



HOUSE OF LORDS

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Witnesses: Rt Hon Charles Clarke and Rt Hon Lord Howard of Lympne CH QC

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Members present

Baroness Jay of Paddington (Chairman)
Lord Crickhowell
Baroness Falkner of Margravine
Lord Hart of Chilton
Lord Irvine of Lairg
Lord Lexden
Lord Macdonald of River Glaven
Lord Pannick
Lord Shaw of Northstead

Examination of Witnesses

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

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

If I may, I will plunge straight in with something that has come up in all our discussions. Do you think that the conventions, as everyone has understood them, of ministerial responsibility can continue to be relevant in the most modern forms of government? In particular, does the expansion of government activity—and particularly, in both your cases, with a department such as the Home Office, which has very broad responsibilities, and responsibilities for bodies that are quasi-government organisations—make the understanding

of ministerial responsibility, in the individual sense, to Parliament something that we can continue to exercise? If we cannot, what should replace it? Perhaps Lord Howard would start.

Lord Howard of Lympne: I am Lord Howard of Lympne. My answer to your question is, broadly speaking, yes. There are a couple of caveats and qualifications. I think that it would be helpful, and I suggest this somewhat diffidently, if one thought a little about what you actually mean by the phrase “ministerial responsibility”. I was struck reading the transcript of your proceedings on 23 May by the extent to which the word “accountability” and the word “responsibility” were used pretty well interchangeably, as though they meant the same thing. I do not think that they mean the same thing. I think that Ministers should be accountable to Parliament—and Parliament’s select committees, obviously—for everything that is within the remit of their department. However, there will be some things within the remit of their department for which they are not responsible—accountable to Parliament, yes, but not responsible. For example, there will be things that have been devolved to independent bodies. They come within the broad remit of the department, so Ministers should still be accountable to Parliament for those things, but they are not responsible for them.

Another example, which you discussed on 23 May, and which I am sure was in everyone’s mind as leading to complications when it comes to accountability, is the kind of project that extends over a significant period of time, started when there was a different Minister in charge of the department, when there was a different permanent secretary, and implemented—or not implemented—under a second Secretary of State and second permanent secretary, yet the person who is properly accountable to Parliament for that project is the Minister who happens to be in charge of the department at the point of inquiry. I think that it is perfectly proper that he should be accountable, but he is not in any meaningful way responsible for the way in which the project was designed or drawn up at its

outset, or for any critical mistakes that may have been made under a predecessor Secretary of State and a predecessor permanent secretary. I think that if one were a bit clearer about the difference between accountability and responsibility, it would help the clarity of thinking on these issues.

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

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

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

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

Q29 The Chairman: Mr Clarke?

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

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

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

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

The final point is that the accounting officer is the permanent secretary, who is accountable to the Public Accounts Committee. That is a very important principle and is a distinction when you talk about the relationship between accountability and responsibility, which Michael described, between the Minister and the permanent secretary. I have always said

that the core relationship for a Secretary of State is with the permanent secretary in that department; to get the relationships right. When that goes wrong—we can give lots of examples—the whole structure of government tends to fall down. When it is right, then you can conduct government in the proper way. Getting that relationship right is terribly important and relates to your later question about the accountability of permanent secretaries and the change of permanent secretaries and so on. That is a very difficult question.

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

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

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

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

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

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

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

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

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

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

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

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

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

Lord Howard of Lympne: Yes. I am not in favour of any move towards anything remotely resembling the American system, whereby an incoming administration changes large swathes of what we would regard as civil service positions. That is a very unhelpful process. I do not know what the current situation is, or what it was under the last Government. When I was last in government, the position was that a Minister had pretty wide discretion over the appointment of people in his private office. You saw several candidates and you made the choice as to who was to be your Principal Private Secretary and so on. In my time, I had a kind of unofficial right of veto over the appointment of a new permanent secretary, which I exercised. You did not have the right to choose your permanent secretary, although in the end I did get the person I wanted. I did not say, "I insist on having X". What I said was, "I am

trying to completely change the culture of the Home Office, so I do not want a new permanent secretary who has, at any point in his career, served in the Home Office.” The candidate that officialdom had lined up had spent a large part of his career in the Home Office. I had nothing at all against him personally, but I said, “I’m afraid I want someone different.” That led to quite a prolonged argument—I suppose that is one word for it—involving the Cabinet Secretary and ultimately the Prime Minister, who resolved it in my favour.

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

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

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

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

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

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

The Chairman: Please do.

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

Charles Clarke: And famously successful.

