



House of Commons
Public Administration Select
Committee

**Lessons for Civil
Service impartiality
from the Scottish
independence
referendum**

Fifth Report of Session 2014–15

*Report, together with formal minutes relating
to the report*

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The Public Administration Select Committee

The Public Administration Select Committee (PASC) is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by Civil Service departments, and other matters relating to the Civil Service.

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Committee staff

The current staff of the Committee are Sïan Woodward (Clerk), Philip Aylett (Committee Specialist), Sarah Taylor (Committee Specialist), Luanne Middleton (Committee Specialist), Clare Genis (Senior Committee Assistant), Ian Blair (Committee Assistant) and Jessica Bridges-Palmer (Media Officer)

Contacts

All correspondence should be addressed to the Clerks of the Public Administration Select Committee, Committee Office, 14 Tothill Street, House of Commons, London SW1H 9NB. The telephone number for general enquiries is 020 7219 2784; the Committee's email address is pasc@parliament.uk

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Summary

This Report has been compiled so that lessons may be drawn for future referendums. On 18 September 2014, the Scottish public voted for Scotland to remain part of the United Kingdom. The roles played by civil servants in both Scotland and London in the Scottish referendum last summer were subject to criticism and controversy. The referendum campaign exposed two major issues: first, the question of how a unified Civil Service can serve both HM Government and the Scottish Government; and second, the challenges to Civil Service impartiality generated by the Scottish independence referendum.

Particular concerns were raised about the Scottish Government's White Paper, *Scotland's Future*, which included a description of the SNP's proposed programme for government that was contingent upon their winning the 2016 Scottish Parliament elections. This did not uphold the factual standards expected of a UK Government White Paper and raised questions about the use of public money for partisan purposes. There was also concern that the publication of normally confidential advice by the Permanent Secretary to the Treasury called into question the impartiality of the Civil Service.

We conclude that parts of the White Paper should not have been included in a government publication. Civil servants should not be required to carry out ministers' wishes, if they are being asked to use public funds to promote the agenda of a political party, as was evident in this case.

We further conclude that Sir Nicholas Macpherson's advice should not have been published. Its publication compromised the perceived impartiality of one of the UK's most senior civil servants. It remains the view of this Committee that Civil Service advice should remain protected. The decision to publish will have unintended consequences for advice given to ministers on future major issues—including referendums. We invite the Government to make it clear in its response to this report that the publication of advice to ministers will never recur.

We recommend that the Civil Service Code be revised by including a simple new paragraph, so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the "yes" and "no" campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy.

Finally, we reflect on the correspondence with the Government concerning the interpretation of the Code of Conduct for Special Advisers, and invite the Government to be clearer about the role of Special Advisers in respect of political campaigning.

1 Introduction

1. On 18 September 2014, the Scottish public voted for Scotland to remain part of the United Kingdom. The roles played by civil servants in both Scotland and London in the period before the vote were subject to criticism and controversy and there is remaining uncertainty about how the Civil Service should be regarded. This Committee's inquiry studied the referendum process and considered the question: what role should civil servants play in referendums? This inquiry has therefore been narrow, but we are mindful that the Civil Service will benefit from lessons we have drawn from the Scottish referendum to safeguard its impartiality in any future referendums.

Background

2. The Civil Service is the permanent, unified and politically neutral secretariat of Crown employees that support Her Majesty's Government, as well as two of the three devolved administrations: the Scottish Government and the Welsh Government, but not the Northern Ireland Executive.

3. The modern Civil Service arose from the review commissioned by William Gladstone in 1853, from Charles Trevelyan, Permanent Secretary to the Treasury, who was assisted by Sir Stafford Northcote, a former civil servant at the Board of Trade. The final report was published in February 1854 and established the principle of a permanent and unified Civil Service. The report also enshrined the service with the "core values of integrity, propriety, objectivity and appointment on merit, able to transfer its loyalty and expertise from one elected government to the next".¹ This settlement has endured.

4. Over 160 years later, there is no doubt that devolution has presented a major challenge for the Civil Service. It altered both the political environment and the nature of the work, not just in the devolved administrations but also in UK departments that deal with the devolved administrations.

Tensions highlighted by the Scottish referendum

5. The referendum campaign exposed two major issues. First, the question of how a unified Civil Service can serve both HM Government and the Scottish Government. Second, the challenges to Civil Service impartiality generated by the Scottish independence referendum. Particular concerns were raised that the Scottish Government's White Paper, *Scotland's Future*, did not uphold the factual standards expected of a UK Government White Paper, and there was concern that the publication of normally confidential advice by the Permanent Secretary to the Treasury called into question the impartiality of the Civil Service.

1 Professor Peter Hennessy, *Founder's Day address*, Hawarden Castle 8 July 1999, cited in [Whither the Civil Service](#), Research Paper 03/49, House of Commons Library, May 2003

Scope of the inquiry

6. We launched our inquiry in February 2014 in order to explore how the ‘political impartiality’ of the Civil Service had been interpreted during the Scottish independence referendum. We considered the dual obligations of civil servants to their ministers and to the UK Civil Service as a whole, and investigated the extent to which civil servants have complied with the Civil Service Code. Arising from this our recommendations are intended to protect the Civil Service’s reputation for impartiality, to provide clarity so the Civil Service will better understand how to conduct themselves in referendums, and to maintain public confidence in any future referendums.

7. Over the course of this inquiry we took evidence from both sides of the referendum debate, including the Scottish and UK Governments, the Scottish and UK Civil Service, and commentators on the referendum debate. We thank those that have contributed and taken an interest in our inquiry, with particular thanks to our Specialist Advisers, Professor Robert Pyper and Richard Gordon QC.² Written submissions and transcripts of the six oral evidence sessions we held are available on our website at www.parliament.uk/pasc.

² Professor Robert Pyper was appointed as a Specialist Adviser for this inquiry on 23 June 2014. He declared no relevant interests. Richard Gordon QC was appointed as a Specialist Adviser for this inquiry on 16 July 2014. He declared no relevant interests.

2 Serving two masters: a unified Civil Service

Background

8. The devolution settlement enacted in 1998 was couched as “a process not an event”, implying that the 1998 arrangements did not represent an end state but would continue to evolve.³ The Civil Service in the devolved administrations adapted, within the continuing legal concept of a unified Civil Service. However, in the period since 1998, little attention has been paid to the impact of the new divided political leadership under which the UK Civil Service now operates. The referendum campaign has exposed the practical reality for the Civil Service under Scottish devolution. For example, enforcement of the Civil Service Code in Scotland, which constitutionally should be UK-wide, has been devolved to the Scottish Government’s Permanent Secretary, Sir Peter Housden.

History

9. Devolution in the UK is asymmetrical: there are fundamental differences between each devolution settlement. The arrangements for Scotland and Northern Ireland resemble each other to some extent, but this resemblance is limited. Both administrations have a devolved legislature and an executive. Both the Scottish Parliament and Northern Ireland Assembly have primary legislative powers, on all matters not reserved to the UK Parliament.

10. A separate Northern Ireland Civil Service was established under the Government of Ireland Act 1920, which continues to operate in Northern Ireland today.⁴ The devolution legislation passed in 1998 adopted a different concept for Scotland and Wales.

11. There was no requirement to legislate for a specific Scottish Civil Service. Until 2010 the UK Civil Service was constituted by means of an Order in Council. The Scotland Act 1998 reserved the Civil Service to Westminster.⁵ There had been a separate Scottish Office since 1885, which already operated administrative devolution. Following devolution only certain Scottish civil servants working in devolved subject areas would report directly to the new Scottish Executive, whereas UK-wide departments, such as the Department for Work and Pensions, would continue to report to the UK Government.

12. Written evidence from Richard Parry, a University of Edinburgh academic, argued that, although the Civil Service of the Scottish Government “has various managerial relationships with departments of the UK government as part of the unified Home Civil Service, this does not compromise its exclusive political accountability to Scottish ministers, and so talk of a ‘dual obligation’ is somewhat misplaced.”⁶

3 National Assembly for Wales, [The history of Welsh devolution](#), undated

4 nidirect, [The Northern Ireland Civil Service](#), undated, and Section 8 of the *Government of Ireland Act 1920*

5 [Schedule 5, Scotland Act 1998](#)

6 Richard Parry [[SIR7](#)]

Devolved Government, unified Civil Service

13. Professor Jim Gallagher of the University of Oxford raised the “interesting general question of how the civil servants operating for governments that are of different political complexions should work together.”⁷ This underlined the conclusion of our 2013 Report *Truth to Power* that “the impact of devolution and decentralisation on one of our central institutions of state [the Civil Service] has hardly been given any external consideration, and yet the consequences are potentially very significant and underappreciated.”⁸

14. In Scotland and Wales the Civil Service remains a UK matter in law.⁹ In practice, however, the Scottish Government and Welsh Government have autonomy over staffing, promotions and grading, and pay settlements.¹⁰ The single UK framework tends only to apply to the highest reaches of the Home Civil Service—the Senior Civil Service.¹¹

15. Civil servants in the Scottish and Welsh Governments are accountable to ministers in their respective Governments in the same way Civil Servants in UK departments are accountable to their respective ministers.¹² The Scottish Government’s 2013 written evidence to us for our earlier inquiry on the future of the Civil Service cited its two-fold responsibilities:

To deliver the policies of the elected Government of Scotland, which includes delivering the current Scottish Government's purpose of creating a more successful country by increasing sustainable economic growth with an opportunity for all of Scotland to flourish; and to act with integrity, impartiality, objectivity and honesty.¹³

16. A Memorandum of Understanding between the UK Government and devolved administrations sets out the expectations for interactions between the administrations as well as situations where information may not be shared.¹⁴

Is the Civil Service still unified?

