



## SELECT COMMITTEE ON THE CONSTITUTION

### The accountability of civil servants

#### Oral and written evidence

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**Lord Armstrong of Iminster GCB CVO – Oral evidence (QQ 239–249)**

*Evidence Session No.6*

*Heard in Public.*

*Questions 239 - 249*

WEDNESDAY 11 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Lord Lexden  
Lord Powell of Bayswater  
Lord Shaw of Northstead

**Examination of Witness**

**Lord Armstrong of Iminster GCB CVO.**

**Q239 The Chairman:** We move swiftly to Lord Armstrong, who has kindly been listening to the conversation. Thank you so much for coming.

**Lord Armstrong of Iminster:** It is a pleasure to be here.

**The Chairman:** The normal broadcasting rules apply this morning, Lord Armstrong. We are broadcasting, so we would be very grateful if, when you speak, you could identify yourself for the benefit of the record. I would just like to explain very briefly that this is the penultimate session we have of oral evidence. We have heard a great deal of evidence from many sources, with people suggesting that the situation as it stands is not perhaps fulfilling some of the understandings of the normal conventions about executive accountability and the relationship of the civil service through Ministers to Parliament. We are now really looking to people like you, with enormous experience, to give us some guidance on some solutions, as well as your perspective on what is happening in the present situation. I would like to start with Lord Lexden.

**Q240 Lord Lexden:** I would just reformulate what the chairman has said as a question. It would be enormously useful if you could briefly look back at the conclusions on the question of the accountability of civil servants with which you are left as a result of your huge experience. Secondly, could you look ahead and tell us how, in your judgment, the changing features of the relationship between the executive and Parliament ought to, perhaps, or could, perhaps, alter the conventions as they applied in your time?

**Lord Armstrong of Iminster:** I am Lord Armstrong of Iminster, formerly a career civil servant. In my last post in that career I was the Secretary of the Cabinet and Head of the Home Civil Service. All I would like to say by way of further introduction is that I retired at the end of 1987, so it is nearly 25 years since I was actively in government, and I would ask you to bear that in mind as you put your questions.

I will come now to the matter of accountability that Lord Lexden asked about. The position, as it was when I was in the civil service, was that civil servants were accountable to Ministers and Ministers were accountable to Parliament. I think that that is more than convention; it is a principle. It would be very difficult for civil servants to be accountable to two masters. No man can serve two masters, and if there were to be some kind of arrangement for permanent secretaries other than the accounting officer arrangement, it could create possibilities of severe division, with split responsibility and split accountability for civil servants. The principle remains valid, as far as I am concerned, that the civil servant is accountable to the Minister and the Minister is accountable to Parliament. We have to build the effects of change within that framework.

**Q241 Lord Lexden:** The simple proposition that you put before us is perhaps difficult to maintain in its entirety, in the absolute form you have explained, particularly in the light of the development of the select committee system, which occurred at the beginning of Mrs Thatcher's Government. It has been put to us rather strongly by one or two of our constitutional experts, Peter Hennessy and Peter Riddell in particular, that a chance was lost. Something that ought to have been done in 1979 or the years thereafter simply was not done, and that was to lay down adequate arrangements for the way in which select committees conduct their investigations and then report to Parliament. We heard this morning about the Osmotherly rules. There is a large feeling among our experts that they provide an inadequate basis for the investigatory work of select committees, which now loom so large in the work of Parliament. Given that is the case, how should matters be conducted? We have heard reference to the need for new rules of engagement, principally based on the select committee system. What is your view of that?

**Lord Armstrong of Iminster:** My view would be that the practice should develop flexibly to take into account the changing situation but have respect to the basic principle. It remains my view that, while select committees are rightly inquiring more extensively and deeply into things, that basic principle remains. Ministers are chosen, they are in government, they are elected and they have that accountability and responsibility. They stand or fall by the success or otherwise of what happens—what is done by the government of the day and by them in their departments. Ministers are happy to take credit when things go well; clearly they are not so happy when things do not go well. It remains my view that the resolution of the kind of difficulty you describe is a matter of the practicality of operations rather than changes in the basic principle.

**Q242 Lord Lexden:** Do you think the word accountability ought to be considered more carefully than tends to be the case? It immediately gives rise to feelings of blame and censure. Going back to select committees, their work is born of the need for explanation—why things have gone wrong—rather than the remedies that should be applied. Extending what we mean by accountability in those ways perhaps fits the circumstances we have today.

**Lord Armstrong of Iminster:** I understand that. I still think the system could accommodate that within the basic principle. The concept of accountability is pretty clear and, in a sense, it differs from responsibility, because for somebody who is accountable there is somebody to whom they have to account. As I say, it is very difficult to account to two masters. The civil

servant is accountable to the Minister and the Minister is accountable to Parliament. Clearly the work of select committees requires a lot of explanation and transparency from civil servants. In that role the civil servant is the representative of his Minister, and if the Minister says, “If they ask you this question, you must not answer it”, or, “You must answer it in a certain way”, the civil servant is bound by that.

**Q243 Lord Crickhowell:** I left the Cabinet in 1987, so, like you, I am 25 years out of date. You have talked about accountability. Very few of our witnesses questioned the concept of ministerial accountability, but they repeatedly made the distinction between accountability and responsibility. So often in these cases, particularly with major, complex, long-term contracts, the decisions were originally taken by a different administration and the civil servants will have changed. Clearly the Minister cannot be responsible for the errors made perhaps years before. He can explain them and report on them, and he should do so, but it forces us back to how we deal with the question of responsibility. Increasingly, select committees are asking to question the civil servants involved. I have seen cases recently where very responsible procurement directors of major departments have sat alongside Ministers and answered questions. How do you deal with this particular problem of responsibility? We have the accounting officer, who is certainly responsible and answerable for the financial affairs of the department. Should not the civil servants who are basically implementing and responsible for implementation have similar accountability for that implementation? Is there not some way in which we can bridge the gap? As I pointed out to the last witness, select committees are not going to relax; they are going to demand answers on these questions, and we are going to have to finish up with an arrangement that covers this particular problem.

**Lord Armstrong of Ilminster:** I do not know the answer; I have not thought deeply about it. I am not sure that I can help with that. I agree with your view that there are an increasing number of long-term projects. I think that must be a problem. The Minister who comes into office inherits projects, which he probably has to stick to. We can all think of examples where that has happened and where change has proved to be difficult. Is it impossible for the practice of select committees to develop in a way that accommodates that but also accommodates the basic principle? I do not know, but I think it should be.

**Q244 Lord Irvine of Lairg:** Lord Armstrong, would you accept that a Minister cannot, in many cases, be effectively accountable to Parliament unless through civil servants giving evidence to select committees, as is the practice today? If you answer yes to that—that they cannot be effectively accountable other than through civil servants giving evidence—do you then think it would be reasonable for a select committee to allocate blame for a failure in the execution of policy?

**Lord Armstrong of Ilminster:** I am not sure that I do answer your first question with a “yes”, so I would not want to go along with that. I think that a select committee can very well identify the failure of a project or policy but, reverting to the previous session, without pillorying particular individuals. It does not seem to me that a select committee is the ideal body to sit in judgment on the conduct of a civil servant, who may have no opportunity to defend himself or herself, but the select committee can well point to the failure of a project and the reasons why it has failed. If that leads the Minister or the department to take the view that there has been culpable failure by a civil servant, the ordinary procedures of disciplinary conduct are there to deal with that.

**Q245 Lord Irvine of Lairg:** Are you therefore saying that, in your view, it would be improper for a select committee to name a civil servant whom the select committee, after due inquiry, from its standpoint feels merits blame?

**Lord Armstrong of Ilinster:** I think that would be very rare, if ever. The identification of a civil servant by name in that situation does not seem to accord with the principles of natural justice. It has not had the safeguards that go with what would be a legal proceeding in that respect. It seems to me that while select committees identifying the failure or mishandling of a project should be able to refer to it, they should be able to make their point without pillorying a particular individual.

**Q246 Lord Powell of Bayswater:** You heard the earlier evidence session with the FDA. Do you think there is a risk of being too protective of civil servants and reinforcing an impression of secrecy in government? It is not unprecedented for select committees to speak critically of civil servants. You and I remember the Westland affair, in which you nobly interposed your body between named civil servants in No. 10 and a select committee when they criticised the civil servants in No. 10, and the world did not come to an end. Do you recognise that things have moved on a bit and that criticism of civil servants is not something to be terrified of?

**Lord Armstrong of Ilinster:** I agree with that, but it is about how it is done and whether it is done with due regard to natural justice and the ability of the civil servant concerned to defend himself and be subject to the ordinary protections that any individual would have. There is something very public about being identified in a select committee report, which ought to be avoided in all but perhaps the most unusual circumstances.

**Q247 Lord Irvine of Lairg:** Are you saying that there is an inherent potential unfairness in the select committee process if a particular civil servant is being criticised? Would you not trust an experienced chairman of a select committee to ensure the civil servant, who is voluntarily giving evidence to the select committee, is protected from the standpoint of fairness and has every opportunity to make a case in his defence?

**Lord Armstrong of Ilinster:** I am not sure that every select committee can be relied upon to be as fair as that. We have had recent cases in which one can see that that has happened, although admittedly not in relation to civil servants. With the best will in the world, the select committee process can become highly politicised, and that is a danger.

**Q248 The Chairman:** I am struggling a little to distinguish the private sector from the public sector in this. After all, one could question whether the elements of natural justice were applied to Mr Rupert Murdoch, or some other senior people in the private sector who have been subject to this kind of politicised, if you call it that, inquiry.

**Lord Armstrong of Ilinster:** I think Mr Rupert Murdoch was responsible in the sense that a Minister is responsible. He is not strictly accountable to Parliament but he is accountable. It is his organisation that is in the dock in that case, and therefore he comes to give evidence. I think there is a difference; that is a special situation. It does expose the risk that the process can become highly political.

**Q249 The Chairman:** Then we get back to the question I asked the previous witness, which was: does that suggest that one is looking to a broader definition or broader understanding of the accounting officer within the public sector? The point Lord Crickhowell made about very big projects managed by individual civil servants is also relevant.

**Lord Armstrong of Iminster:** I am afraid I have not thought about the possibility of having some role like that of the accounting officer in relation to other aspects of departmental work, and I would want to think about that rather carefully.

**The Chairman:** Thank you very much, Lord Armstrong. You have done precisely as we invited you to do, which was to give us very clear and precise guidance. So thank you indeed for your time.

**Lord Armstrong of Iminster:** Thank you for inviting me.



## **Rt Hon Sir Alan Beith MP, Rt Hon Margaret Hodge MP, and Bernard Jenkin MP - Oral evidence (QQ 1–26)**

*Evidence Session No. 1.*

*Heard in Public.*

*Questions 1 - 26*

**WEDNESDAY 23 MAY 2012**

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Lord Lexden  
Lord Pannick  
Lord Powell of Bayswater  
Lord Renton of Mount Harry  
Lord Shaw of Northstead

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### **Examination of Witnesses**

**Rt Hon Sir Alan Beith MP**, chair of the Justice select committee and of the Liaison Committee; **Rt Hon Margaret Hodge MP**, chair of the Public Accounts Committee; and **Bernard Jenkin MP**, chair of the Public Administration Select Committee.

**Q1 The Chairman:** Good morning. I thank all three of you for coming to the Committee. It is enormously helpful to us. We are starting very promptly because I am aware that you will want to be away down the corridor for Prime Minister's Questions promptly at around a quarter to 12. It is a great privilege for us to hear from such senior members of the House of Commons at this early stage of our inquiry, which from a look at the newspapers seems daily to become more relevant. However, I should emphasise at the beginning that, although the Committee is obviously interested in the organisation and role of the civil service, it is specifically looking at questions of accountability through Ministers and directly to Parliament. We are clear that the organisation of the civil service may be structured in a different way and that that may become more relevant to this inquiry, but at the start we cannot second-guess, as it were, what proposals may be made by the Cabinet Office or, indeed, by anyone else in the Government. Perhaps I may summarise what we hope you will be able to look at. Is there a problem with accountability in any of its forms? If so, how and why has it arisen, and what should be done about it? In simple terms, those are the matters which we are most anxious to look at.

I should explain, for the benefit of those taking part in the Committee, that Mr Jenkin has said specifically that, although he is chair of the Public Administration select committee in the House of Commons, this morning he will speak in personal terms. May I confirm that that is also the position for Sir Alan and Mrs Hodge?

**Sir Alan Beith MP:** Yes.

**Margaret Hodge MP:** Yes.

**The Chairman:** Thank you. It is worth confirming that for the record. As this is the first evidence session on this inquiry, you may hear some declarations of interest from members of the Committee. That is part of the order we have to follow. Would one of you like to make an opening statement?

**Bernard Jenkin MP:** Thank you very much for this opportunity; it is a great privilege. In direct response to your point that you want to concentrate on accountability, the factors which are muddying the accountability waters are very broad and, as we have seen, are leading to tensions between the permanent civil service, Ministers and Parliament: 24-hour media, freedom of information, devolution, decentralisation, transparency and technology—the sheer complexity of government, and not least the legal complexity overlaid by legislation from the European Union and the Human Rights Act 1998, which is referred to in every other meeting civil servants have with Ministers. There is also a mounting sense of frustration in that Ministers do not feel that the civil service is accountable to them and they find it hard to get things done. That ranges from Tony Blair’s “scars on my back” to the complaints of the present Prime Minister about the “enemies of enterprise”.

I have a strong sense that the machinery of Whitehall has lost some of its effectiveness. PASC reports so far in this Parliament have found: that Whitehall lacks strategic thinking capacity; that the centre of Government, which employs many more people than it did 20 years ago, is albeit less capable of getting departments to work together; that the civil service is woefully short of key capabilities, particularly in project management, IT procurement and procurement skills generally; and that it has lost specialist expertise at the very top. There was only one applicant for the post of Second Permanent Secretary at the Ministry of Defence. Worthy as she is, she was not brought up as an MoD official like, say, Michael Quinlan. That churn at the top has promoted generalists rather than specialists as departmental heads. Decision-making, as reported by many non-executives, has become slow and risk averse, paradoxically adding risk and cost to every decision. Worst of all, however bad the final decisions turn out to be, however many billions of pounds are wasted, no Minister or civil servant seems to be individually accountable or responsible for what has happened. There is also a sense that the senior civil service has lost its confidence to assert rigour and discipline in the conduct of their departments in the form of good order, good governance, good procedure and objectivity.

A study of the means of accountability is therefore very timely, but I suggest that your inquiry needs to be placed in a context by settling answers to some first-order questions. PASC hopes that these will be addressed in the forthcoming civil service reform plan, a PASC recommendation that was initially rejected by Ministers but subsequently accepted. The questions are: what is the fundamental reason that we have a permanent civil service? What should the permanent civil service uniquely provide for the nation? Does it provide that now, and if not, what needs to change in order that it should do so? How might that change be managed, and by when? Northcote–Trevelyan refers to the need for, “an efficient body of permanent officers ... subordinate to ministers”—I emphasise the next part—“yet possessing sufficient independence, character, ability and experience to be able to advise, assist and, to some extent, influence those who, from time to time, are set over them”. Haldane reported the need for, “the organised acquisition of fact and information, and for the systematic application of thought, as preliminary to settlement of policy and its subsequent administration” by people “whose duty is to study the future, and work out plans and advise those responsible for policy or engaged in actual administration”.

Rt Hon Sir Alan Beith MP, Rt Hon Margaret Hodge MP, and Bernard Jenkin MP - Oral evidence (QQ 1–26)

But we expect something more than that. In his book, *The British Constitution*, Professor Anthony King concludes his chapter on “Mandarins as Managers” with the somewhat chilling words, “the traditional civil service was”—I emphasise the word “was”—“one of the few checks and balances in the old constitution”. Has that gone? Should we get it back? Armstrong’s memorandum implicitly refers to this when he says, “In the determination of policy, the civil servant has no constitutional responsibility or role distinct from that of the Minister”, which implies that outside the role of policy he does. Armstrong later refers to the need to act on “a fundamental issue of conscience” or on a matter relating to the Civil Service Code, but is that enough? That is the question I shall end with.

**The Chairman:** Thank you very much. That was an enormously helpful way of putting the right context into our inquiry, and I can assure you that we are not going to ignore it either historically or in contemporary terms. In my introduction I was simply trying to focus on the area we felt we needed to deal with specifically with our three witnesses this morning. But again, that was very helpful.

**Sir Alan Beith MP:** Perhaps I should just add that Mr Jenkin in his role as chair of PASC obviously is charged to look at these questions and that his Committee is doing so. He is also charged by the Liaison Committee to prepare some work on committee powers, which raises questions that are very current in the media at the moment and on which the Liaison Committee will subsequently report.

The one comment I would make is that, while it is certainly true that the context of what the civil service is like and how it operates has changed, so has the context of the House of Commons as well. Parliament has not been content to sit back and see a system move in a direction in which ministerial personal accountability was assumed to be the basis of the relationship between Parliament and the civil service; it has not been content to rest on that alone. There has been a huge widening, particularly with the growing authority of select committees and the election of their chairs. There is a much greater recognition that we are entitled to the information that we seek and we are entitled to see those officials we want to see. Indeed, the 2005 revision of the Osmotherly rules specifically recognised that and committees have become ever more determined to get the information they want.

Let me give you an idea of the distance that we have moved from the old notion that essentially it was the Minister, with the permanent secretary going to the Public Accounts Committee, which represented the channel through which the executive related to Parliament. My Committee decided that it wanted to have a very clear view of what happened in the Ministry of Justice, and so we said we would like to visit every floor of the department and the only person we wanted with us was someone with keys to the doors. Otherwise, we would talk to whomever we wanted, wherever we wanted. After a brief discussion the Permanent Secretary agreed to that, and I think the department felt in the end that it proved to be a very satisfactory way of ensuring that the Committee had a better understanding of what was happening.

**Margaret Hodge MP:** I have been thinking about this issue a lot. The answer to your specific question of whether there is a current problem is yes, but the answer to what should be done about it is much more difficult. I come at it from the perspective of the Public Accounts Committee, which is charged with ensuring economy, efficiency and effectiveness with respect to public expenditure. This is hugely important in the current context of cuts. The depressing reality of all the inquiries done by our Committee is the continuous recurrence of waste that leads to a perpetuation of wastefulness; people never learn the lessons. We think that accountability is at the heart of the problem of trying to secure better value for money, so we come at this from that view.

Rt Hon Sir Alan Beith MP, Rt Hon Margaret Hodge MP, and Bernard Jenkin MP - Oral evidence (QQ 1–26)

Why have things changed and why has it become more difficult? First, the Government have got bigger. When Haldane established the constitutional convention that Ministers are accountable to Parliament and civil servants are accountable to Ministers, there were 28 civil servants in the Home Office. Now, despite the changes and the growth of the Ministry of Justice, there are 34,000. The idea that one Cabinet Minister can be accountable for the actions of some 34,000 people is, I think, mistaken. Secondly, government is more complex. There are cross-government issues. Recently we looked at apprenticeships, where accountability is held across two or three departments. We have regional growth funds, or universal credit where accountability between HMRC and the DWP is unclear. We have the new landscape of public services with much more fragmentation through the development of independent organisations, whether they be free schools, academies, foundation trusts or private providers providing public services funded through public money. We have to follow the taxpayer pound.

I think that there is an essential disconnect in the whole argument put forward by the senior civil service in trying to defend the old traditions. If Ministers were really accountable for everything their civil servants do, they ought to be able to hire and fire, and yet to maintain civil service independence they cannot do so. To me that feels like an uncomfortable set of principles. There are problems around non-ministerial departments. There was a lot in the press about our inquiry into HMRC and the way it handled disputes over the settlement of tax in big corporations. One of the problems is that there is no Minister in charge. Actually, there are similar issues around maybe even the armed services, which might explain some of the problems we have with MoD spending.

I think that the practice has changed. Let us look back to the UK Border Agency when there was a Labour Government. Beverly Hughes resigned, and I cannot even remember what it was she resigned over, but she did so as a result of actions taken by a civil servant. She took the ministerial rap for it. Compare that with Theresa May and the recent actions of Brodie Clark at the UK Border Agency, where she took a different view. Actually, I support Theresa May and her approach to where ministerial accountability stops and civil servant accountability starts, but it is a change in practice from the conventional orthodoxy of where accountability should lie.

We have a problem and we have to think about how to fix it. I have some ideas about that, but I shall stop there.

**Q2 The Chairman:** We may come on to those in greater detail. I think that what all three of you have said in different ways is that the present way of doing things is ineffective. Do you think that therefore the convention about ministerial accountability should be changed explicitly?

**Sir Alan Beith MP:** I would say no, in the sense that it is an essential overview. I would be very unhappy to see a situation in which Ministers did not have ultimate responsibility to Parliament. That responsibility might take the form of saying that the Minister should have set up a different structure in order to ensure that whatever disaster had happened would not have taken place, rather than that the Minister is held responsible for the particular sequence of events within, for example, an executive agency. However, that is only a small part—although at root an important part—of the accountability of the public sector to Parliament and it has to be supplemented in all sorts of other ways. That should not be allowed to be a barrier to, for example, committees of either House seeking evidence from a particular civil servant and getting the information that they require.

**Margaret Hodge MP:** I disagree with that. I think that the situation has to change, but defining how you implement or take forward that change is hugely complicated. I think that you just have to accept the reality that Ministers cannot be accountable for much that happens. To take an example of a procurement decision, the NHS IT system was a complete shambles that cost £6 billion. Can you really say that Ministers were accountable for that? Big procurement decisions are one example. I think that we have to try to move to a definition where Ministers are responsible for policy formulation and there is greater accountability of the civil service for policy implementation. That is difficult and blurred, and there will no doubt be areas where disagreements will arise, but select committees are actually pretty adept at sorting out where responsibility and accountability lie. That is hugely important.

In addition, the fact that we have a much more fragmented public sector increasingly means that Ministers are not accepting accountability for what happens in, for example, an NHS trust or academy school. Indeed, yesterday we had an inquiry into the work programme and the performance and integrity of private providers such as A4E. Ministers are not accepting that accountability. If that is the way that they are going to go, we need to recognise that and change our conventions in that regard. From the PAC's point of view, we must follow the taxpayer's pound and we must have proper accountability. That is why I think that there have to be changes.

One final thing is that, under the current disposition, civil servants can issue letters of direction when they feel that Ministers are not acting in a way that ensures value for money and uses public money properly. That system just is not working. That is another indication of where the system is broke. Let me give two examples of that. The classic example is the aircraft carriers, for which the Labour Government decided to go ahead with entering into a contract when there was absolutely no money in the budget. Somebody should have stopped it at that point, but the Permanent Secretary did not request a letter of direction. We went ahead and, because the money was not there, we delayed the building of those aircraft carriers and probably incurred £2 billion of extra cost. The system that is there at present is not working.

Another example is fire control centres. A policy decision was taken to establish regional fire control centres under the Department for Communities and Local Government. That was a perfectly sensible policy idea, which was part of the regional agenda, but it was also supposed to save money so that we did not have 999 calls going to 150-odd fire authorities. However, it was never going to work, for all sorts of terribly practical reasons. Somebody should have stopped it, but never was there a letter of direction. The Cabinet Minister at that time, John Prescott, says that he was never told that it was unworkable—goodness knows where the truth lies there—but nevertheless—

**Sir Alan Beith MP:** We all told him.

**Margaret Hodge MP:** A letter of direction should have been written before more than half a billion pounds of public money was wasted on a project that was never capable of implementation.

**The Chairman:** That is the implementation argument. However, in the previous session of Parliament, this Committee worked hard, and in the end successfully, to ensure that the Secretary of State's ultimate responsibility for the expenditure and organisation of the health service was reinserted into the Health and Social Care Bill. We felt that that was an important re-organisation of the same convention, which had been usefully adhered to since the NHS was begun.

**Q3 Lord Powell of Bayswater:** I should declare an interest as someone who a long time ago was a civil servant for 28 years. Trying to stick to this broad issue of accountability, what all of you have said about the increasing complexity of life in organisations is absolutely true; no one could deny that. But it is true in every walk of life, not just Parliament and government; it is true in business, in the military and everywhere.

The concept of organisations led by someone who shows leadership and takes responsibility is a very powerful one. It works very effectively in business. The chief executive is responsible for what happens in the business to the board and the shareholders. It would be quite a step to propose diluting that, and I would be quite surprised if Ministers themselves would want to dilute that. I wonder whether when Mrs Hodge was a Minister she was busy devolving accountability to the civil servants or whether, when in the executive, she looked at it from a rather different perspective and thought that that was a matter for her to answer for. I rather hope that she took that view at the time, because it seems to me very important to preserve that concept that somebody who is elected and given major ministerial responsibility is accountable. Surely the examples that have been given rather reinforce that, because they have been really big ones. I do not think that you could expect a civil servant to be accountable for a decision on the aircraft carriers. That is a massive decision. Only a secretary of state, or the Cabinet collectively, could have been accountable for a decision on that scale. Once we go down the street of undermining or diluting ministerial accountability, I just wonder where we stop.

**Bernard Jenkin MP:** The direct answer to your question and the Chairman's question earlier is: abolish ministerial accountability, no; but re-express it and redefine it, yes.

Following your business analogy, I suggest that here-today, gone-tomorrow Ministers should be treated like company directors. Company directors have to operate according to proper procedure, legality and all the rest of it. They cannot just gallop in and do what they want. Bluntly, they have to be stopped from being irresponsible, particularly when you are dealing with Ministers who come in with no experience of being a Minister before and who may never have run any organisation before, short of their own MP's office, before taking on responsibility for government departments. So the permanent civil service has a very strong role in being the executive authority in the department and running that department. It is very important, while we redefine the accountability question, that we make some important distinctions, which are made in the Armstrong memorandum, but perhaps not explicitly enough.

Ministers are accountable for policy and outcomes, but in matters of fact and matters of how something is going and how something is going to be implemented, realistically the Minister cannot be responsible for every detail. We want both a more effective and a more accountable civil service that is, in turn, going to make Ministers accountable for the decisions they make. It is a sort of triangular relationship between Parliament, Ministers and civil servants, to which I referred in my opening remarks, which is breaking down. It is not just a question of which civil servants are telling what to select committees; it is a far broader question than that.

It seems to me completely unreasonable that civil servants should be schooled in lines to take on matters of fact in front of a select committee. My experience on the Defence select committee was that we would have operational commanders in theatre giving us the line to take instead of telling us—although the good commanders would shut the civil servants out

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of the room and tell us—the whole unvarnished truth. I think that that is what select committees are entitled to.

**Sir Alan Beith MP:** There is a further downside to the old-fashioned interpretation of ministerial responsibility for individual decisions, which is the crippling effect of an assumption being made, when every local decision is taken, that this will have to be referred upwards. That is crippling to initiative. You see it, for example, in the Prison Service, where the possibility that some event in prison might go wrong means that the governor has to be ready to deal with a parliamentary question file or a Minister's query because of media inquiries. If you carry that too far, initiative is crippled.

**Lord Powell of Bayswater:** There is of course the opposite danger that Ministers, in the sort of situation which Mr Jenkin was describing, would duck the decisions and say, "I do not want to take that decision, thank you very much, as it might make me unpopular".

**Bernard Jenkin MP:** Then they should not be Ministers.

**Q4 Lord Powell of Bayswater:** I would not like to go too far down that road, but civil servants would be left taking responsibility for unpopular decisions which Ministers have edged towards.

I think that the point that I am getting at, which we have not quite got to the core of yet, is that the present system of ministerial accountability is part of quite a delicate balance. I do not use the word "constitutional" as it is not constitutional but a matter of conventions but, none the less, it is a very delicate balance which has existed for a very long time. Changes around the edges? Perhaps so, but once you start to undermine the central core of that, you are in very difficult territory, which we will no doubt come on to, involving politicisation of civil servants.

**Sir Alan Beith MP:** I would argue that the changes have been quite profound. There are changes going on all the time in the working of that relationship, although I agree with Lord Powell that ministerial responsibility is a very important doctrine that we lose at our peril. Nevertheless, the practice has changed. I have been in Parliament for 39 years. In the perspective of history, that is not a very long time, but there has been enormous change in that time in the kind of things that Ministers would no longer feel that they had to take responsibility for, the kind of things that civil servants might happily be personally identified with, in a way that was anathema in earlier times.

**Margaret Hodge MP:** Nobody is arguing that we abolish ministerial responsibility; it is a question of redefinition. Perhaps one should start by saying that, as a Minister—you would probably say likewise as a civil servant—government works best where the two work in partnership effectively. Where you have a good relationship between your Ministers and your civil servants, you probably provide the most effective government on the part of the voters and the taxpayers.

However, I think that you have to accept that at present the traditional accountability structures simply no longer work. Otherwise, Theresa May would have fallen on her sword over the Brodie Clark incident. She did not. Maybe you think that she was wrong; I think that it was perfectly legitimate for her to argue that action was taken without authorisation. Where the Civil Service was in difficulty was that the current convention did not enable the civil servants to defend themselves. I think that the current conventions are as frustrating to both sides, to all parties, in this debate.

Let us take Jonathan Stevens and Jeremy Hunt, if one may take a current example, where he just happened to be appearing before us on the day after Jeremy Hunt said that he had the

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authorisation of the Permanent Secretary for the role played by the special adviser. Jonathan Stevens clearly felt unable to answer the question directly, and was no doubt frustrated by that, although we can surmise what he actually said to Jeremy Hunt. Those are all instances of where the current balance no longer operates.

One final thing is that we are demanding transparency everywhere. I am about to have a session this afternoon on data transparency and the impact that has had on opening services to public account. Civil servants are probably the last vestige of where there is not proper transparency and where responsibility and accountability are not linked.

**Q5 Lord Crickhowell:** As a former Minister, I certainly share the basic principle mentioned by Lord Powell, but I pick up the point that Bernard Jenkin made about lack of specialist skills. He cited IT. That is a very good example of how you get into a situation where truth does not come out. At one time, I found myself, as the chairman of a public company, doing quite an important IT contract at the very heart of government. The very heart of government did not have any IT skills at all. They called in contractors who had, incidentally, presided over a series of previous disasters. The whole thing went bottom-up in a pretty disastrous way; it need not have done, but it did. What happened then was that it disappeared into a black hole. The Public Accounts Committee never heard anything about it because the civil service's interest, unless it had been identified outside, was to protect itself and to cover up. You do not necessarily get the truth in that situation.

That leads me to the question: how do you deal with the expert special adviser? On the Science and Technology Committee of this House, we completed a very important inquiry at the end of last year into nuclear research. We expected the Chief Scientific Adviser to give us his best professional advice and he did, but it was in total conflict with the advice being given by all the other civil servants, and indeed the Minister who appeared before us. One then asks: how do you reconcile the requirement that the expert gives the select committee the advice it is entitled to have and does not get jawed up, as he did in this case by the Permanent Secretary as soon as he got back to the department? That leads me to a session that I watched quite by chance on BBC Parliament last week of the Defence select committee examining the new, very able head of procurement, the service head and the Minister. What I found interesting was that they all appeared together before the select committee, and the evidence was deeply impressive. For once, I thought I was hearing how procurement really should be managed. The head of procurement made impressive comments about what is happening, and then the Minister felt able to make his comments. Is there a way forward that is somehow related to that kind of operation by select committees, where the experts are not entirely separated from the Ministers but are seen to be working together?

**Bernard Jenkin MP:** I absolutely agree with that, and I do not think that this needs to break with the Haldane settlement. The Haldane report foreshadows the advent of departmental select committees in its final paragraphs. The report says, “and for this purpose it would be requisite that Ministers, as well as the officers of Departments, should appear before them to explain and defend the acts for which they were responsible”. So we are not trying to break the mould here; we are simply trying to bring some sense to it. What we have at the moment is civil servants covering their tracks by claiming that they are not allowed to say what they should say because of ministerial responsibility. At the same time, as Professor King writes in his book, “ministers are still accountable to Parliament, but they are now able to shift, in a way that they never were in the past, some of the responsibility for their action—and their mistakes—onto their officials”. So we are in the worst of both worlds.



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**Q6 Lord Irvine of Lairg:** I declare an interest in that I was Lord Chancellor for six years. All of you seem to have drawn a distinction between policy and implementation; all of you seem to agree that Ministers are accountable certainly for policy and perhaps for the outcomes of its implementation. However, all of you seem to be saying that Ministers are not responsible for every detail of implementation. Is there a corollary for that in the powers that should now be recognised as being vested, as it were, in the modern select committee? I would like your help on a couple of specific questions. Do you think that select committees should be entitled, and recognised as being entitled, to question civil servants on the detail of implementation? One aspect of that is that they can in effect summon whom they want to hear from; the second aspect is that they must be entitled to question them without any kind of restriction. Should a convention be recognised whereby, for example, civil servants appearing before select committees and parroting lines-to-take is not acceptable, because lines-to-take in that context are essentially an engine for obfuscation?

**Sir Alan Beith MP:** Select committees have the power to call named civil servants. The revised Osmotherly rules, the Cabinet Office memorandum, make that clear with two qualifications. I direct you to paragraph 46, which states: “Ministers may, in such circumstances, wish to suggest either that he or she give evidence personally to the Committee or that a designated senior official do so on their behalf”. However, the House is still free to insist on the civil servant’s attendance, at which point you enter a fascinating area in which the Minister might attempt to instruct a civil servant not to carry out a summons from Parliament—I think that most Ministers would not want to get into that situation. However, the second part of your question raises the extent to which a Minister giving an instruction to a civil servant not to tell the truth to a committee would be in contempt of the House—we are currently discussing how we deal with contempt of the House. A requirement is therefore placed on civil servants, which the Osmotherly rules in various places reiterate, to tell the truth to committees.

One other point made by the memorandum by way of qualification is that select committees are not disciplinary inquiries or a mechanism for deciding whether to allocate personal blame to an individual civil servant. Indeed, if that was what we were doing, we would probably have to organise our proceedings differently. That might be a reason for a Minister saying: “Actually, I do take responsibility”. The process envisaged there, at least in theory, asserts Ministers’ responsibilities. Either the Minister lets the civil servant come to the committee and tell the truth, or the Minister comes along and says, “It’s my fault; I directed that this should be done”, or “It fell within the terms of the instructions that the civil servant had good reason to believe that he had got from me as Minister”.

**Q7 Lord Irvine of Lairg:** Sir Alan, are you saying that, in relation to the generalities that we are trying to address, there is no need in your view for any recognised additional powers for select committees?

**Sir Alan Beith MP:** No.

**Q8 Lord Irvine of Lairg:** When you say no, do you mean that there is a need?

**Sir Alan Beith MP:** Let me put it this way. There are enough people who do not realise that committees have that power for us at least to question whether it should be expressed in different terms, whether the wording of the revised Osmotherly rules should be changed to make it much clearer and whether we should remove the ability of the Minister to say, “I will substitute myself for the named civil servant or the permanent secretary, because contrary to the committee’s view, I insist that this is something for which we take

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responsibility; it was a centrally made decision.” It is not sufficiently clear to some people at the moment.

**Q9 Lord Irvine of Lairg:** What is the direct answer to the question whether, in your view, select committees require additional powers?

**Sir Alan Beith MP:** The reason that I did not give a very direct answer is that, on the Liaison Committee and with Mr Jenkin’s assistance, we are looking precisely at whether the powers need to be extended and expressed in different ways. I want to assert that more power already exists than people sometimes recognise.

**Bernard Jenkin MP:** My Lord, in theory, we have the absolute power to summon persons and papers. We should not upset the legal principle that the civil service has no legal personality and that civil servants’ actions, by the Carltona principle, are entirely consonant with their Ministers’ wishes. Ministers need to be individually and jointly accountable to Parliament for what happens in their departments. The question is one of practicalities. We live in a different world from that of 100 years ago.

**The Chairman:** Or even, if I may say so, of seven years ago.

**Bernard Jenkin MP:** The age of deference, where we respect the front that an institution presents to the public or to Parliament, has passed. We expect to understand the soap opera of what is going on within our institutions—it is all over the internet, the television and the newspapers. The idea that Parliament should abjure itself from that kind of scrutiny of our institutions would seem absurd and make us look irrelevant. We must change what we do, but Haldane says that we can do that without upsetting any of these legal principles. I used to get very steamed up about the Osmotherly rules. You should meet Sir Edward Osmotherly if you have not done so, my Lord; it is a very agreeable experience. He is a former clerk of the House of Commons who serendipitously gave his name to these rules which he drafted while on secondment to the Cabinet Office. They are only a fiction created by the executive to try to create excuses for not putting the right people in front of select committees. They have no legal standing whatever and, if Parliament wishes, it can ignore them, and it probably should.

**The Chairman:** But a case is being made that Parliament should have some role in an updated version.

**Bernard Jenkin MP:** I think that we should keep our distance. We should have nothing to do with them. We should maintain our absolute discretion to summon papers and persons of our own choosing. If the Government start making up rules for themselves, and they get in the way of our inquiries, we should disregard them.

**Margaret Hodge MP:** The difficulty that I have with the argument is that the practicalities lead you to challenging the principle.

**Sir Alan Beith MP:** I disagree.

**Margaret Hodge MP:** First, ministerial accountability to both Houses of Parliament is hugely important, but is it sufficient? Where are the boundaries? Do we need to reflect on whether we should create new accountabilities for the civil service? That is the difficulty. I do not want to repeat my examples, but there are plenty of them which challenge the overarching principle that Ministers are totally responsible.

Secondly, I do not know what telling the truth is. We see civil servants; we rarely see Ministers. The civil servants, in giving their evidence to us, are constrained by the traditional convention of ministerial responsibility and accountability. You do not get to the truth on

some very complex government programmes, projects and procurements, which is all PAC work, with the current conventions. If we carry on pretending that it is all about ministerial accountability and do not recognise the changes in the world and therefore try to redefine and open up—Lord Irvine’s suggestions in that regard are very helpful, but need underpinning—we will end up not serving properly the taxpayer’s or the voter’s interest.

The current convention on accountability for executive action is for the permanent secretary to appear. We are already challenging and changing that convention. Helen Ghosh was the Defra Permanent Secretary for five or six years. She oversaw the rural payments scheme, which has been a mess. She moved on to become Permanent Secretary at the Home Office. The convention said that we should call the new Permanent Secretary at Defra. We broke that convention and asked for her to come and give evidence, because she had been responsible and therefore, we felt, should be accountable. That is one change.

A second relates to the current accountability structure for a civil service department, which revolves entirely around permanent secretaries. It is the permanent secretary who has a duty to the Public Accounts Committee. I do not think that that is good enough. Our permanent secretaries today—it may not have been the case in your day—spend too much time handling their Ministers. If you talk to them, you find that that is what they do. They are not necessarily just the chief executive of the department. We should consider going down the chain, perhaps to director-general level. If we can draw the distinction, which I accept is difficult, between executive and policy, and therefore between accountabilities, we also come down the food chain a little from the permanent secretary to perhaps the director-general, who is responsible and therefore accountable for the implementation of ministerially directed policy.

**Q10 Lord Irvine of Lairg:** Could you explain to me your intellectual difficulty with recognising complementary accountabilities—accountabilities that are not in conflict but are complementary: civil servants for implementation without prejudice to the Minister’s accountability for policy and eventual outcomes. What is wrong with that?

**Bernard Jenkin MP:** May I just clarify something? I said that I disagree with my colleague. I disagree in that I do not think everything that she subsequently described necessarily upsets the fundamental principle of ministerial accountability. It is merely the means of holding the Minister ultimately accountable for the conduct of his department. As Haldane explains, we cannot be expected to hold Ministers accountable for their departments if the officials will not tell us the facts. The distinction you are making, my Lord, is the right one. It is often difficult, but it should be perfectly acceptable for a civil servant to appear before a select committee and say, “With the greatest of respect, Mr Chairman, I do feel that that is a matter of policy which should be addressed to the Minister and not to me”. That should not be a matter of shame. Of course, it might be seen as passing a hot potato up the political chain, but that is the fact. It is wrong for the civil servant instead—this is what happens—to be briefed by the communications people in the department. This happens to armed forces officers as well, very senior ones. The chiefs of staff are briefed by the communications people, not even military people, about what they are going to say in front of the committee so that it is completely consonant with the messaging that Downing Street and the secretary of state want to put out about what is happening.

**Sir Alan Beith MP:** These two are not necessarily the same, by the way—Downing Street and the secretary of state.

**Bernard Jenkin MP:** Well, you can see the problem. That to me is an abuse of collective responsibility. That is not what collective responsibility should be about. We often wonder

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whether we should be taking evidence on oath. The conclusion I have come to—I have not told the chair of the Liaison Committee yet—is that we should say, “We are not taking evidence formally on oath, but you are under an obligation to tell Parliament the truth and the whole truth, not just what is convenient.” If an official appears and does not tell the whole truth, they should be regarded as in contempt of Parliament.

**Q11 Lord Renton of Mount Harry:** I find it tremendously interesting to listen to the three of you. Like Lord Crickhowell, I was a Minister some years ago and I was in three departments. I never remember having any of the trouble that we are talking about today.

I noticed that Mrs Hodge mentioned the academy schools and Ministers saying that they are not accountable for NHS trusts. That is fascinating. The whole point about academy schools was to remove the responsibility from the local authority and give it to a Minister instead, yet you are telling me that Ministers are already saying, “It is not our responsibility.” NHS trusts are a huge matter. They will go on being very difficult, so one totally understands why Ministers want to say, “Well, it is not us.”

What do we do about it? The problems that you mention have been growing, but is there not always a very basic fact that Ministers can be sacked and civil servants cannot and that is at the heart of it? Therefore we lead on to the thought: is it appropriate for civil servants now, because of the developments you describe, to be directly accountable to Parliament? If so, and if they get it wrong, do they get sacked? Is that what life is coming to? Both Alastair Campbell and Jonathan Powell, I understand, when they were in the Prime Minister's office, became civil servants.

**The Chairman:** All special advisers are civil servants. They had a particular responsibility for managing civil servants.

**Lord Renton of Mount Harry:** In a way, that was odd, but it also means that when the Prime Minister goes, those civil servants who are the special advisers go too.

I totally understand the complaints, the thoughts and the difficulties that you have, but I wonder whether we are moving on to the point that civil servants should be directly accountable to Parliament and that means that if they get it wrong, they can get sacked.

**Sir Alan Beith MP:** By whom? That is the interesting question. Does Parliament take executive responsibility for dismissing civil servants? That is one suggestion.

**The Chairman:** Whether Ministers should have a role in appointing civil servants is a relevant point which follows on from that.

**Sir Alan Beith MP:** The Home Office seems to be a graveyard for careers both of secretaries of state and of senior officials.

**Lord Renton of Mount Harry:** It always was.

**Sir Alan Beith MP:** But these days of senior officials. We all remember the director-general of the Prison Service and, lately, the director of the UK Border Agency.

**Lord Renton of Mount Harry:** Douglas Hurd was one of those who actually succeeded as Home Secretary, and I was one of his Ministers.

**Bernard Jenkin MP:** I would argue that Mrs May is certainly succeeding as Home Secretary.

I think that the reality is changing. We have come from an era where civil servants were relatively poorly paid but had a nice index-linked pension, were showered with honours, had anonymity and were out of the limelight. They are now much more public figures, they are

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better paid and their pensions are under attack, perhaps, but they are still pretty good. The idea that they are unfortunate, beleaguered public servants who cannot speak for themselves is of an era that has passed. They are being held, certainly by the public, to be more directly accountable and it would seem odd if Parliament did not do the same. I do think it is up to Ministers whether their civil servants stay or go, although it is up to the permanent secretary to make sure that the Minister is not victimising one of his civil servants.

**Lord Renton of Mount Harry:** The point that I make back to you is that it is very likely that the Minister will go before the civil servant does, because if he is in, for example, Defra, he will be trying to get out of that job as possible.

**Margaret Hodge MP:** I think that you have to strengthen accountability with responsibility. If someone is responsible, they have to be accountable: praised if they get it right and accept proper accountability if they get it wrong.

In response to Lord Irvine, let me say that what will happen if that system works effectively in practice is that there will be disagreement between evidence given by civil servants and evidence given by Ministers. I think that is a problem which we need to think through properly. I do not know what the answer to it is. I would rather have that openness and transparency, but if we had a system where select committees could question the detail of implementation with no restriction at all and a convention that says that you cannot have the lines-to-take and the sort of briefing that currently takes place, you will get a different interpretation of what is happening from civil servants and from Ministers. That is a fundamental change.

**Q12 Lord Irvine of Lairg:** Would that not advance transparency? You leave out of account in this respect the weight to be attached by the public and other interested parties to your report where you come to a view on those differences.

**Margaret Hodge MP:** Yes.

**Bernard Jenkin MP:** It might make civil servants keener to make sure that Ministers are aware of what might be dragged out of them by the select committee. One senses that, ever since the time of Margaret Thatcher, when she started to try to change the civil service, there is the sense that the civil service no longer has the confidence to tell the truth to power in the way that it did. This kind of accountability might reinforce the necessity for civil servants to tell truth to power.

**Sir Alan Beith MP:** Could I pick up on another point that Lord Renton made in relation to academy schools, which also applies to the National Health Service, which is that the Liaison Committee questioned the Prime Minister on this subject in March. I draw attention to his answer, whether you agree or disagree with it, which is that, “real accountability, to me, is making these organisations accountable to the user. I want schools to be accountable to the parents. The idea that the secretary of state, however brilliant he or she is, can really hold to account every school in the country is clearly nonsense. What I want is a situation where parents in every local area feel that there are schools competing with each other for the custom of that parent, and they are accountable to that parent because they are having to produce results”. That is the context in which this discussion is taking place.

**The Chairman:** I would be interested in the reaction of the Public Accounts Committee.

**Margaret Hodge MP:** Our view is that Ofsted looks at quality, the department currently distributes money, parents care about what happens to their children and there is no accountability for value for money in that.

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**Bernard Jenkin MP:** I would retort by pointing out that head teachers of academies are becoming better paid and their jobs are much less secure. Academies fire head teachers much more readily than local authorities do.

**Margaret Hodge MP:** I do not know if that happens, but we had an instance recently of a school in Lincoln, which belonged to a federation of academies established under the previous Government and taken on under this one. It was called the Priory Federation. Perhaps it was a rogue head—I hope it was—but he was spending public money on sex games, trips for his daughter to Bali, paying himself a huge amount of money, employing his daughter to establish some web page for a lot of money and employing his son, who had a criminal record and therefore should not have been in that position. There was an appalling litany of things going wrong. The governors did not know about it, Bernard.

**Bernard Jenkin MP:** But it was their job to know about it.

**Margaret Hodge MP:** It came to me through a whistleblower. It left officials, as well as the Committee, thinking that you need some form of proper accountability in that system to ensure that these things are spotted early and dealt with appropriately.

**Q13 Lord Pannick:** From the principle that Ministers may not be accountable for the implementation of policy—sometimes they are and sometimes they are not, but there is a general principle that they are not—does it follow that, if they ask, select committees must be told by civil servants precisely what involvement the Minister actually had in the implementation of policy? That is vital to any assessment of accountability on the particular facts of the case. I am troubled by what I understand you to be suggesting, which is that civil servants sometimes feel that they should obfuscate on these issues. Surely it is absolutely fundamental that you know and we know precisely what involvement the Minister has had.

**Sir Alan Beith MP:** There is some degree of protection for the process of discussion. “He rang me on Tuesday and he was not very nice in the way he put it”, is not the kind of exchange you would necessarily expect, but it goes with the soap opera that Mr Jenkin described earlier. However, generally it would be in the civil servant’s interest, if it came to the point where it was a clear policy that caused him to act in a particular way, to say that it was the policy the Minister had set out and that he and his officials acted in accordance with it.

**Q14 Lord Pannick:** My point is that it may not be a matter of policy, but rather that the Minister had received in his or her box a description of how the implementation of an IT project was going and what the problems were. One can easily envisage, even in relation to the implementation of policy, that there will indeed be occasions when a Minister is culpable—not in any legal sense—but is responsible for and involved in what has gone wrong. But we will not know that and you will not know it unless there is an obligation on the civil servant, if asked, to answer questions not as to the confidential details of what the advice and the responses were, but on the fact that the Minister was involved. Am I right?

**Margaret Hodge MP:** You are right in saying that we do not do that at the moment because too often it is obfuscated.

**Q15 Lord Shaw of Northstead:** Surely under those circumstances it would be right for the Minister to be brought before the committee, otherwise he would have to reply to questions that would be put in the House itself. That would be very much less satisfactory than talking to the committee.

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**Sir Alan Beith MP:** It is the appropriate course for the committee to take. It should say to the Minister, “Were you told, when were you told, and what action did you take when you were given a warning that the programme was going badly?”

**The Chairman:** Lord Powell has had to leave, as he explained, to attend a meeting with President Clinton, which is a good excuse.

I shall linger on his point for a moment. There is a question of whether a clear-cut distinction between policy and implementation is possible, because as often as not, poor implementation is the result of dodgy policy.

**Sir Alan Beith MP:** That argument could be applied to the Rural Payments Agency, where you had both. The decision was made to implement a system that was more complicated than the bureaucracy was able to work with. That is one of the realities of life. Clear distinctions are not always made.

**Q16 Lord Crickhowell:** I have one final question on this and then I would like to ask another question. The examples of where people can be held responsible and possibly dismissed have almost all come from non-ministerial departments or offshoots of things like the health service or the education service. Very few, if any, examples have been given of the department itself being held responsible. That takes one back to obfuscation because, with the best will in the world, the permanent secretary will give the best answer he can for the conduct of his department. It means that he will not tell you everything that has happened; he will tell you about the good things. Therefore, I find it difficult to see how, under our present arrangements, you can pin down the actual responsibility of senior civil servants in a department in the same way that increasingly it can be done in the non-departmental public bodies. Is that right?

**Margaret Hodge MP:** I concur completely that accountability is much easier to define in an NDPB. Again, we do not see Ministers so I look at this through this prism of my experience, on the whole, of seeing permanent secretaries. Only rarely do we see Ministers. I am quite happy with an answer to our Committee along the lines of, “That was a ministerial decision”. You then have a clear understanding of where the responsibility and accountability lie, which is all that you are trying to define.

**Q17 Lord Crickhowell:** It should not always be the permanent secretary in accounting matters. I used to bemoan the fact that for weeks on end I could not find my Permanent Secretary. I would then discover that he had a wet cloth around his head because he was being briefed about the awful interrogation he was going to have to face by the Public Accounts Committee. In my day, what were called the deputy secretaries were always being called to give evidence rather than directors-general because they were the people who actually dealt with the case.

**Margaret Hodge MP:** We always ask, particularly in relation to complex defence procurement contracts and so on, “Who is the senior officer responsible and can we see them?” Quite often, they are not brought before us, too often because they change jobs frequently. If you ask what has gone wrong with a lot of government projects, it is because the civil servants, in the way that career progression in the civil service is currently handled, change jobs every two years. In defence or IT procurement cases, which are probably the major disasters that we see all too often, if the civil servants change every two years, a new one comes in and changes the specifications. That makes it more complicated and no doubt more money goes down the drain behind those changes. So if we were to go down the ladder to the senior responsible officer, which I would like to do, we would also require a

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change in the career structure for civil servants that would enable them to stay in the job. In defence procurement they probably cannot stay for the entire 20 years of buying something, but they could remain up to a sensible point at which a new civil servant could take over responsibility. Their reward for doing a job well should not only be a promotion to another job in the department.

**Bernard Jenkin MP:** I should like to support that point with an example. In the 10 or 11 years that I have been closely following defence, I have got to know some of the major defence contractors, and over that period they have remained the same people. But the civil servants and military officers involved in the procurement of helicopters and so on change every two or three years.

**The Chairman:** Let alone the Ministers.

**Bernard Jenkin MP:** Of course. It is no wonder that the industry runs rings around the department. However big the cost overruns, the companies never seem to make a loss on a big programme because they cocked it up—please excuse my language. It is quite obvious that there needs to be a change in the career structure, and I think it is something that the Government have taken on board.

**Sir Alan Beith MP:** Can I make a brief factual point? Unlike the Public Accounts Committee, most committees will regularly see directors. Indeed, permanent secretaries are often rather keen that it is the directors rather than the permanent secretaries themselves who answer questions on main policy areas.

**Q18 Lord Crickhowell:** Mr Jenkin said that the traditional civil service was one of the few checks and balances in the constitution. How far is the civil service a check and balance against irresponsible or worse ministerial action? There is a difference between a Minister being told, “Well, that is rather unwise; I think you shouldn’t do that”, and, “That really would be quite improper conduct”. How far is that still a valid role for the civil service and is it done effectively? That is very much a question for this Committee’s inquiry.

**Bernard Jenkin MP:** I would put it as strongly as this: if they are not doing that job, they are mere courtiers, just “yes people”. They are obviously not, but I certainly have less confidence that senior civil servants are standing up to their secretaries of state on matters of procedure and good order. I have said this before—it is not news—but I think that it is extraordinary that Jonathan Stevens did not stop the special adviser talking to News International about a matter as sensitive as the News International bid for BSkyB, on such a quasi-judicial matter. I have spoken to previous special advisers in the DTI, who told me that they were never allowed in the room or to see papers relating to a potential referral for a bid. How did this happen? We will want to know in due course. It is also a little odd that Lord Butler of Brockwell can say that there has been a breach of the Ministerial Code, and the Prime Minister can then say that the Cabinet Minister has advised that there is no need to refer it to the adviser on ministerial interests. This raises questions about how objective civil servants feel able to be in the advice that they give to Ministers over these matters of propriety.

**The Chairman:** We have moved on to an issue that we felt we had to devote a sufficient amount of time to, which is the whole area of special advisers. Lord Crickhowell, do you feel that that was an adequate response to your previous constitutional point?

**Lord Crickhowell:** I think that we have started down the road, and we can return to it.



**Q19 Lord Hart of Chilton:** For the record, I spent 10 happy years as a special adviser to two Lord Chancellors, so I had a close connection between permanent secretaries, civil servants, secretaries of state and an ever-increasing turnover of junior Ministers, none of whom really knew much about the subject, except that the two secretaries of state were of course experts in their own right. Some of the difficulties that you have been describing never really arose. I find it unbelievable that a special adviser could take it upon himself to take on the role of an intermediary in a quasi-judicial function. That just would not have occurred in my time, for anyone to have contemplated the audacity of being able to do such a thing. I find it almost unbelievable that that could be what actually happened, but we shall find out.

**Bernard Jenkin MP:** The Permanent Secretary was apparently aware and content.

**Lord Hart of Chilton:** Again, I find that astonishing.

**Margaret Hodge MP:** According to the Minister, it was authorised.

**Q20 Lord Hart of Chilton:** Before we move on to other subjects, I am sympathetic to the fact there seems to be a problem and we have to try and see if we can find a solution. In varying ways, all of you have said that there should not be any change to ministerial accountability. Indeed, you would hope that it would be even more responsible of a Minister to take responsibility for everything that went on in his own department. Can you just summarise these changes in rules that you would like to achieve, if you had a wish list? What is it, in summary, that you would hope to change from the system not being adequate for your purposes at the moment?

**Sir Alan Beith MP:** I do not think that any of us are saying that, in the traditional way, you can regard Ministers as directly responsible for every action in their department. Rather, there is an underlying necessity for that ultimate responsibility but, in practice, it tends to surround policy and major decisions. There have to be other ways of maintaining accountability for so much that the civil service does. The question of what new rules are required depends on how far you think existing rules can meet the need for select committees to be able to examine without fear or hindrance all the ways in which government is conducted. But there are a number of areas, and we have highlighted some of them, where it may be necessary to state the rules more firmly, or to deal—to take the specific point that Mrs Hodge made—with the question of former officials, who may often be extremely relevant to an inquiry. The present permanent secretary may be in no position to give you an understanding of what happened in his predecessor’s time. That is a specific change in the rules that I would seek.

**Bernard Jenkin MP:** I am looking again at the Armstrong memorandum. The sort of A-level politics, Crichel Down version of ministerial responsibility is actually a simplification and distortion of the reality. It was not expressed in those terms by Haldane, and even the Armstrong memorandum says, “Civil servants often find themselves in situations where they are required or expected to give information to a parliamentary select committee”. It says, “the civil servant's first duty is to his or her Minister”. That is “first duty”; it is not the only duty. That is the emphasis that perhaps needs to be altered. I do not think that we need any change in the rules. I think that we should disregard the Osmotherly rules. It is a question of creating an expectation of what we are to be told, and striking a different balance on what it is reasonable to expect civil servants to divulge to select committees, and when it is reasonable for them to say, “I am really sorry; I think you have to ask the Minister that question”. What will pop out in this process is Ministers, watching their civil servant on the television screen from their office, saying, “My God, I was never told that.” That is where

the fur will fly. Unfortunately, we have a conspiracy between Ministers and the civil service: the Ministers quietly shuffling off blame for what they can and cannot do on their officials; and then officials hiding behind ministerial responsibility so that they are not accountable either. It cannot go on.

**Margaret Hodge MP:** We all agree, more than I thought that we probably would when we started giving evidence. It is just whether that needs definition. I feel that it probably does need closer definition. Can we reach a definition which talks about responsibility for executive decisions being held by civil servants, and at what level? That is the sort of question that I am asking myself. Maybe we can just manage by the way in which we take it forward. Because it is all built on convention, we just break the conventions and keep arguing it. Maybe that is the best way forward; I do not know.

The only other thing that I would put on the table as a question—I do not think that these are easy issues—is whether the appointment of top civil servants should remain entirely a matter in which Ministers have no role to play. Local government has moved further than we have, in all sorts of ways. These big project decisions could be assessed by Parliament before they are implemented, which is a big project in local government: assessment before the go-ahead is given. There is an involvement of the leader/mayor in major appointments. We ought to think about that. If we are changing accountabilities, that follows from it.

**Q21 The Chairman:** I was going to ask Sir Alan and Mr Jenkin whether they also thought, as Mrs Hodge mentioned, that there was a question to be raised about ministerial involvement in senior appointments.

**Sir Alan Beith MP:** Quite clearly, the Minister has an interest in, and is entitled to pursue, the question of whether his department has adequate leadership, particularly if he is embarking on a major programme of change in a particular policy area. A degree of involvement there seems to me to be not unreasonable. My present personal view is that I would not want to extend that very far, because I see merit in the maintenance of a system which is not subject to political pressure in the way in which appointments are made.

**Bernard Jenkin MP:** First, I would say that there is a case for pre-appointment hearings for permanent secretaries. If you are going to do it for some of the people that work for them in agencies, then it would seem sensible to have pre-appointment hearings for permanent secretaries as well. Secondly, there is a great danger of Ministers feeling that if only they could put in the man or woman that they really want, then everything would be all right. Look, there are 400,000 civil servants out there. Changing two or three people is most unlikely to substantially change the organisation, of itself. I am also very sceptical about this idea that a few more special advisers would enable the Government to steer the ship of state in a different direction. It seems improbable to me. Those 400,000 people are all they have got to run the country with. This is very much at the centre of our work and many of our recommendations: the Government, and Ministers themselves, need to spend much more time thinking about what sort of civil service we should have for it to be fit for purpose in the modern age. It is no good saying, “Oh, civil service reform is down the corridor on the left.” We took evidence from one ex-Minister informally, who told us that she had been running her department for two years before she realised that there was, under Tony Blair, a programme for civil service reform. In a corporation you will not change its culture and practices unless the board are broadly united and focused on implementing the change right down the organisation, redefining people’s roles, tasks and responsibilities. On this idea that Ministers should be able to appoint their permanent secretaries, of course they are consulted. But if we are going to have a permanent civil service, it should be a

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consultation. Ministers, on the whole, should be running the civil service and, indeed, the civil service should be running itself so that the right sort of people finish up in the right sort of jobs. I accept that that may not be happening at the moment, but political control over top appointments is not the right answer.

**Q22 The Chairman:** But pre-appointment hearings should be part of the consultation, in your view?

**Bernard Jenkin MP:** Not part of the consultation, but pre-appointment hearings are a check. We are finding in other areas that, occasionally, somebody is suggested for a role which seems completely unsuitable. There have been some political rows, but there have been one or two cases where changes have been made which are universally accepted as very positive.

**Q23 Lord Lexden:** Could we focus a little more on the role of special advisers? I might have become one myself a long time ago, but Mrs Thatcher wisely blocked the appointment. I share Lord Hart's incredulity over the recent case. That must highlight the existence of a pretty considerable problem. Should special advisers become civil servants, should they be more accountable to Parliament and, if so, how would it be done?

**Bernard Jenkin MP:** My Committee has started an inquiry on the role of special advisers, and I will put these answers in the interrogative, if I may. I think there is a question about to whom they are ultimately accountable. We do not know quite how they are chosen—in fact, we have no idea at all, officially—but they should be the person that the secretary of state wants for political comfort, support and personal counsel. The code says that the secretary of state or Minister is responsible for their conduct, but it is quite obvious that the permanent secretary is responsible for the good order and conduct of his department, and the reporting line goes to the permanent secretary—or should do. But there is another factor in here: that, de facto, in the majority of cases, under this Government, special advisers seem to report to No. 10 through the special adviser network. They are spies in the camp of the secretary of state.

**The Chairman:** I do not think that has changed very much.

**Bernard Jenkin MP:** Maybe, but they are told not to allow their secretary of state to have lunches with journalists unless they go as well and they get told off if the secretary of state goes off to have lunch with a journalist without the special adviser present so that he can report back to No. 10 on what was said. The Prime Minister signs off the appointment of special advisers and—I put this in the interrogative—to whom should they be accountable? I just add that we are going to ask whether pre-appointment hearings might avoid some of the accidents we have seen.

**Sir Alan Beith MP:** I had better record that I do not think that these particular arrangements apply to special advisers to Liberal Democrat Ministers in the Government.

**The Chairman:** Mrs Hodge, what is your remembrance of this in your experience?

**Margaret Hodge MP:** I think that Bernard Jenkin is the expert on this from his Committee. This is a very personal view, but my experience of special advisers in all my years of ministerial office is that they were not so much spies as people who ensured that the secretaries of state in the departments in which I worked got a coherent and consistent policy direction. They caused me hassle every now and then if I wanted to do something that my secretary of state might not have wanted, but they played a useful role in keeping us as a team in a department, all facing in the same direction on policy.

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They were also useful because the relationship between Ministers and civil servants is a complex one, and when you are trying to develop new policy, on occasions where you had resistance from civil servants on particular policies, they could be incredibly helpful in trying to find your way through the civil service to get to your policy objectives. On the whole, I thought that they were a force for good. I did not think that they were spies for No. 10 in our day, but they tried to stop us going off and blabbing to journalists in the same way—that is true.

**Q24 Lord Hart of Chilton:** Can I just say that my appointment was no secret because it was the subject of a Court of Appeal judgment, because two people complained about my appointment and it went through the courts as to whether Lord Irvine had properly appointed me. Eventually, of course, I was sustained.

My experience of being a special adviser for 10 years was not that you were a spy. I only once went to No. 10 because everyone was about 20 years younger than I was and they were all career politicians in the making, and I had no ambitions in that direction. I found my role, if it was being eyes and ears, it was being eyes and ears on behalf of the secretary of state—to alert him to pitfalls that might come his way on particular issues and to liaise with civil servants and, sometimes, with the permanent secretary, to ease the way through difficulties that had arisen.

That may have been a fairly unusual experience for a special adviser, but I never had any problem. Lord Irvine never wanted to see a journalist, let alone have me accompany him to the lunch; Lord Falconer of Thoroton would have given an interview to a lamp-post if he had the opportunity. I was never required to go anywhere in that direction. Nevertheless, the liaison role in the department between all the different functions of policy evolution was, I think, one of the most important parts of the job, and never to cause conflict but always to seek to iron out any problems that there were.

**The Chairman:** And I think that it is right to say that, historically, your appointment was in the wake of a pitfall.

**Lord Hart of Chilton:** Yes.

**The Chairman:** So that, in a sense, is an illustration.

**Q25 Lord Lexden:** If all special advisers were like Lord Hart, serving a long time and knowing a great deal about the subject, that would be tremendously helpful, but, having seen quite a lot of them over the years, I think that there is a real problem about quality. Many of them serve a short time, they do not know a great deal about the subject and some of them are not much good at the politics either. There is a real problem about ensuring quality among special advisers now.

**Margaret Hodge MP:** Just to counter that, in my experience the Secretary of State appoints more than one special adviser. In every department I worked in, we always had a specialist and then more of a political figure—who was young, that is true, and I agree probably had political ambitions himself or herself. I think that the specialist role was hugely important because very often as a Minister you have not got the specialism either. It is very helpful to have that political support from a specialist as you develop policy.

**Bernard Jenkin MP:** But there is a distinction to be drawn between special advisers and specialist advisers; they are two different species.

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**The Chairman:** But they are all combined in the same pigeon hole as far as the Government are concerned.

