

Committee on Standards in Public Life

# Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service



Ninth Report  
Cm 5775

## **The Seven Principles of Public Life**

### **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.



Ninth Report of the Committee on  
Standards in Public Life

*Chair: Sir Nigel Wicks GCB CVO CBE*

# Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service

**Report**

Presented to Parliament by the Prime Minister  
by Command of Her Majesty  
April 2003  
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# *Committee on Standards in Public Life*



**Chair:**

Sir Nigel Wicks GCB CVO CBE

April 2003

I am pleased to present the Committee's Ninth Report, which deals with Boundaries within the Executive.

The Committee's First and Sixth Reports made recommendations relating to members of the Executive: Ministers, civil servants and special advisers. This report reviews the implementation of these recommendations, taking account of the reference in our terms of reference to "examine current concerns", and of developments within the Executive since the Committee's Sixth Report.

We took as the framework for our Report the Seven Principles of Public Life and their three supporting mechanisms, codes of conduct, independent scrutiny and guidance and education, all of which had been recommended in the Committee's First Report.

The evidence presented to us suggested that there is a need to clarify the definitions and secure the maintenance of the boundaries within the Executive. This would, we believe, provide assurance to the public that government is carried out in accordance with the Seven Principles of Public Life. It would provide a robust framework for ensuring that the Civil Service is fit for purpose and can play its full part in delivering the programme of the government of the day. It would also help office holders within the Executive continue to build and to sustain the relationships necessary for good government. Finally, it would help prevent the unfortunate events which, though occasional, occur when there is a breakdown in relationships between Ministers, civil servants and special advisers and which are corrosive to the public's estimation of office holders in the Executive.

We have, accordingly, made a series of recommendations, which address public concerns in particular areas. We have recommended changes to the Ministerial Code and to the way in which compliance of the Code is monitored and any breaches are investigated. We have recommended a change too to the status of special advisers, who are currently classed as temporary civil servants. Another area of our recommendations concerns the maintenance of the core Civil Service values, particularly impartiality from political party, whilst ensuring that the Service remains "fit for purpose". We also make recommendations concerning the Office of the Prime Minister and the Government Information and Communication Service. We consider it crucial that the procedures for sustaining the fundamental principles identified throughout this report should be subject to Parliamentary scrutiny and decision. We therefore recommend statutory legislation to implement our key recommendations.

Taken together, we believe that our recommendations will help to ensure the highest standards of propriety of office holders in the Executive and so enhance public trust in government and thereby strengthen our democracy.

**Nigel Wicks**

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# LIST OF RECOMMENDATIONS

## Chapter 5: Ministers

- R1.** (a) Material currently contained in the Ministerial Code which covers departmental and parliamentary custom and practice should be published separately as a Ministerial Handbook.
- (b) The substantive material on issues of conduct should form a new Ministerial Code, which should be defined as having equal weight and authority to the Civil Service Code and the Code of Conduct for Special Advisers. (page 22)
- R2.** The Cabinet Secretary and Permanent Secretaries should have no responsibility for giving advice to Ministers on conflicts of interest arising under the Ministerial Code. (page 25)
- R3.** (a) An independent office-holder, called an Adviser on Ministerial Interests, should be established to provide advice to Ministers on compliance with those sections of the Ministerial Code which cover the avoidance of perceived and actual conflicts between their public duties and private interests, formal or otherwise.
- (b) The Ministerial Code should be amended to require an incoming Minister to provide the Adviser on Ministerial Interests with a full list in writing of all interests which might be thought to give rise to a conflict and to provide the necessary information in order for the Adviser's records to be kept up to date.
- (c) The Adviser should consult the Minister's Permanent Secretary about departmental business where necessary to enable the Adviser to ascertain whether a conflict of interest may exist.
- (d) The Adviser should be responsible for maintaining a record of ministerial interests and should keep a note of action taken by a Minister on taking up office.
- (e) The Adviser should publish information and guidance on how Ministers should deal with conflicts of interest under the Ministerial Code.
- (f) The facts of ministerial interests should be published.
- (g) Where unforeseen conflicts arise subsequently during the course of a department's work, the Minister should consult the Adviser over what action might be necessary.
- (h) The Adviser should refer any breach or allegation of a breach to the Prime Minister.
- (i) The Adviser should be appointed by open competition, chaired by the First Civil Service Commissioner, for a fixed, non-renewable term.
- (j) The Adviser should be provided with appropriate resources to achieve his or her task. (page 27)
- R4.** (a) At the beginning of each Parliament, the Prime Minister should nominate two or three individuals of senior standing after consultation with leaders of the major opposition parties.
- (b) The names of these individuals should be made public.
- (c) Should the Prime Minister consider an investigation into an allegation of a breach of the Ministerial Code appropriate, the Prime Minister would invite one of these individuals to conduct that investigation.
- (d) The individual selected to carry out an investigation should investigate the facts and report his or her findings to the Prime Minister, who would decide on the consequences for a Minister. The report should be published. (page 29)
- R5.** The Government should ensure that the Civil Service can expand the training options in place to cover the needs both of newly appointed or promoted Ministers and of opposition politicians shadowing Cabinet posts. (page 30)

## Chapter 6: The permanent Civil Service

- R6.** The Civil Service should be established in statute. (page 34)
- R7.** The Civil Service Commissioners should have an active role in scrutinising the maintenance of the core values of the Civil Service. (page 34)
- R8.** The Civil Service Commissioners should monitor the use of both short-term appointments and secondments to ensure that the core values of the Civil Service are not compromised. (page 38)
- R9.** (a) The overriding principle of selection on merit, after fair and open competition, should be maintained.
- (b) The Civil Service Commissioners should continue to be responsible for ensuring that the merit principle is properly applied within the Civil Service.
- (c) To that end, the Commissioners should be granted powers and facilities to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit.
- (d) The Civil Service Commissioners should grant further relaxation from the overriding principle of selection on merit only if they are fully satisfied that this is needed for the operational effectiveness of the Civil Service, for example after an investigation using the powers referred to in (c) above.
- (e) The present practice whereby one candidate, chosen on merit, is recommended to the Minister should continue for open competition involving outside candidates. (page 38)
- R10.** Principal Private Secretaries should continue to be permanent civil servants and they should have the responsibility for ensuring that the Minister has the full range of governmental advice affecting his or her duties. (page 39)
- R11.** (a) Departments should ensure that the Civil Service Code is used in induction proceedings and in-service training.
- (b) The Civil Service Commissioners should advise departments on their promotion of the Civil Service Code and report on their induction and training activities in their annual report. (page 40)

- R12.** (a) The Government should actively establish a register of departmental nominated officers to whom any civil servant may go if he or she believes that he or she is being required to act in a way which is inconsistent with the Civil Service Code.
- (b) The Civil Service Commissioners should establish and maintain contacts with the departmental nominated officers.
- (c) Departments should report the number of appeals they handle under the Code to the Civil Service Commissioners so that the Commissioners can publish figures in their annual report. (page 41)
- R13.** Paragraph 22 of the Code of Conduct for Special Advisers specifically relating to civil servants should be inserted into the Civil Service Code as soon as possible. (page 42)
- R14.** The appointment of the First Civil Service Commissioner should be made after consultation with opposition leaders. (page 42)

## Chapter 7: Special advisers

- R15.** Special advisers should be defined as a category of government servant distinct from the Civil Service. (page 45)
- R16.** As a category of government servant distinct from the Civil Service, special advisers should have terms of service which preserve the relevant elements from the Civil Service Code, the Civil Service Management Code and the Code of Conduct for Special Advisers. (page 45)
- R17.** There should be a single category of special adviser. (page 46)
- R18.** (a) A clear statement of what special advisers cannot do should be set out in primary legislation.
- (b) Special advisers should not:
- (i) ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
  - (ii) undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;
  - (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants;
- Subject to R31 on the Prime Minister's Office special advisers should not:
- (iv) have powers to authorise the spending of government money;

- (v) have any role in the line management of civil servants;
- (vi) have charge of or any direction over the work of GICS members;
- (vii) have any other executive powers. (page 48)

(c) The Code of Conduct for Special Advisors should continue to list the sorts of work a special adviser may do at the request of their Minister.

(d) The Ministerial Code should be amended to require each Minister to set out in the individual contract for each special adviser the work that adviser is being appointed to undertake. Any significant departure from the sorts of work envisaged in the Code of Conduct for Special Advisors should require the prior written approval of the Prime Minister and should be explained publicly. (page 48)

**R19.** The Ministerial Code should be amended to make clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers. (page 49)

**R20.** (a) The Minister concerned should investigate any allegation that his or her special adviser is in breach of the Code of Conduct for Special Advisors.

(b) Where necessary, it would be possible for the Prime Minister to refer the matter for investigation in the same way as an alleged breach of the Ministerial Code. (page 49)

**R21.** An annual statement should be made to Parliament setting out:

- (i) the total number of paid special advisers employed in the year;
- (ii) their names;
- (iii) the Ministers for whom they work or have worked;
- (iv) their particular roles and areas of responsibility;
- (v) the total salary cost by department;
- (vi) comparison figures for earlier years. (page 50)

**R22.** (a) The total number of special advisers should be contained in statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament.

(b) Pending legislation, there should be a debate on the total number of special advisers that can be appointed within government. (page 51)

**R23.** (a) The Ministerial Code should be amended to make clear that Ministers are personally accountable for the management and discipline of their unpaid advisers in respect of their governmental responsibilities to the Prime Minister and to Parliament.

- (b) The annual statement referred to in R21 should also include unpaid advisers, stating:
- (i) the total number of unpaid special advisers employed in the year;
  - (ii) their names;
  - (iii) the Ministers for whom they work or have worked;
  - (iv) their particular roles and areas of responsibility;
  - (v) comparison figures for earlier years.

(c) An unpaid adviser should be defined in the Ministerial Code as anyone who provides, on an unpaid basis, advice to any Minister or represents any Minister in this country or abroad on a recurring or continuous basis.

(d) The requirement to uphold the political impartiality of civil servants and the requirement not to use official resources for party political activity, contained in the Code of Conduct for Special Advisors, should be included in the letter of appointment for every unpaid adviser. (page 52)

**R24.** The Code of Conduct for Special Advisors should be updated as appropriate to take account of the change in status of special advisers. (page 52)

## Chapter 8: The Government Information and Communication Service

**R25.** An Accounting Officer should not hesitate to notify his or her concerns, in accordance with Treasury guidelines for Accounting Officers, where he or she believes that the Minister in charge of the department is contemplating a course of action relating to the operation of the press office which would infringe the requirements of financial propriety or regularity. (page 57)

**R26.** An individual should only be recruited to a senior post in the GICS where the selection panel has a high degree of confidence that he or she will be a leader in upholding the impartiality of the GICS. (page 58)

**R27.** Wherever possible, GICS press officers should speak on the record as “the department’s spokesman/spokeswoman”. (page 60)

**R29.** The *Guidance on the Work of the Government Information Service* should set out the relationship between special advisers and civil servants. (page 60)

## Chapter 9: The Prime Minister's Office

**R29.** It should be for the Government to decide on the overall distribution between departments of the number of special advisers approved by Parliament. (page 63)

**R30.** (a) The Ministerial Code should be amended to make clear that the Prime Minister is personally accountable to Parliament for the management and discipline of his or her special advisers.

(b) The most senior special adviser in the Prime Minister's Office should be responsible to the Prime Minister for ensuring that the day-to-day activities of special advisers appointed by the Prime Minister comply with the Code of Conduct for Special Advisers. (page 63)

**R31.** (a) The existence of two posts in the Prime Minister's Office with executive powers should be a matter for Parliamentary debate and agreement.

(b) Special advisers with executive powers should not:

- (i) ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
- (ii) undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;
- (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants.

But they may:

- (iv) have powers to authorise the spending of government money chargeable to the Prime Minister's Office;
- (v) have a role in the line management of civil servants in the Prime Minister's Office;
- (vi) have charge of or direction over the work of GICS members in the Prime Minister's Office.

(c) The Prime Minister's Principal Private Secretary should have the responsibility of drawing to the attention of the Prime Minister any concerns that he or she may have about the ability of civil servants in the office to maintain their political impartiality. (page 66)

**R32.** The *Guidance on the Work of the Government Information Service* should deal specifically with the issue of media work in the Prime Minister's Office. (page 66)

## Chapter 10: Securing the boundaries

**R33.** The Government should begin an early process of public consultation on the contents of a draft Bill. The Bill should receive pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. (page 70)

**R34.** There should be a short Act to cover the Civil Service and special advisers. In particular, this should:

- (a) define the status of the Civil Service;
- (b) include a statutory obligation on Ministers to uphold the impartiality of the Civil Service;
- (c) set out the responsibility of the Civil Service Commissioners for ensuring that the principle of selection on merit is properly applied, together with the ability to make exceptions from that principle;
- (d) set out the Civil Service core values, including the overriding principle of selection on merit;
- (e) grant powers for the Civil Service Commissioners to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit;
- (f) provide for the First Civil Service Commissioner to be appointed after consultation with opposition leaders;
- (g) define the status of special advisers as a category of government servant distinct from the Civil Service;
- (h) state what special advisers cannot do;
- (i) include power for the Civil Service Code and the Code of Conduct for Special Advisers to be given effect as statutory instruments requiring the approval of both Houses of Parliament and amendable by the same procedure;
- (j) state the total number of special advisers, with an upper limit subject to alteration by resolution approved by both Houses of Parliament;
- (k) provide for two special adviser posts in the Prime Minister's Office with "executive powers";
- (l) define special advisers with executive powers by derogation from the restrictions on what other special advisers can do;
- (m) require an annual statement to Parliament on paid and unpaid special advisers. (page 71)

# CHAPTER 1 INTRODUCTION

- 1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major, in response to public concern about standards in public life.
- 1.2 The Committee was given wide-ranging terms of reference:

*To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*

- 1.3 These terms of reference were extended in November 1997 by the present Prime Minister, the Rt Hon Tony Blair MP, to enable the Committee to undertake an inquiry into the funding of political parties. A list of the Committee's previous reports is in Appendix D.
- 1.4 A list of public office-holders was also given. It included the members of the Executive, Ministers, permanent civil servants and special advisers who are legally 'temporary' civil servants. The full text is in the information about the Committee at the back of this report.

## The First and Sixth Reports

- 1.5 For its First Report, the Committee, under the Chairmanship of the Rt Hon Lord Nolan, concentrated on three areas: the House of Commons; central government (Ministers and civil servants); and executive Non-Departmental Public Bodies (NDPBs) – or 'quangos' – including NHS bodies.
- 1.6 The First Report was published in May 1995 and contained four general recommendations and 55 other recommendations. The first general recommendation was the formulation of Seven Principles which should underpin standards in public life – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and

Leadership (set out in full inside the front cover of this report). These have since come to be widely used as the touchstone for ethical standards in public life. The other general recommendations were:

- **All public bodies should draw up codes of conduct incorporating the Seven Principles.**
- **Internal systems for maintaining standards should be supported by independent scrutiny.**
- **More should be done to promote and reinforce standards of conduct in public bodies, particularly through guidance and training, including induction training.**

- 1.7 Of the 55 recommendations, 21 were directed towards the Executive, Ministers, civil servants and special advisers.
- Ten recommendations concerned Ministers, in particular the Ministerial Code and the extension to Ministers of the Business Appointment Rules.
  - Ten recommendations concerned civil servants, in particular the immediate introduction of a Civil Service Code.
  - One recommendation concerned special advisers, that they should be subject to the Business Appointment Rules.

In 1999, under its second Chair, Lord Neill of Bladen QC, the Committee reviewed the implementation of the recommendations in the First Report, and looked again at Ministers and civil servants. In the five years between the First and Sixth Reports, there had been a number of developments relating to the Committee's interest in the Seven Principles in Public Life. They concerned, in particular, contacts between the Executive and external interests and the growth in the number of task forces. Further evidence was also taken on the enforcement of the Ministerial Code and the introduction of legislation embodying the Civil Service Code.

1.9 Following this review the Committee published its Sixth Report, *Reinforcing Standards*, making four and three recommendations respectively on Ministers and special advisers. In this report, the Committee also specifically discussed special advisers, making six recommendations relating to their status and regulation. In all, 13 recommendations were made in the Sixth Report concerning the Executive. These, and the recommendations made in the First Report, are set out in full at Appendix A.

## The purpose and scope of the present inquiry

1.10 In September 2001, the Committee, under its present Chair, Sir Nigel Wicks, published *The First Seven Reports – A Review of Progress*. This took stock of each of the 308 recommendations made by the Committee in its seven reports since 1995. The Committee stated its intention to follow this up in due course with a review of the implementation, delivery and outcomes of each report.

1.11 Since the Committee's Sixth Report in early 2000, there has been a number of developments and some high-profile events which relate to the three elements within the Executive – Ministers, the permanent Civil Service and special advisers.

The concept of a Civil Service Act has continued to be pursued, most recently as a result of a debate in the House of Lords<sup>1</sup> and a valedictory speech by the then Cabinet Secretary and Head of the Home Civil Service, Sir Richard Wilson.<sup>2</sup>

Several cases have also drawn attention to concerns about the way in which investigations are handled into alleged breaches in the Ministerial Code and the role of the Cabinet Secretary and Permanent Secretaries in advising Ministers.

The number of special advisers has continued to rise – from 34 in 1994 to 78 by 1999–2000 (at the time of the Committee's Sixth Report), to 81 in 2003.<sup>3</sup> Notwithstanding the publication in 2001 of a new Code of Conduct for Special Advisers and a Model Contract for Special Advisers (following recommendations made in the Sixth Report), questions have been asked regularly about the role, responsibilities and accountability of this growing cadre of political appointees, with

particular attention paid to the two special advisers in the Prime Minister's Office with 'executive powers', and to one or two unpaid special advisers.

Finally, in late 2001 to early 2002, a series of events within the then Department for Local Government, Transport and the Regions led to the resignation of a special adviser and the departure of the civil servant who was head of the department's press office. Some months later, the Secretary of State himself resigned. These events drew attention to particular areas of concern within the working relationship of the three elements within the Executive.

## Gathering evidence

### Written evidence

1.12 In March 2002, the Committee published a consultation paper setting out the principal areas on which it intended to focus and raised 19 questions relating to those areas. The paper was circulated widely within both Houses of Parliament and to members of the Northern Ireland Assembly, to members of the Scottish Parliament and the National Assembly for Wales and a wide range of organisations (including national libraries and national and local newspapers). The paper was distributed to a number of academics and other political commentators as well as those members of the public who showed an interest in our work. The paper was additionally available on the Committee's website. 65 written submissions were received from a variety of organisations and individuals. We also sought additional written evidence in response to a series of letters of inquiry to various permanent heads of departments of state.

1.13 All written submissions (save, in accordance with the Committee's long-standing procedure, those which we were asked to treat as confidential or those which we considered might be defamatory) can be found on the CD-ROM which forms part of this report. A list of those submitting written evidence is at Appendix B. The CD-ROM also contains a copy of this report and transcripts of the oral evidence.

### Public hearings

1.14 Between 27 June and 18 September 2002, the Committee took evidence at nine sessions of

<sup>1</sup> 1 May 2002.

<sup>2</sup> *Portrait of a Profession Revisited*, 26 March 2002. Sir Richard is now Lord Wilson of Dinton.

<sup>3</sup> *Hansard* (HC) 31 January 2003, col 1956W; 22 January 2001, col 469W.

public hearings in London. A list of witnesses who gave oral evidence, either on their own behalf or in a representative capacity, is set out in Appendix C. The transcripts of evidence given at the public hearings are published on the CD-ROM. In this report, references to the transcript are in terms of the day of the public hearing and indicate whether the evidence was taken in the morning or the afternoon (for example, 'Day 2, pm').

1.15 In Chapter 2 we explain the Committee's particular interests. Some of the matters raised by witnesses in their evidence go beyond the Committee's terms of reference. Such matters include:

- the consequence of Executive Agencies for the operation of the Civil Service;
- the means by which the Prime Minister is held to account for the Civil Service;
- the relationship between government and the media;
- the relationship of the Civil Service with the Opposition.

Many of these matters raise important issues which deserve further consideration. But we must leave it to others to decide whether to carry this forward.

## The framework within which the Committee works

1.16 This Committee is an advisory body only. It reports to the Prime Minister but sets its own programme after consultation between the Committee and the Government. It has no legal powers. It cannot summon witnesses to appear before it. It has no powers of enforcement and has, therefore, no power to impose any of its recommendations.

## Acknowledgements

1.17 We would like to record our thanks to those who took the time and trouble to make a written submission, or provided additional evidence at our request. We thank in particular those who, in addition, appeared before us to give oral evidence. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable. The Committee does, however, express its profound concern that a number of witnesses in the Prime Minister's Office refused to come and give evidence at our public hearings. This is a matter of especial regret since the Committee reports to the Prime Minister.



# CHAPTER 2 BOUNDARIES WITHIN THE EXECUTIVE: THE COMMITTEE'S INTEREST

2.1 This Committee's interest in the Executive arises through the application of the Seven Principles of Public Life to the conduct of office holders within the Executive, namely Ministers, civil servants and special advisers. Each of the Seven Principles has some relevance. But, in examining the boundaries between Ministers, civil servants and special advisers, we focus particularly on the principles of:

- **Leadership;**
- **Objectivity/impartiality;**
- **Accountability; and**
- **Openness.**

2.2 Throughout this report we consider the effectiveness of the mechanisms in place to ensure standards of conduct which meet these principles. To that end, we consider, for Ministers, the Civil Service and special advisers, the three key mechanisms identified in the First Report:

- the introduction and maintenance of **codes of conduct** which incorporate the Seven Principles of Public Life;
- the use of **independent scrutiny** to support internal systems for maintaining standards; and
- promotion and reinforcement of standards of conduct through **guidance and education.**

## Leadership

**Holders of public office should promote and support the principles of public life by leadership and example.**

2.3 Leadership is critical to the effective promotion and acceptance of standards of conduct. It was a

recurring theme in the evidence we heard during this inquiry. In this context, the leaders particularly identified were the Prime Minister, Ministers, Heads of Departments (Permanent Secretaries), Principal Private Secretaries and Heads of Information.

2.4 Peter Hennessy, Atlee Professor of Contemporary British History at Queen Mary University of London, said, "*the Prime Minister ... is crucial ... [he or she has] to set a tone*".<sup>1</sup> Jonathan Baume, General Secretary of the First Division Association, pointed to the responsibility of Ministers:

*You can look around over the past five years, ... at previous governments and see ministerial teams that really worked well together and that puts a responsibility on a Cabinet Minister, and that means that the politicians succeed, and also civil servants building those teams.*<sup>2</sup>

2.5 Lord Haskins, former Rural Recovery Co-ordinator, drew attention to the need for a strong relationship between Ministers and Senior Civil Servants:

[Relationships depend] *crucially on the quality of leadership there is in a particular department.*<sup>3</sup>

2.6 Sir Andrew Turnbull, now Cabinet Secretary and Head of the Home Civil Service,<sup>4</sup> identified the role of the Permanent Secretary and added to it that of the Principal Private Secretary:

*I think it [the role of Permanent Secretaries in enforcement of codes of conduct] is almost the number one task. If you get a major problem in your department with one of those codes it would damage the department and it would*

<sup>1</sup> Day 4, am.

<sup>2</sup> Day 2, am.

<sup>3</sup> Day 4, pm.

<sup>4</sup> Sir Andrew was Permanent Secretary at HM Treasury when he gave evidence.

damage the effectiveness of Ministers or officials. So ... I share the policing of it with the Principal Private Secretary.<sup>5</sup>

- 2.7 For Mike Granatt, Head of the Government Information and Communication Service, the conclusion was that:

*People want clear leadership.*

He added:

*Without clear, effective leadership at every level in the service, but particularly from the top, and without a clear understanding of what the rules are, things start to go wrong.<sup>6</sup>*

In subsequent chapters, we turn in more detail to the role of these identified leaders.

## Objectivity/impartiality

**In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.**

- 2.8 In the context of this inquiry, we have taken objectivity to be synonymous with impartiality, when it is applied to the Civil Service. (We set out our understanding of impartiality in para 3.19.) From the beginning of its work, the Committee has been careful to identify its role in respect of changes in the Civil Service. We have limited our considerations to *“whether, and if so why, the traditional core values should be sustained and the effect of the Government’s present programme of reform upon them”*.<sup>7</sup> Our consideration of special advisers is complementary to our examination of *“whether the role of a strong and impartial Civil Service is, or is perceived to be, in the process of being diminished”*.<sup>8</sup> In Chapter 6 we consider the core values of the Civil Service and the need for a Service which is fit for purpose.

## Accountability

**Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.**

- 2.9 Witnesses raised concerns that there was an undesirable lack of clarity in the arrangements for accountability for members of the Executive. Ministers are required to account for the actions of the Executive to Parliament. Civil servants are accountable to their Minister. In our Issues and Questions paper we specifically queried the way in which the accountability of special advisers can best be achieved and the role of the Minister or the Permanent Secretary in that process. Lord Lipsey, a former special adviser, saw, in the heightened attention paid to the role of special advisers,

*... a fundamental lack of clarity in this whole area which feeds the political fires that people are always attempting to light around this kind of thing ... Greater clarity, in so far as it is obtainable, would help to avoid a lot of misunderstanding and a perceived problem.<sup>9</sup>*

- 2.10 We turn to the particular matter of accountability for special advisers in Chapter 7. In Chapters 6 and 10 we turn to the accountability of the Executive for the governance of the Civil Service.

## Openness

**Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.**

- 2.11 Openness, in the same way as Leadership, is a principle which should apply to the way in which all of the other principles of public life are observed. Simon Webley, Research Director at the Institute of Business Ethics explained:

<sup>5</sup> Day 5, pm.

<sup>6</sup> Day 6, am.

<sup>7</sup> Committee on Standards in Public Life, Sixth Report, Cm 4557, para 5.6.

<sup>8</sup> Ibid., para 6.22.

<sup>9</sup> Day 1, am.

*I do not think it is unhealthy that people do probe ... any institution in our society about its accountability ... However, it does present ... some challenges, which is how you respond. Ultimately it comes down to how transparent and how open you are in what you are doing.*<sup>10</sup>

The pressure for increasing transparency is inexorable. Lord Haskins made the point that:

*This is a very transparent government, but you cannot be half-transparent.*<sup>11</sup>

2.12 Throughout this report we have made recommendations which are intended to deliver a necessary and effective level of openness and clarity about the boundaries within the Executive. In the next chapter, we consider the need for boundaries and discuss the constitutional context within which the Executive operates.

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<sup>10</sup> Day 3, am.

<sup>11</sup> Day 4, pm.



# CHAPTER 3 DEFINING THE BOUNDARIES

3.1 In this chapter we consider the issue of boundaries and relationships within the Executive and then turn to the constitutional context in which these boundaries and relationships between Ministers, the permanent Civil Service and special advisers are fashioned.

3.2 It is this constitutional background which creates, and makes necessary, the boundaries within the Executive.

## Boundaries and relationships

3.3 Some of our witnesses emphasised that the definition of boundaries should not take precedence at the expense of relationships. The current Cabinet Secretary, Sir Andrew Turnbull asserted, *“Is the aim to maximise the kind of distinctiveness of these different people, or to find ways in which they can work more effectively together?”*<sup>1</sup> Don Cruickshank, who has held a number of senior roles across the public sector,<sup>2</sup> said, *“The more interaction in a network, the more powerful the network becomes. Boundaries and borders can so easily block these interactions ... they can be bad for creativity and problem-solving”*. However, he qualified this by saying, *“But boundaries also provide a sense of attachment and identity: who is inside, who outside – a sense of order”*.<sup>3</sup>

3.4 Professor Hennessy drew attention to the importance of clarity of functions in the commercial world:

*In the commercial world, we are ever more sensitive...to the difference in functions between the various players when it comes to the proper conduct of business. I think you have to be in government too.*

He added:

*In real-time operations the distinctions are not*

*there because you all shove the business on. But in terms of external confidence, you have to know which of the governing professions you belong to.*<sup>4</sup>

3.5 Some witnesses intimated that reference to boundaries can appear to be a defence of the *status quo*. Dr Tony Wright MP, Chairman of the Public Administration Select Committee, identified what he called *“a culture clash”*:

*You have civil servants who are ... very attached to formal procedures. Then you have politicians ... who see themselves as ‘can do’ people who have got to sort things out ... It is not surprising that there are tensions that arise out of that.*<sup>5</sup>

He qualified this, however, by saying, *“Now, it seems to me they are very proper tensions”*. We agree with this qualification.

