



HOUSE OF LORDS

Unrevised transcript of evidence taken before
The Select Committee on the Constitution
Inquiry on
ACCOUNTABILITY OF CIVIL SERVANTS

Evidence Session No. 4.

Heard in Public.

Questions 105-155

WEDNESDAY 27 JUNE 2012

10.25 am

Witnesses: Andrew Haldenby, Alexandra Runswick and Rt Hon. Peter Riddell CBE
Professor Lord Hennessy of Nympsfield, Professor Colin Talbot and Dr Andrew Blick

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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

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.

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 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 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 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.

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 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 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.

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 “SpAdery 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 19th 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 secretary was uneasy about a role that was being give 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. 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 bugger 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 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 value of special advisers giving expert advice on complicated matters. I think it was Norman Fowler in evidence who said we had far too many special advisers, and we should have fewer of them. What became quite clear in subsequent evidence that we had on special advisers was that many of them are no more than glorified press officers, and political press officers at that. Should this Committee express a view about the desirability of special advisers being the experts who can add something to the policy advice rather than being press officers, designed to be there to hand over political views to what I think was described by one of the Ministers as the increasingly voracious press that needs to be fed? There seems to have been a complete switch in the purpose of a special adviser. Should this Committee form a view?

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 the 19th century to the 20th, and it has survived into the 21st, 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 beholden 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.

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.