**Bernard Jenkin MP:** The specialist advisers are ordinary civil servants and are not political appointments.

**The Chairman:** In an area like defence.

**Bernard Jenkin MP:** Yes.

**Q26 Lord Renton of Mount Harry:** Clearly, you are much involved in this. You have all had thoughts which you have explained to us. What would you most like to see happening that would improve matters? Is there a particular foothold ahead that would give you more knowledge as everything gets more detailed?

**Bernard Jenkin MP:** I would say a policy of openness and transparency with select committees. The Government say that they are in favour of openness and transparency.

**Lord Renton of Mount Harry:** To a degree that is not present at the moment.

**Bernard Jenkin MP:** It should be understood that, if you ask a question of fact of a civil servant or a serving military officer, unless there is good reason, you will be given the facts. To be fair, in private, they very often do give the facts. Maybe select committees should do more in private, because we often get a much better understanding in private sessions. But a lot of colleagues feel that that is not what we are there for; that we are there to bring facts into the open, not to furnish ourselves privately with the facts.

**Sir Alan Beith MP:** Practice has varied. Consistency of practice around the principle that it is in the interests of good government that information should not be withheld from select committees needs to be firmly established.

**Margaret Hodge MP:** I agree that the issue is transparency. I give one example where we really fell into conflict with the senior civil service, which was on the Goldman Sachs issue. We had had a whistleblower, and there was an allegation as to whether, in settling with Goldman Sachs, internal HMRC procedures had been adhered to in the negotiation. We had a minute of a meeting that had been held within HMRC under the chief lawyer, and we really wanted the lawyer to confirm that minute. He felt unable to do so before the select committee, which created great difficulty for us and frustration among the members. All that we wanted to establish was whether the minute of that meeting, which talked about the involvement of the Permanent Secretary for tax in a negotiation and whether or the outcome of that negotiation was “conscionable”, was a true minute. He refused to confirm that.

**The Chairman:** I am looking sadly at the clock. I must draw this to a close, because I know that everybody will wish to go to Prime Minister’s Questions. Thank you very much indeed. You have been generous both with your time and with your enormous experience. As was just said by Lord Renton, you have all obviously given a great deal of thought to this already, which is very beneficial to this Committee because we are starting our inquiry into this matter. This is our first evidence session, but we felt it was important to begin our evidence sessions with members of the House of Commons, with all the experience that you have and your seniority on select committees—although I realise, of course, that today you are speaking personally. I offer you our warm thanks. Thank you for your transparency, among everything else. We look forward to keeping in touch as this develops.

There will of course be a full transcript of this, which you are welcome to see, and which you may wish to correct if it is not accurate.

Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London; Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; and Professor Colin Talbot, Professor of Governm

**Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London; Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; and Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School - Oral evidence (QQ 130–155)**

[Transcript to be found under Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL](#)

## **Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London – Written evidence**

### **Summary**

The passing of the Constitutional Reform and Governance Act 2010 (CRAG) creates potential for changing the role of Parliament in the oversight of the Civil Service. Amongst other measures, CRAG places on a statutory basis the Civil Service Commission, the power to manage the Civil Service, the publication of Civil Service, Diplomatic Service and special adviser codes, Civil Service appointments and the definition of a special adviser. Since Parliament, rather than – as previously – the Royal Prerogative, is now the source of the legal basis for the Civil Service, there is an implied role for Parliament in overseeing the exercise of the powers that it created through CRAG. This function should cover the general operation of the system established by CRAG, more than a focus on individual civil servants and their activities, though such issues may arise. To enable Parliament to develop and perform this new role, it might be appropriate for Parliament to establish a Civil Service committee, possibly a joint committee of both Houses.

Special advisers, through personal closeness to their appointing ministers, can achieve an importance greater than their formal roles might suggest. The special adviser code of conduct should not create the impression that special advisers are required in no way to be impartial or objective in the course of their duties. The special adviser code of conduct both includes – as it is required to by CRAG – a prohibition on special advisers performing management functions, but also expressly permits activities on their part which could easily take on a management character. This possible contradiction should be addressed in a future text of the code. The introduction of pre-appointment hearings by parliamentary committees for special advisers should be considered, as a means of discouraging abuse of the patronage system and misconduct in office.

It is neither practical nor appropriate to regard civil servants as a constitutional check on ministers. However, consideration might be given to the idea of extending the accounting officer principle into areas beyond public accounting.

Individual ministerial responsibility is a key component of the UK constitution. A major movement away from individual ministerial responsibility would entail a substantial reconfiguration of the UK constitution. While there may be a case for such a change, it could only be exercised as part of a major constitution-building exercise, which is wider than the immediate scope of the present Committee inquiry.

### **Overview**

#### **I. Does the convention of individual ministerial responsibility remain the most appropriate and effective means of holding the government to account?**

I. Individual ministerial responsibility is a key component of the UK constitution, combining with collective Cabinet responsibility for the overall policy of government to comprise the doctrine of ministerial responsibility.

I. Individual ministerial responsibility involves ministers being held responsible by

Parliament for particular actions, such as the exercise of statutory powers vested in them, and the conduct of officials within their departments. Within this model, civil servants answer to the minister in charge of their department and through them to Parliament, but not directly to Parliament.

2. The main argument that this doctrine has been and continues to be appropriate is that, since ministers are by constitutional convention drawn from Parliament, it offers a means of ensuring that the activities of central government are held to account by a representative institution, one component of which, the House of Commons, is directly elected.
3. A major movement away from individual ministerial responsibility would entail a substantial reconfiguration of the UK constitution. While there may be a case for such a change, it could only be exercised as part of a major constitution-building exercise, which is wider than the immediate scope of the present Committee inquiry. Such a change should not be recommended lightly or regarded as a self-sealing exercise without broad consequences beyond the present issue of Civil Service accountability. For instance, it would raise issues about whether functions for which ministers were no longer held individually responsible to Parliament would need to derive a different kind of democratic mandate, for instance through directly elected post-holders. While the present inquiry probably cannot fully address these issues, the Committee could recommend or itself go on to conduct an inquiry along these lines in future.
4. A key limitation on the effectiveness of individual ministerial responsibility is that it is clearly unrealistic to hold secretaries of state responsible for everything that takes place within their departments. One of the sources of this problem is the overcentralisation of UK – and particularly English – government, when placed in international perspective. Again, altering this characteristic of the UK constitution is beyond the terms of reference of the present inquiry.
5. While it is generally accepted that there are limits on how far individual ministerial responsibility should be expected to extend, there is no precise consensus and how it should apply in each particular case is unclear. As a consequence processes for ensuring the accountability of central government can suffer from a lack of clarity.
6. Another way in which individual ministerial responsibility is not absolute involves the accounting officer principle, whereby the accounting officer in a department can answer individually to the Public Accounts Committee in the Commons. Accounting officers are able to require ministers to issue them with written instructions regarding a use of public funds about which they are not content.

## **2. If the current model of individual ministerial responsibility is no longer appropriate, what should replace it?**

7. While, as suggested above, replacing individual ministerial responsibility altogether is an issue which cannot be considered purely as part of an inquiry into Civil Service accountability, there is scope for changing the role of Parliament within the existing model.



8. Potential for development in this regard has been created through the passing of the Constitutional Reform and Governance Act 2010 (CRAG).
9. Amongst other measures, CRAG places on a statutory basis the Civil Service Commission, the power to manage the Civil Service, the publication of Civil Service, Diplomatic Service and special adviser codes, Civil Service appointments and the definition of a special adviser.
10. The introduction of a statutory basis for the Civil Service in 2010 was an event of historic and legal significance. It entailed the enactment of a measure proposed as long ago as 1854 by the so-called 'Northcote-Trevelyan' report; and it meant that for the first time the Civil Service was founded in authority created by Parliament rather than the Royal Prerogative.
11. However, the practical impact of CRAG has, so far, failed to match its historic and legal significance. Yet the Act contains within it a latent significance which Parliament could choose to exploit.
12. Since Parliament is now the source of the legal basis for the Civil Service, there is an implied role for Parliament in overseeing the exercise of the powers that it created through CRAG. This function should cover the general operation of the system established by CRAG, more than a focus on individual civil servants and their activities, though such issues may arise.
13. To enable Parliament to develop and perform this new role, it might be appropriate for Parliament to establish a Civil Service committee, possibly a joint committee of both Houses. While other committees such as the Commons Public Administration Select Committee consider the Civil Service as part of their work – and could continue to do so – a Civil Service Committee could engage continuously and specifically in oversight of the powers and functions dealt with by CRAG.
14. This new role could take on a number of forms, which would require to varying degrees cooperation from the executive, for instance:
  - a) post-legislative scrutiny of CRAG, including its Civil Service components, at a suitable time, perhaps conducted on a regular basis;
  - b) detailed scrutiny of Civil Service, Diplomatic Service and special adviser codes issued under CRAG, perhaps in draft form;
  - c) general consideration of the operation and effectiveness of these codes;
  - d) general oversight of the system of Civil Service appointments and adherence to the principles underpinning it;
  - e) a defined role for Parliament in the drafting of future editions of the Osmotherly Rules;
  - f) Parliament could go further than simply involving itself in the drafting of editions of the Osmotherly rules and produce a single statement of its understanding of the constitutional relationship between the Civil Service and ministers. CRAG (in section 3 [6]) rightly requires the Prime Minister (in the guise of Minister for the Civil Service) to 'have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's

- Government'. However, the statute does not (and could not) define what those conventions are. Parliament might attempt to fill this gap;
- g) a clearer role for Parliament in the drafting and enforcement of portions of the *Ministerial Code* dealing with the Civil Service;
  - h) an expansion of the practice of pre-appointment hearings by Commons select committees for favoured candidates for major public roles. One category of appointment to which pre-appointment hearings might be extended is that of special advisers to ministers (including the Prime Minister); and
  - i) Consideration could be given to areas in which the accounting officer principle might be extended to cover normative standards beyond those of public accounting. A particular official in a department could answer to a parliamentary committee for these forms of activity and in particular circumstances require a written direction from the minister.
15. By these means, Parliament could take on certain responsibilities for the Civil Service, without altering the basic general principle of responsibility via ministers to Parliament, until such time as a decision might be taken deliberately and seriously to alter this principle.

### **3. Do the civil servants' and special advisers' codes of conduct require amendment?**

16. Two features of the special adviser code of conduct merit attention.
17. First, the special adviser code of conduct states that they are (paragraph 4) 'exempt from the general requirement that civil servants should...behave with impartiality and objectivity so that they may retain the confidence of future governments of a different political complexion'.
18. While special advisers, who are a useful component of government, are rightly governed by a different set of rules to career civil servants, the code should not create the impression that they are required in no way to be impartial or objective. It is surely possible that such outlooks can be reconciled with party political commitment and attachment to a particular minister, and the code of conduct should be redrafted accordingly.
19. Second, CRAG requires the Prime Minister (as 'Minister for the Civil Service') to publish a special adviser code of conduct (section 8). The Act goes on to stipulate that the code should, amongst other things, prohibit special advisers from exercising (section 8 [5] [b]) 'any power in relation to the management of any part of the civil service of the State'.
20. The current special adviser code of conduct contains this prohibition (paragraph 7 [vii]). However it also states that (paragraph 7):

*Special advisers may, on behalf of their Ministers:*

- i. convey to officials Ministers views and work priorities, including on issues of presentation...*
- ii. request officials to prepare and provide information and data, including internal analyses*

*and papers;*

*iii. hold meetings with officials to discuss the advice being put to Ministers.*

21. The exercise of these functions could easily come to resemble what would reasonably be defined as 'management'. It seems, then, that the special adviser code of conduct is drafted in such a way as to both include its statutory minimum content prohibiting management but at the same time undermine this obligatory statement.
22. Special advisers have long performed functions of the sort set out in paragraph 7 of the code of conduct. In this sense the code is merely reflecting reality. Amendment to CRAG so soon after its introduction would not be desirable. Consequently, it might be useful for a future edition of the code of conduct to define more precisely in a single paragraph what was meant by 'management' and emphasise the importance that special advisers perform tasks of the kind described in paragraph 7 with a degree of caution.

### **The accountability of civil servants to ministers**

#### **5. To what extent has the expansion of government activity, and the increasingly fractured nature of the state, weakened the ability of ministers to account for their civil servants?**

23. See 1. above for the issue of the centralisation nature of UK government and the difficulties it creates for individual ministerial responsibility.

7. To what extent does the home civil service act as a constitutional check on the actions of ministers? How does this check operate? Is a constitutional check on ministers by civil servants appropriate?

24. The underlying constitutional principle is that civil servants work for ministers and in this sense they are not a constitutional check upon them.
25. Accounting officers operate to some extent as a formal check on ministers. They cannot overrule their ministers, but they can in effect bring them to the attention of the Comptroller and Auditor General.
26. Beyond accounting officers, the *Ministerial Code* states that ministers must take the views of civil servants into account in making decisions (paragraph 5.2); and the *Civil Service* code requires civil servants to provide honest advice to ministers (paragraph 11). However, ultimately, civil servants are required by the *Civil Service Code* loyally to implement the wishes of ministers (within the law), even if they do not agree with them (paragraph 11). Given this arrangement, it is misleading to describe the Civil Service as a 'constitutional check on the actions of ministers'. A civil servant who sought overtly to act as such would be violating the *Civil Service Code* (though it should not be discounted that in practice civil servants sometimes do so).
27. In most countries, a codified constitution would create some kind of constitutional check on the executive. The lack of such an entity in the UK perhaps encourages some observers to look to the Civil Service to perform this role, even

though formally they are not permitted to do so and are themselves a part of the executive.

### **The accountability of civil servants to Parliament**

#### **9. In what circumstances, if any, is it appropriate for civil servants to be held directly accountable to Parliament?**

28. As discussed in 1 and 2 above, at present accounting officers can answer directly to the Public Accounts Committee. There is scope for considering some kind of extension of this principle.

#### **12. Where civil servants should be held directly accountable to Parliament, is there a case for (enhanced) parliamentary involvement in their appointment?**

29. Consideration could be given to extending the practice of pre-appointment hearings by Commons select committees, including for special advisers (see 2 above).

### **The accountability of special advisers**

#### **17. What is the level of influence exercised by special advisers, both in theory and in real terms?**

30. The underlying source of the authority of a special adviser is their relationship with the appointing minister. While there is a strong bond between the two, it is possible for special advisers to exercise a significant degree of influence, outstripping what might be suggested by more formal descriptions of their role.
31. Through this personal proximity to the minister, while it is retained, special advisers can have an impact on the exercise of powers, for instance over the expenditure of public funds, which they are not allowed formally to wield on their own accounts.
32. Moreover, as discussed in 3, special advisers are permitted by their code of conduct to exercise a set of potentially quasi-management functions, even though such activities are, as required by CRAG, also prohibited by the same code of conduct.

#### **18. What are the current accountability mechanisms for special advisers, and are these appropriate to the level of influence they possess?**

33. The current accountability mechanism for special advisers is that, as set out in paragraph 4 of the special adviser code of conduct, the appointing minister is responsible for 'the management and conduct of special advisers, including discipline'. At the same time the approval of the Prime Minister is required for the appointment of special advisers, and the Prime Minister can also remove them from their posts.
34. There is arguably a slight confusion of responsibility between the minister and the Prime Minister here (except in the case of prime-ministerial special advisers).
35. Moreover, it is not clear what this responsibility means in practice. Ultimately decisions, including when there have been allegations of impropriety, are made by

ministers and the Prime Minister on a political basis.

**19. Is there a case for increasing the accountability of special advisers to Parliament? How should any such accountability mechanism operate in practice?**

36. As proposed above (2), pre-appointment hearings for special advisers should be considered. Under such a system committees would not possess the formal power to block an appointment. Consequently the existing basis for recruiting special advisers – by the minister alone, subject to prime-ministerial approval – would be retained. At the same time, pre-appointment hearings could be used to question proposed appointments about their qualifications, work history, and likely role if employed. Ministers might be asked to produce a statement about their reasons for wishing to employ the individual concerned and the tasks they envisaged them carrying out. By this means, abuse of the patronage form of employment and inappropriate behaviour by special advisers might be discouraged. The personal responsibility of ministers for special advisers could thereby be strengthened.

37. As also suggested above, following the enactment of CRAG, Parliament might wish to take on a role in enforcing codes such as the special adviser code of conduct and the *Ministerial Code*. By this means a counterbalance might be introduced to the discretion presently available to ministers and the Prime Minister in interpreting and upholding these documents.

**11 June 2012**

## Rt Hon David Blunkett MP and Lord Fowler - Oral evidence (QQ 48–77)

*Evidence Session No. 3.*

*Heard in Public.*

*Questions 48 - 77*

WEDNESDAY 20 JUNE 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Irvine of Lairg  
Lord Lang of Monkton  
Lord Lexden  
Lord Macdonald of River Glaven  
Lord Pannick  
Lord Powell of Bayswater  
Lord Shaw of Northstead

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### Examination of Witnesses

**Rt Hon David Blunkett MP and Lord Fowler.**

**Q48 The Chairman:** Good morning and thank you both very much for coming. You will realise that the nature of the Constitution Committee is to look at specific issues and we are looking not broadly at the civil service—in the context of the Government’s statement yesterday—but in a way that is focused on the question of the accountability of civil servants and their relationship with Ministers and Parliament. We are most grateful to you both for coming.

I have established that both Mr Blunkett and Lord Fowler are aware of and have looked at the report that the Government issued yesterday and the statement that was given in both Houses. In so far as we want to address those points that were raised, as they are relevant to our inquiry, I think that we will find that both Mr Blunkett and Lord Fowler have a view—as I am sure they have on everything that we are talking about.

Perhaps I could begin with Lord Fowler, although I am sure that Mr Blunkett will want to join in as this is a general question. You have both been Secretaries of State in very large and complex departments, and one of our areas of interest is whether, given the complexity of modern government and the size of modern departments of state, the concept of individual ministerial responsibility as we have understood it in the past can really survive. If not, how do we replace it?

**Lord Fowler:** I am not sure whether the complexity of government has actually increased. When I became Secretary of State for Transport, we were in charge of British Rail, the

National Freight Corporation, bus companies and even the motorway service areas. I was responsible for, and was answering questions on, the quality of the baked beans on the motorway. An awful lot of that has been taken away, so I am not sure that it is much more complex.

A straight answer to your question is that I think that a Minister is certainly responsible for policy development and is directly accountable as far as that is concerned. If Treasury policy goes wrong and you have devaluation or you come out of the Exchange Rate Mechanism, then obviously your credibility as a Minister has been challenged. However, I think that the issue is much more difficult when it comes to running the management of the department. When I was running—or in charge of, at least—the financing of the National Health Service, I remember that there was a food-poisoning case in which almost 20 people died and I was not regarded as accountable for that. However, one then had to clear up the mess afterwards, and that is why we have general managers. So, there is that division, although it is not a very precise one. Of course, agencies of government have changed the situation, and the outlook, a great deal. With agencies of government, you have almost by definition got to a position where the Government are saying that they want to give independence to these agencies of government. I do not think that you can have it both ways and ask the Minister to be directly accountable for those as well.

**David Blunkett MP:** Like Lord Fowler, I think that the issue is not the complexity of government but the confusion that exists, and has existed for some time, about exactly where accountability should lie. What the academics in the very unhelpful phrase “the hollowing out of the state” describe is the state seeking to set up next-steps agencies, which became NDPBs and all the rest of it, which then led to decentralisation. In Norman Fowler’s day, in the health service, which in policy terms he was in charge of, it was very clear who carried the can—it was Ministers. While there may have been an over-centralised administration, people were clear where decisions were being taken. In a decentralised service—and this is even more true now in education, with academies and free schools—it is not at all clear where decisions are being taken. They are still theoretically being taken by the Secretary of State and Ministers, who are answerable to Parliament at the dispatch box, but in practice decisions are being taken way outside Westminster and Whitehall. If we could have a much clearer understanding of where decisions are being taken, we could hold the right people to account. The same applies, as we will come to later in the discussion, between Ministers and civil servants at national level. If we actually knew who was taking the decisions, it would help.

**Q49 The Chairman:** There is often a distinction drawn, perhaps artificially, between policy and implementation, and questions then arise about responsibility for implementation. I suppose that some of the examples that both of you have given could fall into the second category, which is where the question of extended official—as opposed to political—accountability arises.

**Lord Fowler:** There are a lot of blurred lines. It would be nice to be able to talk about it exactly, but you can see a position where a Secretary of State should hold responsibility and accountability for implementation of a policy if he has ignored every warning that has been made that things will go wrong. What is much more difficult is implementation. The real problem with implementation comes from the fact that Ministers change position so often that it is very difficult to hold one Secretary of State accountable as far as a policy and its implementation are concerned because by that time he is trying to implement the policy of his predecessor. I think it is that position after the Minister has left and after the Act has gone through that we should be concerned about.

**David Blunkett MP:** I agree with that entirely. I was very fortunate in that I had four years in one job and three and a half in another, which allowed me not only to understand and therefore to be able to develop policy but to carry the can for things that I had decided in policy terms. I was also very fortunate because, in the Department for Education and Employment, there was an understanding between myself, the Permanent Secretary and the leadership team that helped us not only to develop and enunciate policy but to understand the implications for delivery. For instance, the ability to bring in Professor—now Sir—Michael Barber to head the standards and effectiveness unit back in 1997 was a seminal moment, both in terms of a change of direction for the way in which the civil service would welcome people from outside and in terms of direct hands-on delivery.

In her book *Shephard's Watch*, Gillian Shephard—now Baroness Shephard of Northwold—says that the problem that she experienced when she came into the department was that she had no levers to pull. There is no point in pretending that you are in charge or that you have policy direction if you have no levers to pull to make it happen. That not only leads to disillusionment among Ministers and civil servants but, more importantly, leads to mistrust and disillusionment among the electorate.

**Q50 Lord Powell of Bayswater:** Is there perhaps not a danger of a bit of a cop-out here? Ministers want to be in charge, but when it comes to taking responsibility when things go wrong, they are rather less keen to be seen in charge. That seems to be the implication that one could draw from this. If you look at other walks of life, in the military the commanding officer takes responsibility if an operation goes wrong—he will not necessarily have known what happened at the platoon level, but he was the man in charge and he was the leader. The same applies in business, where the chief executive is responsible not just for the policy but for the implementation. Why should Ministers be so different?

**Lord Fowler:** It depends on the position. If a Minister has just come in—Ministers and Secretaries of State can change so rapidly that you can have one Secretary of State who is picking up the policy of his predecessor—is he responsible in that respect as far as implementation is concerned? I think that you are right that the government machine, however you try to define it, does not do enough about implementation. What happens in crude political terms is that, when a new Secretary of State comes in, he knows perfectly well that he is not going to get brownie points for simply implementing the policies of his predecessor—that is just ABC stuff as far as politics is concerned—so it goes on the back burner. The question then becomes whether the civil servants and Ministers concerned should be held to account later on. However, I think that the civil servants also tend to take their eye off the ball because they are into the new agenda, whereas implementation is the old agenda. You also have to tackle that. I am certainly not remotely defensive about ministerial responsibility and accountability: I think that Ministers are responsible and accountable and, if there is any doubt about it, it should be that they are accountable rather than not.

**David Blunkett MP:** I agree. It is a very poor Minister who immediately goes out and blames the civil service for things over which the Minister not only has theoretical responsibility but has actually made the decisions. The question is: who made the decisions, did they know the implications and are they prepared to stand by the decision?

The difficulty arises where you have made decisions internally that affect the structure and performance of the department, but at senior level those decisions are not being carried out. The theory is that you could go to the Prime Minister and the Head of the Civil Service and say, “I want to sack my permanent secretary”. The evidence from over the years of



people wanting to move or sack their permanent secretary is not healthy for Ministers. The reason why we traditionally called the head of the department the “permanent secretary” is because they were permanent and the Secretary of State was temporary. Regarding the reporting system back to Downing Street, I did not have any of this trouble—I had a very good relationship with Tony Blair, who backed me on every occasion—but I saw other colleagues who got into real difficulties. While I am a great supporter of the independence of the civil service, they do not half know how to bite back and I think that Francis Maude might have experienced this.

**Lord Fowler:** Perhaps I could bring in a degree of disagreement with what David Blunkett has said. I was a member, as were Lord Crickhowell and Lord Lang of Monkton, of what is regarded as the most radical Government since Attlee’s—the Thatcher Government. We carried out in the departments in which I worked the first privatisations in transport and health, social security reform and abolition of the dock labour scheme. I never at any stage found any problem with the civil service in developing, implementing and putting forward those policies. Obviously there were discussions and battles—“battles” is putting it too high, although perhaps on one or two occasions there were. In the main, it was a Rolls-Royce machine and I think we would be mad to turn our back on it. Because it has been so good and served so well, we need to be very cautious about changing it.

**David Blunkett MP:** We may be disagreeing about something that we do not disagree about. I am not talking about the formulation and delivery of the macro-policy, about which I had no difficulty and, as far as I am aware, neither did colleagues. I did not take the Bennite view—Tony Benn, as opposed to Hilary—on the way in which the Civil Service would block your policy. I am talking about competence. In a business, the non-executive chairman would of course rely on the management to manage, but they would expect to hold those senior managers directly to account for the competence of delivery and not just the overall direction. It is very difficult for politicians in their relationship with the senior civil service to do that. Let me give you a practical example. In the Home Office, it was clear to me within six months that there was no proper accounting system. The way in which finance was dealt with was amateurish. Very few of those who were dealing with finance had any accountancy knowledge or skills. Regrettably, I was proved right because, year after year, the accounts were not signed off, but it took a long time to get the leadership team in the department to accept that there had to be quite radical change.

**Q51 Lord Powell of Bayswater:** That is surely an issue of internal accountability, Mr Blunkett, where the thing should be sorted out within the department, rather than an issue of the Minister’s accountability to Parliament. Is not the answer to the problems of accountability to have better and more experienced Ministers who stay longer in office rather than to start fiddling around with accountability?

**David Blunkett MP:** It is, so long as the Minister knows what they are about and has some interest in it. Accountability to Parliament by the accounting officer for the incompetent use of public resources—not just to the Public Accounts Committee but much more broadly—is crucial in the relationship of Ministers to Parliament. It is not merely an internal matter if a department is mishandling or does not have a grip on very large sums—billions of pounds.

**Lord Fowler:** I agree entirely with what Lord Powell has just said. The real problem in running a department was not getting the right team of civil servants but getting the right team of Ministers. I was quite fortunate by the end, because I managed to get people such as Ken Clarke, Tony Newton and John Major—I do not know what happened to any of those.

They were a very good team. To put such a good team together, you had to get rid of some others. In my experience, that team was much more important than the civil service team.

**David Blunkett MP:** I err on the side of Lord Heseltine rather than Lord Fowler on these matters.

**Lord Fowler:** That is a grave mistake.

**David Blunkett MP:** Thank you very much. I have to put on record that, out of all the ministerial teams in the Blair Government, I was very proud to lead some of the best people.

**Q52 Lord Shaw of Northstead:** It seems to me that civil servants are apt to appear in public in one way or another, particularly before committees and so on, to express views and be cross-questioned. How far can they express their own views and how far have they to stick with the views of the department and their Minister?

**David Blunkett MP:** The first thing to say is that it is absolutely crucial that civil servants are encouraged and supported in expressing views to Ministers inside the department and on, as we had, the joint management board. It is vital to be able to do that. If there is a culture of fear about doing that, that will be disastrous both for good governance and for policy-making, as well as, in my view, for the well-being of the Minister. Once a decision has been reached, it is beholden on the civil service—because this is what we have with a neutral civil service—to do its utmost to sustain that policy in both delivery and answerability. That is where we come to what the Minister should be answering for in select committees or the PAC and what the civil service should rightly answer for, which is operational delivery but not the policy itself.

**Lord Fowler:** I agree with that. Inside government, if you are trying to build up teams to do various reforms and make various changes, it is useless if they do not express their true views. You will have clashes on that. I have always taken the view that if you cannot get your policies past your own civil service, there is not much chance of your getting them past the House of Commons and Parliament. As far as the appearance of civil servants outside is concerned, again I agree with David. I do not think that, once government policy is decided, you can get civil servants saying, “Well, I didn’t believe a word of it.” That is ridiculous. However, I think there is a problem where a select committee is looking at past events and trying to learn lessons from those past events. Then it is in the public interest that where a policy or an area has gone particularly wrong historically—perhaps only two, three or four years ago—civil servants should be able to say what actually happened at that time, because unless they do one tends to go round in circles, with Ministers simply playing a straight bat and no one else saying anything.

**Q53 Lord Shaw of Northstead:** But in committees these days, there is pretty fierce cross-questioning of civil servants from time to time. If, for example, the committee says, “Yes, that was the policy but did you have any advice against what was done?”, are civil servants entitled to say they did not get it or did not know or whether they agreed with it? These are very difficult matters.

**Lord Fowler:** Yes, to an extent it depends on when the questioning comes up. If it is just before the second reading of a bill, it is not exactly helpful to the Government’s case if someone says he has had no background and has no knowledge whatever of what is taking place.

**Q54 The Chairman:** I think it is the retrospective accountability that you mentioned and which is mentioned in the Government’s plan.

**Lord Fowler:** I think retrospective accountability is another matter. It is for the good of the public and everybody else that they understand what has happened.

**David Blunkett MP:** I do not think that we should fear that. Did Ministers follow fiduciary duty? Did they take proper advice? Was that advice broad enough, which is partly what the Government's plan is dealing with, and, above all, having weighed the advice, did they carry out the decision that was reported to Parliament? My disagreement about judicial review was never that people should not have the opportunity for it if Ministers were outside the power that had been granted to them. My objection was when Parliament had made a decision and it and the policy were being challenged, as opposed to stepping outside the remit.

**Q55 Lord Macdonald of River Glaven:** I was very interested in what you said, Mr Blunkett, about the relationship between Ministers and senior civil servants. I think you were rather deprecating the idea that a Minister would come in and want his own permanent secretary. There has been that. Mr Clarke gave some evidence about this last week. I want to broaden out slightly whether you think Ministers should have influence and, if so, to what degree over the selection of senior civil servants, permanent secretaries and so on. What should be the ministerial input to selection?

**David Blunkett MP:** The suggestion in the Government's plan that there should be more than one name presented to a Secretary of State is fairly straightforward and unanswerable. The difficulty is where you come in fresh. Lord Fowler has referred to this. Even with five-year fixed-term Parliaments, which help in this regard, it is not going to be easy to come in and say, "I want to start afresh. I want to review who is in place at this time". I was fortunate; Lord Bichard was the Permanent Secretary, and he and I got on extremely well and I had absolutely no questions. When I took over at the Home Office, I inherited an extremely able and experienced Permanent Secretary. He had been appointed six weeks before, which from his point of view as well as mine was unfortunate. There was no way I was going to ask the Head of the Civil Service or Tony Blair to have another review and to have a contest for that Permanent Secretary's post. There is a great deal of practicality, not just theory, that needs to be dealt with.

**Q56 Lord Macdonald of River Glaven:** There must be occasions when the relationship simply does not work for one reason or another or you do not have confidence in the permanent secretary.

**David Blunkett MP:** You will have had evidence from other people about that. The civil service is very good at finding slots for people who are theoretically the square peg. That has happened. In human terms, people will fail to get on, and in those circumstances we need to find sophisticated, sensible ways of resolving it. For two people to be at loggerheads with each other is a recipe for disaster for the governance of the country.

**Q57 Lord Macdonald of River Glaven:** So you regard a system in which the Minister is offered three names as granting him sufficient influence over the appointment?

**David Blunkett MP:** I would, so long as the Minister is able to express a view about the job description. We do not go far enough back into this system of Ministers describing what they expect from the head of the team that is reporting directly to them. We do not prepare Ministers for that, either. Even with the Institute for Government's efforts, we do not prepare people for that level of office. Some people have had experience. I was very fortunate that I had had experience as leader of a major local authority. Many people come into office without business or local government experience, which is a difficulty for them.

**Lord Fowler:** I was in government for 11 years and I inherited two permanent secretaries. One was Peter Baldwin, who was excellent, and the other was Ken Stowe, who was quite exceptional and was with me for six years. The only time I was consulted was when I did employment. Michael Quinlan went to defence, and then I was presented with the list of three, heavily marked, I think from memory, with who was the preferred choice. Actually, it was a pretty obvious choice to make. I cannot quite see how someone coming into a new department can suddenly decide that the permanent secretary is going to be someone entirely different. There can come a time, if the relationship breaks down, but that is up to Ministers to sort out.

**David Blunkett MP:** We usually gave our principal private secretaries a few months to settle us in before we changed them, did we not?

**Lord Fowler:** I did not change too many. How many did you change?

**David Blunkett MP:** When they knew I was coming, they wanted to get out.

**Q58 Lord Crickhowell:** This morning, we have pursued rather well the distinction between ministerial responsibility and accountability, which Lord Howard of Lympne emphasised last week. I have a question for both witnesses about whether there were any specific criticisms and suggestions made in our earlier evidence, particularly from the chairs of the Commons committees, with which they agreed or disagreed. We now have this set of proposals in yesterday's paper. Taking up the point that David Blunkett made about the lack of accountability skills, there is a serious proposal that, in the main delivery departments, permanent secretaries will have experience of commercial and operational roles. We also have the proposal which meets Margaret Hodge's point about select committees being able to call past permanent secretaries and so on to give evidence. Do our witnesses have any further comments on the Government's proposals?

**Lord Fowler:** I confess I have not been through all the proposals from beginning to end. There are two areas that I am a little sceptical about. I am not sure whether this has come into the Government's plan, but it is certainly one of the pieces that came out in evidence. I find myself uncomfortable with parliamentary questioning and approval of top civil service jobs. I am not quite sure what the experience would be of those people doing the questioning on the job to be done or the experience that they have had coming up to that position. I am sceptical. I am extremely sceptical about the proposal that politicians should play any part in the discipline of the civil service. Frankly, I think that would begin to politicise it in an extremely difficult way. On the question of bad civil servants, I had one who I felt had been rather overstating his position, and when he turned up at a meeting he proved to be sloshed out of his mind. He had just come back from a sadly unsuccessful drying-out session. The civil service took care of that position. It did not need me to do it.

**David Blunkett MP:** I am not sure from their paper whether the Government have really bitten the bullet. I am not disagreeing in relation to the scrutiny by committees, although I think there is a contradiction between people who are supposedly Crown appointments and those who are not. In the case of the two major departments that I spent a lot of time in—Education and Employment and then the Home Office—we had inspectorates, and the heads of the inspectorates were in essence appointed by the Nolan process, with the Secretary of State having considerable influence. But in theory they were not responsible to the Minister if they were Crown appointments. They were nominally scrutinised by select committees. Because of the way in which the whole structure of government has changed, there are many bodies now reporting back to departments that are devolved outwards, which fall into

exactly the same category, except they are not called Crown appointments. There is an area to explore there.

**Q59 Baroness Falkner of Margravine:** Lord Fowler, you have been unequivocal in your view that Ministers should not be involved in disciplinary procedures or the dismissal of civil servants. Do you still hold that view in light of the growth of non-departmental public bodies and the minimal accountability, if not responsibility, of the senior staff of those bodies?

**Q60 Lord Fowler:** I think it is extremely difficult to see how Ministers with months of experience can get involved in disciplinary hearings and decisions when they are supposed to be judging a man who has been there for 10 or 20 years. I just do not think that that is part of the Minister's job. I do not think that the Minister, in the main, has the knowledge of the individual to be able to do that.

**Q61 Baroness Falkner of Margravine:** But you would not demur from the idea that civil servants should have to be accountable at least to select committees?

**Lord Fowler:** No. I do not know about the individuals concerned, but in that respect if I am saying that Ministers should have no part in that, it is very much the permanent secretary who is accountable in the same way that he is accountable to the Public Accounts Committee. He is accountable for the running of his department in that respect.

**Q62 Baroness Falkner of Margravine:** I do not think that that was the case in the current Home Secretary's instructions and the implementation of a policy on the UK Border Agency, was it?

**Lord Fowler:** I do not know enough about the intricacies of that, but David, having been an ex-Home Secretary, would know it absolutely.

**Q63 Baroness Falkner of Margravine:** Mr Blunkett, would you like to comment?

**David Blunkett MP:** Generally there should be very clear and open disciplinary procedures, and that should not, other than the permanent secretary and the principal private secretary, involve the Secretary of State or a Minister. However, in practice, if you thought that someone was useless, they usually got moved. I do not want to repeat the caricature of being promoted, although I know of at least one example of that happening. The relationship between the Secretary of State and Ministers and their senior civil servants has to be on the basis of trust. You have to be able to say, "I do not think we can carry on as we are carrying on", and to understand that that will happen. It is more than a codified system of structures. It is more about that personal relationship. As far as Theresa May is concerned, every past Home Secretary has to have sympathy with the present one, whatever their party differences. It would appear to me that instructions given were not carried through, but the implications of decisions were not understood either. I will not go into it, but I think there was a mess. Undoubtedly, the Home Secretary has a grievance if she or the Minister of State lays down a policy and it is flagrantly breached. The responsibility is to report back on why and what the difficulties are and then to force Ministers to make choices—difficult choices.

**Q64 Lord Pannick:** I am interested in the extent to which civil servants have the role of acting as a constitutional check on the Minister. Suppose the civil service believes that the Home Secretary is acting in breach of a court order. What should the civil servant do? Obviously, they give advice, but what other steps should they take if they think there is some breach of a constitutional norm?

**David Blunkett MP:** We had a very straightforward system, which was that the accounting officer would indicate that if the Secretary of State, in my case, was to override a recommendation, I had to put it in writing. That decision would be mine. Therefore it would be on the record and I would have to stand by it. In very difficult circumstances, where there was a balance—we had it with the sale of the student loans portfolio, at one stage—there had to be a decision between me and the then Chancellor to make that happen. In a legal case, if there is a breach of a legal requirement, the Secretary of State is in the dock. If that requirement is to be overridden, the only way that that can happen is to come back to Parliament.

**Lord Fowler:** David was Home Secretary, but rarely did this situation arise in any of the three departments that I worked in. It did not arise very much.

**Lord Pannick:** But in rare cases, and one would hope that they would be rare cases, where it would need to be formally minuted that the Minister was overriding the advice on constitutional grounds, should that be reported to a committee of Parliament or should it just remain on the record so that it can be raised in the future if necessary?

**David Blunkett MP:** I think it is the job of the opposition to ask questions of that sort and when doing so to expect that they will receive honest answers.

**Lord Fowler:** In terms of openness of government, it is right that that should actually be made clear. I am not sure that we can rely entirely upon any opposition to winkle out that sort of information. We are talking about an exceptional circumstance, and if it is an exceptional circumstance and as we are trying to make up an open and transparent as possible, it would be sensible to make that clear.

**Q65 The Chairman:** We had one specific question that we wanted to raise, about the relationship between civil servants and select committees. You have touched on that, but there are the so-called Osmotherly rules.

**Q66 Lord Lexden:** I will ask for your views on the Osmotherly rules, which determine the manner in which civil servants appear before select committees. They seem to have been criticised ever since their introduction in the 1980s. Bernard Jenkin expressed a robust view in our first session when he described these rules as only a fiction created by the executive to try to create excuses for not putting the right people in front of select committees. Do you think that significant change is needed to these rules, and if there is to be a revision should they be subject to parliamentary approval?

**David Blunkett MP:** My reading of the Government's plan is that the Government do not intend formally to change the rules, although they have changed over time in practice, with civil servants with operational responsibility reporting to select committees, not just to the Public Accounts Committee. I do not want to comment on the nature and robustness of the PAC's questioning, but there is no doubt in my mind that it is right that the Public Accounts Committee should be able to ask questions of, and expect answers from, those running Her Majesty's Revenue and Customs, for instance. This would have been the case with the Treasury in the implementation of the policies on tax credits, which ran into great difficulties. It was a case of questioning the civil service not on the policy but on the way it was carried out. Other select committees have moved the goalposts gradually over the past 30 years in that way. Reflecting that in reality by redrafting the rules seems to be common sense.

**Lord Fowler:** I agree. It should be made clear that select committees have the right to call named civil servants, but I would hope that that power is used cautiously and selectively.

One does not want named civil servants to be called to each and every select committee. However, I do not see any way in which you can draft the instruction other than by giving that power. We ask other people to appear before select committees, although not always successfully. I was very influenced by the fact that when I was chairman of the Select Committee on Communications, I asked a newspaper proprietor to give evidence to the committee—not Mr Murdoch, he was rather good—and he refused three or four times. Therefore, I am a bit prejudiced in the sense that I am for more powers in this area rather than less.

**Q67 Lord Lexden:** Sir Alan Beith drew our attention to the case that arises from time to time whereby a Minister may wish to substitute himself for a named civil servant or the permanent secretary, contrary to the committee’s view, and say, “I insist that this is something for which we take responsibility”. Is that an area where these rules could be tightened up?

**Lord Fowler:** It would be very unusual for Ministers to do that. I do not think that too many Ministers volunteer to appear before select committees, but perhaps things have changed. One should just put a red line through such a request. I do not think that that is acceptable. You are very dependent on the good sense of the members of the select committee, particularly the chairman, but if the committee has good reason for wanting the named civil servant to appear before it, that is perfectly fair.

**David Blunkett MP:** I liked appearing jointly. I had no difficulty agreeing with the permanent secretary or senior officials what I would field and what they would field.

**Q68 Lord Crickhowell:** On that specific point, I happened to turn on BBC Parliament recently and watched a select committee examining witnesses on procurement policy in the Ministry of Defence. The Minister and his senior civil servants sat alongside each other. It was a very impressive and convincing piece of evidence. The Minister occasionally came in if he had something to add, and the highly qualified senior civil servant dealt with most of it. It seemed an admirable example of the way things should be done, and could be done more often.

**Q69 The Chairman:** I think you wanted to pursue something along those lines, didn’t you, Lord Irvine?

**Q70 Lord Irvine of Lairg:** You must be familiar with the much-used expression in government—systemic failure. It means that what went wrong cannot be blamed on any individual but was simply a system failure for which no individual or individuals were directly responsible. Do you think that this idea of systemic failure is a euphemism to excuse the authors of reports from determining where the blame or responsibility actually lies? Do you think that leads to the proposition that there should be very vigorous investigations by select committees to remedy this deficiency?

**Lord Fowler:** To begin with, I would be highly sceptical of that defence, and I think that one should be highly critical of it. The fact is that something may be regarded as schematic failure, but sometimes Secretaries of State and Ministers have to take responsibility and be accountable for things that at the margin are probably beyond their control. However, the select committee system gives us every opportunity to go into that and should be used to its fullest extent.

**David Blunkett MP:** My answer is yes, I think it is a cop-out. I also think that it is quite dangerous. The only disagreement I had with the report on the killing of Stephen Lawrence,

and the subsequent handling of the investigation, was the idea that you could dub the whole of the Metropolitan Police in a way that let individuals off the hook for the actions and decisions they had taken. That got me into a bit of difficulty from time to time. I believe that the same is true of departments as well in that this mechanism is an easy way of avoiding rooting into who took decisions, why they did so, when they did so and what their competence was for doing so.

**Q71 Lord Irvine of Lairg:** Does it follow that you would support the proposition that, if particular civil servants are found by a select committee to have been at fault in the implementation of a policy, it should be well within the rights of the select committee to say so?

**Lord Fowler:** Yes, certainly. There is no question about that. You then come to the question of what you do next. I do not think that that is a decision for the select committee, but being able to name someone who is responsible must follow from what you are saying.

**David Blunkett MP:** That takes us back into disciplinary procedures. The person who has been named in that way must have legal and moral fairness rights. Chairs of committees have to understand that as well. They are not acting in a quasi-judicial role, and it is very important that people's rights are not taken away from them in that way.

**Q72 The Chairman:** You have been very generous with your time and we have covered a huge amount of ground. If you have a few more minutes, one area that we have not touched on but that is clearly relevant is the position of special advisers.

**David Blunkett MP:** We might disagree on this. I am a great enthusiast for special advisers. They help to keep the civil service independent and neutral.

**Lord Fowler:** We disagree.

**David Blunkett MP:** I would have a larger cabinet. I think it gets over the Michael Gove/Theresa May disagreements in Cabinet. Special advisers would be responsible to the Secretary of State and have clearly laid out terms and conditions. Their relationship to the civil service, while codified sensibly to protect the civil service politically, would depend as well on good relationships. Where they work, they work very well in ensuring that the politicians do not ask the civil service to do things that are inherently party political. I say "party political" because I discovered that the civil service sometimes thought that it was outwith anything to do with politics and therefore did not have to understand how Parliament worked or what was happening in the public arena. Therefore, to protect advisers from party politics there should be a clear distinction of roles, but they are there to do a specific job—to reflect the views of the Secretary of State, to be their eyes and ears, and to follow that through.

Separately, Secretaries of State should have a monitoring unit to monitor what the department is doing to implement past and present policy. I am not sure whether these should be made up of advisers or taken from the permanent civil service. When I went into the Home Office I discovered several pieces of legislation for which the regulations had not been laid for 18 months to two years. That was not a bad example; some were much worse. I have heard of regulations not being laid after six or seven years. Therefore, it would be quite useful for the Secretary of State to know what is going on.

**Lord Fowler:** I firmly disagree with most of what David has just said. The power and influence of special advisers has become much more obvious over the years. In a sense it began in the Thatcher years, at the end of which quite a lot of Cabinet committee decisions



were pre-empted by discussion with the special advisers beforehand. I remember putting one proposition to a Cabinet committee and being told by the Prime Minister, Margaret Thatcher, at the beginning that, “We have looked at this and we are very concerned.” She was not using the royal “we”; she was saying, “We have had this meeting and you may be the Cabinet committee, but by golly we don’t think too much of it.” Of course, once you mark the card in that way, propositions do not go through.

It was slightly better than the example of Ken Baker. I remember being on a Cabinet committee when Margaret said, “Does anyone agree with this recommendation apart from the Secretary of State?”, which was another way of marking the card. In all seriousness, one of the reasons why Margaret Thatcher lost contact, got out of kilter and ultimately fell was that she became isolated. That was at No. 10 level, so people should be very cautious.

My basic view is that there are too many special advisers and they are doing too much. I suspect that many of them today do not know what their function is. I was on a phone-in the other day when an ex-special adviser rang and said, “We need one special adviser for policy and another for the media.” He had been advising a Minister of State. I do not think that Ministers of State, or even Secretaries of State, need special media advisers. We have whacking great press departments all over the place and do not need anyone else. If people are talking about cutting back, this is one area where we could do so to great public acclaim.

**David Blunkett MP:** So there you are—two different views.

**Lord Fowler:** Slightly.

**Q73 Lord Lang of Monkton:** I think the committee is fairly clear on your robust views on special advisers. Correct me if am wrong, but when special advisers came in they were joined at the hip to their political masters. They were political animals, planted almost as a virus within the department. There was deep distrust. Now they are part of the civil service but with a code of their own and subject to slightly different arrangements. Has that helped to clarify their position and role, or has it clouded it? Do you think that accountability has kept pace with the change in their status?

**Lord Fowler:** It is all extremely uncertain, frankly. One does not necessarily want to go into individual cases, but the present position of special advisers in the Department for Culture, Media and Sport has not been exactly fantastic. I had one special adviser throughout my time, and that was very sensible. You know him—it was Lord True, who did an extremely able job, and it was very good to have an assistant of that kind. However, to have media special advisers and roles of that kind takes the whole thing much too far. That whole area needs to be examined with real care.

**David Blunkett MP:** I cannot advise the committee on what evidence to take, even in writing, but I strongly urge that Conor Ryan or Huw Evans, who both worked for me, should be allowed to present evidence. They were superb, worked extremely well with the civil service and were an essential feature of the job that I was able to do. Whatever happened to me, I do not think anybody in the Department for Education and Employment or the Home Office could dispute that we were good at communicating. We certainly would not have been if we had relied on a department in which, when we first came in, none of the people had any experience in the media outside the civil service.

**Q74 The Chairman:** Thank you, that is very helpful. We have noted both those names. I think the committee has also noted the formulation of “not exactly fantastic” in Lord Fowler’s view of the operation of contemporary special advisers.

**Q75 Lord Crickhowell:** There is one area that I am confused about, which is the exact relationship between special advisers and the rest of the civil service. There have been cases in previous governments where special advisers have told civil servants what to do. Surely there should be a clarification; the civil servants have one job to do and the special adviser is there to advise the Secretary of State. Surely the special adviser should not be ordering civil servants around. Do we not need clarification on that relationship?

**David Blunkett MP:** We may have agreement on this. I agree that it is not the job of a special adviser to order a civil servant around.

**Lord Fowler:** I think you need clarification on that. I entirely agree with what Lord Crickhowell is saying. One of the problems here is that particularly with a new Government you get new Ministers coming in who, as we know to our cost, have to find their own way around. It is a new world and you have not been a Minister before. Then it is thought that you must have special advisers as well. I suspect that that is pushed down and that there is on-the-job training but no one really formalises it. I repeat that it is an area of concern, and their power and influence has gone too far. I do not think, frankly, that it is to the benefit of the Government.

**Q76 The Chairman:** We are going to talk to two special advisers immediately after this session, so if we can we may hold some of our questions to put to them. You have given some very good answers, and I thank both of you for giving us an enormously interesting variety of things to discuss and think about. Are there any points that you would have wanted to raise that no one around the table has mentioned?

**David Blunkett MP:** Only to say that if you manage to sort this whole business out, you will have done better than anyone else in the last few years.

**Q77 The Chairman:** That is always our ambition.

**Rt Hon Lord Butler of Brockwell KG GCB CVO, Cabinet Secretary and Head of the Home Civil Service, 1988–98 – Oral evidence (QQ 296–310)**

*Evidence Session No. 7*

*Heard in Public.*

*Questions 296 - 310*

WEDNESDAY 18 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Lexden  
Lord Pannick  
Lord Powell of Bayswater  
Lord Shaw of Northstead

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**Examination of Witness**

**Rt Hon Lord Butler of Brockwell KG GCB CVO**, Cabinet Secretary and Head of the Home Civil Service, 1988–98.

**Q296 The Chairman:** Lord Butler, thank you very much for coming. It is most helpful of you to have agreed to come to this, I am afraid, slightly short session this afternoon. This session is being televised so, if you would be kind enough, in your opening statement, to introduce yourself that would be very useful. I understand you have got a short opening statement you would like to make so, when you are ready, why not make it?

**Lord Butler of Brockwell:** Thank you, chairman. I am Lord Butler of Brockwell. I was Secretary of the Cabinet and Head of the Home Civil Service from 1988 to 1998. It is because you are short of time that I thought it might help if I just say in two minutes where I approach this issue from. I regard ministerial accountability as being both a constitutional and a statutory principle. Parliament confers powers on Secretaries of State; it does not confer them on departments. Civil servants exercise those powers on behalf of Ministers. I have no difficulty at all about civil servants being held personally accountable for those tasks that are clearly delegated to them. My experience was that, although it is always an ordeal to appear before a select committee of Parliament, civil servants did not have any difficulty about that concept either.

During my time as Head of the Civil Service, I argued for the distinction between accountability, on the one hand, which Ministers were always subject to, and responsibility where they could not clearly be responsible for everything that happened in their departments. I led the Next Steps initiative, which involved setting up accountable chief executives—civil servants in charge of agencies with executive functions. There needs to be

Rt Hon Lord Butler of Brockwell KG GCB CVO, Cabinet Secretary and Head of the Home Civil Service, 1988–98 – Oral evidence (QQ 296–310)

a clear definition of what is delegated. Lord O'Donnell, in his evidence to you, quoted from a 1991 document, when I was Head of the Civil Service, saying just that. The limits of responsibility can often not be defined with complete clarity, but the effort to define them is still worthwhile, in my submission.

I also have no difficulty about civil servants being criticised by name by select committees, provided that the committees go through a sufficiently rigorous process to ensure that that criticism is fair. I would have no difficulty with a select committee recommending that a named civil servant should be subject to disciplinary procedures, but those disciplinary procedures must be conducted through the employer of the civil servant. Finally, civil servants' accountability, in my view, cannot override their responsibilities to their Minister. When the limit of what the civil servant can say to Parliament has been reached, then the Parliament's proper recourse should be to the Minister. I have, if there is time, something to say about the appointment of senior civil servants and about the Government's proposals.

**The Chairman:** Both of those would be very helpful. Lord Powell, you wanted to follow that.

**Q297 Lord Powell of Bayswater:** I was only going to ask Lord Butler, in the light of these clearly formulated views, what he feels about the Government's recent proposals and whether they, in any way, change anything very much.

**Lord Butler of Brockwell:** I think in some respects they are useful. I am all for defining, as the Government propose to do, what permanent secretaries are to be held accountable for. That goes with my statement. I think that, if you are going to hold people accountable, you have to define what it is that they are accountable for, and that is the first proposal that the Government have. I am also content with what would be a change in procedure, with former accounting officers being called back to select committees to account for what happened in their time. Indeed, there was one example of that where it happened, which I took part in, which was the famous Public Accounts Committee inquiry into the efforts of the then Chancellor of the Exchequer, Mr Lamont, to get a tenant out of his house. Sir Peter Middleton, who had been accounting officer at the time, joined Sir Terence Burns and me in giving evidence to the Public Accounts Committee.

The role of Ministers in appointments I think is more complicated. I would like to say something separately about that, but let me go through the other things. On the proposal that permanent secretaries should appoint short-term contracts for executive or management roles, again, I see no difficulty about that. I rather wryly make the point that, if these were appointments that the permanent secretary was instructed to make by the Minister then, in a sense, they would be political appointments and you would have political appointees giving instructions to civil servants—a matter I initiated and was much criticised for when Mr Blair came in, and Mr Brown continued. The idea of having figures that allow comparisons to be made between departments is excellent. I see no objection to that, nor do I see any objection to looking at other models of accountability. Indeed, I went to Australia and New Zealand when I was Cabinet Secretary and looked at that. We adopted some of the innovations that the New Zealand government in particular had made.

**Q298 The Chairman:** New Zealand seems to have become a slight nirvana, but of course it is much smaller and much less complex than the United Kingdom. I am not sure that we are all necessarily attracted to the vision of excellence.

**Lord Butler of Brockwell:** No, absolutely it is. We did follow them and there are things that were introduced that have disappeared. We had contracts for senior civil servants; I do not

think they have contracts anymore, but these were an effort to define what they were responsible for.

**Q299 Lord Pannick:** Can I ask you about the confidentiality of advice given to Ministers? If a parliamentary committee is seeking to get to the bottom of what occurred and why, in relation to some controversial project, would you agree that the parliamentary committee may need to know what the Minister was advised as to the content? If that is right, should the civil servant be able to respond to the parliamentary committee by giving the details accurately?

**Lord Butler of Brockwell:** In my view, the answer to the second part of your question is “no”. If somebody is going to give that information, it should be the Minister. It is a perfectly proper question to ask the Minister, I think, but it is an area that the Minister should answer for, rather than the civil servant.

**Q300 Lord Crickhowell:** I know you have read the transcripts of the sessions we had last week, where some of your predecessors and successors put up a remarkably solid defence of the status quo and the almost divine sanctity of the Osmotherly rules as they stand. Indeed, Lord O’Donnell then, neatly, in a wonderful *Yes Minister* episode, almost reversed our inquiry as being one not about the civil service but about select committees. I think you have been rather more open about the way in which select committee activity might take place and rather more willing to see former accounting officers and so on give evidence to them. The overwhelming evidence we have had from outside—from people like Peter Riddell, Lord Hennessy of Nympsfield and so on—is that the trouble with the Osmotherly rules is that they were drawn up by the civil service a long time ago; we have had the whole select committee system set up in 1979, developing and finding its way forward.

The Government indicate in their written evidence to us about this inquiry that they want to look again at this. There is a general view outside among those who have given evidence that there has to be a revision of the arrangements and the Osmotherly rules, but there cannot, surely, be simply a revision carried out by the civil service. They have to involve Parliament; Parliament has got to be involved because this is about the relationship between Government, the civil service and Parliament. Have you any views about how that exercise might be conducted and what is the way forward, so that we change things to take account of life as it is today, rather than life as it may have been in 1979 when I was still a Minister?

**Lord Butler of Brockwell:** The version of the Osmotherly rules that I read, which was the guidance to officials appearing before select committees, was dated 2005, so I think it has been revised and brought up to date and I think that such rules, as is quite right, continue to be reviewed and revised to take account of changing circumstances. I think that the principles remain the same. On the participation of Parliament, I remember very clearly that, when the Osmotherly rules were first devised, Parliament saw them, quite rightly.

**Q301 The Chairman:** How did they see them?

**Lord Butler of Brockwell:** They were published.

**Q302 The Chairman:** But there was no formal scrutiny process.

**Lord Butler of Brockwell:** There was no formal scrutiny process but, in a sense, that is the interesting point because Parliament refused to endorse them, because it wanted to have room for manoeuvre. I completely understand that. These are rules prepared by the

executive that Parliament should be free to comment on but, in the end, I think Parliament would be wise to say that these are rules that the executive makes for itself and we do not feel bound by them.

**Q303 Lord Crickhowell:** You have already touched on, in a previous answer, the way in which individuals can be held responsible but the actual disciplinary activities should take place within the department. That raises the question about how far select committees can go in trying to identify exactly what happened and who they can call—not necessarily just accounting officers but senior civil servants and perhaps consultants involved in the project. Many of these projects last a long time and involve a great many people. We surely want to get away from the kind of slanging match almost that took place between Margaret Hodge and Lord O'Donnell about the way in which the Public Accounts Committee acted in a particular case. Therefore, if we can get a revision that gets broad consensus, perhaps aided by the recommendations of this Committee, surely we would be in a world that everyone would be happier with.

**Lord Butler of Brockwell:** I was bold enough to say to the chair of the Public Accounts Committee, Margaret Hodge, that I thought that the Public Accounts Committee was, in a sense, the committee that had least modernised its proposals. Select committees can and do see civil servants at all levels. I do not know why the Public Accounts Committee confines itself only to permanent secretaries, nor do I know why the Public Accounts Committee never summons Ministers, because the defence for a permanent secretary is that they get a direction from their Minister. The Minister, therefore, in my view, ought to be accountable for that direction. I said to Margaret Hodge that, in my time, such ministerial directions were very rare; for a permanent secretary to ask for it was almost like the nuclear weapon. In the three months before the last election, I am told, there were nine occasions on which permanent secretaries asked for directions. Has the Public Accounts Committee looked into any of those? I believe not.

**Q304 Lord Crickhowell:** You would welcome, for example, the practice of the Defence Committee, where the permanent secretary and very senior civil servants, involved say in procurement, and the Minister often appear together.

**Lord Butler of Brockwell:** I think that is a very good thing because, for the reasons we said earlier, you cannot always draw an absolutely clear line between what the civil servants are responsible for and what the Minister is responsible for. If they are both there together, they can join in answering the questions.

**Q305 Lord Lexden:** Going back to the famous Osmotherly rules, much criticised by the constitutional experts who gave evidence to us—Peter Hennessy and Peter Riddell in particular—Peter Riddell said quite explicitly that they are no longer “a sufficient guide” and the Government are now to review them. What would you think should be the chief features of a reviewed or possibly replaced set of rules? Would they have implications for the Civil Service Code? Would there need to be revision there too?

**Lord Butler of Brockwell:** I am afraid I do not agree with Peter Riddell and Peter Hennessy about that. In preparing for this appearance, I read through the 2005 document. I thought it was admirable, to be honest. It preserves ministerial accountability. It is quite clear, in my view, that while civil servant witnesses must help Parliament as much as they possibly can, they cannot override their responsibility to their Minister; they cannot go beyond what the Minister has instructed them to do. Then there is the recourse, which is that the civil

servant should say, “I am afraid you have to ask the Minister that question.” Then the recourse of the select committee is to the Minister.

**Q306 Lord Lexden:** You said in your opening statement that you would favour pretty considerable explanations from the civil service to select committees about the causes of problems and when things go wrong. Would not existing conventions need to be adapted? They are or can be read as being restrictive at the moment. Would not the existing conventions need to be adapted to permit the fuller explanations that you were suggesting?

**Lord Butler of Brockwell:** I certainly did not read any restrictions in the Osmotherly rules of that sort. I think one of the difficulties, which is a difficulty not of accountability but of our arrangements, is that where there are big projects, the civil servant who is in charge really ought to be accountable for whether it is carried out. We move our civil servants around much too often. We move our Ministers around much too often. There is a difficulty there in Parliament finding the people to hold properly to account. That is an issue of policy rather than accountability.

**Q307 Baroness Falkner of Margravine:** Lord Butler, would you like to share with us your views on ministerial involvement in the appointment of senior civil servants?

**Lord Butler of Brockwell:** Yes, I would like to very much. I think that the appointments process needs to fulfil three requirements. First, it must produce somebody who is well fitted to do the job. Second, it must produce somebody who has the confidence of the Secretary of State. Third, it must produce someone who can be expected to command the confidence of future Secretaries of State, including Secretaries of State who may be from a different party. Now, the present situation, the present procedure, is rather rigid and I understand why Ministers find some difficulty with that.

If I may describe the bad old days, when I was involved in this we had a much more flexible arrangement. We had something called the Senior Appointments Selection Committee, SASC, which was a committee that the Head of the Civil Service chaired with some senior civil servants. They produced a shortlist of people who were appointable to the job, taking into account both the suitability of the person but also the civil service’s plans for future appointments. Then I would, as Head of the Civil Service, discuss these with the Minister, and I would get the Minister’s view on them, and then I would put them to the Prime Minister, very often in the form of a shortlist. If we were close to an election in particular, or if the appointment looked as if it might be controversial, I would go and see the Leader of the Opposition and say, “Would your party have any difficulty with this appointment?” Out of that procedure, an appointment would come. I should say that sometimes I disagreed with the Secretary of State about who should be appointed, and we would argue it out in front of the Prime Minister. Sometimes I would win and sometimes he would win. Usually the reason why I opposed the Secretary of State was the Secretary of State would say, “Well, I like the permanent secretary I have got here. I would like to take him to my new department.” I would say I did not think that was a good idea, because he was less suited to the new department and he ought to help the incoming Minister. That sort of thing was what we argued about, but this was a flexible procedure and, on the whole, I think we managed to make appointments that were both good and gave everybody satisfaction.

Why has it changed? I think that the reason it has changed is transparency. We have got a much more transparent and open process. A lot of these appointments are open to the public and people apply. Understandably when that happens, there has to be a more formal process than these bad old days. There has to be a competition. The Secretary of State can

Rt Hon Lord Butler of Brockwell KG GCB CVO, Cabinet Secretary and Head of the Home Civil Service, 1988–98 – Oral evidence (QQ 296–310)

have his input at various stages but, when the competition is held, a competition is a competition. There is a winner. Then, the Secretary of State only has the choice of accepting the winner or asking for the whole thing to be done again, which they are understandably reluctant to do. I think this is a little inflexible, this arrangement, but that is the reason for it. I do not think it should be seen as a rigid arrangement that the civil service has introduced to protect its own interests.

**Q308 Baroness Falkner of Margravine:** To clarify, you think the reform proposals, whereby a shortlist of two or three names would go to the Secretary of State, would perhaps introduce more flexibility into the system.

**Lord Butler of Brockwell:** I think there was flexibility. No, I cannot go that far, I am afraid. I think that when you have this transparent open competition with outside applicants coming in, there has to be a process and that process has to be transparent. That is the reason that you have a winner. The Secretary of State, at that point, really has to accept the winner. Whether some more flexibility can be introduced into that, I do not know, but I certainly see the difficulties with introducing more flexibility into it.

**The Chairman:** I am very aware of the time, Lady Falkner. I am so sorry, but I think we need, in a minute, to bring this part of the proceedings to a conclusion. Did you want to follow up on that?

**Baroness Falkner of Margravine:** No. I think we are left none the wiser in terms of the Cabinet Office proposals.

**The Chairman:** Maybe we can ask the next witnesses, but I know Lord Powell also wanted to ask another follow-up.

**Lord Powell of Bayswater:** I want to follow up Lord Lexden's question if I could.

**The Chairman:** Please do.

**Q309 Lord Powell of Bayswater:** Listening to Lord Butler, and indeed to the former Cabinet Secretaries, one gets the impression there is no pressure from the civil service to have much change in the existing rules, customs, traditions and so on, and yet there is a debate underway about the need for some change in accountability. Do you think this is Ministers wimping out? Would it be unkind to suggest that they do not like the degree of accountability they have and want to dump it more on civil servants?

**Lord Butler of Brockwell:** I think that the basic principle from which we started—that ministerial accountability is a constitutional and statutory principle—is at the root of it, and that cannot be changed. Civil servants are responsible to Ministers for that. The system has developed enormously in getting permanent secretaries to appear more before select committees and to be held accountable. I think there can be changes in that and I mentioned some that I thought the Public Accounts Committee could undertake. At the root of it, I think, is that if civil servants are going to be held accountable, you have got to define what it is that the Minister has delegated to them in the interests of good management and fairness. That is not easy to do and, in some respects, it may go back to the Minister.