3.6 The Committee recognises that without good relationships, or *“chemistry”*, as several of our witnesses put it, no organisation can prosper, let alone a highly complex one like government. Sir Hayden Phillips, Permanent Secretary of the Lord Chancellor’s Department, explained:

*Yes, of course boundaries are important. But what is also important is what goes on within those boundaries, and that is the heart of the issue.*<sup>6</sup>

3.7 We also see a clear need to distinguish between organisation and management, which can and should be adapted to meet new challenges – and values and boundaries, which need definition and maintenance. We agree with the view expressed by Don Cruickshank that:

*The challenge is to strike the right balance within the Executive between new ways of delivering the modern task of government, and the pressures for clarity, transparency, impartiality*

<sup>1</sup> Day 5, pm.

<sup>2</sup> Including Chief Executive of NHS in Scotland, Director General of the Office of Telecommunications and Chairman of Action 2000.

<sup>3</sup> Day 9, am.

<sup>4</sup> Day 4, am.

<sup>5</sup> Day 4, pm.

<sup>6</sup> Day 5, pm.

and accountability that are at the core of sound public service.<sup>7</sup>

That is what this report is about.

## The constitutional framework

3.8 While the generality of constitutional matters is not within the mandate of this Committee, several witnesses set out for us the constitutional framework within which the Executive functions. The Committee's approach throughout this report reflects our belief that the existing constitutional framework has served this country well and can continue to do so in the future. The Committee believes, too, that the definition of boundaries and the fashioning of the relationships within the Executive need to accord with this established constitutional framework. Our recommendations are made with that in mind. So we now set out the constitutional context presented to us by our witnesses.

3.9 The then Cabinet Secretary, Sir Richard (now Lord) Wilson<sup>8</sup> referred to the link between the constitution and standards in the following terms:

*I think we express values through our institutions in this country. It is true of Parliament, it is true of the Civil Service, it is true of government and so on. I think the issue of standards ... is very much tied up with the constitution; I do not think they are easily separated.*

He went on, with particular reference to the Civil Service:

*When they write the history books, I believe they will say that constitutionally we are in the middle of great change ... I think we need to provide reassurance to the outside world that the things that matter, the values which I referred to earlier, are being respected and upheld ...<sup>9</sup>*

3.10 The relationships and boundaries within the Executive – defined for the purposes of this report as Ministers, the permanent Civil Service and special advisers – are complex. As Lord Norton of Louth explained in the House of Lords:  
*Government in this country has never been some homogeneous whole. It has comprised several parts, and the relationship between them has*

*been one of interdependence. It has been an interdependence of defined parts, each proceeding on the basis of respect for the others.<sup>10</sup>*

3.11 Not all aspects of the relationship between the “defined parts” fall within the remit of the Committee. But, as the evidence we heard made clear, some issues are central to the practical application of the Seven Principles of Public Life, particularly Objectivity, Accountability, Openness and Leadership. In order to explore those issues we now set out the context in which the relationship, referred to by Lord Norton, is formed.

## Party in government

3.12 It is a feature of the British constitution that party, Parliament and government share common personnel. The Westminster system of government draws its Executive from the Legislature and hence Ministers are members of both Executive and Legislature. Moreover, parties – particularly the governing party – have a dominant role in Parliament. Since the Second World War, senior Ministers have been chosen predominantly from the party which enjoys majority support in the House of Commons.

3.13 Benjamin Disraeli famously said in a speech in Manchester in 1872, “I believe that without party, parliamentary government is impossible”. Parliament, government and party still provide today the crucible in which politics and political life in this country are forged. The Hansard Society Commission on Parliamentary Scrutiny asserted that:

*At Westminster the two most important facts which determine activity are the dominance of the governing party over the activity of the Commons, and the influence of the parties over their MPs.*

3.14 The Commission continued:

*Westminster is characterised by the dominance of the Executive. ... The extent of this control is conveyed in Standing Order 14 of the House of Commons which states that “save as provided in this order, government business shall have precedence at every sitting”.*

<sup>7</sup> Day 9, am.

<sup>8</sup> Lord Wilson of Dinton.

<sup>9</sup> Day 6, pm.

<sup>10</sup> House of Lords, 1 May 2002, *Hansard*, col 710.

The Commission concluded that, “MPs conceive their role according to their position, and the position of their party, in relation to the Government”.<sup>11</sup>

- 3.15 In principle, the electorate chooses a government on the basis of a manifesto put to it by a political party. The Rt Hon Charles Clarke MP, the then Chairman of the Labour Party,<sup>12</sup> explained it to us in the following terms:

*Now, by constitutional practice, I think it is fair to say, what is in the winning party’s manifesto then becomes the policy of the government, unless I have misunderstood some constitutional nicety here. I think that the overlap comes at that particular point in the General Election manifesto.*<sup>13</sup>

This “overlap” of party and government referred to by Mr Clarke allows for the transmission of the party programme into government policy. It is crucial to the smooth working of our constitutional arrangements.

## Ministers, the permanent Civil Service and special advisers

- 3.16 It is Ministers, as members of the Executive and as members of the governing party, who decide how the transmission of party policies into government policy should be achieved. Douglas Alexander MP, Minister of State at the Cabinet Office,<sup>14</sup> explained:

*One of your responsibilities as a Minister is to fulfil the obligations of the Government which have been set down in a manifesto before the people at the previous election... You are aware of the fact you are working towards the manifesto commitments set down by your party; I certainly am as I pursue Ministerial office.*<sup>15</sup>

- 3.17 Ministers are assisted in their task of delivering government policy by the Civil Service. Professor Hennessy described the Civil Service as “a piece of transferable human technology from one properly elected administration to another”.<sup>16</sup>

For Ministers, civil servants are a permanent source of advice and the means by which their instructions are carried out. As a result of a legal case in 1943,<sup>17</sup> the principle was established that:

*The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament...*<sup>18</sup>

- 3.18 The Civil Service Code elaborates the role of “the responsible officials of the department”, namely the Civil Service. It refers to a service which will “assist the duly constituted Government” in three ways: “formulating their policies, carrying out decisions and in administering public services for which [the Government] are responsible”.<sup>19</sup> In all three activities the responsible officials are expected to be impartial. But impartiality here has a particular connotation.

- 3.19 Impartiality signifies, for example, acting in a way which is independent of political partisanship. It does not signify that the Civil Service is independent of government. On the contrary, the Civil Service is bound to give full support and commitment to government Ministers in carrying out their state responsibilities. This will include delivering the party’s manifesto into government policy. Yet, civil servants cannot be used for party political purposes and it is this distinction between an impartial Civil Service and the political role of Ministers which sometimes leads to “a zone of tension between the work that civil servants, Ministers and political parties do”.<sup>20</sup>

- 3.20 The impact of this need to be impartial is perhaps most clearly seen where government information and communication is concerned. Romola Christopherson, former Director of Communications at the Department of Health, explained:

<sup>11</sup> *The Challenge for Parliament, Making Government Accountable*, Report of the Hansard Society Commission on Parliamentary Scrutiny, Hansard Society 2001, pp15-16.

<sup>12</sup> Now Secretary of State for Education and Skills.

<sup>13</sup> Day 6, am.

<sup>14</sup> With responsibility for Civil Service issues.

<sup>15</sup> Ibid.

<sup>16</sup> Day 4, am.

<sup>17</sup> *Carltona Ltd v Commissioners of Works and Others*, [1943] 2 All ER 560.

<sup>18</sup> This has since been qualified. In the 1980s, the Commons Treasury and Civil Service Committee said that “ministers are accountable for the Government’s policies and their own actions or those carried out by civil servants on their specific instructions but not for actions carried out by officials of which they are unaware”. HC 92, para 3.16.

<sup>19</sup> *The Civil Service Code*, para 1.

<sup>20</sup> Andrew Stunell OBE MP, Day 6, pm.

*It is legitimate and appropriate for tax payers' money to be spent on informing and presenting the case for the government and its activities and policies. Not [on] informing and presenting the case for the Labour Party, which happens to be the Government.*<sup>21</sup>

- 3.21 None of our witnesses saw any fundamental difficulty in managing the zone of tension between Ministers and civil servants. Nor does this Committee. Indeed, it is a situation which has endured since the end of the nineteenth century. But the zone of tension can require careful management. It would be a great pity if the “*proper tensions*” referred to by Dr Tony Wright MP, and quoted in para 3.5, were to degenerate into hostility.
- 3.22 The limitation on the permanent Civil Service to be independent of political party has understandably led Ministers to look elsewhere for support for those aspects of their Ministerial role which are party political. This has given rise to a role for special advisers. Although classed as civil servants, special advisers are exempt from the requirement to act with impartiality and objectivity. This allows them to engage with the party political element of Government.<sup>22</sup>
- 3.23 As Pat McFadden, former Deputy Chief of Staff in the Prime Minister's Office<sup>23</sup> explained, “*Special advisers operate on the terrain ... which crosses between the administrative function and the political function. You cannot remove that*”.

He said:

*This goes back to the kind of politics and the kind of democracy that we have. Political parties stand for election. They stand on manifestos that are drawn by those political parties. Once the election happens the Minister does not cease to be a political person. The Minister continues to be a political person ... There are areas of that work where it is not appropriate for civil servants to operate, otherwise they would be compromising their impartiality.*<sup>24</sup>

- 3.24 Witnesses provided us with evidence that the relationships between Ministers, the permanent Civil Service and special advisers were usually good. We believe, however, that such relationships would benefit from clarification of the boundaries within which they are fashioned and so to strengthen the platform for carrying forward the modern tasks of government.
- 3.25 In subsequent chapters we examine in detail the role of each part of the Executive in turn, before looking specifically at the Government Information and Communication Service (GICS) and then at the position of the Prime Minister's Office. First, we look at the way in which the relationships and boundaries within the Executive are being affected by developments which have occurred since 1997.

<sup>21</sup> Day 7.

<sup>22</sup> Although this activity is carefully circumscribed. The Code of Conduct for Special Advisers states that special advisers provide advice on the development of Government policy and its presentation and that in these two areas Government and Party may overlap. The Code continues, “*special advisers paid from public funds have a legitimate role in support of the Government's interest, which they can discharge with a degree of party political commitment and association which would not be permissible for a permanent civil servant*” (para 14). However, “*They should avoid anything which might reasonably lead to the criticism that people paid from public funds are being used for Party political purposes*” (para 6).

<sup>23</sup> Now returned to the Prime Minister's Office as Political Secretary.

<sup>24</sup> Day 3, pm.

# CHAPTER 4 THE CHANGING LANDSCAPE

4.1 In the last chapter we presented a broad overview of the boundaries and relationships of the three elements within the Executive and their constitutional significance. The political landscape within which these boundaries operate and relationships are formed does not remain static. In our Sixth Report, we drew out some of the political and constitutional developments that had occurred since the Labour Government was returned to office in May 1997.<sup>1</sup> Witnesses to this inquiry drew attention to a number of developments since then.

4.2 In broad terms, the most significant of these can be grouped as follows:

- the increased focus on delivery;
- changing demands on in the Civil Service; and
- government and the media.

## The increased focus on delivery

4.3. The word ‘delivery’ has acquired huge currency in recent years. The tendency for it to be widely deployed was indicated by Andrew Marr, Political Editor of the BBC, when he suggested, “If you say ‘Well, this is really all about delivery’, then it is a catchall, conversation-ending answer”.<sup>2</sup>

4.4 He and other witnesses offered a detailed critique of its emergence and current importance. David Hencke of *The Guardian*, suggested that the emphasis on delivery had arisen from developments in party politics. He thought that, over the last 15-20 years, there had been “a collapse of distinctive ideologies for the two parties, a more concentrated move towards

*the centre and to delivery to plans*”. He believed that “that does put a greater weight on ... the Civil Service ... to deliver ... it becomes more of a managerial function”.<sup>3</sup>

4.5 Peter Riddell, Assistant Editor (Politics) at *The Times*, argued that, although delivery of public services was not a new role for the Civil Service, delivery in the post-war years had been through intermediary institutions such as local authorities. He thought the change had begun “a decade or more ago” with the introduction of charters and national standards. Post 1997, the point had been reached where “the state was more interventionist”. This had changed the role of the Civil Service:

*They are expected not just to be the people who advise on policy, but also to be more actively involved in using outcomes at a local level, which was not true ... in the post-war settlement.*<sup>4</sup>

4.6 Sir Richard Mottram, Permanent Secretary of the Department of Work and Pensions, agreed. He thought that when the Labour Government came into office:

*... they began to press the Civil Service about how far the Civil Service was fit for purpose to assist government in the delivery of those services which are not actually delivered by civil servants themselves ... [Now] one of the characteristics is....you have got civil servants working with Ministers, working with third parties to energise the delivery of public services which are largely in the hands of others.*<sup>5</sup>

4.7 Sir Michael Bichard, former Permanent Secretary of the then Department for Education and

<sup>1</sup> CSPL Sixth Report, paras 2.9-2.17.

<sup>2</sup> Day 1, pm.

<sup>3</sup> Day 2, am.

<sup>4</sup> Day 1, am.

<sup>5</sup> Day 9, pm.

Employment felt that the development of Executive Agencies<sup>6</sup> had contributed to the focus on delivery. Before the existence of agencies, he suggested, Ministers often “got advice and actually policy that was not informed by operational realities”. Now, at least in the best instances, “a policy/delivery partnership” had been forged to which both departmental civil servants and agency officials contributed.<sup>7</sup>

4.8 In the view of Peter Preston of *The Guardian*, however, the creation of agencies had now led to ministerial concerns that there was “a major fault-line...in the sense of delivery” because some of the agencies were “basically quite semi-autonomous” and “a lot of it looks like it is outside the control of Ministers”.<sup>8</sup>

4.9 A ministerial viewpoint was expressed robustly to us by Charles Clarke MP. Recalling a difference of opinion with his civil servants during his earlier time as a junior Education Minister, he said:

*That made me wild at the time ... for me, it symbolises ... that the policy advice was not about actually making it happen, but what was the right thing to do in some general way ... I still believe that there is the profound difference between the political class generally and the Civil Service machine, this frustration about actually making things happen.*<sup>9</sup>

4.10 Many issues beyond this Committee’s remit are raised by the increased emphasis on effective delivery of government services so that they meet the standard that responds to the needs of the public. However, the Committee’s interest, in this report is confined, as we explain in Chapter 2, to seeking to maintain the principles of public life, notably Leadership, Objectivity, Accountability and Openness.

## Changing demands on the Civil Service

4.11 Our witnesses presented varying evidence about the ability of the Civil Service to change so as to meet ministerial wishes ‘to make things happen’.

Lord Donoughue of Ashton, Head of the Policy Unit of Prime Ministers Wilson and Callaghan, was sceptical:  
*I think there is a limit to what the Civil Service can deliver, especially if you are talking in terms of delivery of services, which cannot be assessed ... like sales of computers.*

This was in part because of the constant upward revision of the public’s expectations. But it was also unrealistic in view of Civil Service salary levels and selection criteria: people wanting to do “a dramatic, dynamic management job” would go into industry.<sup>10</sup>

4.12 Witnesses saw a need for a greater range of skills, including specialists in project management, human resources, and IT, increasing the emphasis on interchange of staff into and out of the Service. David Normington, the Permanent Secretary of the Department for Education and Skills, described how his department was approaching this issue:

*We have been in the forefront ... of bringing in at senior levels people who have experience of other parts of the education system ... that was a way of strengthening the senior team and putting together this mix of skills that you now need.*

He also mentioned the role of secondees such as teachers as a way of varying the mix:

*We have about 120 inward secondees at the moment and that is how you change the nature of the department. ... They are experts, they are specialists.*<sup>11</sup>

4.13 Former Cabinet Office Permanent Secretary, Sir Robin Mountfield, agreed that there was “a need for the Civil Service to continue to open itself up. It is still, to some extent, a secret garden”. However, he felt the process was not moving fast enough. He was of the view that the policy of trying to recruit at the very top by open competition had not been a success. Instead, he suggested:

*What we ought to be doing ... and are doing progressively, is to recruit people not for specific*

<sup>6</sup> Following publication in 1988 of *Improving Management in Government: The Next Steps*, Executive Agencies were created. They perform certain executive functions of government. They remain part of the Civil Service but, under the terms of individual framework documents, they enjoy greater delegation of financial, pay and personnel matters. Agencies are headed by chief executives who are accountable to Ministers.

<sup>7</sup> Day 2, am.

<sup>8</sup> Day 2, am.

<sup>9</sup> Day 6, am.

<sup>10</sup> Day 8, pm.

<sup>11</sup> Day 6, pm.

*jobs on a short-term contract ... but mid-career into the main career stream ... that ought to be pursued more actively than it has been.*<sup>12</sup>

The same point was made by Sir Michael Bichard.<sup>13</sup>

- 4.14 When we took evidence from a panel of Permanent Secretaries,<sup>14</sup> they also spoke of the importance of human resource management in changing the ability of the Civil Service to deliver outcomes. In their view, this extended beyond changes in recruitment to changing ways in which the skills of existing personnel are developed and their careers managed. Sir Andrew Turnbull said:

*We have not questioned enough ... some of the traditional ways of thinking and traditional ideas about career structures ... compared with the best, not just private sector organisations but a number of large organisations ... I do not think the HR function really matches up.*<sup>15</sup>

- 4.15 Again, these points about the role and composition of the permanent Civil Service raise issues beyond the Committee's remit. But they can impinge, for example, on the arrangements for recruitment into the Civil Service and therefore on its perceived impartiality. We turn to this issue in Chapter 6.

## Government and the media

- 4.16 Several of our witnesses identified a change in the relationship between government and the media. Peter Riddell suggested that any government now lived in a state of 'permanent campaign'. While not a new feature post-1997, it had gained additional impetus from the Labour Party's experience in Opposition of media relationships, which they carried into government after May 1997.

- 4.17 We took evidence about the challenges which the GICS faced when the new government came into office in May 1997. There had been media

comment and speculation about the number of Heads of Information who moved on soon afterwards.<sup>16</sup> Several of our witnesses, particularly those from the media, described how the GICS had reached the point where it was "simply not able to cope"<sup>17</sup> and "near to useless for lots of working journalists".<sup>18</sup> Pat McFadden spoke of the "different culture of communication" that the Labour Government brought in, which required the GICS "to change to meet new demands".<sup>19</sup>

- 4.18 It was common ground among our witnesses that there had been a "dramatic change in media pressure", requiring much swifter handling by government, both in creating and responding to news stories. Jonathan Haslam, former Press Secretary at No.10 from 1996 to 1997 described the challenge as follows:

*[It is] to try to manage a complex organisation in a very, very complex and challenging media world. The competition for the airwaves is intense. And the Government is not treated with the same sort of respect as it had in years past, when interviewers would say, "Is there anything to say to the Nation, Prime Minister? No? Thank you." We are in an entirely different game.*<sup>20</sup>

- 4.19 Andrew Marr, Political Editor of the BBC, also described the change from 20-30 years before:

*There were fewer of us [the media] ... certainly fewer television channels ... fewer newspapers. There was a certain kind of fairly intense competition but a lot of it happened underground as a sort of subterranean root of the lobby system and anonymous sources ... In those days, Ministers had more time to spend directly with journalists than they do now ... the need for go-betweens was much less than it is now.*<sup>21</sup>

- 4.20 The need for 'go-betweens' between a Minister and the media is particularly relevant to our inquiry. There is evidence that there has been an increase in the number of special advisers,

<sup>12</sup> Day 1, am.

<sup>13</sup> Day 2, am.

<sup>14</sup> Sir Andrew Turnbull KCB CVO, then Permanent Secretary at the Treasury and now Cabinet Secretary and Head of the Home Civil Service; Sir Michael Jay KCMG, Permanent Secretary at the Foreign and Commonwealth Office; Sir Hayden Phillips GCB, Permanent Secretary at the Lord Chancellor's Department; and Richard Broadbent, Chairman of HM Customs and Excise.

<sup>15</sup> Day 5, pm.

<sup>16</sup> In a letter to the Public Administration Select Committee, the Head of the Government Information Service, Mike Granatt noted, "Since 1997 people have moved for a variety of reasons. We have always said that "personal chemistry" was an issue in some cases but this is not peculiar to the Information Service. Others simply retired and many moved onto better jobs. To spell it out, at least half of the 19 moves cited by some commentators as forced in some way were nothing of the sort". Minutes of Evidence, 28 February 2002.

<sup>17</sup> Lord Donoghue of Ashton, Day 8, pm.

<sup>18</sup> Andrew Marr, Day 1, pm.

<sup>19</sup> Day 3, pm.

<sup>20</sup> Day 1, pm.

<sup>21</sup> Day 1, pm.

within the Prime Minister's Office and in departments, whose principal function is to handle contacts with the media. The traditional interface between a Minister and his or her government department and the media is the department's Press Office, usually led by a specialist press officer, the Head of Information and a member of the Government Information and Communication Service.

- 4.21 When questioned by the Public Administration Select Committee about how many special advisers are doing information work, the Head of the GICS, Mike Granatt said:

*It is difficult to tell because some advisers operate on policy matters; some advise on presentation and talk to the media – some do both. My guess would be, however, taking into account Number 10 and the adviser departments, about half of them. We are talking about 40 people but as I say, that is an imprecise figure.<sup>22</sup>*

In the view of a number of our witnesses, this development represented a change post-1997. A number of witnesses described how the role of special advisers doing information work operated. Andrew Marr said:

*A good special adviser, who knows the answer, gives you a clear answer quickly and explains*

*what the Minister meant when he was saying so-and-so and does not appear to go any further than that. It is very, very useful.<sup>23</sup>*

Peter Preston explained:

*If I want actual facts... I can ring the Press Office, but they are restricted. If I talk to the special adviser on one side, I can get a view, but I have to take that with a slight pinch of salt because that would be the view to present the case of the Minister involved in the best way. So, if you ring a rival one on the other side, you then get the other side, and then between the two you can get it. But you get more steers of information that way than you would directly from the Press Office. So they are useful".<sup>24</sup>*

- 4.22 Another significant change introduced by the new government in 1997 was the creation of two posts in the Prime Minister's Office filled by special advisers granted executive powers under a change in the Civil Service Order in Council, one of whom is the Director of Communications. We examine the boundaries within the Prime Minister's Office in Chapter 9. First, however, we turn to the role of Ministers.

<sup>22</sup> House of Commons, Minutes of Evidence, 28 February 2002.

<sup>23</sup> Day 1, pm.

<sup>24</sup> Day 3, am.

# CHAPTER 5 MINISTERS

- 5.1 As Chapter 3 made clear, Ministers are at the heart of the Executive. They are accountable to Parliament and responsible for driving forward the Government's programme. Public confidence in their standards of conduct is crucial to delivering confidence in the Executive.
- 5.2 In this chapter we consider the application to Ministers of the principles of Leadership, Accountability and Objectivity. We then turn to the Ministerial Code and the way in which ministerial standards of conduct are scrutinised.

## Leadership

- 5.3 Ministers, as leaders of the Executive, have the duty to promote and support the Seven Principles of Public Life. As the Ministerial Code states, they "are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties" and, they "are expected to observe the Seven Principles of Public Life".<sup>1</sup> As part of this, Ministers bear a special responsibility for maintaining standards and the proper boundaries within the Executive.

## Accountability

- 5.4 In general, it is Ministers who are accountable to Parliament for the actions of the Executive. The Government in its evidence to the Committee noted: "Ministerial accountability to Parliament is a key tenet of our democratic system".<sup>2</sup> Douglas Alexander MP, Minister of State at the Cabinet Office, described the accountability of Ministers in classic terms:

*Your primary accountability is to the House of Commons where, as a Minister, you remain accountable to the democratically elected representatives – not just of a single party but of all the parties represented in the Commons.*

*I think also you accept and are bound by the terms of the Ministerial Code which sets out clearly a corpus of knowledge ... in terms of the conduct of ministerial life.*<sup>3</sup>

Ministers are also accountable to the Prime Minister, a point which the Ministerial Code underlines. The first chapter of the Code states:

*Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister, and the appropriate consequences of a breach of those standards.*<sup>4</sup>

- 5.5 The Prime Minister is accountable, like all other elected Ministers, to the House of Commons. In practice, this accountability is exercised during statements and debates, the weekly Prime Minister's Questions in the House of Commons and, more recently, by the Prime Minister's appearance before the Liaison Committee.<sup>5</sup> The extent to which the practical expression of prime ministerial and ministerial accountability to Parliament satisfies the constitutional principle has long been a subject for debate. It raises wide constitutional issues which fall largely outside our terms of reference. These were most recently explored by the Hansard Society Commission on Parliamentary Scrutiny in 2001.<sup>6</sup>

## Objectivity

- 5.6 In order to be able to observe the principle of Objectivity, it is important that Ministers have available to them the politically impartial advice of the Civil Service. The Ministerial Code emphasises the Minister's duty, among others, to uphold that impartiality.<sup>7</sup> We discuss the position of civil servants in more detail in the next chapter and make recommendations in Chapter 10 to introduce into statute an

<sup>1</sup> *The Ministerial Code*, Foreword.

<sup>2</sup> Written evidence 21/59.

<sup>3</sup> Day 9, am.

<sup>4</sup> *The Ministerial Code*, Chapter 1.

<sup>5</sup> The Prime Minister has appeared twice before the Liaison Committee, on 16 July 2002 and 21 January 2003.

<sup>6</sup> *The Challenge for Parliament – Making Government Accountable*, Hansard Society 2001.

<sup>7</sup> *The Ministerial Code*, para 58.

obligation on Ministers to uphold the impartiality of the Civil Service.

## The Ministerial Code

5.7 It is the Ministerial Code of Conduct which sets down the standards of conduct which Ministers should observe. The document itself was first published as *Questions of Procedure for Ministers (QPM)* in 1992, although it had been in existence for many years before. It is an accretion of prime ministerial guidance over that time and large sections deal with questions of practice and procedure.<sup>8</sup> These issues of procedure sit alongside more substantive issues of conduct. In both our First and Sixth Reports we commented that this has resulted in an uncomfortable “*miscellany*”<sup>9</sup> and in the Sixth Report we observed that “*the effect is not quite the equivalent of a ‘free-standing code of conduct’ for which we called*”.<sup>10</sup>

5.8 This approach has also left the status of the Code unclear. Although entitled the Ministerial Code, it is additionally referred to as “*a useful source of guidance and reference*”,<sup>11</sup> “*guidance*”<sup>12</sup> and “*not a rulebook*”.<sup>13</sup> There is reference, too, to Ministers being “*advised*” or “*expected*” to do something.<sup>14</sup> This may be appropriate for matters of procedure, but for standards of conduct it is considerably at variance with the approach taken on the same issues for other holders of public office, including civil servants and special advisers. **We recommend** that matters relating to standards of conduct in the Ministerial Code should be separated out from matters of procedure so as to produce the free-standing code of conduct we originally envisaged. This arrangement will help ensure clarity when we turn to matters of compliance below.

## RECOMMENDATION

**R1. (a) Material currently contained in the Ministerial Code which covers departmental and parliamentary custom and practice should be published separately as a Ministerial Handbook.**

**(b) The substantive material on issues of conduct should form a new Ministerial Code, which should be defined as having equal weight and authority to the Civil Service Code and the Code of Conduct for Special Advisers.**

## Compliance

5.9 For any code of conduct to be effective it needs to be supported by a compliance process which assists the individual in complying with the code while providing a rigorous but fair procedure if a breach is alleged. For holders of public office it is manifest that such a procedure should carry public confidence.