17. Professor James Mitchell, Professor of Public Policy and International Relations at the University of Edinburgh, suggested that there had never been a unified civil service:

We can overstate the extent to which devolution has affected things. That said, yes, I think things have progressed further and, informally, there is a

7 Q 14

8 Public Administration Select Committee, Eighth Report of Session 2013-14, [Truth to power: how Civil Service reform can succeed](#), HC 74 [incorporating HC 664-i-x, Session 2012-13], September 2013, paragraph 169

9 *Scotland Act 1998*, section 51 and Schedule 5, paragraph 8; *Government of Wales Act 1998*, section 34

10 House of Lords, Select Committee on the Constitution, [Devolution: Inter-Institutional Relations in the United Kingdom](#), Second Report of Session 2002-03, HL 28, paragraph 151

11 As above

12 Derek Jones, Permanent Secretary, Welsh Government, [Future of the Civil Service written evidence](#), May 2013

13 Scottish Government, [Future of the Civil Service written evidence](#), May 2013

14 Cabinet Office, [Devolution: memorandum of understanding and supplementary agreement](#), March 2010

distinct Scottish Civil Service. There always has been, but it is more distinct now than it was in the past.¹⁵

18. Akash Paun, Fellow at the Institute for Government, told us that:

There was a reasonable rationale for maintaining the unified Home Civil Service at the outset of devolution [...] The perception was that it facilitated a more informal form of intergovernmental relations that enabled differences to be resolved without escalating to more formal dispute mechanisms. [...] Over time, however, what we have seen is, first of all, that political diversion since 2007 has pulled things apart and, also, the gradual evolutionary change of Civil Services in the respective capitals becoming more systems unto themselves.¹⁶

19. The Rt Hon Peter Riddell, Director of the Institute for Government, suggested that the traditional model of the Civil Service had adapted to address different governments with different views and said “it is evident already that, in practice, Scotland and Wales are at least more distinct Civil Services” that have, for example, different pay scales.¹⁷ Of the Scottish Government’s Civil Service he said:

Scotland has its own reform plan; it is not the same as the one that applies here. The Civil Service has changed an awful lot in Scotland. It is much more outcome-directed. There have been a lot of reforms. They, of course, have an integrated rather than departmental Government structure in Scotland. It has changed a lot, but not in the same ways as in England.¹⁸

20. Akash Paun argued that it was “more and more of a constitutional fiction that there is a single unified Civil Service anymore”.¹⁹ Professor Jim Gallagher pointed out that in practice, the operation, administration, and pay and rations of the Civil Service in the devolved administration were a matter of devolved responsibility. “The only things that are required to be the same are the code and values, and the peer and grading structure of the most senior staff.”²⁰

21. The Rt Hon Peter Riddell told us that, regardless of the referendum outcome, there would be “an increasing recognition that there are separate Civil Services within that umbrella”.²¹ He suggested that after the referendum, it would be important to return to the issue of the future of intergovernmental relations across the country:

15 Q 382

16 Q 442

17 Q 455

18 As above

19 Q 445

20 Q 9

21 Q 442

We would argue that all parties need to reassess—it would probably be after the general election, in practice—and recognise that there are separate structures [...]²²

22. Professor Michael Keating of the University of Aberdeen was in favour of having a Scottish public service separate from the UK Civil Service, in order to provide “greater flexibility for changing the structure of the Civil Service in Scotland”.²³ He noted that the need for this had been somewhat lessened by the organisation of the Scottish Government, which has changed considerably “from the Whitehall model”.²⁴

23. The Scottish independence referendum raised the broad question of how the civil servants serving governments of different political complexions should work together, and the impact for a unified Civil Service regardless of referendum outcome. Professor James Mitchell told us that “informally, there is a distinct Scottish Civil Service. There always has been, but it is more distinct now than it was in the past”.²⁵

24. In practice the single unified Civil Service has become something of a constitutional fiction, since civil servants in Scotland are expected to serve the Scottish Government in the same way as civil servants in Whitehall departments serve the UK Government. However, the advantages that flow from having a single Home Civil Service justify the retention of a single UK Civil Service.

22 Q 442

23 Q 9

24 As above

25 Q 382

3 Lessons from the referendum

25. The constitutional scholar A.V. Dicey wrote that referendums could “by checking the omnipotence of partisanship, revive faith in that parliamentary government which has been the glory of English constitutional history”.²⁶ The historic vote in Scotland tested some people’s faith in government and the Civil Service and has given cause to consider how the Government should administer referendums in modern Britain.

Background

26. Our Report *Truth to power, how Civil Service reform can succeed*, said that the impartiality of the Civil Service remained “the most effective way of supporting the democratically elected Government and future administrations in the UK, and of maintaining the stability of the UK’s largely uncodified constitution.”²⁷

27. The Constitutional Reform and Governance Act 2010 confirmed the Civil Service Commission’s long-standing responsibility for promoting and protecting the Civil Service’s impartiality.²⁸ In its written evidence to us, the Commission explained that it is responsible for investigating and considering complaints under the Code. Civil servants can complain to the Commission if they believe they are being required to act in a way that conflicts with the Code value of impartiality, or if they are aware of the actions of another civil servant that breach impartiality.²⁹ The Commission does not have the power to initiate investigations itself.³⁰

Acting with impartiality?

28. John Swinney MSP, the Deputy First Minister of Scotland and formerly the Cabinet Secretary for Finance, Constitution and Economy, acknowledged to us that the referendum had created a “very sensitive political environment” but he went on to defend the work of civil servants in Scotland who were “simply acting for their ministers in the fashion that civil servants in the United Kingdom Government are working for United Kingdom Government ministers”.³¹ He insisted that there was “no difference in the approach they have taken”.³²

26 Dicey, A. V. (2013 [1885]) *The Law of the Constitution*. Oxford University Press.

27 Public Administration Select Committee, Eighth Report of Session 2013-14, [Truth to power: how Civil Service reform can succeed](#), HC 74 [incorporating HC 664-i-x, Session 2012–13], September 2013

28 Civil Service Commission [\[SIR16\]](#)

29 As above

30 As above

31 Q 581

32 As above

29. Professor Jim Gallagher told us that political impartiality is “quite difficult to define”. He explained that it required civil servants to behave in a manner that would sustain “the confidence of the minister you presently work for and an alternative minister. That is what impartiality means”.³³

30. In a debate on Civil Service reform in the House of Commons on 3 April 2014, the Rt Hon Francis Maude MP, Minister for the Cabinet Office, explained what he believed impartiality to mean:

The essence of impartiality is not indifference to the Government of the day but the ability to be equally passionate and committed to implementing a future Government’s priorities and programme. It is important that this impartiality does not turn in to a cold indifference. It must be a passionate commitment to delivering the Government of the day’s priorities. This is hugely important.³⁴

31. Evidence submitted to this inquiry by Sir Bob Kerslake, then Head of the Home Civil Service, stated that civil servants were obliged to serve and support ministers as fully as possible with their objectives, in a way that maintains political impartiality and the other core values in the Civil Service Code.³⁵ With specific reference to the Scottish independence referendum, he told us:

Civil servants working for the Scottish Government have a duty under the Civil Service Code to support the Scottish Government regardless of which party or parties make up that government and future administrations. The current Scottish Government’s policy is to have an independent Scotland. The obligation to support and serve elected administrations, which is imposed by each of the Civil Service Codes in all of the parts of the United Kingdom, extends to issues where those governments may take conflicting positions and to matters of constitutional change.³⁶

32. In written evidence to us in 2013 the Scottish Government Permanent Secretary Sir Peter Housden cited the “two-fold” responsibilities of civil servants in Scotland, which include both acting with impartiality, but also delivering the policies of the elected Government of Scotland.³⁷