If one thinks of the case of Derek Lewis, the Prison Service and the prisoners escaping from Dartmoor, was Derek Lewis responsible because he ran the Prison Service or was ultimately the Minister responsible because Derek Lewis could say he had not been given the necessary



Rt Hon Lord Butler of Brockwell KG GCB CVO, Cabinet Secretary and Head of the Home Civil Service, 1988–98 – Oral evidence (QQ 296–310)

resources? These things are not cut and dried, and I think that, in pursuing them, it is reasonable for Parliament to expect civil servants to be accountable for what they have been clearly delegated.

**Q310 The Chairman:** Lord Butler, thank you very much. I am sorry that this has been a rather constrained timetable, but you have been very kind to come this afternoon, at some inconvenience, I know, to yourself. You said very clearly at the beginning that there were points you wanted to make. Do you feel you have made them or is there anything that is outstanding that you will feel frustrated if we do not ask you to respond to?

**Lord Butler of Brockwell:** You have been very kind in letting me make all the points I wanted to make.

**The Chairman:** Good. Thank you very much for coming.

**Rt Hon Charles Clarke and Rt Hon Lord Howard of Lympne CH QC  
- Oral evidence (QQ 27–47)**

*Evidence Session No. 2.*

*Heard in Public.*

*Questions 27 - 47*

WEDNESDAY 13 JUNE 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Macdonald of River Glaven

Lord Pannick

Lord Shaw of Northstead

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**Examination of Witnesses**

**Rt Hon Charles Clarke and Rt Hon Lord Howard of Lympne CH QC**

**Q27 The Chairman:** Thank you both very much for coming. As I am sure you realise, this session is being broadcast—I point that out for the benefit of all those taking part. We have got about an hour for this question-and-answer session, which I am sure will develop more into a discussion, and we are most grateful to both of you for taking part. This is the second evidence session in our inquiry into the accountability of civil servants. In the first one, which was just before the Jubilee recess, we talked to some chairs of select committees in the House of Commons. We want now to turn the focus to experienced Secretaries of State, particularly those who have had responsibility for very large departments. It would be very helpful for the purposes of the broadcasting and the report if you would just identify yourselves when you first speak.

If I may, I will plunge straight in with something that has come up in all our discussions. Do you think that the conventions, as everyone has understood them, of ministerial responsibility can continue to be relevant in the most modern forms of government? In particular, does the expansion of government activity—and particularly, in both your cases, with a department such as the Home Office, which has very broad responsibilities, and responsibilities for bodies that are quasi-government organisations—make the understanding of ministerial responsibility, in the individual sense, to Parliament something that we can continue to exercise? If we cannot, what should replace it? Perhaps Lord Howard would start.

**Lord Howard of Lympne:** I am Lord Howard of Lympne. My answer to your question is, broadly speaking, yes. There are a couple of caveats and qualifications. I think that it would be helpful, and I suggest this somewhat diffidently, if one thought a little about what you

actually mean by the phrase “ministerial responsibility”. I was struck reading the transcript of your proceedings on 23 May by the extent to which the word “accountability” and the word “responsibility” were used pretty well interchangeably, as though they meant the same thing. I do not think that they mean the same thing. I think that Ministers should be accountable to Parliament—and Parliament’s select committees, obviously—for everything that is within the remit of their department. However, there will be some things within the remit of their department for which they are not responsible—accountable to Parliament, yes, but not responsible. For example, there will be things that have been devolved to independent bodies. They come within the broad remit of the department, so Ministers should still be accountable to Parliament for those things, but they are not responsible for them.

Another example, which you discussed on 23 May, and which I am sure was in everyone’s mind as leading to complications when it comes to accountability, is the kind of project that extends over a significant period of time, started when there was a different Minister in charge of the department, when there was a different permanent secretary, and implemented—or not implemented—under a second Secretary of State and second permanent secretary, yet the person who is properly accountable to Parliament for that project is the Minister who happens to be in charge of the department at the point of inquiry. I think that it is perfectly proper that he should be accountable, but he is not in any meaningful way responsible for the way in which the project was designed or drawn up at its outset, or for any critical mistakes that may have been made under a predecessor Secretary of State and a predecessor permanent secretary. I think that if one were a bit clearer about the difference between accountability and responsibility, it would help the clarity of thinking on these issues.

**Q28 The Chairman:** That is extremely interesting, but, if I may ask you, Lord Howard—I will come to you in a minute, Mr Clarke—if you talk about the collective responsibility of the Cabinet, for example, that is also collectively responsible to Parliament, isn’t it?

**Lord Howard of Lympne:** Yes, collective responsibility means something slightly different. Collective responsibility means that you accept responsibility for the decisions and actions of your colleagues and you do not take a different line in public.

**The Chairman:** But if we emphasise the responsibility as opposed to the collective, we talk about responsibility as well as accountability in that context.

**Lord Howard of Lympne:** As I say, I think that that is a slightly different concept and collective responsibility sums that up fairly accurately.

**Q29 The Chairman:** Mr Clarke?

**Charles Clarke:** My name is Charles Clarke. I agree with most of what Michael Howard just had to say. I have two preliminary remarks. One, I am broadly conservative about the existing structures; I am not in favour of dramatic change to them. That is perhaps fitting for the son of a former permanent secretary—I am not in favour of much of the discussion that is going on about tearing up the current system. Secondly, in the set of questions that you have established, there is an element that you do not reflect—perhaps understandably, you cannot—which is the politics of the time in relation to all these issues when they arise in practice.

Trying to codify what you have called “the convention of individual ministerial responsibility” is an interesting task, which I think the Committee will find quite elusive. I am not sure what “the convention of individual ministerial responsibility” is.

Michael's discourse on the relationship between responsibility and accountability is helpful and true. Where I probably disagree with what he said is that I think that the Queen's Government has to keep going perpetually and that is why the system of accountability has to be perpetual. Though you have changes of personnel, whether Minister, permanent secretary, or whatever, the accountable system has to be that the Government is accountable to Parliament and to the country. You can argue about how that process works and how well it works at each stage, but to start saying that there is a moment—a change of Government, of Cabinet member, or of permanent secretary—at which there is a discontinuity in that accountability leads to potentially quite dangerous situations, in which people start saying, "It's their fault, not mine".

Going back to the political point, on many of these issues a blame culture or chase-the-victim process starts, which I think is profoundly unhelpful. The principle of ministerial responsibility for what the Government do is absolutely correct and very important. As I said, I am broadly conservative on this. I think that keeping the existing conventions is the right way to go and that codifying them is quite difficult—I think that you will find that elusive. However, it is very difficult to ignore the political pressures of the moment in relation to any particular case, when anybody is looking to see what happened when, who left office and who did not, or whatever, in any given circumstance.

The final point is that the accounting officer is the permanent secretary, who is accountable to the Public Accounts Committee. That is a very important principle and is a distinction when you talk about the relationship between accountability and responsibility, which Michael described, between the Minister and the permanent secretary. I have always said that the core relationship for a Secretary of State is with the permanent secretary in that department; to get the relationships right. When that goes wrong—we can give lots of examples—the whole structure of government tends to fall down. When it is right, then you can conduct government in the proper way. Getting that relationship right is terribly important and relates to your later question about the accountability of permanent secretaries and the change of permanent secretaries and so on. That is a very difficult question.

**The Chairman:** It also leads to the question of ministerial involvement in appointments.

**Q30 Lord Macdonald of River Glaven:** Yes, I wonder whether you think that Ministers should be able to exercise any influence over Civil Service appointments, and whether you think that there are any particular posts that such a process might be more desirable in relation to.

**Charles Clarke:** Well, self-evidently they do. The Prime Minister, through the Cabinet Secretary, directly influences the appointment of permanent secretaries across government—I think correctly so. Obviously, most importantly, that applies to the Cabinet Secretary directly or the Head of the Civil Service, where they are different posts. Then when key permanent secretaries are appointed, the Prime Minister is consulted. I used to be of the view that individual Cabinet members should not be involved in that process. That really is the view but I am being hypocritical in saying so, since, in my own case, I lost confidence in John Gieve, who was the Permanent Secretary at the Home Office when I became Home Secretary, and I felt—and said to the then Secretary to the Cabinet and to the Prime Minister—that I thought he should move. I also had views about who would be the best person to replace him, so I did put those views, but I put them to the Prime Minister and to the Secretary of the Cabinet. However, I do not think that a Minister should

directly appoint their permanent secretary, but I do think that there should be more accountability of the permanent secretaries than there often is at the moment.

**Q31 Lord Macdonald of River Glaven:** Is that not a slightly cosmetic distinction? I am not arguing against it, but there is no point in a Minister having foisted on him a permanent secretary whom he or she cannot work with—and we all know that that has happened from time to time. So the Minister’s input to the Prime Minister’s view is going to be highly significant, is it not?

**Charles Clarke:** Not in my case; it did not affect things for a very long time—unfortunately, from my point of view. But there we are; that is life. It is a cosmetic distinction—I take your point—but it is certainly not the case that the Prime Minister will automatically do whatever their Cabinet member thinks—still less that the Secretary to the Cabinet will automatically want to do even what the Prime Minister wants, let alone what an individual Cabinet member would want. Nor do I really believe that you can be in a situation where, when a Secretary of State comes into office, they then appoint their permanent secretary. I think that that would be a very dangerous course of action, and I am not in favour of that. I am slightly aware of my own hypocrisy in the way that I am describing this, because my own relationships did not work out as I would have wished them to.

**Lord Macdonald of River Glaven:** Do you think that that particular post might require more direct ministerial involvement?

**Charles Clarke:** No, not really. The classic ones would be the great departments of state—the Treasury, the Foreign and Commonwealth Office and the Home Office. However, I do not think that they are in principle so different from the other great departments of state.

**Q32 Lord Macdonald of River Glaven:** Can I just grasp the nettle and ask whether you think that different rules ought to apply to the appointment of the Director of Public Prosecutions, which is a permanent secretary appointment?

**Charles Clarke:** I am ready to answer that question but not with a great deal of familiarity. I have never been involved in the appointment of a DPP, and I do not know enough about how it operates. This relationship between politics and the law has become clarified over recent years with the Supreme Court and so on, but I am not at all sure that you should say that the DPP’s role is completely independent of the political process. I am inclined to think that the DPP should be appointed under the supervision of the political process, through the prime ministerial and permanent secretary structure. I say that with some hesitation, since I have not thought about that particular question.

**Lord Macdonald of River Glaven:** We have this distinction that the Attorney General is a superintending Minister over the DPP, rather than a directing Minister, which is clearly a significant difference.

**Charles Clarke:** It is a significant difference. Michael, with respect, could probably answer your question better than I can, but the idea that you could have a separate legal appointment approach that is nothing to do with the political process does not really work.

**Q33 The Chairman:** Lord Howard, do you want to comment?

**Lord Howard of Lympne:** Yes. I am not in favour of any move towards anything remotely resembling the American system, whereby an incoming administration changes large swathes of what we would regard as civil service positions. That is a very unhelpful process. I do not

know what the current situation is, or what it was under the last Government. When I was last in government, the position was that a Minister had pretty wide discretion over the appointment of people in his private office. You saw several candidates and you made the choice as to who was to be your Principal Private Secretary and so on. In my time, I had a kind of unofficial right of veto over the appointment of a new permanent secretary, which I exercised. You did not have the right to choose your permanent secretary, although in the end I did get the person I wanted. I did not say, “I insist on having X”. What I said was, “I am trying to completely change the culture of the Home Office, so I do not want a new permanent secretary who has, at any point in his career, served in the Home Office.” The candidate that officialdom had lined up had spent a large part of his career in the Home Office. I had nothing at all against him personally, but I said, “I’m afraid I want someone different.” That led to quite a prolonged argument—I suppose that is one word for it—involving the Cabinet Secretary and ultimately the Prime Minister, who resolved it in my favour.

**Charles Clarke:** I think the unofficial veto that Michael mentioned is a good description of what the situation was. In my case, in the process of appointments in the Home Office below the level of permanent secretary, I was directly engaged at the Senior Deputy Secretary level, including appointments that were very difficult—running the border service, for example, was a massively difficult appointment, where we could not find anyone in the whole civil service whom we could appoint to that job. Finally, we appointed someone who was a local authority chief executive. It was a very difficult process, but the Secretary of State was directly involved. I do not know how proper that was, although, as far as I know, it was proper. There was direct involvement. I very much agree with Michael’s point that if you suddenly become Home Secretary or head of a department, you are concerned about the whole culture of the organisation, the way it works and the way it operates. Whether you have an arbitrary rule such as not appointing anyone who has been in the department before, as Michael described, or a more ad hominem rule, about whether you think the people are ready to make these changes, is a very important issue.

**The Chairman:** Lord Hart, did you want to come in on that?

**Lord Hart of Chilton:** No, it was just that the description that we have just heard is still the position—that is to say, there is not a right of selection but a right of veto.

**Charles Clarke:** I would not say that it is a right of veto. The phrase that Michael used was the right one.

**Q34 The Chairman:** Of course at the other end, apart from appointment, what about disciplinary proceedings, vis-à-vis the civil service.

**Lord Howard of Lympne:** No. It is immensely frustrating but I do not think that Ministers should have a role in that. I do not want to take up too much of the Committee’s time, but perhaps I may give you an example of just how frustrating it can be.

**The Chairman:** Please do.

**Lord Howard of Lympne:** Quite early in my tenure as Home Secretary, a rather sensitive document was leaked. A leak inquiry was instituted.

**Charles Clarke:** And famously successful.

**Lord Howard of Lympne:** Let me tell you what happened. The person in charge of the leak inquiry concluded as follows: “I have made inquiries of everyone who had access to this document. I have established that only two officials had access to it at the relevant time. One

gave me a totally convincing account of the way in which he had handled the document and I therefore did not question him further. The other admitted that he had had the document at the relevant time, admitted that he had spoken to the journalist who had written the article at the relevant time, but denied categorically that he had told the journalist about the contents of the document. I am therefore unable to come to a conclusion about who was responsible for the leak.” That is an example of just how frustrating it can be, but, nevertheless, I do not think that Ministers should have a role in dismissal or disciplinary proceedings.

**Q35 Lord Pannick:** I am very puzzled about that. Why is it inappropriate for the Minister in that type of situation to make representations to, say, the permanent secretary, as to whether consideration should be given to disciplinary proceedings?

**Charles Clarke:** That is quite different from actually disciplining in the first place.

**Lord Howard of Lympne:** Yes, that is different.

**Lord Pannick:** But you would accept that it would be permissible for the Minister have taken that step.

**Lord Howard of Lympne:** Yes. Ministers can make representations to their permanent secretaries and do so all the time about all sorts of things. The question is: who is to have responsibility for making the decision?

**The Chairman:** It is a good distinction as compared with having a formal veto on appointments.

**Charles Clarke:** Lord Chairman, can I make just one other point following on from what Michael said? I think that there is an important triumvirate in the department, which is the Secretary of State, the permanent secretary and the Principal Private Secretary. That triumvirate is very important. In fact, in both cases when I became Secretary of State I inherited a Principal Private Secretary with whom I was very happy, but when a new appointment came along, some considerable time after I became Secretary of State, I was then directly involved in the appointment of the new person in the way that Michael describes. That person has an absolutely massive responsibility in ensuring that the relationship between the Secretary of State and the permanent secretary is harmonious in all these respects.

**Lord Howard of Lympne:** And the rest of the department.

**Charles Clarke:** I agree. What Lord Pannick was talking about need not necessarily be done by direct representation from the Secretary of State to the permanent secretary. A Principal Private Secretary worth his or her salt would know the problem that was in the mind of the Secretary of State and would be talking to the permanent secretary about it to try to resolve it in a successful way. It might well not come to a meeting at which a representation is made. However, that triumvirate is very important. The Principal Private Secretary has to have the confidence of both the Secretary of State and the permanent secretary.

**The Chairman:** Can we turn perhaps from the civil servants’ relationship with their Secretaries of State, in terms of the Secretary of State’s responsibility for them, to their impact on Ministers?

**Q36 Lord Shaw of Northstead:** Clearly, civil servants come into contact with the public or Parliament much more than they did—that is my opinion. To what extent does the whole

civil service act as a constitutional check on the actions of Ministers? For example, should any public statement that has to be made or is asked for from a civil servant only be in accordance with his Minister's view? What is the position if a Minister has yet to give a view on something? When questioned, is a civil servant barred from giving his own personal view? What freedom is there in the case of civil servants?

**Lord Howard of Lympne:** In terms of checks, certainly there can be and should be a check to some extent. I can only speak of the position as it was when I was in government but, for example, if there was any question of a press release from the department going out that was considered to step over the mark into the political arena, I would be told that the officials did not think that it was proper. Invariably, the press release was amended. I think that things probably changed somewhat after 1997 in that respect. Certainly, that was the case before then and they exercised a proper role in ensuring that conventions of that kind were properly adhered to. In terms of what they say in public or to a select committee or whatever, I think that if they are giving evidence on behalf of their Minister—that is normally the position—then they have to reflect the views of that Minister. It is the Minister who is there to decide policy and make those decisions. The civil servants are there to implement those decisions.

**Charles Clarke:** I do not think that things changed after 1997, and certainly not in the departments that I was associated with. In answer to your question, the home civil service absolutely does and should act as a constitutional check on the actions of Ministers. That is precisely what they ought to do. However, everything depends on the relationship between the permanent secretary and the Secretary of State, as I said at the outset. The permanent secretary has to be strong enough to say to a possibly very strong Minister, “You cannot do this, Secretary of State”. To be honest, I do not think that all permanent secretaries are strong enough to do that. There are occasions when Ministers will try to override their permanent secretaries, and that is a serious criticism of a permanent secretary.

Secondly, I used to encourage—and still do in various courses when I am asked about what it is to be Cabinet member—all civil servants, even as many as would be round a table of this size, to give me their opinion about what I was proposing. I would say that the sanctionable offence would be not to tell me that I was about to do something mad before I found out by another route. It was then my job to take the decisions. If somebody said, “You are mad to do this for the following reasons”, I might say, “Well actually I am still going to go ahead and be mad”, and that was a matter for me. It was my decision. It was the duty—I emphasise the duty—of officials to say to me, “You have to operate in this way and understand these circumstances.” I understand that there are other Ministers who do not operate in that way. They essentially do not want their civil servants to give their views and do not want to be contradicted. I am sure that Michael, having his personality, would have been similar in his approach in wanting people to be quite candid. I did not mind if officials said that I was doing completely the wrong thing, because I was confident enough to deal with the arguments that they put forward and come to a view about how to proceed.

Having said that, you have a series of difficult issues if the civil servants are not strong, and if in particular the permanent secretary is not, in relation to the Secretary of State. That leads to a very difficult set of issues. You used in your question the phrase “constitutional check”. That becomes a very critical question when you talk about quasi-judicial roles played by Ministers, or proprietaries, for example in relation to allocation of moneys including to your own constituencies and issues of that kind, where the civil service has to be absolutely a stickler for the position—and should be. That is one of the reasons why I find the current position in relation to the Secretary of State for Culture, Media and Sport completely



inexplicable. In the current circumstances, it does not appear that the permanent secretary acted as he should have done. It is a constitutional check. It should be a key culture of the civil service to be that constitutional check. Now, some politicians do not like that. We see it in the papers all the time at the moment that certain politicians argue that you do not want civil servants who are a constitutional check. I take exactly the opposite view: it is critical that they are a constitutional check as long as, at the end of the day, the right of the Minister to take the decision is acknowledged and recognised. I think that in practice that is the case. All civil servants I know accept that if the Secretary of State wants to take a decision, then that is what they should do.

**Lord Howard of Lympne:** Yes, but there is a very important distinction to be made between questions of propriety and questions of policy. When it comes to propriety, Ministers ought to listen to civil servants, who ought to tell them that what they are contemplating doing is improper. If that is not said to the Minister, that is a failure on the part of the civil servant and it is serious. When it comes to policy, as it happens I took the same attitude as Charles and liked to have different views expressed. I thought that that helped me come to better decisions. Not infrequently, I was persuaded that what I was contemplating doing was not the right thing to do. Other Ministers take a different approach and do not like that sort of thing happening. That is really a matter of the different temperaments of different Ministers and there is not much that you can do about it. It is just the way that life is. But that is in a completely different box from questions of propriety.

**Charles Clarke:** I agree with that but there were examples, certainly in the Labour Government, of senior Ministers who took key policy decisions closeted with their special advisers and some friends and who were not ready to allow civil servants to comment on them. I agree with Michael that that is their right and there is nothing wrong about that, but I think that it is extremely unwise. Some current Ministers also do that—I also think that is unwise.

**Q37 Lord Crickhowell:** I am going to ask a different question, but I cannot resist saying, in response to the reference about quasi-judicial roles, that those of us who served on the Select Committee on the Constitutional Reform Bill pressed an amendment very hard against the combined front benches of the then Labour Government and the Conservative Opposition that this role should not be given to a Minister because they were bound to have a political view. It was an absurd situation. What a pity that it was defeated. I suspect that we will have to move to a situation where Ministers are not put in a position of having to take quasi-judicial roles on such issues. But that is a diversion. We were defeated by a very narrow majority. It was a pity.

I was going to ask—and I am aware that neither of you has served in a coalition government—about press reports that indicate that the civil servants, particularly the Cabinet Secretary, are having to play quite a significant role in bringing together the coalition and deciding where things are part of coalition policy and how they should be handled. Some of us saw a report in the *Times* that a Cabinet committee had been chaired by the Cabinet Secretary, which would have been inconceivable in the time when I served in the Cabinet. I wonder if you have any comment to make about the relationship between the civil service and a coalition Government.

**Charles Clarke:** As you say, I have never served in a coalition Government, but there are two separate points. First, I know that it is a truism but it is true that all governments are, in a sense, coalitions. All governments, including single-party governments, have caucuses and groups within them that work in particular ways, and in a way that is not entirely dissimilar

to having two separate political parties in operation. There are groups who have their own Members of Parliament who will vote in parliamentary votes in accordance with what is happening and so on. In a sense, the operation of this coalition Government is different to an extent from what has happened in previous one-party governments, but is not on a completely different planet.

The second difference is much more significant. There is no manifesto. The manifesto has been replaced by the coalition agreement. I understand why and I do not criticise anyone for replacing it with the coalition agreement, because there was no alternative in 2010 but to do that. But the coalition agreement has been given a kind of authority almost equivalent to a manifesto commitment. That is not a trivial point when it comes to your Lordships' House, in terms of the way in which you can behave in relation to various issues that come along. The constitutional propriety of that is a more difficult and complicated question. I was not aware of the report about the role of the Cabinet Secretary in chairing Cabinet committees, but I agree that in the Government I was a member of it would have been extraordinary. I do not think that it happened at all. I may be wrong about that, but I do not think so. I find it extraordinary because, at the end of the day, the political working of the coalition has to be for the political leaders of the coalition—namely the Prime Minister and the Deputy Prime Minister—to sort out.

**Lord Howard of Lympne:** I think that Lord Crickhowell would agree that in the administration in which he served the whole concept of coalition government would have been inconceivable. We have little experience of coalitions and therefore, inevitably to some extent, people are having to make things up as they go along. Of course Charles is right when he says that there are coalitions within parties. But the difference between that and the present situation is that the differences are formalised. You have two separate political parties. Therefore it does not strike me as astonishing that in some fora you may benefit from an independent voice chairing the particular discussion that is taking place. I am not sure whether the fact that that forum is an informal one or whether it becomes a Cabinet committee matters all that much. We are in uncharted waters. We have not had a peacetime coalition for 90 years, and even that was a continuation of a wartime coalition. So we are in completely uncharted waters. People are having, to some extent, to make things up as they go along. It certainly would have struck me, too, as inconceivable, in a single-party Government, that a civil servant, even the Cabinet Secretary, should have chaired a Cabinet committee, but times have changed.

**Q38 Baroness Falkner of Margravine:** On a more mundane level, and returning to what you were saying about welcoming challenge from civil servants in terms of the constitutional checks and so on—and particularly in terms of policy ideas—in a coalition, where you would perhaps have the senior Minister from one party and the Minister responsible for that particular policy area from another party, how would you foresee that challenge from civil servants operating through essentially what we would like to think of an impartial and neutral civil service?

**Lord Howard of Lympne:** I think that in the current discussions we would have officials around the table putting different views on an issue that has to be decided on. You have the Secretary of State and the relevant Minister of State sitting side by side listening to the arguments. They listen to the arguments and then they have a discussion between them and resolve it. That is how I imagine it would happen.

**Baroness Falkner of Margravine:** So that final discussion would be bilateral.

**Lord Howard of Lympne:** That is a good example of what Charles was talking about, because that is how I did it in my time. Having listened to the arguments from the officials, you would not always get the same view as the Secretary of State and the Minister of State. But you would discuss it between you, come to a conclusion and that would be the policy.

**Charles Clarke:** I very much agree with what Michael has just said, but I should add that what the civil servants ought to bring to the conversation is an analysis of the facts around the policy decision being taken and of the varying positions that come from various areas, and so on. I very often found that, when you had a discussion about a particular policy, what you might have thought in a saloon bar that you might do was different from what you actually did once you had considered the arguments when they were put in a clear way. It is why even today I resist saying, “What do you think about X?”, because I will often not have considered the fullness of the arguments that you are bound to consider when you are a responsible Secretary of State. That process of discussion with the independent civil service brought out the whole set of considerations. You might decide, “Actually, my saloon bar view still remains the right one”, but you might say, “Blimey, I had not thought of that and I had better look at it in a different way”. I would say that that is very true in the coalition context as well. I do not want to make any anti-Liberal Democrat remarks, but I sometimes feel that their policies in some areas are more dependent on the saloon bar than the main parties’ policies are—although, no doubt, that will now change.

**Q39 Lord Pannick:** You both emphasised, understandably, how important it is for civil servants to give clear advice to Ministers on impropriety and unconstitutional action. Supposing the Minister does not accept that advice and the civil service thinks that the Minister is simply wrong—not on a question of policy but on a question of impropriety or unconstitutional action. Does the civil service just accept that or is there some action that it can take?

**Charles Clarke:** There is then a formal minute. I cannot remember the name of the process—it happens very rarely—but the permanent secretary will formally minute that he does not accept that decision and thinks that an impropriety has taken place. That would go to the Cabinet Secretary as well as to the Secretary of State and it would be a big issue.

**Lord Pannick:** Should it go to Parliament?

**Charles Clarke:** You could argue that it should.

**Lord Pannick:** What is your view?

**Charles Clarke:** I would not object to it going to Parliament. Where it happens, it is a very big question. It should not particularly be confidential. If it is to such an extent that the permanent secretary thinks an impropriety has taken place, I can see a good case for a committee such as this one examining it. It happens very rarely in my experience but it is the right—and I would say the duty—of the permanent secretary to set out formally if he or she thinks that the Secretary of State is behaving incorrectly. Of course, if there is then something more serious on the propriety side—for example, a breach of the Ministerial Code—that is something that would absolutely need to be brought to the attention of the Prime Minister of the day and to the Secretary of the Cabinet.

I found that one of the most difficult areas was relationships with private contractors. I have come this morning from a breakfast on educational technology. When I first became a junior Minister in this area in 1998, I thought it was very important to try to understand what companies such as Microsoft or Apple were doing in the educational field but I was advised

that I could not meet them because there might be a circumstance in which a tender was coming round the corner and the meeting might be thought to have prejudiced a decision on the allocation of the contract. It was a very long and difficult process and meant that there was a lack of dialogue in areas which I thought were important. I still think that this is quite a difficult problem. There is a kind of purity—that is perhaps a funny word to use—or isolation of the political and civil servant class from what is going on in the rest of the world, which I think is a problem. You end up with ridiculous and dangerous situations where the meetings that take place do so at think-tank dinners, functions or private meetings. Those meetings are not about allocating money from the Government—that would obviously be improper—but about trying to understand what is going on in these different areas. I think that it is important to get a better level of dialogue between government in general and the wider world than we currently have. Some of the current conventions make that quite difficult to achieve.

**The Chairman:** We should move on. I know that Lord Crickhowell wants to take this up. He might have another point from before, when Mr Clarke and Lord Pannick mentioned the relationship between civil servants at a senior level and Parliament, if the permanent secretary were to alert Parliament. Lord Crickhowell, I know that you wanted to pursue that, but did you have another point on this?

**Q40 Lord Crickhowell:** I just wanted to take up the point that Mr Clarke interestingly raised. It takes us back to the point made earlier by Michael Howard about the difference between accountability and responsibility. I was a chairman of an IT service company attempting a very important contract for the Cabinet Office at the heart of government, the management of which had largely been subcontracted out. I doubt that the Minister had any real knowledge of what was going on. It was in the hands of the second permanent secretary. When things started to go wrong, I as chairman of the company suggested a meeting with the second permanent secretary, which is what would have happened in the private sector because it takes two to tango. He refused to have that meeting until everything was lost. Then, mysteriously, the whole thing disappeared and we never heard anything more about it. I do not think that it ever got looked at by the Public Accounts Committee. The permanent secretary reports to the Public Accounts Committee about accounting matters, but the civil service is always going to be defensive of reporting the civil service position when something has gone wrong of an administrative kind, like the management of an IT contract. How do we get round that? The Minister cannot be responsible for this. I do not even see how he can be accountable for it. Are we adequately looking at how we deal with this sort of situation?

**Charles Clarke:** I think that this was a massive issue, Lord Crickhowell. Baroness Jay will correct me: I am not sure that this Committee is looking into this matter but it is an absolutely enormous question. One of the biggest contracts that I saw was as the Minister of State at the Home Office when Jack Straw was Home Secretary. It was for the communications system to the police, which was a contract with BT. It was a very difficult question, finally solved by the Permanent Secretary, Sir David Omand, and the Home Secretary, Jack Straw, with my involvement, on Christmas Eve one year. There had been an enormous negotiation in ways that people found very difficult to understand. Actually, the Government were a very bad partner for the private sector in their negotiation of those issues. Hundreds of millions of pounds have been lost by bad decisions in these areas precisely because there is not a sufficient level of dialogue between the contractors and Government because it is thought to be improper. Obviously, one has to be frightened of impropriety in this area because there could always be corruption. I do not think that that

has been the case in these areas, but it is potentially there. But you have to have a better system of dialogue between the Government and the people they are contracting with.

**The Chairman:** Having been a Minister in the Department of Health at the time of trying to establish an NHS IT system, I am very familiar with this. Perhaps we may move on, Lord Crickhowell, to the broader question of the civil service and its relationship with Parliament per se. I think that you wanted to pursue that.

**Q41 Lord Crickhowell:** No, it was really on this, except that the point I referred to was Michael Howard's reference. I find it very hard to see how the responsibility and answerability to Parliament would work in practice in just this kind of situation.

**Lord Howard of Lympne:** This is where I think we really need change. Change is beginning to happen. You were given an example of it in your previous hearing, with a permanent secretary being asked to account for something that happened in a department where she had previously served. I think that that is not easy but it is the best answer to the kind of difficulty that Lord Crickhowell raised. It is essentially a matter for the Public Accounts Committee. The Public Accounts Committee is moving in this direction and is now refusing to accept what had previously been regarded as a kind of blanket convention. If it was a Home Office project, you had the permanent secretary in the Home Office and if that was a new permanent secretary and all the decisions had been taken by somebody else, well that was tough; this was the permanent secretary that you had in front of you and it was the permanent secretary that you had to be content with. That attitude is changing and I think that that is an extremely healthy change. The way to stop things falling in the hole that Lord Crickhowell described, which has so often been the case in the past and which is the real enemy of accountability, is for bodies—principally the Public Accounts Committee—to be able to question the people who were in charge of making the relevant decisions at the relevant time. Even if they have moved on or indeed retired, they should be accountable—in the real sense of that word—for the decisions that they took.

**Charles Clarke:** I strongly agree with Lord Howard.

**Q42 Lord Macdonald of River Glaven:** As you said, that happened in one well-known case. Why do we not move to a more direct accountability model for civil servants? Of course permanent secretaries, sometimes to their distaste, appear in front of the Public Accounts Committee, but they increasingly appear in front of other committees. I myself have appeared in front of many parliamentary committees, not just the PAC but the Home Affairs, Justice and Constitutional Affairs committees. It seems to me that in the case of policy implementation, as opposed to policy development, surely there cannot be any real objection to Parliament wanting to scrutinise directly those individuals who have made decisions, particularly if the decisions have gone wrong—not just in financial terms but in terms of the Government's objectives. What is the problem with a broader and deeper form of direct accountability to Parliament by senior civil servants?

**Lord Howard of Lympne:** I think again that there is a distinction to be drawn between policy matters for which Ministers must be responsible and accountable, and implementation.

**Lord Macdonald of River Glaven:** I agree.

**Lord Howard of Lympne:** That is their bag. Ministers now have a responsibility for making sure that implementation takes place. No effective Minister would simply say, "This is the policy. Get on with it and I am not going to ask you any more about it for another year."

That is not the way that effective government is conducted. Ministers have a role in implementation as well. However, where you have a project of the kind that we were just discussing—an IT project or something of that kind, or a regional fire service project such as you were discussing at your previous hearing—I do not see any difficulty in select committees, apart from the Public Accounts Committee, which has a primary role, asking to see the people who were responsible for the decisions that were made.

**Q43 Lord Macdonald of River Glaven:** Indeed they increasingly do. The objection that is usually made to this process is that it somehow politicises the civil service. Do you have any sympathy with that view, Mr Clarke?

**Charles Clarke:** I do not. I am not sure that there is an obstacle to what you are suggesting in any case. I argued for a much more rigorous approach. When I was a member of the Treasury Committee in 1997–98, I proposed—and it was agreed—that we have a programme for a Parliament for a four-year period. That will now be easier with a fixed-term Parliament. We would have a formal inquiry into each of the organisations for which the Treasury was responsible, including the Treasury itself, the Bank of England and so on. I think that all select committees ought to have a programme where there is routinely a process of scrutinising each of the agencies in that area. It takes a lot of work and involves a lot of people, but that kind of level of scrutiny every three or four years is important for every public body and there should be a process of going through it. It would mean staffing up the select committees a bit more for them to be able to do the work involved. It would certainly involve what you are suggesting—the ability to take evidence from civil servants and people who are not even civil servants but who are responsible for the operation of the various agencies in different ways. I absolutely think that that should be possible. I do not think that that is politicisation in any way. If they are asked a difficult question in the policy field, the civil servant would simply say, “That was a matter of policy and Ministers decided to go in that way.” That is the answer that the select committee would get—and fair enough. But to give that answer would not, of itself, be a problem.

**Q44 Lord Irvine of Lairg:** This is a question that I am putting to you both in no particular order. Does it follow from what has just been said that both of you think that select committees should be entitled and recognised as being entitled, perhaps by a new convention, to question civil servants on the detail of the implementation of policy, particularly if that implementation cuts across changes of administration?

**Charles Clarke:** Personally, I would welcome that. It would be an appropriate strengthening of the select committee process. My only caution is that the amount of time involved in these hearings is substantial. Getting the agreement of select committee members to allocate the amount of time involved in what would then be a heavy set of inquiries could be difficult. But for me it is a classic appropriate role for a Member of Parliament—and an honourable role that should be fulfilled. As I said, it would require more staffing for select committees. I am not talking about going to the level of support for the Public Accounts Committee, but the main select committees would need a bit more research support to help them.

**Lord Irvine of Lairg:** It would be hard work but they would need more support.

**Charles Clarke:** Precisely.

**Lord Howard of Lympne:** I agree, but with one qualification. Lord Irvine’s question related to decisions taken by a previous administration.

**Lord Irvine of Lairg:** It was that the new convention would entitle members of select committees to ask questions about the implementation policy set out or determined by a previous administration when continued by a subsequent administration.

**Lord Howard of Lympne:** There are sensitivities about the extent to which new Ministers have access to the papers of Ministers of previous administrations. In general I am entirely in favour of the principle, but it would have to be handled with special sensitivity when there has been a change of administration, as opposed to a simple change of personnel within the same administration.

**Lord Irvine of Lairg:** That was why I was careful to qualify my question that it would be a continuation of policy from one administration to another, in circumstances where the select committee was addressing the success throughout of implementation.

**Lord Howard of Lympne:** In principle, yes.

**Q45 Lord Macdonald of River Glaven:** I wonder if this can be taken a stage further. Bernard Jenkin has suggested that prospective permanent secretaries should be subject to some form of pre-appointment hearings by Commons select committees. This is already happening for some posts—not permanent secretary posts but other public posts—and seems to be working reasonably well. Do either of you think that that is desirable, or would it be a step too far?

**Charles Clarke:** I would oppose that for permanent secretaries, because they are the servants of the whole Government and should be appointed in the way that operates at present. I strongly supported the confirmation hearings for a number of agencies. In fact, the Treasury Select Committee voted in favour of confirmation hearings for the Governor of the Bank of England and we ended up in the rather embarrassing position that the then Government, when Gordon Brown was Chancellor, was not in favour of doing that in 1998. Therefore, Giles Radice and I had to abstain against our own Government when our recommendation was taken up by the Opposition. I am in favour of extending those confirmation hearings in a key number of posts, such as the head of Ofsted and so on, but I would not favour such hearings for permanent secretaries.

**Lord Macdonald of River Glaven:** I do not quite follow the distinction between those posts and the permanent secretary post.

**Charles Clarke:** They are qualitatively different posts. I think that you have a professional civil service, of which the permanent secretary is the peak. In general, the appointments to the permanent secretary role are made by the civil service on the basis of the competence of the candidate, not by direct political intervention in any kind of way. When you appoint a Governor of the Bank of England, chairman of the BBC or whatever, it is a different type of process. Personally, I would go further than just holding confirmation hearings. I think that there should be a formal confirmation, as in America.

I would qualify your question to some extent. I think that there are some serious constitutional issues lying under the surface at the moment about the role of select committees in some of those appointments, as decisions are taken and then Secretaries of State overrule them. There was a recent case with the head of the Office for Fair Access where there was controversy. I think that there needs to be more clarity than there is now about the rights of the select committee in those circumstances. Is it simply to advise the Secretary of State or is it formally to confirm an appointment? I broadly favour formally confirming an appointment but I raise that in the way I do, Lord Macdonald, because I do not

think that you can say that the current system is working reasonably well. A number of issues under the surface will come out at some point where the responsibilities are not quite clear.

**Lord Howard of Lympne:** Except that I would favour a continuation of what I think is an advisory role rather than formal confirmation, I agree with everything that Charles said.

**Charles Clarke:** I should say, Lady Jay, that there are issues here. I gave evidence to the Treasury and Civil Service Select Committee in 1992 about the involvement of the Leader of the Opposition in key appointments. At that time I was working for Neil Kinnock as Leader of the Opposition. There was an interesting issue immediately before the 1992 election about consultation on the appointments of both the Lord Chief Justice with the Leader of the Opposition and the Permanent Secretary to the Treasury with John Smith, who was then the shadow Chancellor of the Exchequer. There was an uncodified issue about the extent to which the Opposition—as opposed to Parliament—should be involved in key appointments of that kind. My evidence to the Treasury Select Committee in about 1992, which I can let this Committee have if it is of interest, was that I thought that that needed to be codified. There is a serious issue about to the extent to which, in relation to certain appointments, the Opposition should be involved in the process.

**The Chairman:** I cannot let this session end without turning to the question of special advisers and their role in the civil service and in relation to Parliament. Lord Hart is a distinguished ex-member of this group.

**Charles Clarke:** The national union of special advisers.

**Q46 Lord Hart of Chilton:** In the limited time that we have, can you deal with three questions? First, in your view, has the role and influence of special advisers changed over the past 20 years? Secondly, in the light of recent actions in relation to the Department of Culture, Media and Sport, do you think that Ministers and permanent secretaries are able adequately to control and be held accountable for the actions of special advisers? Thirdly, do you think that there is scope for increasing the accountability of special advisers to Parliament?

**Charles Clarke:** My answer is that the role of special advisers has changed over time. They vary immensely in terms of the type of person they are. Some are glorified press officers while others are serious political advisers. They are different types of people who play different types of role. I believe that there are too many special advisers. Some of the issues under our Government were not correctly handled at the centre. I do not think that the issue about giving certain special advisers line management responsibility over civil servants was correctly dealt with in 1997. We should not have done that.

Defining how the level of influence has changed would be difficult, but I certainly think that is has. Are Ministers adequately able to control and be held accountable for their special advisers? I would say yes. The special adviser is the servant of, almost the slave of, the Minister and Secretary of State. I find it incomprehensible in the case that you mentioned of the current Secretary of State for Culture, Media and Sport that he could be thought of as different from his special adviser. Any communication by the special adviser is a communication by the Secretary of State and needs to be treated as such. The suggestion of some difference between them is absurd. I think that it is wrong that the Prime Minister has not acted accordingly in that particular area. The idea that the special adviser can operate independently of the Secretary of State is quite wrong. If they were operating independently,



they should have been sacked on the spot at the time. Mistakes can be made and they can then be corrected.

I extend that to the point you asked about accountability to Parliament. I do not think that special advisers should have any accountability to Parliament. They do not exist other than as the voice of their principal. I did this role for many years for the Leader of the Opposition, Neil Kinnock. I was acutely aware that everybody treated me as though I spoke on behalf of the Leader of the Labour Party and the Opposition. That was the case. When I became a Cabinet member, I expected my special advisers to be seen to be speaking on my behalf. If they said something that did not reflect my position, that was a matter to be sorted out between me and the special adviser. There was never any problem or difficulty in doing that. I think that they are able adequately to control their special advisers. If they are not, they should not be in the job. The Minister should be held accountable for what their special advisers do. I am sure that when you were a special adviser, Lord Hart, you operated in precisely that way in respect of your principal.

**The Chairman:** I think that the last word goes to Michael Howard.

**Lord Howard of Lympne:** I agree with Charles that what was done in 1997 in making civil servants accountable to people who were in effect special advisers was a great mistake. It had a knock-on effect on the role played by special advisers within departments. It was a mistake that was rectified by Gordon Brown and I hope that the mistake is never repeated. Special advisers have an important role. Charles said he thought that there were too many special advisers. That is a common refrain.

Let me give you an example of one area of a Cabinet member's responsibility that it is very difficult for him or her to undertake and where they could be significantly helped by the presence of an additional special adviser, quite apart from someone who gives advice on the policy of their own department. I found it very difficult when I was in government to make an effective contribution to decisions made by other departments. There were some in which I took a particular interest and I devoted quite a lot of time to them, but I simply did not have time to do that across the board. In retrospect, if I think back to things that I would like to have done differently when I was in government, I would have liked a special adviser looking not at what I was doing in my department but at what other departments were doing so that I could have made a much greater input, for better or worse, into those decisions for which I would have to bear collective responsibility. Now, that would lead to an increase in special advisers and that is one reason why I do not go along with what has been suggested. I do not think that special advisers should be answerable to Parliament for the reasons that Charles gave.

**Charles Clarke:** I agree with that point. My point was not about too many special advisers for individual Cabinet members. I think that one, two or even three might be acceptable in that area. But if you look at all the lists of special advisers, there are some big agglomerations around the Treasury, around Number 10 and so on. That should be a rather smaller number.

**Q47 The Chairman:** You have both been enormously generous with your time and with your extremely helpful comments. Are there any points that either of you feel that we have not touched on that you particularly want to bring to the attention of the Committee?

**Lord Howard of Lympne:** No, thank you very much.

Rt Hon Charles Clarke and Rt Hon Lord Howard of Lympne CH QC - Oral evidence (QQ 27–47)

**The Chairman:** Thank you very much indeed. It has been enormously valuable. We are very grateful to you both.

**Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General – Oral evidence (QQ 338–358)**

*Evidence Session No. 7*

*Heard in Public.*

*Questions 338 - 358*

WEDNESDAY 18 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Lexden  
Lord Pannick  
Lord Powell of Bayswater  
Lord Shaw of Northstead

**Examination of Witness**

**Rt Hon Francis Maude MP**, Minister for the Cabinet Office and Paymaster General.

**Q338 The Chairman:** Thank you very much for coming this afternoon. This meeting is still being televised and broadcast so, if when you first speak you would kindly identify yourself for the purposes of the record, that would be very helpful. Thank you again for your written evidence, which I think we have all had the opportunity to read in the last 24 hours. Given that this is the last day of oral evidence that this Committee is taking on this matter, it would be most helpful if we could ask you briefly to start with what you see as the most important proposals that you are making in the paper to change some of the broad matters that we have been talking about, in relation to accountability.

**Mr Francis Maude MP:** Thank you very much. I am Francis Maude. I am Minister for the Cabinet Office with overall ministerial responsibility for civil service matters. The primary issue, it seems to me, is that within the current system of Ministers being accountable to Parliament for the conduct of their departments for what is done, which is something that has not been seriously challenged on a fundamental basis—there have been changes around the edges of that—there is a question around the ability of Ministers to decide on the shape of the department and the personnel in the department. We have made some proposals in *The Civil Service Reform Plan*, within strict guidelines on avoiding politicisation, which is a legitimate concern, around increasing the ability of the Ministers to influence the choice, particularly of permanent secretaries; and also to expand, in a very mild way, the accountability of civil servants to parliamentary committees, particularly with the proposal that is becoming custom and practice already, that accounting officers should be able to come back before the PAC. It is not always the current accounting officer who is held accountable for mistakes made in the past.

Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General – Oral evidence (QQ 338–358)

The other side of the coin of Ministers being accountable to Parliament for the conduct of the department should surely be a greater ability to decide on the people who are responsible in the department for the delivery and the performance of the department. That is why we have made these modest suggestions and why we are proposing, as we said in *The Civil Service Reform Plan*, to commission from outside some policy work on looking at alternative models, particularly those in Australia and New Zealand, but others as well.

**The Chairman:** We are quite interested in the political context for all this. As we discuss it in this very objective way, it is almost as though we were talking about the syllabus of a paper on modern British government, whereas I think we all understand, if we work in the Houses of Parliament, that this has political roots.

**Q339 Lord Powell of Bayswater:** We have heard a lot of evidence in the last two sessions from civil servants. The word “tweak”, that wonderful civil service word, has been used a great deal. Are the Government’s proposals just a tweak?

**Mr Francis Maude MP:** I do not think anything in our civil service reform plan is revolutionary, for sure. A lot of the things that we are proposing are themselves not huge, if you take them on their own. If you add them together and implement them, which is an absolutely crucial part of it, they will amount to real change. Insofar as appointments are concerned, I think you are right; it does not amount to more than a tweak. The proposal that a Secretary of State should have a choice of candidates for permanent secretary barely seems like a tweak even. Jack Straw, when I made my statement in the Commons, recounted how he had been, as a Secretary of State, responsible for appointing three permanent secretaries. On each, he chose from a choice of candidates. In one case, he chaired the panel, which is probably not at all *comme il faut*.

**Q340 Lord Powell of Bayswater:** Is that not how it really happens? My recollection, which is now rather dated, is that alongside the processes there were parallel processes of what actually happened. These consisted of people consulting privately in dark corners, on car journeys and so on. I rather agree with you that on the appointment side nothing much is going to change, so this should be no problem.

Looking for a moment at the wider picture, this is really about Parliament wanting more power, this debate on accountability, as far as I can see. The select committee mechanism is a way they see to get it, by being able to question not just civil servants but all sorts of people. We saw the Deputy Governor of the Bank of England being beaten up yesterday and, week in, week out, someone is given a thorough thrashing by a parliamentary committee. Is the best way to deal with this just to block it, which seems to be the tendency at the moment, or should some quite original thought be given to how you could change it to make parliamentary committees feel that they were getting more insight into the way government actually works? You do not think, just possibly, the Government’s proposals are too timid?

**The Chairman:** As Lord Powell was speaking I looked again at your paper. You say very broadly that the system “may need to be adapted to allow the Government to improve quality and responsiveness for users and value for the taxpayer”. We are talking about accountability for the taxpayer. I think that is behind the broader aims that we are seeking to establish.

**Mr Francis Maude MP:** I am always open to invitations to be more radical. We have committed to be and look forward to the Committee’s recommendations. On your first

point about the parallel processes, I am sure you are right but, actually, I am rather in favour of having a single open process, where we do not have to have huddled conversations in dark corners, where we do it honestly and openly and say the process should be that a panel, properly constituted and invigilated by the Civil Service Commission, should put forward a choice of candidates, both of whom, or all of whom if it is more than two, are totally validated as not being political, not capable of being a political choice; both are meritorious after fair and open competition.

I know of nothing that says that, as a matter of law, a choice on merit cannot take place if there is a politician involved in the choice. How could that be the case? If it were the case that merit is only capable of being shown if politicians are rigorously excluded from taking part in the choice, then Secretaries of State should be debarred from exercising a veto, which it is widely accepted they should have. It is a matter of ordinary common sense. You cannot impose on a ministerial head of department a permanent secretary who is unacceptable. I think there is a lack of openness and of clear logic here, which I think it would be valuable for your Committee to explore.

Insofar as your broader point of whether we should look at ways of giving committees more sense that they have an ability to question, we have very deliberately, in our paper, held back on that, because we acknowledge that your Committee is doing this rather important inquiry. There are two ways you can go. One is you can preserve, in all its purity, the model of Ministers being accountable to Parliament for their department; but it seems to me you cannot do that and, at the same time, deny Ministers, to the extent that the system currently endeavours to maintain, the ability to have any serious choice over the people who are responsible for delivering the performance of the department.

**Q341 Lord Pannick:** Minister, could I ask for your comments on a specific proposal that has been put to us for increasing the accountability of civil servants to select committees? That is that, if a select committee wants to understand what has happened and why in relation to some controversial project, it should be entitled to ask for and receive the advice that Ministers received. Indeed, it may be the civil servant is the best person to answer in relation to that, because the civil servant may have been in the department for far longer than the Minister who is currently in post. Are you receptive to such a proposal or do you, like some of the civil servant witnesses we have heard, think that that would fundamentally undermine relationships?

**Mr Francis Maude MP:** I think you will find total solidarity on this. I think the advice that civil servants give to Ministers should be very private, because it needs to be completely candid. Where I would favour us being much more open than we are at the moment is in releasing the data and the evidence on which decisions are based, which is different. I think there has been too much tendency in the past for policy to be based on assumption and assertion, rather than hard evidence. We should be more rigorous with ourselves and prepared to submit the evidence on which we base decisions to more public scrutiny than has been the case in the past. If we are going to keep this notion that Ministers are accountable, then we have to build on the accountability that civil servants have to Ministers. That is not as strong as it should be, and we have a number of proposals in our reform plan to strengthen the accountability.

One of the proposals that we did not put in the paper, but which we will enact, because it frankly had not occurred to us that it would be necessary at the time, is that, when the appraisals are done of civil servants—those civil servants whose work Ministers see and the civil servants who are running the projects and programmes for which Ministers are

accountable—the input of Ministers should formally be sought and taken in the appraisal of those civil servants. People feel accountable to the people whose views make a difference to their future careers. If the views of Ministers are not being sought and, in my own department for example, this year they were not, then there is a very clear sense of where the accountability of civil servants seems to lie. That is a change that in many cases does happen, but without any formal backing. We will make that a formal requirement in the future, which I think will play a modest part in strengthening the accountability of civil servants to Ministers, which is essential if Ministers are to be accountable to Parliament.

**Q342 Lord Pannick:** Do you accept that, if you do maintain this confidentiality—and I am not sure whether it is an absolute confidentiality or it can be outweighed by exceptional circumstances—you are going to make it more difficult for select committees to perform their job?

**Mr Francis Maude MP:** I do not see why, because what select committees are looking at is the policy, how it is implemented and what the effects are. It is completely proper to want to see what the evidence is on which the decision has been based, and that will be a salutary discipline for the policymaking process and all of those involved in it, whether officials or Ministers. I want to be in a world where officials are encouraged to give very candid advice to Ministers, and where Ministers are obliged, as they are under the Ministerial Code, to seek advice and listen to it. They are not obliged to take it. At the end of the day, it must be open to Ministers to say, “I have listened to your advice carefully. I have considered it and I am going to do something else.” The candid advice will not be given if it is open to being examined in public randomly, at a later stage.

**Q343 Baroness Falkner of Margravine:** I have two points. The first is prompted by what you have just said about the fact that select committees should be entitled to see the evidence on the basis of which policy was determined. We had this example earlier this year about the NHS risk register, where the Government made a very clear defence of the reason why they would not publish, and indeed was supported by those former Cabinet Secretaries who are in Parliament now. There was evidence and yet the Government did not want to release the evidence. Would you exclude items of policy such as risk registers, in light of the fact that you want civil servants to be candid to you, but not necessarily to a select committee?

**Mr Francis Maude MP:** A risk register is advice; it is a matter of judgment. It is not evidence.

**Baroness Falkner of Margravine:** But it is advice based on evidence, presumably, hopefully.

**Mr Francis Maude MP:** Yes, and so that falls squarely within what I have said. When you draw up an assessment of risk, you are exercising judgment. Risks are not generally based upon a pure factual basis. The facts will be quite clear, but the judgment is, “This is the likelihood, we believe. We advise you, Minister, the likelihood of the risk and the impact of the risk.” That is how you draw up a risk register.

**Q344 Baroness Falkner of Margravine:** I wanted to clarify that. I was with you on that one, but it was interesting to see where the line is drawn. It is going to be in a different place, depending on where we are. I want to go back to your earlier evidence on the selection of permanent secretaries. I think you posed a rhetorical question almost when you said you could not see why a politician could not be involved, given the lengthy process that

What would be your response to that objection? Therefore, we were told, because the permanent secretary has to work under potentially several different Ministers, it would not be a good idea for one single Minister, at that point of appointment, to be involved in that very clear manner of choosing one person from the list.

**Mr Francis Maude MP:** There are two separate things. The first is the issue of politicisation. Most decisions that Ministers make, whether they are about personnel or anything else, are not political decisions, in the sense of being party-political decisions. They are simply not. Most of what Ministers do in their daily lives is not about party politics. It is about driving a programme through. It may have a political origin. You would be insane, frankly, to seek a mediocre permanent secretary who you thought might be politically congenial over a first-class deliverer, a first-class permanent secretary about whose politics you are unclear.

Frankly, I have been a Minister two years in this Government and for seven years in the 1980s and early 1990s. I have never known what civil servants who work for me have voted. I have sometimes had a suspicion. Actually, some of the best who have worked for me I have suspected did not vote Conservative, and yet I have had no hesitation about their commitment and dedication to implement what I wanted.

The thing for me that is fundamental in civil servants is that they should feel wholly uninhibited in challenging, advising and pushing back, and then, when a decision is made, should be really clear about implementing it. For me, the sin against the Holy Ghost is not to push back and then not to do it. That is what absolutely enrages Ministers. Certainly in talking to Ministers in the last government as well as to colleagues in the current coalition Government, that is the frustration. It is by no means universal, but it is far more widespread than is desirable.

To deal with your point about a permanent secretary needing to serve other Ministers as well as the current incumbent: I completely accept that, but the reality is that, as Lord Powell has said, it has ever been the case that Secretaries of State, one way or another, have the final say in whom the permanent secretary is. It is just done in a rather hole-in-the-corner way. It has ever been the case that, if a new Secretary of State comes in and finds that they cannot work with the incumbent, a change ought to be made and will be made. While the permanent secretary is there not just for the current incumbent and does not have a term coterminous with the Secretary of State, there is no sense and never has been a sense of complete and immovable permanence.

**Q345 Lord Crickhowell:** I have in front of me the evidence given by Lord Hennessy, who reminded us that, when Norman St John-Stevas brought in the select committees, he said it was “a change in the relationship between Parliament and the executive”. I must say, listening to a great deal of the evidence that we have had recently, particularly from former Cabinet Secretaries and Heads of the Civil Service, you would have thought the entire argument was about the relationship between select committees and the civil service. We have been told by a good many of them that the 2005 version of the Osmotherly rules are

A great deal of our inquiry was about how we set about any change in the rules and the relationship between those rules and the select committees. It suddenly struck me perhaps we have been spending too much time on this only in the sense of the relationship with the civil service. I would be very interested in your views about this whole change and, perhaps, the need to codify the way we are going and exchanges between Parliament and select committees as they affect the executive, not just the civil service, or perhaps both. I would be very interested in your comments on this whole relationship, which is going to be, I fear, a central part of our report.

**Mr Francis Maude MP:** I think you put your finger on it unerringly. The executive is not just the civil service. It is Ministers who lead the executive. We all know the separation of the powers—as Montesquieu quaintly described it—does not exist in this country, with its extreme manifestation of the lack of separation in the former Lord Chancellor’s role as head of the judiciary, member of the executive and Speaker of one of the Houses of the legislature. There is more separation than there was, but we have a curious system here which is relatively unusual. Ministers are leading the executive and that is sometimes not always apparent in the way in which the civil service is viewed.

I think, as I was saying earlier, though it is not for me to tell your Committee what you should dwell on, an important and unresolved area is the balance between Ministers being accountable to Parliament for their department and the extent to which they have an ability to choose the people who actually manage the performance of the department for which they are accountable. There is a sense that you cannot have it both ways: only the Minister is accountable but yet you cannot choose who does the work. That feels wrong.

**Q346 Lord Crickhowell:** We have been discussing that in terms of permanent secretaries, but I suppose the thing we have been looking at the most is, when Parliament comes to look at this, the ability to call in not just the permanent secretary but others involved in what may be a very large, long-term project, such as other senior civil servants, perhaps their consultants and advisers, former accounting officers and, indeed, former project managers—though we would probably call them something different nowadays—so that the whole picture can be looked at. I think we would be interested in your views about that general direction.

**Mr Francis Maude MP:** I do not have rigid views about it, to be honest. I do not have a rigid view that more civil servants should not be able to give evidence. I think one needs to tread carefully in these areas. As you were saying, in terms of the British constitution, the introduction of select committees at all is a relatively recent phenomenon and their role has been developing. It is developing all the time. They hand out, as Lord Powell says, thrashings periodically and, as a recipient of those thrashings, one would obviously wish for them to be fairly equally distributed.

I genuinely do not have a very strong view about it. Just as I believe that former permanent secretaries, former accounting officers, should be able to be brought back in front of the Public Accounts Committee to talk about projects they have overseen in the past, I would be equally relaxed about former Ministers doing the same. I think we should continue to be accountable for what we do even after we have moved on.



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**Q347 Lord Crickhowell:** Therefore you presumably approve of the practice that is growing, not just in the Public Accounts Committee but, as I have observed, in the Defence Committee, of having Ministers sitting with their civil servants so that they can answer if they feel that the questions being asked are ones they should address rather than the civil servants and vice versa.

**Mr Francis Maude MP:** I think that has been the case for quite a long time. I remember—when I was a Minister the first time around—periodically giving evidence with a senior official beside me. If one is at a loss, it is always useful to have someone to turn to.

**Q348 Lord Lexden:** First, one tiny thing: you know how I tend to fuss and fret about plain English. Regarding paragraph 14, bullet point 1, “Major Gateway Reviews”, I just wonder if, in passing, you could explain what a major gateway review is. My serious and substantive question is: does the civil service reform plan have, in your view, implications for the accountability of civil servants to Parliament and, if it does have such implications, what are they?

**Mr Francis Maude MP:** Major gateway reviews have been a feature of project reviews for quite some time. There are particular points at which the major project review group will look at a project and make a judgment on its progress and so on. We now look at the Government’s major projects in a much more holistic way. We have a Major Projects Authority led by a formidable Australian called David Pitchford. We rate those projects and manage them on a much more whole-of-government basis so that we do not anymore, I hope, have a position where a small department can have a massive project and be learning on the job. It probably does not meet your plain English test, but that is the best I can do, I am afraid, on that.

The only specific thing on accountability of civil servants to Parliament—which is really the growing custom and practice anyway—is former accounting officers being able to come back to the Public Accounts Committee. As I say, we rather deliberately left the field open for your Committee to guide us for the future.

**Q349 The Chairman:** You mentioned in that reply the formidable Australian in a pivotal position, and you have also talked in your paper about commissioning a research project on other experiences. The countries that keep being mentioned are New Zealand and Australia. What attracts you about those systems that you think would be useful?

**Mr Francis Maude MP:** I do not know enough about them yet, which is why we are going to do a proper study. What I believe to be the case is that there is a different kind of relationship, an almost contractual relationship between the Minister in charge of the department and the chief executive, where I believe the principle of ministerial accountability to Parliament is preserved and entrenched but there is a stronger sense of accountability of the official head of the department to the Minister. It seems to me, for all the reasons I have been talking about, to be worth exploring.

**Q350 The Chairman:** You also mentioned the United States where, of course, what we would call the politicisation of officials is built into the system. That is presumably not a system you are looking to for lessons on parliamentary accountability.

**Mr Francis Maude MP:** As we said in *The Civil Service Reform Plan*, there is a huge advantage in our system, which is that you can have very fast transitions. A new government can come in; there is a working machine there. The theory is that you step into the vehicle and just need to take control of the steering wheel. The difficulty often is finding the steering wheel

and then, in particular, finding the accelerator. There are huge advantages in that which you lose in the American system.

The American system is not always about politicising it, actually: most of the senior appointments that an incoming administration makes in the United States are not political appointments. It may be the same people being reappointed. I think our very strong prejudice is in favour of the way in which our system works. We have made proposals in the civil service reform plan for how it can be made to work better and it needs to be made to work better. It does not work perfectly at the moment and, as I say, there is a sense of frustration among Ministers of both the last government and this one that it is not always easy to get traction and things you think you have decided implemented. That needs to change because being defensible and defended and being sustainable are core parts of the current system.

**Q351 Lord Lexden:** I will return, if I may, to our cherished friends the Osmotherly rules, which Lord Crickhowell brought up. Paragraph 9 of your written evidence refers to a forthcoming review of the guidance that the rules contain. Could you tell us about the character and nature of this review? Will the view of Parliament be sought in the course of it?

**Mr Francis Maude MP:** No and yes, I think, are the correct answers to your questions. I think we will not start to do this review until your Committee has opined. That would not make sense. And yes, we will not suddenly issue this ex cathedra. We will wish what emerges to be scrutinised by Parliament.

**Q352 The Chairman:** There seems to be—in a more general context, not just in relation to our old friends the Osmotherly rules—a question about the nature of the accountability of this very important part of the executive to Parliament and the way in which they are, in a sense, interdependent. Does there need to be some formal process? If there is going to be a review of the civil service, and of the accounting aspects of that in particular, should that more formally involve Parliament and, if so, how?

**Mr Francis Maude MP:** I would be very open to suggestions. It would be a rich irony if revisions to the rules on accountability to Parliament were to exclude Parliament from their consideration.

**Q353 The Chairman:** This, I think, is something that emerges quite strongly. On the other hand, we have not yet had any proposals for the way in which, in the system as we understand it, this could be usefully taken forward. Who has the dialogue, in other words?

**Mr Francis Maude MP:** That is a very good question to which I do not have an immediate answer, but I will provide one.

**Q354 The Chairman:** We would be grateful for your thoughts on that and it is certainly a question we will raise when we come to think about what we are going to say about this whole area because, clearly, the theme of all of the discussions we have had—excepting the senior ex-Cabinet Secretaries—has been that there is room for improvement. You have said that yourself this afternoon. This should somehow be achieved, but the fact is that Parliament and Ministers are asking for improvement and yet there is no precise way in which that kind of dialogue should be carried forward.

For example, Sir Bob Kerslake talked this afternoon about having discussions with you, I imagine, about the way in which the suggestions you have made about permanent secretary

appointments should be had, but that would be you in your role as a Minister in the Cabinet Office and not as a parliamentarian, presumably. I know the hats are difficult to distinguish but I think formal parliamentary involvement in this is something that is emerging as a live issue.

**Mr Francis Maude MP:** I hear that.

**Q355 Lord Lexden:** Although it is not a major theme of our inquiry, I think it would be useful to us to hear your views on the role and position of the code as it relates to special advisers. It would be terribly useful to have your views on that.

**Mr Francis Maude MP:** Do you mean any particular aspect of it?

**Q356 Lord Lexden:** Do you believe the current code and arrangements are sufficient or do you believe, particularly where Parliament is concerned, that there should be amendment to the manner in which the work of a special adviser is overseen?

**Mr Francis Maude MP:** I do not particularly think so, actually, not wishing to sound particularly complacent about it. The code was revised when the coalition Government came in; it was strengthened. We are much more open than any government has been before about the number and pay of special advisers. So, no, but I am always willing to listen to suggestions as to how things could be improved. However, I think the code is pretty robust.

**Q357 Lord Crickhowell:** Rather than the code, there have been some quite strong comments made about special advisers. Lord Fowler suggested that we should have fewer of them, but we discovered, on getting evidence, that there are an awful lot of people who are what you might call glorified press officers as special advisers of pretty junior rank. They are simply there to feed the ever-burgeoning 24-hour press. The strongly held view was that there is a need for skilled professional advisers in the area that the Minister is dealing with and may not have great experience of, and that really the balance ought to be changed so that we have more special advisers who can provide some real input to the work of Ministers independently of the civil service, rather than the large numbers of people who are there simply to give the current political view to Twitter and the press.