5.10 An effective compliance process should have five elements:

- induction – ensuring new office-holders understand the process;
- advice – providing clarification and guidance to office-holders;
- investigation – a process for examining any alleged breach of the code;
- adjudication – a process for considering the findings from the investigation and reaching a judgement; and
- sanction – a process for deciding upon and imposing any penalties.

<sup>8</sup> Ch 2 ‘*Ministers and the Government*’, Ch 3 ‘*Ministers and Parliament*’, Ch 4 ‘*Ministers and their departments*’, Ch 7 ‘*Ministers’ Visits*’.

<sup>9</sup> CSPL First Report, p49.

<sup>10</sup> CSPL Sixth Report, p43.

<sup>11</sup> *The Ministerial Code*, The Prime Minister’s foreword.

<sup>12</sup> *Ibid.*, page 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, para 115 and Foreword.

We heard particular concern from witnesses about the second and third of those elements: advice, as it applies to conflicts of interest; and investigation, with regard to the Ministerial Code. Such concern is not new – the Committee heard very similar evidence during the course of its Sixth Report. However, the concerns expressed in 2000 have been borne out by a number of high profile cases since then which persuaded us that it was timely to review again the current arrangements relating to the Ministerial Code and the Committee's previous conclusions.

## Advice on conflicts of interest

5.11 The Ministerial Code states that *“Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise”*.<sup>15</sup> The Permanent Secretary is identified in the Code as the source of advice to which an incoming Minister should turn when deciding whether he or she has conflicts of interest:

*It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally ... or by securing the services of a professional adviser.*<sup>16</sup>

## Ministerial conflicts of interest

The Ministerial Code advises incoming Ministers to provide their Permanent Secretary with a list of all interests which might be thought to give rise to a conflict. The Code states:

*On appointment to each new office Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.*<sup>17</sup>

5.12 By virtue of his or her position as Accounting Officer, the Permanent Secretary has a clear interest in any ministerial conflicts of financial interest. As the Code explains,

*“The Permanent Secretary as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department's business, and his or her advice must be given*

<sup>15</sup> *The Ministerial Code*, para 113.

<sup>16</sup> *Ibid.*, para 114.

<sup>17</sup> *The Ministerial Code*, para 115.

*particular weight where such issues [conflicts of financial interest] arise*".<sup>18</sup> However, there is a subtle but important distinction which needs to be made. As Accounting Officer it is for the Permanent Secretary to ensure the propriety of the department's business. This is different from ensuring the propriety of the conduct of the Minister as a holder of ministerial office. The current arrangements do not make that distinction clear and the Committee believes that, as a result, an unhappy confusion has arisen in practice where a ministerial breach of the Code is alleged.

### The advisory position of the Permanent Secretary under the Ministerial Code

- 5.13 Of particular concern to witnesses was the way in which Permanent Secretaries became involved – as a result of their advice-giving role – in any investigation into an allegation of a breach of the Code. The Code itself contributes to a Permanent Secretary being drawn into the investigatory process. It states:

*If an allegation is made that a particular Minister has a conflict of interest it must be for that Minister to explain their position and justify what has been done. ... It is open to them if they wish to confirm (if it is the case) that they have consulted their Permanent Secretary in accordance with the Code.*<sup>19</sup> (emphasis added)

- 5.14 This statement encourages the perception that it is the role of the Permanent Secretary to act as an impartial witness to propriety in the event of any controversy. Jonathan Baume, General Secretary of the First Division Association, said:

*I think successive Cabinet Secretaries have found it difficult ... it is very difficult for the Cabinet Secretary, who can all too easily find themselves being drawn into a party debate and almost acting as a shield to politicians in a way that I do not think is very helpful to the Civil Service.*<sup>20</sup>

- 5.15 We believe that, in the event of controversy, for a Minister to refer to consultation with their Permanent Secretary in the way envisaged by the Code leaves them particularly vulnerable to being perceived to have used their Permanent Secretary as a shield, no matter how unfair this

perception. Moreover, as we noted in paragraph 5.12, we have difficulty with the concept that the Permanent Secretary should have a role with regard to the propriety of a Minister as a holder of ministerial office.

- 5.16 The most recent edition of the Ministerial Code made clear for the first time that, *"it is not the role of the Secretary of the Cabinet or other officials to enforce [the Code] or to investigate Ministers"*.<sup>21</sup> The reason for this was highlighted by Tim Collins MP, Shadow Minister for the Cabinet Office, when he said:

*I do think it is important that we have something which is better than ... what, perhaps, applied too frequently before 1997, which is the Prime Minister asked the Cabinet Secretary to have a look. And, I think, that makes things extremely difficult for the Cabinet Secretary because if the Cabinet Secretary comes back and says, "Yes, I think your friend is a bit dodgy" you are in all sorts of difficulties then, are you not? So, I do not think that is terribly clever.*<sup>22</sup>

- 5.17 Notwithstanding the statement in the Code, it seems inevitable that one of the practical consequences of the role of the Permanent Secretary as advice-giver is that, when an allegation is made, they will be asked to review what originally happened and what arrangements were made when the Minister took office. There is also the potential for the Cabinet Secretary to be drawn into this review, especially when the Prime Minister's interests are involved. To all intents and purposes, therefore, this puts either or both the Permanent Secretary and the Cabinet Secretary in the position of carrying out an internal investigation. Whatever the circumstances, there was almost universal agreement amongst witnesses that investigation by the Permanent Secretary or Cabinet Secretary was highly undesirable.

- 5.18 Sir Andrew Turnbull, now Cabinet Secretary, said:

*One thing I find uncomfortable is asking the Permanent Secretary or the Cabinet Secretary to investigate his own Minister. I think they are not very well equipped to do it.*<sup>23</sup>

<sup>18</sup> *The Ministerial Code*, para 123.

<sup>19</sup> *Ibid.*, para 118.

<sup>20</sup> Day 2, am.

<sup>21</sup> *The Ministerial Code*, page 1.

<sup>22</sup> Day 3, pm.

<sup>23</sup> Day 5, pm.

- 5.19 His colleague Sir Hayden Phillips, Permanent Secretary at the Lord Chancellor's Department, said:

*It puts a Permanent Secretary in a false relationship, in my view, to his Minister, for him to be, as it were, an investigator ... I think it is important we are able to call on distinguished and independent people from outside in circumstances of real difficulty.<sup>24</sup>*

- 5.20 Others thought the arrangements were out of step with contemporary thinking about regulation. Peter Preston, former Editor of the Guardian, explained:

*I said to an earlier meeting of this Committee some years ago that I thought it was completely wrong that Cabinet Secretaries should be wheeled on, as sort of ad hoc men of probity, when there was a question under the Ministerial Code ... If the supreme code, the Ministerial Code, now much embellished under this government, does not have an independent element in investigating and deciding what happens under it, everything else becomes bendy and much less satisfactory than it should be.<sup>25</sup>*

- 5.21 We recognise the convenience of having an incoming Minister consult his or her Permanent Secretary with regard to matters of conflict between the Minister's personal interests and his or her new role as a Minister. The then Cabinet Secretary, Sir Richard Wilson, was a staunch advocate of this when giving evidence to us for our Sixth Report. He argued that Permanent Secretaries were the best people to offer advice to Ministers because of their in-depth understanding of their department and the conflicts which might arise.

- 5.22 However, we consider that such convenience must now take second place to the weight of concern expressed about the consequences of the Permanent Secretary having an advisory role. Moreover, it cannot always be the case that an incoming Minister has the advantage of a Permanent Secretary with considerable experience in that department. Permanent Secretaries can and do move between departments and may be recruited direct from the private sector. **We recommend** that Permanent Secretaries should have no responsibility in providing their Minister with

advice on conflicts of interest. We consider in more detail below how the advice-giving function should be achieved.

## RECOMMENDATION

**R2. The Cabinet Secretary and Permanent Secretaries should have no responsibility for giving advice to Ministers on conflicts of interest arising under the Ministerial Code.**

## An Adviser on Ministerial Interests

- 5.23 Removing Permanent Secretaries from the role of providing advice to Ministers on ministerial interests leaves a continuing and regular task for an adviser. **We recommend** that arrangements be put in place to appoint an independent office-holder, to be known as an Adviser on Ministerial Interests, who will:

- **advise an incoming Minister** on what arrangements to make to ensure that actual or perceived conflicts of interest do not arise between Ministers' public duties and their private interests;
- **consult the Minister's Permanent Secretary** about departmental business where necessary to enable the Adviser to ascertain whether a conflict of interest may exist;
- **maintain a record** of ministerial interests; and
- **keep a note of action** that has been considered and taken.

- 5.24 We envisage that the arrangements should replicate those currently set out in the Ministerial Code. That is, an incoming Minister should provide the Adviser with a full list in writing of all interests which might be thought to give rise to a conflict with regard to departmental business. However, rather than the Minister being simply "advised"<sup>26</sup> as at present to provide such a list, **we recommend** that this be made a requirement of the Code.

- 5.25 The Adviser would then discuss the list with the Minister and advise on the course of action which should be taken with regard to each interest. Options available to a Minister would

<sup>24</sup> Ibid.

<sup>25</sup> Day 2, am.

<sup>26</sup> "On appointment to each new office Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict". *The Ministerial Code*, para 115.

include his or her divesting themselves of an interest or asking the Adviser to record it.<sup>27</sup> The Adviser will then keep a note, agreed with the Minister, of what action has been taken and record the Minister's interests. In circumstances where an allegation of a breach of the Code was made against a Minister, it would be possible for the Prime Minister to consult the Adviser on what advice was given and what action was taken by the Minister on taking up his or her post with regard to his or her interests.

**5.26 We emphasise, however, that the existence of an Adviser should in no way detract from the Minister's personal responsibility to fulfil the obligations set out in the Ministerial Code.** The Adviser's responsibility is to provide advice and guidance to the Minister and to maintain a record of the Minister's interests. But if the Adviser considered that the Minister was not making proper arrangements to deal with an actual or perceived conflict of interest, he or she should report the matter to the Prime Minister. It is for the Minister to ensure that he or she provides the necessary information in order for the Adviser's records to be kept up to date.

**5.27** To ensure clarity, **we recommend** that the Adviser should publish information and guidance on how Ministers should deal with conflicts of interest under the Ministerial Code.

#### **Publication of the Adviser's records**

**5.28** Registers of interest for many other holders of public office are published and the Committee has considered carefully whether any record of Ministerial interests should also be disclosable. We have borne in mind the importance of personal privacy as well as the need not to deter individuals from wishing to hold office. Nevertheless, we have concluded that there is no reason for Ministers to be treated differently

from many other holders of public office. In particular, given the requirement for the interests of MPs and Peers to be registered and open to inspection, we consider that the application of the principles of Leadership and Openness means the requirement to publish has even greater importance with regard to Ministers, who have power to take decisions.

**5.29 We recommend**, therefore, that the facts of ministerial interests should be published; although the value of any financial interest need not. Bearing in mind that the record deals with interests which might be thought to give rise to a conflict with regard to departmental business, we can envisage circumstances where conflicts might arise subsequently during the course of a department's work which neither the Minister nor the Adviser previously deemed relevant. In such circumstances, we further **recommend** that the Minister should consult the Adviser over what action might be necessary.

#### **Appointment, tenure and resourcing of the Adviser**

**5.30** It is critical that the Adviser be, and be perceived to be, independent. For this reason **we recommend** that the appointment process should be carried out by open competition chaired by the First Civil Service Commissioner. As best practice, we would expect the process to conform with the Code of Practice of the Commissioner for Public Appointments.

**5.31** We further **recommend** that the appointment should be for a fixed, non-renewable period of tenure and that the office-holder should be provided with appropriate resources to achieve his or her task.

<sup>27</sup> For interests that have been recorded, we expect that the same process would be followed in declaring interests as is contained in the Ministerial Code at present. Para 117 states that: "Where it is proper for a Minister to retain a private interest it is the rule that he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and that the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary if a matter under consideration in the Department relates in some way to a Minister's previous or existing private interests such that there may be thought to be a conflict of interest."

## RECOMMENDATION

**R3. (a) An independent office-holder, called an Adviser on Ministerial Interests, should be established to provide advice to Ministers on compliance with those sections of the Ministerial Code which cover the avoidance of perceived and actual conflicts between their public duties and private interests, formal or otherwise.**

**(b) The Ministerial Code should be amended to require an incoming Minister to provide the Adviser on Ministerial Interests with a full list in writing of all interests which might be thought to give rise to a conflict and to provide the necessary information in order for the Adviser's records to be kept up to date.**

**(c) The Adviser should consult the Minister's Permanent Secretary about departmental business where necessary to enable the Adviser to ascertain whether a conflict of interest may exist.**

**(d) The Adviser should be responsible for maintaining a record of ministerial interests and should keep a note of action taken by a Minister on taking up office.**

**(e) The Adviser should publish information and guidance on how Ministers should deal with conflicts of interest under the Ministerial Code.**

**(f) The facts of ministerial interests should be published.**

**(g) Where unforeseen conflicts arise subsequently during the course of a department's work, the Minister should consult the Adviser over what action might be necessary.**

**(h) The Adviser should refer any breach or allegation of a breach to the Prime Minister.**

**(i) The Adviser should be appointed by open competition, chaired by the First Civil Service Commissioner, for a fixed, non-renewable term.**

**(j) The Adviser should be provided with appropriate resources to achieve his or her task.**

## Investigation

5.32 The Ministerial Code states:

*Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention.*<sup>28</sup>

This explicit statement of the Prime Minister's responsibility for his or her Ministers gave effect to a recommendation in our Sixth Report. We had been concerned that the Code make clear that the procedure for holding Ministers to account must lie chiefly with the Prime Minister. This was a re-emphasis of a recommendation made in the Committee's First Report in 1995 and the Committee welcomes this recognition of the Prime Minister's role.

5.33 However, the Code is entirely silent on the means by which any allegation of a breach of the Ministerial Code should be investigated. Hitherto, the practice has been for the Prime Minister to nominate individuals to investigate allegations on an *ad hoc* basis. Baroness Jay was an advocate of this arrangement:

*I prefer the ad hoc procedure because I think that reflects more precisely the notion of collective responsibility within the Cabinet ... I think that is something which is properly done through the Prime Minister, rather than in some standing body outside the whole government machine.*<sup>29</sup>

5.34 The then Cabinet Secretary, Sir Richard Wilson, commented:

*It is for the Prime Minister to decide in any particular case how he or she wants to handle an allegation ... It is how we have always done it, although that may not be a good reason for how we always do it in the future ... It was always the case that whether a Minister remained a Minister or not was a matter that depended on whether he or she retained the confidence of back benchers and of the Prime Minister of the day. That is actually still the*

<sup>28</sup> *The Ministerial Code*, page 1.

<sup>29</sup> Day 6, am.

*crucial question; that is the constitutional position and I do not see that it is intrinsically a bad one.*<sup>30</sup>

5.35 Nor could Sir Richard's predecessor, Lord Butler of Brockwell, see an alternative to the present system:

*If an allegation is made against a Minister and it is serious enough and well enough founded, then the Prime Minister will have to take some action in due course ... the machinery that is used should be decided in the circumstances of each case.*<sup>31</sup>

5.36 The debate about the process by which allegations of breaches of the Ministerial Code should be investigated is not new. In our Sixth Report we rehearsed the evidence for and against the establishment of an office for the investigation of allegations of ministerial misconduct.<sup>32</sup> On balance, however, the Committee concluded then against the creation of a new office<sup>33</sup> for two main reasons:

- concern that the Prime Minister's power to determine the dismissal of a Minister should not be fettered; and
- recognition of the need for speed so as to ensure a Minister is not left 'dangling in the air'.<sup>34</sup>

5.37 The Government agreed:

*There is no single approach to the investigation of allegations of ministerial misconduct that would be helpful in all cases ... The Government agrees with the Committee that it would be undesirable to fetter the Prime Minister's freedom to decide how individual cases should be handled.*<sup>35</sup>

5.38 However, as noted in para 5.10, subsequent high profile cases, along with the evidence taken during the course of this inquiry, have led us to conclude that an *ad hoc* approach is no longer satisfactory. While those chosen to investigate allegations against Ministers have been people of

probity and eminence, we consider it doubtful that they were **perceived** to be independent and, as a result, we doubt that the outcome of their inquiries has invariably commanded public confidence.

5.39 In evidence for the Committee's recent inquiry into standards of conduct in the House of Commons, Lord Nicholls of Birkenhead<sup>36</sup> spoke of the "ongoing march of outside participation in disciplinary and regulatory processes", concluding that "the public feels that self-regulation is not 100 per cent reliable".<sup>37</sup> The Committee believes that this observation is equally valid in the context of this inquiry.

5.40 The Committee strongly agrees that independent scrutiny is an effective safeguard in maintaining public confidence and one that has become accepted as best practice by most professions. Ministers are not only leaders of the Executive, but regarded as leaders in public life. In order to maintain public trust and public confidence they must lead by example. Our First Report said:

*Whenever there is scope for behaviour falling below the highest standards, then internal systems must be supported by independent scrutiny and monitoring.*<sup>38</sup>

5.41 For the reasons identified in the Sixth Report, we remain unconvinced of the need for establishment of a ministerial equivalent to the Parliamentary Commissioner for Standards and we heard no evidence that would justify such a move. However, we believe that an independent element is vital in any investigation of allegations of ministerial misconduct if the process is to deliver public confidence. **We recommend**, therefore, that two or three individuals of senior standing should be identified at the beginning of a Parliament to whom the Prime Minister should turn if he or she believed it appropriate that there be an investigation into an allegation of a breach of the Ministerial Code. The Prime Minister would retain the power to determine the consequences for the Minister of any investigation.

<sup>30</sup> Day 6, pm.

<sup>31</sup> Day 7, am.

<sup>32</sup> *Ibid.*, pp46-53.

<sup>33</sup> *Ibid.*, p 53 R12: *No new office for the investigation of allegations of ministerial misconduct should be established.*

<sup>34</sup> CSPL Sixth Report, paras 4.70 and 4.71.

<sup>35</sup> The Government's Response to the Sixth Report from the Committee on Standards in Public Life, Cm 4817, page 6.

<sup>36</sup> Lord of Appeal in Ordinary.

<sup>37</sup> CSPL Eighth Report, *Standards of Conduct in the House of Commons*, Cm 5663, Day 6, pm.

<sup>38</sup> CSPL First Report, page 18.

5.42 The main elements of the process for handling an investigation as **we recommend** it are set out below.

- **At the beginning of each Parliament, the Prime Minister should nominate two or three individuals of senior standing as being available to carry out an investigation into an allegation of ministerial misconduct.** We envisage that only one person would be needed to carry out an investigation, but two or three names are needed to ensure there is an alternative individual where necessary;
- **The individuals should be nominated by the Prime Minister after consultation with the leaders of the major opposition parties.** This process will help ensure confidence in the individuals chosen;
- **The names of the individuals should be made public.** The fact that the individuals have been identified ahead of time should ensure that they are perceived as being independent from any individual investigation and increase the speed with which any investigation can take place;
- **It should be the decision of the Prime Minister should he or she consider it appropriate to refer an allegation for investigation, including any allegation against him or herself.** We expect that it would be necessary to invoke this procedure only in the rarest of cases;
- **The individual selected to carry out an investigation should investigate the facts and report his or her findings to the Prime Minister, who would then decide on the consequences for a Minister. The report should be published.**

5.43 In cases where it was alleged that a Minister was in breach of both the Ministerial Code and the Code of Conduct for MPs, we would expect the nominated investigator and the Parliamentary Commissioner for Standards to liaise with each other about the best way to carry forward their respective inquiries.

5.44 We consider that the Prime Minister should also have the option of consulting any one of these individuals, in addition to the Adviser, about the recording of his or her interests. In addition, we envisage that resources provided for the Adviser on Ministerial Interests could also support any investigation as necessary.

## RECOMMENDATION

- R4. (a) At the beginning of each Parliament, the Prime Minister should nominate two or three individuals of senior standing after consultation with the leaders of the major opposition parties.**
- (b) The names of these individuals should be made public.**
- (c) Should the Prime Minister consider an investigation into an allegation of a breach of the Ministerial Code appropriate, the Prime Minister would invite one of these individuals to conduct that investigation.**
- (d) The individual selected to carry out an investigation should investigate the facts and report his or her findings to the Prime Minister, who would decide on the consequences for a Minister. The report should be published.**

## Guidance and education

5.45 Witnesses spoke at some length about the difficulties of a change in Administration which also included a change of governing party, particularly after a long period in Opposition. It was suggested that a lack of contact between civil servants and opposition leaders made for a lack of preparedness in an incoming Administration and its Ministers.

5.46 Douglas Alexander MP told us about arrangements which the Labour Party had put in place in 1997:

*The Shadow Cabinet did undertake training through their own organisation in the run-up to the 1997 election and that was reflective of a concern to ensure that prospective Ministers, who themselves had not experienced government, would have some familiarity with some of the challenges that would face them if they were successful in 1997.<sup>39</sup>*

5.47 But evidence given by other witnesses suggests this training was not sufficient to meet the difficulties. Peter Riddell said:

*In 1997 you had a party which had not been in power for 18 years. I think we all under-rated ... the difficulty of coming in almost totally*

<sup>39</sup> Day 9, am.

*inexperienced to run a government. That produced problems which actually appeared subsequently.*<sup>40</sup>

5.48 Jonathan Haslam, former Press Secretary to the Prime Minister, noted that the lack of contact meant that:

*One [does] wonder about the level of understanding there was about what the Civil Service could offer an incoming Administration, what it was right to offer, whether it was geared up to offer it, and whether the new Administration's expectations of it were going to be met.*<sup>41</sup>

5.49 Training was identified as a priority in 1999 in the Civil Service Reform Report, which asserted: *"Joint Ministerial training with civil servants is also an important part of our plans".*<sup>42</sup> The Government confirmed in evidence to us<sup>43</sup> that there was now a programme of joint seminars and workshops for Ministers and Senior Civil Servants, and a Cabinet Office Report noted in December 2002 that three quarters of Ministers in the UK had attended at least one Centre for Management and Policy Studies event.<sup>44</sup> The Committee notes the efforts being made, but believes more can be done. Relationships between civil servants and new Ministers are crucial. Incoming Ministers must feel able to trust the civil servants they inherit from a previous Administration. We believe training and induction would be useful for the following groups:

- opposition politicians shadowing Cabinet posts;
- new and inexperienced Ministers entering government on a change of Administration; and
- new Ministers appointed during the lifetime of a government.

5.50 In all cases, we believe that the training should be focused on how the Government works, its organisation, standards and boundaries and the role of the Civil Service. **We recommend** that training should be available to any shadow cabinet member of an opposition party as well as to newly appointed or promoted Ministers. It should be for the Leader of the Party to nominate individuals to attend the training.

## RECOMMENDATION

**R5. The Government should ensure that the Civil Service can expand the training options in place to cover the needs both of newly appointed or promoted Ministers and of opposition politicians shadowing Cabinet posts.**

<sup>40</sup> Day 1, am.

<sup>41</sup> Day 1, pm.

<sup>42</sup> Civil Service Reform, 2001 Cabinet Office, paragraph 6.

<sup>43</sup> Written evidence

<sup>44</sup> Civil Service Reform 2001

# CHAPTER 6 THE PERMANENT CIVIL SERVICE

6.1 In this chapter we consider the second of the three elements of the Executive, the permanent Civil Service.<sup>1</sup> Special advisers are considered in Chapter 7.

## The Committee's interest

6.2 Although we refer in this chapter to the Civil Service as a whole, our emphasis is on those civil servants who come into regular contact with Ministers and special advisers. We refer too to the 'permanent' civil service, the "transferable human technology",<sup>2</sup> as it was described by Professor Hennessy. But we recognise that individual civil servants themselves are not, and cannot be, permanent. Indeed, we discuss later the regular renewal of the permanent Civil Service through movement of staff in and out of the service.

6.3 The Committee's interest in the Civil Service relates directly to those four of the Seven Principles of Public Life discussed in Chapter 2 – Accountability, Openness, Leadership and Objectivity. In this chapter we concentrate especially on the principle of Objectivity. Hitherto this principle has been interpreted in relation to the Civil Service as requiring civil servants to be impartial of political party and ready to support Ministers from whatever party holds government office.

## Making the Civil Service fit for purpose

6.4 But at the same time as meeting this requirement for impartiality, the Civil Service has to be 'fit for purpose'. The First Civil Service Commissioner,

Baroness Prashar emphasised this point in her reference to "... a Civil Service, which, though able to serve successive Administrations, is also fit for purpose".<sup>3</sup>

6.5 Not all the issues surrounding the debate on making the Civil Service fit for purpose are for this Committee. Our interest is of particular relevance with regard to recruitment and training. We turn to recruitment at para 6.23 and to training at para 6.54.

## Serving the Government of the day

6.6 In Chapter 3 we drew attention to the important role of the Civil Service in our constitutional arrangements in providing a permanent resource to help in the transformation of the manifesto of a political party into the programme of a government.

6.7 Several witnesses described the importance of a permanent Civil Service. Tim Collins MP, Shadow Minister for the Cabinet Office, said:

*People can go and vote with their stubby pencils on one day, and the very next morning an entire new administration has taken office and is able to take very swift decisions ... That ... only comes because the heart of [the British system] is permanent and is there to serve any government.*<sup>4</sup>

Lord Macdonald, Minister for the Cabinet Office, described the Civil Service as "a repository of great expertise, with a profoundly deep corporate memory".<sup>5</sup>

<sup>1</sup> By permanent Civil Service we mean those individuals appointed according to Civil Service rules. This includes temporary appointees. Throughout this report, information given on civil servants relates to the position in the Home Civil Service, that is civil servants in England, Scotland and Wales. The Diplomatic Service is a separate service. Our recommendations should be read as applying, *mutatis mutandis*, to this and other similar services within central government.

<sup>2</sup> *Portrait of a Profession Revisited*, 26 March 2002.

<sup>3</sup> Written evidence 21/36.

<sup>4</sup> Day 3, pm.

<sup>5</sup> Day 9, am.

- 6.8 Permanence also brings a Civil Service able to serve without fear or favour. Norman Baker MP said:

*It is very important that Ministers ... can have options put to them on the basis of the best possible advice which is neutrally provided in an intellectual capacity, not beholden to a particular party interest.<sup>6</sup>*

- 6.9 Dr Tony Wright MP, Chairman of the Public Administration Select Committee, added:

*The policy role of civil servants – their access to Ministers, their right to be heard, the right to say things which Ministers may not want to hear – all that has to be protected.<sup>7</sup>*

- 6.10 The evidence of Norman Baker and Tony Wright illustrates that, today, permanence and a non-politically partisan Civil Service have become intrinsically linked. Indeed, inherent to the case for a permanent Civil Service is the ability of the service to demonstrate, and be seen to demonstrate independence of political party, through its own behaviour and the behaviour of Ministers who direct its work. Over time, this ability has come to be seen to rely on adherence to a set of **core values**: “to act with integrity, propriety and impartiality, and to select on merit”.<sup>8</sup> These are given force in the Civil Service Code and reinforced by the Ministerial Code and the Code of Conduct for Special Advisers.

- 6.11 Yet at the same time as acting with political independence, the Civil Service must demonstrate its loyalty and commitment to the particular government of the day. Lord Haskins put this point succinctly:

*The idea that civil servants should be standing apart and being impartial from everything going on. You just could not run like that. Civil servants have to line up with the policies of the government of the day and deliver them.<sup>9</sup>*

Indeed, a civil servant would fail in his or her duty if he or she did not display full commitment to the Minister in charge of the department consistent with the requirements of the Civil Service Code.