33 Q 6

34 Hansard (2014) 3 April : Column 1112

35 Head of the Civil Service [[SIR13](#)]

36 As above

37 Scottish Government, [Future of the Civil Service written evidence](#), May 2013

Impartiality and politicisation

33. The political impartiality of the Civil Service is highly valued. As the Better Government Initiative explained to us:

If the civil service is not politically impartial—and seen to be so—it will become impossible for it to serve governments of different political complexions and public confidence will be undermined.³⁸

Akash Paun, Fellow at the Institute for Government, has examined the challenges facing the Civil Service in coalitions, some of which relate to politicisation and impartiality. His report *Year Five: Whitehall and the Parties in the Final Year of Coalition*, published in May 2014, focused on how the Civil Service should work with the two Westminster coalition partners as the next election approaches. The report concluded that, without effective action and clarification of the rules, there were growing risks including “public perceptions or accusations that Civil Service resources are being used improperly, or that particular officials or teams have become politicised for one side or other of the Coalition”.³⁹

34. Keith Howell, a member of the public, wrote in evidence to this inquiry that the referendum had presented a challenging situation for both the Scottish Government and the Scottish Civil Service, “in which their integrity, objectivity and honesty were always going to be tested”.⁴⁰ He also said that “the impartiality of the Scottish Civil Service should have provided fundamental checks and balances that the people of Scotland could have relied upon”.⁴¹ However, University of Edinburgh Professor and former Minister Susan Deacon put accusations of politicisation into context for us:

I want to take issue with the suggestion that civil servants are engaged in political campaigning in either Government. They are not standing up advocating particular positions; they are not going knocking on doors or out in the streets at the weekends or whatever—all the things that we recognise as bone fide political campaigning. I think the issue comes back to how much they are engaged in advocacy.⁴²

35. Simon Johnson of the Telegraph had “some concerns” but told us he thought it would be “going too far to say the entire Civil Service is corrupt or politicised”.⁴³ The Rt Hon Peter Riddell, Director of the Institute for Government, said of impartiality that:

The protection of the impartiality of civil servants is the responsibility both of senior ministers and of civil service leaders. During the pre-election period, it is in everyone’s interests, politicians and civil servants alike, that the

38 Better Government Initiative [SIR5]

39 Institute for Government, *Year Five: Whitehall and the Parties in the Final Year of Coalition*, May 2014

40 Keith Howell [SIR03]

41 As above

42 Q 690

43 Q 691

guidelines are both publicly known and have been applied fairly. It is time to be transparent and clear.⁴⁴

Impartiality or neutrality?

36. During our inquiry we discussed whether civil servants were expected to be politically impartial or politically neutral. The Minister for the Cabinet Office, told us that:

It is really not so much about a definition as what it connotes. Neutrality connotes indifference. Impartiality connotes an ability to serve Governments of different political persuasions, and thus not being so identified with one approach that the level of trust of an incoming Government and incoming ministers would be jeopardised.⁴⁵

37. We asked Mr Maude if there was an injunction on civil servants not to be as passionate about a Government's policy as to lose the potential trust of a minister of a different political persuasion. He replied:

One of the things you look for in a civil servant, regardless of what their political views actually are [...] is an ability to promote by action as well as by words where that is appropriate, the policy and programme of the Government of the day. I would much rather have a civil servant who has been diligent and effective in promoting the programme of my opponents in government than someone who has been so neutral and impartial.⁴⁶

38. The Civil Service Code states that "impartiality is acting solely according to the merits of the case and serving equally well Governments of different political persuasions."⁴⁷ The Code does not define 'neutrality'.

Maintaining impartiality

39. Both the UK Government and Scottish Government circulated guidance to their civil servants on the Scottish independence referendum. Intentionally, the two sets of advice closely follow each other, and were the subject of close consultation at official level.⁴⁸ The advice was rooted in the Civil Service Code and offered guidance on the Code's application in the run-up to the referendum. The Cabinet Office guidance says it is "both legitimate and necessary for civil servants to support ministers as fully as possible in pursuit of those objectives".⁴⁹ The Scottish Government's advice states that the requirements of the Code "apply to work on constitutional reform as much as in any other area of the respective

44 Institute for Government, [Risk of danger surrounding how political parties work with civil servants in final year of parliament](#), May 2014

45 Q 503

46 Q 504

47 Cabinet Office, [Civil Service Code](#), laid in Parliament on 11 November 2010

48 Head of the Civil Service [[SIR13](#)]

49 [BBC News, 'Scottish independence: Swinney steps up Treasury criticism over pound'](#), 22 February 2014

Governments' work".⁵⁰ This advice applies whether the two Government's objectives are aligned or opposed.

40. The Cabinet Secretary for Finance, Constitution and Economy (and now Deputy First Minister) John Swinney MSP explained to us that "the Scottish Government has a policy position. The United Kingdom Government has a policy position. On this they happen to be different. Our respective civil servants work to provide advice to us in respect of the policy positions that we respectively take and ministers make decisions accordingly".⁵¹ However, Simon Johnson of the Telegraph described a blurring of Government, campaign and party on both sides of the campaign, saying that a change happened in 2007 following the success of the SNP in the Scottish Parliament elections:

The Scottish Government would put out a press release about something, and then immediately afterwards it would just so happen that you would get the SNP press release on the same thing praising it. So, no, I think the line is very much blurred on both sides, on both the "Yes" and "Noes", about what is Government, what is campaign and what is party.⁵²

41. The Deputy First Minister told us that, during the referendum campaign, the Civil Service were asked to operate within the terms of the Civil Service Code and to "fulfil their responsibility to their respective ministers where their priorities were different."⁵³ This method of operation was "what the Civil Service Code envisages" and also:

It is what the Memorandum of Understanding envisages between the United Kingdom Government and the three devolved Administrations and I think that is what we see being fulfilled in the way in which the respective agendas of different Governments are taken forward.⁵⁴

White Paper: *Scotland's Future*

42. In November 2013 a White Paper was published by the Scottish Government titled *Scotland's Future: Your guide to an independent Scotland*.⁵⁵ David Clegg of the Daily Record told us that, "if you lined up all the White Papers over the last 15 to 20 years and put them in a row, the one on Scotland's future would feel very different in content and style".⁵⁶ The paper made the case for an independent Scotland and was consequently labelled by commentators as a Scottish National Party "manifesto".⁵⁷ John McTernan, a political adviser, was among those who criticised the document, in an article in the Scotsman. He confirmed in his written evidence to us his view that civil servants had

50 BBC News, '[Scottish independence: Swinney steps up Treasury criticism over pound](#)', 22 February 2014

51 Q 586

52 Q 692

53 Q 588

54 As above

55 Scottish Government, [Scotland's Future: Your guide to an independent Scotland](#), November 2013

56 Q 692

57 '[John McTernan: White paper damns civil service](#)', *The Scotsman*, 4 April 2014

written a party political manifesto in contravention of the Civil Service Code.⁵⁸ He set out the logic for this assertion:

In the words of the BBC: ‘As well as making the case for independence, the White Paper also set out a series of policy pledges which the SNP said it would pursue if elected as the government of an independent Scotland.’

The problem is that the current Scottish Government cannot set out a programme for an independent Scotland. That would be a matter for political parties in a contest in the event of independence. So, the Civil Service have written and the taxpayer has paid for a party political manifesto.⁵⁹

43. It was heavily criticised for having been written and produced by Scottish civil servants and at the taxpayers’ expense, and this resulted in complaints to Sir Peter Housden, Permanent Secretary of the Scottish Government. The FDA, a trade union for senior public servants, said the White Paper controversy demonstrated the awkward position in which civil servants, especially senior civil servants, can find themselves.⁶⁰ Alan Cochrane, Scottish Editor at the Telegraph, for example, wrote that there was a “continuing and growing unease about the part played by Scotland’s civil servants” and the alleged use of the Civil Service by the SNP.⁶¹ He said that “many [civil servants] are deeply unhappy about the way their work has been politicised”.⁶² The Sunday Herald published a letter on 20 April 2014 from a member of the public, Brian McGarry, who had worked in the Scottish Civil Service for 40 years. In it he wrote that he had often “had to assist with the development and implementation of certain government policies that I personally found disagreeable [...] But that was the nature of the job and the choice was either to accept the situation and get on with it or to find another career.”⁶³

44. The use of civil servants to write and produce the paper was raised in the House of Lords in December 2013, in which Lord Forsyth of Drumlean asked why civil servants had been asked to write the document, “putting the bill for an SNP manifesto on to taxpayers.”⁶⁴ In a later House of Lords debate in January 2014 Lord Kerr of Kinlochard suggested that “we have not yet lost the apolitical, independent, expert public service but it is in danger”.⁶⁵

45. During our inquiry we questioned whether Scottish civil servants had in any way abandoned impartiality through supporting the Scottish Government in producing its White Paper on independence. Professor Susan Deacon discussed the status of the document:

58 John McTernan [\[SIR8\]](#)

59 As above

60 FDA [\[SIR10\]](#)

61 ‘It’s time for Whitehall to stand up to the Nationalists’, *Daily Telegraph*, 13 December 2013

62 As above

63 ‘Civil servants were just doing their job’, *Sunday Herald*, 20 April 2014

64 Hansard (2013) 5 Dec : Column 398

65 Hansard (2014) 16 Jan : Column 378

It is very explicitly produced in a way that it is divided into two parts, one part of which are [...] propositions that a SNP Government would follow with an independent Scotland. But the word “manifesto” in a very literal sense is taken to describe what is produced by a party in advance of an election. So I guess in literal terms it is not that.⁶⁶

Simon Johnson of the Telegraph described the process for producing such a document:

My understanding of the way the Scottish Government works with some documents, such as this one, is that the Civil Service do provide the information, the figures or whatever, the research that ministers need, but I think it does go through the special adviser’s office, then the political appointees and certainly directly to the First Minister’s office as well. They look at things like the language and they have the final say on how things are presented.⁶⁷

46. The Deputy First Minister did not reassure us that civil servants were excused from working on the more party political propositions the document contained:

Lindsay Roy MP: You said the report had been substantially written by civil servants. Who wrote the other parts?