**Mr Francis Maude MP:** Special advisers come in all shapes and sizes and all combinations of skills. In my experience, most of them are not in the category of predominantly media people. There is a role for that and it is quite an important ability for someone close to the Minister to be able to impart a party-political view, which it would be wrong to ask civil servants to do. Certainly, in my experience and that of most of my colleagues, that is a very small part of what special advisers do.

I do not think that the best use for a special adviser is to provide subject expertise. A department ought to be able to provide that and if they do not have it they should get it. It should not be necessary for a Minister to hire in, as it were, subject expertise. If that is needed in the department then the department should provide it. It is the obligation of the permanent secretary to provide the necessary resource. The principal benefit of special advisers, certainly for me and for other Ministers I think, is to have highly intelligent people there about whom there can never be any suggestion of divided loyalties—that is really important—and who are there to scrutinise the work of mainstream civil servants, not just to provide political input into it, although that is important, but to ensure the work that comes to Ministers actually reflects what Ministers want, to help spot things that are wrong, which is a crucial function, and then, going back to what I was talking about earlier in terms

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of whether decisions get implemented, to be very actively on the case in helping to ensure that the decisions that have been taken are actually implemented in the way that was intended. I think it is a very wide-ranging role, and it is much wider than being just party political.

**Lord Crickhowell:** By the way you have described them, the Minister must be responsible for them.

**Mr Francis Maude MP:** Absolutely.

**Q358 The Chairman:** Thank you very much. We have covered such an enormous amount of ground. Thank you very much, Mr Francis Maude MP. It has been extremely helpful. We will hope to provide some answers. They may not necessarily be the ones that everybody agrees but I think we shall try to be at least a little didactic.

**Mr Francis Maude MP:** Very good; thank you very much indeed.

**The Chairman:** Thank you very much indeed for your time and for the written evidence. Please continue to feed into us any thoughts that you have. You mentioned the decision you have taken about appraisals and so on; we shall be writing our report over the summer so anything fresh or new which comes up we would be delighted to hear about. Thank you very much indeed.

**Mr Francis Maude MP:** Thank you.

## **Cabinet Office – Written evidence**

### HOUSE OF LORDS SELECT COMMITTEE ON THE CONSTITUTION

#### INQUIRY INTO THE ACCOUNTABILITY OF CIVIL SERVANTS

1. The Government welcomes the Committee's inquiry into the accountability of civil servants and looks forward to giving this issue further consideration following the Committee's final report.
2. The existing model of Civil Service accountability, whereby civil servants are accountable to Ministers who are in turn accountable to Parliament, is well established and should underpin the effective workings of Government.
3. The Government believes, however, that it is timely to debate these issues, and has set out some initial thoughts to make the Civil Service more flexible and innovative and more accountable in the recently published Civil Service Reform Plan. More detail is provided at the end of this memorandum on the Government's plans, building on the Civil Service's existing strengths and addressing the areas where change is needed.

#### **Overview of existing accountability arrangements**

4. As the Committee will know, the Civil Service provisions of the Constitutional Reform and Governance (CRaG) Act 2010 came into force in November 2010. The legislation placed the management of the Civil Service on a statutory basis, including putting the core values of the Civil Service – integrity, honesty, objectivity and impartiality – on a statutory basis, and requiring the publication of codes of conduct.
5. The Civil Service serves the government of the day in developing and implementing its policies, and in delivering public services. The Civil Service Code (current version published in November 2010 reflecting the requirements of CRaG) sets out the core values and standards of behaviour expected of civil servants and makes clear their line of accountability 'Civil servants are accountable to Ministers, who in turn are accountable to Parliament' (Civil Service Code paragraph 2).

#### **Accounting Officers and Permanent Secretaries**

6. The most senior official in a department or other central government body is designated as Accounting Officer. The Accounting Officer (AO) of a department is normally its Permanent Secretary. Accounting Officers are personally responsible for the regularity, propriety, value for money and feasibility of the resources used by their department or their central government body. Chapter 3 of Managing Public Money ([http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf)) sets out the personal responsibilities and duties of Accounting Officers. Chapter 3 will be adjusted to take account of the changes set out in the Civil Service Reform Plan – see paragraph 14 below. The changes will take place when Managing Public Money is refreshed and reissued in the autumn.
7. It is fundamental to each Accounting Officer's responsibilities to manage and control the resources used in his or her organisation. A new requirement, the Governance

Statement, is now a key feature of each organisation's annual report and accounts, and manifests how these duties have been carried out in the course of the year. It encompasses discussion of corporate governance and risk management and, in some cases, oversight of certain local responsibilities. More detail can be found in annex 3.1 of Managing Public Money ([http://www.hm-treasury.gov.uk/d/mpm\\_annex3.1.pdf](http://www.hm-treasury.gov.uk/d/mpm_annex3.1.pdf)).

8. Accounting Officers are required to give evidence as witnesses before the Committee of Public Accounts (PAC). This may follow the audit of the body's accounts, though in most cases it is in response to value for money studies carried out by the Comptroller and Auditor General. In this way, Accounting Officers are personally held to account by Parliament for the way they use public money. Ministers are not normally called to give evidence before the PAC because the Committee does not consider the formulation or merits of Government policy.

### **Civil Servants and Parliament**

9. As set out above, the Civil Service Code is clear that civil servants are accountable to Ministers, who in turn are accountable to Parliament. The Cabinet Office guidance 'Departmental evidence and response to Select Committees' (Cabinet Office, 2005, <http://www.cabinetoffice.gov.uk/sites/default/files/resources/guide-deptal-evidence-and-response-to-select-committees.pdf>) (often known as the 'Osmotherly Rules' after the civil servant who originally drafted them), sets out the long-established conventions that are observed where civil servants give evidence to Select Committees (with the exception of Accounting Officers giving evidence to the Committee of Public Accounts of the House of Commons). The Cabinet Office will shortly begin a review of this guidance. The current guidance states in paragraph 40 onwards that:

*40. Civil servants who give evidence to Select Committees do so on behalf of their Ministers and under their directions.*

*41. This is in accordance with the principle that it is Ministers who are accountable to Parliament for the policies and actions of their Departments. Civil servants are accountable to Ministers and are subject to their instruction; but they are not directly accountable to Parliament in the same way. It is for this reason that when civil servants appear before Select Committees they do so, on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee. This does not mean, of course, that officials may not be called upon to give a full account of Government policies, or indeed of their own actions or recollections of particular events, but their purpose in doing so is to contribute to the central process of Ministerial accountability, not to offer personal views or judgements on matters of political controversy (see paragraphs 55-56), or to become involved in what would amount to disciplinary investigations which are for Departments to undertake (see paragraphs 73 -78).*

*43. The line of ministerial accountability means that it is for Ministers to decide which official or officials should represent them.*

10. The Ministerial Code also states that 'Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code.'

11. The relationship between civil servants and Select Committees has also been set out recently in the Government's Parliamentary Privilege Green Paper (April 2012) paragraph 281):

The Government would also want to ensure that any legislation did not undermine the constitutional relationship between Ministers and civil servants. There is a long standing convention, as set out in the Osmotherly rules, that civil servants are accountable to Ministers who in turn are accountable to Parliament for the decisions and actions of their Department... If civil servants could be prosecuted for any select committee-related criminal offences this would alter and undermine the constitutional position, and risk creating an unmanageable conflict of interests for civil servants, in relation to their statutory duties under the Civil Service Code. The Government, therefore, believes that if legislation were taken forward it should include an exemption for civil servants.

### **Non-Ministerial departments**

12. Although non-ministerial departments (NMDs) do not have their own Minister, they are accountable to Parliament through the Minister of the sponsoring department. This system is supplemented by robust governance and reporting arrangements, with NMDs usually being headed up by a corporate board (led by a Chairman) and a permanent senior official. For example, Her Majesty's Revenue and Customs is led by a Chairman and Board which is responsible for setting strategic direction and ensuring effective governance, and a Chief Executive (supported by an Executive Committee) who is responsible for the organisation's delivery and expenditure. Often such organisations are statutory and required to report annually to Parliament on performance. Chairs and Chief Executives of such organisations can be called to give evidence before Select Committees. Many of the Chairs of non-ministerial departments are also subject to pre-appointment scrutiny by the relevant Parliamentary select committee, e.g. the appointment of the Chair of the Food Standards Agency is scrutinised by the Health Committee.

### **Civil Service Reform and accountability**

13. The Government recognises that there are a number of issues, including changes in the size and functions of government, the drive to increase transparency, and the development of innovative ways of delivering public services, which mean that it is important to explore whether aspects of the system needs to be adapted to allow the Government to improve quality and responsiveness for users and value for the taxpayer.

14. The Civil Service Reform Plan, published on 19 June 2012, sets out a series of specific, practical actions. In terms of accountability, this includes immediate steps to sharpen and make more transparent the responsibility of Accounting Officers and make clearer their responsibilities for delivering major projects and programmes:

- requiring explicit Accounting Officer sign off of implementation plans, major gateway reviews and, in some cases, Cabinet Committee papers;
- expecting former Accounting Officers to return to give evidence to select committees where there is a clear rationale to do so and within a reasonable time period;
- strengthening the role of Ministers in the recruitment process of Permanent Secretaries where the Government is discussing with the Civil Service Commission the possibility of Ministerial choice in these appointments;
- where expertise does not exist in the Department, and it not practicable to run a full

open competition, Ministers should be able to ask their Permanent Secretaries to appoint a very limited number of senior officials, for specified and time-limited executive/management roles

- putting in place consistent and comparable cross-government Management Information to ensure that all departments are reporting on a consistent basis which will enable comparisons of operational performance across Government so that departments and individuals can be held to account; and
- commissioning a research project considering other international models of accountability, including the New Zealand model. The project will include a proper comparison of how the UK Government machine performs relative to other nations. The project will also cover other models which exist, such as in Australia, Singapore, Sweden and the USA.

15. The Government will also publish the performance objectives of Permanent Secretaries and ensure Ministers feed directly into the performance appraisals of those civil servants with whom they work and those responsible for key projects and programmes. There will be a formal process to ensure their views are taken into account and acted upon.

16. The Government would be very interested to hear the Committee's views on these proposals and on any other changes that the Committee feels would strengthen accountability.

July 2012



## Civil Service Commission – Written evidence

1. The Civil Service Commission's interest in the accountability of civil servants stems from our statutory responsibilities for ensuring that civil servants are selected on merit on the basis of fair and open competition, and for upholding the Civil Service Code values of integrity, honesty, objectivity and impartiality in the way civil servants carry out their duties.
2. The Constitutional Reform and Governance Act 2010, of which the Commission was a strong proponent, put these principles and the role of the Commission into primary legislation for the first time, over 150 years after this was first proposed in the Northcote-Trevelyan Report of 1854. It therefore provided legislative underpinning for the Civil Service as we know it today: recruited on merit and committed to implementing the policies of the elected Government, whatever its political colour.
3. The Act also drew on important distinctions between civil servants and special advisers. It established in statute two distinct classes of people who would be appointed to support the Government:
  - i. civil servants, selected on merit on the basis of fair and open competition under rules laid down by the Civil Service Commission and bound by the principles in the Civil Service Code; and
  - ii. special advisers, selected by Ministers personally, appointed for the period of the Minister's term of office, subject to their own Code as well as the Civil Service Code but specifically exempted from the Civil Service Code requirements of objectivity and impartiality.
4. In the Commission's view this clear legal distinction in role and function is important and reflects the nearest we get in the UK to a constitutional settlement on the role of the Civil Service. It protects the long held principle of an impartial Civil Service, while recognising that Governments also need support from personal appointees who share their political objectives and philosophy. Part of the Commission's role in regulating Civil Service appointments and in hearing complaints under the Civil Service Code, is to ensure that this distinction is maintained.
5. We address below those aspects of the Committee's inquiry on which the Commission has a view relating to the Civil Service Code and the question of whether Ministers should be able to influence Civil Service appointments. Before that, however, we want to make three general points:
  - a. first, we believe that the 2010 Act was of great importance in putting the Civil Service on a statutory footing and codifying the long-standing principles that underpin it. In our experience that legislation is working well and there is no evidence of the need for early revision or change;
  - b. secondly, the Act places on the Civil Service Commission the responsibility for publishing Recruitment Principles which interpret the requirement that selection for appointment to the Civil Service must be on merit after fair and open competition. This gives us the flexibility to enable the selection processes to evolve and improve to meet the changing needs of a modern,

c. thirdly, as the number of open competitions for senior posts has increased over the last 15 years, the Commission has encouraged more professional recruitment practices and accepted that Ministers have a legitimate role in the selection of the senior civil servants with whom they will be working closely. But that has always stopped short of allowing Ministers to make the choice of candidates themselves. In the Commission's view that could undermine the principle of merit-based appointments and be a step towards the politicisation of the Civil Service.

6. We now turn to the Committee's specific questions.

7. Question Three: **Do the civil servants' and special advisers' codes of conduct require amendment?**

A. The Commission has a statutory role in hearing complaints from Civil Servants under the Civil Service Code; and by agreement we assist departments to uphold the Code, which in the last few years has included auditing their policies and practices in promoting and upholding the Code. The Commission does not have any role in relation to the special advisers' code of conduct.

We have seen an encouraging growth in civil servants' knowledge of the Civil Service Code and understanding of the right to complain to the Civil Service Commission over the past three years. We see no evidence of the need for significant change to the Code. But we think it is important that Government Departments continue to promote it actively and ensure that civil servants are not discouraged or penalised for raising concerns that its provisions are being breached.

8. Question Four: **To what extent should the content of the civil servants' and special advisers' codes of conduct be set down in statute? If so, how might CRAG be amended to achieve this?**

A. We believe the Constitutional Reform and Governance Act 2010 gets the balance right. Under the Act the Civil Service Code must require civil servants to carry out their duties for the assistance of the current administration whatever its political complexion, with integrity, honesty, objectivity and impartiality; but it need not require special advisers to carry out their duties with objectivity and impartiality. The Act also includes the right to complain under the Code and to take a complaint to the Civil Service Commission.

We believe these to be the core requirements. It would be onerous and inflexible to include greater detail in the primary legislation. We have so far seen no evidence that this is needed.

9. Question Six: **What, if any, influence should ministers be able to exercise over home civil service appointments? What are the constitutional benefits and risks of allowing such influence? Are there any particular civil service posts to which special considerations might apply?**

A. The Constitutional Reform and Governance Act 2010 requires civil servants to be selected on merit on the basis of fair and open competition. It places the

responsibility on the Civil Service Commission to interpret this legal requirement in its Recruitment Principles.

From its inception in the 19<sup>th</sup> century, the merit principle was founded on the belief that the Civil Service will only be effective and efficient if the best person is selected for the job. That remains as relevant today as it ever was. The Commission's principal task is to encourage and enable recruitment practices in Government Departments which get the best candidate for any given job. This is best achieved through an open and fair process where candidates are objectively assessed against the requirements of the job.

These practices must also evolve as the needs of the Civil Service change. In the last 15 years there has been a significant increase in the number of external appointments to senior Civil Service roles. The Commission has encouraged and supported this and helped Departments to develop new ways of assessing the suitability of external candidates.

The Commission's approach to Ministerial involvement in senior Civil Service appointments has also evolved. We accept that, since the Secretary of State (or the Prime Minister) must ultimately agree the appointment (and therefore has the power of veto), it is important that the Secretary of State is involved in appointments in which he or she is particularly interested. In the case of Permanent Secretary appointments it has become normal practice for the Commissioner actively to encourage the involvement, given the close working relationship which is necessary at the top of a Department. In practice this means the Secretary of State agreeing the job description, the key skills required, the terms of the advertisement and the composition of the selection panel. He/she will be updated at each stage and encouraged to meet the short-list and feedback to the panel any concerns about the skills and experience of the candidates, which the panel can then explore at interview.

This degree of involvement in the process, coupled with the ultimate power of veto, is, we believe, a proper reflection of the Secretary of State's interest in the appointment and the accountability he/she ultimately carries for the Department's performance. However, in order to protect the impartiality of the Civil Service, it stops short of giving Ministers a choice of candidates. That decision remains with the panel, based on all the evidence it has collected and assessed through the process.

We do not see the case for changing this position. Handing over the final choice to one individual, whether a Minister or a civil servant, is unlikely to further the merit principle and may lead to favouritism. Where the choice is put in the hands of a Minister, there may be the perception – and sometimes the reality – of politicisation which could eventually undermine the ability of the civil service to serve successive administrations.

June 2012

## Simon Cramp – written evidence

1. I'd like to formally submit evidence to your committee on the accountability of civil servants.
2. I'd like to set out some background about me.
3. I am someone who is interested in politics and more recently I have been interested in the relationship between special advisers (i.e. political civil servants) to ministers of the Crown. I have submitted evidence to a number of committees of the of Commons and Lords and to joint committees where appropriate, especially issues to do with civil servants and their political masters and also lobbying and more recently evidence to the Leveson Inquiry and other evidence to a range of other committees in inquiries.
4. Although I have in the past as I mentioned earlier given that evidence to select committees I have also given oral evidence to a joint committee of both Houses.
5. I am currently unemployed but have worked in the public sector and the voluntary sector over the last 20 years, up to October 2011 when I was made redundant. I worked in the voluntary/not-for-profit sector originally as a learning disability sector adviser for an organisation called dimensions, but this submission is in a private capacity. In the public sector I also worked at Ofcom as advisor between 2004 and 2011 on the older and disabled people advisory committee, giving Ofcom advice on communication issues to do with older and disabled people.
6. Finally as part of my introduction to this submission I put on record that I have dealt with politicians and parliamentarians and, within my freelance work during the last 12 years, with arm's-lengths bodies that are funded by government but have an independent voice. I have sat round the table with junior ministers and civil servants debating policy changes within the framework of government bills before either the House of Commons or the House of Lords as they start or continue their parliamentary passage to become law.
7. I turn to the questions you have laid out for witnesses to comment onto help you get feedback and engagement with members of the public or industry experts and to help you look at this area and use the findings to help make recommendations for your report to Parliament.
8. I will repeat the comments I made to the Public Administration Committee of the House of Commons who are running a similar inquiry. I would like you to take my comments into consideration in a general context.
9. I'm not sure at the moment whether special advisers actually make a difference to the political system in relation to the relationship between a minister and his special adviser. The reason I say that is because of the current inquiry being conducted by Lord Justice Leveson on press ethics. I say this only in passing but it's important to me because as I write this some current and former politicians—even former prime ministers—had press secretaries as special advisers that could give orders to (non-political) civil servants.

Where does this blur the boundaries between civil servants and special advisers?  
Because under successive governments of all political colours what do special advisers bring to the table apart from being political and a hindrance, not the effectiveness that question implies.

10. The only other point I would make is that the number of special advisers has rocketed in the last two governments.
11. In answer to your question on what does or should change under a coalition government, I'm not sure, for the reason that I'm 40 years old. I was born in 1971 and since I got the vote when I was eligible in 1988 the 2010 general election was the first time I have lived and witnessed a post-war peace-time coalition government. I'm not sure it makes much difference in that Labour and Conservative, as I said earlier, created different special advisers in the form of senior civil servants with the power within government to give instructions to say the press office at Number 10 and others. Politicians have had to resign or special advisers have had to resign for example for sneaking out bad news on a quiet day. The only thing I would add to this part of my submission is that it is not clear if special advisers are paid by the state or whether their political masters within their political party pay their salary. The reason I say this is that I was not clear if the former communications director of the current prime minister had previously worked for the Tory party; then the Tory party was the largest party but couldn't form a government and had to ask the Liberals to join them in coalition to have any effective government to implement the programme that both parties had agreed with give-and-take from their party manifestoes. When the communications director for the Tories was appointed by the current prime minister was he civil servants or was he a special adviser? Who paid his wages? I don't know so it is difficult to be precise as a layperson to work that one out. I'm not convinced what special advisers actually give the Minister. In terms of the old phrase in "Yes Minister", you have a room down the other end of the building but gave the impression that you were far from the Minister; in other words the perception was you were a problem that made the Minister happy but the civil service wanted still control. Apart from political speeches what do special advisers bring to the table? I simply don't know.
12. I may have answered these questions in the wrong way round but I'm not sure what special advisers bring to the civil service. The recent scandal was made a big media story—namely the BSKyB bid that is still being investigated in a different context, but with the media and a current ongoing public inquiry and a special adviser resigning because it was deemed inappropriate or given the impression it was not called a communication between different parties. I think that's a blunt view and a difficult one because not all civil servants (i.e. special advisers) will have contact with different parties as part of a bid in terms of competition takeover that a government department has to adjudicate on or refer to an appropriate authority.
13. Yes civil servants should be directly accountable to Parliament, but also if they resign they should be required to go in front of the select committee for the department they worked for if it is deemed necessary—i.e. if they have potentially played a part in a scandal or some other wrongdoing. This may with the Cabinet Secretary's approval be held in private and members of Parliament will deal with this under parliamentary privilege and make recommendations to the Cabinet Secretary, where sensitive information is required not to be published in full but by redacting where necessary

sensitive information. The communications director or press spokesman at number 10 on behalf of the Prime Minister should as a matter of course be expected to attend a pre-appointments hearing.

14. The Prime Minister of the day will always find a way for arguing a limit on the number of special advisers was not sufficient or make promises in opposition that he or she doesn't fulfil in government.
15. Hopefully I have outlined my opinions on areas that you have asked about. I hope that it helps you. The Ministerial Code or a code or model contract for special advisers is a waste of time because the person that decides it is the person that makes a decision about the Ministerial Code, code of conduct or a model contract for special advisers. The Prime Minister and the Number 10 can say he or she is not going to be sacked or referred to the Cabinet Secretary.
16. Finally, I hope you find this submission useful. I have tried to answer all the questions you have asked and tried to make logical points and arguments to help facilitate discussion within your committee to help you make recommendations to Parliament that ultimately to government.
17. I hope you have found this useful. It is a very interesting subject area. I hope I have given you food for thought and I look forward to seeing your report when it published in due course.

Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice; and Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government - Oral evidence (QQ 78–104)

**Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice; and Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government - Oral evidence (QQ 78–104)**

*Evidence Session No. 3.*

*Heard in Public.*

*Questions 78 - 104*

WEDNESDAY 20 JUNE 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Irvine of Lairg  
Lord Lang of Monkton  
Lord Lexden  
Lord Macdonald of River Glaven  
Lord Pannick  
Lord Powell of Bayswater  
Lord Shaw of Northstead

**Examination of Witnesses**

**Mark Davies**, former special adviser to Jack Straw MP at the Ministry of Justice; and **Paul Richards**, former special adviser to Hazel Blears at the Department for Communities and Local Government.

**Q78 The Chairman:** Good morning, and thank you both very much for coming. I am delighted that you were able to sit in on part of the previous session, because that will have given you some context and, I imagine, stimulus, for the discussion that we are going to have.

Mr Davies and Mr Richards were both special advisers to Secretaries of State in the previous Government. We obviously would expect you to have long political and other experience, and know that you did, both inside and outside Parliament, so it is valuable to have your views this morning. We will start where we left off with the two ex-Secretaries of State— with the question of the relationship between special advisers and the permanent civil service and whether that needs to be clarified. Obviously we recognise that there is now the Special Advisers Code, but does that all need to be set out more clearly, particularly in relation to the internal position of special advisers with their Ministers, and to Parliament?

**Paul Richards:** I think the idea that a special adviser would tell a civil servant what to do is nonsense. I never experienced that with myself or anyone else. The role is about influencing and being present in meetings where things are being discussed, but you cannot order civil servants about. It works best when that is completely understood on both sides. Different

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roles and cultures come together for the good of governments, but they are different, so I would say that there is no need for greater clarification.

**Q79 The Chairman:** I think there was a particular example under Mr Blair's Government of specific individuals in No. 10 who were given some kind of executive authority beyond special adviser role, but I think that was a particular instance.

**Paul Richards:** I think it was a one-off or a blip, if you will. It was good that when Gordon Brown came in he revoked those Orders in Council, because that is not the right way. They should not be part of a management structure either in a department or in No. 10.

**Mark Davies:** I endorse what Paul has said. When I began working as a special adviser in 2004, I saw my role very much as seeking to add value to what my permanent civil service colleagues were doing in the various departments that I worked in. I worked very closely with them and could bring a particular perspective to the work that they were doing, and I had more freedom to do and say things that they could not. There is also a really important point about how special advisers can to some extent provide a kind of firewall for the civil service. There are issues that the civil service faces that can be politically difficult, with political logjams across government or elsewhere, on which special advisers are really helpful in being able to tread where civil servants cannot and can seek to unblock those things. I know that many civil servants I worked with really appreciated the role that we could play with those issues. I remember when I began as a special adviser. Another special adviser told me that with the civil service you had to get your tackles in early. I remember thinking that it was useful advice because I would take exactly the opposite view and do the opposite. I worked for Baroness Amos first and then for Jack Straw for five years, and it stood me in good stead. The other thing is that it is really important that Ministers set the leadership example as to what they expect from special advisers who work for them. I was always very clear what Mr Straw and Baroness Amos wanted and did not want me to do, and it was also very clear that if I overstepped the mark by ordering people around, or whatever, there would be pretty swift repercussions. That was very clear.

**Q80 Lord Lexden:** We shall have some points to put to you arising from what you heard from David Blunkett and Norman Fowler, and I might add that Charles Clarke, who saw us last week, agreed with Norman Fowler that there were too many special advisers. Before coming to that, could I ask you about one important section of the code? It is the second article of the code, which states that special advisers are "appointed to serve the Government as a whole and not just their appointing Minister". Could you explain how that dual responsibility works—to the Government as a whole and to the individual Minister?

**Mark Davies:** That is a really important point. I think that I am right in saying—apologies if I am wrong—that that element was added by the current Prime Minister shortly after he came into office. I welcome it; it is a really important step because when I was doing the job they were times when I felt that, while the vast majority of special advisers I worked with were doing a really good job responsibly on behalf of their Minister and the wider Government, some of them did not. Some of them were too closely attached to their particular Minister and, as a result, probably overstepped the mark in some of the things that happened. I should stress that that was in a minority of cases; it did not happen often. Providing that greater clarity is important. This is a role that encompasses the whole of government, and you have a duty to the whole of government as temporary civil servants and public servants seeking to put in place the policy programme of the Government elected by the people. The issue with the code is not so much where it sits but how it is translated



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for new special advisers. There is an issue when people become special advisers; it is a bewildering experience, as Paul would agree. Special advisers need an induction process with training, support and mentoring. There is probably some scope for that which would help to make the important point that you are there clearly with a loyalty and duty to the Minister for whom you are working but to the wider Government as well.

**Q81 Lord Lexden:** How does it work in practice? Does that mean that the special advisers are in touch with the Policy Unit at No. 10 or advisers at No. 10, so that is how they contribute to the work of government as a whole? Is not the danger that that wider responsibility might conceivably conflict with work for the Minister?

**Mark Davies:** There is a danger of it conflicting. I think that it probably did conflict at times during the period when I was there, although not through anything that I did. There is probably something around how the collective special adviser group, led by No. 10, brings everyone together from different departments to provide a collective sense of purpose. We tried to do that and had regular meetings with other special advisers from other departments, when we talked about the general programme. Most special advisers when I was working were not completely working for their Minister and no one else; they were very much working for the Government as a whole. But we could probably have done more, and we should all take responsibility. We should have done more to bring a greater sense of the collective.

**Paul Richards:** I think that it reflects the duality of the Minister's place, which is that they are out for themselves and their own departments but they are also serving the wider good of the Government. The role of special adviser is as an adjunct to their political boss. They have no independence, so it is a reflection of that. I echo Mark's points about being thrown in at the deep end. You arrive with probably nothing more than "Yes, Minister" as your training manual and get no training at all. There is a strong argument for a mentoring or a buddy system or even a half-day training course where new special advisers are taken through the code and advised about what Ministers can and cannot do et cetera.

**Q82 The Chairman:** Are you saying that there is no specific guidance, for example on the code?

**Paul Richards:** You receive a copy of it. It would be useful if all new special advisers were sat down with a senior civil servant, talked through it and given practical examples of its implementation. When you arrive, you have a lot to read, as does the Minister, and I am afraid that the code of conduct may not be top of the list.

**Mark Davies:** That is absolutely right. You feel in at the deep end. Part of the issue is that there are myths about what special advisers do and there is a slightly sinister view of these people who operate in the shadows, so the civil service is nervous about offering mentoring support to special advisers. This inquiry is welcome because we need to lift some of the myths around special advisers and be a bit more upfront about accepting that politics has an part to play in the business of government. We should probably celebrate that people get involved in politics in general. There is probably something to be said about how we approach special advisers in that sense.

**Q83 Lord Macdonald of River Glaven:** I wonder whether we are getting a slightly vanilla impression of special advisers, if you do not mind me saying. My experience goes back a bit to between 2003 and 2008. The special advisers I had contact with over those years showed every sign that their loyalty was to their Minister. There was a powerful, sometimes

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almost tribal, sense of loyalty. Some of them could be powerful and influential figures in their own right. They had significant contacts with the media, which they were not afraid to use. They would place stories regularly in the media, which would perhaps be helpful to their Minister but not to other people who had come into contact with the Minister. None of what I experienced seems to be apparent from the evidence you are giving. First, do you recognise the picture that I am portraying, even if you may say that it is slightly out of date? Secondly, do you think that, in order to prevent abuses of the sort that that picture might represent, we need greater accountability for special advisers, for example to Parliament as well as to their Ministers?

**Paul Richards:** That is an entirely fair representation of a period of history.

**Q84 Lord Macdonald of River Glaven:** I thought you might say that.

**Paul Richards:** I do not think that it is across the piece. It does not reflect departmental life. Maybe at the higher levels of governance between the Treasury and No. 10, let us say, that sort of thing went on, but I do not think that in the departments that we were in any of that went on. I recall briefing a journalist and a line appeared that was critical of another Secretary of State. I assure you that I got into a lot of difficulty for that. I was held to account by my Secretary of State and had to apologise to the other Secretary of State. It was a mistake and it was stamped on very hard. The kind of thing that you are alluding to with the briefings and so on were not acceptable, condoned or encouraged at all in departments in my experience.

**Mark Davies:** I echo that. I would hate to give a rose-tinted view of things, so we should acknowledge that those things happened. We know that they happened and it would be wrong to suggest that they did not. But Paul is right that, on the whole, for the 70 or 80 special advisers during the period that when I was doing the job, the record was pretty good. You are right to raise the issue and we should not ignore it. I always felt that there was a clear line of accountability through the Secretary of State and from him to Parliament. It was very clear to me that I owed him a responsibility to act in a way that was befitting of the position, because ultimately he was accountable to Parliament. Should special advisers be more open and transparent? Probably, yes. Lots of steps have been taken to improve transparency about the position and what we do. There have been lots of parliamentary answers and statements about it. Should special advisers give evidence to select committees? Civil servants sometimes do alongside their Minister. Perhaps in the case of policy specialist advisers there might be a case for that where a special adviser is playing a significant role in the development of a policy. I do not really see why not as long as they sit alongside the Secretary of State and it is clear that the Secretary of State is ultimately responsible for the policy.

**Paul Richards:** To offer a counterview, the danger would be that they would become a bigger public figure in their own right, and we do not want that. They should be in the dark to some extent. They are supposed to be in the back room.

**Q85 Lord Macdonald of River Glaven:** The danger is that they are exercising power in the Government.

**Paul Richards:** Exactly. You said power and influence. My argument is that they offer only influence; there is no power. They have no management responsibilities, budget or staff—all the things that you normally associate with the ability to do things. They can offer only influence inside a department in government. That is as it should be.

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**Q86 Lord Macdonald of River Glaven:** I am not sure whether, in terms of policy, that distinction between influence and power has any reality. Obviously, special advisers do not have the power to hire and fire, but is not their influence over policy a significant form of power?

**Paul Richards:** Plurality of advice is a healthy thing, but ultimately advisers advise and Ministers decide, and that is quite right. They are accountable to the country and to Parliament. You can have a semantic argument about whether that is powerful or not. A good special adviser should be able to add to the advice and a good Minister should be able to take lots of different advice, not just from the officials or the political advisers but from other sources, and then take a balanced view based on it.

**Mark Davies:** That is right. I was often a voice around the table expressing a view but alongside a number of other voices, and sometimes the Secretary of State would say, “You are right, we’ll go with that”, and sometimes he would say, “No, sorry, that is not the right way forward.” It was right that there was a space for that view to be expressed alongside other views. We have not looked at the Government’s plan that was published yesterday in great detail, but I think there was talk about how Ministers should be able to get more external advice, and that is something to be welcomed. The reality is that Ministers currently get advice from a whole range of different areas.

**Q87 Lord Macdonald of River Glaven:** You were in a very civilised ministry, Mr Davies.

**Mark Davies:** Very civilised.

**Q88 Lord Crickhowell:** I heard Lord Fowler say that there were too many special advisers dealing with the media. It would be very helpful to me to know what you thought your role as special advisers was. Mr Davies, you went from the Foreign and Commonwealth Office to the Ministry of Justice, which are two extremely different departments. What was your role as a special adviser? What was your particular contribution? In what area did you contribute? You have been talking about the generality of special advisers and I would understand much more of what you were saying if I knew what your role was.

**Mark Davies:** Most Ministers, in my experience, have two special advisers: one would be a policy expert in a particular area; and one would probably be what would be regarded as a media special adviser—someone with expertise in communications and the media. I was a former journalist at the BBC, at CNN and elsewhere when I came to work for Baroness Amos in this House. That was the particular advice and expertise that I provided for her and for Mr Straw in the Foreign and Commonwealth Office, the Ministry of Justice and the House of Commons. I advised Mr Straw on the media and the development of policy within the ministry and the Foreign Office, and I could speak to the media in areas where there was a political slant to the issue that we were facing. In the Ministry of Justice, there were a lot of issues on which journalists would come to the ministry with queries that were political. The civil service was not able, rightly, to get involved with those, whereas I was. That was an extremely political ministry—the Foreign Office less so. That is where I performed a role. I did much more than that; I was a link between Mr Straw and other parts of government, other special advisers, and people in No 10, the Treasury and elsewhere. I was able to represent him in his dealings with them and with journalists. Also, I was able to sit around the table during policy discussions to give input from a political perspective, which civil servants were unable to do. So it was a role that encompassed a huge range of different things. It is quite difficult. Sometimes I would tell my colleagues in the Ministry of Justice that it would be nice to know what some of the other guys were doing in other departments,

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because it was not really that clear. You work for your Minister, you have a set of tasks that are set by him, and you seek to perform them to the best of your ability. That is probably different from what Paul was asked to do by his Minister. It is difficult to explain, but I would say that it brought great value to the work of the civil service. I saw myself as adding value to that.

**Q89 The Chairman:** Paul, do you have the same perspective?

**Paul Richards:** In answer to the question, “What do you do all day?”, I would say that a lot of work goes on that civil servants should simply be nowhere near. I echo what David Blunkett said, which is that our role reinforces the impartiality of the civil service. Special advisers doing the political work that inevitably needs to be done allows civil servants to be civil servants. That might be adding political content to a speech or briefing a member of the lobby—for example, a journalist wanting to know about the politics of a piece of legislation—or devising a policy to go through the party political structures. These are things that civil servants should be nowhere near, yet someone has to do that work and obviously Ministers do not have time. Special advisers also represent the views of their Minister to internal and external audiences. There are more people who want to see a Secretary of State than there are hours in the day. Acting as a cypher and channelling your boss’s views to those groups allows more people more access to their thinking. It also helps civil servants if they can have a chat upstream from developing a policy or a white or green paper just to set the parameters. It allows the wheels to be oiled and therefore things to happen faster if civil servants do not waste time on things that the Secretary of State will ultimately say they do not want to do. It is a good relationship if it works well, and in my experience it does. I disagree with the idea that you should have fewer special advisers; I think you need more. The model is the Treasury, with its council of economic advisers. That was an interesting cabinet-style model that brought in people with all kinds of specialisms to help the then Chancellor to devise policy across a range of issues. That should be available to every department and not just the Treasury.

**Lord Lang of Monkton:** From listening to what you have said, my concern is the creeping institutionalisation of special advisers. It is a long way from the old buccaneering spirit where one individual was an all-rounder, completely politically based, defending his Minister and doing his work for him, finding intelligence, writing speeches, feeding in the political input and handling the press, almost in opposition to the civil service but trying to work with it and gradually building up its confidence, which is what happened in the days when I had a special adviser. We now have a cadre of subject-related special advisers at No. 10, so there is less personal loyalty to the individual, although it is there for the Prime Minister, and I sense that they are themselves becoming a source of power, possibly of executive power, with their collective accumulated knowledge and detailed experience. The reference to the obligation of civil servants to be responsible for matters of conduct across the Government as a whole tends to move towards that. I can see merit in that but I can also see the institutionalisation going further. I wonder how much further this might go and how the Minister can remain responsible and accountable for the actions of his special adviser or advisers, given the way in which it is creeping more and more into becoming an institutionalised part of the civil service.

**Paul Richards:** It is a reflection of coalition Government, I think. The need for two parties to work together inside the Government means you need more people doing the politics, because there are more politics to do. The fact that you have this stronger centre is a direct reaction to that new reality. Whether it would then continue should there be a majority

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government of one party in future, I do not know. I argue that we need a strong centre as well as strong advice in the departments, because governments need to drive their policies forward.

**Mark Davies:** I agree. It also reflects the nature of the 24/7 world in which we live. The demands on Ministers and on No. 10 are to some extent reflected by the increasing number of special advisers in No. 10, and that probably is in part a response to being in a coalition Government, although possibly it would have increased under a Labour Government as well. I agree with Paul; there should be more. With that increased number of special advisers, we would then need to build the necessary safeguards around the sort things that we have talked about.

**Q90 Lord Lang of Monkton:** You do not think that you are then doing some of the things that should be done by the civil service and displacing it?

**Mark Davies:** It has to be complementary. This comes back to Paul's point about a plurality of views. There is space for both, and some of the ideas in the plan yesterday probably help to make that space. I do not agree with Lord Fowler that there are too many. I agree with Paul that there should be more. If you look at other governments around the world, there are significantly more—I think there are 19 per Minister in Canada, although I could be wrong about that. That is possibly over the top, but it is more reflective of where things should be. To some extent it goes back to the point about not being too afraid of political advice, and advice not being a bad thing so long as it is within the safeguards we have talked about.

**Paul Richards:** And the change from the 1980s to now is that the 24-hour media are much more voracious. As a media special adviser, your calls start at 6 am and finish at 1 am. They happen on Sundays particularly for Monday. They happen on Christmas Day. They happen on Easter Sunday. They never stop. You have one person doing that political work all the time because the media are ever-growing and ever-demanding. They come to you because you are the person who can provide a political interpretation of events in a way that the vast numbers of civil service press officers simply cannot.

**Mark Davies:** And also provide authenticity. The Secretary of State allowed me to speak on his behalf, so I was able to provide journalists with the authentic voice of what he was thinking or feeling about an issue.

**Q91 The Chairman:** On numbers, I think it is right that at the beginning of the coalition Government there were fewer special advisers, but the number has grown, presumably in reaction to some of the points that you have raised about the coalition.

**Q92 Baroness Falkner of Margravine:** You are putting forward a view of an almost impartial, policy-focused role, working for the Government as a whole. In section 3 of the code of conduct, out of 12 possible roles that you could do—it gives practical examples—only two do not have the words “political party position” or “party line”. Looking at the code of conduct, it seems that this is far more of a party liaison role than the role you are presenting to us. In the light of that, I want to move a little bit away and suggest that if that were the correct interpretation of the role, I would expect a lot of what you are saying to be done by the PPS to the Minister. How did you find that overlap working between the PPS and you?

The second part of my question is to do with coalition Government and the role of special advisers now. In the light of what you have just said about the media role, Mr Richards, is it

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not impossible to play that role under a coalition if you have two different media advisers speaking on the same thing and to do it for the benefit of the Government as a whole? In that sense, if you are a Conservative special media adviser you will clearly speak with that voice, and if you are Lib Dem one you will speak with another.

**Paul Richards:** Yes. I mentioned earlier that the growth in numbers is a reflection of there being a coalition of two parties in government, and some of the culture that you describe is also a product of that. That is a reality of there being a coalition Government. In opposition, we have watched with great glee stories appearing in the press that have clearly been placed there by special advisers very much in a partisan way against other members of the Government from a different party.

**Q93 Baroness Falkner of Margravine:** How could one make that more accountable and make it work better in the coalition?

**Paul Richards:** If I were advising the Government, which I am not, partly it should be about joining together these special advisers from whichever party into a single unit. We used to have a Friday session where all the special advisers were trooped into No. 10, talked through the week ahead, and asked for anything coming up that might cause trouble—

**Baroness Falkner of Margravine:** The formal institutional structure.

**Paul Richards:** Yes. It was joined up, although I have to say that often the Treasury special advisers did not attend that. We had our own coalition of sorts, didn't we? Unless you put a three-line whip on them, those sessions might not work, but you need the sense that the advisers are serving the Government as well as their own bosses. It has been fun to watch, but it is not good government to see some of the activities that you allude to.

**Mark Davies:** It is not good government and it is a great shame, for the sake of better government, that the coalition did not spend more time looking at and perhaps learning from some of the things that special advisers to the previous Government could have told them about better government. I am not talking about getting involved in policy, but there are plenty of things that we could have told them. Some of the issues that they have had have to some extent been the result of some of the assumptions that they have made about what it is to be a special adviser, but that is probably an area that I do not want to get into.

On your point about the code of conduct, much of it could be performed by parliamentary private secretaries. You need to be inserted into the department. Parliamentary private secretaries play an important role in liaising with the party in Parliament, to be sure, but in order to be able to provide the political advice to make a difference in the department, one needs to be in the department sitting around the table with the officials working on a particular policy, or in the private office with the principal private secretary.

**Paul Richards:** And, crucially, full time. The parliamentary private secretary disappears on Thursday with all the other MPs. They have lots of their own work to do for their constituents, whereas the special adviser is more than full-time.

**Q94 Baroness Falkner of Margravine:** Mr Davies, would you agree that perhaps a formal institutional structure—a unit containing all special advisers, irrespective of which party they belonged to—

**Mark Davies:** Yes, there is definitely a case for looking at—and the civil service has a huge part to play in this—how to create some kind of institutional unit to oversee the broad range of work that all special advisers are doing and to get that greater sense of the

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collective. That would be a step forward, and I think that it could be done without compromising civil service impartiality. I remember that when we were special advisers there was a suggestion that there should be a training course for a couple of days for us to go off and spend a bit of time. We all put our arms up in horror at the idea of a political summer camp; we thought it would be horrendous. But there is a case for the civil service to get involved in those sorts of things and to look at how to help special advisers understand how Government, and Parliament, works.

**Q95 The Chairman:** You argued earlier that some sort of induction or mentoring would be useful.

**Mark Davies:** It would be hugely helpful, yes.

**Paul Richards:** It is very hit or miss, isn't it? Sometimes the Secretary of State will take on someone with vast experience—maybe a former Member of Parliament or a professor of politics—but sometimes it will be someone in their twenties who has worked at head office. There is a big difference in skill and experience there, so some kind of generic training to get everyone up to the same level as far as possible would be useful.

**Q96 Lord Powell of Bayswater:** I will put four brief questions to you. First, does the multiplication of special advisers—not just special advisers, but special units, strategy units, and all these things—risk demotivating the civil service because the feeling is that the interesting work is being devolved more to special advisers and taken away from civil servants? My second question is: is there perhaps a problem that we have too many special advisers and not enough specialist advisers? I think you were making that point, Mr Richards. Special advisers very often seem to be a way station between university and getting a seat at the age of 29, with no obvious experience beyond PR. I think that departmental civil servants welcome specialist advisers—the people who bring in real, substantial knowledge which they can draw on and then understand policy better. Perhaps the balance ought to be restored between special and specialist.

**Paul Richards:** I am a supporter of the idea of specialist advisers. The danger with them is that they are in effect just special advisers under the radar. That is a misuse of the opportunity, but where it is used properly and brings in actual policy specialists, they are a very useful addition. I would wholeheartedly support a cabinet-style group of 10 or 12 experts in different fields.

**Q97 Lord Powell of Bayswater:** That was my third point. Is the proliferation of special advisers leading to the establishment of a cabinet system of the sort that you have in the EU, Brussels and perhaps other governments, whereby everything is discussed and settled at that level before it gets to Ministers and therefore cuts out large parts of the machine? Lastly, is there any risk that the special adviser system might ultimately be a way of evading the Northcote–Trevelyan principles of appointment by merit on the basis of a competitive examination, and come to assume an ever-greater role at the expense of civil servants because Ministers like to have people who think the same way they do, who belong to the same party and are more comfortable to work with?

**Paul Richards:** On that specific point, the value of the special adviser is not just to think the same way as the Minister; it is actually to challenge and offer a differing view, and to tell them when they are wrong in a way that you do not get—

Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice; and Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government - Oral evidence (QQ 78–104)

**Q98 Lord Powell of Bayswater:** The civil service could do that as well. A Minister chooses special advisers because they come from the same party.

**Paul Richards:** But with some grit in the oyster, normally, to give them a challenge if they are clever appointments. I do not think that we are anywhere near a cabinet system; there is no danger of that. On the point about demoralisation of the civil service, in my experience the civil service loves getting a clear direction. It relishes a clearly set out strategy. If somebody can drive that forward and work with civil servants, they will put in the hours and enthusiasm. They like being given leadership. It is the absence of that which demoralises them, I would say.

**Q99 Lord Powell of Bayswater:** I think that they welcome leadership from their Ministers. I am not sure that they always welcome leadership from special advisers. One has heard of examples of certain Cabinet Ministers in the past having demanded that all major policy proposals are presented first to their special adviser before they will be prepared to look at them. If people are putting out complicated proposals on nuclear arms control, or something, to advisers who frankly know little or nothing of that, it is very demoralising. It is a perversion of government.

**Paul Richards:** The special adviser reads everything that goes into the red box, though, remember. They have the prerogative to write a covering note on top of everything. Usually you work with the principal private secretary to pick out anything that is particularly hot or political, because you cannot spend your time reading everything that goes into the red box. But it is only one voice among many, one piece of advice among many. The Minister ultimately has to make their mind up.

**Q100 Lord Powell of Bayswater:** We all know that the last voice is the one that counts the most.

**Mark Davies:** I have heard of cases of Ministers who have said that their special adviser must see every single dot and comma that comes through from officials before it arrives with them. I think that that is a ridiculous way to run a private office. It is not manageable. I would be the first to admit that I would not be qualified to look at half the things, or to be able to offer a really detailed view on a lot of the things that came to the Secretary of State. It is a recipe for logjam and poor government. Certainly, the Ministers I worked for were very much of the view that that was not the role that I was there to do. The role is, as Paul said, to assess what is going on and to provide some political advice where necessary.

You are right that the civil service can often tell Secretaries of State that they are wrong, but special advisers sometimes need to tell Secretaries of State that they are wrong from a political position as well, which is something that civil servants cannot do. That happened on occasion.

**Q101 Lord Powell of Bayswater:** It used to be that Ministers themselves would decide whether they were politically right or wrong.

**Mark Davies:** Generally speaking they are right, but sometimes you might want to offer a view and they might consider it.

**Q102 The Chairman:** There is the question about being out of touch.

**Q103 Lord Powell of Bayswater:** Yes, it was interesting, that point, because there were no special advisers in No. 10 at the time.



Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice; and Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government - Oral evidence (QQ 78–104)

**Q104 The Chairman:** I wondered whether you would rise to that.

That is very helpful. I thought it was extremely useful that you were here at the end of the previous former Secretary of States' evidence. We are most grateful to you. Thank you both very much.

**Mark Davies:** Thank you very much for the opportunity.

**Paul Richards:** Thank you.

**Daniel Finkelstein, Christopher Hope and David Hencke – Oral evidence (QQ 156–183)**

*Evidence Session No. 5*

*Heard in Public.*

*Questions 156 - 183*

WEDNESDAY 4 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Goldsmith

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Powell of Bayswater

Lord Shaw of Northstead

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**Examination of Witnesses**

**Daniel Finkelstein**, Executive Editor and Chief Leader Writer, *The Times*, and former special adviser to John Major as Prime Minister; **Christopher Hope**, Senior Political Correspondent, *The Daily Telegraph*; and **David Hencke**, *Tribune*, and formerly of *The Guardian*.

**Q156 The Chairman:** Good morning, and thank you all for taking the time to come this morning. We are looking forward to this session, because we have had evidence from ex-Ministers, Members of Parliament, and chairs of Commons select committees, who, as you will know, are exercised about the accountability of civil servants and their role in achieving accountability to Parliament. We have had a great deal of evidence from different individuals telling us that they think the system, as it now stands, does not work very well, because the lines of ministerial accountability, as we have all been brought up to understand them, are not quite right in the context of 21st-century government; and also because the need for greater transparency in today's political world and the areas of complexity that governments are now dealing with make some of the distinctions which we have also been used to—like the distinction between policy and implementation—again somewhat more clouded.

If I may, I would like to ask whether you feel that there needs to be a review the whole area of civil service accountability. If so, who should take the lead in doing that? Do you have any marvellous ideas about how Parliament or, indeed, government should pursue this? Daniel Finkelstein, perhaps I could begin with you. May I just say, it would be very helpful, since this is being broadcast, if you could, for the record and for the broadcast, identify yourselves?

**Daniel Finkelstein:** I am Daniel Finkelstein, Executive Editor of *The Times*. You are right to suggest that the system does not work as well as it could. That does not mean to say that everything does not work, but the distinction that has been made before your Committee between ministerial responsibility and ministerial accountability is a correct one. The answer could be of two kinds: one is to provide an evolutionary solution that increases accountability of officials to, for example, address the question of whether you have deep enough levels of accounting officer responsibility or accountability to Parliament of officials—so whether you should, for example, include the whole of the top 200 in the civil service and not just the top tier. That is one evolutionary solution.

I tend to believe—and this is controversial—that another part of this solution is to increase the political staffing in departments and increase the seniority. A real problem is that Ministers employ very junior special advisers, who have little experience before they get there and are employed in a deliberately junior role. Naturally, the response to that is to increase official control over special advisers, because there is a nervous feeling that those people are not capable of senior performance. I do not really understand why a Minister who only has one special adviser chooses someone so junior when they could choose someone more senior. That is a puzzle for me.

**Q157 The Chairman:** It is a slightly separate question, which we have touched on, about people viewing special advisers in very different contexts. They are either somebody who contributes expertise in policy or someone who is their sort of media relations person.

**Daniel Finkelstein:** I have a view of a move towards a chef de cabinet role. At the moment, a senior person would not accept a special adviser role, so you would have to change the nature of that role if you are going to get better quality people. I think there is a need to do that and a need to ensure that when Ministers take responsibility, it is reasonable to impose that responsibility upon them, because they have some role in bringing in a management group that can work with them. That is a more radical solution. I favour it because I worry about a sort of hybrid system, in which you have accountability of civil servants, but you gradually increase the Minister's ability to add them in. The Minister is not satisfied, because they have chosen somebody from a list prepared by someone else. The civil service is not satisfied because it reduces their independence of action, and you end up with a mess in the middle.

**David Hencke:** I am David Hencke, former Westminster Correspondent of *The Guardian*, now Westminster Correspondent for *Tribune*, via my lobby pass, but I actually earn my money—because we do not earn any money from *Tribune*—by working for an investigative news website called ExaroNews. I specialise in Whitehall issues there, and using the splendid Freedom of Information Act to find out quite a lot of information. My view on the subject is quite clear. I remember as a school kid being taught about the famous Crichton Down affair, when a Minister had to resign because of something he did not even know was going on in the Ministry of Defence over land sales. I think that you cannot possibly, in the modern world, have a system where Ministers know everything, civil servants are accountable to Ministers and they cannot really be called to account themselves.

I think an amazingly brave attempt is being made by Margaret Hodge, as chair of the Public Accounts Committee, within their remit, to go back over spending and looking at how things work, to bring civil servants to account. I am delighted that the civil service plan says that former civil servants—because I know from my coverage in Whitehall, they used to laugh and say, “Oh great, I've moved on now. My successor is going to have to handle this hot potato I have left, and that is really good.” I think that committees should bring civil servants

to account. On the question of special advisers, I agree with Danny in the sense that that needs to be strengthened, but in a particular way. A lot of the special advisers I deal with are young guys who are brilliant for gossip; they are media-savvy and they know all this. I remember when David Clark started on the Freedom of Information Act, had a specialist special adviser, an academic who knew the subject well. They need people at that level, experienced people, who know their subject well, who can advise the Minister and also, to a certain extent, should be accountable to Parliament. I know that is a rather unusual situation, but I think they should be.

**Q158 The Chairman:** The distinction would be that they were political appointees and, therefore, the direct accountability would be more acceptable. Is that the point?

**David Hencke:** Yes, that is right. Also, the difference is you would have someone there who could be quizzed in detail about the subject, and what decisions were made. They should know. Also, given they have an input with the civil service staff, I think that would make a difference.

**Christopher Hope:** Christopher Hope, Senior Political Correspondent with *The Daily Telegraph*. I agree with everything that my colleagues have said today. I think this whole idea of accountability and responsibility is blurred when it comes to journalism. When we report on Parliament or whatever Ministers do, the buck stops with the Minister. Certainly it is up to them to know what happened and it is all about who knew what and where. Often, the big row and the annoyance among readers happens when no one is held to account.

David mentioned that former civil servants are now being called back. Well that's only just recently. Dame Helen Ghosh, who was the permanent secretary at the Home Office, was only called back to discuss rural payment figures after a battle, last November to the PAC, and that took a huge battle led by the redoubtable Margaret Hodge MP. I hope that there will be more of this. I think this is a rather academic discussion, which does not translate out into the real world. We have a white-collar readership; they work in companies. The buck stops with the CEO and that is the Minister. That is how everyone sees it. It is not enough to say, as Bob Diamond has said, that "I may not have known about it". He has gone.

**Q159 The Chairman:** We all recognise, I hope, the degree to which the real world impinges upon this. When you talk about accountability, very often you talk about blame; it is a mistake—who is blamed for the Rural Payments Agency, or whatever it might be.

**Christopher Hope:** That is right. That is an example of a long-term project that went wrong over a number of years. The average Minister is in office for 1.7 years. The average permanent secretary is there for four years, so it naturally outstrips. When you get to the point of allowing Ministers to appoint permanent secretaries, then you have to consider that they will be there for longer than the Minister. The Minister may have two years of happiness, and then he or she leaves and the Minister has a permanent secretary who he or she did not appoint, has no stake in and may distrust. There is an argument that all permanent secretaries should reapply for their jobs at the start of each Parliament. They have to reapply: "Do you want me, Minister, or not? I have institutional memory; I know what has happened; or you could start afresh?" If you politicise the senior civil service, you allow lots of expertise to walk out the door—for what reason, especially if you have long-term projects? Universal credit will not be finished until 2017, when a new Labour government might be in power. If you had a political civil servant leading that, he or she may have gone and have no memory of what happened under the coalition by 2016.

**Q160 Lord Crickhowell:** It is rather curious that we have gone straight into special advisers, having decided we were going to put it at the tail end of our inquiry and not at the centre today. I was interested in the suggestion that we should have more technically proficient and effective special advisers, who knew the subject for which the Minister was responsible. I have a good deal of sympathy for that. I came in as a Secretary of State never having been a Minister before, and it would have been very useful to have had such a special adviser. David Howell—Lord Howell of Guildford—handed over responsibility as the first Minister for the civil service, and I think Kenneth Baker found it hugely important that Mark Schreiber, as he then was—Lord Marlesford—knew exactly what papers and so on had previously been held. I have a great deal of sympathy for the view and we have had evidence that too many special advisers are mere conduits to the press and the media, rather than doing the real role they should be doing.

Having said that, the implication has been that these political appointees should somehow be answerable for their actions. Surely because they are political appointees they, more than almost anyone else, are the responsibility of the Ministers. Therefore surely, though it would be great to have them in this role and great that they should perhaps come and give evidence, at the end of the day—and recent events have surely borne this out—the Minister has to be responsible for his special adviser.

**Daniel Finkelstein:** Although we are talking about special advisers, it would be much clearer to say that what I am calling for is people who may be chosen by the Minister, who may have a political background and whose role may even be executive. The reason is to increase the real-world sense that the Minister can be held responsible and accountable for the actions of the department, because they have picked the people who have carried out the policy. I do not think that will ever be completely the case, because I think you will always have, for example, the disks being lost in the Inland Revenue and who was responsible for it, but I do think that there is a case for such a move.

I think it is quite a big leap, and I doubt whether it will enjoy much political support, since even appointing quite junior special advisers is immensely controversial.

If we do not go down that route, there are advantages to our current system that it is important to preserve. What ought to be avoided is going halfway between the two, in which you end up semi-politicising the civil service. You lose the advantages of that constitutional distance. You give the Minister the opportunity to choose between two or three people. It is not satisfactory to them and you lose the advantages of the system, and I would not be in favour of that. I am quite conservative about the current system if you do not move towards a different model.

**Q161 Baroness Falkner of Margravine:** Why would you think that, if there has been a robust selection process, open competition and all that—well, close competition within the civil service—offering a Minister a choice of more than one would in any way politicise it? You have said, Mr Hope, a Minister only stays in position of 1.7 years or something, but surely, even so, there has to be a close personal working relationship. If there are candidates who are capable of doing the job, as you would expect for that senior position, assuming you are talking about permanent secretaries and people of that level, surely it would be sensible to put forward two or three different options to the Minister, and the Minister choosing, between almost equally qualified people, the one who best suits his requirements at the time. Why would that be political?

**Daniel Finkelstein:** It is unusual, as is my understanding, for civil servants to choose a permanent secretary whom the Minister does not like. It is quite common, in an informal way, to ensure that that does not happen. I think it would be a mistake to make it formal, because it would mean you are retaining all the current system but the civil servants would begin playing to the Minister.

**Christopher Hope:** I think it is more that, if you go back to brass tacks, the reason special advisers exist is because the Minister feels powerless in the Whitehall machine. That person is there, literally, as the eyes and ears. Until the recent situation with Jeremy Hunt, you were not meant to be able to divide the two. It was basically that that person was an extension of the Minister. He was only there because the Minister has come into the government and had no apparent stake in the system of government; therefore, they want to try to put someone in there who can get their message out outside of the press office. I know a lot of Ministers have two spads—they call them “spads”—they have a policy spad and a press spad. There is somebody in there thinking of ideas outside the box. If you gave more weight to this role of spad, you are just putting a sticking plaster on the problem, which is that the Ministers do not have a stake in the civil service. This is an attempt to give that person an entry to the Whitehall machine. Every government coming in does not trust the civil service. There has been a huge churn in two years, has there not—certainly in the Department for Education for example?

**David Hencke:** The point you are making is that, if you get a permanent secretary appointed who just cannot work at all and the chemistry is not there—I am trying to think if I can remember of a case.

**Baroness Falkner of Margravine:** We have heard that from a witness.

**David Hencke:** I do not see it as an absolute. It depends whether the Minister’s decision is final and, in weighing everything up, that would be wrong, but I cannot see why the Minister, particularly a Secretary of State, cannot have an input if they are three equally good or nearly equally good candidates. Certainly for a job of that level they normally are. There is not normally only one person in the world who can do it. I agree with you on that.

As to the role of special advisers, you get the impression that Ministers come in to a government department; they are, in one sense, at the mercy of the civil service machine—very sophisticated, very clever people, who know how to put at the bottom of the red box the decision they do not want to know, for example. Therefore, we need someone to go through this and say, “You can look at this view and that view.” They need some support; otherwise I think they must be rather lonely if they have only got their colleagues.

**Q162 Lord Powell of Bayswater:** I am puzzled by this picture of these poor helpless little Ministers in their departments. After all, these are guys who have stood for election three times, served on the back benches, whose only aspiration is to be running this country. When they get there—oh dear, they are all by themselves. It is not what happens in business; it is not what happens in the armed forces. People at the top want to exercise leadership. They believe they can. They want to be accountable. Are we to believe that Ministers feel they need to be less accountable and less responsible?

**Christopher Hope:** No. Surely in business you appoint your own team. If you are dropped in there as a new CEO, you then gradually clear out your top team and bring in people you want. It happens in most companies that you can think of.

**Q163 Lord Powell of Bayswater:** After 20 years in business, I do not think I agree with that at all. My second point is that Ministers also have a team. They have things called Ministers of State and parliamentary under-secretaries, who are consistently ignored in all these discussions. According to you, they have no role in political advice, no accountability and are there just as fifth, six or seventh wheels on the bicycle.

**Daniel Finkelstein:** Is that not your experience? That is evidently the relationship between lots of Secretaries of State and Ministers of State. Some of that is on the record and I have witnessed it myself. The point is that politics is chemistry rather than physics. If you are attempting to make this incredibly close definition, you are going to fail. In the end, the question of accountability and responsibility will be determined by who ends up having a little picture looking slightly disappointed, as they leave their house when something happens. We will not be able to determine that completely. The question is: how do we ensure that a Minister is supported in their decisions in such a way that we can not only hold them responsible, but it would be reasonable to do so? I can see why you would think that the Ministers of State would be the people who would be responsible, but often those people are put there precisely because they are not the political allies of the Minister and they have their own responsibilities in different areas. The political relationship of advice is not that strong, so I think that needs to be strengthened.

**Q164 Lord Powell of Bayswater:** I am more interested today in the accountability side than the political-adviser side, which we have been asked to steer clear of. I think it is a function of leadership to be accountable. If you have risen to be a Cabinet Minister, accountability is what you want to have. You will want to be the man who answers. That seems to me to be quite natural. To look at it from the other side for a moment, do you think it is possible that civil servants would also like to be more accountable? Most of our discussions have been on the basis that civil servants will run a mile rather than be accountable. That was not my experience. I think you will find quite a lot of civil servants would welcome the possibility of answering more often to parliamentary committees and being able to explain themselves. Do you think that is likely? Has that come up in any of your contacts?

**David Hencke:** Yes, it does. One of the interesting things was creating arm's-length agencies. I am thinking of one example that goes back a bit. I think it is the vehicle inspectorate, which sounds boring, but the civil servant in charge of that started a whole series of improvements on boring subjects, like lorry testing and other things, but you got the impression there was a drive there. Therefore, the civil servant would be delighted to come before a parliamentary committee and so on.

Where I think they might get worried is something like the Rural Payments Agency, which frankly was a disaster, financially, the whole computer system and everything else. They might not be so keen. I agree with you that the modern civil servant would probably welcome the chance to be examined by not only the Public Accounts Committee on the past, but also on the present developments, and should be free to put forward views and so on themselves. It is a much more adult way, because government is complicated. It stretches across a lot of areas. I have mentioned a boring little agency; that is just one of 500 or whatever it is. Basically the MPs or peers want to get to the nitty-gritty; they need someone there who is running it, can explain and can answer detailed questions, not a broad-brush thing where they cannot get anywhere.

**Christopher Hope:** I agree with David, chairman. It must be a controlled environment. You must not push out these junior officials and let them fend for themselves alone. You

would expect a permanent secretary to be with them as the senior officer in charge or the accounting officer, and they can refer back to them. You would also want, as a good employer, to equip these civil servants with the tools to take on a committee, which can be quite daunting if you have not trained for it or skilled up in it.

**Q165 Lord Powell of Bayswater:** What you are heading towards then, surely, is the concept that the existing conventions need to be adjusted. At the moment, as I understand it, government determines what civil servants should do and writes the rules for that. Parliament tries to establish precedents by hauling particular individuals before it and hoping to extend its remit. Do you think it is practicable to rewrite the conventions so that there is greater scope for civil servants to answer, without losing the basic political accountability of Ministers?

**Daniel Finkelstein:** Yes, I do. As I said in my initial answer, I think there is a case for expanding the group of people who could be called before Parliament. In reality, accountability and responsibility get shared between people, and you can hear evidence from both of them. I think it is wrong to expect that accountability from quite junior people to Parliament, simply because that is why you have senior people. You want to ensure that they are managing their staff. Of course, sometimes they are going to be called for something they were not directly involved in, but merely have an account of, but that is perfectly reasonable. I think it is too restrictive at the moment and that more people ought to be called upon. It is also a very important discipline on civil service behaviour, so the idea that they might be called before a select committee is important.

**Q166 Lord Shaw of Northstead:** Are we talking about special advisers as well as normal civil servants? How far do you feel that they will be tempted in appearing before committees to express views that perhaps they were not entitled to express?

**Daniel Finkelstein:** There is quite a big difference between a special adviser, especially one of the ones they have got at the moment, who are basically the people who do the political press work and some political advice to Ministers, and the sort of role that one might envisage outside people being able to provide, which would be different to the current special adviser model, which I think is quite devalued. In those circumstances, naturally they should be accountable as senior officials. I do not think you should call the special adviser to Parliament, because that is what you have the Secretary of State or the Ministers for. It is their job and those people are merely working for them.

**Christopher Hope:** Surely we are going further than this, because you are in the policy remit, are you not, with what you are talking about, but we are talking more about the operational application of policy on the ground. That is more interesting for what the electorate and what readers experience. This high policy world where the special adviser works is interesting, but just as interesting, and ignored at the moment, is the operational side of it, because only accounting officers are called. Why not have people involved in all parts of where government impacts on the electorate?