- 6.12 In a valedictory speech as Cabinet Secretary, Sir Richard Wilson (now Lord Wilson of Dinton),

## The Civil Service Code

The Civil Service Code was introduced in 1996 and updated in 1999 to take account of devolution. It sets out the constitutional framework within which all civil servants work and the core values which they are expected to uphold. The Code states:

*Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations in which they serve.*

Of particular relevance to this Committee’s remit are the requirements of the Code that civil servants:

- conduct themselves with integrity, impartiality and honesty;
- give honest and impartial advice to the Minister;
- do not deceive or knowingly mislead Ministers, Parliament or the public;
- conduct themselves in such a way as to deserve and retain the confidence of Ministers;
- endeavour to ensure the proper, effective and efficient use of public money; and
- do not seek to frustrate the policies, decisions or actions of the Administration by declining to take, or abstaining from, action which flows from decisions by Ministers.

The Code also provides that a civil servant should report the matter if he or she is being required to act in a way that: is illegal; improper or unethical; is in breach of constitutional convention or a professional code; may involve possible maladministration; or is otherwise inconsistent with the Code.

A copy of the Code is at Appendix E.

<sup>6</sup> Day 3, pm.

<sup>7</sup> Day 4, am.

<sup>8</sup> *Civil Service Reform*, Report to the Prime Minister from the Head of the Home Civil Service, Cabinet Office 1999.

<sup>9</sup> Day 4, pm.

made the connection between a Civil Service which can demonstrate commitment to the Government of the day and a service whose value depends on its core values or “character”:

*Because governments change, policies change, functions change and laws change; and the Civil Service changes too. It has never remained the same for long. But it has established over time an important character which I would argue makes it an institution of value and a force for good in public life, provided always that it continues to perform well.*

Sir Richard continued later:

*We have to earn our keep afresh with every new government. The size and shape of the service left by one government may not meet the needs of the next.*<sup>10</sup>

## Some concerns

6.13 We heard evidence from some witnesses who believed that the incoming Administration in 1997 did not find a Civil Service that was fit for its purpose. Lord Lipsey, a former special adviser, said:

*When the Labour Government got in ... things did not rub down quite as well as they might have done, and you will still get a lot of senior Ministers grumbling about their civil servants not being up to it.*<sup>11</sup>

6.14 Charles Clarke MP believed that there were “too many civil servants who were not prepared to really say it as they saw it”.<sup>12</sup> Lord Donoughue of Ashton thought that, when he returned as a Minister to Government 20 years after having been a special adviser, “It led me to feel that the average calibre of officials may have declined a bit”.<sup>13</sup>

6.15 Some witnesses thought that difficulties had arisen because of a shift in emphasis from the function of giving advice – seen as the traditional role of the civil servant – to the function of delivery, which was regarded as a new requirement. Sir Richard Mottram, generalising, thought that:

*Under the Conservative government ... we had the great process of change in relation to the creation of next steps agencies ... and the sort of policymaking side of government was felt to be I think in reasonably good shape. ... When the Labour government came into office, I think they began to press the Civil Service about how far the Civil Service was fit for purpose to assist government in the delivery of those services which are not actually delivered by civil servants themselves.*<sup>14</sup>

6.16 Don Cruickshank said:

*There is a recognition in government ... which is that the capacity to deliver public services as promised, and as expected, is not possible through existing mechanisms of the Civil Service.*

He described this as “the fundamental problem, which is the lack of capacity of the Civil Service to do what is being asked of it”.<sup>15</sup>

6.17 However, Sir Robin Mountfield, former Permanent Secretary at the Cabinet Office, did not regard criticisms as being confined to the present administration and thought that the problem was in the service’s performance in policy advice:

*I think its [the Civil Service’s] performance in the management area is vastly better than is generally understood. Particularly during the 1990s its performance was really outstandingly good ...*

*I do not think that we have improved our performance in policy advice to a comparable extent ... Ministers clearly – of both parties, and I do not think this is just the present Administration – have felt for some time that the Civil Service advice typically ... has been too inward-looking or “not invented here” and not looked sufficiently widely at alternative sources of advice.*<sup>16</sup>

## The overall effect of change

6.18 As a result of such criticisms and perceptions, the present government has been seeking

<sup>10</sup> *Portrait of a Profession Revisited*, 26 March 2002.

<sup>11</sup> Day 1, am.

<sup>12</sup> Day 6, am.

<sup>13</sup> Day 8, am.

<sup>14</sup> Day 9, pm.

<sup>15</sup> Day 9, am.

<sup>16</sup> Day 1, pm.

reforms of the Civil Service to secure better delivery of its policies and better performance of public services in general. For many of our witnesses, however, the crucial concern was that the drive to develop a Civil Service fit for purpose should sustain those core values which make the service, as Sir Richard described it, “a force for good in public life”. As we set out in para 6.10, these values are fundamental to the existence of a permanent Civil Service able to demonstrate, and be seen to demonstrate, independence of political party.

6.19 We heard nothing in our evidence to suggest that specific aspects of the current reform of the Civil Service necessarily risked undermining the core values. None of our witnesses disagreed with the core values of the Civil Service or suggested that they should be changed. Indeed, the values have been restated as part of the current process of reform.<sup>17</sup> However, we did hear concerns that insufficient attention was being paid to the overall effect of change.

6.20 Jonathan Haslam, former Press Secretary to Prime Minister John Major, said:

[We want to] *protect a very, very valuable institution that gives our country its sense of being; it plays a vital role in it ... We have to find ways of making sure that it works effectively and help it to help the Government of the day and vice versa. There is tension between the two at the moment, I am sure.*<sup>18</sup>

He noted that there had been “a whole series of things which happen incrementally”, as a result of which, “It has all become rather muddy, and the way to avoid this muddiness is to have much more clarity in our thought about what they [the Government] want”.<sup>19</sup>

6.21 Professor Hennessy was of a similar mind:

*It is entirely proper for a government to come in ... and say, “We are going to change the DNA of the governing professions and their relationship and we are going to change in this direction and we will legislate for it”. But it is not being done like that.*<sup>20</sup>

He concluded, “it is all tremendously squishy”. Tim Collins MP said:

*The resistance that a number of us have to the changes that have happened in the government machine since 1997 is not that all of them are ipso facto immoral or wrong. ... The point ... is that it is arguable at least that the aggregation of all the changes that have been made ... add up to quite a significant constitutional change. But ... it has never been properly debated.*<sup>21</sup>

6.22 We believe that these concerns about “the aggregation of change” have weight. But we believe too that two measures can help provide public assurance that core values are upheld while at the same time ensuring that the Civil Service is fit for purpose. These are:

- to put the Civil Service on a statutory footing. We consider in Chapter 10 in more detail how this might be achieved; and
- to reinforce independent scrutiny of maintenance of the core values of the Civil Service. We turn to this in more detail later in this chapter.

## RECOMMENDATION

**R6. The Civil Service should be established in statute.**

**R7. The Civil Service Commissioners should have an active role in scrutinising the maintenance of the core values of the Civil Service.**

## Recruitment

6.23 The maintenance of a Civil Service which is non-partisan and fit for purpose requires the right criteria and procedures for the recruitment of individuals into the service.

### Selection on merit

6.24 In his evidence Sir Richard Wilson made a connection between appointment on merit and the ability of a permanent Civil Service to serve any government equally, saying:

*... one of the issues that concerns me much... is this concern that future governments might find themselves reluctant or unwilling to work with permanent civil servants who have worked for a*

<sup>17</sup> For example, in *Civil Service Reform*, Report to the Prime Minister from Sir Richard Wilson, Head of the Home Civil Service, Annex A, Cabinet Office 1999.

<sup>18</sup> Day 1, pm.

<sup>19</sup> Day 1, pm.

<sup>20</sup> Day 4, am.

<sup>21</sup> Day 3, pm.

*previous government. I think that the other political parties in Parliament are first entitled to look to the Civil Service Commission to ensure that recruitment on merit is upheld.*<sup>22</sup>

6.25 In 1854, the Northcote-Trevelyan Report on the Civil Service recommended an Act of Parliament to give effect to its proposals for appointment and promotion on merit. The principle of merit was agreed. But instead of an Act of Parliament, the Civil Service Commission was established by Royal Prerogative. Today, it is the Civil Service Commissioners who, under the Civil Service Order in Council, still have a responsibility to maintain the principle of selection on merit. Appendix F sets out in more detail the role of the Commissioners.

### The Civil Service Commissioners

The Civil Service Commissioners are appointed by Order in Council. They derive their responsibilities from the Civil Service Order in Council 1995 and the Diplomatic Service Order in Council 1991 (as amended). They have two responsibilities:

- to maintain the fundamental principle of selection on merit on the basis of fair and open competition in recruitment to the Civil Service; and
- to hear and determine appeals under the Civil Service Code.

6.26 The Commissioners produce and maintain a recruitment code on the interpretation and application of the principles for recruitment into the Civil Service. Both the code and principles are mandatory for all posts opened to competition from outside the Civil Service.<sup>23</sup> Every individual joining the Civil Service must be selected on merit on the basis of fair and open competition, and it is the responsibility of the Permanent Secretary or the Chief Executive of each department or agency to ensure adherence to the rules.

6.27 The recruitment code defines merit as having two objectives:

- no-one should be appointed for a job unless they are competent to do it; and
- if two or more people meet the criteria for appointment, the job should be offered to the person who would do it best.<sup>24</sup>

Recruitment panels are free to determine what the criteria should be for appointment, provided they are relevant to the job.

### Applying the principle of selection on merit

6.28 There are various exceptions to recruitment on the principle of selection on merit which we discuss in later paragraphs. Witnesses giving evidence on behalf of the Government appeared to question whether these exceptions provided sufficient flexibility. Douglas Alexander MP, as Minister of State at the Cabinet Office,<sup>25</sup> said:

*Within those broad parameters [a Civil Service based on fair and open competition] there are certain distinctive challenges ... in terms of looking at where there are particular skills and attributes that are needed given some of the public policy challenges we face at the moment and I think there is always scope for looking at our methods and methodologies to see if there is room for improvement.*<sup>26</sup>

He went on to speak of the “need to make sure we equip the service with the particular skills needed”.<sup>27</sup>

6.29 Lord Macdonald talked of “the need for more expertise in project management”<sup>28</sup> among other things, and said, “It is perhaps a little cumbersome at times if you are trying to get the right person into the right spot very quickly – you do not have the freedoms that you would have in the private sector”.<sup>29</sup>

6.30 Other witnesses also aired concern that the rules might be insufficiently flexible to deal with the realities of modern day pressures on recruitment.

Richard Broadbent, Chairman of HM Customs and Excise told us:

<sup>22</sup> Day 6, pm.

<sup>23</sup> i.e. for every post for which it is possible for a non-civil servant to apply. The code and principles have no mandatory effect where a post is available only to applicants who are already civil servants.

<sup>24</sup> Civil Service Commissioners’ Recruitment Code, para 1.16.

<sup>25</sup> Douglas Alexander and Lord Macdonald gave evidence after the changes referred to at para 6.33 had been made to the exceptions to selection on merit in July 2002. Richard Broadbent and Sir Andrew Turnbull, who are quoted at paras 6.30 and 6.31, gave evidence just before the change was made.

<sup>26</sup> Day 9, am.

<sup>27</sup> Day 9, am.

<sup>28</sup> Day 9, am.

<sup>29</sup> Day 9, am.

*There is effectively a war for talent going on in the labour market ... You really have to go out and sell what you are offering, often on a fairly personal basis at a senior level, and sell it aggressively.*

His view was that the current system has “limits to the flexibility and speed you can deliver” and that “procedure does not guarantee you will get the best person”.<sup>30</sup>

6.31 Sir Andrew Turnbull, echoing the point made by Lord Macdonald, said:

*I believe that, although we have subscribed to the principle of open competition, we should not make it illegal to recruit other than by open competition. Occasionally you might see one person and you have got to say, “I really believe this is the best person for the job. I can get him now. You have got to trust me” and this is all under the agreement of the Civil Service Commissioners.<sup>31</sup>*

### Exceptions to the rules

6.32 Under the Order in Council, the Civil Service Commissioners have some scope to make exceptions to the requirement to appoint by selection on merit, in the following categories:

- short-term appointments;
- secondments;
- re-appointment of former civil servants;
- transfers into the Civil Service;<sup>32</sup>
- surplus acceptable candidates;<sup>33</sup> and
- disabled candidates.<sup>34</sup>

6.33 In addition, in response to concerns such as those expressed above, the Order in Council was amended in July 2002. The key change was to limit the need for the Commissioners’ approval of all open competitions to Senior Civil

Service posts to only those posts at the most senior level. Two additional changes were made which are relevant to us – on short-term appointments and secondments – which we consider in paras 6.40 to 6.45.

### Ministerial involvement in recruitment

6.34 The application of the principle of selection on merit can raise particular sensitivity where a Minister has a special interest in the post for which an appointment is being made. The Civil Service Commissioners follow the principle whereby Ministers do not participate directly in choosing external candidates for appointment into the Civil Service. This helps ensure that civil servants are more likely to be acceptable to any incoming administration.

6.35 The Civil Service Commissioners’ recruitment code expects that Ministers will be consulted where they have a particular interest in a post:

*The appointment should be discussed with the Minister right at the start and the terms on which the post is to be advertised, together with the job and person specification and the criteria for selection, should be settled in detail at the outset.<sup>35</sup>*

But – to demonstrate that any appointment is free from personal or political partiality – Ministers do not participate in the selection process. The selection panel recommends only one candidate, including for appointments to Permanent Secretary. Ministers are given the choice only of accepting the selected candidate or re-running the competition. This procedure contrasts with that for public appointments, which is overseen by the Commissioner for Public Appointments. The Public Appointments Commissioner’s Code recommends that, wherever possible, Ministers should be given a choice of candidates.

6.36 Many witnesses gave strong support to the current practice that Ministers do not participate in the selection process. The First Civil Service Commissioner, Baroness Prashar said:

<sup>30</sup> Day 5, pm.

<sup>31</sup> Day 5, pm.

<sup>32</sup> Transfers into the Civil Service by individuals who hold a situation in a public service or by individuals who have been employed on functions which have transferred to the Crown.

<sup>33</sup> Candidates who reached the required standard in a fair and open competition for another situation without securing appointment and there is a demonstrable shortage of suitable candidates for the relevant situation.

<sup>34</sup> The Civil Service Order in Council states that the Commissioners may except an appointment from the requirement to select on merit on the basis of fair and open competition where it appears to the relevant appointing authority that the person satisfies the relevant standards for entry into the service and has been selected for appointment under arrangements which provide for such selection to be made on merit on the basis of fair and open competition, but include provision for encouragement and assistance in the process of selection to be given to any person who is defined as being a disabled person or as having a disability by or under any enactment relating to the employment of disabled persons.

<sup>35</sup> Civil Service Commissioners’ Recruitment Code, Appendix 2 to Part I.

*Increased Ministerial involvement [in the recruitment process for civil servants] or Ministerial choice would, I think, impact on what I may call the core values and the permanence of the service. ... There was a request that the Ministers should be given a choice. We have to date resisted it.*<sup>36</sup>

6.37 Sir Richard Wilson, while noting that ministerial non-involvement had not always been the case, supported the current rules, saying, *“I think there are perfectly good ways of ensuring the proper concern of Ministers that they are served by people who are good for the job without reversing the Northcote-Trevelyan reforms”*.<sup>37</sup>

6.38 Lord Burns of Pitshanger, former Permanent Secretary of the Treasury, said, *“... there is no reason why you cannot have some discussion with Ministers about [an appointment] if you have a situation where you have more than one excellent candidate. But I think that it has to be handled carefully”*. He emphasised, *“... the system [must] be ruthlessly opposed to allowing people to be appointed through a process of open competition who are not the best people for the job”*.<sup>38</sup>

6.39 The Committee attaches particular importance to retaining the principle that Ministers do not participate in the selection process for individuals being recruited into the Civil Service. This principle is fundamental to the maintenance of a service which is, and is perceived to be, politically impartial. **We recommend** that the present practice should continue.

### Short-term appointments and secondments

6.40 Where a job is clearly temporary or there is a genuine uncertainty about work requirements, staff can be recruited for short-term appointments of up to 12 months without the full, fair and open competition process set out in the Civil Service Commissioners' recruitment code. Since the amendment in July 2002, such short-term appointments may now be extended to a maximum of 24 months without reference to the Civil Service Commissioners.

6.41 Where an inward secondment is to last for a limited period of time, the secondment can be

arranged without having to establish a field of candidates. Since July 2002 that limited period has been increased from 12 months and is now defined as a maximum of 24 months.

6.42 We consider that short-term appointments and secondments are a necessary and positive approach to delivering an effective human resources strategy. In our Sixth Report, the Committee sought assurance that the Government would consider carefully how to sustain core Civil Service values in the context of widening the range of appointments. Increasing use of short-term appointments and secondments heightens the need to ensure that the Civil Service values are properly embedded in the culture and that newly appointed staff are made aware of them. Our specific recommendation in our Sixth Report was that there should be *“training and induction opportunities for those appointed on secondments or on short-term contracts ... where ethical issues within the public sector are examined.”*<sup>39</sup> We turn to the issue of training at para 6.54 below.

6.43 In addition, increasing use of short-term appointments might contribute to perceptions that the principle of recruitment on merit was being undermined. Baroness Prashar said: *“If ... we felt that a department was actually using a lot of appointments on short-term, one would raise eyebrows as to why that is the case”*.<sup>40</sup> We agree that short-term contracts were intended for particular purposes, and it would be highly regrettable if departments were to use them to evade recruitment through fair and open competition.

6.44 In his valedictory speech, Sir Richard Wilson speaking about secondments noted, *“We have brought in over 100 secondees to do prominent key tasks”*.<sup>41</sup> In evidence to us, he endorsed the need for recruiting of this nature, saying:

*I think that the world of employment now means that there are areas of our work where we need to be able to bring in people from outside. Now, we may want to do that because they have got skills which we lack in the short term and we need to bring in those skills to strengthen our ability to serve the Government.*<sup>42</sup>

<sup>36</sup> Day 4, pm.

<sup>37</sup> Ibid.

<sup>38</sup> Day 6, am.

<sup>39</sup> Committee on Standards in Public Life, Sixth Report Cm 4557 January 2000, Recommendation 15.

<sup>40</sup> Day 4, pm

<sup>41</sup> *Portrait of a Profession Revisited*, 26 March 2002.

<sup>42</sup> Day 6, pm.

6.45 We share this view, but for both short-term appointments and secondments, **we recommend** that the Civil Service Commissioners should monitor the use of both short-term appointments and secondments to ensure that the core values of the Civil Service are not compromised.

### RECOMMENDATION

**R8. The Civil Service Commissioners should monitor the use of both short-term appointments and secondments to ensure that the core values of the Civil Service are not compromised.**

#### The principle of selection on merit and a Civil Service fit for purpose

6.46 Having reviewed all the evidence put before us, we have concluded that there is no conflict between the principle of selection on merit as discussed in para 6.27 and the need for the Civil Service to be fit for purpose. We recognise the wish of some of the government witnesses for a greater degree of flexibility and the genuine difficulties in attracting and securing talent in the war for talent in the labour market. However, we believe selection on merit against properly specified job criteria should help to ensure that the Civil Service is maintained in a way which is fit for the purposes which Ministers set for it. **We recommend** that the overriding principle of selection on merit should be maintained, together with the ability for the Civil Service Commissioners to make exceptions provided that they are fully satisfied that this is needed for the operational effectiveness of the Civil Service. For reasons set out in Chapter 10, we believe this should be implemented through statutory legislation.

6.47 We note the recent changes made to the Order in Council. It is too early to judge their impact. The Committee considers that further change should only be contemplated after the Civil Service Commissioners have been granted powers and facilities to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit.

### RECOMMENDATION

**R9. (a) The overriding principle of selection on merit, after fair and open competition, should be maintained.**

**(b) The Civil Service Commissioners should continue to be responsible for ensuring that the merit principle is properly applied within the Civil Service.**

**(c) To that end, the Commissioners should be granted powers and facilities to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit.**

**(d) The Civil Service Commissioners should grant further relaxation from the overriding principle of selection on merit only if they are fully satisfied that this is needed for the operational effectiveness of the Civil Service, for example after an investigation using the powers referred to in (c) above.**

**(e) The present practice whereby one candidate, chosen on merit, is recommended to the Minister should continue for open competition involving outside candidates.**

### Working relationships: The Principal Private Secretary

6.48 Personal relationships between officials and Ministers are, of course, crucial to the successful functioning of a department. Romola Christopherson observed:

*I have always said that any Minister in charge of a department, any Secretary of State, will have more to do and rely upon more with four civil servants than any other civil servants. Those are the Permanent Secretary, the Private Secretary, the Press Secretary and the special adviser. ... it*

*is absolutely vital that those four people have the confidence and trust of the Minister.*<sup>43</sup>

6.49 We have considered in Chapter 5 the relationship between a Minister and his or her Permanent Secretary. In Chapter 9 we turn to the issues relating to the Press Secretary. But the role of the Principal Private Secretary is perhaps less recognised.

6.50 The Principal Private Secretary, as the civil servant in charge of the office of a Cabinet Minister has a pivotal role in working with Ministers, special advisers and civil servants. Lord Burns, former Permanent Secretary in HM Treasury, was clear about the importance of the Principal Private Secretary:

*I have always regarded that one of the pivotal features of our system is the role of the Private Secretary in Ministers' offices. In a sense they are the people who really keep the system honest. ... I think it would also be very unwelcome if that role was ever taken over by special advisers, either in practice or in effect, because it is a very important channel of communication between the department and the Ministers.*<sup>44</sup>

6.51 It is significant that he mentioned the role that a Principal Private Secretary has to play in matters of propriety as well as the perhaps more immediately obvious role of communication. Charles Clarke MP saw the role as critical for a Minister:

*Anybody here would tell you that a strong Private Secretary is essential for the success of an individual Minister. That is a critical thing. And the Private Secretary has to be very strong and direct with the Minister in areas where there can be problems that arise.*<sup>45</sup>

6.52 For Tom Burke, a former special adviser:

*... the Principal Private Secretary ... is the key piece...I certainly saw myself as part of the Private Office, part of the Minister's political family ... The relationship with the Permanent Secretary and the Secretary of State was crucial, as is the relationship between the Private Secretary and the Secretary of State. The agent – and that is the person in the first instance who*

*needs to be alert to the possibilities for problems – is the Private Secretary, not the Permanent Secretary.*<sup>46</sup>

He also believed that the nature of the Principal Private Secretary's role was not as well understood or appreciated as it could be: *"it seems to me that a clearer identification of the role of Private Secretaries might help in this area".*<sup>47</sup>

6.53 We agree with Tom Burke's assessment and endorse the need for a better awareness of the Principal Private Secretary's role. We believe also that the Principal Private Secretary has a crucial role to play in *"keeping the system honest"*, in the sense of helping to maintain the boundaries, within a department, between different members of the Executive: Ministers, the permanent Civil Service and special advisers. We agree too with Lord Burns that it is important that this role fall to a permanent civil servant, and not to a special adviser. It is especially important that it is a politically impartial civil servant who has the responsibility for ensuring that the Minister has the full range of governmental advice affecting his or her duties.

## RECOMMENDATION

**R10. Principal Private Secretaries should continue to be permanent civil servants and they should have the responsibility for ensuring that the Minister has the full range of governmental advice affecting his or her duties.**

## Upholding the values of the permanent Civil Service: the Code, training and induction and independent scrutiny

6.54 In Chapter 2 we referred to the three delivery mechanisms for ensuring that civil service values are upheld (called the "common threads" in our First Report). These are codes, induction and education, and independent scrutiny. In the First Report we recommended that, *"there should be regular surveys in departments and agencies of the knowledge and understanding staff have of ethical standards which apply to them".*<sup>48</sup> In its

<sup>43</sup> Day 7, am.

<sup>44</sup> Day 6, am.

<sup>45</sup> Day 6, am.

<sup>46</sup> Day 5, am.

<sup>47</sup> Ibid.

<sup>48</sup> Recommendation 28.

response to this recommendation, the Government agreed, but said that it did not intend to prescribe any arrangements.

6.55 We remain of the opinion that such surveys would both help staff at all levels to understand what is expected of them and demonstrate a department's commitment to upholding the core values. Promotion of the Civil Service Code during induction and thereafter as a part of regular training is indispensable if it is to become embedded in the civil servant's culture. Other organisations, both in the public and the private sector, and internationally as well as in the UK, are increasingly becoming aware of the importance of ethical values in their operations. Simon Webley of the Institute of Business Ethics emphasised that:

*... if you do not embed principles and codes and ways of behaviour, you are at risk that somebody, or a group of people, will just ignore whatever they have been given in writing and do something which brings the reputation of the organisation into great public disrespect.<sup>49</sup>*

6.56 The First Civil Service Commissioner's evidence showed the importance she attached to the Civil Service Code and also her concern that, *"The Code is not well-known, it is not promoted."*<sup>50</sup> She saw the responsibility of promoting the Code to make it a *"living reality"* as resting with individual departments:

*My hope would be that the Code would be promoted in a way that people believe in self-regulation and departments are actually taking the lead responsibility in this.<sup>51</sup>*

6.57 Baroness Prashar also suggested that the role of the Civil Service Commissioners could be enhanced in relation to the Code, and that the operation and promotion of the Code itself should be audited. The latter would create greater awareness of the system, without which, as Baroness Prashar said: *"Codes just on a piece of paper do not mean anything in terms of enforcement because you really want to make them a daily reality"*.<sup>52</sup> We endorse this view and believe that the Commissioners could also help departments by advising on promotion of the Code as well as reporting on their activities.

## RECOMMENDATION

**R11. (a) Departments should ensure that the Civil Service Code is used in induction proceedings and in-service training.**

**(b) The Civil Service Commissioners should advise departments on their promotion of the Civil Service Code and report on their induction and training activities in their annual report.**

## Dispute resolution

6.58 Currently, any civil servant who believes that he or she *"is being required to act in a way which:*

- *is illegal, improper or unethical;*
- *is in breach of constitutional convention or a professional code;*
- *may involve potential maladministration; or*
- *is otherwise inconsistent with this Code"*,<sup>53</sup>

should report the matter in accordance with his or her own departmental guidance. Actual practice may vary widely across the service as a whole and departments do not publish details of the numbers of appeals which are successfully resolved internally.

6.59 If the civil servant in question does not receive an adequate response within the department, he or she may then report the matter to the Civil Service Commissioners. Since this procedure was introduced in 1996, alongside introduction of the Code itself, only five appeals have been heard and determined.<sup>54</sup> Although civil servants have the alternative option of approaching the Cabinet Secretary in the same circumstances, Baroness Prashar implicitly recognised that the number of appeals seemed low:

*I think that lack of complaints does not mean that there is not a problem, but I do feel that the arrangements are not adequate to give confidence. It is in the gene of civil servants not to raise their heads above the parapet.<sup>55</sup>*

<sup>49</sup> Day 4, am.

<sup>50</sup> Day 4, pm.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Civil Service Code, para 11.

<sup>54</sup> All five have been found in favour of the appellant.

<sup>55</sup> Day 4, pm.

6.60 The then Cabinet Secretary, Sir Richard Wilson also expressed some concern about the procedures: *“I do not think realistically I can expect people to always come to me if they are not happy with what is going on in their department.”*<sup>56</sup> He also identified a problem with departmental nominated officers:

*We have arrangements at the moment, which I fear too few people know about, whereby in each department there is a nominated officer to whom staff can go if they feel that something is going wrong. I do not think that is well enough known and I would like to see it strengthened.*<sup>57</sup>

6.61 In the light of this evidence the Committee believes that although internal systems exist for maintaining standards and resolving disputes there is a lack of awareness of them and a lack of confidence in using them. We believe that it is vital for the effective operation of the Civil Service that the arrangements are more transparent.

6.62 **We recommend** that the current system of departmental nominated officers should be strengthened and developed and that the Civil Service Commissioners should establish and maintain contacts with this network of officers. We also **recommend** that departments should report the number of appeals they handle under the Code to the Civil Service Commissioners so that the Commissioners can publish figures in their annual report.