John Swinney MSP: Well, it would obviously be subject to contributions by ministers and contributions by special advisers.⁶⁸

47. The Rt Hon Peter Riddell, Director of the Institute for Government, did not see civil service support for the White Paper as “dramatically different from what would happen within Whitehall with a White Paper”.⁶⁹ A number of our witnesses suggested that, while politicians might object to policies pursued by devolved administrations, the actions of the Civil Service in developing such policies did not in themselves call into question the impartiality of the Civil Service.⁷⁰ As the Minister for the Cabinet Office explained, the key test is whether the same level of commitment can be transferred to another party pursuing a different policy agenda in the event of a change of government. He quoted the Civil Service Code, which states that:

You must serve the Government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this Code, no matter what your own political beliefs are [and you must] act in a way which deserves and retains the confidence of ministers, while at the same time ensuring that you will be able to establish

66 Q 683

67 Q 693

68 Q 597

69 Q 394

70 For example, Head of the Civil Service [\[SIR13\]](#)

the same relationship with those whom you may be required to serve in some future Government.⁷¹

48. Professor James Mitchell described the idea that Scottish Government officials would be unable to provide the appropriate level of support to a different Scottish governing party or parties as “fanciful”.⁷² Michael McCann MP wrote in evidence to this inquiry that:

Civil servants could have been willingly compliant with the First Minister’s partisan agenda. Alternatively, they could have been bullied or cajoled into going along with the plan. Whatever the answer, I feel that it should be found, as although it may be too late to have an impact on the Scottish debate about independence, there may be lessons to learn for the future.⁷³

49. The Deputy First Minister told us that “civil servants provided a very comprehensive amount of advice to ministers about the document [the White Paper]. Civil servants would have written, very substantially, the material within the White Paper, but ultimately the decisions about what was in the White Paper and the signing off of the White Paper were taken by ministers”.⁷⁴

50. The Deputy First Minister was clear that the Scottish Government was aware of the importance of operating “utterly consistently with the Code”, he said that:

We were all very clear about what the approach should and would be and how that would be followed. Ultimately, the contents of Scotland’s Future were a matter for ministers, but it was essentially operating on the basis of advice and information supplied by civil servants.⁷⁵

51. The Deputy First Minister did not accept that *Scotland’s Future* went beyond “what one might consider to be the norm”.⁷⁶ He said that it was very common for UK governments to set out policy material of what is going to happen beyond the term of a Parliament.⁷⁷

52. Our witness Simon Johnson of the Telegraph newspaper had other reasons for doubting the White Paper (see Box 1):

The lack of detail on figures and things, things that people would probably want to see before they voted for independence, the lack of costs and expenditure leads me to the belief that this is a document intended to elicit the “Yes” vote primarily rather than a document to inform.⁷⁸

71 Q 501 and Cabinet Office, [Civil Service Code](#), laid in Parliament on 11 November 2010

72 ‘[A unified civil service?](#)’, *Holyrood Magazine*, 17 November 2014

73 Michael McCann MP [[SIR2](#)]

74 Q 590

75 Q 591

76 Q 592

77 As above

78 Q 684

Box 1: Arguments made in the Scottish Government's White Paper, *Scotland's Future*

The White Paper, *Scotland's Future*, contained the expected arguments in favour of Scottish independence. However, it also contained such material as contained in Chapter 2, under the heading, '*Early priorities for action within sound public finances*'. These 'priorities' were not just contingent upon a "yes" vote in the referendum. These were a description of the SNP's proposed programme for government contingent upon their winning the 2016 Scottish Parliament elections–

'This Government intends to raise revenue and reduce spending by:

- reducing defence and security spending to £2.5 billion per year (which is still more than Westminster spends on defence in Scotland)
- ending the married couples tax allowance, planned for introduction in 2015
- cancelling the Westminster Government's Shares for Rights scheme in Scotland
- providing for a streamlined system of overseas representation focused on Scottish citizens and priority business sectors

There will also be savings from no longer having to fund the Westminster Parliament.

We expect these changes to deliver savings or increases in revenue totalling around £600 million in a full year.

This will provide scope to take action in the first budget of an independent Scotland to create a fairer and more successful country. The priorities of the current Scottish Government for that first budget will be to:

- maintain a commitment to protecting free personal care, free prescriptions, free higher education tuition for Scottish students and free concessionary travel
- abolish the "bedroom tax"
- extend the period of the triple lock for uprating of state pensions
- reduce energy bills by moving the cost of the Energy Company Obligation and Warm Home Discount Scheme to the Scottish Government
- provide 600 hours of childcare to around half of two year olds, as part of a longer term plan to deliver a transformational expansion in childcare
- equalise the earnings disregard between first and second earners for those already in receipt of Universal Credit
- increase tax allowances, tax credits and benefits in line with inflation
- meet international commitments to spend 0.7 per cent of Gross National Income on international aid

We expect these commitments to cost around £500-600 million per year in total to deliver.

Over the course of the first term of an independent Scottish Parliament, the Scottish Government proposes to work with Scotland's tax authority, Revenue Scotland, to simplify the tax system to reduce compliance costs, streamline reliefs and help to reduce tax avoidance, with a target revenue gain of £250 million per year by the end of the first term.

Alongside simplification, this Government plans for Revenue Scotland to deploy modern digital collection technologies to help ensure that all taxpayers pay their fair share of taxes, bearing down on the amount of revenues which are lost to error, avoidance and evasion.

Within our framework for robust and sustainable public finances, we propose to deliver the following measures to boost Scotland's competitiveness within the first term of an independent Scottish Parliament:

- provide childcare for 30 hours per week for 38 weeks per year - equivalent to primary school hours - for every three and four year old and vulnerable two year old, as part of a longer-term commitment to provide this level of provision to all children from age one until they start school
- cut Air Passenger Duty by 50 per cent, with a view to eventually abolishing it
- provide a clear timetable for cutting corporation tax by up to three percentage points for businesses paying tax in Scotland

We will also examine an increase in the National Insurance Employment Allowance to help small businesses, and will commence negotiations to return Royal Mail in Scotland to public ownership.

53. The Deputy First Minister compared the commitments made in the White Paper *Scotland's Future* to those made in the 2010 Budget, which was published “about six weeks before the United Kingdom general election”. He noted that the contents of that Budget were largely about what the then Government would do after the forthcoming election, which would require the Government to be re-elected for the Budget to be put into effect.

54. The Deputy First Minister went on to defend the tone of White Paper, pointing out that the document “is caveated to make it absolutely crystal clear what is material that would be incumbent on the election of a Government of a particular colour and makes it expressly clear that that is not a given outcome as a consequence of a “Yes” vote in the referendum in September”.⁷⁹

55. When asked if civil servants had expressed concerns to their ministers during its drafting, the Deputy First Minister told us that “the process of producing the White Paper was carefully considered by ministers in dialogue with civil servants and we received no concerns that we were in any way taking an approach that was beyond what was appropriate in the circumstances”.⁸⁰

56. Other issues during the referendum campaign also gave rise to accusations of breaches of impartiality by Scottish Government and UK Government civil servants. For example, former civil servant Andrew Inglis wrote to tell us about what he saw as breaches in impartiality and neutrality in tweets by the Scotland Office, in particular, criticism of the Scottish Government and First Minister, and similarities with tweets by the Better Together campaign.⁸¹

57. Many of the ministers and senior civil servants from whom we heard were keen to emphasise the professionalism of civil servants working in Scotland and Westminster during the referendum process. Our witnesses highlighted the dedication and hard work of many officials in both the devolved administrations and the UK Government. We wish to pay tribute to all the civil servants involved for their contribution to the process of the referendum.