**Q167 Lord Irvine of Lairg:** Suppose there has been a major failure in the implementation of policy, which a select committee wants to inquire into. They have in front of them the senior civil servant, who has been responsible for the implementation of that policy. Should the select committee be able to question that civil servant critically and, if need be in its report, make findings of fact critical of the civil servant?

**David Hencke:** I have been following the row between Margaret Hodge and Gus O'Donnell, and this seems to be at the cutting edge of the argument you have raised,



because they seem to have been put into a situation where the accounting officer for the Revenue did not, shall we say, give an entirely truthful account of what had happened. They called someone else. I know it got rather dramatic, with people having to swear on the bible, but I thought it was right, because basically it turned out that the Committee appears to have been misled about what happened with the deal—I think it was Goldman Sachs or whatever the company was he was dealing with over tax affairs. I think that this should happen, because MPs have got to get to the bottom of this. Whitehall, or Ministers for that matter, should not use this cover to prevent them really being able to follow the story through, because what we are talking about is the Exchequer losing money that, as far as I can see, is rather important at this stage, for public spending reasons.

**Q168 Lord Irvine of Lairg:** You are agreeing with the question I put. Do your colleagues?

**Daniel Finkelstein:** I absolutely agree with it. I basically think government is too big not to have that. It is not sensible to think that, in an entire department, the only person who can be asked any questions or criticised for their behaviour is the person at the very top. On the other hand, I think there should be limits. I suggested the top 200 civil servants, so probably the first two tiers, but maybe it should be the first three. You obviously have to see how that works on arm's-length bodies as well. I think that, within that group, it is not only a human right, but it is very important.

**Christopher Hope:** I agree with all those comments. Currently, you only get the voices from below these top strata through unions, whistleblowers and stuff. There are ways of surely channelling that evidence and using it. It has much more power because it is front-line staff doing it. I do not see why that cannot happen, but I agree that you do not want to expose people.

**Q169 Lord Irvine of Lairg:** It may entail select committees being better resourced. In fairness to those who they are questioning, they have to follow a rather forensic style to get to the bottom of things. This of course could be much more time consuming.

**Christopher Hope:** Yes, definitely. They are not very well resourced. I am always trying to get more disclosure on websites and information sent in. As journalists, we can help them do their job and try to help push them forward into publishing more information on websites. I am not sure what the resourcing is for select committees. There is a clerk, is there not, and an adviser? That is it.

**David Hencke:** Can I add, on top of the civil servants, if we are moving more to contracting out the running of public services, alongside the civil servant should be the man from Capita, Serco or whatever new company is set up? Where something has gone wrong and they have been responsible for implementing it and running it, they should be accountable alongside. I would broaden it. Particularly with what looks like is going to happen in government in the next four years, if Parliament does not do that, these companies are not properly accountable. Unfortunately, the Freedom of Information Act does not apply and it ought to. I believe Lord Irvine originally wanted it to, and he was right on this. Therefore, they must be brought into the system, because they have ways of making it much more difficult for journalists or interested members of the public to find out what they are doing.

**Lord Lexden:** Lord Irvine has highlighted one extraordinarily important way in which the powers of select committees might be enhanced as regards civil servants. There will be other ways of developing the relationship between civil servants and select committees, too. How is the shape of the said relationships to be decided and do we need some basic

principles? Do we need conventions? How sharply should it be defined and who would establish rules and conventions to allow this development of the role of select committees vis-à-vis civil servants to proceed?

**Q170 The Chairman:** This is the point at which we always get a certain pause. All recognise things that we would like to see happen and things that we do not think are appropriate happening. The question is: how is change delivered?

**Christopher Hope:** I was going to say the Civil Service Commission, but I do not think they are onboard with these changes. They are resisting calling other people who may not be permanent secretaries to select committees and offering up a shortlist for Ministers to choose from, so they are not necessarily there. I think the Speaker of the House of Commons is definitely up for it. He has done loads to promote Parliament since he came in. He could be good, but it is definitely a negotiation.

**David Hencke:** I think Parliament should initiate it. Parliament should decide what it wants to hear, draw up proposals and then it should get into talks with both Ministers, at the political end, and the civil service, at the top end—because they seem to have split the role of the civil service—and draw up a code. That might be the best thing. I am not too keen on a rigid law, which would end up in the courts with people arguing over the detail. All it would do is increase the money lawyers get over something like this, so I would quite like to see a code. Then you have to decide, and this is rather crucial because it is shown up in the special advisers’ thing, where basically Gordon Brown seems to have left a little hole for the Prime Minister. The Prime Minister had to initiate, say, an inquiry into Jeremy Hunt and somehow it is missing in the code that was drawn up. It cannot be forced. You then have very carefully to define the code and how it should be implemented, and have someone go through it—a brilliant lawyer—to see that there are no loopholes. That is how, talking off the cuff, I would think you might do it.

**Daniel Finkelstein:** I thought it was a trick question: I did not know I was allowed to answer “Parliament”. If I am, then that is my answer. Obviously select committees and Parliament, setting the roles and power of select committees, have to determine who is accountable to them. If you think, which is obviously the case, that the expanding role of select committees is an increasingly important form of accountability, simply because it allows more detail and more independence, then part of this is to do with how you run them, as to how you are going to answer this question. If I were practically looking for the pinch point to make this happen, I would look at how the rules for select committees were drawn up and how the powers of select committees were determined.

**Q171 The Chairman:** It was a long time ago. The Osmotherly rules, so called, were last revised in 2005; it does seem even 2005 was a slightly different era.

**Daniel Finkelstein:** I am saying that you can simply revise those in order to achieve this objective.

**Q172 Lord Crickhowell:** I am always a bit nervous about the distinction between policy and implementation. Ministers need to know that something can be implemented before they decide the policy. Having said that, it seems we are moving towards some clarification about what the change to the terms of engagement should be. The terms are already being changed by select committees. An example I have given in earlier sessions is that the Ministry of Defence, dealing with long-term procurement with huge complexity and so on, has started giving evidence to the Defence Select Committee with the senior civil servants and the procurement expert present, and the Minister, both coming in, where appropriate,

**Christopher Hope:** I would say definitely. What the Public Accounts Committee does is when they have a hearing, they have several officials and the National Audit Office. You are sitting there going, “The only thing missing here is the Minister; then we would finally be apprised of what is going on.” The Public Accounts Committee, I think, is a great model. If you add a Minister into that mix, you are there and you would have a feeling that we are getting to the heart of the problem. The PAC is the only committee that I can see that is going towards what you are offering up. If you add in a Minister, then you have the solution.

**Q173 Lord Crickhowell:** There was a Defence Committee meeting that I watched on television recently doing an inquiry in exactly this way, and I found it very impressive, because the civil servant, the procurement expert, was extremely expert; you had the long-term view being looked at; and the Minister, if he felt something needed to be said, came in and said it. That seemed to work rather well.

**Christopher Hope:** Good. It is rare, so more of that.

**Q174 Lord Irvine of Lairg:** Lord Lexden asked a general question. Do you not think that, for example, if any select committee indicated, through its clerk, that it rarely wanted to hear in depth from a particular civil servant about this or that, there is no doubt, in practice, that that civil servant would be fielded to the select committee to answer the questions it wanted? The only caution that I add, but I would like to hear your view, is whether you think, because the practice of select committees is developing, what we are doing is seeing pragmatic evolution in this area. Do you think we should leave it for a bit to see how practice grows, because you can try to systematise things too early? I just want your general view on that.

**Daniel Finkelstein:** I certainly think that is a possibility. I certainly think it is a possibility that, if you make rigid distinctions, for example between accountability and responsibility, and try to formalise those, you will end up making the situation worse rather than better. You will have your own view about how serious the problem is you are trying to solve, and whether or not it is amenable to simply waiting or whether or not there are some things you can do to push it along—small things, such as making clear that tiers of civil servants who have not generally appeared before you ought to appear. It may be that you are right that the best impact you can have is on opinion in Parliament, rather than on Parliament’s formal rules, but that is a fine political judgment that you will probably be better at exercising than I would.

**David Hencke:** The direction of travel is quite clearly going this way, but I still think you probably need to give it a bit of a push. Particularly when governments have been in office for X years, the immediate zeal for reform, and we will agree with this—it did not happen and does not always happen but, when you are in opposition, you want massive

accountability of Ministers, civil servants and everything. The moment you are in government, you think, “Oh, what a pain. This has gone wrong and I have to appear before them.” If you left it to evolve, it might slowly run into the ground. I think you should set down a lot of principles about what you want doing.

**Q175 The Chairman:** Principles rather than systems?

**David Hencke:** Yes, with an idea about how this may be developed. I also think one little thing has not been mentioned: committees are often short of resources. The best source, actually, and why the Public Accounts Committee is good is because there are 800 auditors in the National Audit Office who, in different departments, go over things. There has always been talk about other committees using it, but you get the impression there is a bit of jealousy among the committees. I think that source should be used much more widely. I think, occasionally when there is an inquiry, there is no reason why they should not call the NAO auditor who has looked at this, as well as other people. I do not know that the NAO would like it very much, but I think it is a brilliant resource. It is very well researched. That should be taken into the equation.

**Q176 Lord Shaw of Northstead:** I think there is a lot of merit in that, because they obviously have a tremendous amount of experience and knowledge. We have heard about the developing practice of allowing civil servants to appear before committees. What about civil servants appearing before the press? What changes would that involve? Is it moving in that direction now or must it be restrained as before?

**Christopher Hope:** As a member of the press, I would applaud that. Do you mean in a controlled situation of a briefing? These things happen in the Home Office and other departments all the time.

**Q177 Lord Shaw of Northstead:** What I am saying is that civil servants are cross-questioned now in some committees and they reply fairly freely. Would the same freedom to reply apply when the press is seeking information from them? I hope not, I might add.

**Christopher Hope:** Given the hearings you are talking about are publicly available and we listen to them, the MPs or peers are proxies for what we would ask. We probably would not improve greatly on what they ask. As long as these hearings are in public, we are fully supportive. I do not see how you could reconstitute a different committee of the press to ask similar questions. You have press conferences, do you not, and you have briefings in departments? They are always off the record; we are told we cannot quote officials and we have to rely on the Minister for quoting. They try to hide in the shadows still on that point.

**Daniel Finkelstein:** No, I am not in favour of that. For example, in America the President’s senior advisers appear on television programmes and give interviews, but they are politically chosen and they are presumably chosen partly for that ability. That is a different system and, if we were to move towards that system, I would be in favour of it, but you do not select people for that capacity. It is a professional ability to be able to talk to the press without mishap. You do not want to have the wrong people do that.

**David Hencke:** Already, there are meetings. If the National Audit Office has a complex report, they will give a really thorough press briefing with graphs and everything, and the auditor can be cross-questioned by the press on what the report means.

**Q178 The Chairman:** You have been extremely helpful, particularly in indicating to us where we should be heading. I think that has been very helpful. Do any of you have anything you are longing to say which we failed to ask you?

**Christopher Hope:** There was one point I was going to raise, which is the issue of when an accounting officer asks for a direction on a policy, which I thought was quite interesting. It is a little-used Whitehall way of putting a brake on Ministers. It is not often used. With MG Rover in 2005 on the eve of the election, Patricia Hewitt wanted to push £100 million to the company, and Catherine Bell said, “If you do that, I will seek a direction, Minister, because it is on the eve of an election.” Having the threat of doing that was quite a brake on Ministers. I wondered whether you can use these directions in other areas that are not about money—propriety, ethics or policy. It is not there at the moment. I wondered whether you should look at the use of these interesting nuclear options.

**Q179 The Chairman:** One of our academic witnesses has raised the specific concept of an ethical accounting officer.

**Christopher Hope:** It is away from money, but it is a nuclear button that is very rarely used. There was one use, I think with Charles Clarke and some form of local government shake-up in Norwich. They are very rarely used but they are very interesting. I think they are extreme.

**Q180 Lord Goldsmith:** You are right this is an important and interesting area. We have raised this and looked at it in a little detail in the last evidence session, but it is interesting that you support this as a possible mechanism.

**Christopher Hope:** It is moving forward; it is evolution, not revolution.

**Q181 Lord Irvine of Lairg:** It would have to be a backstop, would it not, because by the time a civil servant asks for a direction from a Cabinet Minister, then that signals quite a considerable breakdown in trust and confidence, does it not?

**Christopher Hope:** Yes, but there is no degree of that, is there? There is a threat and an application of it, and nothing before that. Also, it is confined to money, whereas in modern-day politics there are things outside that, where the civil service might have doubts about its use. It is not just a money issue any more.

**Q182 Baroness Falkner of Margravine:** Would expanding it beyond money and increasing the use of these directions really, to pick up Lord Irvine of Lairg’s point, not indicate a breakdown in relationship and, if not going that far, would it not indicate a real politicisation of the relationship? The word “ethical”, as in the evidence given to us previously, makes me very nervous because that is deeply subjective. I wonder what the other two might have to say about that.

**Daniel Finkelstein:** The first thing I would say is you cannot remove subjectivity from human relations. If you look at the evidence that was given by the permanent secretary at Culture, Media and Sport at the Leveson Inquiry, it was clearly taking a view of the ethical situation.

**Q183 Baroness Falkner of Margravine:** When you have a financial constraint, the parameters are quite clear. My alarm was about expanding the parameters. Where would you have parameters then?

**Daniel Finkelstein:** You are right in thinking that this is one model of how you would do it. This is one model in which the civil servants are effectively independent guardians of the long-term governance of Britain, with the Ministers being, in Robin Day’s phrase, “here-today, gone-tomorrow politicians”. I am a little bit uncomfortable with that. Other people are more comfortable with it, and usually most politics being autobiographical remains where they sit in this and which power they are going to exercise. Personally speaking, I am less keen on the civil service sitting in judgment on Ministers but if, under the current system, that is what we have got, this is quite a good mechanism.

**Lord Hart of Chilton:** It is a weapon to be used where constitutional propriety is a problem, and that was what happened in the Norwich case.

**The Chairman:** I am going to have to draw this to a close, but thank you for raising an extremely important issue, to which we will obviously come back. Thank you very much, all three of you, for being enormously helpful. I am very grateful to you all.

**Professor Matthew Flinders, Professor of Parliamentary Government & Governance and Dr Felicity Matthews, Lecturer in Governance and Public Policy, Department of Politics, University of Sheffield – Written evidence**

**Does the convention of individual ministerial responsibility remain the most appropriate and effective way of holding the government to account? If not what should replace it?**

1. The convention of individual ministerial responsibility was originally designed, as Walter Bagehot famously explained in *The English Constitution* (1867), as a buffer or regulator of contact between the House of Commons and the wider civil service. It was therefore designed as much as an *accountability shield* rather than an *accountability sword*. The question is now whether the convention has become so blunt and outdated that a new relationship between the House of Commons and the civil service, potentially with ministers playing a different and less central role, might be appropriate.
2. This line of reasoning flows into two secondary but inter-related issues (one practical and one political). First, what should replace ministerial responsibility and should this relate to the whole of the civil service or just specific component elements? Secondly, is it realistic to expect ministers to cede control of a mechanism that effectively allows them to control the flow of information between Whitehall and Westminster on which they will be held to account?
3. The latter question is one for parliamentarians and depends to a great extent on their willingness to shift the balance of power between the executive and legislature as it relates to the accountability of the civil service. The former question, however, is arguably easier to answer in the sense that the position of the chief executives and chairs of executive agencies has for some time been a source of disquiet. The explicit aim of giving these organizations a large amount of day-to-day autonomy from ministers has never sat comfortably with the convention of ministerial responsibility. As a result the convention has quietly mutated from *ministerial responsibility* to *ministerial accountability* in order to signify that although ministers are still expected to account to Parliament for their departments they are no longer personally responsible for the content of that account.<sup>1</sup>
4. The obvious problem is that the distinction between *policy-making* (the preserve and responsibility of ministers) and *administration* (the responsibility of agency chief executives) is generally of little value in the real world and (even if it was of value) the minister's capacity to control the relationship between the chief executive and the relevant select committee arguably puts both Parliament and the civil service at something of a disadvantage when seeking to ascribe blame when things go wrong. The output of this situation is generally messy and complicated blame games between ministers and officials and the outcome is a perception amongst the public that

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<sup>1</sup> See Flinders, M. 2008. *Delegated Governance and the British State*. Oxford: Oxford University Press.

Professor Matthew Flinders, Professor of Parliamentary Government & Governance and Dr Felicity Matthews, Lecturer in Governance and Public Policy, Department of Politics, University of Sheffield – Written evidence  
politicians are not to be trusted.<sup>2</sup>

5. The introduction of some form of direct accountability relationship between some civil servants and select committees – possibly building on the role of Accounting Officers and Additional Accounting Officers – therefore provides a way of allowing the mechanisms of parliamentary accountability to keep pace with the transition from government to *governance* (the latter term indicating the massive increase in the number, role and powers of agencies, boards and commissions). Implementing such a measure, however, is not without risks. Steps would have to be taken to protect the (internal) relationship between ministers and agency chief executives and it would also be vital that MPs did not abuse the introduction of a more direct relationship with certain officials in order to undermine ministers or to engage in party political point scoring. Introducing a direct accountability relationship between Parliament and some parts of the civil service is not therefore a panacea for the challenges of modern democratic governance.

### **What influence, if any, should ministers be able to exercise over civil service appointments?**

6. Since the Northcote-Trevelyan Report in the middle of the nineteenth century and the subsequent establishment of the Civil Service Commission the patronage capacity of ministers over civil servants has been tightly constrained. However, just as the relationship between Parliament and the civil service may have become outdated in a number of specific ways it is also possible to argue that the relationship between ministers and the senior civil service has also become outdated. Indeed, the recent decision to bring together of the roles of Commissioner for the Civil Service and Commissioner for Public Appointments into a single post-holder (currently Sir David Normington) possibly offers a useful ‘window of opportunity’.
7. Ministers currently have limited and closely-regulated discretion in relation to the appointment of individuals to Chair a range of non-departmental public bodies, special health authorities, independent regulatory bodies and a range of other ‘quangos’. Given the importance of close inter-personal relationships at the heart of government there may be some benefit in giving ministers a degree of limited discretion in relation to the most senior departmental appointments. This would retain an emphasis on merit and transparency and need not equate to a form of politicization but might more constructively be framed as facilitating the creation of high-trust low-cost relationships. It should also be noted that a ‘new public service bargain’ has been in existence for some time and our view of ministers having very limited powers in relation to civil service appointments could be interpreted as a residual and possibly unhelpful element of the ‘old public service bargain’ that was forged in the nineteenth century, limped through the twentieth century and may be completely unsuitable for the twenty-first century.

### **Three Final thoughts**

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<sup>2</sup> On blame games and blame avoidance strategies see Hood, C. 2011. *The Blame Game*. Princeton: Princeton University Press.



8. The debate regarding the accountability of the civil service is not a question of ‘more’ or ‘less’ – as many observers seem to think – but of a more subtle emphasis on *proportionality*. By this we mean that too much accountability can be as problematic as too little and therefore any that any plans for reforms need to consider the inevitable ‘integrity-efficiency’ trade-off.
9. It is also important not to lose sight of *the politics of accountability*. It would be naive to think about reforming the mechanisms and processes through which civil servants are held to account without first acknowledging that this accountability takes place in a highly charged adversarial atmosphere. Accountability is generally of the ‘gotcha’ variety (rather than on a focus on, for example, lesson-learning) and, as a result, for most officials and ministers accountability means one thing – blame.
10. The bigger picture is not really about the accountability of the civil service but the accountability of the British state *in toto*. As the Institute for Government’s *Read Before Burning* report of 2010 illustrated, the civil service forms a shrinking element of an increasingly confused and delegated bureaucratic structure. There is no rationale for why some public functions are placed in executive agencies in some cases (and are therefore formally part of the civil service) while similar functions are based within executive non-departmental public bodies in others (and therefore exist beyond the civil service and have a more direct relationship with Parliament). It is a great shame that the Coalition Government rejected recommendations to place all elements of the British state on a far clearer, simpler and more transparent basis.

June 2012

Lord Fowler and Rt Hon David Blunkett MP - Oral evidence (QQ 48–77)

**Lord Fowler and Rt Hon David Blunkett MP - Oral evidence (QQ 48–77)**

[Transcript to be found under Rt Hon David Blunkett MP](#)

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po

**Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London - Oral evidence (QQ 130–155)**

*Evidence Session No. 4.*

*Heard in Public.*

*Questions 130-155*

WEDNESDAY 27 JUNE 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Goldsmith  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Lord Lang of Monkton  
Lord Lexden  
Lord Pannick  
Lord Shaw of Northstead

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### Examination of Witnesses

*Witnesses:* **Professor Lord Hennessy of Nympsfield**, Attlee Professor of Contemporary British History, QMUL; **Professor Colin Talbot**, Professor of Government and Public Administration, Manchester Business School; and **Dr Andrew Blick**, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London, gave evidence.

**Q130 The Chairman:** Good morning to our next three witnesses, who have all kindly been sitting in on the previous session. I suppose we could say, “Shall we continue?”, but I think we should cover some of the earlier points we raised with the other witnesses. All three of you—Professor Talbot, Lord Hennessy and Dr Blick—came to our earlier seminar on this subject, so you have been part of our earlier discussion about this inquiry. As I said at the beginning of the last session, we have refocused somewhat—if not in a different direction, then we have tried to be disciplined about the areas that we can usefully cover and report on to the House of Lords.

Could I start where I started with them, by asking whether the concept of ministerial responsibility, as we have all been brought up to understand it, and the conventions that surround it, is fit for purpose given the present complexity and breadth of government? If it is not, how do we redefine those parts of accountability that include civil servants? Should

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po we draw up explicit rules, conventions, statutory guidance or whatever for the accountability of civil servants?

**Professor Lord Hennessy:** I wish, Lady Jay, that your Committee had been in existence in about 1982, three years into the new, post-1979, select committee regime. Until now, we have never really faced up—you are obviously doing it—to the change in both tone and pitch in the moving parts of the governing marriage between permanent officials and transient Ministers. When the Osmotherly rules were first promulgated in May 1980 the Civil Service Department gave them to me happily, as they did not think that there would be any fuss about them. *The Times* ran them and we christened them the Osmotherly rules.

**Q131 The Chairman:** Who was Osmotherly?

**Professor Lord Hennessy:** Edward Osmotherly was the assistant secretary in the machinery of government division in the Civil Service Department. He is a lovely man. He has forgiven me now, although he did not for years, because he was one of those who did not want publicity. Indeed, the rules were drawn up by Sandy Russell, his predecessor, but they went out under his signature. So there is a little story within a story.

The Osmotherly rules were extraordinary because they did not face up to what Norman St John Stevas, who brought in the select committees, with Cabinet approval, said was a change in the relationship between Parliament and the executive. The Osmotherlys, in 60 paragraphs of “don’ts”—they were a work of genius and they were to apply indefinitely like Whitehall’s papal bull—ruled out officials talking before select committees about interdepartmental exchanges on policy issues; civil service advice to Ministers; the level at which decisions were taken; and questions in the field of political controversy. So, if you took them literally, Sir Douglas Corridor—all the permanent secretaries were called Douglas in that era—could have given his name, rank and number before a committee like this, but nothing else. When you look at the latest edition of the Osmotherlys, the 2005 one, you see that it takes into account the Freedom of Information Act 2000 and some other changes. However, I do not think, from my memory, which is not as good as it once was, that anybody has faced up to this question, which we should have faced up to in the early 1980s, because the terms of trade changed. The old deal between Secretaries of State and Ministers, and officials—“you give us free and frank advice and we carry the can in public”—mutated. It mutated almost from day one, as some of you here will remember, as you were in the Commons on those select committees in that new regime. So, in a very British way, we are now catching up, in 2012, with the discussion that we should have had in 1982.

**Professor Talbot:** I simply add to that that there was another watershed in 1988, when the next steps agencies started to come into existence. We had this strange arrangement where the chief executives of next steps executive agencies are also accounting officers in their departments. For, say, the Prison Service, both the director-general and the then permanent secretary at the Home Office were the accounting officers, which created some interesting issues. It also led to the sort of crisis we had in the Derek Lewis affair, where there was a very clear conflict about who was accountable and who was responsible for the Prison Service. We had this arcane debate about Ministers being accountable but they were not responsible—the director-general was responsible and therefore he could be sacked, but the Minister was free to say, “It wasn’t me, guv” to Parliament.

We have never really sorted that problem out since, and the provisions in the Constitutional Reform and Governance Act 2010 do not sort that out. As Peter has said, the introduction

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po of the select committee system opened that question up. It has moved on considerably since then. We now have in practice a situation where House of Commons select committees regularly call officials and question them about matters, some of which are the subject of political controversy. I could name several agency chief executives who have made statements to select committees directly contrary to Government policy, so clearly not obeying the Osmotherly rules. We have also had independent inquiries that have called, named, and in some case shamed, individual civil servants. Things have moved on considerably, but none of that has been recognised in the existing rules.

**Q132 The Chairman:** You say in your paper that a new basis for defining that accountability, whether it is arm's-length bodies, or whatever we now wish to call them, or the permanent civil service, is urgently needed. How would you suggest we achieve that?

**Professor Talbot:** I think, in the previous discussion that you were having, Peter Riddell was absolutely right. There needs to be considerable discussion between committees in the House of Lords, Parliament itself, the Cabinet Office and the Government, and that discussion needs also to involve bodies like the National Audit Office. Behind the scenes, the role of the NAO has been changing considerably, without any change in the rules about how it should operate. 20 years ago, the NAO basically only worked to the Public Accounts Committee. Now, it regularly assists other select committees in the other House, on a pretty consistent basis, and is involved in giving analytical support to a large number of other inquiries, so there has been quite a shift there. Again, it is not recorded anywhere and anyone outside the corridors of Westminster probably would not know it was happening.

**Q133 The Chairman:** Dr Blick, you suggested in your paper to us, for which I thank you, that it might be appropriate for Parliament to establish a civil service committee. What would you see as being the remit and the role of that, if it happened?

**Dr Blick:** The basis for the establishment of a civil service committee is the Constitutional Reform and Governance Act 2010, which creates a statutory basis for the civil service for the first time. That is an historic event, but the potential of it has not yet been realised. A civil service committee could be a way for Parliament to realise some of the potentials that are suggested by the fact that Parliament is now the source of the authority. It is no longer royal prerogative; it is Parliament. That should mean something and it is up to Parliament to take it upon itself to make sure that it does mean something. The kind of role that I would see that committee performing, if it were established, would be overseeing the principles that are underpinned by that Act. I am aware that there are other committees in Parliament, particularly the Commons Public Administration Select Committee, that have the civil service within their remit, but if you had a committee specifically looking at the powers created by that Act, how well they are operating, and how well the principles in that Act are being adhered to, that would be a distinct and valuable role for such a committee to perform.

**Q134 The Chairman:** That could, in turn, potentially develop new rules. We have heard several times this morning that the rules that are supposedly in place are simply not operational.

**Dr Blick:** Yes, it would be very useful. There is a mention in the CRAG Act of the idea that the Prime Minister promotes the conventions involving the relationship between the civil service and Parliament among civil servants. It would be quite useful for a statement to be made of what those rules actually are, in a single authoritative source. Such a committee, if it were established, could address itself to making this kind of statement. It could also look

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po at things like the Osmotherly rules and the text of various codes issued under the Act, perhaps in draft form if the Government were good enough to provide future editions in draft form. Those are the kinds of tasks that this committee, if it were established, could address itself to.

**Q135 Lord Lang of Monkton:** This Committee, almost 10 years ago, carried out an inquiry into the accountability of non-departmental public bodies and produced a very calibrated report, to which the Government said “thank you very much” and did nothing. What the Committee, at that stage, did not recognise was how new sources of power and activity within the constitution were emerging. We have mentioned select committees and NDPBs, and special advisers and others could be added. Is it possible to calibrate or grade measures of accountability and responsibility, perhaps using something like Professor Talbot’s suggestion as part of the exercise, in a way that would stand the test of time as this process of constitutional change continues and diversifies?

**Professor Lord Hennessy:** That is a very interesting question. One of the problems, even for people like we three, who are very interested in this subject and professionally teach it, is keeping a grip on the geography of distribution function of the central state through these various agencies. Since the central state began to be hollowed out quite seriously in the early 1980s, it has been increasingly difficult to follow it, and with outsourcing it becomes nearly impossible. The National Audit Office has striven mightily to follow every taxpayer pound, which is the first order question. It may be impertinent of me to say this, but when you think about even all of us together here, it is very difficult to know the map that we carry in our mind of what the NDPB world means, and all the rest of it. That would be a first order requirement.

I think the test is the taxpayer-pound one. The notion of no supply without redress, on which Parliament was originally constructed and which is still the basis of its power today, I think—but I am romantic about these things—means that the money bit should be part of the cartography. Nobody has done that either. It is not for me to suggest it, but you might want to commission a piece of cartography like that, which shows functions, institutions and money. That would be a great service to every select committee, wouldn’t it?

**Q136 Lord Lang of Monkton:** Yes it would, but perhaps Professor Talbot could deal with whether or not we can create a form of words that would stand the test of time, grading the degrees of accountability and responsibility to apply to those different bits of geography.

**Professor Talbot:** I will come on to that, but can I say something about Peter’s point first? It is perfectly possible to produce the sort of cartography that Peter is talking about. It is done in most other OECD countries. I have just come back from Australia, where I was handed a single sheet of A4 that mapped out all of the major institutions of central Government, including all the arm’s-length bodies and so on. They had a little laminated page. It was two sides and that was it. You could work out what was what in Australian government from that. Most other governments do something like that. We used to do it in some formats; we used to produce an annual report on NDPBs from the Cabinet Office, and one on executive agencies. These were important accountability mechanisms. It was a simple, easily accessible way of seeing what the landscape of these bodies was, what they were up to and how much money they were spending. It is almost impossible, even for experts like us, to find out that sort of information these days. It would be a full-time job.

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po

**Q137 The Chairman:** Do you know why that practice ceased?

**Professor Talbot:** No. It is quite entertaining. If you look at the last annual report on next steps executive agencies, which I think was published in 2000, you will find a glowing introduction by the then Ministers involved in the Cabinet Office saying this was a wonderful transparency and accountability device. That was the last time that it appeared. You need to ask that question to people in the Cabinet Office and to former Ministers. Perhaps that is why it disappeared, because it was a bit too transparent.

Coming back to your substantive point, I think it is possible, certainly in broad terms, to set out more clearly the accountability roles. What I was trying to get at in my paper, although I would not hold it up as necessarily the model, was that the discussion around this has always tended to be, in very general terms, about accountability. What I was trying to say in the paper was that there are actually different types of accountability, and it ought to be possible to set those out more clearly, and be clear that, for some areas, like policy advice to Ministers, there is perhaps a case for saying that some of that information should not be in the public domain and/or civil servants should not be held accountable in quite the same way. However, in other roles, like their role as accounting officers or what I call chief executive roles, it is pretty clear that they ought to be held accountable for what they are doing. They are spending public money. The accounting officer role already effectively accepts that, and it could be extended considerably. I am very pleased to see that I anticipated the civil service reform plan because it proposes, in a very small way, the expansion of the senior responsible officer role. I think you could go an awful lot further than that in specifying in what ways and for what individual civil service managers are to be held to account.

Lord Crickhowell raised a point earlier about the complexity of public organisations. I completely accept that, but we pay these people a lot of money to be in charge. If it is that complex that they cannot manage it, why are we paying them such high wages to be managers? If they are going to take responsibility, they have to be held to account.

**Q138 The Chairman:** Dr Blick, did you want to add to that?

**Dr Blick:** There is a broader issue, which was alluded to earlier, that we have an over-centralised system of government in the UK. Many of the problems that we are talking about here partly arise from the fact that there is no manager who could properly manage an organisation on this scale, because it would be taking on too much. That is not an argument for small government; it is an argument for decentralised government. It is also probably beyond the remit of what we are looking at today.

**Q139 Lord Crickhowell:** Before I ask the question I was going to, I am absolutely clear that there should be management responsibility. All I am saying is that if you are going to be able to test it effectively, you have to have a good deal of information about the nature and detail of the arrangements, otherwise you will not get proof.

You began to answer the next question in your previous answer, when you drew distinctions between the various roles: the policy role and the chief executive role. You said very clearly that you thought civil servants should and could answer for the chief executive role, but you questioned whether that was right for the policy role, not just on the basis that if you were going to have frank advice given to Ministers, there should be confidentiality. However, one does ask the question: if, for example, a civil servant gives policy advice that turns out to be demonstrably wrong, who holds them to account for this error? I suppose

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po we have had some recent examples cited. It is alleged that the Treasury reproduces a list of old projects at every Budget that it would like to get through, which then prove demonstrably wrong. We have had some obvious examples. Surely the answer is that, whether the policy advice was right or wrong, it is up to the Minister to make a judgment. The criticism that could be made of the Chancellor of the Exchequer over things like the “pasty tax” is that they have been served up before. The Minister has to be alert. If the advice was wrong, it surely cannot be the civil servant who is responsible at the end of the day; the Minister must answer why he accepted the advice.

**Professor Talbot:** This is one of these grey areas, where it is extremely difficult to define precisely what the roles and responsibilities are. What is clear is that where civil servants have given demonstrably wrong advice to Ministers and Ministers have no other way of knowing whether or not that is correct, then it is difficult to hold the politicians to account for taking wrong decisions when they have been given wrong information in the first place.

**Lord Crickhowell:** Wrong information.

**Professor Talbot:** There are certainly examples of that even within the current Government. We have had a series of policy mistakes, and I think there are one or two rather large ones on the horizon, where either Ministers are being given the wrong advice about what is possible or they are choosing to ignore the advice that they are given. One of the roles of Parliament is to discover which of those is the case.

Let me give an example. I confidently predict that the introduction of the new universal benefit scheme will not happen in October next year without serious mishaps. The Minister is still going on the radio, as he did yesterday, saying, “Oh yes, we are all on course. Everything is okay.” Either the Minister is being given the wrong advice about that, or he is choosing to ignore it and go on the radio saying that everything will be okay. It seems to me that Parliament cannot hold Ministers or civil servants to account unless they get to the bottom of what is true. That presents a real difficulty in the area of policy advice. At the moment, what happens is that it is simply said: “That’s policy advice; that’s not for parliamentary scrutiny.” So, it is a very difficult area. Perhaps Peter has some ideas on it.

**Professor Lord Hennessy:** I think, under our system, because the public requires it and has an instinct about it, the Secretary of State has to be the can-carrier in chief for everything in the end. It is the *Today* programme test. However, that does not get us very far. If you are given wrong information, that is very serious. But policy is a promiscuous business, in the benign sense of the word “promiscuous”. One of the great reasons for having special advisers, particularly if they are selected because they know things rather than believe things—which are the special advisers I admire—you have alternative supplies of advice. Also, if you are in the intelligence world—in which I have always had an interest; the Joint Intelligence Committee produces its weekly red book, which it has just restored for Ministers, on the inner loop—it has to be caveated. You could not have a system of accountability in which you said to the Joint Intelligence Committee, “Why didn’t you foresee this or that event?” In the politico-military areas, and indeed in the Foreign and Commonwealth Office, there is no system that you can apply to testing out policy advice in Whitehall. Also, section 35 of the Freedom of Information Act 2000 means that we cannot see the policy advice until 30 years have elapsed. Even by the standards of the House of Lords, with our long-term perspective, that is quite a while. That limit is going to come down to 20 years, which might make it easier. However, in terms of testing out the policy advice question—were Ministers given duff advice?—we cannot do it; we have not got the wherewithal. Our Cabinet Secretary colleagues in this House are determined that section



Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po 35 is stone clad—that it is a safe area for them in which to give policy advice. I can understand why they say that, because that is part of the deal.

On the policy advice bit, it is very problematic. It comes back to the Osmotherly rules, and also human nature. It is too much to expect Secretaries of State and permanent secretaries to collapse in front of select committees and say, “You want the truth, Lord Crickhowell? I’ve been itching to tell you all these years, and I’m so glad”—as they say to policemen at the crucial moment of the interrogation—“to get it off my chest, sir”. It does not happen like that, does it? We are never going to be able to test out policy advice.

**Q140 Lord Irvine of Lairg:** I want to hark back to your earlier evidence, Lord Hennessy. You were telling us that there is no cartography of responsibilities across the place. You are not in a position to give instructions to the Cabinet Office, but we are in a position to ask the Cabinet Office for evidence and advice. Formulate for us a request to them for evidence, please, that would meet your concern.

**Professor Lord Hennessy:** The letter would open, “Dear Sir Jeremy Heywood, Could you possibly provide, for the benefit of this Committee and therefore Parliament, a cartography of the central state, both its traditional departmental structures, including departments based on statute, like the Ministry of Defence, and those based on the royal prerogative, like the rest of them, but also their penumbra of NDPBs, widely defined, and those institutions to whom, with Parliament’s approval, they have devolved functions.” Suggest they take it as far down the food chain as they possibly can. I am pretty sure that nobody has ever asked them.

**Q141 Lord Irvine of Lairg:** So am I.

**Professor Lord Hennessy:** Just as, wearing another hat, declassified at the National Archives many years ago was a “functions of the Prime Minister” list, which was produced by the Cabinet Office in 1947. People even more nerdy than I, the Institute of Public Administration, asked the young William Armstrong in the Treasury Machinery of Government division—the Edward Osmotherly of his day—for help with a paper for a seminar in Geneva or Berne, comparing the British chief executive with the American President, the Fourth Republic President in France and so on. They had never written down what a Prime Minister was for. It gave me the idea of doing that periodically. I did the last one with my colleague Andrew here. Nobody has ever asked the question that the little boy asked when Queen Victoria drove across Blackfriars Bridge to open it: “Dad, what is that lady for?” We have an aversion to doing that in this country, because we do not like writing down anything that matters—at least not in this area—but it would be very good if you asked that question.

**Q142 The Chairman:** We wrote down the Freedom of Information Act.

**Professor Lord Hennessy:** Well, the Freedom of Information Act is a wonderful thing—

**The Chairman:** We won’t go into that.

**Q143 Lord Pannick:** Lord Hennessy mentioned that there is no principle: “I want to get this off my chest, Lord Crickhowell.” I just wonder whether you think it might be helpful for us to recommend that if Ministers reject advice from civil servants that their proposed course of conduct would be a breach of constitutional principle, there should be an obligation not just for that to be minuted but for it to be reported to Parliament.

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**Professor Lord Hennessy:** That is very interesting. The Civil Service Code, and the Ministerial Code, if I remember them correctly, say that Ministers are free to accept or reject advice from the civil service, but they must take it seriously. If a permanent secretary thought that his or her people had been pushed to one side, either because it was outsourcing of policy or because it was “SpAderly on stilts”, what redress do they have? I am very reluctant, as Peter Riddell and your previous witnesses were, to over-codify these relationships. There is a school of thought among older civil servants, whom I used to write about in *The Times* when I was young, that our need to write so much down, to put as much as we have had to in the code—the Ministerial Code existed for years as Questions of Procedure for Ministers, but the Civil Service Code was a very new thing in the mid-80s or even the 90s—shows that it is too late. The relationship has already broken down to some extent if you have to write it down. There is something in that. If you over-codify it, it can produce all sorts of suspicions and tensions.

The first order question is: why is the relationship so tricky? It has never been an easy governing marriage, ever since the 19<sup>th</sup> century when it was invented by Northcote–Trevelyan and implemented by Gladstone, but it has been in a more shaky, jagged condition than I have ever know it in the last 10 or 20 years, for a variety of reasons, under governments of different complexions. Being a traditionalist, I am instinctively against over-codifying or over-specifying. These relationships are human ones, above all, and if they break down on a human level, there is no scrap of paper that can save them.

**Q144 Lord Goldsmith:** Let us descend for a moment from high principle to pragmatic solutions. I asked Miss Runswick earlier about a suggestion for ethical accounting officers. I see that there is a similar proposal, Dr Blick, in your paper, in relation to the possibility of extending the accounting officer principle “to cover normative standards beyond those of public accounting.” I would like to ask all three of you the same question. What do you see as the benefits and the dangers of that?

**Dr Blick:** Before I answer that, I would like to add that I did put in a Freedom of Information request to the Prime Minister’s office a few years ago, asking for all the statutory powers possessed by the Prime Minister. I assumed that they had a document lying around somewhere, and I hoped that they would provide it to me. They directed me to a database of statute law and recommended that I typed in the search string “Prime Minister” and saw what results I got. Maybe you will have more luck if you attempt that.

To come back to the idea of extending the accounting officer principle, if you are going to doing it—and I recommend it is worth looking at—it has to be done with a lot of caution, and it cannot be just things that a permanent secretary does not like the look of or does not feel like doing. It has to be very clearly delineated, as are the existing accounting officer principles of value for money, propriety, and other such limited areas. Things it could be useful for are perhaps those things that are in the Special Adviser Code and the Civil Service Code. If there are particular things that a permanent secretary—if that person is going to be the nominated officer—is asked to do or put in train that he or she is uncomfortable with because they relate to things in the codes, or the codes as they might, hopefully, be redrafted in the future, that would be the basis for that kind of activity.

Let me give you an example of how it may work in practice. Recent difficulties, or political controversies, surrounded what was or was not going on in the Department for Culture, Media and Sport, with the role of the special adviser in relation to a quasi-judicial role that was being carried out by the department, and the fact that a special adviser was given some kind of role that, seemingly, the permanent secretary knew about. Perhaps, if a permanent

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Public Administration, were uneasy about a role that was being given to a special adviser, that would be the kind of point at which a permanent secretary might require written instruction. That is an example of how it could potentially work in practice, if that helps.

**Professor Talbot:** Two recent examples are the Werritty affair in the Ministry of Defence, and the Adam Smith affair in DCMS. Both point to the issue of what I have called the conservator role of permanent secretaries, which is making sure that Ministers stick to the rules and are seen to be sticking to the rules, and raise serious questions about how these situations were able to develop—for the civil service, not just for Ministers. Ministers clearly did things that were, at best, questionable, but it is pretty clear that the permanent secretaries in both cases did not take action to stop these roles. Certainly, in the DCMS case, there seems to be evidence that the permanent secretary was perfectly comfortable with that situation developing. I agree with Peter's instinct of not over-codifying these things, but I think that we have gone beyond that, frankly. It does need to be codified now, to make clear that permanent secretaries are responsible for advising Ministers, when those sorts of situations are developing, that it should stop, and, if they cannot get the Minister to agree, then they bump it up the chain to the Head of the Civil Service or the Cabinet Secretary in order to get it stopped. Both of those situations could have been stopped if that had happened, and it did not.

**Q145 Lord Goldsmith:** Lord Hennessy, would you see that as breaking down what relationship of trust or confidence there is between senior civil servants and Ministers if, each time there is something that the civil servant is not that happy about, there is a demand for a written direction?

**Professor Lord Hennessy:** The way round it is to concentrate on the Civil Service Code and, indeed, the Special Adviser Code—to confine it to that area. I have not read the Civil Service Code for a while, but if I remember, the permanent secretary already has the duty, after the official with worries has gone up the line management hierarchy, to take it further up. I need to check but I am pretty sure they have that specific duty, and they have had since the code was published in 1996. You could confine it to that area, with an accounting officer for ethics as prescribed in the Civil Service Code, the Special Adviser Code and that bit of the Ministerial Code which says that Ministers will have due regard to advice and treat their officials properly. Indeed, it is interesting that, in our old friend the Cabinet Manual, the area of your inquiry is covered in one paragraph—5.6—with four subsidiary blobs. The Ministerial Code and the Civil Service Code are mentioned in that. It is interesting, isn't it, that in the Whitehall manual that we all live by now, and that you investigated, pretty well the whole area that you are concerned with is dealt with in just this tiny section in chapter 5. In a funny way, Lord Goldsmith, I would not be anxious about that because that would already make use of the codes that we have already agreed and Parliament has had a considerable say in, but I would not want it to go much beyond that.

**Q146 The Chairman:** I have one a brief point for Professor Talbot. As I understood it from your paper, you were suggesting that you wanted more parliamentary involvement in this particular axis, as it were.

**Professor Talbot:** When it comes to what Dr Blick calls extending the more normative roles of the accounting officer into what I would call the conservator role of making sure that things are done with due propriety, legality and constitutionality, in those sorts of roles it seems to me that it is unfair, unreasonable and unlikely that simply leaving it to Ministers, or eventually the Prime Minister, to be responsible is putting them in an impossible position.

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po They will have conflicting pressures on them—having to make judgments of whether or not somebody has broken the Ministerial Code, for example, puts the Prime Minister in an impossible position. There are clearly major political considerations in any situation like that, alongside the Prime Minister supposedly taking some sort of quasi-judicial role and adjudicating whether or not the Minister has breached the code. It seems to me that Parliament has to be involved in some way in doing that.

To come back to Dr Blick's earlier point about some sort of committee structure, my view is that it would be at least worth examining making such a committee a committee of both Houses, involving people from the Public Administration Committee and the Public Accounts Committee from the House of Commons and perhaps yourselves, or whoever else is appropriate, from the House of Lords. I think being a committee of both Houses would give that sort of committee much more authority. It is the sort of thing that would happen in most other jurisdictions, to be honest. There would be some sort of committee, which would be a whole of parliament committee, to look at these fundamental issues.

**The Chairman:** I am sorry, I interrupted you, Lord Goldsmith.

**Lord Goldsmith:** All I wanted to say was that I thought that Lord Hennessy's answer was very helpful, and that we ought to look further at the Civil Service Code in the way that he has suggested, so we can see just what the limits of this possible solution would be.

**Q147 Lord Lexden:** There have been one or two very brief references to experiences in other countries—we heard one just a moment ago. I wonder whether the triumvirate could draw our attention to lessons from foreign countries that might bear directly on what we are doing.

**Professor Lord Hennessy:** I have to confess to being terribly narrowly nationalistic about this, partly because we did it first with Northcote–Trevelyan. The Commonwealth countries—the old dominions, you might call them—are very much modelled on us. However, we have re-imported certain very valuable things from them over the years. The Indian civil service gave us Northcote–Trevelyan, so it was pioneered first in the ICS. Freedom of information was pioneered across New Zealand, Canada and Australia in a way that helped. I am not sure about human rights or able to talk about that, because my mentor on that is a member of this Committee.

I do not want to be unkind about New Zealand, but it is the size of a local authority. It is the square root of buggery all, really, compared to what Ministers in this country have to deal with, so I do not think it is much of a model. I have always thought—this is me in my psycho-dramatic mode, perhaps too much—that it is a sign of a loss of self-confidence if you have to keep looking abroad. Why can we not concentrate on our entrails? We have the resources to do so within this very room, and within this Parliament, in buckets. So, Lord Lexden, I am not keen on overseas examples. Let us just stick to what we know and who we know. It is hard enough.

**Q148 The Chairman:** We heard a very practical example from Australia about your map, with their double-sided A4.

**Professor Lord Hennessy:** Yes, indeed, that was very helpful. I take at least an eighth back of what I have just said.

**Professor Talbot:** I like looking at international examples, and I think that we can learn things from other places, both positive and negative. I will deal with the New Zealand

Professor Lord Hennessey of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po example first. You may note that the civil service reform plan includes very positive statements about examining the contractual role that has been adopted between Ministers and the equivalent of permanent secretaries in New Zealand. The Government are seriously considering looking at that as a possible model. I have my doubts about that. There has been quite a lot of criticism within New Zealand and quite a lot of revision of the way that it works in practice.

Moving on to Australia, to which I have just been, I can think of two interesting examples, one positive and one negative. The first is that the way to resolve this ministerial accountability/permanent civil service accountability conundrum is basically to remove the permanent civil service from Ministers' offices. Ministers' offices in Australia are effectively staffed by about 400 SpAds, which creates a completely different dynamic, as you can imagine. Ministers are fully accountable for the people who work in ministerial centres, because they appoint them all. Personally, I do not think that that is the road we want to go down.

The other part of their system I found quite intriguing, and I suspect that your Lordships might, is that, although on paper the civil service has a very similar accountability relationship to Parliament as here, there is one very important way in which they are held very significantly to account. At the Budget every year, the Senate committees that look at each of the major policy areas hold a series of hearings on the Budget proposals for their policy areas, which are technically governed by something like the Osmotherly rules, in the sense that the Minister is supposed to turn up and go through all the detail of what is in the Budget. In practice, it is the officials who do it, and they spend a day or two at each of the scrutiny committees—I think that there are eight or nine of them, covering the main portfolio areas—and they are put through serious hoops as to why they are spending money in particular ways, whether it is effective, what evidence they have for evaluating the effectiveness of that expenditure, and so on. Although technically those committees cannot alter the decisions in the Budget, the impression I got from talking to parliamentarians and senior civil servants was that that has a very dramatic effect on the way civil servants formulate budgetary plans and implement and report on them. That is quite an interesting difference between our system, where Budget decisions are subjected to a very wide-ranging debate in the House of Commons and not much else, except retrospectively. That is an interesting one.

**Q149 The Chairman:** Dr Blick, do you have any reflections on examples from abroad?

**Dr Blick:** We are perhaps edging our way towards a continental, *cabinet*-style system in the way that Ministers are supported. When special advisers, as we understand them now, were first introduced in 1964, the popular idea was that they were getting things right on the continent. The French model in particular was looked at, where the inner ministerial team is a mixture of outsiders and permanent officials, but the permanent officials are handpicked by the Minister. The current Government thinking seems to move us closer and closer towards that model, where all the people around the Minister, be they permanent officials or special advisers, are people whom the Minister has actually picked. So 50 years on, we are getting there, which, given that it took about 150 years for a civil service Act to be introduced, is quite fast movement. Maybe we should slow down a bit. That could be where we are heading.

**Q150 Lord Crickhowell:** That leads me rather neatly to the specific question I wanted to ask about special advisers. I think it was Lord Hennessey who spoke earlier about the

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**Professor Lord Hennessy:** I would strongly urge that you consider two categories of special adviser. The first, and the ones that really matter—if I were Secretary of State, a job to which I have never aspired, this is what I would have gone for—are those who really know something, can help test out what the machine is producing and what the think tanks are producing, and have the background and the self-confidence to do that. I do not want to be unkind to the British political class, but it has often been a mystery to me why they want the other sort, in their early 20s, to be the bag-carriers and so on. The one quality that the political class is not short of is political prejudice, and there is no need to bring in young men and women with political science degrees to reinforce your existing prejudices. It has always been a mystery to me. I suggest that you go for two categories of special adviser—those who know and those who believe. If we have to cull the 85, which is far too many, those who believe should be ruthlessly culled.

**The Chairman:** Thank you very much. We are moving beyond our scheduled time, and you have been very generous with your time and your thoughts. Are there any members of the Committee who feel they have not had the opportunity to raise a specific point that they were particularly keen to raise?

**Q151 Baroness Falkner of Margravine:** As you have invited me, I will ask a quick question. Professor Blick, you talked about the current reforms, whereby a list of names is to be submitted to the Minister in terms the appointment of permanent secretaries. Do you believe that would unnecessarily politicise the relationship?

**Dr Blick:** I think that would be a very likely consequence, because you would have people who were clearly handpicked by a particular Minister as permanent secretary. What happens if there is a change at the top, as there tends to be, and a new Secretary of State comes in, and this person is seen as being very closely linked to the previous Minister? I think you have then got a problem. Historically speaking, we can see that things can go badly wrong when a permanent civil servant is seen as too closely associated with a particular politician. I am thinking, for example, of Sir Horace Wilson and Neville Chamberlain—a not very happy precedent—but also, moving on, William Armstrong and Edward Heath. It can be a real problem if a permanent, supposedly impartial civil servant is seen as being a particular Minister's woman or man, and I think that will happen now. I am not saying that should not happen, but I am saying we need to realise that, within the context of our existing system, it will create problems.

**Professor Lord Hennessy:** I agree with that. I am worried about creeping politicisation. The criterion will, no doubt, be that the Civil Service Commission approves that they are impartial and so on, but it is the impression given. The danger will be those senior officials brought in on a temporary contract. That is where the temptation will lie. The great gift of

Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL; Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; and Dr Andrew Blick, Senior Research Fellow, Centre for Po the 19<sup>th</sup> century to the 20<sup>th</sup>, and it has survived into the 21<sup>st</sup>, is that we have a notion of career Crown service, so that you increase the chances of people speaking truth unto power, of telling Secretaries of State what they need to know rather than what they wish to hear. I have always noticed in the past, in the archives as well as talking to people as a journalist, that self-confident Secretaries of State would have it no other way. But there is this danger of creeping politicisation.

There always has, as Peter Riddell was explaining, been an element of compatibility-testing, sort of discreet good chap—of both sexes—conversations round the edges about whether people will be able to live with each other, which is a very sensible way of doing it. However, I am worried about that bit in the civil service reform plan, because it could be the beginning of the gradual undoing of Northcote–Trevelyan. Once we lose a sense of shock about that possibility, we will have gone through a valve through which we cannot return. It is like a clean water supply—you take no notice of it until it is contaminated, by which time it is too late.

**Q152 Baroness Falkner of Margravine:** Selecting from a shortlist of three would not seem to me to be so controversial.

**Professor Lord Hennessy:** It is more the temporary ones that they were talking about, rather than the permanent secretary ones, so there is an element there. William Armstrong, who I was full of admiration for and knew quite well, never recovered from that. He said to me once—I can say this because it was many years ago now and he is long gone—“I always lived in fear that I would be seen as another Horace Wilson and that is how I fear history will remember me.” It was very sad.

**Q153 The Chairman:** Those two examples are very interesting.

**Professor Talbot:** I agree with the previous two witnesses. We have to remember that the average lifespan of a Minister in the British Government is about 15 months. The civil service plan suggests, from my reading of it, that several of the top positions, including possibly the permanent secretary, will effectively become temporary and go with the Minister. We already have a problem at the top of the senior civil service. You can see this in hearings of select committees in the other place. If you revisit any decision that was taken at the top of a ministry more than about two and a half to three years ago, you very rarely get the same official coming back to answer for what happened. I think there is a very real danger of that situation becoming far worse.

Coming back to the issue about the normative role of civil servants, I greatly fear not just politicisation, but the undermining of the role of the civil service in being able to say on occasion, when it is necessary, “No Minister, that is not legal, proper or the correct way of doing things.” If these people are appointed by, and beholdened to, the individual Minister, it is going to make it extremely difficult for them to turn round and say, “No, Minister” when it is appropriate, and I think that that could potentially undermine the conservator role of the civil service considerably.

**Q154 Lord Shaw of Northstead:** In the discussions that we have had today, it is amazing that the National Audit Office has now been mentioned and has never been mentioned before. Would the witnesses feel that it would be to our advantage if we had a representative from the NAO come to give evidence before us?

**Professor Lord Hennessy:** That is an interesting point.

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**Professor Talbot:** I would certainly urge you to ask the Comptroller and Auditor-General to come to talk to you. The role of the NAO is evolving. It may be doing so incrementally, but it is evolving. As I said earlier, it used to work only to the PAC, but it now does work for most of the select committees in the other place, and its value for money studies, with which you may be familiar—the 50 to 60 studies that it does outside the normal financial audit—cover a whole range of policy issues. My sense is that, since Amyas Morse took over as Comptroller and Auditor-General, it is being more consistently aggressive in pursuing issues in those studies than they were under the previous Comptroller and Auditor-General. I think that it would be worth talking to the NAO. It obviously plays an extremely important role in supporting parliamentary scrutiny of the civil service.

**Professor Lord Hennessy:** And in keeping the system clean and decent. It is very interesting, historically, that you raise that, Lord Shaw. Gladstone had a scissors approach to reform. One side was the Northcote–Trevelyan recruitment on the basis of merit and the other was the Exchequer and Audit Departments Act 1866, which was to make sure that money that was voted for by Parliament was spent only on the purposes so outlined by Parliament. He saw it in those terms.

In terms of the accounting officer system being the model for an extension into the ethics area, that would be excellent. There are a few former Comptrollers and Auditors-General, and former chairmen of the PAC, around. They were symbiotically linked in Gladstone's mind, but it had not occurred to me until you suggested it.

**Q155 The Chairman:** On the other hand, you did mention at the beginning, Lord Hennessy, that following the taxpayer pound was, in a sense, the key to unlocking a great deal of this.

**Professor Lord Hennessy:** It is, absolutely.

**The Chairman:** Thank you all very much. Do any of you feel that something we should have addressed has been ignored? If so, please say so.

**Professor Lord Hennessy:** I don't think so.

**The Chairman:** Thank you very much indeed, and thank you again for your background papers, which will continue to be useful to us as we examine other witnesses. It was very nice to see you all.



David Hencke, Daniel Finkelstein and Christopher Hope – Oral Evidence (QQ 156–211)

**David Hencke, Daniel Finkelstein and Christopher Hope – Oral Evidence (QQ 156–211)**

[Transcript to be found under Daniel Finkelstein](#)

**Sir Jeremy Heywood CB CVO, Cabinet Secretary, and Sir Bob Kerslake, Head of the Home Civil Service – Oral evidence (QQ 312–338)**

*Evidence Session No. 7*

*Heard in Public.*

*Questions 312 - 338*

WEDNESDAY 18 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Lexden

Lord Pannick

Lord Powell of Bayswater

Lord Shaw of Northstead

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**Examination of Witness**

**Sir Jeremy Heywood CB CVO**, Cabinet Secretary, and **Sir Bob Kerslake**, Head of the Home Civil Service.

**Q312 The Chairman:** Sir Jeremy and Sir Bob, thank you very much for coming and for your time. As you were observing the previous discussion, or at least part of it, I am sure you will recognise the way in which the Committee is beginning to formulate some of its own questions, which it wants to pursue in our report. This is the last day of our oral evidence, so you are in a position to write some conclusions for us, if you wish to do so. I should mention, from an organisational point of view, that all these sessions are being broadcast so, if you would be kind enough at the beginning of what you say to identify yourselves, that is useful for the broadcasters.

Maybe I can start almost at the point where we finished with Lord Butler. If we assume that the conventions of ministerial accountability, as we have understood them, continue to exist, is there a worthwhile difference in accountability and responsibility as concepts, when we are looking at the civil service in its relationship with Ministers and Parliament? Several ex-Ministers and also some of the academics who have given us evidence have been clear in their evidence that they see a strong distinction between responsibility and accountability, and that this, in itself, affects the organisation of the civil service and is relevant to the Government's own proposals that have been made in the last few weeks. Sir Bob, do you want to start?

**Sir Bob Kerslake:** Yes, I will do. Bob Kerslake, Head of the Civil Service. I can see the line of argument that makes this distinction and there is some value in it, in particular being clear on

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the accountability of Ministers for the whole of their department's activities, but nevertheless recognising that there is a whole set of activity for which officials are, on a day-to-day basis, responsible. There is some value in that distinction, but we have to be careful not to push it too far. In one sense, you have to ask the common-sense test: would the public see that clarity of difference? I am not entirely sure they would, so there is some value in the way we have our conversation, but we have not got to see it as such a sharp distinction in reality.

**Q313 The Chairman:** As was said in the previous sessions, it is quite difficult, I imagine, in practical management terms to distinguish those things for which the individual civil servant could be said to be responsible, within a departmental brief.

**Sir Bob Kerslake:** Yes, I think that is true, but actually, in the way in which we manage the Civil service, we try to give people very clear sets of tasks and accountabilities through the performance management process. That is a process whereby civil servants are responsible through the line to their permanent secretary, and their permanent secretary is responsible to the Minister, and the Minister is responsible to Parliament. I would not want to suggest that the complexity means you can hide away from responsibility—quite the opposite. Indeed through the plan, we are sharpening the way in which performance management works and sharpening the responsibility of individual civil servants through this process. We think that is quite important, but we cannot and would not want to suggest that you can readily disentangle the issues around policy and implementation, in the clean lines that are sometimes suggested.

**Q314 The Chairman:** If we take the solution proposed and the way in which it would work with clearer lines of responsibility and demarcation of actual projects, to put it that way, how far up the chain would that degree of responsibility go in your proposals? Would this end up with that person being responsible, through the Minister, to Parliament? How would it work?

**Sir Bob Kerslake:** We are clear that civil servants should remain responsible to Ministers and, ultimately, Ministers to Parliament, which again does not mean to say that officials will not come to select committees. They do now. In fact, I have been at a PAC meeting with colleagues from my department at the time, DCLG. This happens now. It is not suggesting in any way that they should be hidden away from select committees, but ultimately there has to be clarity that permanent secretaries are accountable to Ministers for the effective running of their department. That should not be moved away from.

**Sir Jeremy Heywood:** Jeremy Heywood, Cabinet Secretary. The only thing I would add is that I think there is one area where there is a very clear carve-out, as it were, which is the accounting officer, which is tried and tested, and works very well in practice. Rather than trying to invent some new border line between implementation and policy, or delivery and policy, or whatever, I would much rather stick with the tried-and-tested “this is the accounting officer” set of responsibilities, where historically and traditionally the permanent secretary has been directly accountable to Parliament and it is all clearly laid out. In the rest of the role of government and the functions of government, clearly the Minister is accountable to Parliament and the civil servants are accountable to Ministers. I think we will probably come back later to policy and implementation; I have some views on that, but let us see how you want to use the time.

**Q315 Lord Shaw of Northstead:** You said earlier that you were looking for ways to sharpen the service—I think was the expression that you used. To what extent does the

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home civil service act as a constitutional check on the actions of Ministers? In other words, can they resist what he is trying to do? Can he object strongly? If he does, if he is called to a committee, how far dare he disclose the fact that he has objected or tried to do this, that or the other? Must he keep silent on that or is he allowed to reveal it?

**Sir Bob Kerslake:** I saw the question in the list and to describe it as a “constitutional check” is perhaps not the way I would describe it, but there are clearly roles for permanent secretaries. Obviously there is the issue of the accounting officer role. Jeremy has alluded to that, and that clearly gives permanent secretaries responsibilities and indeed a particular one of seeking a direction if they are not happy with the way in which a Minister wants to go. I should say in relation to the accounting officer role that that does not just cover value for money; it also covers propriety in relation to a project, the feasibility of the project and legality as well. Those are all covered within the accounting officer responsibilities.

Beyond that, if they believe there is an issue with a Minister breaching the Ministerial Code, you clearly would expect a permanent secretary to raise that with the Minister and, if they were not satisfied with the outcome, ultimately raise it with either Jeremy or myself. I think there is quite a lot of clarity about the roles of permanent secretaries already within the system. Some of that may be more visible than others. Clearly a ministerial direction is highly visible. Advice on concern about a breach of the Ministerial Code is less likely to be visible, but I think those processes and safeguards already exist.

**Q316 Lord Shaw of Northstead:** The difficulty arises that civil servants now are appearing before committees and, incidentally, before the press a lot more than they used to. If a policy comes up for criticism, the Minister of course, one accepts, is responsible, but if the civil servant is questioned on it and questioned as to whether he agreed with it, whether he gave contrary advice, tried to persuade the Minister and so on, how far is it his duty to disclose that fact to a committee?

**Sir Bob Kerslake:** I think the rules are clear and the process is clear that they would not disclose that advice that they had given to Ministers in reaching their decisions. Provided Ministers have been given advice and they have taken their decision properly, that is the way the system works and I think it should stay that way: we act on behalf of Ministers and our role is to defend the policy that Ministers have agreed. What I was trying to say was, if that strayed into issues around propriety, value for money or breaches of the Code, then there are clear arrangements already in place for that to be challenged by the permanent secretary.

**Sir Jeremy Heywood:** I would not particularly use the words “constitutional constraint”, because that implies in some senses a sort of higher authority, which the civil service is the custodian of. Clearly Bob has talked about propriety and value for money. These things we are custodians of, under the accounting officer duties and so on. We see it as our obligation to draw attention to a potential breach of the law—European Union law, the ECHR and UK law—although those cases would be extremely rare, because Ministers would not, in the normal course of events, be actively seeking to break the law.

There are other conventions that are not statutory and not really constitutional. For example, one of my roles is to act as the fair arbiter with the previous government, in relation to previous government papers, for example. To create that firebreak between current Ministers and previous Ministers from a different party, you have to have somebody umpiring those sorts of disputes. You have conventions that you are protecting; you have the law of the land that you are drawing attention to; and you have propriety and those

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sorts of issues. I do not think that constitutes a constitutional role. You certainly, as Bob says, would not be articulating that in public, because our job is to provide advice in private.

**Q317 Lord Pannick:** If a select committee is seeking to identify what has happened in relation to a particular project and why it happened, is the select committee not entitled to ask the civil servant what advice was given to the Minister, so the select committee can do its job?

**Sir Jeremy Heywood:** Obviously the select committee can ask what it likes.

**Q318 Lord Pannick:** Should the civil servant not have a duty to assist?

**Sir Jeremy Heywood:** No, our obligation is to support our Ministers, to provide confidential advice to Ministers and not to break that confidentiality.