## RECOMMENDATION

**R12. (a) The Government should actively establish a register of departmental nominated officers to whom any civil servant may go if he or she believes that he or she is being required to act in a way which is inconsistent with the Civil Service Code.**

**(b) The Civil Service Commissioners should establish and maintain contacts with the departmental nominated officers.**

**(c) Departments should report the number of appeals they handle under the Code to the Civil Service Commissioners so that the Commissioners can publish figures in their annual report.**

6.63 The First Civil Service Commissioner saw advantage in the Commissioners being able to:

*... [initiate] inquiries without waiting for a complaint to be made, because at the moment I think the word was used, it would be ‘nuclear’ for any civil servant to come and complain.*<sup>58</sup>

We agree and have recommended, at R9(c), that the Commissioners be given this power. For reasons set out in Chapter 10, we believe this should be implemented through statutory legislation.

6.64 We envisage that if the Commissioners’ enquiries suggested that there was a case to investigate, the investigation would be carried out in the same way as at present where an approach has come directly from a civil servant.

6.65 The Code of Conduct for Special Advisers says:

*Any civil servant who believes that the action of a special adviser goes beyond that adviser’s authority or breaches the Civil Service Code should raise the matter immediately with the Secretary of the Cabinet or the First Civil Service Commissioner, directly or through a senior civil servant.*<sup>59</sup>

<sup>56</sup> Day 6, pm.

<sup>57</sup> Ibid.

<sup>58</sup> Day 4, pm.

<sup>59</sup> Paragraph 22.

6.66 Baroness Prashar identified that this was something of an anomaly:

*The question of the rights of appeal in relation to the Special Advisers was tucked away in the Special Advisers' Code, not in the Civil Service Code, which is an odd thing to do.*<sup>60</sup>

6.67 We note that, in its written response to the Committee, the Government said:

*The Government is conscious that details of this route of appeal are currently only set out in the Code of Conduct for Special Advisers. The Government plans to amend the appeals section of the Civil Service Management Code to provide specific guidance on the options available to civil servants under the Civil Service Code and the Code of Conduct for Special Advisers.*<sup>61</sup>

**We recommend** this amendment be made as soon as possible.

## RECOMMENDATION

**R13. Paragraph 22 of the Code of Conduct for Special Advisers specifically relating to civil servants should be inserted into the Civil Service Code as soon as possible.**

## Appointment of the First Civil Service Commissioner

6.68 Throughout this chapter, we have highlighted the role of the Civil Service Commissioners in upholding the core values of the Civil Service and have made recommendations intended to reinforce that responsibility. It is crucial, therefore, that the Civil Service Commissioners themselves carry the confidence of each new administration. Baroness Prashar told us:

*The way I got appointed has not really affected the independence, or the way in which we have operated. But I think if you wanted to make it an issue which everybody else took interest in ... after the competition the person is approved by the Prime Minister ... it could be cleared with the opposition leaders so that they all felt they were satisfied with the appointment of the First Commissioner ...*<sup>62</sup>

6.69 We consider that the involvement of the opposition leaders in the appointment of the First Commissioner would ensure confidence in that individual.<sup>63</sup> We consider in Chapter 10 the need for this to be a statutory requirement.

## RECOMMENDATION

**R14. The appointment of the First Civil Service Commissioner should be made after consultation with opposition leaders.**

<sup>60</sup> Ibid.

<sup>61</sup> Written evidence 21/59.

<sup>62</sup> Day 4, pm.

<sup>63</sup> Appropriate arrangements would need to be made to consult appropriate party leaders in Scotland and Wales in view of the responsibility of the Civil Service Commissioners for the Home Civil Service, which also serves those Administrations.

# CHAPTER 7 SPECIAL ADVISERS

7.1 In this chapter we turn to the third element of the Executive, special advisers.

7.2 In 1974, Harold Wilson, the then Prime Minister, authorised the systematic appointment of political or special advisers by Cabinet Ministers. The presence of such people in government was not new. What was new was the greater formality of the arrangements, with 30 advisers given “a definite role in our [political] affairs”.<sup>1</sup>

7.3 The purpose of these advisers and their role in Government was to be:

*... an extra pair of hands, ears and eyes and a mind more politically committed and more politically aware than would be available to a Minister from the political neutrals in the established Civil Service.*<sup>2</sup>

Since then, every administration has appointed special advisers and, as comments from witnesses below indicate, there is now unanimous agreement about the value which they bring to our constitutional arrangements.

*It has been said by virtually every Commission and report since the war, that there have to be mechanisms for bringing into government people who are not permanent civil servants, to give policy advice and so on. I would think that is almost common ground and ground that I would support.*<sup>3</sup>

Charles Moore, Editor, *The Daily Telegraph*

*There is a long and very reputable history for special advisers.*<sup>4</sup>

Andrew Stunell MP,  
Liberal Democrat Chief Whip

*In my view, I think special advisers play a very valuable role...*<sup>5</sup>

Baroness Prashar,  
First Civil Service Commissioner

*The FDA has made the point in our evidence and separately that the special adviser system is a good one; it is an asset... special advisers are an asset to the Civil Service; they are an asset to Ministers.*<sup>6</sup>

Jonathan Baume,  
General Secretary, FDA

*For decades, Whitehall has been run efficiently, and civil servants and special advisers have co-existed.*<sup>7</sup>

Theresa May MP,  
Chairman of the Conservative Party

*Having the political advisers there actually protects the Civil Servants from being asked to do an overtly political job.*<sup>8</sup>

Rt Hon Estelle Morris MP,  
then Secretary of State for  
Education and Skills

7.4 In short, special advisers have a valuable role to play precisely because they are free to act and advise in a way that a politically impartial civil servant cannot.

7.5 Nevertheless, the status, role, accountability and number of special advisers have received much greater prominence and significance in Parliament and the media in recent years. Peter Riddell considered that:

<sup>1</sup> Statement, Harold Wilson, Commonwealth Heads of Government Conference, Jamaica, May 1975.

<sup>2</sup> Harold Wilson, *The Governance of Britain* (London: Weidenfeld and Nicholson and Michael Joseph, 1976), p203.

<sup>3</sup> Day 4, am.

<sup>4</sup> Day 6, pm.

<sup>5</sup> Day 4, pm.

<sup>6</sup> Day 2, am.

<sup>7</sup> Day 8, pm.

<sup>8</sup> Day 6, pm.

*There was ... a particular phenomena in 1997 with one of the most inexperienced governments in our history coming in and being used to working with a group of people ... and then wanting them around ... It was a reflection of a more general thing, of politicians wanting more outside advice, more political advice.*<sup>9</sup>

- 7.6 Tim Collins MP believed that, since 1997, “*there seems to have been quite substantial changes in their [special advisers’] role and in their manner of behaviour*”.<sup>10</sup> Paul Tyler MP said:

*What I think is unusual is the huge number now, and whether they are actually expert advisers or whether they are special advisers ... It was clear in the case of Harold Wilson’s first appointees that these were people of very considerable expertise and experience ... But I do not think we could really say that [of] the present array of huge numbers of advisers.*<sup>11</sup>

- 7.7 Professor Hennessy thought that, “*the clout, as it were, of the permanent Civil Service advisers is much diminished compared to some of the special advisers*”.<sup>12</sup> Lord Lipsey, comparing the Administration of James Callaghan and the current Administration commented, “*they [the current Administration] work with special advisers in departments in a way we did not ... You go into a department and you see a Number 10 adviser there*”.<sup>13</sup> Andrew Marr suggested that changes over the last 20 or 30 years, including an increase in media activity, meant that “*The need for go-betweens [between government and media] was much less than it is now*”.<sup>14</sup>

- 7.8 We turn to consider the status, role, accountability, number and funding of special advisers.

## Status

- 7.9 Special advisers are appointed by Ministers to the Civil Service under powers conferred by the Civil Service Order in Council 1995 (as amended). Their appointments are temporary, end with the Minister’s departure and cannot last beyond the end of the Administration.

- 7.10 Though classed as civil servants, they do not

share the defining characteristics of civil servants:

- **unlike** civil servants they are **personally** appointed by Ministers;
- they are **not** subject to the general Civil Service obligation to be objective and impartial; and
- **unlike** civil servants they **are** able to represent Ministers’ views on government policy to the media with “*a degree of political commitment*”.<sup>15</sup>

- 7.11 In this way, special advisers are distinguished by what they are not, rather than defined by what they are. As Lord Butler said:

*There has always been something uncomfortable about treating as temporary civil servants “political” special advisers whose explicit role is to advise Ministers in the interests of their Party.*<sup>16</sup>

- 7.12 This is an inherently unsatisfactory position and one which has consequences for their relationship with Ministers and civil servants. As Mike Granatt put it:

*There can be confusion, and I think this is one of the concerns that arises in times when things do not work well, that the special adviser may become a gatekeeper, and that civil servants do not have access to the Minister to provide advice, they merely become the recipient of instructions, one way or the other.*<sup>17</sup>

- 7.13 We believe that these concerns have weight and we have considered how that might be remedied. We concluded that the defining characteristic of special advisers is their personal appointment. In the words of Andrew Marr, Political Editor of the BBC:

*They are special only in the sense that they are close, political compadres of Ministers.*<sup>18</sup>

It is this that makes them fundamentally different from the permanent Civil Service. It reflects the

<sup>9</sup> Day 1, am.

<sup>10</sup> Day 3, pm.

<sup>11</sup> Day 6, pm.

<sup>12</sup> Day 4, am.

<sup>13</sup> Day 1, am.

<sup>14</sup> Day 1, pm.

<sup>15</sup> *Code of Conduct for Special Advisers*, para 8.

<sup>16</sup> Day 7, am.

<sup>17</sup> Day 6, am.

<sup>18</sup> Day 1, pm.

fact that their role is to serve Ministers in a more personal capacity than members of the permanent Civil Service and, in the great majority of cases, with political commitment.

7.14 It is in recognition of this that **we recommend** special advisers should be separated out as a category of government servant distinct from the Civil Service and that this should be part of the legislation we discuss in Chapter 10. As Dr Tony Wright MP said:

*Rather than try to squeeze them into a category which is fundamentally unsuitable to them – instead of bending the Civil Service rules to accommodate this new species – why not simply have a separate category [so that special advisers] are acknowledged for what they are.*<sup>19</sup>

7.15 In considering the case for a separate category we were mindful of an important objective set out by the then Cabinet Secretary, Sir Richard Wilson:

*What you want is to ensure that special advisers are part of the team in the department, performing their particular role and that they are there serving – whatever they are doing – government as government, rather than political party.*<sup>20</sup>

7.16 We agree, and it was, in part, for this reason that we were unpersuaded by some of the evidence put to us for taking special advisers entirely outside the public service, or making them exclusively Party advisers paid for by Party with a form of ‘Short’ money.<sup>21</sup>

7.17 The Committee believes, to use the words of Sir Jon Shortridge, that the value of special advisers lies in providing:

*.... grit in the oyster, to bring a different perspective on things ... [and] in doing those things that civil servants must not do.*<sup>22</sup>

This role can still be carried out if special advisers are a category of government servant distinct from the Civil Service and without the attendant confusion which we identified above.

## RECOMMENDATION

**R15. Special advisers should be defined as a category of government servant distinct from the Civil Service.**

7.18 We are conscious that, even if not civil servants, special advisers must remain subject to many of the constraints and disciplines of government service. For example, as they are paid from public funds, their participation in party politics must be carefully limited. So the Code of Conduct for Special Advisers is explicit that special advisers:

*... are employed to serve the objectives of the Government and the department in which they work. It is this which justifies their being paid from public funds and being able to use public resources, and explains why their participation in party politics is carefully limited.*<sup>23</sup>

7.19 In addition, special advisers are “otherwise required to conduct themselves in accordance with the Civil Service Code”,<sup>24</sup> with honesty and integrity. They must also observe government rules about confidentiality and access to papers. **We recommend**, therefore, that, as a category of government servant distinct from the Civil Service, special advisers should have terms of service which preserve the relevant elements from the Civil Service Code, the Civil Service Management Code, as well as the Code of Conduct for Special Advisers.<sup>25</sup>

## RECOMMENDATION

**R16. As a category of government servant distinct from the Civil Service, special advisers should have terms of service which preserve the relevant elements from the Civil Service Code, the Civil Service Management Code and the Code of Conduct for Special Advisers.**

## Categories

7.20 Some witnesses suggested that there should be different categories of special adviser. Typically three were suggested: political, media and expert. But we were persuaded that, in practice, it is difficult to draw defined lines between these

<sup>19</sup> Day 4, am.

<sup>20</sup> Day 6, pm.

<sup>21</sup> Short money (named after the then Leader of the House of Commons, the Rt Hon Edward Short, now Lord Glenamara) dates back to 1975, and is the provision of public funds to the opposition parties to assist them in their parliamentary activities.

<sup>22</sup> Day 9, pm.

<sup>23</sup> Para 6, *Code of Conduct for Special Advisers*, Cabinet Office.

<sup>24</sup> Para 4, *Code of Conduct for Special Advisers*, Cabinet Office.

<sup>25</sup> Taking account of the recommendations for amendment to the *Code of Conduct for Special Advisers* which we make elsewhere.

functions because the range of activities undertaken by special advisers is such that the categories inevitably overlap significantly with each other. Pat McFadden said:

*It is quite difficult in government and in politics to put people into separate boxes and say that the person who deals with the media does not have policy expertise because they might have both. The person who has a lot of policy expertise might have no expertise at all with dealing with the media or they may.<sup>26</sup>*

Mike Granatt concurred: *“I would not personally think that you could feasibly say a special adviser can be neatly divided up into a non-press person and a press person.”<sup>27</sup>*

7.21 Tom Burke spoke of the difficulties of defining what is meant by ‘political’, saying: *“Perhaps if you distinguished between partisan and non-partisan advisers, you might be making it easier”*. He pointed out that an expert adviser need not mean a non-political adviser:

*Making the link between a body of technical expertise and the political world is something ... that does add value. So, the idea that you would not do that if you were an expert adviser seems to me odd.<sup>28</sup>*

7.22 However, there is clearly one common characteristic shared by all special advisers, namely that they are personally appointed by a Minister, and it is on that that we have focused. **We recommend**, therefore, that there should be just the one category, and that all special advisers, whether expert or otherwise, should fall within it.

## RECOMMENDATION

**R17. There should be a single category of special adviser.**

## Role

7.23 Harold Wilson set out the broad terms of the special adviser role in a speech in 1975. As each adviser was a personal appointment, and dependent on background or experience, the role would vary, but he gave illustrative examples of the type of work they might do. This included:

- acting as a ‘sieve’, examining papers as they go to Ministers;
- acting as a ‘deviller’, chasing up ministerial wishes;
- preparing ‘think-pieces’ to generate long-term policy thinking within the department;
- contributing to policy-planning within the department;
- liaising with the Party;
- easing the Minister’s burden in contact with outside interest groups;
- speech-writing and research.

## The legal definition of a special adviser

7.24 The current legal definition in the Civil Service Order in Council ‘limits’ the role of special advisers to one of *“giving advice only”*. It is clear from the list above that the special adviser role was always envisaged as being more than purely to give advice and this has been reflected in the current Code of Conduct for Special Advisers. As Baroness Prashar noted in debate in the House of Lords:

*The Code of Conduct for Special Advisers now includes as part of their role, “preparing speculative policy papers which can generate long-term policy thinking within the Department, including policies which reflect the political viewpoint of the Minister’s party”, and, “representing the views of their Minister to the media including a Party viewpoint, where they have been authorised by the Minister to do so”. All this seems to go beyond the role of special advisers as set out in the 1995 Order in Council, which states that their purpose is, “only of providing advice to any Minister”. There appears to be a variance between the legal basis for a special adviser’s role and that set out in their Code.<sup>29</sup>*

7.25 This variance is clearly unsatisfactory. It is particularly acute in relation to media activities. Sir Robin Mountfield, for example, noted:

*There is an awkwardness about the role of special advisers in relation to the press which derives from the present legal authority for appointing special*

<sup>26</sup> Day 3, pm.

<sup>27</sup> Day 6, am.

<sup>28</sup> Day 5, am.

<sup>29</sup> House of Lords, *Hansard*, 1 May 2002, col 703.

*advisers for the purposes of “advice only”. Is dealing with the press really an advice function?*<sup>30</sup>

7.26 We considered whether the role of special advisers should be confined to the more normal and narrow meaning of ‘advice’. However, as Dr David Hine, University of Oxford pointed out:

*A common sense answer is that a tighter definition is impossible because of the huge range of activities involved ... and because of the inevitable inter-changeability of roles which will develop... the precise definition of boundaries cannot go beyond a list of examples and general principles.*<sup>31</sup>

7.27 Following Dr Hine’s evidence, we considered the extent to which it was appropriate for the boundaries of special advisers’ activities to be limited by setting general principles and listing examples of what they can do, as is the case in the current Code of Conduct.

**The Code of Conduct for Special Advisers: “the sorts of work a special adviser may do if their Minister wants it.”**

Among 12 sorts of work are the following:

- helping to brief Party MPs and officials on issues of Government policy;
- representing the views of their Minister to the media including a Party viewpoint, where they have been authorised by the Minister to do so;
- providing expert advice as a specialist in a particular field;
- attending Party functions (although they may not speak publicly at the Party Conference) and maintaining contact with Party members;
- taking part in policy reviews organised by the Party, or officially in conjunction with it, for the purpose of ensuring that those undertaking the review are fully aware of the Government’s views and their Minister’s thinking and policy.<sup>32</sup>

7.28 Sir Richard Wilson was clear:

*Rather than engage in abstruse discussions about what special advisers can do, we should say clearly and firmly what they cannot do and,*

*beyond that, leave each Cabinet Minister to determine how they want to deploy them.*<sup>33</sup>

Special advisers, he said, ... *should not behave illegally or improperly. They ... should not ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants ... [or] undermine the political impartiality of civil servants or the duty of civil servants to give their own best advice to Ministers. Special advisers should not have any role in the recruitment and promotion of permanent civil servants, or in their line management including the assessment of their performance and pay.*<sup>34</sup>

7.29 We concluded from our evidence that it was not possible to compile an exclusive list of what a special adviser can do which would cover all legitimate eventualities and which would replace the current unsatisfactory legal definition of “giving advice only”; too much would depend on the exercise of individual judgement. **We recommend**, therefore, that a clear statement of what special advisers cannot do should be set out in primary legislation. We make clear in Chapter 10 the need for statutory legislation. **We recommend** that the content of the statement of what special advisers cannot do should follow the description given by Sir Richard in para 7.28.

7.30 This recommendation is not intended to change the broad limits of the work which Harold Wilson set out for special advisers and which are now indicated by means of a list in the current edition of the Code of Conduct for Special Advisers. As Sir Richard said, in practice, the consequences of defining special advisers by what they cannot do leaves it to “each Cabinet Minister to determine how they want to deploy them [each adviser].” **We recommend**, therefore, that the Code of Conduct for Special Advisers should continue to list the sorts of work a special adviser may do at the request of their Minister.

7.31 We further **recommend** that the Ministerial Code be amended to require each Minister to set out in the individual contract for each special adviser the work that adviser is being appointed to undertake. In line with the requirements in the Ministerial Code concerning any departure from the rule of two special advisers per Cabinet

<sup>30</sup> Day 1, pm.

<sup>31</sup> Day 2, am.

<sup>32</sup> Para 3, *Code of Conduct for Special Advisers*, Cabinet Office.

<sup>33</sup> *Portrait of a Profession Revisited*, 26 March 2002.

<sup>34</sup> *Ibid.*

Minister, any significant departure from the sorts of work envisaged in the Code of Conduct for Special Advisers should also require the prior written approval of the Prime Minister and should be explained publicly.

## RECOMMENDATION

**R18. (a) A clear statement of what special advisers cannot do should be set out in primary legislation.**

- (b) Special advisers should not:**
- (i) ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;**
  - (ii) undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;**
  - (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants;**

**Subject to R31 on the Prime Minister's Office, special advisers should not:**

- (iv) have powers to authorise the spending of government money;**
- (v) have any role in the line management of civil servants;**
- (vi) have charge of or any direction over the work of GICS members;**
- (vii) have any other executive powers.**

**(c) The Code of Conduct for Special Advisers should continue to list the sorts of work a special adviser may do at the request of their Minister.**

**(d) The Ministerial Code should be amended to require each Minister to set out in the individual contract for each special adviser the work that adviser is being appointed to undertake. Any significant departure from the sorts of work envisaged in the Code of Conduct for Special Advisers should require the prior written approval of the Prime Minister and should be explained publicly.**

## Accountability

7.32 As temporary civil servants, special advisers are currently accountable to the Permanent Secretary as the person delegated with the running of the department by the Minister. The Permanent Secretary is also responsible for their day to day conduct and discipline. But special advisers are appointed by, and ultimately accountable to, their Minister, to whom they work directly.

7.33 This division of responsibilities can, and has, given rise to confusion. David Normington, Permanent Secretary at the DFES said:

*Although the formal responsibility for disciplining them is with me, it is inconceivable that I would do it in the case of a special adviser without consulting the Secretary of State ... If it came to a sacking I would have to ask the Secretary of State to do it.<sup>35</sup>*

7.34 The relationship between the Permanent Secretary and the Minister is further complicated, as Tim Collins MP illustrated:

*I think it is extremely difficult for any Permanent Secretary whose effectiveness in leading their department is hugely dependent on their personal relationship with the Secretary of State, to be placed in a position where they actually have to rule on the fitness of the Secretary of State's own personally chosen special adviser.<sup>36</sup>*

7.35 As Andrew Marr put it:

*Responsibility should lie where common sense would put it. Common sense says that if the Minister has chosen the special adviser, has employed this person as a special adviser and is working with this person, anything the special adviser gets badly wrong is the Minister's fault. The Minister should be absolutely, clearly and entirely responsible for the conduct of a special adviser ...<sup>37</sup>*

7.36 The Committee was pleased to see, therefore, the Government response in February 2003 to a recent report by the Public Administration Select Committee which said:

<sup>35</sup> Day 6, pm.

<sup>36</sup> Day 3, pm

<sup>37</sup> Day 1, pm

*The Government believes that the ultimate responsibility for disciplining an individual special adviser should fall to the Minister who made the appointment.*<sup>38</sup>

7.37 We agree. It should be clear that the appointing Minister has full responsibility for their special advisers' conduct and discipline. **We recommend** that the Ministerial Code should make clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers.

7.38 Andrew Marr drew the Committee's attention to the fact that:

*They [special advisers] go off and will say things and do things on behalf of the Minister that the Minister would not dream of saying and doing as Minister in front of a journalist or a colleague. I think that then produces all the complexities of different kinds of stories.*<sup>39</sup>

It is the Minister's responsibility to prevent any such state of affairs from arising. We believe that some of the most difficult issues over the last few years could have been prevented if this had been clear to all concerned from the outset.

## RECOMMENDATION

**R19. The Ministerial Code should be amended to make clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers.**

## Compliance with the Code of Conduct for Special Advisers

7.39 It follows from our recommendations that allegations that a special adviser has infringed the Code of Conduct are matters for the Minister to investigate; and to account to Parliament, as necessary, for the outcome and for the action taken in consequence of an investigation. As a result, where civil servants draw the attention of the Civil Service Commissioners to a special adviser who is alleged to have over-stepped the boundaries, the Civil Service Commissioners should refer the matter to the Minister concerned where they feel that this is warranted.

7.40 In the very last resort the Prime Minister could invoke the procedure used for allegations of breaches of the Ministerial Code outlined in recommendation 4. However, we do not consider that such a course would be necessary.

## RECOMMENDATION

**R20. (a) The Minister concerned should investigate any allegation that his or her special adviser is in breach of the Code of Conduct for Special Advisers.**

**(b) Where necessary, it would be possible for the Prime Minister to refer the matter for investigation in the same way as an alleged breach of the Ministerial Code.**

## Funding

7.41 Special advisers are employed by their appointing Minister's department and are paid out of the funds voted to departments by Parliament to meet the running costs of the department.

7.42 It was suggested to us in evidence, notably by Lord Butler who advocated paying special advisers "from ear marked funds similar to 'Short' money",<sup>40</sup> that the present arrangements should be changed so that special advisers were paid out of a centrally held "pot of money",<sup>41</sup> to use Peter Riddell's phrase. Norman Baker MP favoured too an approach which mirrored the arrangements for Short money.

7.43 We recognise that this approach would have some advantage for transparency, in gathering all government spending on special advisers' salaries into one account. But it could, we believe, by removing the funds from the departmental vote, weaken the appointing Minister's accountability for his or her special advisers by having them paid from a separate fund for which another Minister would have to be responsible. Such arrangements could also be complex to administer. Moreover, the requirement for transparency can be met by the submission to Parliament each year of a statement which should set out:

- the total number of special advisers employed in the year;

<sup>38</sup> *Government Response to the Public Administration Select Committee's Eighth Report of the 2001-02 Session "These Unfortunate Events"* [HC 303], Cm 5756, Cabinet Office, February 2003.

<sup>39</sup> Day 1, pm.

<sup>40</sup> Written evidence 21/18.

<sup>41</sup> Day 1, am.

- their names;
- the Ministers for whom they work or have worked during the year;
- their particular roles and areas of responsibility;
- the total salary cost by department, including for the Prime Minister's Office; and
- comparison figures for earlier years.

## RECOMMENDATION

### R21. An annual statement should be made to Parliament setting out:

- (i) the total number of paid special advisers employed in the year;
- (ii) their names;
- (iii) the Ministers for whom they work or have worked;
- (iv) their particular roles and areas of responsibility;
- (v) the total salary cost by department;
- (vi) comparison figures for earlier years.

## Numbers

7.44 There is no limit to the number of special advisers who can be appointed other than that set out in the Ministerial Code promulgated by the Prime Minister. The Code provides that, with the

exception of the Prime Minister, Cabinet Ministers (and certain other Ministers)<sup>42</sup> may each appoint up to two special advisers, though in certain circumstances this limit can be increased.

### The Ministerial Code: numbers of special adviser per Cabinet Minister

*“With the exception of the Prime Minister, Cabinet Ministers may each appoint up to two Special Advisers. The Prime Minister may also authorise the appointment of one or two Special Advisers by Ministers who regularly attend Cabinet. The Government expects the appointment of experts normally to be made to permanent or temporary Civil Service posts in accordance with the rules of the Civil Service Commissioners. Where, however, an individual has outstanding skills or experience of a non-political kind which a Minister wishes to have available while in a particular post, the Prime Minister may exceptionally permit their appointment as a special expert adviser above the usual limit of two advisers per Cabinet Minister. All appointments require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. Any departures from the rule of two Special Advisers per Cabinet Minister will need to be explained publicly”.* (paragraph 50)

7.45 We heard several concerns about the growth in the number of special advisers. Tim Collins MP thought that *“The fact that they have more than*

### Special adviser numbers and pay since 1994/95<sup>43</sup>

Financial Year	Total	Special Adviser Numbers No 10	Departments	Special Adviser Pay	% Increase in Pay Year on Year Since 1994/95
1994/95	34	6	28	£1.5 million	–
1995/96	38	8	30	£1.5 million	0
1996/97	38	8	30	£1.8 million	20
1997/98	70	18	52	£2.6 million	44.4
1998/99	74	25	49	£3.5 million	34.6
1999/00	78	26	52	£4.0 million	14.2
2000/01	79	25	54	£4.4 million	10
2001/02	81	26	55	£5.1 million	15.9

As at 13 March 2003, there were 81 special advisers, 27 in No 10 and 54 in departments.