58. The contents of the Scottish Government White Paper, *Scotland's Future*, included a description of the SNP's proposed programme for government that was contingent upon their winning the 2016 Scottish Parliament elections. This did not uphold the factual standards expected of a UK Government White Paper and therefore raised questions about the use of public money for partisan purposes. Civil servants serving the Scottish Government are obliged to serve the objectives of their Government. We recognise that the exceptional circumstances of the Scottish referendum placed some civil servants in a challenging position, which would have been difficult for them to express publicly.

79 Q 684

80 Q 593

81 Andrew Inglis [\[SIR9\]](#)

59. **Parts of the White Paper should not have been included in a Government publication. Civil servants should always advise against the appearance of partisan bias in Government documents—and they should not be required to carry out ministers’ wishes, if they are being asked to use public funds to promote the agenda of a political party, as was evident in this case. At the very least, Sir Peter Housden, Scotland’s Permanent Secretary, should have required a letter of direction.**

60. *We recommend that the Civil Service Code should be revised to specifically refer to referendums and provide civil servants across the UK with clear and definitive guidance on their role in respect of referendum campaigns. We have provided a suggested amendment to the code in the Annex to this Report.*

Impartiality and the publication of advice to ministers

61. Criticism has also been directed at the Civil Service in respect of its impartiality and objectivity. Sir Nicholas Macpherson, Permanent Secretary to the Treasury, gave a speech to the Mile End group in January 2014 that set out reflections on economic policy based on his personal experience and Treasury history. In this speech Sir Nicholas said:

[...] just as the Treasury has played a leading role in setting out the implications of Scotland leaving the free trade area that is the United Kingdom, so would I expect it to play a critical role in setting out the economic implications of the options of staying in or leaving the EU, should there be a referendum on our membership in the next Parliament.⁸²

The Daily Mail reported that after the speech, MPs accused the Treasury of “attempting to scare the public in favour of a ‘yes’ vote”.⁸³

62. On 11 February 2014 Sir Nicholas wrote to the Chancellor of the Exchequer with advice on the possibility of a currency union with Scotland, should Scotland become independent.⁸⁴ In the letter Sir Nicholas wrote that a currency union with an independent Scotland would be “fraught with difficulty”. On this advice, the Chancellor ruled out the First Minister’s preferred option of a currency union between an independent Scotland and the rest of the UK.

63. In what Sir Nicholas himself described as “a highly unusual” decision the letter he wrote was made public.⁸⁵ As a consequence Sir Nicholas’ impartiality was called into question. The then Cabinet Secretary for Finance, Constitution and Economy, John Swinney, for example, said Sir Nicholas had “crossed the line” of civil service neutrality in

82 HM Treasury, [Speech by the Permanent Secretary to the Treasury, The Treasury view: a testament of experience](#), January 2014

83 [‘Treasury mandarins to campaign against Britain leaving the EU to the fury of Tory Eurosceptics’](#), *Daily Mail*, 24 January 2014

84 Letter from Sir Nicholas Macpherson to the Chancellor of the Exchequer, [Scotland and a currency union](#), 11 February 2014

85 [‘Scottish independence: ‘Yes’ vote means leaving pound, says Osborne’](#), *BBC News online*, 13 February 2014

his advice.⁸⁶ He added that it was “perfectly permissible for civil servants to provide advice to ministers on all sorts of questions.”⁸⁷ To enter a debate in the fashion that Sir Nicholas entered the debate, which was a partial entrance, I thought was entirely over the line.”⁸⁸

64. George Parker writing in the *Financial Times* questioned the wisdom of publishing the advice, stating:

And with this, Sir Nick—the longest-serving permanent secretary in Whitehall—opened up a can of worms. Civil service advice to ministers has long been protected—exempt from Freedom of Information laws and never spoken of in public. How long can that position last now? There will presumably be great pressure, for example, for civil servants to say what their advice is over leaving or staying in the European Union.⁸⁹

65. The Rt Hon Peter Riddell, Director of the Institute for Government, published a statement on the publication of the letter:

It is highly unusual to see a permanent secretary’s personal advice to a minister published, especially in the midst of a major national political debate. Such advice is currently exempt from FOI. Historically civil servants are kept out of the limelight to protect them from accusations of political bias. This may be a well-thought-through departure from the usual rules, in which case the civil service, Parliament and public need to be informed at the earliest opportunity as to how the new system will operate.⁹⁰

66. In evidence to this inquiry, Michael Keating, Professor of Politics at the University of Aberdeen and Director of the Scottish Centre on Constitutional Change, said that it was “very unusual that ministers should now rely on the advice of a named civil servant as an argument, rather than taking Civil Service advice and then making their own argument on the basis of it”.⁹¹ He went on to say that might not be a “bad” precedent: “ministers are even more responsible, because we know what advice they have been given. If they have overridden what turns out to be good advice, they have to answer for it.”⁹² David Clegg of the *Daily Record* told us that:

If part of the Civil Service job is to be able to change from one Government to the other, the publication of that advice has limited Sir Nicholas Macpherson’s hand in the future. Hypothetically, he could find himself working for a Government that is considering negotiating the currency

86 Q 619

87 As above

88 As above

89 ‘[Sir Nick Macpherson: very bold, perm sec](#)’, *Financial Times*, 13 February 2014

90 Institute for Government, [IfG statement on HM Treasury letter to Chancellor](#), February 2014

91 Q 80

92 Q 97

union with an independent Scotland. It seems very difficult to see how he could do that when this advice is on the record.⁹³

67. However, Sir Bob Kerslake, Head of the Civil Service, defended the Permanent Secretary to the Treasury and told us that “I do not think it is the case that Nick crossed the line of neutrality, because he is there to give advice to the Government of the day”.⁹⁴ Sir Bob also said that this example did “not constitute a change in rules or practice, and there have been precedents where Civil Service advice has been published in the past, but not very many”.⁹⁵

68. In evidence to this inquiry, Sir Nicholas cited ‘reassuring the markets’ in his explanation of the reasons for publishing the letter:

This was quite an exceptional set of circumstances, which goes to the heart of the integrity of our currency. I should also say that, as Accounting Officer, I have a wider responsibility to ensure that the British Government can borrow as cheaply as possible. By setting out my views on the Scottish Government’s threat to walk away from their share of the debt in the event of independence, I was seeking to provide reassurance to the markets, not just in the short run, but potentially further into the future. I regard this as a very exceptional set of circumstances, but it is one where the interests of the British state—the Government, the official Treasury, and the pound sterling’s position in the markets—were all completely aligned.⁹⁶

69. The circumstances of the Scottish referendum, where the very existence of the British state was at stake, were exceptional. However, the case presented in Sir Nicholas Macpherson’s advice on a currency union with an independent Scotland could have been presented in other ways and just as powerfully. The only purpose was to use the impartial status of a Permanent Secretary to give authority to the advocacy of a political argument. There were other ways of ‘reassuring the markets’. In any case, we do not accept that this was the primary reason for publishing this advice, because entering a currency union with an independent Scotland is a decision for government, not the Civil Service. The advice should not have been published. Its publication compromised the perceived impartiality of one of the UK’s most senior civil servants.

70. It remains the view of this Committee that civil service advice should remain protected. The decision to publish will have unintended consequences for advice given to ministers on future major issues—including referendums.

93 Q 679

94 [Q 189](#)

95 [Q 271](#)

96 Q 137

71. We recommend that guidance regarding the publication of Civil Service advice should be reiterated and if necessary revised to ensure that a civil servant's advice to a minister cannot be published in future, in order to protect the impartiality of the Civil Service in accordance with the Northcote-Trevelyan settlement.

72. The publication of this advice only occurred because it suited ministers' political objectives in respect of the Scottish referendum. The Government in response to this Report must make it clear that this will never recur.

4 Guiding the Civil Service through a referendum

The Civil Service Code

73. In our Report *Truth to Power*, we recognised that a politically impartial civil service was “the most effective way of supporting the democratically elected Government and future administrations in the UK”.⁹⁷ The Civil Service Code, first published in 1996, sets out the core Civil Service values of impartiality, integrity, honesty and objectivity, and the standards of behaviour expected of civil servants in upholding these values.⁹⁸ The Code was recognised in statute by the Constitutional Reform and Governance Act 2010. The Civil Service Commission told us that “there is always scope for tensions between politicians who want to argue their case forcibly and civil servants who must uphold the Code’s provisions on impartiality and objectivity” but “the Code provides an important safeguard to civil servants who may find themselves under pressure” or uncertain how to behave.⁹⁹

74. A Scottish Executive version of the Code was first published in 2006. A revised separate Code of Conduct covering civil servants who serve the Scottish Government was laid before the UK Parliament and Scottish Parliament in November 2010. The Scottish Code has only minor drafting differences to the version for UK Government civil servants.¹⁰⁰ Both versions are consistent in their description of civil servants’ obligations as regards impartiality.¹⁰¹ University of Edinburgh academic Richard Parry discussed the difference between the two codes, explaining that the Scottish version was rewritten “to make it clear the officials of the devolved administrations are accountable to devolved ministers. No channel of accountability to UK ministers is set out.”¹⁰² The Code makes reference to the conduct of civil servants in respect of political parties: “you must not act in a way that is determined by party political considerations, or use official resources for party political purposes.”¹⁰³ It contains no guidance in respect of referendums.