**Q319 Lord Pannick:** Do you accept the Minister would have a duty to tell the select committee what advice he or she was given, if it is relevant to the select committee seeking to identify what happened and why?

**Sir Jeremy Heywood:** I think that would be up to Ministers to decide in a particular case but, in general, Ministers prefer to maintain the confidentiality of their relationship with their civil service advisers. That is the way the British government has worked over many decades and it is, as far as Ministers are concerned, I believe, the model they want to stick to.

**Q320 Lord Pannick:** Why should confidentiality take priority over the select committee seeking to identify what has happened, which may have important lessons for the future?

**Sir Bob Kerslake:** Select committees can ask for the underpinning evidence that led to decisions. They can obviously see things like the impact analysis that would have been done on the courses of action, so there is quite a lot of transparent information about decisions. The thing that is kept confidential, and I think is rightly and properly kept confidential, is the advice that is given at the point of decision by the Minister from the civil servant. That is a pretty clear-cut principle that really would make the functioning of government very difficult if it was not upheld.

**Q321 Lord Crickhowell:** I have two questions. I want to return to the question I put to Lord Butler, but first, and it arises from a report I saw in the press, which may have been wholly incorrect, you, Sir Jeremy, actually presided over a meeting of Cabinet Ministers, which would have been inconceivable at the time when I was in Cabinet. It prompts the question of, when you have the kind of coalition arrangement that we have now, does this involve any change in the relationship of senior civil servants, and particularly the Cabinet Secretary, with Ministers that is different from a more normal position?

**Sir Jeremy Heywood:** On the first question, I certainly do not chair meetings of Cabinet Ministers or any other Ministers for that matter, certainly not in formal Cabinet committees or anything like that. I may and do attend meetings with Ministers, but I would not be in the chair if a Minister was present. I do not know what that story was about at all.

On the coalition question and the broader issue, I do not think it fundamentally changes the role of the Cabinet Secretary or officials. I think one of your previous witnesses made the obvious point, in a way, that all governments in some sense are a coalition of either different departments or different factions within parties. The coalition is two different parties, and that sometimes is the main issue that is dividing Ministers in the room; but often it is the Treasury versus the rest or three departments with one view and two departments with

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another. For all of these issues, whether they are in formal Cabinet committees or in offline meetings you, as a civil servant, are trying to ensure that the evidence is there for people to make a rational decision and that any disputes of fact are resolved. You are trying effectively to codify what has been agreed and, occasionally, you play a personal role in trying to find compromise language or think laterally about how an agreement can be reached—but it is not that different, frankly, in a coalition than in any other sort of government.

**Q322 Lord Crickhowell:** I think the same Minister also commented that the government of which I was a Minister, presided over by Margaret Thatcher, could hardly have been described as a coalition in exactly the same terms. There is a coalition agreement and, therefore, one could see that this involves you or other civil servants perhaps in some role that would not have existed before. That is really what I am questioning on.

**Sir Jeremy Heywood:** The coalition agreement is a very interesting document. At the time it was put together, I and a number of other civil servants around did not quite understand the significance of what was being agreed. That document was agreed really within the space of about a week, behind closed doors with a few civil servants taking notes and so on, but fundamentally between the Ministers of the two parties. The wording that was used in that coalition agreement, cobbled together—probably not the right phrase—but put together very elegantly at the time, in the space of a week, has become a sort of sacred text. That is the default position. If no other agreement can be reached on an issue, it defaults to the exact wording of the coalition agreement.

Instead of having the two manifestos that were agreed and written before an election, we have got a post-election joint manifesto, in a sense, of what the two parties want to try and agree. That also is very helpful for Bob and myself to understand what we have to implement, because each department knows essentially what the Government are trying to achieve over the five years. We know it is five years or we think we know it is five years. We know we have the coalition agreement with all its clauses, so effectively that is the job of work ahead of us, other than to respond to events. I find it very helpful. I do not know whether you want to comment, Bob, but generally speaking it has been a helpful document for us.

**Sir Bob Kerslake:** I think it gives a great deal of clarity about what the tasks and priorities are for departments. I add one other point: the very nature of a coalition requires issues to be more widely and more comprehensively discussed and analysed, because you have to reach agreement. Of course, the way in which this coalition works, you have both parties within each department. I think, if there is any change, it actually increases the extent by which issues require a wider sense of discussion between Ministers before a conclusion is reached.

**Q323 Lord Crickhowell:** That is a very helpful answer, if I may say so. Can I go back to the question? As I say, there is a sense from the civil service witnesses that we have had that the Osmotherly rules are all marvellous in their present form, but the critics that have been quoted—Peter Hennessy and Peter Riddell and many others—feel that the world has moved on. Certainly the select committee chairs who appeared before us are not happy with the present arrangements. Can you give us your thoughts about how the issue is to be taken forward? Indeed, the Government in their response to this Committee said they are considering this issue.

What is the best way forward, so that we have a generally acceptable set of conventions and rules which would form a sound basis, not just for the civil servants and Ministers, but also

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for select committees? Have you any proposals or ideas about the best way of arriving at consensus? I said rather sharply to Peter Riddell that you asked for a consensus, but you are very careful not to say exactly what it should be. We have been probing at this for some time. Your practical experience in an issue that the Government say they are now considering would be very helpful.

**Sir Bob Kerslake:** The starting point is that we think the core model of Ministers accountable to Parliament, and civil servants independent, impartial and accountable to Ministers, has stood the test of time. There is no proposal from the Government to change that model. Beyond that though, *The Civil Service Reform Plan* sets out some very specific practical changes that would, we think, sharpen accountability. We propose to move to implementation of those proposals. The plan also says that we are very much aware of this Committee's inquiry and of other discussions. We would be very interested to see what comes out of that process. There is an opportunity to look again, if there are things that we have not covered in the plan so far.

**Q324 The Chairman:** When you say the things that this Committee recommends, thank you, but one of the points that we have made, and it was made by Lord Crickhowell in discussion with our previous witnesses, is that this suggests that there is a wider discussion of whatever may emerge from your plan, or indeed our proposals, than simply the civil service, the executive, creating a new framework or suggestions for its own activities? Do you see a role for a wider dialogue with Parliament or whoever on this?

**Sir Bob Kerslake:** I think there is already a wider dialogue, whether we like it or not in fact. The Institute for Government has done a lot of work on this.

**The Chairman:** I was thinking of something slightly more formal.

**Sir Bob Kerslake:** We have not suggested that there should be a formal process. I think we are more interested to hear what comes out of what is already underway. We have said that we will review the Osmotherly rules, and that process is going to be started soon from the Cabinet Office.

I would make two points. One is what you observe when you read the various evidence you have had. People are saying that a change is needed, but there is no consistent view about what change is needed. The second point is we need to be very clear about what problem we are trying to solve and what consequences flow from trying to solve that problem. When I read this, some of these issues are about managerial performance and effective operation of the civil service, which is one issue, and some of them are genuinely about the model of accountability.

**Sir Jeremy Heywood:** Can I say that I am slightly surprised that the Osmotherly rules are getting so much attention? I agree with Robin Butler: I think they are pretty close to a work of perfection. I am sure we can take on board comments that people have, if they are made into specific suggestions, as it were, and we would be very open to those. The only thing wrong with them, in my mind, apart from a bit of updating, is the word "rules". They are basically just guidance to civil servants about how to help select committees.

I am sure you have your own rules that we have not approved either, about how to investigate civil servants and Ministers. You have got your guidance; we have got our guidance. As I understand it, these rules or guidance were drawn up in consultation with or with some input from parliamentarians last time around, and we would be more than pleased to do that again. We do not have a specific process in mind. One should not get them out of proportion; they are guidance for civil servants as to how to be as helpful as

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possible to select committees, consistent with the constitutional principle that Ministers are accountable to Parliament. If you are not going to change that, you are not going to fundamentally change these rules, in my view. I just put that on the record as my view on the Osmotherly rules.

**Q325 Lord Powell of Bayswater:** This builds on your point, chairman. I think this inquiry is at risk of becoming really rather boring. We spend our time with this very calibrated system, arcane distinctions between responsibility and accountability, and the Osmotherly rules. Only the British civil service could have nurtured an Osmotherly all those years to produce him at just the right moment to come up with these rules.

**The Chairman:** There is even some suggestion they should change the name, which we totally resisted.

**Lord Powell of Bayswater:** The reality is surely the disconnect from the reality, which is that there is a bit of a bloody battle starting again between Parliament and the executive, where Parliament wants to cut back the powers of the executive to get more for itself, and seize the select committee system and the ability to force civil servants to disgorge more as a way of attracting notoriety and perhaps increased power.

The sorts of questions that arise from that are: are civil servants going to get too exposed? Perhaps civil servants should be more exposed. Perhaps they would like to be more exposed. I know a lot of civil servants who would welcome the ability to speak more freely to parliamentary committees, because they think they can probably explain better than Ministers can and have greater knowledge. At the moment, we seem to be heading for a no-score draw in this whole debate. It would be nice to think that somebody was thinking about how the system could change a bit. I notice there should have been a question mark at the end of that last sentence, but you probably got the intent.

**The Chairman:** I think what you mean to ask is, do you agree?

**Sir Jeremy Heywood:** The first thing I would say in response to that is I do not think there is a huge pitch battle going on between Parliament and the civil service or the executive. Obviously there was one quite controversial hearing, which Gus and Margaret Hodge corresponded about, but there were some pretty unusual circumstances around that, where legal professional privilege and taxpayer confidentiality clashed with the fundamental principle to be as co-operative and open as possible with select committees.

I do not think that should be taken as indicative of the overall relationship here. Most civil servants take select committee appearances extremely seriously. They spend hours preparing for them. It is one of the most important parts of their annual calendar—hopefully not more than annual, but the more the merrier sometimes. From my perspective, the question, as well as all of the issues you have focused on, is how that accountability process can be tweaked. Does it need to be tweaked to encourage better behaviour, the better performance of the civil service or government generally?

Some of the issues that I would be quite interested in your thoughts on, over time, are: whether the current department-by-department approach reinforces departmental silos, as opposed to encouraging cross-departmental working; whether it is true, as people often allege, that the select committee process, particularly the PAC, encourages risk aversion on the part of Government or the civil service; whether it focuses too much on short-term interesting political issues as opposed to long-term horizon scanning or the strategic issues facing the country.



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I think an interesting question, alongside all the other ones you have been debating, is whether or not the way in which the select committee process works and the interaction between the executive and select committees reinforce some bad habits, and probably is a missed opportunity to encourage some different sorts of behaviour. I think there are some wider questions there, as well as all the ones you have been talking about.

**Sir Bob Kerslake:** Could I add a few quick points? First, I personally have been at either the Public Accounts Committee or the Public Administration Select Committee more than half a dozen times since January. That feels quite a generous level of accountability. The second point is I do not think the civil servants either shy away from or seek the limelight. They can and should be comfortable with a world that wants more transparency. We should live with that and accept it as part of the deal for being a senior civil servant.

The third point is that the best and most successful select committees I have been at are where they are able to shine a light on, challenge and test a major issue of government policy or implementation. As Jeremy says, sometimes you feel that the way they work, the conventions they work to, get in the way of elucidating the issues and the problems. It is a particularly adversarial style that naturally leads to a defensive response. I welcome the fact that the chair has tried alternative models of making the PAC work more effectively. I do not think this is about some fundamental overhaul of the system, nor do I think we have anything to fear from a more assertive Parliament wanting to get to the bottom of issues, but if we do not get the boundaries and the behaviours right, we could very quickly run into difficulties.

**Lord Powell of Bayswater:** The frustrations from the parliamentary point of view are that it is, as you rightly say, an adversarial system. They believe in use of the adversarial system, but civil servants are cast as non-combatants. There is nothing worse, if you are adversarial, than finding yourself up against a non-combatant.

**The Chairman:** I thought you might also, Lord Powell, quote Lord O'Donnell saying that the intention perhaps was to change this inquiry into one into the operation of select committees, rather than the operation of civil servants.

**Q326 Baroness Falkner of Margravine:** On that theme, *The Civil Service Reform Plan* proposes quite significant roles for non-executive directors. I will quote you one paragraph, which says “including taking responsibility with relevant senior officials for advising on the implementation of Departmental priorities and objectives”. In light of that statement and the whole role of non-executives, would you see that they too could appear before select committees and be accountable, in that sense, for the direction of the relevant department, at a strategic and operational level?

**Sir Bob Kerslake:** I would need to be careful about that, because they are there as expert advisers to Ministers and permanent secretaries. It is a very positive development, by the way, and they bring genuine expertise and advice to the board, but ultimately the decisions have to be taken by Ministers, on the advice of civil servants. Holding a non-executive to account for the rightness or otherwise of a decision would be, for me, a step too far.

**Q327 Baroness Falkner of Margravine:** In the private sector that is what their role is. You were both here, I think, for Lord Butler of Brockwell's description of the more flexible system that used to exist in terms of the ministerial role in appointing permanent secretaries and his conclusion that, despite the fact that rigidity was built into the system, he could not see that a change where a Minister had more significant involvement might be the answer.

**Sir Bob Kerslake:** I hesitate to disagree with a predecessor, but I think the current system is quite flexible and responsive to the issues and interests of Ministers. Having been through two recruitment processes since becoming Head of the Civil Service, it is very clear to me that the Civil Service Commission takes huge care in engaging Ministers right from the beginning of the process, from the forming of the job description to the longlist to the shortlist to the panel. Nobody gets appointed to a permanent secretary role without the approval of the Minister. In fact, if the Minister is not happy, it does not require a complete re-running of the process. It is possible for it to go back to the panel and for them to deliberate on the issues.

There is a huge amount of common ground about a system that works in a robust and fair way, which is essential when you are looking to bring new people into roles and bring them in from outside. The only point of debate here is whether or not you should be given a preferred candidate to approve or a choice of candidates, from a list that has been scrutinised and regarded as above the line and, therefore, appointable. This is the point of difference: it is very clear that Ministers seek to have that choice.

**Q328 Baroness Falkner of Margravine:** Would you agree with that?

**Sir Bob Kerslake:** My view is that Ministers have wanted to move forward on this. I absolutely understand their arguments. Our role now is to work with Ministers and the Commission and find a resolution to what are clearly different positions. That is where I stand at this stage.

**Q329 Baroness Falkner of Margravine:** Sir David Normington's letter in *The Times* set out this process much as you have described it. He says, "Ministers can help set the key skills required for the job; meet candidates on the short list and give their views on those candidates to the panel." As you have said, they can exercise a veto. It seems to me that if that is what happens then there is quite a lot of ministerial involvement. In that case, I find it difficult to see the objections to one further step down the road, which would pre-empt the Minister exercising a veto by having perhaps a hierarchically ordered list. In other words in the panel's judgment one would be the best, two would be the next best and so on. It would, in my mind, build some flexibility into the system where we have a lack of diversity at senior level across protected categories. It would allow more flexibility into the system, whereby women, ethnic minorities and other plurality could be built into those senior positions.

**Sir Bob Kerslake:** Clearly, the view of the Prime Minister and the Minister for the Cabinet Office is that this would be a logical development from where we are now, and that is the conversation we need to have with the Commission. In the same letter, Sir David sets out very clearly why the Commission has a differing view, and that is the conversation we need to have. I am not sure, per se, that this issue relates to gaining a more diverse civil service, because I think that is much more about how you develop the shortlists and how you attract people from a wide range of backgrounds to apply for jobs. I think that is the thing that ultimately influences how we have diversity.

**Baroness Falkner of Margravine:** It could be a spin-off though.

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**Sir Bob Kerslake:** It could potentially be one, but my view is that that is where the task is greatest. The conversation needs to be had. We are already underway with it and we will see what comes out of it.

**Q330 The Chairman:** You said, Sir Jeremy, earlier that you had some points you wanted to make about this troubled distinction between policy and implementation, and the effect that that may have on our understanding of accountability. Would you like to tell us?

**Sir Jeremy Heywood:** Very briefly, I always slightly recoil when I see policy put in one box and implementation put in the other, because it is just not like that. Some of the worst problems we have had are because policy has not been properly informed by implementability. Often the blockage on implementation is a policy design failure. I also think it is a complete myth to think that Ministers are not involved in implementation and should not be involved in implementation. Often, Ministers are very deeply involved in implementation and should be. They play a very important role.

Bob and I sit through Cabinet meetings—I do not want to breach Cabinet confidentiality obviously—but quite a number of our Cabinet meetings these days are about what the blockages are to the implementation of agreed priorities, with the Prime Minister basically telling his colleagues he wants them to be closely involved in identifying blockages and so on. Some of the myths around this, which are that Ministers decide policy and the civil servants go off and implement, and ne'er the twain shall meet, are a caricature, which are out of date and wrong. I would not want anybody to think that that is a useful guide to the way government works these days.

**Q331 The Chairman:** I think we understand that it is an unclear boundary. Do you think there are implications we can draw out, however merged it is, about the different forms of accountability and responsibility, which we talked about earlier?

**Sir Jeremy Heywood:** Given the complexity of trying to draw the line in a different way, I think the right place to go back to is where we are, which is the accounting officer/Minister distinction, as it were. That is the clear-cut distinction that has stood the test of time, remains very workable, is clearly understood and is a very good basis for the future. Trying to draw the line in a different place gets you into very difficult terrain.

**Sir Bob Kerslake:** The reform plan makes one new development or innovation, which is that the accounting officer signs off the implementation plan. That is ultimately going to be quite a significant development.

**Q332 The Chairman:** Can you develop that a little? Significant in what way?

**Sir Bob Kerslake:** What it will do is make it absolutely clear, at the commencement of a project, that the accounting officer has done all the appropriate due diligence and testing with non-executives and others to know, at that point, the project is deliverable; in other words, the policy that was developed and announced can actually be brought into being. There is often a gap between that first stage and the second, and it would give select committees a clear benchmark, a clear point of reference, at the point projects start.

**Q333 The Chairman:** The accounting officer would then be both responsible and accountable.

**Sir Bob Kerslake:** Yes.

Sir Jeremy Heywood CB CVO, Cabinet Secretary, and Sir Bob Kerslake, Head of the Home Civil Service – Oral evidence (QQ 312–338)

**Q334 Lord Crickhowell:** I entirely agree with what Sir Jeremy said. It is a point I made several times in putting questions. There is this idea that you can pin the whole thing on these very broad responsibilities placed on the accounting officer. Contracts now are lengthy, large and very complicated. I speak as a former chairman of a large quango but also, rather more painfully, as the chairman of an IT service company that undertook a failed IT contract at the heart of government. That experience leads me to think that we are now in a world in which the Government increasingly are employing consultants to advise them on implementation and policymaking, and sometimes consultants to advise on the advice that they have received from the first lot of consultants.

There is reluctance perhaps from some civil servants to commit themselves to the actual project until they are certain that every conceivable risk has been eliminated, and then they employ outside consultants to do jobs. Would it not be desirable for select committees, in looking at these big projects, to also be able to have before them some of these major players in the game, as well as simply the accounting officer or one or other very senior civil servant to get the complete picture?

**Sir Bob Kerslake:** Actually, they can and do now invite people. Again, the example I cited was going to the Public Accounts Committee, which was on FiReControl. The project manager for FiReControl came along and was questioned by the Committee. I think Lord Butler made a good point: it is not often used, but perfectly possible to bring people along to explain and present on projects. Where I think the issue arises is that you can seek information; you can seek input from those officers, but you should not pin the whole of the responsibility on them. Ultimately, the accounting officer must take responsibility for how things are done in their department and for ensuring that there are proper systems that enable things to be delivered effectively with the right resources. You cannot resile from that responsibility as an accounting officer, and I would not be comfortable with any system that led to that happening.

**Q335 Lord Crickhowell:** Fine, but the desirability of being able and, perhaps in many cases, insisting on getting the wider picture avoids what has sometimes been the case in the past: that the accounting officer seems to think his principal role is to prevent blame falling on his department. You would at least have the whole picture before you or the possibility of the whole picture, rather than the picture that the head of the department may wish to present to the select committee, which may not be the complete truth.

**Sir Bob Kerslake:** As I say, the select committee has the right to invite others to its meetings.

**Sir Jeremy Heywood:** I will make two points on that. First, that may have been the position in the past, when you had a consultant advising on a consultant's work, and so on. As I am sure the Minister for the Cabinet Office is about to tell you, we do not have consultants anymore, so we are not wasting money on that sort of multiple banking.

Secondly, it is a fair point that in the past sometimes the projects have gone badly wrong because we have not spent enough time up front scoping the project, de-risking it and understanding the risks in it; actually, we have plunged too rapidly into it. Part of our reforms are to put a stop there and make the accounting officer responsible for looking at whether or not this is an implementable project, whether we know enough about it before we embark on it and spend an awful lot of money on a project we do not know enough about. You may have had a bad experience but there is some sense in spending a lot of time up front before you plunge in.

**Q336 The Chairman:** This would presumably mean that you would agree to or welcome the Government's proposal to have what they describe as a very limited number of short-term appointments by Ministers for particular executive and implementation roles.

**Sir Jeremy Heywood:** Definitely. We already have some examples of those sorts of people, and usually when a Minister and a permanent secretary find there is a gap in the department, they have a joint incentive quickly to work out whether there is anybody internal who can fill that role and, if not, get someone in from outside. Sometimes time will allow that to be a full competition, but sometimes it certainly will not. We have plenty of good experience of people coming in from outside, with the approval of the Civil Service Commission to avoid any sort of suggestion of politicisation. We have brought people in from outside who have got the right skills, can be brought on board quickly and then can make a real difference to the competence of the department.

**Q337 The Chairman:** You do not see any potential problems with them being looked at as super-special advisers, with all the problems that can occur in management relationships in the civil service then.

**Sir Bob Kerslake:** Clearly within the plan it says that whoever is brought in works within the management line of the civil service. It is also clear, as Jeremy says, that for senior appointments coming through this route they will be approved by the Commission. I think there are very good safeguards that allow us both to bring in people quickly when they are needed in expert areas—this already happens—and to have safeguards against the sort of thing you were talking about.

**Q338 The Chairman:** You have both been extremely helpful. Thank you very much for being so precise in taking us through these points. Sir Jeremy, do you have points that you feel frustrated we have not asked you about?

**Sir Jeremy Heywood:** No, I think I made all my points.

**The Chairman:** Sir Bob?

**Sir Bob Kerslake:** I am very happy, thank you very much.

**The Chairman:** Thank you both very much for your time.

## HMRC; Office of Fair Trading; and Valuation Office Agency - Oral evidence (QQ 184–211)

*Evidence Session No. 5*

*Heard in Public.*

*Questions 184 - 211*

WEDNESDAY 4 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Baroness Falkner of Margravine  
Lord Goldsmith  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Lord Lexden  
Lord Powell of Bayswater  
Lord Shaw of Northstead

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### Examination of Witnesses

**Philip Collins**, chairman, Office of Fair Trading; **Mike Clasper CBE**, non-executive chairman, HMRC; and **Penny Ciniewicz**, chief executive, Valuation Office Agency.

**Q184 The Chairman:** We are very grateful to all three of you for coming.

As you will have heard from our other three witnesses, this is a broad inquiry, but we are trying to focus it in the way we began to at the very end of that last session. We hope that you will be able to help us with the question about the experience in what one could generally term arm's-length bodies, although we realise that all three of you come under different systems of governance and from a background of different types of accountability. One issue that has arisen in discussions we had with academic witnesses is that there are lessons to be learned for the broader civil service from the way in which some of the arm's-length bodies have conducted their accountability relationships, both with their sponsoring Minister or indirectly with Parliament. We would be very grateful for your reflections on that, as well as some of the other questions.

If I may start broadly with the question that I realise, of course, is different for all three of you, in terms of your own systems—perhaps you would be kind enough to just explain how those work for the record—and whether you think those systems are appropriate and satisfactory for the work that you now do. Perhaps you could identify yourself for the record.

**Philip Collins:** Good morning. I am Philip Collins; I am the chairman of the Office of Fair Trading. The Office of Fair Trading has a fairly conventional corporate governance structure. It has a board and an executive committee. The board consists of a majority of

non-executives, who are appointed by the Secretary of State. Some of them can be civil servants. Non-executives are not civil servants, nor am I as the chairman, nor is my chief executive. We have a board and we have an executive. The executive consists of typically between six and eight members, depending on time to time. Between three and four of those typically sit on the board, so there is a majority of non-executives.

In terms of accountability, we feel intensely accountable to a wide range of people. Clearly the OFT was established by statute, so it is accountable to Parliament. We regularly appear before parliamentary committees, both the Public Accounts Committee and the Business, Innovation and Skills Committee. We also regularly appear before other committees, giving evidence in relation to matters that they are considering, whether it is because of the work we are doing or their interest, for instance, in issues of consumer protection, credit or the way that markets work. In addition to formal accountability to Parliament, we are accountable to the courts. We are subject to the jurisdiction of the High Court, judicial review and in relation to our competition work to the Competition Appeal Tribunal.

Looking more broadly, we have a statutory obligation to produce an annual plan, and we hope to consult on that in advance of producing it. We have a cycle that starts in the autumn, which sets out what we think we should do over the next year, and then we consult on it before finalising it. We are required by statute to publish that plan before the start of the next financial year. At the end of the financial year, we have to produce an annual report, which summarises what we have done, essentially giving an account of ourselves. In addition to that, as you know, this Government has required all Government departments to produce a four-year plan under the SRI0 regime. We produce that and it is constantly under review.

In addition, I think different terms have been used in this Committee and this Committee's previous work on regulators, which talked about accountability, responsibility and scrutiny. We face extensive scrutiny, not only from a wide range of stakeholder groups, consumer groups, voluntary groups, business groups and so on, but also from the media. A core principle of the way we operate is to have a high level of transparency and consult extensively on the projects we are undertaking.

Last but not least is the fact that we have accountability to the Treasury for our spending. We have a budget. My chief executive is the accounting officer, and our accounts are scrutinised by the National Audit Office. The NAO also carries out fairly regular reviews of our work in terms of value for money. That is our structure. In terms of how it works, and you have made the point that each arm's-length body is slightly different, I would argue that it is an extremely effective body, provided, first, that you have a good group of non-executives—building that is not something you can do overnight—and, secondly, you have a strong, effective relationship between the chairman and the chief executive. Those points were both made in the earlier sessions in a slightly different context.

**Q185 The Chairman:** How are the non-executives appointed?

**Philip Collins:** They are appointed by a process under the office of the Commissioner for Public Appointments. I have done three recruitment rounds; we use headhunters. On the last one, we had over 130 applicants.

**Q186 The Chairman:** So it is similar to a private sector body.

**Philip Collins:** It is very similar to a private sector body, and you are looking for a diverse range of skills.

**Q187 The Chairman:** Penny Ciniewicz, there is obviously a difference in your agency; perhaps you could describe it for us.

**Penny Ciniewicz:** I am Penny Ciniewicz. I am the chief executive of the Valuation Office Agency. The agency is an executive agency of Her Majesty's Revenue and Customs. We are civil servants. I am an additional accounting officer appointed by the Treasury with the chief executive of HMRC as our principal accounting officer. In that role I am accountable to Parliament, in particular to the PAC and have similar responsibilities and accountabilities in terms of publishing an annual report and accounts, and scrutiny by the NAO. In addition, a lot of my accountabilities are captured in a framework document. Ministerial accountability for our work comes through the Treasury. As an agency of HMRC, the Chancellor has delegated that accountability to the Exchequer Secretary, as he does for HMRC. The framework document sets out clearly where my accountabilities and ministerial accountabilities lie. I am clearly accountable for the operations and day-to-day management of the agency. The chief executive of HMRC, as my line manager, also has a role in strategic oversight and in advising the Minister on our operations.

We are slightly different, as many agencies are from each other, in the sense that we have a lot of different clients, so we have a lot of statutory responsibilities, which are carried out for a number of different departments. We have several different clients that fund us, and obviously the Ministers in those departments have accountability for the policy and the legislative framework that we work within. We have service-level agreements with those clients for our operational delivery. We are held to account over those levels of services that we provide through that process.

**Q188 The Chairman:** I do not know if you were here when we were discussing in the previous session the question that has come up quite often about how ministerial responsibility tends to be exclusively focused on a Secretary of State. Your relationship with the Exchequer Secretary to the Treasury is the equivalent of that. Is that right?

**Penny Ciniewicz:** It is, I guess, yes. It would be the equivalent of that.

**Q189 The Chairman:** Some of the evidence we have heard that somehow junior ministerial teams are not embraced in the concepts of ministerial accountability does not play a role there.

**Penny Ciniewicz:** Certainly not in our context, no.

**Q190 The Chairman:** Mr Clasper?

**Mike Clasper:** It is different again, of course. I am the non-executive chairman of HMRC. The accounting officer situation is very similar to a normal department, in that the accounting officer, which is the chief executive and permanent secretary of HMRC, is accountable to Parliament for spending the money wisely. On policy matters and so on we are also accountable to Treasury Ministers. In most other matters, it is the Exchequer Secretary to the Treasury, but on some of the Customs and Excise matters it is the Economic Secretary to the Treasury. There is a part of HMRC's activity that is performed by the tax commissioners, in the case of individuals' tax affairs and the tax affairs of companies, where the accountability does not directly go through Ministers. There is this separation which, if we have time later, is a wise separation between policy development, and execution and administration.



**Q191 The Chairman:** Please develop that, because that is something that we find an endless question of discussion—whether that distinction is a real one. It applies differently in different circumstances.

**Mike Clasper:** I am probably leaping ahead to some of the later questions, if that is okay. The important thing is that the Minister and the board of HMRC that I chair perform a similar role in challenging the executive. We get a remit from the Chancellor, which defines the objectives we are expected to meet, and we get voted funds and non-voted funds, and so on, as the resources to achieve those objectives. The XST is involved in the development of the strategy. He is involved in challenging the department to perform better against those objectives. In a sense, from my corporate background, that is very similar to what you would expect a board of a plc to do: to develop the strategy and to challenge on the performance against the strategy. The execution, as I think it should be, is left to the accounting officer and the civil servants, 65,000 of them, who report to the accounting officer.

The important distinction, though, is that, in an individual tax situation, the commissioners of HMRC, of which the accounting officer is one, are charged with interpreting the policy and the law in that particular case as to what is the right tax due and then to collect that tax. Again, I have got some global business experience; that separation is quite important, because it means that the actual affairs of individuals and companies are not politicised through the tax system. I think it is a wise separation, but it is a difference, versus most Government departments.

**Q192 The Chairman:** It is specific to your experience.

**Mike Clasper:** It is extremely specific, as I understand it, to HMRC.

**Q193 Lord Goldsmith:** There are some statutory constraints on HMRC, which I think may not apply to other agencies—for example, the statutory obligations to confidentiality, which would be one of the things that limit what can be done. In the light of what you have said about your board, could I ask Mr Collins to say something about how the board of OFT operates? You may have some similar issues to HMRC, in terms of individual decisions that are being made in a different area, such as enforcement decisions—and I am getting into things that are happening today. To what extent does the board exercise any role in relation to challenging those decisions, understanding those decisions or, indeed, being involved in the making of those decisions?

**Philip Collins:** The board's role is largely strategic and policy, as is set out in our rules and procedures. The board does not get involved in individual decisions about infringements of competition law. It does get involved in decisions about whether or not to refer matters to the Competition Commission, and the reason for that is, to some extent, historic but it is also because there was a feeling at the time, when that provision was introduced, that a reference to the Competition Commission was a very big decision, in terms of expenditure of public money and burdens on business, given that there is no infringement of the law. That was a matter that should be kept by the board.

The situation at the moment, in relation to individual decisions, to some extent has some parallels with HMRC, as those decisions are delegated to individuals within the organisation. They are subject to overall scrutiny by the executive committee. The processes are subject to overall scrutiny by the board. We have just finished a consultation on a review of those processes. Our intention is, subject to reviewing the consultation, which only closed about 10 days ago, to introduce a separate decision-making committee within the organisation to

deal with individual cases. That would still be accountable to the board, but it would be responsible for taking individual decisions. It would also involve a separation of the investigation function from the decision-making function, so the board would have continued overall oversight of the processes, but the decisions on individual cases would be taken by the decisions committee, and not by individuals, as at present.

**Q194 Lord Goldsmith:** If an issue arose in which Parliament or a select committee was interested, which to some extent crossed that barrier between policy and an individual case, who would you see as, as it were, accountable or at least answerable—we have drawn that distinction—to explain what has taken place to that select committee?

**Philip Collins:** If it concerns the quality of what is going on within the organisation, it is a matter for the board and it is probably either for me or my accounting officer. We talk about “cases”; it is a fairly general term. There are situations where we are, for instance, looking at markets and deciding whether or not to make a reference to the Competition Commission or whether or not to take enforcement action. Quite often, those studies result in recommendations to government or they result in the possibility of enforcement action by us. Quite often, that is in parallel with work that is going on, for instance, by a select committee.

The typical position then is we will try to nominate the person who is most appropriate to appear before that committee to give the organisation’s view as to why, for instance, the actions that we are taking or not taking are appropriate. We have done that, for instance recently, in relation to debt management. We have done it in relation to other issues, from milk prices to pig farming, for instance. Our position—and it goes back to some extent to the point that was raised earlier in the discussion with the journalists—is that we would seek to put forward the person who was best qualified, in our view, to express a view on behalf of the organisation to the select committee.

**Q195 Lord Crickhowell:** I thought on hearing Mr Collins’ description of the Office of Fair Trading that it was going to be almost exactly the same in structure and so on as the National Rivers Authority, which I chaired for eight years and which is now absorbed into the Environment Agency. Then I realised it is another sort of body, because it is dealing with individual cases, enforcement action and so on. The NRA was dealing with much broader issues, and very often expressed its opinions about things in public. The board was involved in those policy decisions, right up to the detail of them. That sometimes meant that we were expressing views that were not necessarily popular with the then Secretary of State. All the Secretaries of State on the whole responded very positively and well, and I had very good relations with them. Many of them were former colleagues. What I wanted to ask, in the case of the Office of Fair Trading and the others, is to elaborate a little on your relationships with the Secretary of State or the Minister responsible, and how often you are involved in discussions with them. At the end of the day, where does the responsibility fall in that relationship?

**Philip Collins:** Shall I answer first, and I will deal with it at two levels? First of all, I will deal with the general. We have two lines of responsibility, because BIS is responsible for policy and the Treasury is responsible for funding. We meet the Commercial Secretary to the Treasury on a fairly regular basis. We also meet either the Secretary of State or the Minister responsible for competition and consumer affairs. The last time you looked at this, in 2004, you came to the conclusion there was no conflict between independence and accountability, and that has certainly been my experience. We have an extremely positive relationship with our Ministers, in the sense that they know the value of having an

independent agency, which is governed by a board that has a majority of non-executives. They see the value of the work that we are doing. We have regular meetings; we see the Ministers roughly once a quarter to brief them on what we are doing and to deal with any questions they have got. We have ad hoc meetings. We have a statutory annual plan meeting with the Secretary of State to discuss our plan for the coming year and to get his input on that.

To be specific, where you have a particular project that involves either your own ministry—in this case, BIS—or, as is often the case now, a variety of other ministries, the key for us has been the development of strong engagement with those ministries about the issues, in advance of doing the work. We recognise that our work is only part of a bigger issue, so it is trying to work out what our contribution can be to the policy debate about whether something should or should not happen. We make it clear that the policy choices, if there is a trade-off, are for others and not us, but we try to use our skill, expertise and experience to explain the way in which markets can work better, if certain things are done, or markets may work better if a certain action is taken. For instance, in relation to our recent work on dentistry, we had extensive consultation with the Department of Health in advance of that. Essentially our recommendation was about the renegotiation of the contracts with dentists, so we had extensive consultation with the Department of Health to make sure that what we were proposing to do would be complementary to what they were doing. The experience has generally been positive.

**The Chairman:** If the other two of you want to be comment, it would be helpful.

**Q196 Lord Crickhowell:** Situations are different again.

**Mike Clasper:** The situation is different, although I think both the executive and the relevant Minister view the independent advice that they get from the non-executives as very helpful. I see the Minister fairly regularly; when the department is discussing operational strategies with the Minister, then I think I have attended almost every meeting. He has often asked for one or two of the non-executives to be involved. He has used the non-executive to provide some level of assurance against the very large transformation programme that we are going through in HMRC, and we use the independent non-executives to also provide guidance to some of the sub-committees that report to the accounting officer, rather than report directly to the board. I think we are engaged with the Minister, and he uses us as a means of providing assurance and independent opinion. Obviously we are not in a position to make a public statement that decides tax policy should be over here when the Chancellor wants it to be over here, but that is the different nature of HMRC.

**Penny Ciniewicz:** We are very much part of the policy–delivery continuum. We work very closely with the policy-makers and decision-makers in our client departments, on a number of different levels. We provide updates all the time on how policy is working in practice and issues that may arise. I regularly meet our Minister, the XST, and I keep him briefed on the operational aspects of our performance. We have, for instance, seconded a senior surveyor into one of our policy client’s teams to help them in policy-making. It is a kind of joint enterprise, I would say.

**Q197 Lord Crickhowell:** Having got the responsibility, and therefore the relationship with Ministers, in terms of your relations to Parliament, no difficulties or conflicts arise; you give evidence to select committees that might differ. It is conceivable in some cases that your views might differ from the views that are being expressed or are the views of Ministers.

**Penny Ciniewicz:** My responsibility to Parliament is twofold: as an accounting officer; but also my framework document is clear that I can be called to appear before select committees that want to examine the affairs of the agency. It is also clear, however, that the Minister is ultimately accountable to Parliament. I do that in support of his accountability. I do not find a particular conflict in that. I have not found a conflict in that, in practice.

**Q198 Lord Crickhowell:** I am seeking to explore, because it is parliamentary control we are concerned with over the public sector and the civil service. That is what this inquiry is about. Any other comments on the relationships between Parliament and these different bodies?

**Mike Clasper:** The brief is accountability, but the definition of the word “accountability” is expanding into areas of ethical behaviour and responsibility. This is part of the brief. I would say, from my limited experience, that the frameworks around accountability to Parliament are very strong. It is wholly appropriate that the accounting officer has to account to Parliament for the wise spending of the money to achieve the outcomes that the Minister has set. If I can comment on what I heard earlier, I think it is a very good idea to have a professional body like the National Audit Office providing, if you like, the professional scrutiny of value for money and so on. The Treasury Select Committee, which I have been before, can challenge us on whether we are administering it well and so on. I think the framework is extremely good.

The application, though, is something that should be considered. It is very important that the application of that framework is targeted to improve the capability and capacity of the civil sector and the public sector at large to deliver better outcomes for less money. It is an obvious but vital thing to say in the current environment. The application of this scrutiny should be targeted at that objective: improving the capacity and capability of the civil service. I am a little worried that the climate is one of a presumption of incompetence and a presumption full of mistakes. My experience is that you have a lot of people trying to do a really strong job. They make mistakes; they make judgments that are wrong, but it is very important that the processes do not make people stand back from judgments and decisions. In an environment in which you need to innovate in order to produce better results it is vital that people are comfortable about making decisions that carry some risk. The more the application of this scrutiny drives you to be risk-averse, the more that should be counter the core objectives of the framework.

**Q199 Lord Powell of Bayswater:** As far as you are all concerned, the system works pretty well; it works as it was supposed to when independent agencies were established. But it is clearly not working so well from the point of view of the regular civil service and regular ministries, as you will have heard this morning and must know from your experience. Are there particular aspects of the way in which you exercise your accountability that you think are relevant to other parts of the civil service in how they should be made accountable and how they should deliver accountability; not so much the accounting officer, which is distinct and clear, and we all understand that, but in other areas? How can they get the right balance between what the Minister has to be accountable for and what probably civil servants should be made more accountable for? Do you have views and ideas on that, looking at you particularly, Ms Ciniewicz? As a civil servant in the past, do you have a view?

**Penny Ciniewicz:** Yes, and I have worked in policy departments as well as in operational delivery. I do not feel that my position is particularly different in the role I am in now, compared to when I worked in a policy department. My sense of accountability for what I do and my sense of accountability to Ministers for what I do, in delivering the outcomes that

Ministers need and the country needs, transfers quite readily between policy and operational delivery.

**Q200 Lord Powell of Bayswater:** With Parliament, it must be a bit different surely. Looking at one or two of your previous jobs, were you actually called much to give evidence to select committees?

**Penny Ciniewicz:** No, but then I was probably in more junior roles. In principle, it is a very similar sense of keeping your Minister informed, understanding what the issues are that your Minister is going to be interested in, which affect his or her accountability. Those things are very similar. It is just that in policy departments practically, because they are accountable for the policy and the legislation, more decisions are taken by them personally perhaps or with advice from Ministers, whereas in an executive agency I am taking more decisions on a day-to-day basis.

**Q201 Lord Powell of Bayswater:** There was a mention of the framework documents, which I think you all probably have, in one form or another. Should all permanent secretaries or all directors-general have framework documents that would guide their activities and be a basis for Parliament to question them?

**Philip Collins:** I cannot be sure, but I think all departments were required to produce business plans as part of the coalition agreement. Whether they have all been updated, I am not sure. Whether they have been scrutinised, I do not know, but others may know.

**Q202 The Chairman:** It is not quite the same as a framework document, is it?

**Philip Collins:** No.

**Mike Clasper:** I feel that we get a very clear remit from the Chancellor of what outcomes are expected of us. We publish each year a business plan that outlines how we are going to achieve those things. I think—I would say this anyway from what I have been doing for the last four years—that there is a strengthening of the capability of the civil service to deliver those outcomes, through having a strong critical friend from the non-executives. Some of the reforms that have been put in place in strengthening, if you like, that critical-friend role for the non-executives have been in the right direction because, to some extent, and I think Philip would agree, they are moving in the direction that some of the power of the very successful arm's-length bodies have, from having an independent board, often with an independent chairman. I think they are in the right direction. I struggle with whether the scrutiny will make the system work better. I struggle with that.

**Q203 Lord Powell of Bayswater:** I think you are right; you have put your finger on the problem that our whole political system is adversarial in its nature. A lot of the time select committees are not actually struggling to find truth and justice; they are looking for a hapless victim whom they can attack to make the Government look stupid. That of course is part of the problem that we are wrestling with.

**Mike Clasper:** I am not sure I should confirm that, but I have sympathy for the view.

**Q204 Baroness Falkner of Margravine:** Given that, on the whole, all three of you seem entirely comfortable with your accountability roles to select committees, would you encourage an enhancement of select committee scrutiny through pre-appointment hearings for people at your level, or your chief executives?

**Philip Collins:** We already have—I did not go through that process but the rule was introduced after I was appointed, and my successor will go through that process.

**Q205 Baroness Falkner of Margravine:** What are your views on it?

**Philip Collins:** My views are that it is a useful process to go through and it is valuable. There is a risk, though, that there could ultimately be distortions in appointments. Where, for instance, you put both the chairman and the chief executive through the process, if the Minister has had a choice of candidates, you could potentially get some conflicts between who the chairman thinks he can work with as chief executive, and who the chief executive thinks he can work with as chairman. You may end up with an outcome that is not optimal. When I was recruiting my two chief executives, I was extremely careful to make sure that, of the candidates available, the person who I recommended to the Secretary of State, after consulting him, was somebody who I felt was going to fit the organisation and fit the board; that is fit the whole board.

**Mike Clasper:** I am a little nervous. The current selection of non-executives and my successor, who has just been recently announced, has been done extremely professionally. Headhunters are used. We had an excellent panel, which I was not on, which is appropriate good governance for the selection of my successor. There was a shortlist, and then the Minister, in line with the new approach, had a chance to look at the candidates and conclude that that was a wise decision. I do not know what political scrutiny of the appointment would add to what, at the moment, seems like a very professional process, but I think it carries a risk of politicisation. If one looks at the US situation, some key roles are not appointed for months and months, because you cannot get through the hearing.

**Philip Collins:** My opposite number in the US, the Attorney-General for Antitrust, has just stood down and there is a vacancy that will not be filled now, probably until the spring of next year, after the election. You have a temporary appointment that is not satisfactory. There have been some situations, and there is one in relation to one of the economic regulators, where the process has not worked and that has led to a long vacuum, with the present incumbent having to stay in post, which is not good.

**Q206 Baroness Falkner of Margravine:** Taking you to the situation of Mr Les Ebdon, a recent case where the select committee does the pre-appointment scrutiny and the Secretary of State takes a different decision from the recommendation of the select committee. What are your views on where that situation happens and how detrimental it is or how relaxed you are about it?

**Philip Collins:** I would not want to comment on the individual situation, which I do not know much about—I have read about it—but I think it is detrimental to the system. If you have gone through the public appointments process, which Mike has described and which I have been through on several occasions, I think it is a very good process. You need to be extremely careful you do not create considerable uncertainty and also potential disincentives for good people to apply.

**Q207 Baroness Falkner of Margravine:** Following that line of reasoning, would it therefore be better not for the select committee to have that role at all, if there is a veto that could be exercised by the Secretary of State?

**Philip Collins:** Possibly.

**Mike Clasper:** A crucial point, as Philip has said, is that the more that things like you have just described—which I do not know the details of—occur, the discouragement for good

candidates to enter public service has to be significant. Were that whole process to occur to the next non-executive chairman of HMRC, then I think quite a lot of valuable candidates would say, “I can do other things with my life.”

**Penny Ciniewicz:** I am a civil servant appointed under the civil service processes. The only thing I would observe is that quite a lot of chief executives of arm’s-length bodies will be in the civil service at levels beneath which the civil service commissioners would get involved in the process of appointment. That is something to take into account, if that is being considered.

**Q208 The Chairman:** One of the broad points—I am perhaps speaking from complete ignorance—from looking at the paper that Francis Maude produced, which we all keep referring to as a white paper, but I believe does not have that status, is you have all described different forms of accountability within your organisations. As Lord Powell said a few minutes ago, you seem to be reasonably happy with them in the context of your own work. How do you think they apply, individually or collectively, to what is now proposed? Do you see read-across and say, “Ah, what they are trying to do is to replicate my organisation,” or “his organisation” or “her organisation”. Do you think there are lessons that could be specifically applied to those proposals?

**Mike Clasper:** I am not sure.

**Q209 The Chairman:** They are talking much more broadly of what sounds like more devolved to specialised agencies, to organisations that may have private sector advice, etc, in the delivery of the kinds of services that would normally, in a previous era, if you want to put it that way, have been exclusively done by the civil service in the conventional sense.

**Mike Clasper:** The problem within tax administration is the nature of what we were discussing about the confidentiality of personal tax affairs and so on. The delivery of the vast majority of the activities of HMRC will stay contained within HMRC.

**Q210 The Chairman:** I am sorry; I am perhaps not being clear. I am really saying that, given that you seem to be satisfied with the ways in which you deliver accountability and the services that you do, is this something that we should just generally accept as a way of delivering services, rather than having the rather hybrid situation that we are now developing?

**Mike Clasper:** I think there is value in a hybrid system, in the sense that you look at certain activities, which is what HMRC is actually doing, and decide whether they would be better served by doing them outside of the civil service or inside the civil service, but I would be wary of saying that the prime reason for doing that is some form of change in accountability, because the accountability will always end up back with the accounting officer and the Minister to Parliament. Put it this way: the accounting officer and I are very conscious that, when we go out to a debt collection agency that we think will do a better job in a particular area of activity for HMRC, there is no sense in which we do not feel that, eventually, we will be accountable, through the mechanisms we have just talked about, to Parliament. Yes, it should be hybrid, but I do not think it is fundamentally changing the accountability of the senior civil service and Ministers.

**Philip Collins:** I agree with that from our point of view. We are a relatively small Government department—roughly 600 people—and the core thing for me is to retain their specialist skills and expertise, and the knowledge in the organisation, so they can be effectively deployed. Going back to the point that Mike made, it is doing ever more with

less and making some quite difficult choices about what you do and do not do. There is a constant pressure to do lots of things, and it is very important to have a rational basis for deciding not to do things, as well as the things you choose to do, and to do them well.

We contract out a number of things, particularly some economic research. We contract out things like some of the surveys, but the vast majority of the work is done in-house and is done to a pretty high standard by some highly qualified people. One of the concerns I have about the future in terms of the civil service is the ability to retain and recruit qualified people, who would be potentially capable of earning a great deal more in the private sector, if they chose to, but many of whom stay with the organisation because they strongly believe in the work that they are doing for the economy and for consumers. That is a big challenge in terms of the broader programme for civil service reform.

**Penny Ciniewicz:** From my perspective, it is about what the organisation is there to deliver and how best it can be delivered. That is the test. Organisations in the public sector often have very complex responsibilities and accountabilities, and you need to get under the skin of those delivery accountabilities and be very clear, if you are making a change, why you are making a change, what the risks are and how those risks are going to be managed, or if they are going to be accepted. There needs to be a close examination of the different aspects of that delivery model to make sure that it is made on the best information you have available, and a rational decision is made.

**Q211 The Chairman:** None of you think that you have, as it were, discovered the alchemy that will solve the problems in your different ways and different accountabilities.

**Penny Ciniewicz:** Probably not.

The Chairman: We are very grateful to you. I must say particularly from my own perspective, which may largely be one of ignorance, you have clarified an enormous number of the details of these accountabilities within your organisations. That is very helpful to what we are thinking about. Many thanks to you all for coming and taking the time to help us. Thank you.



Rt Hon Margaret Hodge MP, Rt Hon Sir Alan Beith MP and Bernard Jenkin MP - Oral evidence (QQ 1-26)

**Rt Hon Margaret Hodge MP, Rt Hon Sir Alan Beith MP and Bernard Jenkin MP - Oral evidence (QQ 1-26)**

[Transcript to be found under Rt Hon Sir Alan Beith MP](#)

Christopher Hope, Daniel Finkelstein and David Hencke – Oral Evidence (QQ 156–211)

**Christopher Hope, Daniel Finkelstein and David Hencke – Oral Evidence (QQ 156–211)**

[Transcript to be found under Daniel Finkelstein](#)

Rt Hon Lord Howard of Lympne CH QC and Rt Hon Charles Clarke - Oral evidence (QQ 27-47)

**Rt Hon Lord Howard of Lympne CH QC and Rt Hon Charles Clarke  
- Oral evidence (QQ 27-47)**

[Transcript to be found under Rt Hon Charles Clarke](#)

**Institute for Government, Reform, Unlock Democracy - Oral evidence (QQ 105–129)**

*Evidence Session No. 4.*

*Heard in Public.*

*Questions 105-129*

WEDNESDAY 27 JUNE 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Goldsmith

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lang of Monkton

Lord Lexden

Lord Pannick

Lord Shaw of Northstead

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**Examination of Witnesses**

*Witnesses:* **Andrew Haldenby**, Director, Reform; **Alexandra Runswick**, Unlock Democracy; and **Rt Hon. Peter Riddell CBE**, Institute for Government, gave evidence.

**Q105 The Chairman:** Good morning, and thank you very much for coming to give evidence. Mr Haldenby and Mr Riddell came to an earlier seminar that we had on this subject, before we began our formal hearings. However, as you will realise, there are new members of the Committee who have joined us and our thinking, and the way in which we are proceeding in this inquiry, have altered slightly since we first met in March, so we are grateful to you for returning and also, to all three of you, for providing us with background papers on your positions.

Perhaps I can address this first of all to Peter Riddell. Do you consider that the existing conventions of ministerial responsibility are, in the fashionable phrase, fit for purpose? If we are going to give civil servants more direct accountability, will that involve a changing view of the Civil Service Code and matters like the Osmotherly rules, which govern civil servants giving evidence to select committees?

**Peter Riddell:** The point I would make is they already have changed. It is not a question of whether they should; it is a question of whether they have. You can trace it back to the reforms setting up the departmental select committee system in the Commons in 1979, with more civil servants appearing, as well as to the clear changes that we have observed in the past two years, not least the election of chairs of Commons committees. That has brought about very important behavioural change and made committees more independent-minded and demanding of civil servants appearing before them. That has changed, along with, as I

said in my evidence—and this is something fundamental—the whole set of changes in the late 1980s, with the creation of next steps agencies and more devolution of responsibility to varying degrees of arm’s-length bodies. The taxonomy is complicated. All that has challenged those conventions.

There is a danger of getting too obsessed by the distinction between ministerial accountability and ministerial responsibility. It was very evident in the session that you had with Michael Howard and Charles Clarke that you can dance round on that and get very confused and not get anything very practical as a result. Yes, it has changed, and the current conventions need to be reviewed.

**Alexandra Runswick:** I agree that ministerial accountability is still the right basis for accountability in our governmental system, but—to use that phrase—no, I do not think it is currently fit for purpose. I think there are ways in which it needs to be strengthened. First, there are some structural factors that make effective ministerial accountability quite challenging in the UK. I realise that these are beyond the remit of this Committee, but these are things like the incredibly centralised nature of UK governance, which means that individual Ministers can be responsible for enormous amounts of work in very large departments, and how you effectively manage that is very challenging. Specifically, there are challenges to what we mean by accountability. I do not think that that is always very clear, and different Ministers have interpreted it differently. We saw that, for example, with Theresa May and Brodie Clark. I am not taking a view on whether or not that was the appropriate interpretation but there have been different interpretations and, certainly from a public point of view, there needs to be more understanding of what we mean by ministerial accountability. Is it purely resigning—which would be an exceptionally narrow definition—or is it more about identifying and fixing the problems and taking things forward? I also think there needs to be more independence in terms of investigating breaches of the Ministerial Code, because if we remain with ministerial accountability as the basis of our system, then the Ministerial Code is essential, but also it is important to know when something will or will not be investigated. I do not think at the moment that there is any clarity in that.

**Q106 The Chairman:** I should make it clear that last session this Committee, in relation to the Health and Social Care Bill, took a clear-cut and perhaps slightly didactic view of ministerial responsibility and accountability, and therefore, in a sense, this Committee does not feel confused about that. However, we recognise that this is something that is constantly for debate.

**Andrew Haldenby:** At the risk of disagreeing with the Committee, I do not think that the convention of individual ministerial responsibility is fit for purpose and others who might take that view would include Ministers in the previous Labour Government.

**Q107 The Chairman:** We did not say it was not fit for purpose; we said you could define it.

**Andrew Haldenby:** I am sorry. I agree that it can be defined, but I do not think it is fit for purpose. Others who would take that view include Ministers in the previous Labour Government, such as David Blunkett, Caroline Flint and Liam Byrne; and, reportedly, in this Government, the Home Secretary and the Education Secretary, but also some current civil servants who were kind enough to come to the meetings that we organised. The point that they all make is that it does not provide enough accountability for performance in the civil service itself.

**Q108 The Chairman:** Accountability for performance?

**Andrew Haldenby:** Yes, within the civil service. Broad worries about performance in the civil service and Whitehall were identified in the capability reviews in the last Government. Let me give a couple of anecdotes. In this Government, in the Cabinet Office, there is one team that is supposed to be delivering the Open Public Services agenda, which is the Government's key public services policy. Last November, there were 10 members in the team; today there are 10 members in the team, but they are 10 different people. There has been a complete change in the personnel. There are other examples that one could mention. Equally, I think this Government has been surprised by some of the employment arrangements in Whitehall. In particular, it is quite common for Ministers to find it difficult to get things done on a Friday because there is a very rigidly-applied flexitime system, by which officials work their 10 days over a fortnight in nine days, and do not come in every other Friday. I mention these two examples, which suggest that, without strong accountability, any organisation will start to work in its own interests, rather than in the interests of its mission. What all these people feel, and what I feel, is that there is an absence of accountability of performance. It is this overall idea that Ministers, not civil servants, are responsible for their performance that clearly is part of that.

On the Osmotherly rules, as Peter said, there has clearly been a trend towards giving select committees the ability to call civil servants and ask them questions. To me, that does not imply that civil servants should be accountable to Parliament. Select committees should be able to call people—maybe anybody—from throughout society, but that does not mean that all those witnesses should be accountable to Parliament.

**Q109 Lord Crickhowell:** Ever since Lord Howard of Lympne confronted us with the difference between accountability and responsibility, it has become rather the centre of our inquiry. I therefore read Peter Riddell's paper with particular interest. You address the matter very thoroughly, except in paragraph 8. Incidentally, earlier you talked about dancing around this question, but I do not think that we can just dance around it; we have to get to the core of it. In paragraph 8, you say that the "terms of engagement" need to be revised. In the margin I wrote, "But what?", because you do not say. Then in paragraph 9, where you talk about responsibility and blame, you say "the current model should be revised to focus on this central aspect of accountability". As a Committee, we are going to have to address, rather more specifically than just dancing around a subject, what we think should be done. Therefore, it would be very helpful if you would now answer the questions you only partially answered in your paper.

**Peter Riddell:** I did not want to give all the answers in my paper. That is my defence, anyway. There are two points there. One is that I think the essence of accountability is answerability. It is offering explanation and remedy. That is the crucial point. Alexandra rightly raised the issue of always demanding resignation, which I think is a futile pursuit. In the extreme, yes, resignation is the answer, but having the executioner's axe there all the time demeans the subject and works away from it. The core remains that the Minister gets up, even if—and this goes back to the Michael Howard discussion—he cannot clearly be held blameworthy or responsible for whatever happened in his department, and offers the explanation. However, in parallel, you have the accounting officer role, which we may want to explore later because it is a fluid area where things are changing rapidly. Committees should be able to talk to individual civil servants, in parallel with the Minister offering an explanation on the floor of the House or to a committee about the details of what happened.

Taking up Andrew's point, I think you have to look at it in two dimensions: the parliamentary one and the internal one. One thing that everyone recognises is that it is not just Ministers who have been moved too frequently in the past—although less often in the past two years—but also civil servants. In the civil service reform plan, there is an interesting argument that the people in charge of projects—they use the horrible term “senior responsible officer”—should be there for much longer and, in terms of major projects, which the Government now identify through their Major Projects Authority, Parliament should know which official is responsible for a big project. This is clearly true with the Olympics, for example: the Culture, Media and Sport Committee in the Commons can identify an official that they can talk to in parallel with the Minister. There are various other aspects of it. This is a recognition of reality. I do not think there is a magic bullet.

I do not think—and this is where Andrew and I might disagree—that you can easily separate policy and implementation. They are always intertwined. You can pick out examples, the classic one being the Bank of England, which you were debating yesterday in the Financial Services Bill. However, there are not many other examples where the Minister and the officials are not intertwined. You have to recognise that and have parallel lines of accountability for it. There are very specific things that you can do to improve it.

**Q110 Lord Crickhowell:** We will come back to the other bodies, but I have a question on one point arising from what you said. In an earlier session, I pointed to a recent example in the Ministry of Defence, where the official—a very capable official—now in charge of procurement had sat with the Minister, answering questions together, each prepared to comment, the Minister only coming in if he wanted to add something, but with both of them answering for their respective responsibilities. That seemed rather a sensible approach. Would you agree that we should have more of that?

**Peter Riddell:** Absolutely. There is another way that I would change it. The Public Accounts Committee has traditionally taken the permanent secretary as the accounting officer. One thing that Margaret Hodge has done is had some Ministers, particularly Francis Maude, along to the Committee. I think that is thoroughly desirable, because most accounting decisions involve a Minister as well as a civil servant. The classic example is the big row about regional fire offices. Despite what your colleague, Lord Prescott, says, anyone analysing it knows that it was a mixture of ministerial and official mistakes that cost us as taxpayers £500 million. To identify it as one or the other is complete nonsense. Therefore, the two should appear together, both in front of ordinary select committees and the PAC.

**Q111 Lord Lang of Monkton:** We spend a lot of time talking about the linguistics—accountability, responsibility, answerability, transparency and so on. Isn't the problem really—and I think Peter Riddell was touching on this—that there has been huge mission creep and that the old distinction between the civil service and the executive is being seriously blurred by the constitutional change that has taken place gradually? Is it the case that we will never get to a clear solution by changing the linguistics and that, rather, it is the structures that need to be defined more clearly? Have you any thoughts on that? I would be interested in the views of all three of you.

**Andrew Haldenby:** I strongly agree with that. I think that the principle of ministerial appointment of senior civil servants, particularly permanent secretaries, would be that kind of structural change. One thing that was interesting about the Government's civil service reform plan, announced last week, was that Francis Maude rejected the idea that there was a structural problem. He said that the structure of Whitehall is fine, and it is just the habits

and culture and so on that have to change. That was surprising to me, because in other areas of the public services, the Government are rightly arguing that structures have to be changed to make people accountable, with, for example, new commissioners to commission policing, and new kinds of schools to provide greater freedom for head teachers. I think the right way to look at the problem is as a structural one, encapsulated in the doctrine of ministerial responsibility.

**Alexandra Runswick:** It is probably not surprising that, as somebody who campaigns for constitutional reform, I think that clarity and structure is a good thing. However, I do not think it is the only thing that matters. We have increasingly complex notions of accountability that have not been thought through, not just in terms of the civil service but also in terms of policy. For example, under both the last Government and this one, in terms of academies and free schools, you have schools that are independent of the local authority but are accountable to the Secretary of State, but it is not clear what that accountability means. So there are bigger issues around being clear about the different kinds of accountability mechanisms we need for different relationships that are not just about the structure but also about defining the words. However, I agree that we want clarity in the structure.

**Peter Riddell:** Yes, it is constitutional, but it is also heavily administrative and managerial. Some of the challenges are within Whitehall itself. Naturally, this Committee's focus is on the relationship between Whitehall and Westminster, but a lot of it is ensuring there is clear responsibility, as well as accountability, for the running of projects. One of the crucial issues—and this is addressed in the civil service reform plan—is the attempt to ensure that there is greater clarity about who is running a big project. The real frustrations for Ministers are when you have a constant turnover of officials doing big projects, particularly when you are talking about big IT projects, which will on average last the time of three Secretaries of State, and officials will often also change a lot. Getting that right is as important as clarifying the relationship between Whitehall and Westminster. If someone is clearly responsible for running a big project for several years, and the incentive structure is there and they do not always seek to get promoted out of the job, that is as important as what we are talking about.

**Q112 Lord Lang of Monkton:** Do you think all that can be recodified?

**Peter Riddell:** I think that it is more to do with practice than codes. The classic example at the moment is universal credit. It is one of the biggest changes to Work and Pensions for a very long time. The director-general responsible for that would, I hope, be in post for four or five years, and will be questioned by the Work and Pensions Select Committee and the new Public Service Provision Committee in this House—alongside, as Lord Crickhowell rightly says, the varying Secretaries of State. I am saying that ministerial accountability-plus is the answer. It is very specific. The core is the political but you have to look at the administrative as well.

**Q113 The Chairman:** That then gives the focus of that responsibility, in practice, to the civil servant.

**Peter Riddell:** It is a recognition in the management of the project, but it is also not attempting to believe that you can always have separation. You can have separation in some areas, but in many cases it is bound to be blurred. You cannot clearly distinguish: “there is the Minister, and there is the civil servant.” After all, if you are to have a successful policy, you have to implement it correctly. I would argue that, for too long, Ministers have not



been interested in how it is going to work out. The classic example is tax credits. If Gordon Brown and Dawn Primarolo had paid more attention to the implementation of that policy, it would have been a lot cheaper for the rest of us.

**Andrew Haldenby:** I disagree with Peter. In Government, there is inevitably a blurring between policy and implementation, political and official. However, at least in terms of performance, that blurring must be fought because as soon as people feel that they are not accountable, their performance will drop. While I agree with Peter on his core philosophical point, I think the requirement is still to react to that by clarifying the accountability.

**Q114 Baroness Falkner of Margravine:** I have a question on that point first, Mr Riddell. If you want the DG responsible at Work and Pensions to be there for four or five years, should there not be a contractual relationship, as is the case in New Zealand?

**Peter Riddell:** The New Zealand model is one of those wonderful things that one talks about, but New Zealand is an awfully long way away. It is rather like when people talked about the Swedish education model. Everyone was very in favour of it until they talked to the Swedes and they said, “Hold on, we have already amended it”. One of my colleagues was in New Zealand for two months last year, and came back saying, “Well, it is not quite so simple.”

The contractual element is, I think, very interesting. For some projects, it is probably justified. The Olympics is an interesting one. We shall have to see how successful it is, but putting the buildings up has been successful, leaving aside what happens in the next two months. There are cases where that can happen, but you always have to recognise that politicians—and there are plenty of ex-Secretaries of State round this table—are not going to be able to say, “Okay, that’s fine, that’s implementation.” That is not the way the world works. They know that they will have to be on the *Today* programme or whatever. I would guard against over-legalistic and formal situations.

**Q115 Baroness Falkner of Margravine:** That brings me to my next question, which is about the role of Ministers in the appointment of permanent secretaries. I know that Mr Haldenby agrees with that, but I wonder whether we could hear from the others as well. Also, since the Government propose that, would all three of you address whether, if that happens, you believe that the civil service will be politicised, so to speak?

**Peter Riddell:** My view is that, first, it is not quite as radical as it is portrayed. The key point is whether the candidates presented to the Secretary of State are above the line, under the conventional process of interviews. That is the key thing. Often in appointments you will have two or three above the line and a selection is made. To say that a Secretary of State has to have a veto, which they do—I am looking at the evidence that you got from Sir David Normington, the First Civil Service Commissioner, where he points out that effectively there is a veto now—I cannot see a problem. I have talked to several Secretaries of State about this, and in practice it has happened that they have effectively been given two or three candidates.