<sup>42</sup> Although it is not a matter for us, we note Baroness Jay's view that, for non-Cabinet Ministers in the House of Lords, *“there is a special role for special advisers”* because *“you are answerable in Parliament to the House of Lords for that broad policy portfolio [of the whole department]”* and *“you ... need to have the very broad political perspective.”* Day 6, am

<sup>43</sup> Source of figures: *Hansard* (HC) 31 January 2003, col 1956W; 22 January 2001, col 469W; Cabinet Office

*doubled since 1997 ... is of some concern*".<sup>44</sup>  
Theresa May MP called for a reduction of  
*"about 25 per cent"*.<sup>45</sup>

7.46 This is not new territory for this Committee. In our Sixth Report we recommended:

*R19. The proposed Civil Service Act should contain a provision limiting the total number of special advisers that can be appointed within government. Any increase beyond that figure should be made subject to affirmative resolution of both Houses of Parliament.*

*R20. Pending the enactment of the Civil Service Act, the Government should put before both Houses of Parliament for debate a limit on the total number of special advisers that can be appointed within government.*<sup>46</sup>

7.47 In its response to the report, the Government accepted that:

*... an overall limit on the number of special advisers should be included in Civil Service legislation. Once that legislation has been enacted, increases in the limit will require the consent of both Houses of Parliament.*<sup>47</sup>

7.48 The Committee does not believe that it should take on the role of specifying a limit to the number of special advisers. In our view, the central issue on this matter is the creation of an accountable mechanism for the establishment and variation of a limit. This is the view the Committee took in its Sixth Report. We therefore re-affirm our Sixth Report recommendations.

7.49 Accordingly, **we recommend** that it should be for Parliament to come to a view on the appropriate limit for special advisers. It is, however, worth noting that the Committee heard no compelling evidence for any increase in the number of special advisers. Indeed, Lord Lipsey told us:

*Once you have so many special advisers that they have no special claims to know the mind of their Minister or have constant access to the Minister, they will cease to be special.*<sup>48</sup>

## RECOMMENDATION

**R22. (a) The total number of special advisers should be contained in statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament.**

**(b) Pending legislation, there should be a debate on the total number of special advisers that can be appointed within government.**

## Unpaid advisers

7.50 The Ministerial Code includes provision for the appointment of unpaid advisers to Ministers.

### The Ministerial Code: Unpaid advisers

The main requirements for the appointment of an unpaid adviser are:

- Appointees provide advice to Ministers in their ministerial capacity;
- Prior written approval of the Prime Minister is required;
- Such appointments are **exceptional**;
- Appointments **carry no remuneration** or reimbursement from public funds;
- The appointment is a **personal appointment** by the Minister;
- There is **no contractual relationship** with the department;
- Ministers must ensure **no conflict of interest** with advisers' private concerns;
- A **letter of appointment** must be issued by the employing Minister making this clear;
- Aside from **accommodation costs**<sup>49</sup> an unpaid adviser should constitute no cost to the public purse; and
- The Official Secrets Act and Business Appointment Rules apply.

<sup>44</sup> Day 3, pm.

<sup>45</sup> Day 8, pm.

<sup>46</sup> CSPL Sixth Report, page 78.

<sup>47</sup> *Government Response to the Sixth Report from the Committee on Standards in Public Life*, Cm 4817, page 9.

<sup>48</sup> Day 1, pm.

<sup>49</sup> Accommodation costs are defined as the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system.

7.51 Ministers have long sought advice from a large number of contacts outside government and the Committee sees value in such contacts. These clearly can be helpful for the working of government. Many such contacts will be of an *ad hoc* and ephemeral nature. But where they are of a more substantial nature, it is right that their appointment and conduct should be covered by the Ministerial Code. The Committee believes that the present rules in the Code are adequate, subject to the following points:

- All Ministers should have the same accountability for their unpaid advisers, in relation to their official duties, as for their special advisers and **we recommend** that this be made explicit in the Ministerial Code;
- We have already recommended in para 7.43 that there should be greater transparency, through an annual report to Parliament, about special advisers. **We recommend** that this report should also include information on unpaid advisers;
- The Ministerial Code provides that unpaid advisers are identified on the basis of a letter of appointment from the employing Minister which sets out the conditions contained in the box above (at para 7.50). However, it is clear that this approach is not being applied evenly and that individuals exist who apparently satisfy the criteria set out in the box but who have not been defined as an unpaid adviser. This is highly unsatisfactory. **We recommend** that the term, unpaid adviser, should cover any person providing, on an unpaid basis, advice to any Minister or representing any Minister in this country or abroad on a recurring or continuous basis; and
- There is nothing in the Ministerial Code which requires unpaid advisers to comply with the Code of Conduct for Special Advisers. **We recommend** that the relevant essential elements of the Special Adviser's Code – that is, the requirement to uphold the political impartiality of civil servants and the requirement not to use official resources for party political activity – should be included in the letter of appointment.

## RECOMMENDATION

**R23. (a) The Ministerial Code should be amended to make clear that Ministers are personally accountable for the management and discipline of their unpaid advisers in respect of their governmental responsibilities to the Prime Minister and to Parliament.**

**(b) The annual statement referred to in R21 should also include unpaid advisers, stating:**

- (i) the total number of unpaid special advisers employed in the year;**
- (ii) their names;**
- (iii) the Ministers for whom they work or have worked;**
- (iv) their particular roles and areas of responsibility;**
- (v) comparison figures for earlier years.**

**(c) An unpaid adviser should be defined in the Ministerial Code as anyone who provides, on an unpaid basis, advice to any Minister or represents any Minister in this country or abroad on a recurring or continuous basis.**

**(d) The requirement to uphold the political impartiality of civil servants and the requirement not to use official resources for party political activity, contained in the Code of Conduct for Special Advisers, should be included in the letter of appointment for every unpaid adviser.**

## The Code of Conduct for Special Advisers

7.52 The Code of Conduct for Special Advisers should be amended to reflect the implementation of the recommendations set out in this chapter, in particular their new status.

## RECOMMENDATION

**R24. The Code of Conduct for Special Advisers should be updated as appropriate to take account of the change in status of special advisers.**

## Training and induction

7.53 Many witnesses, including former special advisers, stressed the importance of training and induction for special advisers. Pat McFadden told us:

*I was certainly given no training at all and we were pitched in very quickly into the activities of government from literally a day or two after the General Election. In any walk of life to be trained and briefed and helped out before you begin a new task has to be a good thing.<sup>50</sup>*

7.54 Similarly, John Newbiggin said: *“I certainly think that to have a better understanding of how the Civil Service worked would have been very useful”,* adding, *“I think training would be useful and it is still inadequate”.<sup>51</sup>* Tom Burke remarked: *“I think I would have benefited from there being somewhat more in the way of guidance as to what special advisers could do and could not do”.<sup>52</sup>*

7.55 Baroness Prashar made the useful point that there should be arrangements for putative special advisers before an election: *“you need to start putting some arrangements in place beforehand”.<sup>53</sup>* We were pleased to see, therefore, the attention being paid to this issue by the Government. In its response to the PASC report on *“These Unfortunate Events”,* the Government said:

*... the first ever training of this kind [induction training for special advisers] was held on 21 November [2002]. It is the first step in building a more open and planned approach to special advisers’ development ... In addition, special advisers have been invited to think about their development needs – individually and collectively.<sup>54</sup>*

7.56 This must be the right approach and one which we believe will be assisted by separating out special advisers as a category of government servant distinct from the Civil Service.

<sup>50</sup> Day 3, pm.

<sup>51</sup> Day 5, am.

<sup>52</sup> Day 5, am.

<sup>53</sup> Day 4, pm.

<sup>54</sup> Cm 5756, February 2003, page 5.



# CHAPTER 8 THE GOVERNMENT INFORMATION AND COMMUNICATION SERVICE

8.1 In this chapter we examine the role of the Government Information and Communication Service (GICS) and the relationship between GICS press officers, special advisers and Ministers.<sup>1</sup> The role of press officers in the Prime Minister's Office is considered separately, in Chapter 9.

8.2 It is the role of the Government Information and Communication Service (GICS), a professional specialism within the Civil Service, to disseminate to the public an enormous range of information about the business of government. The GICS is staffed with around 1,000 civil servants, of whom 43 per cent are press officers who act as the Government interface with the media. Unlike most of their counterparts in the rest of the Civil Service, many will have had previous experience of a 'political' role. It is not unknown, for example, for new entrants to have worked in organisations with some political or campaigning role. However, as civil servants their role is different: to quote the GICS Handbook, the job of those working in the GICS is to *"help the Government fulfil its duty and exercise its right, [to be heard] professionally, and with **political impartiality**"*.<sup>2</sup> (emphasis added)

8.3 Under all Administrations, the role of press officers and the way in which government relates to the media have frequently, and perhaps inevitably, been a matter of intense media interest. So the environment in which press officers and special advisers operate brings its own pressures. This is not new. In 1996, when giving evidence to a House of Commons

select committee, the then Deputy Prime Minister, Michael Heseltine explained:

*Information officers have under both parties been in a position of articulating government policy in perhaps a more committed way than you would expect from the rest of the civil service. That they have always done ... information officers constantly are defending government policy which might be considered political. It is not their job to avoid controversy.*<sup>3</sup>

However, we heard some evidence, referred to in Chapter 4, that the pressures which press officers face have increased as a result of what has been termed, "permanent campaigning". Associated with this is Peter Riddell's observation that, *"We are now in the era of the 24-hour news cycle"*.<sup>4</sup>

8.4 The need to be *"committed"* is heightened by the premium which Ministers understandably place on effective government communication. Jonathan Haslam, former Press Secretary to the Prime Minister, said:

*Whatever we like to say about it, the media is where the shoe pinches as far as Ministers are concerned.*<sup>5</sup>

8.5 As the GICS Handbook recognises, this has the potential to generate tension:

*Ministers are political animals. Civil servants are not. Nowhere is this difference more likely to*

<sup>1</sup> We note that the Government announced on 11 February 2003 that an external review of government communications is to be carried out by a group of journalists and members of the GICS chaired by Bob Phillis, Chief Executive of the Guardian Media Group plc.

<sup>2</sup> GICS Handbook

<sup>3</sup> Public Service Committee, Role and Responsibilities of the Deputy Prime Minister – Michael Heseltine's evidence, 28 February 1996, HC 265, as quoted by Professor Stuart Weir in a Memorandum to the Public Administration Select Committee, 28 February 2002.

<sup>4</sup> Day 1, am.

<sup>5</sup> Day 1, pm.

create difficulties than in the press office of a communication directorate.<sup>6</sup>

Or, as the Public Administration Select Committee said: “The whole area of communications is a difficult one, especially the line between effective communication of policy and party propaganda”.<sup>7</sup>

## Upholding the values of the GICS

8.6 The pressures highlighted above make it particularly important that all involved remain conscious of the boundaries of their roles. Mr Heseltine’s statement summarises the principal issue – the maintenance of impartiality (from the party politics of the Government of the day) of members of the GICS.

8.7 The GICS Handbook explains that:

*The Government has a duty:*

- to explain its policies, decisions and actions;
- to inform the public about their rights and liabilities; and
- to provide the public with advice and warnings.

*And as the duly elected administration, it has the right to be heard.*<sup>8</sup>

8.8 Members of the GICS are required to conduct their work in accordance with the *Guidance on the Work of the Government Information Service*. This guidance lists various conventions that should apply to government information and communications work, e.g. the subject matter:

- should be relevant to government responsibilities;
- should be objective and explanatory, not tendentious or polemical;<sup>9</sup>

- should not be, or be liable to misrepresentation as being, party political;<sup>10</sup> and
- should be conducted in an economic and appropriate way, having regard to the need to be able to justify the costs as expenditure of public funds.<sup>11</sup>

8.9 At the heart of the matter is the need for government information to carry long-term public credibility. In giving evidence to the Committee, Romola Christopherson explained:

*In crude terms, I reckoned it was my job to make the best case I could for a policy of the department, the Government of the day, to argue the strongest case consistent – and this is crucial – with long-term credibility.*<sup>12</sup>

Lord Burns thought that:

*The world outside wants a stream of information that they can rely upon and which they can trust and which they know is being given to them as best as possible on an even-handed basis.*<sup>13</sup>

8.10 This highlights the need for a fine balance to be struck: between arguing “the strongest case” and, at the same time, remaining politically impartial. Perceptions of lack of political impartiality can arguably be more damaging in government communications than in any other activity carried out by the Executive.

8.11 In practice, of course, the dissemination of government information will often have the additional effect of supporting and furthering the aims of the party in government. As Peter Riddell noted: “Inevitably the line between the Minister’s viewpoints, a party viewpoint and merely providing impartial information often gets blurred”.<sup>14</sup> But the GICS should never become a participant to deliberate blurring of the line between party and government. The aims of the party in government may be furthered as a consequence of information put out by the

<sup>6</sup> GICS Handbook.

<sup>7</sup> Public Administration Select Committee, Fourth Report, *Special Advisers: Boon or Bane?*, Session 2000-01, (HC 293), para 38.

<sup>8</sup> GICS Handbook.

<sup>9</sup> *The Guidance on the work of the Government Information Service emphasises, “personalisation of issues or personal image-making should be avoided”, para 7.*

<sup>10</sup> The Guidance notes: “It is entirely proper to present and describe the policies of a Minister, and to put forward the Minister’s justification in defence of them, and this may have the effect of advancing the aims of the political Party in Government. It is not, however, proper to justify or defend those policies in Party political terms, to use political slogans, expressly to advocate policies as those of a particular political Party or directly attack (though it may be necessary to respond to in specific terms) policies and opinions of Opposition Parties and groups. It is possible that a well-founded publicity campaign can create political credit for the Party in Government. But this must not be the primary or a significant purpose of Government information or publicity activities paid for from public funds.” para 8.

<sup>11</sup> *Guidance on the work of the Government Information Service*, para 2.

<sup>12</sup> Day 7, am.

<sup>13</sup> Day 6, am.

<sup>14</sup> Day 1, am.

government, but the dissemination of government information should not become part of the party political battle.

8.12 It is right and proper for governments to use public funds and resources to inform the public of government policies and of the public services available to them. But as the GICS guidance emphasises: “These resources may not, however, be used to support publicity for party political purposes”.<sup>15</sup> It is the responsibility of Heads of Information and Permanent Secretaries to ensure that GICS staff do not, and are not expected to, become participants in any deliberate blurring of the line between party and government and to ensure that public funds are not used for party political purposes.

8.13 Indeed the Permanent Secretary, as Accounting Officer, is obliged to ensure this does not occur. Treasury guidelines set out a course of action which may result in the Accounting Officer writing to the Comptroller and Auditor General where he or she believes that the Minister in charge of the department is contemplating a course of action involving a transaction which would infringe the requirements of financial propriety or regularity.<sup>16</sup>

## RECOMMENDATION

**R25. An Accounting Officer should not hesitate to notify his or her concerns, in accordance with Treasury guidelines for Accounting Officers, where he or she believes that the Minister in charge of the department is contemplating a course of action relating to the operation of the press office which would infringe the requirements of financial propriety or regularity.**

## A GICS fit for purpose

8.14 We identified in para 4.17 that there has been media and parliamentary comment and speculation about a number of changes made to the composition of senior GICS staff following the Labour Administration taking office in 1997. Some witnesses raised concerns about these

changes. Others, however, were of the view that change had been necessary because, in 1997, the GICS was not fit for purpose. Peter Riddell said:

[The Government] saw – and particularly in the media area – some rather stale Heads of Information who had been around for a long time. It happens in all regimes when there is a changeover, people have been around a long time and you want to change it. And I did not find any problems with that. I mean it was not always done in the right way.<sup>17</sup>

8.15 Jonathan Haslam was blunt:

*I do not think that the Government Information Service was as good as it should have been. I do not think it had been invested in properly over a number of years; I do not think enough attention had been paid to it, and I think it had drifted somewhat.*<sup>18</sup>

Lord Donoughue made a similar point, believing that the incoming government in 1997 wanted “something sharper” than the “traditional Government Information Service – which never contained the great high flyers of life ... they were not able to cope”.<sup>19</sup>

8.16 Other witnesses referred to the need for personal chemistry between a Minister and the head of his or her press office. Sir Michael Jay said:

*I do think that the relationship between a Minister and the head of his press office has always been a very special relationship ... Quite often when ... a new Minister has come in, that person has changed because the Minister wanted somebody else with whom to build up trust. So I do not think there is anything particularly new in the idea that when a Minister or a government changes, the head of the press office ... will change.*<sup>20</sup>

8.17 Romola Christopherson emphasised:

*Chemistry does matter. It may be unfair, it may have nothing to do with someone’s professional capacity, but chemistry does matter because if the chemistry does not work the relationship will not work.*<sup>21</sup>

<sup>15</sup> *Guidance on the Work of the Government Information Service*, para 4.

<sup>16</sup> Government Accounting 2000 ([www.government-accounting.gov.uk](http://www.government-accounting.gov.uk)).

<sup>17</sup> Day 1, am.

<sup>18</sup> Day 1, pm.

<sup>19</sup> Day 8, pm.

<sup>20</sup> Day 5, pm.

<sup>21</sup> Day 7, am.

Her view was echoed by Jonathan Haslam:

*With any Minister, confidence is what really counts ... Do you get on? There is no point denying that chemistry is important ... There cannot be any rubbing.*<sup>22</sup>

## Impartiality and the application of the principle of selection on merit

8.18 For witnesses who were concerned about possible reasons for changes in senior GICS staff, the implicit worry was that this might lead to a GICS slowly being staffed with individuals who were more politically acceptable to the Government. Peter Riddell thought Permanent Secretaries were “*in denial*” about the fact that, “*There are some Heads of Communication with clear party allegiance*”. He could “*think of four or five current Heads of Information or Heads of News on another level who would undoubtedly go the day after there was a change of government*”.<sup>23</sup> Such concerns have consequences for the perceived credibility of government information. It is critical that government information and those communicating it are perceived to be impartial.

8.19 All members of the GICS are recruited under Civil Service principles of fair and open competition and selection on merit. We considered in Chapter 6 the definition of merit and the fact that finding “*the best person for the job*” of necessity includes a subjective element in the selection criteria. This is perhaps inevitable given the arguments set out earlier on the importance of personal chemistry.

8.20 In addition, the fact that many GICS members may have a ‘political’ background, as noted in para 8.2, should not, in a merit-based system, exclude an otherwise suitable candidate from either recruitment or promotion; nor should personal political affiliation. However, as Jonathan Baume emphasised: “*This [information officers with party backgrounds or political affiliations] is an issue that does need careful scrutiny, it is very important that ... Heads of Information ... do understand very clearly the culture within which they must now operate and very clearly the importance of political impartiality within the Civil Service.*”<sup>24</sup>

8.21 Mike Granatt described to the Public Administration Select Committee the approach taken on this issue by recruitment boards for senior information staff:

*The Civil Service does not discriminate between candidates on the basis of their party background or their party affiliations or what contacts they have had. I always ask on those panels – and if I do not the Civil Service Commissioner does – are you willing to work for a future government of any complexion? In every panel I have been on the candidate has said “yes” and demurred only in the case of parties of the extreme left or right.*<sup>25</sup>

8.22 We recognise that there are difficult issues here. But we have concluded that greater emphasis should be placed on the fact that those recruited into the GICS are joining a profession. An individual should only be recruited to a senior post where the selection panel has a high degree of confidence that he or she will be a leader in upholding the impartiality of the GICS. For example, the panel should be reasonably assured that the individual could be expected to carry the confidence of a new administration, particularly where that Administration results from a change in the governing party.

### RECOMMENDATION

**R26. An individual should only be recruited to a senior post in the GICS where the selection panel has a high degree of confidence that he or she will be a leader in upholding the impartiality of the GICS.**

8.23 A number of witnesses pointed to the difficulties that arose where it was decided to move information staff because the ‘chemistry’ did not work. Sir Hayden Phillips called the relationship between a Minister and his or her press officer “*delicate*”, believing that Heads of Information are “*very exposed*”.<sup>26</sup> While recognising the need for changes in personnel to properly serve Ministers, he stressed that it was important to ensure that “*people’s careers are not unreasonably jeopardised*”.<sup>27</sup> Sir Andrew Turnbull made the same point, that changes which might be “*career-damaging and unfair*”<sup>28</sup> should be avoided.

<sup>22</sup> Day 1, pm.

<sup>23</sup> Day 1, am.

<sup>24</sup> Day 2, am.

<sup>25</sup> Parliamentary Administration Select Committee, Minutes of Evidence, 28 February 2002.

<sup>26</sup> Day 5, pm.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

8.24 The impact which changes made by Ministers can have on careers is an important one, not least because it is more difficult to re-deploy specialist staff like information officers (of whatever grade) than most civil servants. While we accept that, in some cases, the relationship between a Minister and his or her press officer may not be effective because of matters such as personal chemistry, it is important that there is an established process to be followed, fully involving the Permanent Secretary, which decides how the situation should be handled. In no cases do we envisage that the Minister should be involved in deciding a press officer's new post. This is, though, an area which, strictly, goes beyond our terms of reference. We consider that it is something which the external review of government communications would be better placed to consider.<sup>29</sup>

## Special advisers and the GICS

8.25 Special advisers regularly form part of the team delivering government information. Their role was described by the Head of Profession, Mike Granatt, in the GICS annual report: "For GICS staff, their [special advisers'] key ability is to provide a proper way for the party political dimension to be covered while avoiding any question of the GICS being drawn into inappropriate activity".<sup>30</sup> In evidence to us, he said:

*... the value that is provided by the special adviser ... is to add that extra dimension – to an extent be the Minister's voice, but to do it ... "Without throwing bottles and bricks". They can explain the party politics, they cannot indulge in party politics.*<sup>31</sup>

We agree. The boundaries between the press officer and the special adviser are the same as those between any other civil servant and a special adviser: a civil servant is required to offer objective advice and explanation, while a special adviser is specifically exempt from this requirement.

8.26 Special advisers communicating government policy and "representing the views of their

*Minister to the media",*<sup>32</sup> are required by their Code of Conduct to comply with the GICS guidance. However, as Mike Granatt explained, the special adviser's derogation from the requirement to offer objective advice applies also to the application of the GICS guidance so that special advisers "are of course allowed to act in a party political fashion". He went on:

*I think it is incumbent on the special adviser ... however they have handled the party politics of it, to act in a reasonable and truthful manner about it. Not to, for instance, attack individuals ...*<sup>33</sup>

8.27 Journalists told us that they clearly recognised the difference between what they might be told by a special adviser and what a press officer might say. In Chapter 4 we quoted Peter Preston's remark that:

*If I want actual facts about it [a political row] I can ring the press office, but they are restricted. If I talk to the special adviser on one side I can get a view, but I have to take that with a slight pinch of salt because that would be the view to present the case of the minister involved in the best way. So, if you ring a rival one on the other side, you then get the other side, and then between the two you can get it.*<sup>34</sup>

8.28 However, the reader or viewer may not be able to make such distinctions when faced with references such as, 'a figure close to events', 'a Whitehall official', or 'a well-placed figure'. As a result, it can be unclear whether information came from the GICS. This confusion can, so far as the GICS is concerned, detract from the service's credibility as a purveyor of government information. We therefore considered whether the credibility, openness and accountability of GICS press officers might be enhanced if they were to speak only on the record. We accept, however, that press officers, particularly more senior staff, may occasionally require the flexibility of being able to speak off the record. Nonetheless, **we recommend** that, wherever possible, GICS press officers should speak on the record as "the department's spokesman/woman".

<sup>29</sup> The review was launched on 11 February 2003 and is chaired by Bob Phillis.

<sup>30</sup> *The GICS Today* report for 2001/02.

<sup>31</sup> Day 6, am.

<sup>32</sup> *Code of Conduct for Special Advisers*, para 3.

<sup>33</sup> Day 6, am.

<sup>34</sup> Day 2, am.

## RECOMMENDATION

**R27. Wherever possible, GICS press officers should speak on the record as “the department’s spokesman/spokeswoman”.**

- 8.29 We referred, in para 7.38 to the concern that special advisers were capable of saying something publicly which their Minister would not have said. We believe that if such a practice became widespread it would affect the overall credibility of government communication as well as raising issues of accountability. Our recommendation 19, that the Ministerial Code be amended to make clear that Ministers are personally accountable for their special advisers, will reduce the potential for a special adviser to depart from his or her brief.
- 8.30 Issues such as these are all part of a much wider debate on government communications in the modern media environment. This is a debate being taken forward by the external review of government communications.
- 8.31 Notwithstanding this wider debate, we believe that there is scope for improvement to the guidance provided to special advisers and information officers. At present the only

reference to the conduct of relationships between the two is contained in the GICS Handbook, not the official GICS Guidance. The reference is:

*The relationship between a Head of Information and the special adviser is critical; each has a legitimate, distinctive and important remit but the two often overlap. It is vital that the relationship is based on trust, with each side recognising their respective roles and constraints.*<sup>35</sup>

- 8.32 In light of what we have heard about the crucial nature of this relationship, we believe that specific guidance is needed for members of the GICS and special advisers. We recommend that the *Guidance on the Work of the Government Information Service* should set out the relationship between special advisers and civil servants.

## RECOMMENDATION

**R28. The *Guidance on the Work of the Government Information Service* should set out the relationship between special advisers and civil servants.**

<sup>35</sup> GICS Handbook.

# CHAPTER 9 THE PRIME MINISTER'S OFFICE

9.1 In the preceding chapters we considered the boundaries within the Executive as they relate especially to the roles of Ministers, the permanent Civil Service, special advisers and the GICS within government departments. The recommendations set out in these chapters apply across government. We now move on to consider their particular application to the boundaries within the Prime Minister's Office.<sup>1</sup>

## “Special and different”

9.2 Several of our witnesses emphasised that the Prime Minister's Office was, at least to some extent, “special and different”. As Peter Riddell put it:

*I think one has to regard Number 10 as special and different. It is always inherently political.*<sup>2</sup>

Sir Hayden Phillips said:

*It [Number 10] needs to operate, it seems to me, more like a cabinet system on a continental model than the traditional British Government department ... And that seems to me, at the heart of government in Number 10 a perfectly sensible way to structure your organisation. It is not like a government department in the traditional sense.*<sup>3</sup>

Tessa Keswick thought:

*... Number 10 is different because Number 10 is a political place, essentially political.*<sup>4</sup>

Andy Burnham agreed that,

*... the role in Number 10 is different because they are co-ordinating or looking at, across the piece, work of other departments ...*<sup>5</sup>

9.3 That the Prime Minister's Office is special and different has long been a feature of our constitutional arrangements and is not unique to any government of the day. Similarly, political power in the United Kingdom has long been concentrated in the Executive and, in the Executive, political power is concentrated in the Prime Minister's Office, even though few governmental functions are vested formally in the Prime Minister. Inevitably, therefore, the Prime Minister's Office has become a place of great political power. Indeed, that power extends beyond the person of the Prime Minister, to everyone in the office who holds a post at any level of responsibility.

## The Committee's interest

9.4 The special position of the Prime Minister's Office needs to be recognised in the matters addressed in this report. In particular, the Prime Minister, as the political Head of the Executive, supported by all those with responsibility in his office, has a special **leadership** role in ensuring that the Seven Principles of Public Life are upheld. In this connection the Committee is pleased to note that the new edition of the Ministerial Code, issued after the General Election in 2001, included a statement that Ministers are expected to observe the Seven Principles and a statement that Ministers only remain in office for so long as they retain the confidence of the Prime Minister.

<sup>1</sup> For the purposes of this report we define the “Prime Minister's Office” (also referred to by witnesses as “Number 10”), as comprising those units, and the senior staff to whom they report, which report directly to the Prime Minister. This does not include the Cabinet Office.

<sup>2</sup> Day 1, am.

<sup>3</sup> Day 5, pm.

<sup>4</sup> Day 5, am.

<sup>5</sup> Day 8, pm.

- 9.5 The principle of Accountability is also relevant to the Committee's interest. In Chapter 7 we recommended that the Ministerial Code be amended to identify clearly a Minister's responsibility for his or her special advisers. This applies equally to the Prime Minister. The principle of Accountability is important too for the officials working in the Prime Minister's Office. Indeed the greater the role of officials within the Prime Minister's Office, the greater the requirement for clear lines of accountability.
- 9.6 Before turning to these issues we set out the concerns expressed to us as a result of changes made in the organisation of the Prime Minister's Office since 1997.