75. The Deputy First Minister described the Code as “a robust framework within which everybody can be clear, civil servants and also, importantly, ministers, about the approach that should be taken in this respect”.¹⁰⁴

97 Public Administration Select Committee, Eighth Report of Session 2013-14, [Truth to power: how Civil Service reform can succeed](#), HC 74 [incorporating HC 664-i-x, Session 2012–13], September 2013

98 House of Commons Library Standard Note SN/PC/3924, [The Civil Service Code](#), February 2006

99 Civil Service Commission [SIR16]

100 Further details of the statutory nature of the Codes are available in House of Commons Library Standard Note 6699, [The Civil Service Code](#), August 2013

101 Civil Service Commission [SIR16]

102 Richard Parry [SIR7]

103 Cabinet Office, [Civil Service Code](#), laid in Parliament on 11 November 2010

104 Q 589

Revising the guidance

76. There is now an opportunity to strengthen and clarify the Civil Service Code based on the culture and practice of government since the advent of devolution, as highlighted by the referendum, so that future referendums do not give rise to the same uncertainty and controversy.

77. The issues and concerns raised in the course of this inquiry suggest the need for explicit guidance for officials, to govern the conduct of the Civil Service during referendum campaigns. Such guidance would draw upon existing guidance on conduct during elections and the guidance drawn up for officials in advance of the Scottish independence referendum. The resulting guidance must be sufficiently generic to serve all foreseeable future referendums.

78. We recommend that the Civil Service Code be revised by including a simple new paragraph, so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the “yes” and “no” campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy.

5 Special Advisers and political campaigning

79. During the course of this inquiry, an issue arose in respect of Special Advisers, their relationship with their political parties and campaigning. This included the impartiality of civil servants' interpretation of the Code of Conduct of Special Advisers and of the terms of their contracts of employment.

Background

80. The activities and responsibilities of Special Advisers are currently set out in seven separate documents. Collectively these provide a framework within which Special Advisers may or "are expected to" operate, as we explored in detail in our 2012 report, *Special advisers in the thick of it*.¹⁰⁵ We concluded that Special Advisers have a legitimate and valuable function in Government, protecting the impartiality of the Civil Service by performing tasks that it would be inappropriate for permanent, impartial officials to perform, and helping to ensure that the Government's policy objectives are delivered.

81. The Constitutional Reform and Governance Act 2010 gave a statutory basis to the Civil Service Code and the Code of Conduct for Special Advisers, both of which form part of Special Advisers' terms and conditions of employment. As temporary civil servants, Special Advisers are bound by the Civil Service Code, but are exempted from its provisions relating to objectivity and political impartiality. They are also exempted from the general requirement that civil servants should be appointed on merit.¹⁰⁶ The Code of Conduct for Special Advisers describes the types of tasks that a Special Adviser may undertake, as well as containing provisions on relations with the permanent Civil Service, the media and the Government party, and involvement in national politics.¹⁰⁷ Article 19 of the Code contains a general prohibition on canvassing.

82. The Ministerial Code provides that "the responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment".¹⁰⁸ Section 3 of the Ministerial Code further requires that all Special Advisers must be appointed under the terms of the Model Contract for Special Advisers. As well as setting out standard terms and conditions of employment, such as pay and leave arrangements, the Model Contract directs the attention of newly-appointed Special Advisers to certain provisions of the "staff handbook" for their department, particularly in relation to disciplinary procedures, confidentiality and "the constitutional position".¹⁰⁹

105 Public Administration Committee, Sixth Report of Session 2012-13, [Special advisers in the thick of it](#), HC 134, paras 9-13.

106 Constitutional Reform and Governance Act 2010, section 10

107 Cabinet Office, [Code of Conduct for Special Advisers](#), June 2010

108 Cabinet Office, [Ministerial Code](#), May 2010, section 3

109 Cabinet Office, [Model contract for special advisers](#), June 2010, section 15

The role of Special Advisers and campaigning in by-elections

83. Early in January, it became clear that Special Advisers reporting to Conservative ministers had been subject to a general direction to take part in telephone canvassing on behalf of their party in the run-up to the Rochester and Strood by-election which was held on 20 November 2014. We understand that Special Advisers who requested instructions or guidance in writing, directing or permitting them to comply with this request were declined any such written instruction or guidance from their employer. They were told they should rely on a letter from the Conservative Party, which is not their employer. We took advice from Speaker's Counsel, Michael Carpenter, on the question of whether the Code and the Model Contract of employment for Special Advisers permitted Special Advisers to conduct telephone canvassing in a Parliamentary by-election. His advice is attached as an annex to this report. There was then an exchange of letters between Bernard Jenkin MP, Chair of PASC, and the Cabinet Secretary Sir Jeremy Heywood on this matter. PASC subsequently took oral evidence from Sir Jeremy on 26 January 2015 on the Code of Conduct for Special Advisers, and how he had advised it should be interpreted. We pressed Sir Jeremy to consult the Government's Law Officers, and he undertook to "take legal advice".¹¹⁰ PASC wrote to the Attorney General enclosing the previous correspondence and the advice given to PASC by Speaker's Counsel. The Prime Minister responded on behalf of the Government on 15 February. All this correspondence has already been published, and can be inspected on PASC's website.¹¹¹

84. **A Special Adviser is a civil servant, who is provided with specific and limited exemptions so that he/she can support the work of their minister and their department with political advice and in managing their minister's relationship with their political party. We accept that (in the words of the Cabinet Secretary) "The purpose of the political party activity rules in the Code" (and, by implication, in the Model Contract of Employment) "is therefore not to uphold political impartiality but to ensure that official resources or public funds are not used, or seen to be used, for party political purposes." We agree "this is an important principle..." and we agree "it is one which has been adhered to." We therefore see no intrinsic objection to the notion that Special Advisers should have a "strictly limited" role in political campaigning which is "non-public, carried out very clearly in a Special Adviser's own time, and with no use made of government resources or facilities." However, we do not accept that this is compatible with the Code of Conduct of Special Advisers, or the Model Contract, which are currently in force.**

85. **We accept Speaker's Counsel's advice that to rely on the principles quoted above as the basis for interpretation to permit telephone canvassing by Special Advisers represents "too narrow an approach" that disregards the "general prohibition on canvassing in Article 19" of the Code; and that telephone canvassing by a Special Adviser represents "the crossing of the Rubicon".**

¹¹⁰ Oral evidence taken on 27 January 2015, (2014-15), HC 669, Q 446

¹¹¹ [Public Administration Select Committee website](#)

86. We therefore conclude that any direction to a Special Adviser to conduct telephone canvassing was misguided, and that advice that such a direction or such canvassing was permitted under their Code and contract of employment was wrong in law. We also find it unacceptable for ministers and civil servants as employers of Special Advisers to be complicit in such directions or permissions, while refusing to provide any written assurances to Special Advisers that they would not be in breach of Article 19 of their Code or of their contracts of employment by complying with such directions or permissions. We cannot understand why the Special Advisers' Code was not altered to reflect the wishes of Ministers and officials, rather than insisting on a reinterpretation that was at variance with the text.

87. We recommend that Special Advisers should never again be confronted with directions or informal pressure that puts them in breach of the Code and of their contracts of employment. To forestall a reoccurrence of this situation, interpretations of the Code should be issued in writing and subject to the Law Officers' advice. We also recommend that either: the Special Advisers' Code and employment contracts should be amended to reflect what ministers and the Cabinet Secretary would prefer them to mean in respect of telephone canvassing, or it should be made clear that Special Advisers must comply with their Code and contracts of employment as they are written.

88. We are not concerned to blame any particular individual or individuals for what occurred, since ministers appear to have sought advice and the advice given by officials appeared to give what they believed to be the best advice under the circumstances, and which may have reflected past practice. We are concerned however that there should be proper reflection in order to understand what attitudes and expectations allowed this situation to develop.

89. We therefore recommend that the Cabinet Secretary convenes a meeting of relevant officials, including appropriate legal advice, and an independent-minded Special Adviser, to reflect upon how the situation arose, without seeking to find blame, to review the impact of what happened and to learn how the attitudes and expectations which contributed to these events should be changed. We would request the findings of this reflection and review to be included in the Government's response to this Report.