Lord Howard of Lympne: Let me tell you what happened. The person in charge of the leak inquiry concluded as follows: "I have made inquiries of everyone who had access to this document. I have established that only two officials had access to it at the relevant time. One gave me a totally convincing account of the way in which he had handled the document and I therefore did not question him further. The other admitted that he had had the document at the relevant time, admitted that he had spoken to the journalist who had written the article at the relevant time, but denied categorically that he had told the journalist about the contents of the document. I am therefore unable to come to a conclusion about who was responsible for the leak." That is an example of just how frustrating it can be, but, nevertheless, I do not think that Ministers should have a role in dismissal or disciplinary proceedings.

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

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

Lord Howard of Lympne: Yes, that is different.

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

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

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

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

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

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

However, that triumvirate is very important. The Principal Private Secretary has to have the confidence of both the Secretary of State and the permanent secretary.

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

Q36 Lord Shaw of Northstead: Clearly, civil servants come into contact with the public or Parliament much more than they did—that is my opinion. To what extent does the whole civil service act as a constitutional check on the actions of Ministers? For example, should any public statement that has to be made or is asked for from a civil servant only be in accordance with his Minister's view? What is the position if a Minister has yet to give a view on something? When questioned, is a civil servant barred from giving his own personal view? What freedom is there in the case of civil servants?

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

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

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

Having said that, you have a series of difficult issues if the civil servants are not strong, and if in particular the permanent secretary is not, in relation to the Secretary of State. That leads

to a very difficult set of issues. You used in your question the phrase “constitutional check”. That becomes a very critical question when you talk about quasi-judicial roles played by Ministers, or proprieties, for example in relation to allocation of moneys including to your own constituencies and issues of that kind, where the civil service has to be absolutely a stickler for the position—and should be. That is one of the reasons why I find the current position in relation to the Secretary of State for Culture, Media and Sport completely inexplicable. In the current circumstances, it does not appear that the permanent secretary acted as he should have done. It is a constitutional check. It should be a key culture of the civil service to be that constitutional check. Now, some politicians do not like that. We see it in the papers all the time at the moment that certain politicians argue that you do not want civil servants who are a constitutional check. I take exactly the opposite view: it is critical that they are a constitutional check as long as, at the end of the day, the right of the Minister to take the decision is acknowledged and recognised. I think that in practice that is the case. All civil servants I know accept that if the Secretary of State wants to take a decision, then that is what they should do.

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

temperaments of different Ministers and there is not much that you can do about it. It is just the way that life is. But that is in a completely different box from questions of propriety.

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

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

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

Charles Clarke: As you say, I have never served in a coalition Government, but there are two separate points. First, I know that it is a truism but it is true that all governments are, in a sense, coalitions. All governments, including single-party governments, have caucuses and groups within them that work in particular ways, and in a way that is not entirely dissimilar to having two separate political parties in operation. There are groups who have their own Members of Parliament who will vote in parliamentary votes in accordance with what is happening and so on. In a sense, the operation of this coalition Government is different to an extent from what has happened in previous one-party governments, but is not on a completely different planet.

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

Lord Howard of Lympne: I think that Lord Crickhowell would agree that in the administration in which he served the whole concept of coalition government would have been inconceivable. We have little experience of coalitions and therefore, inevitably to some

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

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

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

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

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

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

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

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

Lord Pannick: Should it go to Parliament?

Charles Clarke: You could argue that it should.

Lord Pannick: What is your view?

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

I found that one of the most difficult areas was relationships with private contractors. I have come this morning from a breakfast on educational technology. When I first became a junior Minister in this area in 1998, I thought it was very important to try to understand what companies such as Microsoft or Apple were doing in the educational field but I was advised that I could not meet them because there might be a circumstance in which a tender was coming round the corner and the meeting might be thought to have prejudiced a decision on the allocation of the contract. It was a very long and difficult process and meant that there was a lack of dialogue in areas which I thought were important. I still think that this is quite a difficult problem. There is a kind of purity—that is perhaps a funny word to use—or

isolation of the political and civil servant class from what is going on in the rest of the world, which I think is a problem. You end up with ridiculous and dangerous situations where the meetings that take place do so at think-tank dinners, functions or private meetings. Those meetings are not about allocating money from the Government—that would obviously be improper—but about trying to understand what is going on in these different areas. I think that it is important to get a better level of dialogue between government in general and the wider world than we currently have. Some of the current conventions make that quite difficult to achieve.