## Developments in the organisation of the Prime Minister's Office

- 9.7 The Prime Minister's Office is headed by a Chief of Staff and divided into three directorates dealing with policy, communications and strategy, and government relations. The Chief of Staff is a special adviser and the three directorates are headed respectively by a civil servant, and two special advisers.<sup>6</sup>
- 9.8 The policy directorate was created following the 2001 General Election and brought together the former private office (staffed largely by civil servants) and the then policy unit (consisting mainly of special advisers). This change, combined with an overall increase in the number of special advisers working in the office, as well as the existence since 1997 of two special advisers with "executive powers" (one of whom is the Chief of Staff and the other of whom heads the communications and strategy directorate) helped to make the office a focus for regular parliamentary and media attention.
- 9.9 The then Head of the Civil Service, Sir Richard Wilson, told us:
- I think the role in Number 10 is changing, partly because of the numbers [of special advisers], partly because there is a real wish to have a stronger centre. That is more than any one Minister, as it were, can discharge in a small private office and I think it requires a larger team.*<sup>7</sup>
- Some months before, Sir Richard had made a similar point when giving evidence to the Public Administration Select Committee:
- The role of Number 10 and the size of Number 10 and the concentration of special advisers in Number 10 are different from what they have been before.*
- He continued:
- It does not necessarily mean that it is wrong, but I think there are issues about the framework which quite properly need to be addressed.*<sup>8</sup>
- 9.10 We agree. We recognise that changes to the organisation of the Prime Minister's Office raise issues of wider constitutional interest. We do not consider that issues relating to standards of conduct should, in principle, prevent a Prime Minister from adapting his or her office to suit his or her own individual approach. But if such adaptations are made, it is essential that the boundaries that we have described in earlier chapters should be properly safeguarded. We now examine the adaptations made in recent years and make recommendations for appropriate safeguards under the following headings:
- the increasing number of special advisers in proportion to the number of civil servants in the Prime Minister's Office; and
  - the existence of two special advisers freed from the usual constraint of being able only to provide advice, more commonly described as having "executive powers".

## Number of special advisers in the Prime Minister's Office

- 9.11 In Chapter 7 we noted that the Ministerial Code applies a limit of two special advisers per Cabinet Minister, with the exception of the Prime Minister. Currently, the Prime Minister has 27 special advisers. At the end of the last Conservative administration, in 1997, there were eight special advisers in the Prime Minister's Office. By 1998-99, under the Labour government, the presence of special advisers in Downing Street had grown to 25 out of a total of 74, before reaching its current level in 2002.

<sup>6</sup> As described by the Number 10 website on 25 February 2003 ([www.number-10.gov.uk](http://www.number-10.gov.uk)).

<sup>7</sup> Day 6, pm.

<sup>8</sup> House of Commons, Minutes of Evidence, 14 March 2002.

9.12 A number of witnesses thought that this escalation in numbers was worrying, because of its effects within the Prime Minister's Office and possibly for other areas. Norman Baker MP commented: *"Of the 81 special advisers it is interesting that 27, I think, are in Number 10 with a very unhealthy, it seems to me, cross-fertilisation between special advisers and civil servants"*.<sup>9</sup> Dr David Hine believed this could have wider implications:

*If we are worried about the excessive numbers of special advisers and the possibility of alternative and unstructured policy networks being created, then obviously Number 10 is at the centre of that process. The large number there ... could create that set of alternative networks which would raise ambiguities about how the Cabinet Office fitted into that process, and I would be pretty worried about that.*<sup>10</sup>

9.13 Others thought that the greater political role of the Prime Minister's Office justified a larger number of political appointees. Peter Riddell said:

*I think within Downing Street ... because it is different ... it is perfectly reasonable for the Prime Minister to want a higher proportion of their own people in working alongside the Civil Service.*<sup>11</sup>

Martin Stanley agreed:

*Number 10 is very much a special case ... It seems to me that if that is the way the Prime Minister wants to work, that is entirely right.*<sup>12</sup>

9.14 Dr Hine's evidence raises interesting issues about the working of central government. But it is not for this Committee to pronounce on these wider issues. Our interest, following the principle of Accountability, is in the arrangements for setting the number of special advisers and for maintaining the political impartiality of the Civil Service.

9.15 On the number of special advisers, we recommended in Chapter 7 (R21) that Parliament agree a numerical cap on the overall number of special advisers. We do not consider that it is for this Committee to stipulate the exact number of special advisers in the Prime

Minister's Office. However, we believe that the overall number agreed by Parliament in accordance with the arrangements recommended in Chapter 7 should include those employed in the Prime Minister's Office. We **recommend**, though, that it should be for the Government to decide on overall distribution between departments of the number of special advisers approved by Parliament.

9.16 In para 7.37 we recommended (R19) that the Ministerial Code should make clear that Ministers are personally accountable to the Prime Minister *and* to Parliament for the management and discipline of their special advisers. **We recommend** that, for the Prime Minister, the Ministerial Code make clear that he or she is accountable to Parliament for the special advisers he or she appoints. However, we recognise that the large number of special advisers may make the day to day management a greater burden for the Prime Minister than for Cabinet Ministers. **We recommend**, therefore, that the most senior special adviser in the Prime Minister's Office (under present arrangements, the Chief of Staff) should be responsible to the Prime Minister for ensuring that the day-to-day activities of special advisers appointed by the Prime Minister comply with the Code of Conduct for Special Advisers.

## RECOMMENDATION

**R29. It should be for the Government to decide on the overall distribution between departments of the number of special advisers approved by Parliament.**

**R30. (a) The Ministerial Code should be amended to make clear that the Prime Minister is personally accountable to Parliament for the management and discipline of his or her special advisers.**

**(b) The most senior special adviser in the Prime Minister's Office should be responsible to the Prime Minister for ensuring that the day-to-day activities of special advisers appointed by the Prime Minister comply with the Code of Conduct for Special Advisers.**

<sup>9</sup> Day 3, pm.

<sup>10</sup> Day 2, am.

<sup>11</sup> Day 1, am.

<sup>12</sup> Day 1, am.

## “Executive powers”

9.17 In this section we consider arrangements for maintaining the political impartiality of members of the permanent Civil Service, working within the Prime Minister’s Office. Of necessity, the working relationship between civil servants and special advisers in the Prime Minister’s Office must be close. The office is relatively small and often works under the most intense pressure.

9.18 However, there is an added dimension to the relationship between special advisers and civil servants in the Prime Minister’s Office which is not present in departments. This is caused by the existence of two special advisers with what are commonly referred to as “executive powers”.

9.19 In 1997, the Civil Service Order in Council was amended to allow “up to three situations in the Prime Minister’s Office”, designated by the Prime Minister, which are not constrained by the requirement that special advisers are appointed “for the purpose only of providing advice to any Minister”. Pursuant to that power, the Prime Minister appointed two special advisers, one as Chief of Staff, who has overall control of the Prime Minister’s Office, and another who now is Director of Communications and Strategy.

9.20 Although the Order in Council makes it clear that the Chief of Staff and Director of Communications and Strategy may do more than simply provide advice, it leaves unsaid what else that might be. Sir Richard Wilson told us that it was not unprecedented for special advisers to be free from the restriction of giving advice:

*I had not realised until recently that the qualification [that special advisers may only advise] was only added in 1991 ... throughout the 1980s special advisers had no limits on what they could do in law ... What the recent Order in Council actually does is just to remove the restriction on advice – in relation to the three so-called executive posts – that was introduced in 1991, and put those three posts back to where all special advisers were before 1991 ... we have been improvising over a period of years.*<sup>13</sup>

9.21 However, although we recognised in Chapter 7 that the role of special advisers, in practice, regularly goes beyond simply giving advice, the powers of the two executive posts in the Prime Minister’s Office appear to go further still. The

result is that the posts seem to mark a departure from the role for which special advisers have normally been appointed.

9.22 As Sir Richard Wilson, again, explained, the effect of the powers,

*... gives them [the Chief of Staff and Director of Communications] the right to become engaged in the management issues, or the right to discuss things with civil servants and to ask civil servants to take things on, without people debating whether or not a boundary has been crossed.*<sup>14</sup>

Moreover, he had earlier explained: “Those powers ... do not apply just in Number 10. They apply through the Civil Service”.<sup>15</sup>

9.23 There is, though, no formal statement to this effect, with the result that confusion was expressed by some witnesses about the consequence of the provision in the Order in Council. Dr Hine summed this up:

*There seems to be considerable ambiguity ... and whether the Order in Council tells us enough about what they [the executive special advisers] are actually doing to ensure public confidence, I have got some doubts.*<sup>16</sup>

9.24 We have considerable sympathy with Dr Hine’s view. From the evidence we took, we understand the consequence of the 1997 amendment to the Order in Council to have been the appointment of two special advisers able to carry out the full range of special adviser functions but, in addition, able to have management control over civil servants, with the power to direct civil servants inside and outside the Prime Minister’s Office on the basis of policy decisions reached. The effect is a change in emphasis from the more typical role of a special adviser: a change from advising the Minister and articulating a Minister’s wishes, to directing the necessary action to carry out the Prime Minister’s wishes.

9.25 At the beginning of this chapter we set out the “special and different” nature of the Prime Minister’s Office and in para 9.10 we said that the Prime Minister should have a certain degree of freedom to adapt his or her office to suit his or her needs, provided that this is done in a way that safeguards the boundaries we have described elsewhere. Accordingly and subject to

<sup>13</sup> Day 6, pm.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Day 2, am.

the safeguards set out below, the Committee accepts that, if the Prime Minister chooses, he or she should be able to employ a strictly limited number of special advisers with executive powers.

9.26 Bearing in mind the lack of clarity about the role of special advisers with executive powers, **we recommend** that, for reasons of Openness, Accountability and Objectivity, there should be a number of safeguards, which should be strictly applied, in the use of special advisers with executive powers in the Prime Minister's Office:

- **A limited number of posts.** The Order in Council allows for “three situations” with executive powers. Only two such situations exist at present. We note that it has long been recognised that the senior official in the Prime Minister's Office responsible for relations with the media can have a special status. The practice of appointing someone to that role who is politically close to the Prime Minister goes back many decades. This is unsurprising. As our evidence showed, Number 10 is a highly political place where everything in our country's political life comes together. The arrangements for dealing with the media will need to reflect this. The Committee appreciates why some Prime Ministers have appointed someone in whom they have party political confidence to be in charge of their office's media relationships and who would need responsibility for the work of staff, including civil servants, carrying out media functions in the Prime Minister's Office. We also accept that a Prime Minister *may* wish to make a personal appointment of an individual to carry out a chief of staff-type role with responsibility, to a greater or lesser extent, for the work of the office. However, we can see no reason for a third special adviser post with executive powers. **We recommend** that the existence in the Prime Minister's Office of two posts with executive powers should be a matter for Parliamentary debate and agreement: their existence should be given effect by statutory legislation, a matter which we consider in more detail in the next chapter.
- **A requirement to uphold the political impartiality of civil servants.** Both posts should be required to uphold the impartiality of civil servants – as they are currently required to do by the Code of Conduct for Special Advisers.

- **Limited line management responsibilities.** To reinforce the impartiality of civil servants in the Prime Minister's Office, neither post should have responsibility for the appraisal, reward, discipline or promotion of civil servants.

- **No direction of civil servants outside the Prime Minister's Office.** Neither post should have power to be able to direct civil servants outside Number 10.

- **A key role for the Principal Private Secretary.** We noted in Chapter 6 the key role of the Principal Private Secretary in ensuring that his or her Minister has the full range of governmental advice affecting the Minister's duties. This responsibility carries especial importance in the Prime Minister's Office and we re-emphasise recommendation 10 – that the role should continue to be carried out by a civil servant. In addition, **we recommend** that the Prime Minister's Principal Private Secretary should have the additional responsibility of drawing to the attention of the Prime Minister any concerns that he or she may have about the ability of civil servants in the office to maintain their political impartiality.

9.27 In Chapter 7 we recommended (R18(a)) that there should be a clear statement of what special advisers cannot do and in R18(b) we set out the restrictions. We find the current confusion surrounding the effect of “executive powers” unsatisfactory and we therefore **recommend** that special advisers with executive powers should be defined in law by derogation from the restriction contained in R18(b) and taking account of the safeguards set out above. That is, that special advisers with executive powers, in the same way as other special advisers, should not:

- ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
- undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;
- have any role in the appraisal, reward, discipline or promotion of permanent civil servants.

But that unlike other special advisers, they may:

- have powers to authorise the spending of government money chargeable to the Prime Minister's Office;

- (v) have a role in the line management of civil servants in the Prime Minister's Office;
- (vi) have charge of or direction over the work of GICS members in the Prime Minister's Office.

In the same way as for R18 (para 7.30), we recommend in Chapter 10 that the role of special advisers with executive powers be set out in statute.

## RECOMMENDATION

**R31. (a) The existence of two posts in the Prime Minister's Office with executive powers should be a matter for Parliamentary debate and agreement.**

**(b) Special advisers with executive powers should not:**

- (i) ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
- (ii) undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;
- (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants.

**But they may:**

- (iv) have powers to authorise the spending of government money chargeable to the Prime Minister's Office;
- (v) have a role in the line management of civil servants in the Prime Minister's Office;
- (vi) have charge of or direction over the work of GICS members in the Prime Minister's Office.

**(c) The Prime Minister's Principal Private Secretary should have the responsibility of drawing to the attention of the Prime Minister any concerns that he or she may have about the ability of civil servants in the office to maintain their political impartiality.**

## Guidance on the practice of media work in the Prime Minister's Office

9.28 We considered in Chapter 8 some issues relating to government communications as they concern the interests of this Committee. The practice of government communications in the Prime Minister's Office raises especial challenges, which come from the fact that the office is special and different. For this reason we recommend that the *Guidance on the Work of the Government Information Service* should deal specifically with the issue of media work in the Prime Minister's Office.

## RECOMMENDATION

**R32. The *Guidance on the Work of the Government Information Service* should deal specifically with the issue of media work in the Prime Minister's Office.**

# CHAPTER 10 SECURING THE BOUNDARIES

10.1 A recurrent theme of this report has been the challenges facing the Executive in modern Britain. That challenge was described by Don Cruickshank, whom we quoted in Chapter 3, as:

*To strike the right balance within the Executive between new ways of delivering the modern task of government, and the pressures for clarity, transparency, impartiality and accountability that are at the core of sound public service.*<sup>1</sup>

10.2 This challenge can be more easily met if the definition of the roles, responsibilities and relationships of the different parts of the Executive is made clearer and more explicit. Such clarity of definition would reinforce the transparency, impartiality and accountability which are necessary for the efficient delivery of sound public service. Such reinforcement would, we believe, remove concerns that new approaches necessary to tackle the modern task of government will undermine the fundamental principles which form part of the constitutional framework described in Chapter 3. In this chapter we therefore examine how statutory legislation could help define and clarify the roles and responsibilities of the different parts of the Executive.

## The need for legislation

10.3 At present the organisation and regulation of the Executive is set out in Orders in Council, a mechanism by which the Crown exercises the Royal Prerogative.<sup>2</sup> The ‘Council’ is the Privy Council whose day-to-day business is transacted by those Government Ministers who are Privy Counsellors. Whenever it meets, the Council will obtain the Queen’s formal approval to a number of Orders which have already been discussed and approved by Ministers. Orders

in Council have the force of law but are not normally scrutinised by Parliament.<sup>3</sup> Furthermore they can be changed by the Council without reference to Parliament. In practice, therefore, Orders in Council allow the Executive to exercise authority largely without direct constraint. This has been identified as a cause for concern by a number of individuals as it relates to the regulation of the Executive, and especially to the Civil Service.

10.4 Lord Smith of Clifton told the House of Lords in debate that:

*Successive governments have introduced a plethora of innovations in the name of modernising the apparatus of the state. It is of course the duty of government to bring in new methods in order to discharge their duties in whatever efficacious way they think fit. But these have occurred without the slightest attention being paid to the need for proper accountability. It is not any one particular reform that may be objected to in this context; rather, it is their aggregative effect that is at question.*<sup>4</sup>

10.5 In evidence to us, Jonathan Baume, General Secretary of the First Division Association which represents senior civil servants, pointed out that, “at the moment there is nothing that would stop a government making fundamental changes to the Civil Service in effect without the need for any form of parliamentary scrutiny in practice”.<sup>5</sup>

Lord Butler illustrated this point when he noted the way in which provision had been made for three special advisers with executive powers:

*Whether it is rightly criticised or not, it was, in my view, too easy to do. It is too easy to make a change in the Order in Council. If a government*

<sup>1</sup> Day 9, am.

<sup>2</sup> The Crown governs by virtue of the Royal Prerogative. Although this has been steadily constrained by Acts of Parliament, it has not totally disappeared.

<sup>3</sup> There are however, some exceptions.

<sup>4</sup> *Hansard* (HL) 1 May 2002, col 708.

<sup>5</sup> Day 2.

*which was much opposed to a permanent Civil Service came into office, it could have made much more radical changes.*<sup>6</sup>

10.6 Although not making the same criticisms, the then Head of the Home Civil Service noted that *“it seems to me that we have, over the last 20 or 30 years ... been fairly casual in our approach to some of these issues”*.<sup>7</sup>

10.7 The Committee agrees that the use of Orders in Council in this context is inherently unsatisfactory. It facilitates an approach which may be, or may be seen to be, both *“casual”* and lacking in accountability. We consider it crucial, in a democracy where the Executive is accountable to Parliament, that the procedures for sustaining the fundamental principles identified throughout this report should be subject to parliamentary scrutiny and decision. This, we believe, is the most certain and effective way of delivering the necessary public and parliamentary confidence that the constitutional boundaries are being effectively maintained.

10.8 Some of our witnesses expressed concerns about the use of statutory legislation. The most common concern was that it would limit essential flexibility and cause ossification. Lord Donoughue was emphatic:

*I am not clear what the problem is: what is the need for legislation? I can see all the disadvantages ... For a start a Civil Service Act would be constitutionally significant ... The Civil Service traditionally works for the Crown ... You have a big statutory Act and they are actually under Parliament.*<sup>8</sup>

10.9 Sir Michael Bichard said:

*The more we convince ourselves that legislation statutes are going to help us, the further away from positive change we are going to get. I do not think that many relationships are helped by more legislation. And a lot of this, I think, is about making this work around clear roles rather than seeking yet more statutes and yet more monitoring bodies.*<sup>9</sup>

He added, *“once it is cast into legislative stone then you are into long and complex periods of interpretation”*.<sup>10</sup> Martin Stanley agreed:

*You would certainly lose flexibility and ... when there are grey areas there is a real danger of making it the subject of litigation as distinct from getting it sorted out without such fuss.*<sup>11</sup>

10.10 Other witnesses focused on what an Act might realistically achieve. Lord Burns said:

*What is the difference then between having one of these very general Acts with a lot of things dealt with in statutory instruments and having a series of Codes which can be gradually adjusted as times and practices change?*<sup>12</sup>

Sir Andrew Turnbull recognised what legislation could do, but was doubtful that it would make a difference to issues which arose as part of the day-to-day relationships:

*I do not know that it would make a huge difference. I think it is seeking the reassurance that the long-standing kind of values and structure cannot be changed by stealth. In the actual day-to-day practice, I do not think there would be a great deal changed. ... But an Act would underpin [the Civil Service Code] ... it would give reassurance that, over 10 or 20 years, you will not suddenly wake up and find you have got a world that you did not like and you do not quite know how you got there.*<sup>13</sup>

10.11 We do not accept that such concerns outweigh the arguments in favour of legislation. Indeed, while we agree that there needs to be flexibility in the management of the Civil Service, we disagree with the view that there should be flexibility over the core values and over the boundaries *within* the Executive as we have described them. Nor do we see as an obstacle to an Act the fact that civil servants are servants of the Crown; an Act should make this clear. Furthermore, we see a great deal of difference between codes which can be changed at the discretion of the Executive and a Code contained in a statutory instrument which requires parliamentary accountability and scrutiny.

<sup>6</sup> Day 7, am.

<sup>7</sup> Day 6, pm.

<sup>8</sup> Day 8, am.

<sup>9</sup> Day 2, am.

<sup>10</sup> Ibid.

<sup>11</sup> Day 1, am.

<sup>12</sup> Day 6, am.

<sup>13</sup> Day 5, pm.

10.12 Although we accept Sir Andrew's view that there will be limitations to what legislation can achieve, we do not consider that this undermines the overall desirability of legislation. We see advantage in the reassurance that an Act would bring, as Sir Andrew acknowledged. We believe that an appropriately drafted Act would facilitate the necessary reforms of the Civil Service. To that end, it would provide a stable and clear framework and a set of values within which good relationships could be established and the reform of the Civil Service could be carried forward. The First Civil Service Commissioner made this key distinction between providing a statutory framework setting out the constitutional position of the Civil Service and leaving scope for reform:

*It [an Act] will disentangle what I call the constitutional position of the Civil Service from what I call the organisation development and the reform of the Civil Service. So, it will free that up and I do not see the Act in any way interfering with the development and the reform of the Civil Service. ... I think the disadvantage at the moment is the minute you talk about reform ... people start talking about the values.*<sup>14</sup>

10.13 Baroness Prashar emphasised the need for the Civil Service to be, and to be seen to be as, a transferable resource:

*The Civil Service is a public asset, it is there in the public interest and ... when governments change ... I think it is in everybody's interest what the health of the organisation is.*<sup>15</sup>

The "health" of the service, as Baroness Prashar describes it, is a matter of concern to more than just the government of the day. The government of the day should be accountable to Parliament for the health of the service. The Civil Service should not be subject simply to the virtually unaccountable control of the Executive.

## The commitment to legislation

10.14 In 1997, before the General Election, a joint committee of the Labour Party and the Liberal

Democrats made a commitment to passing a Civil Service Act. The committee said:

*Both parties agree that there should be a Civil Service Act to give legal force to the Code which should be tightened up to underline the political neutrality of the Civil Service. It should also be reviewed in relation to other published authorities to clarify lines of Civil Service and ministerial accountability and responsibility.*<sup>16</sup>

10.15 The Government confirmed its commitment to legislation to a House of Lords Select Committee in 1998<sup>17</sup> and again to this Committee in 2000.<sup>18</sup> Most recently, in 2002, the then Cabinet Secretary, Sir Richard Wilson, noted in his valedictory speech that, "the Government is of course publicly committed to a Civil Service Bill".<sup>19</sup> In addition, Douglas Alexander MP confirmed in evidence to us for this inquiry that "the government is in principle [in favour of a Civil Service Act] and ... remains committed to a Civil Service Act."<sup>20</sup>

10.16 We supported the need for legislation in our Sixth Report and evidence we heard during the course of this inquiry reinforced our view that the Government is right to be committed to an Act.

## Progress towards an Act

10.17 We note that, notwithstanding its repeated assertions of commitment to legislation, the Government's progress in this area is disappointingly slow. Pat McFadden told us:

*Issues have champions in government and this is an unwritten part of a political process. But if an issue has a champion in the Cabinet it is going to have a much higher chance of proceeding. In fact one of the things that is often not said about the Civil Service Act is that one of the reasons it has not happened is not because anyone is particularly against it, but because up until now it has lacked a champion.*<sup>21</sup>

He continued, "When the Queen's speech is written there are not many members of the

<sup>14</sup> Day 4, pm.

<sup>15</sup> Ibid.

<sup>16</sup> The Labour Party, *Report of the Joint Consultative Committee on Constitutional Reform* (1997), para 84.

<sup>17</sup> *The Government's Response to the Report from the House of Lords Select Committee on the Public Service*, Cm 4000, July 1998.

<sup>18</sup> *The Government's Response to the Sixth Report from the Committee on Standards and Privileges*, Cm 4817, July 2000, page 8.

<sup>19</sup> *Portrait of a Profession Revisited*, 26 March 2002.

<sup>20</sup> Day 9, am.

<sup>21</sup> Day 3.

*Cabinet saying, 'Hang on, I think you should drop that Education Bill and we should have a Civil Service Act'."*<sup>22</sup>

10.18 Such information, which we have no doubt reflects the reality, makes us concerned that the pressures of the day-to-day business of government are being allowed to take precedence over a measured look at the fundamental issues which we describe in this report. It is important that we should not, as Sir Andrew Turnbull put it, "*suddenly wake up and find you have got a world that you did not like and you do not quite know how you got there*".<sup>23</sup>

10.19 Concerns about the slow pace of progress were expressed by Lord Holme of Cheltenham when he introduced a debate on a Civil Service Act in the House of Lords in May 2002:

*Last November [2001], Sir Richard Wilson told the Public Administration Committee in another place that consultation on a Civil Service Act would start in the New Year. Two months ago, on 26 February [2002], the Cabinet Office again promised that consultation on a Civil Service Act would start shortly. Subsequently, an issues paper was promised, hot on the heels of the significant speech made by Sir Richard at the end of March calling for an Act as outgoing Cabinet Secretary. It is now 1 May, and there is no sign of government-initiated consultation on the issues.*<sup>24</sup>

10.20 He went further, considering that this "*has become one of the issues on which the Government's credibility depends. Procrastination does not look good in matters of standards*".<sup>25</sup> At the close of the debate, Lord Macdonald replied for the Government. He emphasised the commitment of the Government to maintaining a non-political, permanent Civil Service. However, he continued:

*I did not detect an overwhelming consensus in the House ... I heard caution expressed ... I also heard direct opposition to the idea of a simple Act ... Of course, there may have been a weight in favour of legislation, but it is clear to me that this important debate should continue.*<sup>26</sup>

Later, he added:

*Noble Lords would not expect me to be able to give a detailed timetable of moves towards deciding a timetable for legislation. I stress that there is no crisis. Sir Andrew Turnbull is right. We have managed pretty well for 150 years and I have no doubt that we shall continue to manage well in the absence of a crisis.*<sup>27</sup>

10.21 We find such language disappointing. It is the responsibility of government to put in place legislation before there is "*a crisis*". In short, there is a need for **leadership**. **We recommend** that the Government should begin an early process of public consultation on the contents of a draft Bill and that the Bill should receive pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.

## RECOMMENDATION

**R33. The Government should begin an early process of public consultation on the contents of a draft Bill. The Bill should receive pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.**

## What should an Act contain?

10.22 It is not for this Committee to detail the legislation which might be needed with regard to the Civil Service as a whole. In considering the provisions of an Act, we concentrate therefore on issues of standards of conduct which are relevant to our terms of reference.

10.23 Advocates of an Act were agreed that it should be brief. Baroness Prashar summed up the position when she said there should be "*a narrowly defined piece of legislation*".<sup>28</sup> She continued, however, that this should secure the values of the Civil Service – impartiality, honesty, integrity, appointment on merit and fair and open competition.

10.24 Sir Robin Mountfield thought legislation should impose certain obligations on Ministers:

- ... *the obligation not to ask civil servants to take on political tasks ...*

<sup>22</sup> Ibid.

<sup>23</sup> Day 5, pm.

<sup>24</sup> *Hansard*, House of Lords, 1 May 2002, col 691.

<sup>25</sup> Ibid, col 695.

<sup>26</sup> Ibid, col 725.

<sup>27</sup> Ibid, col 727.

<sup>28</sup> Day 4, pm.

- ... an obligation to listen seriously to Civil Service advice ...
- ... an obligation on Ministers to include in the contracts of employment of civil servants the basic codes ...<sup>29</sup>

10.25 He, along with others, saw the various codes of conduct as being statutory. The then Head of the Home Civil Service, as well as other witnesses, saw the need to include a “power to define a civil servant”.<sup>30</sup> Lord Wilson also suggested, “The [Civil Service] Commissioners publish an annual report and I think that that is something which I would suggest in an Act should be made to Parliament”.<sup>31</sup>

10.26 Elsewhere in this report we have recommended that:

- the overriding principle of selection on merit into the Civil Service, after fair and open competition, should be maintained;
- the Civil Service Commissioners should be granted powers and facilities to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit;
- the first Civil Service Commissioner should be appointed after consultation with opposition leaders;
- the status of special advisers should be defined as a category of government servant distinct from the Civil Service;
- there should be a clear statement of what special advisers cannot do;
- the total number of special advisers should be contained in statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament;
- there should be an annual statement to Parliament giving details on paid and unpaid advisers;
- the existence of two special adviser posts in the Prime Minister’s Office with “executive powers” should be a matter for parliamentary debate and agreement and special advisers with executive powers should be defined by derogation from the restrictions on what other special advisers can do.