Conclusions and recommendations

Is the Civil Service still unified?

1. In practice the single unified Civil Service has become something of a constitutional fiction, since civil servants in Scotland are expected to serve the Scottish Government in the same way as civil servants in Whitehall departments serve the UK Government. However, the advantages that flow from having a single Home Civil Service justify the retention of a single UK Civil Service. (Paragraph 24)

White Paper: *Scotland's Future*

2. Many of the ministers and senior civil servants from whom we heard were keen to emphasise the professionalism of civil servants working in Scotland and Westminster during the referendum process. Our witnesses highlighted the dedication and hard work of many officials in both the devolved administrations and the UK Government. We wish to pay tribute to all the civil servants involved for their contribution to the process of the referendum. (Paragraph 57)
3. The contents of the Scottish Government White Paper, *Scotland's Future*, included a description of the SNP's proposed programme for government that was contingent upon their winning the 2016 Scottish Parliament elections. This did not uphold the factual standards expected of a UK Government White Paper and therefore raised questions about the use of public money for partisan purposes. Civil servants serving the Scottish Government are obliged to serve the objectives of their Government. We recognise that the exceptional circumstances of the Scottish referendum placed some civil servants in a challenging position, which would have been difficult for them to express publicly. (Paragraph 58)
4. Parts of the White Paper should not have been included in a Government publication. Civil servants should always advise against the appearance of partisan bias in Government documents—and they should not be required to carry out ministers' wishes, if they are being asked to use public funds to promote the agenda of a political party, as was evident in this case. At the very least, Sir Peter Housden, Scotland's Permanent Secretary, should have required a letter of direction. (Paragraph 59)
5. We recommend that the Civil Service Code should be revised to specifically refer to referendums and provide civil servants across the UK with clear and definitive guidance on their role in respect of referendum campaigns. We have provided a suggested amendment to the code in the Annex to this Report. (Paragraph 60)

Impartiality and the publication of advice to ministers

6. The circumstances of the Scottish referendum, where the very existence of the British state was at stake, were exceptional. However, the case presented in Sir Nicholas Macpherson's advice on a currency union with an independent Scotland could have been presented in other ways and just as powerfully. The only purpose was to use the impartial status of a Permanent Secretary to give authority to the advocacy of a political argument. There were other ways of 'reassuring the markets'. In any case, we do not accept that this was the primary reason for publishing this advice, because entering a currency union with an independent Scotland is a decision for government, not the Civil Service. The advice should not have been published. Its publication compromised the perceived impartiality of one of the UK's most senior civil servants. (Paragraph 69)
7. It remains the view of this Committee that civil service advice should remain protected. The decision to publish will have unintended consequences for advice given to ministers on future major issues—including referendums. (Paragraph 70)
8. We recommend that guidance regarding the publication of Civil Service advice should be reiterated and if necessary revised to ensure that a civil servant's advice to a minister cannot be published in future, in order to protect the impartiality of the Civil Service in accordance with the Northcote-Trevelyan settlement. (Paragraph 71)
9. The publication of this advice only occurred because it suited ministers' political objectives in respect of the Scottish referendum. The Government in response to this Report must make it clear that this will never recur. (Paragraph 72)

Revising the guidance

10. There is now an opportunity to strengthen and clarify the Civil Service Code based on the culture and practice of government since the advent of devolution, as highlighted by the referendum, so that future referendums do not give rise to the same uncertainty and controversy. (Paragraph 76)
11. The issues and concerns raised in the course of this inquiry suggest the need for explicit guidance for officials, to govern the conduct of the Civil Service during referendum campaigns. Such guidance would draw upon existing guidance on conduct during elections and the guidance drawn up for officials in advance of the Scottish independence referendum. The resulting guidance must be sufficiently generic to serve all foreseeable future referendums. (Paragraph 77)
12. We recommend that the Civil Service Code be revised by including a simple new paragraph, so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the "yes" and "no" campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy. (Paragraph 78)

The role of Special Advisers and campaigning in by-elections

13. A Special Adviser is a civil servant, who is provided with specific and limited exemptions so that he/she can support the work of their minister and their department with political advice and in managing their minister's relationship with their political party. We accept that (in the words of the Cabinet Secretary) "The purpose of the political party activity rules in the Code" (and, by implication, in the Model Contract of Employment) "is therefore not to uphold political impartiality but to ensure that official resources or public funds are not used, or seen to be used, for party political purposes." We agree "this is an important principle..." and we agree "it is one which has been adhered to." We therefore see no intrinsic objection to the notion that Special Advisers should have a "strictly limited" role in political campaigning which is "non-public, carried out very clearly in a Special Adviser's own time, and with no use made of government resources or facilities." However, we do not accept that this is compatible with the Code of Conduct of Special Advisers, or the Model Contract, which are currently in force. (Paragraph 84)
14. We accept Speaker's Counsel's advice that to rely on the principles quoted above as the basis for interpretation to permit telephone canvassing by Special Advisers represents "too narrow an approach" that disregards the "general prohibition on canvassing in Article 19" of the Code; and that telephone canvassing by a Special Adviser represents "the crossing of the Rubicon". (Paragraph 85)
15. We therefore conclude that any direction to a Special Adviser to conduct telephone canvassing was misguided, and that advice that such a direction or such canvassing was permitted under their Code and contract of employment was wrong in law. We also find it unacceptable for ministers and civil servants as employers of Special Advisers to be complicit in such directions or permissions, while refusing to provide any written assurances to Special Advisers that they would not be in breach of Article 19 of their Code or of their contracts of employment by complying with such directions or permissions. We cannot understand why the Special Advisers' Code was not altered to reflect the wishes of Ministers and officials, rather than insisting on a reinterpretation that was at variance with the text. (Paragraph 86)
16. We recommend that Special Advisers should never again be confronted with directions or informal pressure that puts them in breach of the Code and of their contracts of employment. To forestall a reoccurrence of this situation, interpretations of the Code should be issued in writing and subject to the Law Officers' advice. We also recommend that either: the Special Advisers' Code and employment contracts should be amended to reflect what ministers and the Cabinet Secretary would prefer them to mean in respect of telephone canvassing, or it should be made clear that Special Advisers must comply with their Code and contracts of employment as they are written. (Paragraph 87)

17. We are not concerned to blame any particular individual or individuals for what occurred, since ministers appear to have sought advice and the advice given by officials appeared to give what they believed to be the best advice under the circumstances, and which may have reflected past practice. We are concerned however that there should be proper reflection in order to understand what attitudes and expectations allowed this situation to develop. (Paragraph 88)
18. We therefore recommend that the Cabinet Secretary convenes a meeting of relevant officials, including appropriate legal advice, and an independent-minded Special Adviser, to reflect upon how the situation arose, without seeking to find blame, to review the impact of what happened and to learn how the attitudes and expectations which contributed to these events should be changed. We would request the findings of this reflection and review to be included in the Government's response to this Report. (Paragraph 89)

Annex: Revision to the Civil Service Code

Proposed new paragraph 16

The obligations in this Code apply to your conduct towards a referendum, and towards any possible answer to a referendum question, in general, and in respect of any political party, belief or persuasion. In particular, you are to have regard to any special restrictions upon Ministers, or your organisation, which may apply during all or part of a referendum period (as defined in the Political Parties, Elections and referendums Act 2000), concerning the release of information or material, or otherwise.

Appendix: Advice from Speaker's Counsel

Special Advisers' Code of Conduct

21 January 2015

- 1) Your Chairman has asked for my views on the letter of 20 January from Sir Jeremy Heywood. This was in reply to the Chairman's letter of 7 January 2015.
- 2) Sir Jeremy argues on behalf of the Prime Minister that it is not a breach of the Special Advisers' Code for a Special Adviser to be involved in a by-election campaign, provided this is done in a non-public way in the Special Adviser's own time and with no use made of government resources or facilities.
- 3) The Chairman's letter of 7 January referred to my advice that the Special Advisers' Code does not permit Special Advisers to take part in door-to-door campaigning or telephone canvassing for a political party.
- 4) Sir Jeremy appears to accept the first part of this proposition (in relation to door-to-door campaigning) but not the second. Sir Jeremy distinguishes the making of 'private telephone calls from CCHQ in a Special Adviser's own time' (which is consistent with the Code) from 'active and visible public campaigning in a constituency, such as public door-to-door canvassing or public speaking' (which is not).
- 5) Sir Jeremy therefore appears to accept that 'active and visible public campaigning' by a Special Adviser is inconsistent with the Code, whether or not this is done in a Special Adviser's own time. (If it is done during working hours then it would involve the use of Government resources and would be prohibited on that account).
- 6) The issue, therefore, is the extent to which a Special Adviser may engage in 'limited private activity' such as making private telephone calls from CCHQ if this is done in a Special Adviser's own time. Sir Jeremy argues that private activity which is so limited does not constitute a breach of the Special Advisers' Code. He compares this with guidance issued by the former Government which permitted 'backroom support activities, such as stuffing envelopes and liaison with the party' provided this was done in the individual's own time outside office hours.
- 7) At the risk of appearing pedantic, there does seem to me to be a material difference between the 'backroom support activities' described in the previous Government's guidance and the present practice of Special Advisers making telephone calls on behalf of the political party. In the former case, there is no necessary interaction with members of the public, whereas the whole point of the telephone calls is (presumably) to engage with the public. There is therefore the risk of a Special Adviser being seen to engage in debate with members of the public in order to advance the fortunes of a political party. Moreover, the making of telephone calls on behalf of a political party to a member of the public appears to me to amount to 'canvassing' which is expressly prohibited by Article

19 of the Code, whether or not it is done publicly. The natural and ordinary meaning of to ‘canvass’ is to solicit (particularly of votes or opinions) and it is irrelevant whether this is done publicly or privately.