The more interesting thing, as already happens now, is whether the Secretary of State should be involved in defining criteria—whether we want an outsider, what kind of experience we want, and all that stuff. However, provided that people go above the line on the conventional criteria, which are non-political, I do not see a problem. One aspect that has not been touched on enough is the role of non-executive directors. That is a new factor under this Government. The suggestion is that the lead non-executive director for a department would be on the selection board, which I think changes it quite significantly.

**Alexandra Runswick:** I agree with Peter. I think that a more interesting role for a Minister to take is in defining the role—what they want the person to be doing and the skills that are needed in the area. Ministers can be involved in appointing some senior civil servants, although I would want to be careful about how it is done. My understanding of the New Zealand model, given that we have already raised it today, is that they are given only the opportunity to veto. There is a candidate, the Minister can say no and they will be given another candidate, but they are not given a shortlist that they then pick the candidate from. That might be one way to make sure that there is not that increased politicisation. However, I think they can have some role in the process, yes.

**Andrew Haldenby:** On your first question on the New Zealand model and the length of appointment for projects and so on, a previous Prime Minister, Tony Blair, made a speech in November 2004 which contained his considered thoughts on civil service reform after having had experience. One of his key recommendations was an end to tenure in senior posts—so fixed-term contracts for senior civil servants. That is important to mention.

On the point of permanent secretaries, what this Committee has discovered through its previous hearings is that there is an unofficial right of veto—I think that was Charles Clarke's phrase. That is not the same as a policy of ability to appoint; at the very least it is a sort of blurred way of appointment. That is why, reportedly, Secretaries of State in this Government, such as those for Education and in the Home Office, have been highly frustrated. If the reports are true, they would like to have a more active ability to change the permanent secretary.

**Q116 Baroness Falkner of Margravine:** And you do not think that that would politicise the process.

**Andrew Haldenby:** Let us get this straight. If, at the moment, Secretaries of State have an informal veto and an ability to influence—if you are going to put it in those terms—that is politicised. Our previous research on civil service appointments indicated that since the 1980s, particularly starting in the Treasury, Secretaries of State and Ministers took more of a role in that influence. So, if you like, politicisation started some time ago and is now a part of the system. We should be relatively relaxed about that. The question is competence: are Secretaries of State able to have a permanent secretary who they are confident in, who is competent and whom they have the ability to change, where necessary?

**Peter Riddell:** I have one qualification to what Andrew said. The key is that, among the choices with which they are presented, all meet the criterion of being non-political. Of course, every choice made by a Minister is a political choice. I do not regard that as the significant thing. The significant thing is: do any of the candidates presented come in a political category? There is another suggestion in the civil service reform plan about the ability to bring in temporary civil servants. My greater worry is the number of special advisers—which currently stands at about 85. That issue has been evaded by the previous Government and the current Government—although it is complicated because of the coalition—but it is one that has to be faced. You can discuss something in a cabinet system, with an explicit mix, but at present there is a danger of evasion. In practice, people who would not serve another government, which is the criterion, are appointed as temporary civil servants, and that has to be watched. I am not saying it is wrong but, if you are going to do it, make it explicit.

**Q117 Lord Lexden:** Could I take our triumvirate briefly back to the reform plan announced last week, in particular to two features of it—the establishment of departmental boards and a “robust cross-Government management information system”? Do you see these as purely improvements in the structure of the administration, or do they have wider constitutional implications for accountability to Parliament?

**Peter Riddell:** I think that they have. We at the Institute of Government have been very involved in these discussions, particularly in the management of information, because we have produced a report on it and I am glad to see that a number of the proposals in the report are in the civil service reform plan. If you had Francis Maude here, he would say that this is absolutely what Ministers should be involved in. The whole idea of departmental boards was to involve Secretaries of State in understanding, and getting external advice from high-quality private sector people on administration. It is too early to reach a judgment. In some cases, it seems to have worked and in some cases not. It is to ensure that there is another political channel in the running of departments. As I mentioned earlier when discussing the appointment of permanent secretaries, I think that non-executive directors should be involved. To go back to Lord Crickhowell’s example, when you have a senior official in front of a committee, you should also have the lead non-executive director, because they are a central part of that process. I do think that that changes it fundamentally.

On management of information, it is partly the case that you take the horse to water, but will the Minister be interested? Some will be; some will not be. We have a lot of dealings with your distinguished colleague and a regular speaker, Lord Heseltine. I know that he excited Lord Crickhowell and other members of the Thatcher cabinet with his views on the subject. Not many Secretaries of State are like that. The ideas are fine, but I do not see that many Secretaries of State being very interested. Some are interested; some are not. But it is very important for accountability.

**The Chairman:** I think that we should move on to what one could broadly call external questions of accountability at official level and also to the points that you raised in passing about accounting officers. Perhaps we can develop that a bit.

**Q118 Lord Goldsmith:** I wanted to pick up on something that you put forward, Miss Runswick, with the aim of getting a little bit of elaboration, and also the views of the others before us. Unlock Democracy has suggested that you could give consideration to a broadening of the accounting officer approach by having what you termed an “ethical accounting officer” with the possibility of seeking written directions from Ministers not just on accounting issues, but on issues of propriety and ethics, and therefore create a more formal system for putting the Minister, to some extent, on the spot in relation to those issues. Just elaborate a little more on why you see this as a desirable aim. I look to see what Peter Riddell and Andrew Haldenby have to say about it as well.

**Alexandra Runswick:** The first thing I would say is that we recognise that the accounting officer principle is not perfect, and that there may need to be work done on it. I know that Margaret Hodge has raised the issue, in evidence to you, that ministerial directions are not used enough, even where they are possible. In a sense it is about being able to have some kind of whistleblowing mechanism. That is not the correct terminology but we wanted to make sure that there were ways in which senior civil servants could raise concerns about things that they believed needed extra scrutiny so that Parliament, if it wanted to, could have debates, or a select committee could challenge them, but in keeping with the ministerial accountability principle. It was about extending that from purely an accounting principle—

from the use of public funds principle—to other issues about whether or not something is being done appropriately, or whether or not it is right to be doing it.

**Q119 Lord Goldsmith:** There is an analogy with the ability of civil servants to go the office of the Attorney General when there are issues about legality and, to some extent, constitutional propriety. Have you looked at whether that is a patchwork that has been useful?

**Alexandra Runswick:** We come at it very much from a public understanding of Parliament and governance point of view, so we are very interested in public elements of scrutiny. There may well be elements in terms of those channels that can be strengthened, but in terms of the public being aware of issues, and Parliament as their representatives being able to scrutinise them, that was why we were particularly interested in extending the accounting officer principle.

**Peter Riddell:** That is a very interesting issue. It has already been extended from straight value-for-money to feasibility. The Treasury did that a couple of years ago. At the Institute of Government, we have advocated extending it to the policy-making process. It could be used if a permanent secretary felt that a policy-making process had been totally inadequate, and you could get into the ethical areas that Alexandra described. There is one bit of caution—and I have discussed this with a number of permanent secretaries—about using more ministerial directions. They are always used a bit more before a general election, while everyone protects their backs, but we can leave that aside; that is life. Another issue is whether you would overformalise the relationship between the permanent secretary and the Secretary of State. Some permanent secretaries have been worried that their relationship is an informal one of trust and it might be undermined if it was overformalised—if there was a feeling, in the back of the mind, that the red card of the ministerial direction would be produced. That model—to mix metaphors again—is the kind of nuclear option that you would be very reluctant to use.

One person who would be interesting and you might want to talk to on that subject is Sir Tim Lankester, who did it most famously 20 years ago over the Pergau Dam and who is producing a book on the subject, which should be interesting. It can be extended, but you have to be very careful about it, because there are losses from overformalising the process. It may result in Secretaries of State relying rather more on their special advisers rather than civil servants. It may result in a kind of curious politicisation, as the civil service becomes defensive and politicians become defensive as well. It needs to be properly debated. It can be extended, but one has to be careful about it.

**Andrew Haldenby:** I do not know if it is the right answer to the question, but in terms of accounting in that sense and who should be responsible in Whitehall for the value for money of a particular project, it seems to me essential that there is a clear accountability and there should be personal accountability, not just at the top of the Whitehall hierarchy but at the different levels going down. If that means individual civil servants having to come forward to give an account of their ability to achieve value for money, then that seems perfectly sensible. Margaret Hodge has raised concerns that, as public services open up and become more decentralised, it feels like there are lots of accounting officers around and they become more difficult to keep tabs on. Broadly speaking, that is right. The people running schools should be responsible for getting value out of their budget, and the same is true for hospitals and so on.

**The Chairman:** Lord Hart, did you want to develop that in terms of different roles and functions?

**Q120 Lord Hart of Chilton:** We have seen a paper—and I do not know whether you have seen it—from Professor Talbot, who splits the roles of civil servants into four broad categories: the counsellor, who gives policy advice to the Minister; the chief executive running the ministry; the collaborator, where there is cross-departmental and public service co-ordination; and the conservator, which we have just touched on, protecting the due process of the legal and constitutional position of the Secretary of State, and holding to the Ministerial Code. I wonder whether you have a view as to whether those broad categories are correct, and whether you see, as he says, that there is a different level of accountability depending upon which of those functions you are fulfilling as a civil servant.

**Peter Riddell:** There are different levels of accountability. It is quite interesting to look at the evidence given at the Leveson Inquiry by Jonathan Stephens, who is permanent secretary at DCMS. At the beginning, he listed the various levels of accountability and different roles that he has. It is fascinating and complicated. It is not in Professor Talbot's terminology but it is not dissimilar. I thoroughly recommend that the Committee look at that, as his definition of there being multiple roles is very interesting. Everyone in public life has multiple roles, and it is particularly complicated for a permanent secretary.

The interesting point on the conservator role, and what lies behind Lord Goldsmith's question, is that it has broadened out from propriety into efficiency and effectiveness. That is where we get into a much more complicated area. You have to recognise that there are multiple accountabilities. Some of the looser ones—again, the civil service reform paper is rather interesting on that—are to the top of the civil service. That tends to be ignored as well. The legal relationship is with the permanent secretary. His bosses, in many respects, are the Head of the Home Civil Service and the Cabinet Secretary. I know that it is slightly more complicated now with the dual leadership, but it does not really alter the point. The accountabilities lie there, too, because they are the people who decide the pay rises, performance and so on.

**Q121 The Chairman:** Andrew Haldenby, do you have a comment on that?

**Andrew Haldenby:** Just a thought, although perhaps I am repeating myself. Permanent secretaries have to be accountable and if they are able to carve out an area of their role where they say, "Terribly sorry, I am really accountable to myself on this", then that would not be satisfactory. Perhaps it comes under the heading of one of the other questions the Committee is considering, which is whether the civil service should act as a constitutional check on Ministers. This talk of propriety makes me think of that. I am no constitutional expert, certainly compared to members of this Committee, but it seems to me that that really should be the role of Parliament, and the civil service should be accountable to the Queen and Parliament, via the Government, for delivering the Government's agenda.

**Q122 The Chairman:** We come back to the general role of Parliament in this. You have just mentioned it, Mr Haldenby, but we have not specifically talked about the statutory requirements of civil servants under the new legislation, or indeed things like the Civil Service Code, which has various headings under which civil servants are supposed to operate. Would any of you suggest amending that to include accountability of some kind?

**Peter Riddell:** There is an interesting point about the civil service provisions of the Constitutional Reform and Governance Act 2010—this is a point that your next witness, Andrew Blick, makes in his submission, and I agree with him. It is potentially important but

completely untested, as indeed it was always intended. It provides a framework but it does not go much beyond that. It does not help us to answer many of the questions that you have been asking for the last 45 minutes. It provides *in extremis*—and this goes back to the point about ministerial directions—but it is not helpful on a day-to-day basis. There is a provision in it, which I think Lord Norton of Louth got inserted in the middle of the night, about responsibilities to Parliament. Again, nobody has really explored that. It is far from clear that civil servants are given proper training and explanation about their responsibilities to Parliament as a whole, but that is a different matter. It is untested, and what I find interesting is how rarely it is ever referred to in conversations I have had with senior civil servants. It just does not come up. It is there in the background. If something went wildly wrong, I am sure that people would run to it, but not in an operational sense.

**The Chairman:** The other two of you are nodding on that one. Lord Pannick, did you want to come back on that general point?

**Q123 Lord Pannick:** Peter Riddell, you describe in your note the accountability of civil servants to Parliament as the “most fraught” area. You suggest that Parliament and Whitehall need to discuss new rules for appearances by civil servants in Parliament. Do the three of you think that one can articulate the basic principles that should be the foundation of those rules? Is that possible? Are they there already?

**Peter Riddell:** The problem is that the Osmotherly rules are an internal Whitehall document that have never been accepted, debated or endorsed by Parliament. Because of the changes that we have been talking about, much of it looks out of date and needs revision. Indeed, what is interesting is that the civil service reform plan already suggests this fundamental change: moving from the current accounting officer as the embodiment of all accounting officers and the position being accountable, to the person, having accepted that position, being accountable. Margaret Hodge has been summoning previous accounting officers, who were responsible for projects, to the PAC, rather than the permanent secretary who has only been there a few months. That is already a change. What we are saying is that we need a new description of an evolving relationship. That is what Lord Crickhowell talked about when Bernard Gray appeared alongside the Defence Secretary in front of the select committee. All that is a change from what was envisaged 30 years ago under the Osmotherly rules. The only way to do that is to have discussions.

I know that both Margaret Hodge and Bernard Jenkin in the Commons are getting that debate going. Previously, the image has been—and it is certainly true of the clerks in both Houses—that they have nothing to do with the civil service, apart from formal witnesses. I know that the previous Clerk of the Commons had never met the Cabinet Secretary or the Head of the Civil Service—although they were one person before December. That was extraordinary. You have to start talking to try to work out a reformulation—although it will not be perfect—rather than being at opposite ends, as is happening now. There are things like the change in accounting officer and the idea of having responsible officers for big projects and them being expected to appear. I would prefer it not in codes but in a redefinition of working practice. There are a number of ways forward that are happening and that can be done, such as civil servants appearing alongside Secretaries of State. All that can happen.

**Q124 Lord Crickhowell:** I am sure that it is very desirable that there should be a senior civil servant—a permanent secretary—who comes and answers and is responsible for the project. However, in practice, project management is more complicated than that. I am

scarred. I was chairman of a quango and I have also been chairman of a private sector company doing an extremely complicated IT contract at the centre of government. The relationships are very complicated, because the Government may employ contractors to manage their projects, then go out and do business with a firm like mine and there has got to be a relationship. My experience is that the difficulty in both these cases is that the permanent secretary who appears and answers has a perhaps natural inclination to want, above all, to make sure that the civil service and his department emerge unscathed, and therefore you do not always get the truth. If we are going to have an effective system, you have to have a clear picture given to parliamentary committees about who is involved in the project and know exactly what the complications are, otherwise you will not get the true story. That is what happened in the case of the project I was supposed to be involved in; the story never came out.

**Peter Riddell:** There is potential progress there with the identification of, to use this horrible acronym, SROs as the people managing projects. If they are in post for longer, and if they are identified to the relevant select committee, there is potential progress there. I gave the example of universal credit. Another example is the health reforms. There is an identifiable person that the Health Select Committee can go to as these develop over the next few years.

**Q125 Lord Irvine of Lairg:** Do you think that it would be useful if we were to recommend that there should be a strong presumption within civil service practice that a senior civil servant should lead the implementation of a major project from beginning to end, since otherwise there is bound to be insufficient accountability when major failures occur?

**Peter Riddell:** Yes.

**Andrew Haldenby:** Yes, but it begs the question: why does this not happen routinely? Why do Whitehall departments not have an ambition to achieve that?

**Q126 Lord Irvine of Lairg:** My question was whether it would be useful if we made a recommendation.

**Andrew Haldenby:** I am so sorry. Yes, it would be.

**Peter Riddell:** It would also go with the grain. I think things are moving in that direction. It would be very useful for the Committee to recommend that.

**Q127 The Chairman:** Alexandra Runswick, would you agree with that?

**Alexandra Runswick:** Yes, I completely agree with that.

**Q128 The Chairman:** Sorry, we will come back to you. Andrew Haldenby has something to add on a different question.

**Andrew Haldenby:** It is just the question of why this does not happen already. It takes me back to the wider issue of trying to sharpen up accountability and performance in Whitehall. I cannot resist mentioning, since we were talking about the civil service reform plan, that one of the key ideas in it is that Whitehall will identify the bottom 10% of performers, and put them on probation. If they do not improve, then out they go. In a speech in 2004 Tony Blair said, “Conversely those who, relative to their peers, are in the lowest 20% of comparative performance will have to address the causes ... and will be moved out if they can’t meet the demands of the job.”

**Q129 The Chairman:** We are looking for a steer from you as to whether a prod from us would make a difference.

**Andrew Haldenby:** Prod away, please.

**The Chairman:** Thank you, all three of you, very much indeed. It has been very interesting. You have been kind enough to address all of the issues we wanted to address and more. Thank you all very much. We look forward to continuing the dialogue.



## Institute for Government – Written evidence

1. The Institute for Government is about to launch a major research project on accountability, covering relations between ministers and civil servants, and with Parliament. We have already held preliminary discussions with senior ministers, Permanent Secretaries and chairs of select committees involved in the debate. However, because we are only at the start of the project, the views that follow are necessarily tentative and should be regarded as personal, rather than, yet, a collective view of the Institute for Government.
2. This an elusive subject, not least because the word accountability is too broad to be useful on its own. There is widespread view—particularly amongst parliamentarians and former senior civil servants—that the existing conventions are not working satisfactorily.
3. Before responding to your specific questions, it might be helpful to outline some background on why previously understandings on accountability are not working. The long-standing convention is that ministers are individually accountable to Parliament for any actions by their department, whether or not they personally authorised or were aware of them. This defines accountability as answerability: essentially explaining what has happened and what is being done to remedy any errors and to prevent them recurring. On that view, civil servants are accountable through ministers to Parliament. But that has existed alongside the separate accountability of Permanent Secretaries to Parliament, and, in particular, the Public Accounts Committee, in their role as accounting officers for both the probity of expenditure and value for money, and feasibility.
4. The central question is the link between accountability and responsibility. The tensions between the two have increased over the past 25 to 30 years. This is both because of the increasing devolution of managerial responsibility to officials and semi-independent agencies of various kinds and because of the increasing complexity of multi-year projects, often covering the periods in post of several ministers and officials. Senior ministers have expressed interest in the New Zealand model of commissioning where there is a contractual relationship between ministers setting outcomes and heads of departments, appointed for terms of 3 to 5 years at a time, accountable for delivering them. There is now more than two decades of experience and this model has attracted a good deal of interest from commentators in the UK. There is no clear evidence that this model is better, in view of increased scepticism about the policy/management split. The New Zealand background is anyway very different with a more distinct civil service under the umbrella of the State Services Commission. Any move in that direction in the UK would require an improved performance management system within departments that would set out what it was trying to achieve.
5. A move away from pure ministerial responsibility in the UK has worked where an institution can clearly be seen as both responsible and accountable for a policy. The classic example is the Bank of England's Monetary Policy Committee over the setting of interest rates. Since 1997, it has been accepted by Parliament, the media and the public that the Governor of the Bank and members of the MPC are the right people to ask about monetary policy and interest rates, and not the Chancellor of the Exchequer. But there are relatively few such clearcut examples, where responsibility for actions stops at the head of the agency/arms length body rather than goes up to a

minister. In many cases even of executive agencies, the lines are blurred, because ministers are still expected to account publicly—whether on the Today programme or in Parliament—for actions and errors. Within departments, attempts to separate policy (ministers) from implementation (officials) seldom hold up in practice because there is no such division. Ministers rightly take an interest in implementation and most policies, whether successful or unsuccessful, bear the mark of both ministers and civil servants. Good policymaking, as the Institute for Government has argued frequently, depends on close attention to feasibility and implementation. Much of what is subsequently labelled as bad policy, is because insufficient attention was paid to the practical steps of delivery and implementation. Ministers are inevitably involved after the basic policy decision has been taken.

6. Yet ministers are frustrated, and more, by being held to account about programmes for which they have little direct responsibility: for instance, huge IT projects started by their predecessors (often two or three before). The turnover of civil servants, recently as, if not more, rapid than that of senior ministers, means that, in managerial terms, it is hard to hold individual officials to account for the running of such projects.
7. Against this background of the blurring of lines of accountability, Parliament and its committees have found it hard to establish who is responsible. Select committees, and particularly, the Public Accounts Committee, have become more demanding in following this trail in seeking to question individual civil servants rather than just accept the current Permanent Secretary as the institutional spokesman for a department. There are welcome signs of movement here from the Government that former Permanent Secretaries/Accounting Officers will be allowed to be questioned on major projects. Civil servants are in a complicated position since their traditional constitutional obligation is solely to speak on behalf of ministers. The Osmotherly rules, an internal Cabinet Office guide, never endorsed by Parliament, are no longer a sufficient guide.
8. My overall conclusion is that Parliament, the civil service and ministers need new terms of engagement. There are no simple solutions whether in moving to a more contractual basis for employing Permanent Secretaries to distinguish implementation more from policymaking, or more formal, legal procedures of within departments such as extending the system of ministerial directions. The risk is of losing the flexibility of advice that is an advantage of the present system.

#### Overview

9. In answer to questions 1 and 2, the convention of individual ministerial responsibility is necessary, but no longer sufficient. It should be interpreted as essentially about answerability to Parliament, not specific responsibility or blame for actions. Blame, let alone ministerial resignation, is always a highly subjective political matter, depending on the circumstances of the time, political and media attitudes towards a minister in trouble and the view of the Prime Minister of the day. These cannot be codified. The current model should be revised to focus on this central aspect of accountability of explanation and remedy as discussed above.
  10. I am sceptical of the need for, and value of, amending the civil servants' and special advisers' codes except as I discuss later.
- #### Accountability of civil servants to ministers
11. On question 5, as stated above in paragraph 4, the expansion of government activity, and the increasingly fractured nature of the state, has undermined traditional views of ministerial accountability for civil servants. This is part of a broader debate about ministerial relations to agencies and arms length bodies. As the Institute for

Government argued in its report on ALBs, ‘Read Before Burning’, there needs to be a much clearer taxonomy of these bodies and their accountabilities—to the benefit both of the ALBs and of ministers.

12. On question 6, ministers should be consulted, as now, over the job specification for their Permanent Secretary, affecting the search for candidates, but they should also, with the Prime Minister, have a veto over a nomination. Secretaries of State could not pick whom they want on personal or political grounds but they could stop someone they do not want. The Government has now suggested that Secretaries of State, along with lead non-executive directors, should be involved more in the appointment of Permanent Secretaries. With the caveat noted above, there is nothing inherently wrong in this but it needs to be considered along with questions about whether Permanent Secretaries should be on fixed term contracts and how, and who, should review their performance. The point about non-executive directors underlines how they have now become part of the accountability picture.
13. On questions 7 and 8, there is, and should be, both an informal and a formal check. Informally, civil servants should feel free to discuss with ministers whether there are better/cheaper/more effective ways of achieving their objectives. Far from the caricature of civil servants being obstructive to politicians, a greater danger, particularly just after general elections, is of civil servants being insufficiently challenging, not over ends, but over means. Civil servants want to win the trust of incoming ministers and are therefore reluctant to challenge them for fear of being thought hostile and obstructive. The formal checks are legal and financial: to ensure that ministers remain within the law, a constant problem with the rise of judicial review, and are spending money properly, the accounting office role. The latter covers value for money and feasibility. Permanent Secretaries are entitled to seek a ministerial direction if they believe there is irregularity, impropriety or poor value for money. Permanent Secretaries have been reluctant to seek such directions ( though there tend to be a few before general elections as a protective measure) because they are reluctant to over-formalise relations with ministers and undermine the mutual trust which is central to the relationship. However, if there is an increasing focus by Parliament on the individual actions of civil servants, as opposed to their accountability through ministers, more Permanent Secretaries may seek such directions. This is an important area worth exploring.

#### Accountability of civil servants to Parliament

14. This is the most fraught area where existing conventions are most strained. On question 9, it is appropriate to hold accounting officers directly accountable to Parliament. Otherwise, it is a matter of not holding civil servants accountable in the sense of responsibility of blame, but requiring them to explain what happened. This is a very tricky area. Can ministers prevent particular civil servants appearing before select committees? How can civil servants avoid being asked their view on ministerial policies? There are risks not only of politicisation, in the sense of appearing to favour one party, but also, more seriously, of making officials more risk averse. Policy advice by officials should remain protected, but officials should be under a specific obligation to explain implementation.
15. Both Parliament and Whitehall need to discuss new rules for appearances by civil servants. These should be fresh understandings guiding the behaviour both of civil servants and of select committees, which would naturally have to be approved by ministers. Initially, it would be best to have a concordat on this issue, and only then to consider whether to have formal rules approved by Parliament.

16. On question 12, Parliament should not be formally involved in the appointment of civil servants as opposed to the current strong advisory role in appointments to a limited range of public bodies. This would blur the accountability of Permanent Secretaries to Secretaries of State and would increase the risk of politicisation. Also, it might blunt select committees if they were part of the appointment process. However, there is a case for informal consultation with the chairs of select committees whenever a Permanent Secretary vacancy occurs about the criteria for selection of candidates. Moreover, Permanent Secretaries should appear before the relevant select committee as soon as possible after appointment.
- Accountability of non-ministerial departments
17. On question 14, there are clearly weaknesses here. Ministers should be fully accountable for policy affecting such departments, while the official head should be separately accountable for management and performance. On question 15, there is no clear line, as argued above. Operational independence does not remove the need for accountability, both managerially and politically.
18. On question 16, I do not have sufficient detailed knowledge.
- Accountability of special advisers
19. The influence of special advisers varies enormously depending on the character and approach of both the appointing minister and the adviser. In theory, the role is to provide advice and to be a political link, to outside interests, party supporters including MPs and to the media: to do what civil servants cannot do. That is a valuable role. The practice has at times been less satisfactory as advisers have acted as attack dogs for ministers against other ministers and occasionally against civil servants.
20. On question 18, messy. Special advisers operate in an accountability limbo, in theory governed by their code but, in practice, by what their minister is willing to approve. All Permanent Secretaries can do is provide some private advice to ministers and special advisers. They have no disciplinary power when the adviser is appointed by a minister. As recent events have shown, advisers both need to be clearer on what is appropriate and inappropriate in their roles. This could be helped by induction and training, which is largely non-existent now. Above all, ministers need to be made more aware that they will be personally held to account for the actions of their special advisers, including answering questions in Parliament.
21. On question 19, the key line of accountability to Parliament should be via ministers, rather than by advisers themselves. However, temporary or contract civil servants should be held accountable to Parliament like other officials.
- International perspectives
22. The forthcoming Institute for Government study will be addressing this question. My impression is that in most cases, civil servants are held more directly accountable in other Westminster-style parliaments, such as Australia and New Zealand, than in the UK, but that is a tentative conclusion at this stage.

19 June 2012

Bernard Jenkin MP, Rt Hon Sir Alan Beith MP and Rt Hon Margaret Hodge MP - Oral evidence (QQ 1–26)

**Bernard Jenkin MP, Rt Hon Sir Alan Beith MP and Rt Hon Margaret Hodge MP - Oral evidence (QQ 1–26)**

[Transcript to be found under Rt Hon Sir Alan Beith MP](#)

Sir Bob Kerslake, Head of the Home Civil Service, and Sir Jeremy Heywood CB CVO,  
Cabinet Secretary – Oral evidence (QQ 312–338)

**Sir Bob Kerslake, Head of the Home Civil Service, and Sir Jeremy  
Heywood CB CVO, Cabinet Secretary – Oral evidence (QQ 312–338)**

[Transcript to be found under Sir Jeremy Heywood CB CVO](#)

Dr Felicity Matthews, Lecturer in Governance and Public Policy and Professor Matthew Flinders, Professor of Parliamentary Government & Governance, Department of Politics, University of Sheffield – Written evidence

**Dr Felicity Matthews, Lecturer in Governance and Public Policy and Professor Matthew Flinders, Professor of Parliamentary Government & Governance, Department of Politics, University of Sheffield – Written evidence**

[Submission to be found under Professor Matthew Flinders](#)

## **Dame Julie Mellor DBE, UK Parliamentary Ombudsman and Health Service Ombudsman for England – Written evidence**

### I. INTRODUCTION

I am grateful for the opportunity to make a written submission to the Committee so early in my term of office as Parliamentary Ombudsman (I took up the position from Ann Abraham in January this year).

This opportunity is especially timely since I am currently conducting a significant reappraisal of the office's strategy and considering options for new ways of working that can enhance the role played by the Ombudsman in empowering citizens, supporting Parliament and in improving public services.

Since my comments are specific to the role of the Parliamentary Ombudsman and its potential contribution to the overarching theme of executive accountability, I am taking up your invitation to submit 'other views' rather than reply directly to the consultation questions.

### 2. THE OMBUDSMAN AS A CHECK ON MINISTERIAL RESPONSIBILITY

As Margaret Hodge remarked in a recent speech on 'Accountability in Today's Public Services' (Policy Exchange, 15 March 2012), 'Both the Freedom of Information Act and the role of the Ombudsman have helped to open up the civil service to public account and so alter the conventional principle of ministerial responsibility'.

I fully endorse that perspective and its implicit reinforcement of the principle behind the founding legislation of my office in 1967, namely, that the Ombudsman should be very much 'Parliament's Ombudsman' and its mission to 'humanise the state bureaucracy' on behalf of citizens. There is in other words, beyond individual dispute resolution, a desire to contribute to the improvement of public services in the round.

### 3. SOME EXAMPLES

By way of illustration, I would point, for example, to reports published by my predecessor on matters such as tax credits, Equitable Life, occupational pensions, and healthcare for the elderly as instances of that broader ambition being realised in practice.

More specifically, I would cite the response by the Public Administration Select Committee (then chaired by Tony Wright MP) to my report on the Rural Payments Agency's administration of the 2005 Single Payment Scheme (*Cold Comfort*, 15 December 2009).

On that occasion, PASC was able to require the attendance of the relevant Permanent Secretary to explain the Department's reasons for refusing to accept the Ombudsman's recommendation. The Committee session was successful not only in eliciting such an explanation but in achieving a change of heart on the part of the Department.



Dame Julie Mellor DBE, UK Parliamentary Ombudsman and Health Service Ombudsman for England – Written evidence

It is therefore certainly the case, as indicated by Margaret Hodge, that the role of the Ombudsman already serves (and has done so since 1967) as a real, albeit insufficiently acknowledged, modification of the principle of Ministerial Responsibility.

In the case of departmental maladministration, I can reasonably expect to hold to account a department for its failings by addressing my practical concerns to the Permanent Secretary (and, in principle, to more junior officials) and to solicit the support of PASC, and other select committees, in that task. Whilst it is not my regular practice to 'name and shame' individual civil servants, the focus of my attention is very much on 'civil service accountability' as exercised by officials rather than ministers.

My remit, incidentally, also extends to non-ministerial departments: HMRC, for example, is one of my office's regular 'customers'. The Ombudsman is, in effect, already an instrument for the indirect accountability of civil servants to Parliament.

#### 4. A BROADER CONSTITUTIONAL REMIT

More generally, such activity is part of a broader constitutional remit that identifies the Ombudsman as a central feature of what some commentators have described as 'the fourth integrity branch of the constitution'. That 'fourth branch' comprises various 'unelected accountability mechanisms', including regulators, inspectorates, ethics and standards agencies, as well as ombudsmen, and has become a visible sign of heightened Parliamentary scrutiny.

4.2 In the past, the understandable focus on individual dispute resolution has perhaps obscured that wider function. As I embark upon my tenure of office, I am, however, very keen to shine a light on my constitutional role by engaging not just with PASC but with other select committees, in both Houses, as well as more directly with individual MPs and Peers.

#### 5. CONCLUSIONS AND ISSUES FOR FUTURE CONSIDERATION

In short, and in direct response to your call for evidence, I submit that the current model of individual ministerial responsibility is no longer the most appropriate and effective means of holding the government to account. The very existence of the Parliamentary Ombudsman since 1967 has in fact cast doubt on its propriety but has been little recognised. The Ombudsman is in other words a largely untapped parliamentary resource for holding the executive to account, specifically at the administrative level.

I would be very pleased to explore further with the Committee the role that the Ombudsman already plays, and could play more expansively in the future, in working as an accountability mechanism of this sort and in serving as a resource to Parliament.

Further exploration would, no doubt, cover the following broad issues:

- The modification to the principle of Ministerial Responsibility already afforded by the existence of the Parliamentary Ombudsman (since 1967) and the implications for the interpretation of the principle more generally
- The scope within the existing legislative framework for the Ombudsman to hold civil servants to account even more effectively

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- The options for refining the Ombudsman's remit to enable heightened Scrutiny.

It could also, I suggest, usefully entail consideration of:

- The ability of an adverse Ombudsman report to trigger a hearing before a select committee (and in due course trigger a debate on the floor of the House of Commons)
- The possibility of the Ombudsman establishing formal channels of communication with the House of Lords, especially in the context of constitutional reform of the second chamber
- The ability of the Ombudsman to initiate investigations without the need for a specific and individual complaint
- The ability of the Ombudsman to receive complaints directly from citizens instead of by MP referral only, as at present

I trust that these matters are of interest to the Committee and salient to its current inquiry. If so, I look forward to hearing from you further.

8 June 2012

## Lord O'Donnell GCB – Oral evidence (QQ 277–295)

*Evidence Session No.6*

*Heard in Public.*

*Questions 277 – 295*

WEDNESDAY 11 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Powell of Bayswater

Lord Shaw of Northstead

### Examination of Witness

#### Lord O'Donnell GCB.

**The Chairman:** I apologise, Lord O'Donnell, that we have been overrunning slightly. I hope we are not causing you problems in terms of your own schedule.

**Lord O'Donnell:** Not yet, but I do have a proposal as to how I can short-circuit your work, which is to basically say, in answer to all the questions, I agree with Lord Wilson and Lord Turnbull. I almost certainly would have agreed with Lord Armstrong if I had listened to him as well. I have other things that I think are important but, as far as those questions are concerned, you can take as read that I agree with everything they said.

**The Chairman:** In that case, I shall move straight to Lord Powell, who I know had some specific points he wanted to put to you, Lord O'Donnell.

**Q277 Lord Powell of Bayswater:** Lord O'Donnell himself is the guilty party for provoking this whole discussion about civil servants and accountability to Parliament. After all, it was his explicit inflammatory letter to the chair of the Public Accounts Committee that started this whole debate and got it in the newspapers. Here we are, on this Committee, spending days and days asking all these questions. Why exactly did you think what the chair of the Public Accounts Committee was proposing was so dangerous?

**Lord O'Donnell:** Because I strongly agree with the Osmotherly rules and I think the system that we have has worked extremely well. I think there are enormous things we need to do to improve accountability, but they are none of those.

**Lord Powell of Bayswater:** My next question is: what are the things you would like to do to improve accountability?

**Q278 The Chairman:** First of all, we have to distinguish between accountability and responsibility, do we not? Or do you, Lord O'Donnell, simply agree with what has been said before?

**Lord O'Donnell:** Yes, I agree with what has been said before. Let us get on with it. It comes back to what you said about the *Civil Service Reform Plan*. The Government's programme of reform—the aim of making managers accountable for performance within a clear framework of objectives and resources, distinguishing the roles of policy formulation and service delivery, and introducing, where you can, contracts that define standards of performance and responsibility for meeting them—is all sensible stuff. That is not from the non-white paper that has just been out. That was from the 1991 document. Let us be absolutely clear about this: those principles have been there a long time and they work. That is what we need to get out.

Defining the clarity of outcomes is what is really important. If you want to be accountable, accountable for what? If you are looking at the accountability side of it, look at both ends of it. Civil servants are incredibly accountable. I have appeared before many select committees. It was at about the rate of one a month, sometimes with Ministers beside me. I was very happy to do that. I think it is crucially important. The bit that we really need to think about is: so what about the select committees? What is their outcome? What is their success measure? Why does a select committee look at a certain set of questions? I have been sitting in the Treasury dealing with multi-billion-pound decisions that were never the subject of any accountability. I really think we need to think about whether they are given the right expert advice. What are their objectives? Do they have a set of objectives? Can we hold them to account on those objectives? Are there some success measures? Who should do that? There is a massive set of issues there that would really improve accountability. This point about trying to sharpen up accountabilities is very important. I mentioned this to you in our earlier session. We have an issue here about the black and white. There are some things for which you could absolutely say “ministerial responsibility”. You have got some clear distinctions and I gave you the MPC example.

The truth is that there is a lot that is in the middle. I could write a book about this and I would probably call it *Fifty Shades of Grey* if it had not already been done. Those are the complex bits, and there we are in the world of shared accountabilities. That is where it gets difficult, but that is where we are. I would like to think that we might be able to explore the question that was put about arm's-length bodies and the like. As a civil servant, you would dearly love to be able to be in charge, accountable and responsible for something. Quite often, unfortunately, you are not put in that situation; your objectives are changed halfway through and all the rest of it. I think we might be able to get further if we started to think about these agencies. Do we want to push them to be rather more independent and to have a situation, again using the analogy of the MPC, where the Minister sets up the agency framework, the objectives and their resources and accounts, as I have described there, and then says, “Right, I am going to expect you to account for this in front of select committees”? That would be fantastic and I think that would give us real genuine accountability and responsibility.

**Q279 The Chairman:** The extension of the concept of the arm's-length body—we have talked to several of them with very different forms of governance—is really one of the themes of the non-white paper. Do you find that something that you would accept?

**Lord O'Donnell:** All I am after is clarity. I will come back to it; the MPC is a model of clarity on this. Some of the arm's-length bodies are not very clear; they are not at all clear.

**The Chairman:** They can be quite difficult to understand.

**Lord O'Donnell:** Absolutely. I would say, if you really want to improve accountability, the civil servants' bit is tiny. The really important bit is: can you define and be clear about who is accountable for what, in the way you set up the agency?

**Q280 Baroness Falkner of Margravine:** Would you do that on an ad hoc basis depending on the agency? As our chairman has said, we took evidence from different ones that had completely different *modi operandi*.

**Lord O'Donnell:** Indeed. We have got a bit of a hotchpotch here.

**Q281 Baroness Falkner of Margravine:** So the framework document would be the place where you would give a very clear steer that the chief executive, or the chairman, executive chairman or whatever is accountable?

**Lord O'Donnell:** That is for Ministers to decide, as to how far they want to go in that. I am not trying to take the authority away from them. If Ministers say, "Actually, I really care about this; I really care about how it is done, because the 'how' is going to be incredibly political, so I want to keep complete control of this", I think you need to question if you really want an arm's-length body at all. Why not keep it in-house? The Minister should be prepared to say, "Look, what I am really interested in is an outcome; I want to achieve X number of medals in the Olympics. I am going to set up a body and say, 'Get out there and do it.'"

**Q282 Lord Powell of Bayswater:** The corollary of that is that then the heads of those agencies are indeed accountable to Parliament. That includes their fate. They are not necessarily subject then to civil service disciplinary bodies and so on. If they have apparently failed, a select committee is quite justified in demanding their heads.

**Lord O'Donnell:** You have to understand that they would be appointed by a proper procedure and accountable to a Minister, but it would be perfectly proper for a select committee to say, "Look, Minister, you have made this person accountable, responsible and given them the power. They have failed. In our view, they should take the consequences of that." That is the other side of it. Of course, there is an interesting question, if you are going to do that and get people to accept that kind of process, about what you are going to do about remuneration. Frankly, in a world where you are in that sort of situation, the private sector, as Lord Turnbull said, would clearly reward you appropriately for that, because you are taking quite a big risk.

**Q283 Lord Crickhowell:** I understand exactly what you are saying in connection with arm's-length bodies, and it is relatively easy to do.

**Lord O'Donnell:** But we have not done it.

**Q284 Lord Crickhowell:** Coming back into the centre of government, how on earth do you do it? You have a department; it has got some project. Increasingly nowadays, it calls in a consultant and then panics about the advice that is received from the consultant, and calls in another consultant and probably a third consultant. Eventually, with a bit of luck, the project gets underway. That is literally what is happening in some departments. I have agonised reports from people trying to give advice to departments.

**Lord O'Donnell:** You must not tell Francis Maude, because he thinks he has stopped consultants coming in.

**Lord Crickhowell:** You can do it for arm's-length bodies, but how do you do it in the departments themselves?

**Lord O'Donnell:** If it is a project within a department, all of the work I have seen on projects suggests that we should do more of the work upfront before we start the project. All of the lessons on failed projects have been because we have rushed into them. I think there should be some work pre-planning. All of the work that has been done on defence procurement has suggested that a bit of money upfront makes a lot of sense. It may well be that you need to use outside resources for that, so possibly there is a role for consultants there. Personally, I am quite anti their use in general, certainly when it becomes a permanent thing rather than a temporary thing, but if there is a skill set they have that we do not have, let us use it. That is right but, if you are talking about the accountability of a project that is going to have a multi-year life and go through many Ministers and possibly many officials, then the accountability systems we have are probably the best we can do.

**Q285 Lord Crickhowell:** You talk about clarity; a select committee can look at an arm's-length body, and you have its clear objectives set, but how is it going to look at the department? It is not going to have these clear objectives that you say are so desirable. It is not going to know what they are.

**Lord O'Donnell:** I would like to think that departments should have quite good clear objectives. What would stop you having clear objectives?

**Lord Crickhowell:** I am probing as to how we would achieve this objective.

**Lord O'Donnell:** We have tried, on various occasions, to sort these things out by trying to get people to be absolutely clear about what it is they are trying to achieve.

**Lord Crickhowell:** And to say so publicly so that a select committee can examine them on it.

**Lord O'Donnell:** Absolute clarity is my No. 1 of the 10 commandments I gave in this lecture—strategic clarity about outcomes, not about inputs. What are you trying to achieve? Then try, as far as possible, to accept from your civil servants evidence about the best possible ways of achieving that. Your civil servants will, I hope, look outside at all the possible sources of evidence and bring them together, impartially, to present to the Minister the best possible evidence-based piece of advice on what he should do.

**Q286 The Chairman:** If you are thinking about the terms of engagement for the individual civil servant, as you responded to Lord Powell when he asked you about the other end of the process and dismissing someone, you mentioned the potential impact on remuneration, and we heard earlier from Lord Turnbull and, to some extent, from Lord Wilson about that. The problem with that kind of thing, and imposing what one might call a private-sector dimension on the civil service, would be disturbing the balance of all of the things that have developed from Northcote–Trevelyan, which are enshrined now in the statute. Do you agree? How do you see these things integrating with the non-politicised long-term employment of civil servants and so on?

**Lord O'Donnell:** What I am thinking of is this area where we are talking about agencies, where we are very clear about outcomes and the sort of people who are there. You are saying, "Please deliver us a successful Olympics," for example, and everything associated with that. That sort of contract works there. When you are talking about a permanent secretary, it is very different, because the permanent secretary is there to give advice on a

whole range of things. The outcomes, alas, are not as clear cut as one would like. In this case, I would very much agree with what Lords Wilson and Turnbull said. Particularly, I am a very strong believer in the appointment process.

I strongly agree with what Sir David Normington said in his letter, but I would pick up on what Andrew Turnbull said: I think that is a really important point about the other end, of sacking permanent secretaries. It is really important we have some process around that and that Ministers do not just say, “I do not like this person because they have been telling me that all the things I want to do are illegal and stopping me doing those things. I would like someone who says ‘Yes, Minister’ more often.” There is an important point for Prime Ministers in particular. You should possibly ask them about this. Prime Ministers in particular have often said to me, “We need someone strong to go along with that Secretary of State to make sure that it works.”

**Q287 Baroness Falkner of Margravine:** It almost sounds, from what we have heard this morning, as if this is a well founded concern, without naming instances, but does it happen very frequently? It seems to me quite remarkable that you would get that kind of breakdown in relationship. Certainly in the evidence we took from Ministers, I think there was only one mention ever of that happening, from very experienced Cabinet Ministers, who had served across a range of departments.

**Lord O'Donnell:** It can happen. It is always difficult, but it is a very important and can be quite a tough relationship. If you are a permanent secretary and you have to say things that the Minister does not like, sometimes they can take that rather personally and hold it against you. Similarly, if you are a Minister and you feel that your permanent secretary is not helping you deliver your programme, you can think, “I would be much more successful if only I had somebody else as my permanent secretary.” These things do happen.

**Q288 Baroness Falkner of Margravine:** It seems that you are echoing what I think Lord Turnbull's concern was: that the appointment process proposed in this new paper—of potentially a couple of names going forward to the Secretary of State—is not so much of an issue, but the interference, once a person is in place and possibly with a change of Minister and a new Minister coming along, and then a breakdown in the relationship, is the greater problem there.

**Lord O'Donnell:** No, I think both are very important problems. I think you are reading into the paper something that is not in the paper. The paper itself does not say there will be a list from which a Minister will choose, if I remember rightly, having seen various drafts of it. I do not think it is there. There was certainly a briefing that this is what was intended, but it is not in the paper. Personally, I have gone on record as saying before now that I think the idea of giving Ministers a list is not a good one, for all the reasons that are laid out in David Normington's letter. Ministers are involved in this a lot. When you are the Cabinet Secretary, you are not going to appoint someone as permanent secretary about whom the Secretary of State says, “Look, I just cannot work with that person.” That would be a failure on all parts if you ended up there. It does not happen. We manage the process well now. The system can handle this. The bit that is not mentioned in the paper, as Andrew Turnbull said, which is an issue, is the other end of the scale.

**Q289 The Chairman:** The paper says, “Allowing secretaries of state to have greater influence in the appointment of”. It is “greater influence”. It does not specify.

**Lord O'Donnell:** I think if you ask Secretaries of State what influence they have at the moment, those who have not been through an appointments process would not know.

**Q290 The Chairman:** If you were advising us about, as it were, the top line of what we should say in response to all of the concerns that Lord Powell rightly identified—which perhaps you have focused most clearly on in the last few months, at least in the public awareness—what would you think would be the most sensible thing to say?

**Lord O'Donnell:** The most important thing you can do is say, “Let’s think about how we improve the accountability system by looking at select committees and what they do. Let’s be clear with the select committees what their objectives are, how they are going to be measured against them, who is going to do it”—the quis custodiet question. Wouldn’t that be fantastic?

**Q291 The Chairman:** That is essentially more about resourcing them than challenging their role.

**Lord O'Donnell:** No, there is no need to change their resources. Just say: “What is your objective? Let us be clear about objectives. What are your success measures?” Let us have somebody then look at them and say, “I hope your objective in this process would be to improve accountability.” That is the thing that would make the most difference to accountability. We have a system. We have changed it. We have just had elected chairs, which I happen to think has improved it, but it will be hard to get evidence for that. In terms of why they select certain subjects and not others, a cynic would say that it is all to do with the public profile of those on the committees—surely not.

**The Chairman:** Not at this end of the corridor.

**Lord O'Donnell:** Not at this end of the corridor, exactly, but could we not get a bit further and say, “Here are some really big issues that have never been looked at by select committees. Why is that?” I have had some fantastic select committees, where the relationship has been really good and where I think they have really made an improvement. I have had some where, frankly, they never really got on to the important stuff.

**Q292 Lord Lexden:** How do we ensure that they examine those things that ought to be examined? Ought there to be some form of code of practice for select committees? Senior civil servants perhaps would then be usefully associated with the process of developing such a code, so as to help to direct select committees to the areas that really matter.

**Lord O'Donnell:** I would say, because there will be questions about conflicts of interest if you have the civil service there, that we have the Institute for Government, the Constitution Unit at University College London, and lots of academics out there. Let us use these resources to think about how we could do this, then put it to Parliament and let Parliament have a serious look at it and hopefully do something. That would make a real difference.

**The Chairman:** Thank you very much. That is a great advantage, and Lord Lexden wants to follow that.

**Q293 Lord Lexden:** I have one more question on responsibility when things go wrong. We have heard your views on the issue of select committees mentioning names and the difficulties that that would arouse. Would it be appropriate for select committees, having in a report quite clearly identified, after discussion with civil servants and the Minister, that a series of mistakes may have occurred, not to seek to name names but to have thereafter a very clear statement from the department as to what has been done to try to ensure that such mistakes never occur again? The process goes one further stage than the inquiry, but



without the committee being in any way involved in the disciplinary action that an individual department might want to make.

**Lord O'Donnell:** At the moment, departments respond to select committee reports and in their responses are supposed to, and in general do, say precisely how they are going to respond to this. It creates another problem though. You are forever fighting the last war on those fronts. For example, should select committees always be backward-looking? Should they always be ex post? Should they think about ex ante? Should select committees be thinking about the next set of crises and sorting out a situation so that we are robust and ready? I am thinking now about the financial sector, for example. Sitting through the Financial Services Bill, I thought that some of the things we are trying to do and some of the amendments we are putting down are all about solving the problems that emerged out of the last war, not about getting a robust situation for whatever the next problem will be. That is again one of the areas where you could say to select committees, "Do you see your role as just digging over the past or do you see your role as saying, 'Actually, we are not sure that you have the capability to manage future crises?'"

**Q294 The Chairman:** It is both, surely.

**Lord O'Donnell:** If that is true, they do not do much of the latter.

**Q295 The Chairman:** Thank you very much. You said at the beginning that you had some very clear things you wanted to say to us. You have said some of them very clearly. Were there others that you have not?

**Lord O'Donnell:** No, I think that is it. I have got off my chest the things I wanted to say. I think it really matters. If we are going to improve accountability, we need to be absolutely clear about outcomes and who is dealing with them. The accountability process itself is the issue here. If you just look at the civil service part, I do not think you are going to make massive strides forward. What you need to do is look at select committees' resources, the way they do their business and the way they decide what to do.

**The Chairman:** Thank you very much. Thank you all very much. I am grateful to you all for taking the opportunity to come and both listen and contribute. Thank you very much, Lord Turnbull and Lord Wilson, for staying. Lord O'Donnell, thank you for your thoughts in the last session.

Office of Fair Trading; HMRC; and Valuation Office Agency - Oral evidence (QQ 184–211)

**Office of Fair Trading; HMRC; and Valuation Office Agency - Oral evidence (QQ 184–211)**

[Transcript to be found under HMRC](#)

**David Penman, General Secretary, First Division Association - Oral evidence (QQ 212–238)**

*Evidence Session No.6*

*Heard in Public.*

*Questions 212 - 238*

WEDNESDAY 11 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Powell of Bayswater

Lord Shaw of Northstead

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**Examination of Witness**

**David Penman**, General Secretary, First Division Association.

**Q212 The Chairman:** Good morning, Mr Penman. Thank you very much for coming. I realise you are fairly new in your present post, although you obviously have considerable experience within the First Division Association. I am sorry if we are intruding on your time when you are getting your feet under the table of the association. May I mention that this Committee hearing is being broadcast? If, when you first speak, you could give your name and title, that would be helpful from the point of view of the broadcast.

As you know, we have been conducting this inquiry for a couple of months now, since the new session of Parliament started, and this is our penultimate evidence session. We have reached the point where we need to start thinking about solutions to some of the problems that we have heard about. We have come to a general view, from a wide range of witnesses from different places, that there are questions to be asked about the operation of what one could generally call executive accountability in 2012, and whether the conventional and traditional methods of that accountability are working, particularly in relation to civil service accountability in the wider political environment. I would like to start by asking you what your view of the present situation is, and then we will move rapidly on to ask you about potential changes.

**David Penman:** My name is David Penman and I am the newly elected General Secretary of the FDA. The FDA is a union that represents senior managers and professionals in the public sector, the majority of whom work in the civil service, but we also have members who are senior managers in the NHS. We interact with our members, either collectively or

individually, on issues or concerns that they have in the workplace as civil servants in their relationships with other managers, other civil servants, politicians and Parliament.

Our general view is that individual civil servants have concerns about the operation of those issues around accountability.

**Q213 The Chairman:** Is this something they bring to the FDA?

**David Penman:** It is. Our more senior members are more generally the ones who find themselves under a level of scrutiny or may have concerns about the role they play in giving evidence to select committees. There is a degree of concern about the operation of certain committees and the tone and nature of the scrutiny they are under. I would suspect that—whether parliamentarians would agree with whether they should be uncomfortable or not—it is time to review and have a look at those processes and procedures to see whether they can be improved so that there is confidence on all sides.

**Q214 The Chairman:** One of the things that have been drawn to our attention is what some people regard as the inadequacy of the Osmotherly rules on civil servants' appearances before select committees. What do your members say to you about those? Is this a live issue within the association?

**David Penman:** It is not particularly a live issue. I think civil servants would probably have a fonder view of the Osmotherly rules than some parliamentarians. They are there as a guide to civil servants about the evidence they give. It requires them to play a proactive and informative role in the evidence they give to select committees. It makes it clear what that role is in delivering evidence on behalf of the Minister and the Government rather than as individuals, which to some degree gives them some rules of the game and some protection. Looking at some of the evidence from others who have come to this Committee, it seems quite clear that there is a degree of dispute about the Osmotherly rules and whether they are adequate or not. What surprised me was that, in effect, they were not an agreed set of rules. I was trying to find out what happened in Scotland in relation to similar rules and processes and, as I understand it, whilst there is greater consensus about it, they have again not necessarily been agreed by Parliament. However, rather than it being an executive order for civil servants, some attempt was made to reach an agreement so that it was not a convenient tool for beating civil servants with.

**Q215 The Chairman:** If you wanted to look for greater consensus and a revision of the rules in general, whose responsibility would you see that as primarily being?

**David Penman:** That is a difficult question. Who would represent the interests of the civil service in negotiating with Parliament in the interests of Parliament? Perhaps a wider review allowing a number of stakeholders, including us, in representing the role of individual civil servants, and other unions, would be the way forward. It may be too ambitious to try to seek an agreement, but there should at least be some attempt at if there is going to be some revision, so that all sides feel some comfort in the rules of the game when giving evidence.

**Q216 Lord Lexden:** Could you give us an indication of what you would like to see in the revised rules from a civil service point of view?

**David Penman:** We have not encountered any requests from our members specifically about changing the Osmotherly rules, and I do not think the pressure for change is necessarily coming from civil servants as a result of that. There is no direct change that we as a union are seeking in relation to those rules. From the debate that is taking place, you

can see that pressure is coming from elsewhere and from select committees, rather than from civil servants. The issues are the operation of those rules and the conduct of select committees, rather than the rules themselves.

**Q217 Lord Lexden:** In their current form, the rules are so tight and restrictive that, if they were implemented literally, civil servants would not say anything, or nothing of great interest. It is because they are applied flexibly in practice that we get somewhere.

**David Penman:** That may well be the case, but there is no clamour for change from civil servants for the Osmotherly rules to be revised and changed. Therefore, it is for those who wish to change them, or feel they are too inflexible, to propose those changes. As with any set of rules, it is about the operation of them as well as the detail.

**Q218 Lord Powell of Bayswater:** I should declare an interest; I was once a member of the FDA a long time ago. The Government are obviously aware of the parliamentary clamour for some changes in the practice and accountability of civil servants, and must be giving it quite a bit of thought. Have you seen any sign of them consulting the FDA, or would you expect them to want to consult the FDA on this subject?

**David Penman:** There is no sign, but of course we would expect it. As the union that represents the most senior civil servants in the land, we take pride in the fact that, as a trade union and professional association, we represent the interests of the civil service, as part of our founding principles, as well as individual civil servants. So the operation of a good, effective and efficient Government is something that we have always tried to play a constructive role in. If there are changes around those issues, individual members will have individual concerns, which we would want to represent, and we as a union will look to take a pragmatic view about what seems best in the civil service and in the greater public interest.

**Q219 Lord Powell of Bayswater:** Your cast of mind on this seems to be principally about concerns. Do you think that quite a lot of senior civil servants might welcome the opportunity to appear more often and themselves explain things to select committees, on the ground that they can possibly do it more effectively than Ministers?

**David Penman:** My experience of our members is that they recognise that they play a pivotal and important role in the delivery of public services. There is a degree of accountability and transparency that goes with that role. I do not have the sense from our members, as some politicians have tried to portray it, that their role is simply to try to obfuscate and obscure the evidence trail of their ineptitude. Actually they are very committed to what they do, and in many cases they are probably best placed to provide the information that select committees need. The question is about how select committees sometimes conduct themselves. In effect, they are going into a hostile environment. It is not about trying to find the evidence and trying to find what makes for better government, but about trying to pin blame on individuals. That creates an atmosphere of defensiveness from civil servants. In that environment they do not have the opportunity to defend themselves in the way that others do. Perhaps that is one of the things that lead to that more defensive nature.

**Q220 Lord Powell of Bayswater:** Is that not just an aspect of the confrontational nature of our political and government system?

**David Penman:** It is, but we are talking here about the role of select committees and how individuals give evidence. Inevitably, politicians are driven by politics as well as public interest, and where those things conflict and politicians conduct themselves based more on a

political interest rather than the public interest, you get those potential conflicts. So there is maybe an inevitability in relation to that. That is why we need rules of the game that civil servants can take some comfort from.

**Q221 Lord Powell of Bayswater:** I hope that they will not present themselves as too much of a protected species. They should recognise that sometimes things have to change.

**David Penman:** I do not recognise terms like that among our members and what the most senior civil servants do. I do not think that is how they view themselves. Those are easy accusations to make from outside the civil service and are quite often backed up by very little evidence.

**Q222 Lord Crickhowell:** You say that there has been no pressure from civil servants to change the rules, and you have spoken about the increasing demands of select committees. We are now dealing with a world in which projects are very long term, involve huge sums of money, go over successive administrations, and where there are changes in the civil servants who are handling them. Therefore, the demand is going to be insistent and irresistible for Parliament to call forth to give evidence officials who have been involved at a senior level in the implementation of projects, including former civil servants. I have recently seen a rather good case of the Ministry of Defence having the very capable official dealing with projects giving evidence, with the permanent secretary and the Minister all sitting together. In this world, which seems to me inevitable, when the pressure mounts will there be demand for changes in the rules? You have so far said there are no demands, but what safeguards in this changing situation—which will continue to change—do you think your officials will want?

**David Penman:** That is a very interesting point. There has been some discussion in the evidence I have seen about seeking evidence further down the food chain, rather than the permanent secretary appearing before a select committee. You will have a number of more junior civil servants than the permanent secretary, although still very senior civil servants, appearing before a select committee in a way that would not have been the case in the past. Again, I do not sense any resistance from our senior members to that level of scrutiny through attending select committees and giving evidence, or feeling that is simply the role of the permanent secretary. That is particularly true when, as was pointed out, they are probably the ones best placed to give evidence as they are closest to the issues at hand and are the experts and professionals in the fields they are there to give evidence about. I do not think there is any resistance about that, and generally speaking civil servants feel that the rules in place now are rules that are sufficient to safeguard their conduct and the concerns they would have about giving evidence.

This is about the conduct of some select committees in always seeking to pin blame and to try to find an individual who is responsible because that makes for good politics. That is more the concern, rather than the rules. I hope that there would not be a clamour, as a result of this greater scrutiny, to change the rules to become more defensive. I do not think that would be positive for anyone. We as a union say that you should operate the current rules better rather than seek to create a more defensive set of rules to protect civil servants.

**Q223 Lord Irvine of Lairg:** Suppose, for example, that a select committee, having conducted a thorough inquiry, came to the view that there had been a significant failure in the execution of a particular policy and that a particular civil servant was to blame. Would you object to a select committee saying so in its report?

**David Penman:** There is a question regarding the degree to which civil servants are publically held to account and hung out to dry by a select committee, which prejudices a process that any other employee in the country would expect to be fair and just. The question is whether that is possible following the public criticism of a select committee.

**Q224 Lord Irvine of Lairg:** It is your view on this that I am seeking.

**David Penman:** If a select committee felt that there were such significant issues in the conduct of an individual, it would be appropriate for that issue to be dealt with by the civil service and the employer in a way that was fair and just to all. Clearly there would be a significant piece of evidence around that in the conclusions of the select committee.

**Q225 Lord Irvine of Lairg:** The employer would be the relevant department of state.

**David Penman:** Absolutely.

**Q226 Lord Irvine of Lairg:** The senior civil servant would very much be an emanation of that department of state.

**David Penman:** The conclusion is that politicians do not trust the civil service to deal with performance issues or a matter of discipline and properly investigate it. In effect, a select committee will have an opinion about the conduct of an individual. It will not have a firm conclusion about the alternative view or the alternative evidence that will have been considered. That would be appropriate for an internal disciplinary process, where the civil servant had the rights associated with that to represent their views, and the employer would have to come to a conclusion either way. There seems to be an assumption that the select committee would always be right that that conduct was reprehensible.

**Lord Irvine of Lairg:** I certainly do not make that assumption.

**David Penman:** So therefore, effectively, as judge and jury it just passes down its sentence.

**Q227 Lord Irvine of Lairg:** Is the effect of your evidence now that you say a select committee should abstain from saying—even if it feels it right to say it—that there has been a significant failure in the execution of policy for which a particular civil servant is responsible? Are you saying that it should abstain from saying that?

**David Penman:** There are two issues I would raise. One is whether a select committee is a suitable instrument for making that sort of judgment.

**Q228 Lord Irvine of Lairg:** What is your view on that?

**David Penman:** I think that, given the nature of select committee hearings, and the inability on many occasions for individual civil servants to represent issues and evidence about advice they gave to Ministers and the context, rather than represent the Government's view, you would not normally say that a select committee hears balanced evidence and is able to make a judgment one way or the other. There may, of course, be exceptions. We are dealing with some of the most complex issues here, usually around major projects and major issues that governments are dealing with. There may be times when select committees feel that there are matters of such concern from evidence that they have heard that they need to refer that to the department, and that might have implications for individuals. However, if you are an individual civil servant in those circumstances and you have not had the opportunity to put forward your side of the story, is it fair that, publicly to some degree, criticism is made of you without an ability to represent your interests, or that there are

criticisms made without hearing the full facts? It is not the purpose of select committees to judge the conduct of individual civil servants and it is not necessarily the correct environment to do so. That does not mean there would never be occasions where concerns could be raised, and those concerns should be taken forward by the civil service.

**Q229 Lord Irvine of Lairg:** But not by the select committee via its report? I think your answer there was a long yes: that select committees should abstain from finding that there have been significant failings for which an individual civil servant is responsible in the execution of a particular policy.

**David Penman:** I think a long yes is probably a good way to describe my answer.

**Q230 The Chairman:** Some witnesses we have spoken to have suggested that a way of getting around this is to extend the concept of the accounting officer, so that there is a broader role further down the civil service hierarchy, or different types of responsibility. That would enable the person in that post to understand that part of their role is public accountability. Do you think that is a possible way of developing this sense of greater responsibility?

**David Penman:** I do not think it is about people avoiding responsibility.

**Q231 The Chairman:** I am talking about public responsibility.

**David Penman:** Individuals, whether they are accounting officers or whether there is a broader definition of accounting officers—the most senior level of the civil service—recognise that is part of the role. The question is: is a select committee the appropriate forum for judging the conduct of individual civil servants? I do not think it is. They may have concerns. They may say there are issues that need further investigation. There needs to be an appropriate investigation where all sides, including the individual civil servant, can, in private, be held to account and defend their actions so that a determination can be made about whether there is an issue there and what the appropriate sanction should be. That is not a select committee hearing.

**The Chairman:** I am asking you a broader question about changing roles within the civil service, but Baroness Falkner has a question.

**Q232 Baroness Falkner of Margravine:** I may have misheard but you seem to be almost avoiding the word “accountability”. You keep saying that civil servants have to be open to scrutiny. In what circumstances would you believe that a senior civil servant should be accountable and that a select committee is the appropriate setting for that, or do you think they should not be accountable at all? There is also the issue of a distinction between policy and implementation. Would you draw a line there? I am slightly concerned at what I see as your reluctance to concede that accountability.

**David Penman:** To my mind there is no question about accountability. The question is: accountability to whom? A civil servant has to be accountable for their actions, their performance and their conduct. Are they accountable to Parliament, to a select committee, to the government of the day or to the Minister? What are the appropriate means for scrutinising that accountability and, in the context of this discussion, making a judgment about an individual’s conduct? It is not about avoiding accountability; it is about asking, “Where is the appropriate place for that accountability to be tested?” That is the issue and that is the concern.



**Q233 Baroness Falkner of Margravine:** If you do not believe that a select committee would be the appropriate forum to criticise and name a civil servant, do you believe a select committee would nevertheless be well within its role to ask for example the departmental board, where one exists, to investigate and institute disciplinary actions against the individual?