**We recommend** that all these recommendations should be given force by statutory legislation.

## RECOMMENDATION

**R34. There should be a short Act to cover the Civil Service and special advisers. In particular, this should:**

- (a) define the status of the Civil Service;
- (b) include a statutory obligation on Ministers to uphold the impartiality of the Civil Service;
- (c) set out the responsibility of the Civil Service Commissioners for ensuring that the principle of selection on merit is properly applied, together with the ability to make exceptions from that principle;
- (d) set out the Civil Service core values, including the overriding principle of selection on merit;
- (e) grant powers for the Civil Service Commissioners to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit;
- (f) provide for the First Civil Service Commissioner to be appointed after consultation with opposition leaders;
- (g) define the status of special advisers as a category of government servant distinct from the Civil Service;
- (h) state what special advisers cannot do;
- (i) include power for the Civil Service Code and the Code of Conduct for Special Advisers to be given effect as statutory instruments requiring the approval of both Houses of Parliament and amendable by the same procedure;
- (j) state the total number of special advisers, with an upper limit subject to alteration by resolution approved by both Houses of Parliament;
- (k) provide for two special adviser posts in the Prime Minister’s Office with “executive powers”;

<sup>29</sup> Day 1, pm.

<sup>30</sup> Day 6, pm.

<sup>31</sup> Ibid.

**(l) define special advisers with executive powers by derogation from the restrictions on what other special advisers can do;**

**(m) require an annual statement to Parliament on paid and unpaid special advisers.**

# CHAPTER 11 SUSTAINING PUBLIC TRUST

- 11.1* In our Eighth Report on Standards of Conduct in the House of Commons, which was published in November 2002, we emphasised the importance of the maintenance of high standards of conduct in our public institutions if public trust is to be sustained. This includes the Executive on whom the public depends, directly or indirectly, for many of the services essential to the well being of our society.
- 11.2* The subject of this report, the definition of boundaries within the Executive, raises wide constitutional issues, which are outside the mandate of the Committee. So we have based our recommendations on the constitutional framework set out, in classic terms for us, by our witnesses, including our government witnesses. We have endeavoured to apply to this framework the Seven Principles of Public Life (reproduced on the inside front cover of the report) and the three supporting mechanisms, (described in para 2.2) which our predecessors on the Committee promulgated in their First Report.
- 11.3* Against this background, we have sought to clarify and specify the boundaries between the office-holders within the Executive, namely Ministers, the permanent Civil Service and special advisers, and then to prescribe the arrangements for securing those boundaries.
- 11.4* At a time of considerable change within government and in the environment in which government operates, we believe that it is most important for there to be clarity about the boundaries and security about their maintenance. Such clarity and security would, we believe, bring several advantages. First, it would provide assurance to the public that government is carried out in accordance with the Seven Principles of Public Life. Second, it would provide a robust framework for ensuring that the Civil Service is fit for purpose and can play its full part in delivering the programme of the government of the day. Third, it would help office-holders within the Executive – namely Ministers, the permanent Civil Service and special advisers – build and sustain the relationships necessary for good government; all concerned would know clearly where they stand. Finally, it would help prevent the rare but unfortunate events which occur when there is a breakdown in relationships between Ministers, civil servants and special advisers and which are so corrosive to the public's estimation of office-holders in the Executive.
- 11.5* We believe that, taken together, the recommendations in this report if implemented, would help to ensure the highest standards of propriety of office-holders in the Executive and so enhance public trust in government and thereby strengthen our democracy.

## APPENDIX A

### FIRST AND SIXTH REPORT RECOMMENDATIONS

#### First Report

##### Ministers

- R12.* The first paragraph of Questions of Procedure for Ministers (QPM) should be amended to say: 'It will be for individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance.'
- R13.* The Prime Minister should put in hand the production of a document drawing out from QPM the ethical principles and rules which it contains to form a free-standing code of conduct or a separate section within a new QPM. If QPM is to remain the home for this guidance, we recommend that it is retitled 'Conduct and Procedure for Ministers' to reflect its scope.
- R14.* Careful consideration should be given to ensuring that the most appropriate means is used for the investigation of cases of alleged impropriety affecting Ministers. Other than in exceptional circumstances, the general rule that advice from civil servants to Ministers should not be made public should apply in these cases.
- R15.* A system similar to the civil service business appointment rules should apply to Ministers. The system should operate on an advisory basis, and it should be administered by the existing Advisory Committee on Business Appointments.
- R16.* In parallel with the civil service arrangements for permanent secretaries, an automatic waiting period of three months should apply to former Cabinet Ministers, but not to other Ministers or Whips. In cases where a further waiting period is recommended, the maximum waiting period should be set at two years from the date of leaving office.
- R17.* The advisory committee should be able to advise an applicant, whether a civil servant or a former Minister, that they feel that the application is not appropriate, and to make public that advice if it is not taken.
- R18.* Former Ministers, having received the advice of the advisory committee, should have the right of appeal to the Prime Minister of the day, who would be able to reduce any waiting period or relax any conditions if the appeal were well-founded.
- R19.* The system should be as open as possible, while protecting the personal privacy of Ministers.
- R20.* The Government should monitor the workload of the advisory committee under the new arrangements and put in place contingency arrangements for its staffing to be augmented to deal with the aftermath of any change of administration.
- R21.* Departments, as well as maintaining records of gifts, should maintain records of hospitality accepted by Ministers in their official capacity and should make these records available if asked to do so.

##### Civil servants

- R22.* The new performance pay arrangements for the senior civil service should be structured so as not to undermine political impartiality.
- R23.* The draft Civil Service Code should be revised to cover circumstances in which a civil servant, while not personally involved, is aware of wrongdoing or maladministration taking place.
- R24.* The operation of the appeals system under the Code should be disseminated as openly as possible, and the Commissioners should report all successful appeals to Parliament.

- R25.* Departments and agencies should nominate one or more officials entrusted with the duty of investigating staff concerns raised confidentially
- R26.* The new civil service code should be introduced with immediate effect, without waiting for legislation.
- R27.* The Cabinet Office should continue to survey and disseminate best practice on maintaining standards of conduct to ensure that basic principles of conduct are being properly observed.
- R28.* There should be regular surveys in departments and agencies of the knowledge and understanding staff have of ethical standards which apply to them; where such surveys indicate problem areas, guidance should be reinforced and disseminated appropriately, particularly by way of additional training.
- R29.* The Advisory Committee on Business Appointments should, when an appointment has been taken up, give the reasons for its decision in that particular case.
- R30.* The operation, observance and objectives of the civil service business appointment rules should be reviewed.

### **Special advisers**

- R31.* Special advisers should be subject to the business appointment rules.
- R32.* A central or local record of invitations and offers of hospitality accepted should be kept in all departments and agencies. There should be clear rules specifying the circumstances in which staff should seek management advice about the advisability of accepting invitations and offers of hospitality.

## **Sixth Report**

### **Ministers**

- R11.* Paragraph 123 of the Ministerial Code should be amended to make it clear that a Minister, having had the advice of his or her Permanent Secretary on potential conflicts of interests, must take full responsibility for any subsequent decision.
- R12.* No new office for the investigation of allegations of ministerial misconduct should be established.
- R13.* The final three sentences in section 1 of the Ministerial Code should be redrafted to clarify the role of the Prime Minister. It will be for the Prime Minister to determine the precise wording but we suggest the following text:

It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament and retaining its confidence. The Prime Minister remains the ultimate judge of the requirements of the Code and the appropriate consequences of breaches of it.

- R14.* The presentation of section 1 of the Ministerial Code should be improved to reflect its importance as a statement of the ethical principles governing ministerial conduct. In particular the final three sentences, redrafted as suggested above, should be clearly distinguished from the preceding text.

### **Civil servants**

- R15.* Permanent heads of department and heads of profession, in conjunction with the Centre for Management and Policy Studies, should ensure that there are training and induction opportunities for those appointed on secondments or on short-term contracts to middle management or senior civil service levels at which ethical issues within the public sector are examined.
- R16.* The arrangements for validating the performance of permanent heads of department and agencies against their personal objectives need to be subject to further scrutiny but should be structured to allow for some element of independent validation so as not to undermine political impartiality.

*R17.* A timetable for the implementation of the Government's commitment to a Civil Service Act should be produced as soon as possible. In particular a target date should be set for the process of consultation on the scope of such an Act.

### **Special advisers**

*R18.* The Ministerial Code should be amended to reflect the fact that in certain circumstances more than two special advisers per Cabinet Minister may be appointed. The Prime Minister may wish to set out in the Code the criteria which should be applied if the limit is to be exceeded.

*R19.* The proposed Civil Service Act should contain a provision limiting the total number of special advisers that can be appointed within Government. Any increase beyond that figure should be made subject to affirmative resolution of both Houses of Parliament.

*R20.* Pending the enactment of the Civil Service Act, the Government should put before both Houses of Parliament for debate a limit on the total number of special advisers that can be appointed within government.

*R21.* Any increase in the number of special advisers with executive powers should be subject to the same process of parliamentary scrutiny as set out in recommendations R19 and R20 for the overall number of special advisers.

*R22.* There should be a separate code of conduct for special advisers. The special advisers' code should:

(a) consolidate appropriate elements of the Civil Service Code, the Model Contract and paragraph 56 of the Ministerial Code, which sets out the duty to uphold the political impartiality of the Civil Service and other obligations;

(b) include a section on the direct media contacts of special advisers, making clear the nature of the role that they play in relation to the work of Civil Service information staff and in particular the role of the departmental head of information, as set out in the Guidance on the Work of the Government Information Service published in July 1997;

(c) be enforced by permanent heads of department.

*R23.* The Government should include in the contracts of employment of all future special advisers a clause requiring the special adviser to abide by the terms of the special advisers' code, and the Model Contract and the Civil Service Code should not apply to them. The Government should also ensure that existing special advisers abide by the terms of the special advisers' code.

*R24.* The special advisers' code should be included in the proposed Civil Service Act.

*R25.* Pending the enactment of the Civil Service Act, a draft of the proposed Code should be tabled in both Houses of Parliament for debate.

## APPENDIX B

### LIST OF SUBMISSIONS

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all submissions can be found on the CD-ROM which is included with this report. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

Aberdeen City Council	Dr David Hine
Ards Borough Council	The Rt Hon Lord Holme of Cheltenham CBE
Lord Armstrong of Ilminster GCB CVO	Mr Frank Hooley
Association of First Division Civil Servants (FDA)	Institute of Business Ethics
Association of Professional Political Consultants	Institute of Public Relations
Mr Norman Baker MP	The Rt Hon Baroness Jay of Paddington
The Rt Hon Alan Beith MP	Mr Nicholas Jones
Mr Harry Beresford	Ms Tessa Keswick
Professor Vernon Bogdanor CBE FBA	Ms Natalie Lindo
Mr C J Bourbour	Lord Lipsey
Sir Michael Buckley KCB	Mrs R A Mattingly
Mr Tom Burke CBE	Mrs Theresa May MP
Mr Andy Burnham MP	Mr Pat McFadden
Lord Butler of Brockwell GCB CVO	Ms Mary McMillen
Cabinet Office	Professor Gillian Morris
Mr Peter Callison	Sir Robin Mountfield KCB
The Rt Hon Charles Clarke MP	Mr Brian Oldham
Mr Tim Collins CBE MP	Dr Mark Philp
Council for Academic Freedom and Academic Standards	Baroness Prashar CBE
Council of Civil Service Unions	Mr Peter Preston
Mr Don Cruickshank	Public Concern at Work
Ms Gill Cutress	Mr Thomas Punt
Ms Julia Donachy	Mr Peter Riddell
Lord Donoughue of Ashton	Mr Martin Rumbelow
Professor Howard Elcock	Scottish Executive
Equal Opportunities Commission	Sir Jon Shortridge
Mr Mike Granatt CB	Mr Martin Stanley
Mr Al Hanagan	The Rt Hon Lord Strathclyde
Mr Jonathan Haslam CBE	Mr Andrew Stunell OBE MP
Department of Health and NHS Executive	Mr David Walker
Mr Richard Heller	Mr John Wheald
Mr David Hencke	Sir Richard Wilson GCB

## APPENDIX C

### LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

#### A

Jon Aarons, President, Institute of Public Relations (Day 9, am)

Douglas Alexander MP, Minister of State, Cabinet Office (Day 9, am)

#### B

Philippa Foster Back, Director, Institute of Business Ethics (Day 4, am)

Norman Baker MP, Member of Parliament for Lewes (Day 3, pm)

Jonathan Baume, General Secretary, First Division Association (Day 2, am)

Sir Michael Bichard, former Permanent Secretary, Department for Education and Employment (Day 2, am)

Richard Broadbent, Chairman, HM Customs and Excise (Day 5, pm)

Tom Burke CBE, former Special Adviser (Day 5, am)

Andy Burnham MP, former Special Adviser (Day 8, pm)

Lord Burns, former Permanent Secretary, HM Treasury (Day 6, am)

Lord Butler of Brockwell GCB, CVO, former Cabinet Secretary and Head of the Home Civil Service (Day 7, am)

#### C

Rt Hon Charles Clarke MP, former Minister without Portfolio and Party Chair (Day 6, am)

Romola Christopherson, former Director of Communications, Department of Health (Day 7, am)<sup>1</sup>

Charles Cochrane OBE, Secretary, Council of Civil Service Unions (Day 2, am)

Don Cruickshank (Day 9, am)

Tim Collins CBE MP, Shadow Minister for the Cabinet Office (Day 3, pm)

#### D

Lord Donoughue of Ashton, former Special Adviser (Day 8, pm)

#### G

Mike Granatt CB, Head of the Government Information and Communication Service (Day 6, am)

#### H

Lord Haskins, former Rural Recovery Co-ordinator (Day 4, pm)

Jonathan Haslam CBE, former Press Secretary to the Prime Minister (Day 1, pm)

David Hencke, Westminster Correspondent, *The Guardian* (Day 2, am)

Peter Hennessy, Attlee Professor of Contemporary British History, Queen Mary, University of London (Day 4, am)

Dr David Hine, Fellow, Christ Church, Oxford (Day 2, am)

#### J

Rt Hon Baroness Jay of Paddington, former Cabinet Minister (Day 6, am)

Sir Michael Jay KCMG, Permanent Secretary, Foreign and Commonwealth Office (Day 5, pm)

Nicholas Jones, Political Correspondent, BBC (Day 6, pm)

#### K

Tessa Keswick, former Special Adviser (Day 5, am)

Richard Kornicki, Director of Corporate Development and Training, CMPS, Cabinet Office (Day 9, pm)

#### L

Lord Lipsey, former Special Adviser (Day 1, am)

#### M

Lord Macdonald of Tradeston CBE, Minister for the Cabinet Office (Day 9, am)

Andrew Marr, BBC Political Editor (Day 1, pm)

Theresa May MP, Chairman of the Conservative Party (Day 8, pm)

Pat McFadden, former Deputy Chief of Staff, Prime Minister's Office (Day 3, pm)

Charles Moore, Editor, *The Daily Telegraph* (Day 4, am)

Rt Hon Rhodri Morgan AM, First Minister, National Assembly for Wales (Day 9, pm)

Rt Hon Estelle Morris MP, former Secretary of State, Department for Education and Skills (Day 6, pm)

Sir Richard Mottram CB, Permanent Secretary, Department for Work and Pensions (Day 9, pm)

Sir Robin Mountfield KCB, former Permanent Secretary,

<sup>1</sup> Sadly, Ms Christopherson has since died

Cabinet Office and Chairman of the Working Group on the Government Information Service, 1997 (Day 1, pm)

## N

John Newbiggin, former Special Adviser (Day 5, am)  
David Normington CB, Permanent Secretary, Department for Education and Skills (Day 6, pm)

## O

Nigel O'Connor, Head of Policy, Institute of Public Relations (Day 9, am)

## P

Alice Perkins CB, Director of Corporate Development, CMPS, Cabinet Office (Day 9, pm)  
Sir Hayden Phillips GCB, Permanent Secretary, Lord Chancellor's Department (Day 5, pm)  
Dr Mark Philp, Fellow, Oriel College, Oxford (Day 2, am)  
Baroness Prashar CBE, First Civil Service Commissioner (Day 4, pm)  
Peter Preston, former Editor-in-Chief, *The Guardian* (Day 2, am)

## R

Peter Riddell, Assistant Editor (Politics), *The Times* (Day 1, am)

## S

Sir Jon Shortridge, Permanent Secretary, National Assembly for Wales (Day 9, pm)  
Martin Stanley, Author of *'How to be a Civil Servant'* (Day 1, am)  
Andrew Stunell OBE MP, Liberal Democrat Chief Whip (Day 6, pm)

## T

Sir Andrew Turnbull KCB CVO, Permanent Secretary, HM Treasury (Day 5, pm)  
Paul Tyler CBE MP, Liberal Democrat Shadow Leader of the House (Day 6, pm)

## W

David Walker, *The Guardian* (Day 2, am)  
Simon Webley, Research Director, Institute of Business Ethics (Day 4, am)  
Sir Richard Wilson GCB, former Cabinet Secretary and Head of the Home Civil Service (Day 6, pm)<sup>2</sup>  
Dr Tony Wright MP, Chairman, Public Administration Select Committee (Day 4, am)

## Z

Lionel Zetter, Chairman of the Government Affairs Group, Institute of Public Relations (Day 9, am)

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<sup>2</sup> Now Lord Wilson of Dinton

## APPENDIX D

### PREVIOUS REPORTS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee has published reports on the following subjects:

- Members of Parliament, Ministers, civil servants and quangos (First Report (Cm 2850)) (May 1995);
- Local public spending bodies (Second Report (Cm 3270)) (June 1996);
- Local government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997);
- The funding of political parties in the United Kingdom (Fifth Report entitled *The Funding of Political Parties in the United Kingdom* (Cm 4057)) (October 1998);
- Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000).
- Standards of Conduct in the House of Commons (Eighth Report (Cm 5663)) (November 2002)

The Committee is a standing committee. It can therefore not only conduct inquiries into new areas of concern about standards in public life but also,

having reported its recommendations following an inquiry, it can later re-visit that area and monitor whether and how well its recommendations have been put into effect. The Committee has so far conducted two reviews, and in 2001 published a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994:

- A review of recommendations contained in the First and Second Reports relating to standards of conduct in executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report) (November 1997);<sup>1</sup>
- A review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and 'proportionality' in the public appointments system (Sixth Report entitled *Reinforcing Standards* (Cm 4557)) (January 2000);<sup>2</sup>
- A stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (*The First Seven Reports – A Review of Progress*) (September 2001).

<sup>1</sup> This report was not published as a Command Paper.

<sup>2</sup> 'Proportionality' is a term used to describe the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled.

## APPENDIX E

### THE CIVIL SERVICE CODE

The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is modelled on a draft originally put forward by the House of Commons Treasury and Civil Service Select Committee. It came into force on 1 January 1996, and forms part of the terms and conditions of employment of every civil servant. It was revised on 13 May 1999 to take account of devolution to Scotland and Wales. The full text follows, and hard copies are available from the address at the end of the document.

1. The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales constituted in accordance with the Scotland and Government of Wales Acts 1998, whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.
2. Civil servants are servants of the Crown. Constitutionally, all the Administrations<sup>1</sup> form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations in which they serve.
3. This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales, which include:
  - accountability to Parliament<sup>2</sup> or, for Assembly Secretaries to the National Assembly;
  - the duty to give Parliament or the Assembly and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them;
  - the duty not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;
4. Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising:
  - the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice;
  - together with the duty to familiarise themselves with the contents of this Code.
5. Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office-holder in charge of their department, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.
6. Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.

<sup>1</sup> In the rest of this Code, we use the term Administration to mean her Majesty's Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales as appropriate.

<sup>2</sup> In the rest of this Code, the term Parliament should be read, as appropriate, to include the Parliament of the United Kingdom and the Scottish Parliament.

<sup>3</sup> In the rest of this Code, Ministers encompasses members of her Majesty's Government or of the Scottish Executive.

7. Civil servants should endeavour to ensure the proper, effective and efficient use of public money.
  8. Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.
  9. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers or Assembly Secretaries and the National Assembly as a body, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. They should comply with restrictions on their political activities. The conduct of civil servants should be such that Ministers, Assembly Secretaries and the National Assembly as a body, and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.
  10. Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, Assembly Secretaries or the National Assembly as a body by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.
  11. Where a civil servant believes he or she is being required to act in a way which:
    - is illegal, improper, or unethical;
    - is in breach of constitutional convention or a professional code;
    - may involve possible maladministration; or
    - is otherwise inconsistent with this Code;
- he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with the relevant procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.
12. Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Office of the Civil Service Commissioners, 3rd Floor, 35 Great Smith Street, London SW1P 3BQ. Tel: 020 7276 2613. e-mail: [ocsc@civilservicecommissioners.gov.uk](mailto:ocsc@civilservicecommissioners.gov.uk)
  13. Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers, Assembly Secretaries or the National Assembly as a body. Where a matter cannot be resolved by the procedures set out in paragraphs 11 and 12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.

## APPENDIX F

### THE ROLE OF THE CIVIL SERVICE COMMISSIONERS

The Civil Service Commissioners are appointed by Order in Council. They derive their responsibilities from the Civil Service Order in Council 1995 as amended and the Diplomatic Service Order in Council 1991 as amended.

Their powers do not extend to the Northern Ireland Civil Service. The power to hear appeals is limited to the Home Civil Service.

They have two responsibilities:

- to maintain the fundamental principle of selection on merit on the basis of fair and open competition in recruitment to the Civil Service; and
- to hear and determine appeals under the Civil Service Code.

On recruitment, the Commissioners publish and maintain a Recruitment Code on the interpretation and application of the principle of selection on merit on the basis of fair and open competition, and audit departments and agencies for compliance with it. They also require departments and agencies to publish information about their own recruitment processes. They used to approve all appointments to the Senior Civil Service. Following a recent amendment to the Order in Council in July 2002 they now only approve appointments to posts within Pay Band 2 and above within the Senior Civil Service, specified SCS posts at lower levels and a few senior posts outside the SCS. This limits their direct involvement to the top 600 or so posts in the SCS. They also chair the selection process for the most senior and/or high profile posts (78 in 2000/01).

The Commissioners have heard and determined five appeals under the Civil Service Code since it was introduced in 1996. All of these have found in favour of the appellant.

The Commissioners publish an annual account of their work (see [www.civilservicecommissioners.gov.uk](http://www.civilservicecommissioners.gov.uk)).

#### The principles of fair and open competition and selection on merit

In accordance with the Civil Service Order in Council 1995 every individual appointed to a post in the Civil Service must be selected on merit on the basis of fair and open competition, apart from the exceptional cases in Articles 6 and 7 of the Order. To this end:

- a. prospective applicants must be given equal and reasonable access to adequate information about the job and its requirements; and about the selection process;
- b. applicants must be considered equally on merit at each stage of the selection process;
- c. selection must be based on relevant criteria applied consistently to all the candidates; and
- d. selection techniques must be reliable and guard against bias.

To comply with Civil Service policy, equality of opportunity must apply throughout the recruitment process.<sup>1</sup>

*“Openness is about making Civil Service jobs accessible by ensuring that opportunities are made known and publicised. Fairness seeks to ensure that there is no bias in assessment of candidates at any stage of the selection process. Merit has two objectives: no-one should be appointed to a job unless they are competent to do it; and if two or more people meet the criteria for appointment, the job should be offered to the person who would do it best.”<sup>2</sup>*

<sup>1</sup> Civil Service Commissioners’ Recruitment Code, Appendix 1 to Part 1.

<sup>2</sup> Civil Service Commissioners’ Recruitment Code, para 1.16.

## LIST OF ABBREVIATIONS AND ACRONYMS

AM	Assembly Member (National Assembly of Wales)
CB	Companion, Order of the Bath
CBE	Commander, Order of the British Empire
CCSA	Code of Conduct for Special Advisers
Cm	Command paper
CMPS	Centre for Management and Policy Studies
CSPL	Committee on Standards in Public Life
CVO	Commander of the Royal Victorian Order
DFES	Department for Education and Skills
DNA	Deoxyribonucleic Acid
DSO	Companion of the Distinguished Service Order
FDA	Association of First Division Civil Servants
GCB	Knight or Dame Grand Cross of the Order of Bath
GICS	Government Information and Communication Service
GWGIS	Guidance on the Work of the Government Information Service
HC	House of Commons
HL	House of Lords
KCB	Knight Commander, Order of Bath
KCMG	Knight Commander of the Order of St Michael and St George
MP	Member of Parliament
NDPB	Non-Departmental Public Body
NHS	National Health Service
OBE	Officer, Order of the British Empire
PASC	Public Administration Select Committee
PPS	Principal Private Secretary
Q&A	Question and Answer
QC	Queen's Counsel
Rt Hon	Right Honourable
SCS	Senior Civil Service
WA	Written Answer

## ABOUT THE COMMITTEE

### Terms of Reference

The then Prime Minister, the Rt Hon John Major, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 25 October 1994 with the following terms of reference:

*To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*

*For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office-holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.*

*(Hansard (HC) 25 October 1994, col 758)*

#### **The remit of the Committee excludes investigation of individual allegations of misconduct.**

On 12 November 1997 the terms of reference were extended by the Prime Minister:

*“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements”.*

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for up to three years. Sir Nigel Wicks succeeded Lord Neill as Chairman on 1 March 2001. Lord Neill succeeded Lord Nolan, the Committee’s first Chairman, on 10 November 1997.

Sir Nigel Wicks GCB, CVO, CBE		
<i>Chair</i>		
Ann Abraham <sup>1</sup>		Frances Heaton
Professor Alice Brown		Rt Hon Lord MacGregor of Pulham Market OBE
Sir Anthony Cleaver		Rabbi Julia Neuberger
Rita Donaghy OBE		Rt Hon Chris Smith MP
Lord Goodhart QC		

The Committee is assisted by a small Secretariat: Sarah Tyerman (*Secretary*) (to 6 December 2002), Vivien Brighton (*Assistant Secretary* to 6 December 2002, *Acting Secretary* from 6 December 2002 to 8 April 2003), Robert Behrens (*Secretary*) (from 24 February 2003), Colin O’Donoghue (*Assistant Secretary*) (from 10 June 2002), Trudy Payne (*Assistant Secretary*) (from 10 June 2002), Andrew Brewster, Steve Pares, Stephen Barnes (from 20 May 2002), Rani Dhamu (to 4 July 2002), Victoria Williams (from 14 October 2002), Piara Ali (from 20 May to 9 August 2002), and Fiona Dick (*Press Secretary*) (to 31 January 2003).

Advice and assistance to the Committee for this study was also provided by: Radio Technical Services Ltd for the provision of sound recording; WordWave for the provision of transcription services during the public hearings; and Giles Emerson of Words for editing the draft report.

<sup>1</sup> Ann Abraham stepped down from the Committee in November 2002 upon her appointment as the Parliamentary Commissioner for Administration and Health Service Commissioner for England.

### **Expenditure**

The estimated gross expenditure of the Committee on this study to the end of March 2003 is £262,459. This includes staff and administrative costs; the cost of printing and distributing (in March 2002) over 6,400 copies of a paper setting out the key issues and questions which the Committee would address; costs associated with public hearings which were held at the One Great George Street, London from 27 June to 18 September 2002; and estimated costs of printing, publishing and distributing this report.

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*The Ninth Report of the Committee on Standards in Public Life on CD-ROM*

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