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

Q40 Lord Crickhowell: I just wanted to take up the point that Mr Clarke interestingly raised. It takes us back to the point made earlier by Michael Howard about the difference between accountability and responsibility. I was a chairman of an IT service company attempting a very important contract for the Cabinet Office at the heart of government, the management of which had largely been subcontracted out. I doubt that the Minister had any real knowledge of what was going on. It was in the hands of the second permanent secretary. When things started to go wrong, I as chairman of the company suggested a meeting with the second permanent secretary, which is what would have happened in the private sector because it takes two to tango. He refused to have that meeting until everything was lost. Then, mysteriously, the whole thing disappeared and we never heard anything more about it. I do not think that it ever got looked at by the Public Accounts Committee. The permanent secretary reports to the Public Accounts Committee about

accounting matters, but the civil service is always going to be defensive of reporting the civil service position when something has gone wrong of an administrative kind, like the management of an IT contract. How do we get round that? The Minister cannot be responsible for this. I do not even see how he can be accountable for it. Are we adequately looking at how we deal with this sort of situation?

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

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

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

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

Charles Clarke: I strongly agree with Lord Howard.

Q42 Lord Macdonald of River Glaven: As you said, that happened in one well-known case. Why do we not move to a more direct accountability model for civil servants? Of course permanent secretaries, sometimes to their distaste, appear in front of the Public Accounts Committee, but they increasingly appear in front of other committees. I myself

have appeared in front of many parliamentary committees, not just the PAC but the Home Affairs, Justice and Constitutional Affairs committees. It seems to me that in the case of policy implementation, as opposed to policy development, surely there cannot be any real objection to Parliament wanting to scrutinise directly those individuals who have made decisions, particularly if the decisions have gone wrong—not just in financial terms but in terms of the Government's objectives. What is the problem with a broader and deeper form of direct accountability to Parliament by senior civil servants?

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

Lord Macdonald of River Glaven: I agree.

Lord Howard of Lympne: That is their bag. Ministers now have a responsibility for making sure that implementation takes place. No effective Minister would simply say, "This is the policy. Get on with it and I am not going to ask you any more about it for another year." That is not the way that effective government is conducted. Ministers have a role in implementation as well. However, where you have a project of the kind that we were just discussing—an IT project or something of that kind, or a regional fire service project such as you were discussing at your previous hearing—I do not see any difficulty in select committees, apart from the Public Accounts Committee, which has a primary role, asking to see the people who were responsible for the decisions that were made.

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

Charles Clarke: I do not. I am not sure that there is an obstacle to what you are suggesting in any case. I argued for a much more rigorous approach. When I was a member of the

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

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

Charles Clarke: Personally, I would welcome that. It would be an appropriate strengthening of the select committee process. My only caution is that the amount of time involved in these hearings is substantial. Getting the agreement of select committee members to allocate the amount of time involved in what would then be a heavy set of inquiries could be difficult.

But for me it is a classic appropriate role for a Member of Parliament—and an honourable role that should be fulfilled. As I said, it would require more staffing for select committees. I am not talking about going to the level of support for the Public Accounts Committee, but the main select committees would need a bit more research support to help them.

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

Charles Clarke: Precisely.

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

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

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

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

Lord Howard of Lympne: In principle, yes.

Q45 Lord Macdonald of River Glaven: I wonder if this can be taken a stage further. Bernard Jenkin has suggested that prospective permanent secretaries should be subject to some form of pre-appointment hearings by Commons select committees. This is already happening for some posts—not permanent secretary posts but other public posts—and

seems to be working reasonably well. Do either of you think that that is desirable, or would it be a step too far?

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

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

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

I would qualify your question to some extent. I think that there are some serious constitutional issues lying under the surface at the moment about the role of select committees in some of those appointments, as decisions are taken and then Secretaries of State overrule them. There was a recent case with the head of the Office for Fair Access

where there was controversy. I think that there needs to be more clarity than there is now about the rights of the select committee in those circumstances. Is it simply to advise the Secretary of State or is it formally to confirm an appointment? I broadly favour formally confirming an appointment but I raise that in the way I do, Lord Macdonald, because I do not think that you can say that the current system is working reasonably well. A number of issues under the surface will come out at some point where the responsibilities are not quite clear.

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

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

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

Charles Clarke: The national union of special advisers.

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

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

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

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

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

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

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

Let me give you an example of one area of a Cabinet member's responsibility that it is very difficult for him or her to undertake and where they could be significantly helped by the presence of an additional special adviser, quite apart from someone who gives advice on the policy of their own department. I found it very difficult when I was in government to make

an effective contribution to decisions made by other departments. There were some in which I took a particular interest and I devoted quite a lot of time to them, but I simply did not have time to do that across the board. In retrospect, if I think back to things that I would like to have done differently when I was in government, I would have liked a special adviser looking not at what I was doing in my department but at what other departments were doing so that I could have made a much greater input, for better or worse, into those decisions for which I would have to bear collective responsibility. Now, that would lead to an increase in special advisers and that is one reason why I do not go along with what has been suggested. I do not think that special advisers should be answerable to Parliament for the reasons that Charles gave.

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

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

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

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