**David Penman:** Absolutely. All civil servants are looking for is fairness. They are looking to be treated in the same way as every other employee in the land is treated. If there is an issue about their conduct or performance, that should be investigated in a way that is fair to all—the employer and the employee. That is the point: is a select committee the appropriate forum to do that? I would say it is not. Clearly, there are departmental procedures. We would not be in the business of being a trade union if it were the case that, as some suggest, no civil servant was ever held to account, there was never such a thing as a disciplinary process, no one was ever sacked and nothing was ever done about performance. That is what we do every day for hundreds, if not thousands, of our members. So those issues are constantly alive in departments, and that is the appropriate place for it to be dealt with.

**Q234 Lord Hart of Chilton:** How is the public interest served in all that?

**David Penman:** In the civil service, you task civil servants and civil service managers with implementing the Government's policy and running public services. Where that does not happen, and there are issues around the conduct or performance of individual civil servants, you task civil service managers with dealing with that. That is what happens on a daily basis. Why does it require a level of scrutiny that no other part of the public sector, in many cases, or the private sector has? There is this public arena where we expect civil servants to be scrutinised in a way in which we would not expect others to be.

**Q235 Lord Hart of Chilton:** The public purse is expending large sums of money on various projects. On your basis of how an investigation should take place, where is the transparency on behalf of the public to get to the bottom of what sometimes goes very badly wrong?

**David Penman:** The public elect a government. Parliament holds that government to account. The select committee process is part of that accountability in how a government conduct their business, implement their policies and do things right or do things wrong. That is part of that process. What we are talking about is the clamour for naming and shaming individuals because it suits political interests rather than good government interests. That is where there is a degree of resistance. Are you saying that every select committee conducts itself simply for the public interest and the expenditure of every pound of taxpayers' money, rather than, at times, for individual political interest? Clearly that is not the case because it is a political environment. That is the point: that it is therefore not necessarily the appropriate place to make these judgments.

**Q236 The Chairman:** One of the things you mentioned at the beginning was that the Government have not been in consultation with you about some of these broader issues, which we have now developed in conversation. Have you been in continuous consultation on what we are all calling the white paper—although we know it is not a white paper—that Mr Maude issued a few weeks ago?

**David Penman:** Yes, we were in dialogue with the Government prior to the publication of the *Civil Service Reform Plan*, and there is a clear commitment from the Government to have further consultation and dialogue about that with us. We are currently considering as a

union a more detailed response to the reform plan. There will be areas of the reform plan where we have a greater interest than others, and there will be further opportunities on issues around senior civil servants.

**Q237 The Chairman:** Perhaps you would be kind enough to let us see that when you formulate it. Arising out of that, I have one last question. One of the things we have discussed with other witnesses has been the greater degree of what one would broadly call politicisation suggested under that paper. From your evidence, I would think that would be abhorrent to you.

**David Penman:** There are a number of concerns. Ministerial involvement in the selection of permanent secretaries is one of the principal issues that have been raised. We would share some of the concerns the Civil Service Commission has about that. There is already a process where Ministers have an involvement in the process for the selection of permanent secretaries, the criteria for the candidates and, ultimately, a veto on that. So the idea that the Government have put forward, that in effect there would be an approved list that a Minister would then select from, is something we have some concerns about in relation to that creeping politicisation. Someone else who gave evidence here spoke about the lifespan of a Minister being around 15 months on average. There is an issue when a permanent secretary, who is a permanent civil servant, is very closely associated with an individual politician. Our experience, and I am sure it is the same for many around the table, has been that you can have Ministers in the same government who loathe each other and end up as successors. The idea of the permanent secretary being closely associated with one politician leads to some significant dangers. In saying that, clearly we await more detail around what the Government propose. I know the Civil Service Commission are very interested in this and are raising issues with it. We will wait to see what the outcome of that process is, but yes, we have a number of concerns.

**Q238 The Chairman:** Thank you very much. As I said, we would be very grateful if you could let us have your considered response to the paper when it is complete. Thank you very much, Mr Penman.

**David Penman:** Thank you very much for your time.

**The Chairman:** Thank you for your time. You have been very helpful. Good luck in your new post.

Reform, Institute for Government and Unlock Democracy – Oral evidence (QQ105-129)

**Reform, Institute for Government and Unlock Democracy – Oral evidence (QQ105-129)**

[Transcript to be found under Institute for Government](#)

Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government; and Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice - Oral evidence (QQ 78–104)

**Paul Richards, former special adviser to Hazel Blears at the Department for Communities and Local Government; and Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice - Oral evidence (QQ 78–104)**

[Transcript to be found under Mark Davies, former special adviser to Jack Straw MP at the Ministry of Justice](#)

Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London; and Professor Lord Hennessy of Nympsfiel

**Professor Colin Talbot, Professor of Government and Public Administration, Manchester Business School; Dr Andrew Blick, Senior Research Fellow, Centre for Political and Constitutional Studies, King's College London; and Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL - Oral evidence (QQ 130–155)**

[Transcript to be found under Professor Lord Hennessy of Nympsfield, Attlee Professor of Contemporary British History, QMUL](#)

## **Colin Talbot, Professor of Government and Public Administration, University of Manchester – Written evidence**

This brief paper will explore some of the issues surrounding the accountability, or otherwise, of Civil Servants to Parliament in the UK and other Westminster systems.

At the heart of any relationship between an elected government and a ‘permanent’, politically neutral, civil service lies a paradox. On the one hand the Civil Service is expected to be ‘partisan’ to the extent that it must respond to the wishes of its democratically elected political masters, but on the other hand it is expected to be ‘neutral’ in the sense of not favouring any party or government.

This latter requirement goes beyond mere political-neutrality about who governs, because the Civil Service in its core functions – things like tax collection, benefits distribution, law enforcement, etc – must, in a democracy, be seen to be politically neutral in how it carries out its duties. This is vital for what political scientists have called “losers consent” – the necessary cooperation of the electorate that did not vote for the government in power to abide by laws, regulations, taxes and other requirements passed by the representatives of ruling party or parties.

Thus any democratic civil service has to combine, somehow, these requirements of partisan responsiveness to the (majority) government of the day and universalist, non-partisan, neutrality in the day-to-day execution of government functions.

Different jurisdictions also draw the boundary between partisan, political, appointees and neutral, permanent, officials in very different places. In the UK and other ‘Westminster’ governments that boundary is at a relatively high level. Only a relatively small number of political appointees (Ministers), who must be members of the Parliament, preside over a large ‘permanent’ Civil Service. Each Secretary of State has a corresponding ‘Permanent’ Secretary who is a Civil Servant. This contrasts strongly with countries like the USA where a very large number of executive appointments are not politically neutral, but come and go with each new Administration.

In recent years – especially since the late 1980s – the effective accountability of individual civil servants to Parliament and to quasi-judicial and other inquiries has expanded and mutated enormously. The expanding number of Accounting Officers, inquiries like the Scott Inquiry into Arms to Iraq, and many Select Committee hearings that have seen increasing numbers of civil servants called as witnesses, have all eroded the simplistic notions of only Ministers being accountable to Parliament.

The current rules – such as the Armstrong doctrine and the Osmotherly rules, are not ‘fit for purpose’ in dealing with these new realities. A new basis for defining civil servant and civil service accountability to Parliament is urgently needed.

In this brief paper I attempt to elucidate some of the issues by recognising the complex and sometimes contradictory roles which senior civil servants are expected to perform. I have used a specific way of trying to define these competing roles as a lens to tease out some of the complex accountability issues (see figure 1).

**Figure 1 Senior Civil Servants Competing Roles**

| <b>Senior Civil Servants' Role</b> | <b>Main function</b>  | <b>Accountability &amp; Issues</b>   |
|------------------------------------|---|--|
| <b>Counsellor</b>                  | Policy advice to Ministers  | This is the role that is usually cited as the basis for confidentiality between Ministers and Civil Servants and for accountability of only Ministers, and not Civil Servants, to Parliament. Issues about how Ministers hold Civil Servants to account? |
| <b>Chief Executive</b>             | Running the Ministry, Agency, etc   | This is essentially, but not entirely, captured in the 'Accounting Officer' role where Civil Servants are more explicitly accountable to Parliament.   |
| <b>Collaborator</b>                | Cross-departmental and public service coordination.   | This role is not well captured by existing accountability arrangements as it falls outside the traditional Ministry-Select Committee silo's, although it may be sometimes addressed by the PAC and PASC as cross-department Committees?                  |
| <b>Conservator</b>                 | Protecting due process, legal and constitutional norms, if necessary against Ministers (e.g. Ministerial Code). | This is the role that is least clear in accountability terms. When Civil Servants have to say "no, Minister" to whom are they accountable for such judgements? Clearly not Ministers and not currently Parliament either.                                |

Adapted from (Talbot, 2010).

## THE COUNSELLOR ROLE

The giving of policy-advice to Ministers, and acting as policy 'gatekeepers', is the role that is most often cited as the need for a basis of trust and secrecy between Ministers and Mandarins and why only Ministers and not Mandarins should be held to account for policy-decisions.

There is clearly merit in this argument but it is not unproblematic.

Firstly, it requires civil servants to negotiate a very fine line between what is 'policy' advice and what is 'political' advice. In recent years we have seen a growth in the use of special advisers to try to separate out these two types of advice more clearly, but as specialist advisers give both policy and political advice to ministers this is not a definitive solution.

In Australian commonwealth government this has led, since the 1970s, to a vast increase in the numbers of 'special adviser' type roles so that now virtually all Ministerial offices are staffed by political appointees (some 400+ of them compared to about 70 SPADS in Whitehall). And of course in American government political appointments have spread into this and the other executive roles on a vast scale. There however seems little appetite for

Colin Talbot, Professor of Government and Public Administration, University of Manchester  
– Written evidence

such developments in the UK, and if anything in recent years the role of SPADs has been slightly rolled back.

The question to be asked here is: to whom are civil servants, when acting as policy-advisers, to be held accountable? If, for example, a civil servant gives policy advice that turns out to be demonstrably wrong, who holds them to account for this error? Is this an internal management issue for the civil service, or can and should Ministers be involved? This poses the most acute question of whether civil servants are in any real sense accountable to Ministers, or indeed if they can be without becoming politicised? And for the civil service itself, the question has to be asked if it has adequate mechanisms for holding 'its own' to account if they mislead, misinform or fail Ministers in their policy-advice role?

## THE CHIEF EXECUTIVE ROLE

Civil servants do not however simply give policy-advice to Ministers, they are also responsible for implementing Ministerial decisions. In the narrower sense they are responsible for managing "their" part of a department.

Accountability in this role, at least at the top, has long been recognised as different from that of the Counsellor, policy-adviser, role through the mechanism of the 'Accounting Officer' (AO) designation. Through the AO designation, senior civil servants can be held directly accountable to Parliament, especially through the Public Accounts Committee (PAC) but also increasingly through other select committees as well.

Since the late 1980s AO numbers have expanded significantly as a result of the 'Next Steps' reforms creating 'executive agencies'. Agency chief executives were usually designated as AOs, expanding the numbers of AOs from a couple of dozen to nearer a couple of hundred by the mid-1990s.

It is worth recalling how 'Next Steps', and the subsequent expansion of AO numbers, came about. The pre-cursor to 'Next Steps' was the efficiency scrutinies of the early 1980s and 'Financial Management Initiative' (FMI). Both of these ran into severe problems, mainly around the issue of managerial accountability – i.e. there was very little clear management accountability within the civil services.

The creation of 'Next Steps' agencies was seen as a structural way of achieving much clearer managerial responsibility by creating a clear 'chief executive' role, the holder of which could be held to much more clearly to account by Ministers

Making Agency CEOs directly accountable to Ministers proved itself somewhat problematic (e.g. the Derek Lewis affair or the MOD<sup>3</sup>) but this does not, in my view, negate the obvious advantages of having a mechanism to designate clear 'chief executive' roles and responsibilities, including the AO role.

The development of the Canadian federal government's 'Management Accountability Framework' (MAF)<sup>4</sup> offers an alternative route to similar objectives.

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<sup>3</sup> In the case of the Ministry of Defence where Agency CEOs were usually accountable to another civil servant in MOD, simply because MOD had at one point some 50 agencies making it impractical to report direct to Ministers.

<sup>4</sup> The current author confesses to having played a minor role in helping the Canadian Treasury Board Secretariat develop MAF back in the late 1990s).



Designation of Executive Agency CEOs as AOs offers a possible way forward for making senior civil servants more accountable to Parliament for their ‘chief executive’ roles.

One possibility which would be to build on existing practices, such as the designation of Agency CEOs as AOs (remember many Agency CEOs were at relatively low levels in the civil service hierarchy, but still responsible for millions of pounds of tax-payers money), or the designation of ‘responsible officers’ under project management systems like PRINCE. This could be extended by:

1. Widening and clarifying the ‘Accounting Officer’ role and making all AOs accountable to Parliament on their own account (i.e. outside of the Osmotherly framework).
2. Extending the number of AOs roles to cover all, or most, executive groups inside the civil service.

This would then enable Parliamentary committees to play a much more active and clearer role in holding the civil service to account in the execution of Ministerial or Parliamentary decisions.

## THE COLLABORATOR ROLE

The issue of improving coordination within Whitehall, between Whitehall and the rest of the public sector, and between Whitehall and other actors in society such as not-for-profits and businesses, has come increasingly to the fore in recent years. The general consensus has been that an increasingly wide set of ‘wicked issues’ (those that fall between or across traditional policy boundaries) require more ‘joined-up government’ or ‘governance’.

During my recent trip to Australia, during which I spoke at meetings involving dozens of senior commonwealth civil servants, the question I was most frequently asked was about Britain’s experience with ‘joined-up government’ and this issue has come to the fore in many other countries too.

Our accountability mechanisms however assume only a vertical chain of accountability through Ministries to Ministers to Parliament (most often in the form of ‘departmental’ select committees). Whilst there is some holding to account through ‘cross-cutting’ Committees such as the Public Accounts and Public Administration select committees in the Commons and your Lords own committee in this place, mostly accountability flows through existing ‘silos’.

If the ‘chief executive’ role (discussed above) were clarified in the way suggested then this could include a clear duty to collaborate. This in turn would allow for designated civil servants to be held to account for executing such a duty.

This does of course overlap somewhat with the ‘Counsellor’, policy-advisor, role and Ministerial responsibility and probably requires as big, or bigger, change in the attitude of Parliament as is does from the executive part of government. It would, for example, require many more joint enquiries between parliamentary committees into areas where execution and implementation issues spread across traditional boundaries.

## THE CONSERVATOR ROLE

This is the role of civil servants, especially the Head of the Civil Service and Permanent Secretaries, most clearly cannot be held to account by Ministers.

The simplest and most obvious way in which this role is displayed is in the role of played by the Head of the Civil Service in adjudicating on whether or not the Ministerial Code has been breached. But there are many other ways, some trivial and some substantial, in which senior civil servants are expected to uphold due process, legal and constitutional principles sometimes against the wishes of Ministers or other elected politicians.

Although Britain has a relatively good record in this regard there is no room to be sanguine. The recent issues exposed at the Leveson Inquiry include some serious questions about when civil servants should have played a more active role in preventing practices or actions that could have given rise to the appearance, at the very least, of dubious processes, bias, etc.

There seems to be a very strong case for Parliament, in particular, taking a much more active scrutiny role into the discharge of the 'Conservator' role by civil servants. In order to take this as far outside of party politics as possible, one possibility would be for the HoC Public Administration Select Committee and the HoL Constitution Committee to jointly carry out a separate and specific inquiry into this issue with a view to establishing a more permanent scrutiny arrangement.

This is also a case where there is absolutely an argument where the usual 'Osmotherly' rules could not and should not apply to civil servants giving evidence in Parliament, as the rules would negate the entire point of such evidence.

## CONCLUSION

This short paper has demonstrated that the issues of civil service accountability to Parliament have already mutated way beyond the old frameworks for defining these relationships such as the Armstrong doctrine and the Osthmotherly rules. If they ever captured the richness of the relationships, they certainly do not any longer. Civil servant accountability to Parliament has already spread well beyond the limits of these customary practices and now needs to be put on a new footing. Modern government is too large, complex and important to be left to a set of out-of-date rules to govern its accountability.

Manchester, 30 May 2012

## References

TALBOT, C. 2010. Central Government Reform and Leadership. *In*: BROOKES, S. & GRINT, K. (eds.) *The New Public leadership Challenge*. Basingstoke: Palgrave Macmillan.

## Lord Turnbull KCB CVO – Oral evidence (QQ 264–276)

*Evidence Session No.6*

*Heard in Public.*

*Questions 264 - 276*

WEDNESDAY 11 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Powell of Bayswater

Lord Shaw of Northstead

### **Examination of Witness**

#### **Lord Turnbull KCB CVO.**

**The Chairman:** Lord Turnbull, you very kindly came into the previous session, so you know the general areas that we are interested in. I explained at the beginning of the previous session that we are now on the penultimate meeting of the Committee on evidence, so we are hoping to reach some conclusions reasonably rapidly. We have heard a great deal from many sources, some of which you may or may not agree with, about things that people feel, from different perspectives, are not necessarily working as well as they might be, in what we have described as the conventional systems. We very much hope that our witnesses this morning, who have enormous experience in this area, will be offering us some thoughts about ways forward, as well as reflections on what has happened in their experience. If I may, I will ask Lord Crickhowell to begin.

**Q264 Lord Crickhowell:** In our first few sessions, we spent a good deal of time on the difference between accountability and responsibility. I would like to start there, because quite clearly this is an area that select committees are increasingly pursuing; we have got long-term huge projects, extending over very long periods, and the desire to have before them senior civil servants, not just the permanent secretary who is responsible. I declare an interest, because one time I was involved as the chairman of a company that undertook a contract as an outside consultant on a project. You have many outside consultancies involved in these complex projects. Clearly they are going to be examined very closely. Pressure is coming on, more and more, to ask questions of the civil servants who are managing the projects. Would you comment on the way it is going and any safeguards you think are necessary, or any guidance you would like this Committee to give on the subject?

**Lord Turnbull:** There is a clear distinction made between accountability and responsibility. One can see situations where a Minister is accountable but not responsible. I would say

exactly the same applies to the senior officials in the department. If you are the permanent secretary at the Ministry of Defence, there are things going on every day that you hardly ever know about until something goes wrong. The time lags mean that a lot of these projects will have their genesis in the work of others. I suspect that this search for identifiable responsibility is the search for the Higgs boson, and possibly will be less successful.

There is a suggestion, for example, that an accounting officer could be recalled from the grave to give evidence. That works on the assumption that he must have been responsible at the time, so we need to know from him. The way that system actually works is that you have one person, and it is the person whose bad luck it is to be the accounting officer at the time, who has a responsibility, in any particular case, to get to know what happened in that case and to give an account of it. More important is what follows from it. You interrogate your staff on what happened and what went wrong, and then you come up with responses: how do we ensure this does not happen again? That is where the improvement in performance comes from, and a previous accounting officer can contribute nothing to that, because they are out of the department. I would stick with that piece of accountability that, except in a special case where you want to establish the history, it is the accounting officer of the day who gives the account and takes responsibility for the follow-up work.

In appearance before other committees, I, like Lord Wilson, think the idea of trying to pin blame on people is pretty unproductive and is very difficult to do. The last thing we want is a series of people coming along and saying, “I was responsible for this project between 1998 and 2001 and, quite frankly, when I handed it on it was in great shape.” Then someone comes along and says, “Actually, when I got it, all sorts of things were beginning to go wrong.” I think you will find that a pretty unproductive way of trying to get to the root of what went wrong and then doing something about it.

**Q265 Lord Crickhowell:** Should it be the accounting officer, the permanent secretary, who, as you have rightly said, may not be aware of much of what is going on in that particular project? Should it not be the senior civil servant, the procurement director or whatever he may be called, who is actually responsible for managing the project and who, without seeking to find blame, is likely to be able to give the kind of detailed explanations about the project that will lead to improvements in future? That is very unlikely to come from the accounting officer, who may see it as his principal job to defend the department and obscure what actually happened.

**Lord Turnbull:** I always made it my rule with PAC that you have to work out exactly what you think did not go well and concede it fulsomely and early, and then defend what you think should be defended. If you are going to invite the next level down, a director in a department, they may be in exactly the same position as the permanent secretary. They may have come recently into the job and be the person currently in charge but be part of a collective line of responsibility. It is quite often the case that the person you would then get is not actually someone you could say is responsible for the project. I do not think you will ever find that person in the case of big things that went wrong.

If you take poll tax, all sorts of people over 10 years were involved in that project. It turned out to be a disaster but, at each stage, each person thought that they had handed it on in a reasonable shape. You will not find, in the things that really matter, a single identifiable person. It betrays a wrong view of how you make improvements. It is a sort of Voltairean view of “pour encourager les autres”; you punish certain people or shame them, as opposed

to a system that is directed at how we deal with this problem and making sure it does not recur.

**Q266 Lord Crickhowell:** Are you saying that, when a select committee says it wants to see the previous senior civil servants who were involved in a project and would like to ask questions, they should not be allowed to have those people before them?

**Lord Turnbull:** I think it would be a pretty unproductive exercise if someone who has retired is called back five years later on why the “Astute” submarine contract overran; he is not working in the department and does not have the same access to officials. Asking them to cease to do whatever they are doing, which may be looking after their garden, and then come back and re-immerses themselves I do not think is a very productive way of trying to get to the bottom of what went wrong in particular policies and projects.

**Q267 Lord Irvine of Lairg:** As I have been listening to the evidence, it has struck me that there is a potential tension between accepted principles. For example, Lord Wilson told us—and I do not question it—robustly that it would be improper for a select committee to ask a civil servant what advice he had given to the Minister. You would all accept that when a civil servant gives evidence to a select committee he has to give truthful answers to the questions put. Suppose that a civil servant has in fact advised strongly against the adoption of a particular policy. Now we are told that he cannot be asked about the advice that he gave. Surely the civil servant would be in a practically impossible position in giving truthful answers to a select committee’s questions about how the policy had gone wrong. Surely there is a tension between the principles here, and we really have to face up to it.

**Lord Turnbull:** There is a tension, and Richard Wilson’s answer to it was: do not ask that kind of question.

**Q268 Lord Irvine of Lairg:** I am accepting that. Part of the premise of my question is that it is true to say—it is valid to say—that a civil servant must not disclose the advice he gave to the Minister, and indeed the corollary, as Richard Wilson put it, is that it would be improper for the select committee to ask the civil servant what advice he had given to the Minister. My point is different. Since there is a growing practice of senior civil servants giving evidence to select committees, what I am asking you to focus on is if there is a tension, even an incompatibility, within the rules. If the civil servant had advised strongly against the adoption of a particular policy, and a select committee, quite rightly, is asking the civil servant why the policy failed in certain respects, is the civil servant not really in an impossible position?

**Lord Turnbull:** You are absolutely right there is a tension. We have conflicting objectives, but we have resolved them in a particular way. We could have resolved them by saying the civil servant can say what advice he gave at the time, but we then look at the disadvantages of that. What you will find in this whole area is the point that Richard Wilson has made. The whole thing is an interlocking system and, if you disturb one element of it, you put another element of it out of kilter. You can see that with House of Lords reform even. You cannot simply go to another jurisdiction and say, “Let’s take that little bit of their system and put it into our system.” For instance on the appointment of officials, the Americans allow, in effect, the Minister to appoint senior officials—but there is a whole apparatus of checks, balances and approvals, so you cannot simply take that little bit out of it. If you want a system in which officials can say, “I advised against this”, or, even worse, “He did not even bother to consult me”, you then have to look all the way down the chain at what other

things that would dislodge and destabilise. It would destabilise a great many parts of the system. Unless you can come up with something that answers all the subsequent questions, you do not really have an answer.

**Q269 Lord Irvine of Lairg:** Is the flaw in that answer not that, inevitably, the civil servant is drawn into giving partial and not wholly truthful evidence to a select committee?

**Lord Turnbull:** The answer is he does not really answer the question. However, we do have one exception to this, and that is when something goes seriously wrong—like the death of Dr David Kelly—we then set up a judicial inquiry. You could say that is what has happened with Leveson at the moment. When that happens, we accept that the advice that is given is revealed much more fully. We keep that style of working to very special cases, such as Lord Butler’s inquiry on the failures of intelligence. If it were the generality, I think it would mean that the Minister would cease to see himself as working as part of a team in a department, but would have someone who can speak openly against him. You would not get any kind of unity, sense of purpose or loyalty. Both for Ministers and officials, it would be a very unpleasant atmosphere in which to work.

**Q270 Lord Powell of Bayswater:** It would be fair to say, Lord Turnbull, that so far today—we may be startled by Lord O’Donnell yet—we have heard a pretty solid defence of the present system governing relations between civil servants and Parliament as being about as good as you can get. It should not be changed in any significant way. On the other hand, there seems to be a growing frustration that, somehow, civil servants are in a sense less answerable for what they do than anyone else in life, whether it is in business, the academic world and so on. Do you think really we can persist with complete immobility on this, or do you think there needs to be some change in the rules that would still preserve the vital principles that civil servants are not controlled by Parliament or by select committees, yet enable them to speak more freely before them, and be criticised, as they have often been in the past, while keeping any action very firmly within government, within disciplinary bodies and within the civil service itself?

**Lord Turnbull:** I do not think civil servants are these anonymous, shadowy people that they used to be. My predecessor way back, Burke Trend, was hardly ever seen in public or before Parliament. These days, quite a lot of civil servants are quite well known and they appear quite often before select committees. From time to time, as the Permanent Secretary of HMRC has found, they can be given a pretty rough ride. It is still within this framework, which I remind you was validated only two years ago, almost to the day. We have clauses on the civil service enshrined in legislation for the first time—this two-tier accountability. I do not think it is the case that officials are simply getting away with it and under no public pressure whatsoever.

**Q271 Lord Crickhowell:** There is this firm rule about not revealing advice. I recently served on the Science and Technology Committee, and we have done a rather effective inquiry into the nuclear research programme in the department. There, the department’s scientific adviser, and indeed the Government’s chief scientific adviser, gave clear and specific answers to the questions about the advice that they were giving and what they believed to be right, which was in stark contrast to the rest of the departmental advice that was submitted to the inquiry and indeed the views of the then Secretary of State. The Science and Technology Committee looked to the chief scientific adviser to tell them what his genuine belief about the scientific position was. That must be right, but clearly we are

breaching the absolute rule in that situation, where the advice is not becoming public. Where do you draw the line?

**Lord Turnbull:** If you get to a case like the UK Border Agency—this is a highly political issue, far more political than nuclear policy—I think it would have been very difficult for the Minister, if the Minister and the director of the UK Border Agency were, effectively, slugging it out in front of select committees: “I told her this and she didn’t listen to me.” You can have that world where a lot of the information is passed, but you have to ask yourself whether it works when the political heat is really on. My suspicion is that it does not.

**Q272 Lord Crickhowell:** You have to draw a rather delicate judgmental line, rather than a rigid rule.

**Lord Turnbull:** Yes, but it is what the British system requires continuously. Indeed, a lot of people say that one of its merits is that it is capable of making those distinctions.

**Q273 Lord Lexden:** Could I raise another obvious point relating to the interlocking character of the processes by which we are governed? Policy and implementation: are there circumstances where a division can be made between a policy decision and the actions that follow to implement, with civil servants being mainly responsible or answerable for the latter and Ministers obviously for the former; or is the process really a united one that flows together, so cannot be separated in those cases? If that is so, would there be merit, do you think, in our recommending that, to an increasing extent, it might be in the public interest for select committees to hear from Ministers and senior civil servants together, rather than separately?

**Lord Turnbull:** The latter. I spend a lot of my time now in the corporate world, and the corporate world has a completely different model—the model of the unitary board. Non-executive directors, in some sense on behalf of the shareholders, are holding the executives to account but, as directors of that company, they are jointly responsible for its actions. The messages that come out of that company are messages from the company. They are not from one set of directors versus another. Now, we have never managed to import that into our system. We have tried, in a sense, the opposite, particularly with agencies, where you say, “Here is something where there is a policy framework and you get on and deal with it.”

Something that is politically uncontroversial, like the Maritime and Coastguard Agency, has a framework in which they operate and, by and large, it is nothing to do with Ministers. If one of their rescue operations goes wrong, that would be an operational matter, but this distinction does not always last because one of the issues is resources. If one of the cases is, “Well, why did you not get to the scene of this case as quickly as you would otherwise have done?” “It is because the resourcing was cut and we cut the number of coastguard stations.”

This distinction between policy and implementation works for the most part, day to day, but when it does not work is when the controversial issue arises. A Minister can preside over a series of administrative disasters in the department, like losing confidential records of customers. If that goes on, the reputation of that Minister will be such that people will think, “This Minister is not getting a grip of it.” In the end the distinction of “that was just operations” can eventually get up to the doorstep of the Minister. Where that line is drawn is difficult. You can be sure that when you really want to make the distinction is when the case becomes controversial.

**Q274 Lord Lexden:** I have a further point. Would there be merit in the public interest of Ministers and senior civil servants increasingly appearing before select committees together, rather than separately?

**Lord Turnbull:** I think I have done that actually.

**The Chairman:** We have had examples of it, yes.

**Lord Turnbull:** The Chancellor of the Exchequer goes and gives evidence to the Treasury Select Committee. He takes the top brass of the Treasury with him and, if the question is too difficult, he passes it down the line.

**Q275 The Chairman:** But you welcome that. You would welcome that more generally.

**Lord Turnbull:** I did not find any problem with that at all.

**Q276 The Chairman:** I know that we have rather galloped through these various points, but you heard the ones that we were most concerned about from the previous session. Was there anything that we left out that you felt we should say?

**Lord Turnbull:** I think there is one distinction that we need to deal with. This is this question of what role Ministers have in the appointment of permanent secretaries. Where this is most difficult is at the other end; it is with dismissal. I think it is a good thing that you say, “Here are various candidates.” It is rare that someone is, on all counts, superior. You can have people who are innovative but a bit inexperienced, and the opposite. There may be a legitimate choice. When it comes to saying, “I do not want this permanent secretary any more”, I do not think that should simply be a pure ministerial choice, because there are all sorts of ramifications from that, particularly if he says, “I do not want this person. How about so-and-so, who was my private secretary 10 years ago? I really like them.” If the relationship has completely broken down, it may be necessary to move someone on, but the Prime Minister should absolutely retain control of that situation, and not allow people to be dismissed who were doing the job perfectly well but who just happened not to be a close mate of the Minister from a previous life.

**The Chairman:** Thank you very much, Lord Turnbull. It has been enormously interesting. Thank you for your time.



## **United Kingdom Supreme Court - Written evidence**

I am writing in relation to the above Inquiry which I see is considering the constitutional position of the civil service following the introduction of the Constitutional Reform and Governance Act 2010.

The Committee is obviously focussing on the relationship between “conventional” civil servants and Ministers and Parliament. However, I thought it worth pointing out that there is another, much smaller category of civil servants of which I and my colleagues form a part: civil servants who work directly for members of the judiciary. This point was made by Lord Bach at Second Reading of the Constitutional Reform and Governance Bill (as it then was), when he said on 24 March 2010:

“Clause 7(2) provides that the Civil Service and Diplomatic Service codes must require civil servants who serve an Administration, mentioned in Clause 7(3), to carry out their duties for the assistance of the Administration as it is duly constituted, whatever its political complexion. The Administrations in question are Her Majesty's Government and the devolved Administrations in Scotland and Wales. This does not affect civil servants who are on loan to or directly employed by bodies such as the Supreme Court, the Scottish Court Service or arm's-length bodies, whose duty is to serve the organisation they are seconded to or employed by, and not the aforementioned Administrations.”

Indeed so far as my own position is concerned, the Constitutional Reform Act 2005 makes clear at Section 48(4) that the Chief Executive has to act under the direction of the President of the Court, although I may not act inconsistently with the standards of behaviour required of a civil servant, or with my responsibilities as Accounting Officer.

In addition, the Explanatory Notes to the Constitutional Reform Act make clear that, although the officers and staff of the Supreme Court are civil servants, they are responsible and accountable to the Chief Executive.

August 2012

Unlock Democracy, Institute for Government and Reform – Oral evidence (QQ105-129)

**Unlock Democracy, Institute for Government and Reform – Oral evidence (QQ105-129)**

[Transcript to be found under Institute for Government](#)

## Unlock Democracy's – Written evidence

### About Us

Unlock Democracy is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

### Executive Summary

1. Unlock Democracy campaigns for open and transparent government. We believe that for voters to be able to hold the government to account they have to be able to know what the government can and can't do in their name and also who is responsible for making which decisions.
2. Unlock Democracy believes that while we retain our current system of governance whereby the executive is formed from the legislature, maintaining the convention of direct ministerial accountability is necessary and appropriate.
3. However we believe that there are a number of structural and practical impediments to effectively holding the government to account. The structural impediments include the over-centralised nature of the UK state and lack of independence of both the Ministerial Code and the Independent Adviser on the Ministerial Code. We are also concerned that there is little if any shared understanding of when a civil servant is accountable for a mistake and when a Minister should resign. This has been interpreted differently by individual Ministers. We do not take a view on which interpretation is correct but think it is important that there is clarity.
4. Unlock Democracy recommends that ministerial accountability be strengthened in 3 ways. Firstly, the enforcement mechanisms for the Ministerial Code should be strengthened. The Independent Adviser should be able to initiate investigations on her or his own account and the independence of the post could also be guaranteed through making the holder an officer of Parliament. Secondly, the 'accounting officer principle' should be extended to permit direct accountability to Parliament for a limited group of additional public servants. Thirdly, we believe that there needs to be additional clarity that, while Ministers are responsible for policy and its outcomes, civil servants are responsible for the implementation of policy decisions. As such, we believe it is essential that they are free to give honest factual information about the projects they are involved with, rather than being required to take the departmental line.
5. While we do not believe that Ministers should be involved in the appointment process for civil servants, Unlock Democracy supports the use of pre-appointment hearings for special advisers and some senior civil servants.

### Overview

*Does the convention of individual ministerial responsibility remain the most appropriate and effective means of holding the government to account?*

6. While the UK retains a parliamentary system, with governments not directly elected but deriving their legitimacy from their possession of the confidence of the House of Commons, something similar to the basic convention of ministerial responsibility will be necessary. It ensures – in theory at least – that there is a line of accountability from government to electors, via the House of Commons. Unlock Democracy believes that the problems arise not so much from the convention itself but from the significant obstacles to making it a reality, though some modifications to the actual convention are also desirable.
7. Unlock Democracy believes there are a number of structural challenges to the effective operation of ministerial accountability in the UK. A key problem is the over-centralised nature of UK government. Because so much activity is controlled from the centre, individual ministers are theoretically responsible for much more than it is possible in practice for any one person to oversee; and for overstretched Westminster MPs to make accountable. The introduction of arm's-length executive agencies from the late 1980s can also be seen partly as prompted by the problems of over-centralisation. This process has in turn created further difficulties for ensuring ministerial accountability. It is now generally accepted that ministers cannot reasonably be held personally responsible for everything that takes place in their names. However, where precisely the line should be drawn is not clear. This confusion can in effect enable ministers to evade parliamentary accountability.
8. Another challenge to effective accountability, in the context of an over-centralised state, is the multi-faceted role that we expect MPs to perform. They are constituency representatives, they scrutinise legislation and hold the government of the day to account. The over-centralised nature of UK governance means that MPs are dealing with a range of constituency matters that should be dealt with at a local level – in effect making them super-councillors. Unlock Democracy is concerned that this means the accountability and scrutiny roles that we need MPs to perform suffers and this is likely to be worse when the number of MPs is reduced in 2015.
9. The fact that we do not have any separation between the executive and the legislature also gives the executive too much influence and can make accountability more complex. However, we recognise that a solution to these problems, though desirable, is beyond the remit of the present inquiry.
10. Unlock Democracy believes that the lack of independence for the Ministerial Code further undermines effective ministerial accountability. The Ministerial Code is drawn up (in collaboration with the Cabinet Secretary) by the Prime Minister, who is also responsible for deciding whether it has been compiled within particular cases and if it has not, what action should be taken. The Independent Adviser on Ministerial Interests is responsible for investigating alleged breaches of the Code but can only do so subject to the authorisation of the Prime Minister. Therefore a basic mechanism for ensuring ministerial accountability to Parliament is defective. Recent examples of this systemic weakness include the decision of the present Prime Minister not to order investigations by the Adviser over the role of Adam Werritty as an informal

adviser to Liam Fox when the latter was Secretary of State for Defence; and connections between the office of Jeremy Hunt, the Culture Secretary, and News Corp. In contrast to this, Baroness Warsi was almost immediately referred to the Independent Adviser when allegations were made about her use of parliamentary expenses. It is not immediately obvious why this case merited referral when the others did not. For accountability to be meaningful there has to be openness and transparency about how decisions are taken.

11. In addition to the structural challenges to effective ministerial accountability, there are also challenges in practice, as different ministers interpret the convention different ways. The recent case of the Home Secretary and Brodie Clark is a good example of this. One interpretation of Ministerial accountability is that Mrs May should have resigned as the Secretary of State for the mistakes that were made in her department; she took a different view and Brodie Clark, the Head of the Border Agency, who she argued was responsible for the errors, was instead asked to resign. Unlock Democracy takes no view as to whether this was the correct course of action, our concern is the lack of clarity and how this impacts on the governance of the UK.

*If the current model of individual ministerial responsibility is no longer appropriate, what should replace it?*

12. Unlock Democracy believes that the current model requires amending in three areas.
13. First, certain modifications could help ensure that the present model works more effectively. They include a strengthening of enforcement mechanisms for the Ministerial Code, making the Independent Adviser able to initiate investigations on her or his own account and possibly guaranteeing the independence of the post through making the holder an officer of Parliament.
14. Second, some changes which break to some extent with the existing system might be desirable. A change fitting into this category would be an extension of the 'accounting officer principle' to permit direct accountability to Parliament for a limited group of additional public servants.
15. Third and more substantively, we believe that there needs to be additional clarity about who is responsible for what. As outlined above, we believe that ministerial accountability remains the correct model for the UK at present but that the practice of government has outstripped the conventions in a way that makes it possible for accountability to be evaded. While ministers must remain responsible for policy decisions, we do not think that it is practicable for them to be accountable for implementation of policy. Ministers are often in post for relatively short periods of time and may not be an expert in the work of the department. They may also be managing a department that employs tens of thousands of people around the country, they cannot be expected to be involved in each and every decision and indeed, it would create a dangerous and crippling culture of administration if they were. Therefore, we think it is appropriate that senior civil servants should be held accountable to Parliament for decisions around implementation, as long as there are effective mechanisms for them to raise concerns.

16. We discuss changes falling in these categories in various answers below.

*Do the civil servants' and special advisers' codes of conduct require amendment?*

17. Unlock Democracy believes that certain amendments to the Special Adviser Code of Conduct seem necessary.

18. A particular flaw in the Special Adviser Code of Conduct is that it exempts special advisers from the 'general requirement that civil servants should be appointed on merit and behave with impartiality and objectivity so that they may retain the confidence of future governments of a different political complexion'. While special advisers do not need to 'retain the confidence of future governments of a different political complexion', it does not follow that they should not be required to be impartial or objective while acting in a public role. The Code should be amended accordingly.

19. There is also a need for a more detailed review of the types of activities in which special advisers should *not* be permitted to become involved, following the revelation that Adam Smith, special adviser at the Department for Culture, Media and Sport, was acting as a link with News Corp in relation to a quasi-judicial function being performed by his Department. A party political appointment should not be involved in such activity; and full consideration should be given to other similarly problematic conduct that could arise.

20. Finally, as suggested in the Committee consultation paper, there is a contradiction between the statement in the Special Adviser Code of Conduct that they must not 'exercise any power in relation to the management of any part of the Civil Service' (which Section 8 of the Constitutional Reform and Governance Act 2010 requires be included in the Code) and the description of the functions they may carry out, some of which clearly seem to have the characteristics of management. For instance, the Code states that special advisers may 'convey to officials Ministers views and work priorities...request officials to prepare and provide information and data...hold meetings with officials to discuss the advice being put to Ministers'. The Code should be reviewed to ensure that it does not describe as appropriate tasks which risk contradicting the part of the Code the inclusion of which is required under primary legislation.

*To what extent should the content of the civil servants' and special advisers' codes of conduct be set down in statute? If so, how might CRAG be amended to achieve this?*

21. The Constitutional Reform and Governance Act 2010 is a significant piece of constitutional legislation. It did not ultimately cover all the issues that it might have done (for instance, placing the Royal Prerogative war powers on a statutory footing); and it is not perfect in those issues it does cover (for example, the provision for parliamentary oversight of treaty-making is not as strong as it might have been). However, it contains some important provisions, not least through creating a statutory basis for the Civil Service for the first time. Any changes to legislation should only be carried out if necessary, rather than for their own sake. This principle should apply even more to legislation which is clearly constitutional in nature. It would be undesirable to create a precedent for constant interference with such Acts

22. For this reason, we are reluctant to recommend alterations to the Act if desirable changes can be achieved by other means. Moreover, the Act already requires in sections 5-8 that Civil Service, Diplomatic Service and Special Adviser Codes be issued; and makes certain stipulations about their contents.
23. However, it would be useful if the government developed a practice of presenting draft editions of the Civil Service and Special Adviser Codes, which the Act requires should be issued, before Parliament. These texts could then be considered by parliamentary committees, and possibly debated and voted on in plenary.

### **The accountability of civil servants to ministers**

*To what extent has the expansion of government activity, and the increasingly fractured nature of the state, weakened the ability of ministers to account for their civil servants?*

24. The expansion of government activity and the fractured nature of the state has undermined the effectiveness of ministerial accountability. When the independent Civil Service was created there were 28 civil servants in the Home Department; there are now tens of thousands. Too often, new structures are created with too little thought being given to how accountability will work in practice. For example, Academies and Free Schools have quite deliberately been created in a way that makes them independent of Local Authorities, they are accountable to the governors and ultimately to the Secretary of State. How meaningful can that accountability be? It would be entirely inappropriate for the Secretary of State to be involved in the day to day decisions of schools, but at the same time how can they be held accountable for the decisions that are made? This is not only an issue in Education policy, but it does provide an interesting example of how the definition and practice of accountability in UK governance have not kept pace with each other.
25. There is a particular challenge to accountability when public services are contracted out to private providers, which is increasingly common. There is a real tension between contractual accountability, i.e. that between the organisation operating the service and government and democratic accountability. The current doctrine of Ministerial Accountability is based on the principle of democratic accountability, but as more public service functions are outsourced at both a local and national level, this is in effect being replaced by contractual accountability.

*What, if any, influence should ministers be able to exercise over home civil service appointments? What are the constitutional benefits and risks of allowing such influence? Are there any particular civil service posts to which special considerations apply?*

26. Unlock Democracy does not believe that ministers should be involved in the appointment process for civil servants. Special advisers are appointed by the individual minister to give them political advice and support, therefore it is entirely appropriate that the relevant minister is involved in their recruitment. One of the underlying principles of the Civil Service is that it is a permanent administration, able to work for governments of different political persuasions. We would not want to

*To what extent does the home civil service act as a constitutional check on the actions of ministers? How does this check operate? Is a constitutional check on ministers by civil servants appropriate?*

27. Unlock Democracy does not believe that the Civil Service acts as a constitutional check on the actions of ministers. Constitutional convention stipulates that (as paragraph 5.2 of the Ministerial Code puts it): 'Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants'. Civil servants are in turn required to provide honest views to ministers. However, ultimately they are required to act upon ministerial decisions loyally once taken. In this sense, the idea of civil servants as a constitutional check upon ministers is limited to the provision of advice, not any kind of independent power, though accounting officers are a slightly different case, as discussed below.
28. If civil servants are to provide a constitutional check upon ministers, it should be in ways which are clearly defined to the public, themselves and in some way democratically accountable. It would not be appropriate for civil servants to take it upon themselves surreptitiously to frustrate ministers – indeed such action is specifically prohibited by the Civil Service Code.
29. One way in which the Civil Service could have its role as a constitutional check appropriately expanded would be through an adaptation and extension of the accounting officer principle. At present, the departmental Accounting Officer, if he or she has concerns about a proposed course of action involving the use of public money, is permitted to require the minister formally to give him or her a direction to implement a decision.
30. The formal direction is communicated to the Comptroller and Auditor General, who normally brings it to the attention of the Public Accounts Committee in the House of Commons. This in effect allows the civil servant to act as a whistle blower if they believe that public money is being inappropriately used. One example of the way this can work is when, in February 2010, Peter Housden wrote to John Denham MP as Secretary of State for Communities and Local Government about the decision to make Norwich a unitary authority<sup>5</sup>. This letter was then the subject of an Opposition Day debate in the House of Commons<sup>6</sup>. Although Labour MPs were whipped and the motion was defeated, it did at least allow for additional scrutiny of the issue. The challenges are that few such letters of direction are issued and that they can only be used for concerns about public expenditure. There have been high profile public procurement projects, which have been very costly to the public purse where letters of direction arguable should have been issued.
31. Consideration should be given to the possibility of creating some kind of 'ethical accounting officer', charged with ensuring adherence to certain standards of conduct beyond the public accounts sphere. This officer could similarly require the issue of directions for actions which he or she believed did not comply with defined ethical

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<sup>5</sup> A copy of the letter can be found here <http://iaindale.blogspot.co.uk/2010/02/exclusive-denham-indemnifies-his-perm.html>

<sup>6</sup> The Opposition Day debate that the letter prompted can be watched here [http://news.bbc.co.uk/democracylive/hi/house\\_of\\_commons/newsid\\_8555000/8555606.stm](http://news.bbc.co.uk/democracylive/hi/house_of_commons/newsid_8555000/8555606.stm)



standards; and could report to a parliamentary committee on overall departmental ethical issues.

### **The accountability of civil servants to Parliament**

*In what circumstances, if any, is it appropriate for civil servants to be held directly accountable to Parliament?*

32. Unlock Democracy believes that senior civil servants should be accountable to Parliament for the implementation of government decisions, particularly large scale projects that may take many years and have been overseen by a number of different ministers. We also see no reason why a civil servant who has been heavily involved in a significant initiative and then moves post, should not still be questioned by Parliament about the work they did in their previous role.
33. At present, accounting officers answer directly to the Public Accounts Committee. This procedure is appropriate and as we suggest, could be extended to cover a newly created 'ethical accounting officer'. Unlock Democracy also believes that guidance for civil servants appearing before select committees should be changed to reflect that they should provide factual information on the implementation of government policy – we do not think it is appropriate that they are given a departmental line to take. It has been suggested that civil servants are often more forthcoming in private sessions with committees and that this would one way of resolving this issue. However, we believe that it is essential both that this information is made available to Parliament when it requests it and that the public is able to see this process.

Would direct accountability risk the politicisation of the home civil service?

34. If the extensions of direct accountability we propose were introduced, they would not risk politicisation of the Civil Service, provided they were contained within specifically defined areas. Our proposal for special advisers does not engage politicisation issues in this way, since special advisers are by definition already politicised.

*If so, is civil service politicisation always and necessarily something to be avoided? In what circumstances should it be permitted, and what would be the benefits of politicisation?*

35. A politicised administration service is perhaps in some respects more honest. Affiliations are open and transparent and decisions can be assessed on that basis. Although independence is an important principle for the Civil Service and not something that Unlock Democracy is seeking to change; we do need to recognise that independence is not the same as being without values. There is a power that comes from longevity. Civil servants are often in post for longer than the minister, they have institutional memory and expertise. It is possible for departments, like any organisation, to develop cultures and views which it may be difficult for a new minister who is getting to grips with a new policy brief, to challenge. However, as mentioned above, we would not want to move to a system whereby the administration of government changes en masse as the political affiliation of the government changes which is the outcome if the administration is politicised.

36. As we suggest, special advisers are by definition 'politicised'. Despite the problems that have been associated with them, they perform a valuable role, partly because they protect career officials from being asked to undertake inappropriate duties. However, an extension of the principle of politicisation beyond special advisers would not be desirable, unless perhaps as part of a more wide-ranging overhaul of the structure of the UK constitution.

*Where civil servants should be held directly accountable to Parliament, is there a case for (enhanced) parliamentary involvement in their appointment?*

37. Unlock Democracy believes that there is a good case for extending the practice of pre-appointment hearings by parliamentary committees to include special advisers and some senior civil servants. Under such a process, decisions over appointments would continue to rest outside Parliament, but parliamentary committees could meet with special advisers and some senior civil servants prior to taking up their posts to discuss their roles. This practice could act as a deterrent to the abuse of special adviser appointments, and hopefully help encourage better conduct by special advisers when in office. It would also recognise the significance and influence of those at the top of the Civil Service to the governance of the UK.

*Is there a case for redrafting the Osmotherly Rules? If so, what, if any, involvement should Parliament have in the process?*

38. The Osmotherly rules have never been approved by Parliament. We find this arrangement curious since they determine the manner in which officials may provide parliamentary committees with evidence. Therefore, rather than proposing specific alterations to these rules, we believe that future editions of the Osmotherly rules should be considered in draft by Parliament, which could make its own recommendations about content as it saw fit, and perhaps also choose whether or not to accept the rules when they were re-issued.

### **The accountability of special advisers**

*What is the level of influence exercised by special advisers, both in theory and in real terms?*

39. The chief source of the influence of special advisers is their personal closeness to the appointing minister who has chosen to employ them. It is this position which can provide them with immense de facto power over the way in which a department operates. As already noted, the quasi-management functions which their Code appears to permit them means that, given backing from the minister, they can effectively give instructions to permanent officials, perhaps a problematic arrangement given that they are not bound by the same impartiality rules as career civil servants.

*What are the current accountability mechanisms for special advisers, and are these appropriate to the level of influence they possess?*

40. It is appropriate that ministers should be directly accountable for the actions carried out on their behalf by their special advisers. However, there has developed a worrying tendency for ministers seemingly to use special advisers to carry out certain

## Unlock Democracy's – Written evidence

illicit activities and then deny that they were aware they were taking place when their adviser is exposed. However, it is the role of informal advisers who have no official role at all which is a greater worry, since they are not subject to any kind of formal regulation.

*Is there a case for increasing the accountability of special advisers to Parliament? How should any such accountability mechanism operate in practice?*

41. As proposed above, pre-appointment hearings seems an appropriate measure at this stage.

**20 June 2012**

Valuation Office Agency; HMRC; and Office of Fair Trading - Oral evidence (QQ 184–211)

**Valuation Office Agency; HMRC; and Office of Fair Trading - Oral evidence (QQ 184–211)**

[Transcript to be found under HMRC](#)

## Lord Wilson of Dinton GCB – Oral evidence (QQ 250–263)

*Evidence Session No.6*

*Heard in Public.*

*Questions 250 - 263*

WEDNESDAY 11 JULY 2012

Members present

Baroness Jay of Paddington (Chairman)

Lord Crickhowell

Baroness Falkner of Margravine

Lord Hart of Chilton

Lord Irvine of Lairg

Lord Lexden

Lord Powell of Bayswater

Lord Shaw of Northstead

### **Examination of Witness**

#### **Lord Wilson of Dinton GCB.**

**Q250 The Chairman:** Good morning, Lord Wilson, and thank you very much for coming. I know you have kindly been sitting and listening to the previous two witnesses, who have given us very useful and valuable evidence this morning. I am sure you understand the context of these rather short sessions: we are trying to reach some conclusions on ways forward now we have reached the penultimate session of our evidence taking in this inquiry. I am sure you have picked up the strands of concern that we have, and perhaps there are ones that you want to raise that we have not mentioned, in which case please start off by mentioning those. Then I will invite Lord Shaw to address some of our questions.

**Lord Wilson of Dinton:** Thank you, chairman. I am Richard Wilson, Lord Wilson of Dinton. I was the Permanent Secretary of the Department of the Environment from 1992 to 1994, the Permanent Secretary of the Home Office from 1994 to 1997, and Cabinet Secretary from 1998 to 2002. It is 10 years since I was in the civil service, so I am 10 years out of date. I have nothing I want to say immediately, so why don't you ask me your questions?

**The Chairman:** In that case I will ask Lord Shaw to raise some of our points.

**Q251 Lord Shaw of Northstead:** To what extent does the home civil service act as a constitutional check on the actions of Ministers?

**Lord Wilson of Dinton:** It is the duty of civil servants to advise and to give their best advice, whatever the circumstances. If they think the Minister is behaving in an unconstitutional manner, it is their job to make very clear what they believe the constitutional position is. I assume we are talking about situations where constitutional propriety is involved. If it

happens in a department and they do not get an answer that they think is the proper answer or that is defensible, it is their job to go to the head of the civil service, who would take it up with the Prime Minister if necessary. To that extent it is their job to provide their best advice on their understanding of the constitution. If a Minister, in the end, rejects the advice, and if the Prime Minister rejects the advice and insists on going ahead, then in grey areas it is the job of Ministers to decide where the line should be, and there is a limit to how far the civil service can enforce the constitution, except through the ultimate, nuclear deterrent of resigning.

**Q252 Lord Shaw of Northstead:** This gets me to select committees, where civil servants appear more and more often. Some of the questioning is very probing and sometimes very partisan. One has to accept that. If a policy is open for question, is the civil servant—if probed about the question—forced to reply if asked whether they advised against it or what qualifications they advised as a caution against the policy being discussed? Is he forced to reply, “I warned the Minister this would happen”, or something like that? How is he to respond to a committee?

**Lord Wilson of Dinton:** It is improper for a select committee to ask a civil servant what advice they gave.

**Q253 Lord Shaw of Northstead:** Is this a rule?

**Lord Wilson of Dinton:** I think we are getting into constitutional territory, yes—a constitutional principle. Earlier you asked the FDA what safeguards it would want, and Lord Powell said that we should not be too terrified. What one has to do is define that area of constitutional relationship that one needs to protect and try to say where the red lines are that should not be crossed. One of the red lines is that the advice that civil servants give to Ministers is given in private and should remain private. The national interest and the general public interest is that civil servants should give their best advice to Ministers without worrying that they are going to be drawn into the political arena. We could have a political or politicised civil service, but I do not think it should happen by accident or by an individual select committee trying to bully someone into doing what they should not do.

**Q254 Lord Shaw of Northstead:** Is this not one of the most important subjects in the discussion we are having? The development of select committees is ongoing and questioning of this sort is becoming more prevalent.

**Lord Wilson of Dinton:** We write an awful lot down, but because we do not write everything down and have a proper written constitution, a great deal of how we run things still depends on understandings. There is a kind of understanding, or has been, between Parliament and the executive about the role of civil servants and the basis on which civil servants do their jobs. Now, if that were to break down, we would have to have a discussion about it, but it is not the only important question.

Another important question that you are looking at is the Northcote–Trevelyan principle of appointing people on merit, which comes up in relation to the recruitment of permanent secretaries. That is equally another bit of bedrock. The disclosure of policy advice is a bit of bedrock. The principle in the Osmotherly rules that discipline is a matter for handling within a department—it is not a matter for select committees—is another bit of bedrock. The fact that civil servants come before select committees and answer on behalf of their Minister, not of themselves, is another part of this bedrock. It is about the relationship between the

Government and the civil service, who is accountable and how the accountability works. It is all tied up together. It is very difficult to take bits of it out and not alter the rest.

**Q255 Lord Shaw of Northstead:** As this practice develops, the interest and the pressure for information from the press will become greater. Assuming that he has given evidence before a select committee, what has he to endure in terms of attention from the press?

**Lord Wilson of Dinton:** You are quite right: the media are not a fair tribunal; they are primarily in the business of entertainment. What they want is something that creates a headline. That again is not something that the civil servants should be party to or drawn into. At the end of this road that you are describing, there lies a problem, which is that, if Ministers feel that civil servants appearing in public, being broadcast, with the media watching, are going to be freed of the constitutional restraints on their appearance and able to say what they personally think or what actually happened behind the scenes, then Ministers are going to want people in those positions who are politically attuned to them. What you are describing is a path that leads to a very politicised civil service and political appointments. You could run such a system; goodness knows, the United States has a system of patronage. It is not a system that I think is in the general public interest, on the whole, so I would be against it, but we need to be clear where the kinds of developments you are describing are leading.

**Q256 The Chairman:** So what should we do to, as it were, steer it back? If you are saying that we should not slip and slide into this, because of our unwritten constitution, how do we protect those things that you have described as being valuable?

**Lord Wilson of Dinton:** If the basic constitutional understanding is breaking down, this Committee is a noble and admirable attempt to try to shore up the slithering, but there is a limit to how far one select committee can do it. The old-fashioned answer would be a Royal Commission. It is not a stupid idea because you do need to have a proper review of all these different ingredients and not just piecemeal attempts.

**Q257 The Chairman:** The Government have come forward with a fairly substantial paper. What is your view of some of those recommendations, particularly on the role of accountability and responsibility?

**Lord Wilson of Dinton:** This is this document called the *Civil Service Reform Plan*.

**The Chairman:** Yes; we are all trying not to call it a white paper, because we are told it is not.

**Lord Wilson of Dinton:** I called it a “document”. The bit that obviously particularly attracts the eye is the reference to the role of Ministers in the recruitment of permanent secretaries. Parliament, only two years ago, passed an Act that finally implemented the Northcote–Trevelyan report. I think it would be odd to start trying to undo it. There has always been a tension in politics between patronage and merit; it is an old battle. Disraeli hated the Northcote–Trevelyan report and invented the job of First Civil Service Commissioner for a friend of his who needed money. Merit ultimately has won, but the patronage virus is never dead and constantly needs to be beaten back.

I think that the letter that Sir David Normington has put on the website of the Civil Service Commission is a very good one. I support it. It leans over backwards to make very clear the active role that Ministers can have in the process of recruiting someone, but makes it

clear that, in the end, patronage is not the system that we have. You could have a system of patronage; we could go back to the days of *Little Dorrit* and all the corruption and things that are not in the interest of taxpayers that come from that route. You could say that the Americans have a better system, but I do not think we have done that. Until you have the argument, properly explain and defend it, and have it approved—I think you should have a referendum on it—we should stick with what we have.

**Q258 Lord Crickhowell:** You said that one of the red lines was the accountability of civil servants to Ministers. That takes us rather neatly back to the questions that were asked in the previous session, which you sat in on, about the difference between accountability and responsibility, and the fact that a Minister may be accountable and answer, but for a project that perhaps was started years before under a different administration. The project has been managed by civil servants, who may well appear increasingly before select committees. We have had questioning about who would be responsible for discipline, and so on. There is a developing situation here, because select committees are increasingly demanding to see how the whole project is managed. Very senior civil servants will appear before it. It may be that it is quite right that they should not be individually blamed, but their responsibility may become very clear as a result of the questioning. What would your principles be in establishing this kind of relationship, where the Minister is accountable in the sense of reporting but cannot be responsible for what has happened in a long-term project.

**Lord Wilson of Dinton:** Ministers are accountable to Parliament in the sense that they are liable to give an account. That in no way entails personal responsibility. Whether they survive is a matter of whether they retain the confidence of their backbenchers and of the Prime Minister. See that article by Dr Finer in 1956. Civil servants are accountable to Ministers but, on behalf of Ministers, may give evidence.

The boundary where politics and management meet is a really difficult area. As a permanent secretary, that is probably one of the biggest headaches and the most difficult parts of the job that I experienced. We have very big projects. We have areas that are very sensitive and politically but also managerially important. What is in the best interests of politics is not always in the best interests of management. What, in management terms, may be the right thing to do may, in political terms, be controversial. Trying to reconcile those interests contains the seeds of great unfairness to civil servants, who do what the Ministers want, for the reason that the Minister is in charge, but you cannot necessarily in public explain that what the Minister wanted was actually not, in his or her own view, the best thing to do or, in management terms, the best thing to do but, in political terms, may have been the right thing to do.

You are dealing with a situation that is quite complex. The objectives of politics are quite often multiple. In the private sector, it is so nice to have such a simple world to work in compared with the world of politics. The idea that civil servants should be responsible personally on the basis of a select committee hearing is, I think, offensive to any concept of fairness. Someone said there is a clamour to change the Osmotherly rules. I re-read them. I think they are very good. Have you read them? I expect you could probably all quote it by heart. Paragraphs 73 onwards about the personal responsibility of civil servants seem to be remarkably good. I think it is fair. I think it recognises the basis on which the executive and Parliament should treat public servants. I do not know what is wrong with it.

**Q259 Baroness Falkner of Margravine:** Lord Wilson, you draw a very clear distinction between management and responsibility. Do you not think that, when you have a plethora of arm's-length bodies, non-departmental public bodies, agencies, executive agencies and so



on, the public expect, in the interest of transparency, the Minister to be accountable but also to be responsible for the functioning of those bodies. Alongside that, you referred to politicisation. Would you not accept that, in terms of your comment about the new proposals and shortlists going to the Minister, which you did not seem to agree was a useful convention that is being developed to have clearer lines—I see the offering-up to a Minister of a list of several names as—

**Lord Wilson of Dinton:** No, I did not say that. I am sorry, but the record will show I did not say that.

**Q260 Baroness Falkner of Margravine:** I did not actually say what you said. I was going to ask you a question about that. I see that as a positive step in making the Minister more responsible for what happens in the department. Why do you believe that that would so politicise the process? There are two different things here.

**Lord Wilson of Dinton:** Two different questions. First, as to the public holding Ministers responsible, I agree. I think the public is probably fairer than this implies, but certainly the media have a way of wanting to make Ministers personally responsible for failings in their departments. I think it is most unfair. I have often thought that Ministers being held up as personally responsible for things that they could not conceivably be responsible for is most unfair. I am extremely grateful that there is a string of people who are still prepared to come forward to be Ministers, despite such an obvious objection to it as a career. When undergraduates ask me about going into politics, I simply say Mr Punch's advice to a young man about to get married: "Don't." They still, nobly, want to do it and I am grateful for that. That is the only answer I can give on that.

As to permanent secretaries, this is Disraeli's argument. He wanted people around him he was comfortable with. That is the system that Dickens and everyone criticised, which Ministers would like to have. The fact is that actually the public's interest is in continuity. Ministers may not, as is no doubt regrettable from their point of view, always last that long in a job. You have to have someone in the post who is best fitted, with all their skills, background and experience, to do the job and to provide continuity. All sorts of things flow from continuity, such as the ability for a government to come into power on a Friday, when they have been elected on a Thursday, and for the system of government to go on. If you want a system that allows continuity and allows the best person for the job, rather than political favouritism and patronage—if I may use pejorative language the other way—I think the Northcote–Trevelyan approach of selection on merit is the right one and the First Civil Service Commissioner is absolutely right.

**Q261 Baroness Falkner of Margravine:** Are you aware that Peter Riddell has suggested that this new proposal would be fine, as long as the Civil Service Commission would approve the shortlist as being sufficiently non-political?

**Lord Wilson of Dinton:** The answer to your question is no, I was not aware of that.

**Q262 Baroness Falkner of Margravine:** What would your view of the proposal be?

**Lord Wilson of Dinton:** The system that is described in David Normington's letter, in which the Minister is given every chance to meet people, consulted and his views are taken into account is the right one but, in the end, the external recruitment of permanent secretaries should be a matter for decision by an independent body with the wider perspective that I was giving to you earlier.

**Q263 The Chairman:** Lord Wilson, we are, as you know, under some time constraints this morning, and I am aware of your distinguished colleagues sitting behind you, who I know are wanting to speak and who we obviously want to speak to. You said at the beginning that you did not have any particular general points you want to make, but on reflection do you feel we have failed to mention some issues that you wanted us to raise?

**Lord Wilson of Dinton:** There are so many other things we could have talked about.

**The Chairman:** Do give us written evidence.

**Lord Wilson of Dinton:** No. I think that the Osmotherly rules, when read—for instance, paragraphs 40 onwards—are remarkably good and have stood up to the test of time. There is one aspect of them that troubled me a bit, which was paragraph 43: “The line of ministerial accountability means that it is for Ministers to decide which official or officials should represent them”. When I was Cabinet Secretary, the Public Administration Select Committee summoned a variety of individuals from No. 10, mainly special advisers, whom it wished to interrogate. Each time the Prime Minister decided that I should go. They said, “How is it that, whoever we call, we always get you?” One was on discipline, but the others were just to know them. Where discipline is not involved, the principle of a select committee being able to call individuals is an issue that is worth debating. That is the only bit of the Osmotherly rules; otherwise you ought to be pretty pleased with them.

I feel strongly that, again, where something has gone wrong, a select committee should leave it to the department to investigate and to take disciplinary action. The escapes from Whitemoor and Parkhurst, which led ultimately to the departure of Derek Lewis, where a select committee played a perfectly proper, good and interesting role, is a good example of that happening, because we had a disciplinary inquiry there on top of the external investigation. I think that was the proper way of proceeding. I think David Kelly is an example of how select committees can have disastrous consequences if they get too close to discipline and personal wrongdoing. Thank you very much.

**The Chairman:** Thank you very much. I am very grateful. Thank you for being so precise, as we knew you would be. Thank you for taking the time to listen to the earlier sessions, because that was very helpful.

**Lord Wilson of Dinton:** It was very interesting.

**The Chairman:** Thank you Lord Wilson. Next we have Lord Turnbull, and Lord O’Donnell is here too, so that is excellent.