8) The second paragraph of Sir Jeremy’s letter states that ‘the purpose of the political activity rules in the Code is not to uphold political impartiality but to ensure that official resources or public funds are not used, or seen to be used, for party political purposes’. With respect, I think this is to take too narrow an approach. It is not simply a question of the apparent or actual use of public funds, but also the question of persons being seen to take part in party political activities while remaining on the public payroll. In this regard, one returns to the express and general prohibition on canvassing in Article 19.

9) Moreover, the provisions of Article 20(ii) require a Special Adviser first to resign if he wishes ‘to help in a party headquarters or research unit during [a] campaign’. The provision does not excuse the provision of such help if done during the Special Adviser’s own time, neither does it excuse such help if it is provided privately.

10) The position adopted in Sir Jeremy’s letter must (I suggest) involve a contradiction. If any involvement in a by-election campaign has to be ‘strictly limited–non-public’ but what is the position where such activities are made public, such as by being reported in a newspaper?

11) I am afraid I remain unpersuaded by the arguments in Sir Jeremy’s letter. It seems to me (as I think it would to a court seized of any contractual dispute over the meaning of the Code) that a Special Adviser engages in ‘canvassing’ if he makes telephone calls on behalf of a political party to members of the public. Such conduct is not a ‘backroom support activity’ of the kind contemplated in the guidance issued by the previous Government, but does mark the crossing of a Rubicon.

Michael Carpenter CB
Speaker’s Counsel

Formal Minutes

Tuesday 17 March 2015

Members present:

Mr Bernard Jenkin, in the Chair

Mr Nigel Evans
Paul Flynn
Mrs Cheryl Gillan

Kelvin Hopkins
Mr Andrew Turner

Draft Report (*Lessons for Civil Service impartiality from the Scottish independence referendum*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 89 read and agreed to.

Annex and Summary agreed to.

A Paper was appended to the Report as an Appendix .

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 24 March at 2.00 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/pasc

Tuesday 8 April 2014

Question number

Professor Michael Keating, University of Aberdeen, and
Professor Jim Gallagher, University of Oxford

[Q1-99](#)

Wednesday 9 April 2014

Sir Nicholas Macpherson, Permanent Secretary, HM Treasury

[Q100-182](#)

Tuesday 6 May 2014

Sir Bob Kerslake, Head of the Civil Service and Permanent Secretary, to the Department for Communities and Local Government, and
Sir Peter Housden, Permanent Secretary to the Scottish Government and Secretary to the Scottish Cabinet

[Q183-345](#)

David Maddox, Westminster Correspondent, The Scotsman, **Michael Settle**, UK Political Editor, The Herald and **Professor James Mitchell**, Professor of Public Policy and International Relations, University of Edinburgh

[Q346-384](#)

Tuesday 13 May 2014

Rt Hon Peter Riddell CBE, Director, and **Akash Paun**, Fellow, Institute for Government

[Q385-473](#)

Wednesday 11 June 2014

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

[Q474-575](#)

Monday 16 June 2014

John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth, Scottish Government

[Q576-654](#)

Professor Susan Deacon, University of Edinburgh, **David Clegg**, Daily Record, **Simon Johnson**, The Telegraph (Scotland), and **Scott MacNab**, The Scotsman

[Q655-706](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/pasc. SIR numbers are generated by the evidence processing system and so may not be complete.

- 1 Alan Reid ([SIR0001](#))
- 2 Andrew Inglis ([SIR0009](#))
- 3 Better Government Initiative ([SIR0005](#))
- 4 Civil Service Commission ([SIR0016](#))
- 5 Committee on Standards in Public Life ([SIR0006](#))
- 6 FDA ([SIR0010](#))
- 7 John McTernan ([SIR0008](#))
- 8 Keith Howell ([SIR0004](#))
- 9 Martyn Cook ([SIR0011](#))
- 10 Michael McCann MP ([SIR0002](#))
- 11 Richard Parry ([SIR0007](#))
- 12 Scottish Ministers, The Scottish Government ([SIR0015](#))
- 13 The Head Of The Civil Service ([SIR0013](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/pasc

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2014–15

First Report	Who's accountable? Relationships between Government and arm's-length bodies	HC 110 (HC 1129)
Second Report	Appointment of the Chair of the Advisory Committee on Business Appointments	HC 759
Third Report	Leadership for the long term: Whitehall's capacity to address future challenges	HC 669
Fourth Report	Developing Civil Service Skills: a unified approach	HC 112
First Special Report	Business Appointment Rules: Government Response to the Committee's Third Report of Session 2012-13	HC 563
Second Special Report	Too soon to scrap the Census: Government and UK Statistics Authority Responses to the Committee's Fifteenth Report of Session 2013–14	HC 601
Third Special Report	More Complaints Please! and Time for a People's Ombudsman Service: Government Responses to the Committee's Twelfth and Fourteenth Reports of Session 2013-14	HC 618
Fourth Special Report	Caught red-handed: Why we can't count on Police Recorded Crime statistics: UK Statistics Authority Response to the Committee's Thirteenth Report of Session 2013-14	HC 645
Fifth Special Report	Statistics and Open Data: Government Response to the Committee's Tenth Report of Session 2013-14	HC 620

Session 2013–14

First Report	Communicating statistics: not just true but also fair	HC 190 (HC 573)
Second Report	Public engagement in policy-making	HC 75 (HC 986)
Third Report	The role of the Charity Commission and "public benefit": Post-Legislative scrutiny of the Charities Act 2006	HC 76 (HC 927)
Fourth Report	Engaging the public in National Strategy	HC 435
Fifth Report	Appointment of the Chair of the Committee on Standards in Public Life	HC 516
Sixth Report	Government Procurement	HC 123 (HC 105)
Seventh Report	Migration Statistics	HC 523
Eighth Report	Truth to Power: how Civil Service reform can succeed	HC 74 (HC 955)
Ninth Report	Latest proposals for ministerial involvement in permanent secretary appointments: PASC's recommendations	HC 1041

Tenth Report	Statistics and Open Data: Harvesting unused knowledge, empowering citizens and improving public services	HC 564
Eleventh Report	The failure of the Cabinet Office to respond to our Report on the Business Appointment Rules	HC 1156
Twelfth Report	More complaints please!	HC 229
Thirteenth Report	Caught red-handed: Why we can't count on Police Recorded Crime statistics	HC 760 (Cm 8910)
Fourteenth Report	Time for a People's Ombudsman Service	HC 655
Fifteenth Report	Too soon to scrap the census	HC 1090
First Special Report	Public Trust in Government Statistics: A review of the operation of the Statistics and Registration Service Act 2007: Government and UK Statistics Authority Responses to the Committee's Ninth Report of Session 2012–13	HC 77
Second Special Report	Special advisers in the thick of it: Government Response to the Committee's Sixth Report of Session 2012–13	HC 515
Session 2012–13		
First Report	The Big Society: Further Report with the Government Response to the Committee's Seventeenth Report of Session 2010–12	HC 98
Second Report	The Honours System	HC 19
Third Report	Business Appointment Rules	HC 404
Fourth Report	Appointment of the Chair of the Charity Commission	HC 315-I
Fifth Report	End of term report: 2011–12	HC 316
Sixth Report	Special advisers in the thick of it	HC 134
Seventh Report	The Honours System: Further Report with the Government Response to the Committee's Second Report of Session 2012–13	HC 728
Eighth Report	The Role of the Cabinet Secretary and the Resignation of the Chief Whip	HC 864 (HC 968)
Ninth Report	Public Trust in Government Statistics, A review of the operation of the Statistics and Registration Service Act 2007	HC 406 (HC 77)
First Special Report	Public Appointments: regulation, recruitment and pay: Government Response to the Committee's Fourteenth Report of Session 2010–12	HC 18
Second Special Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary: Further Report: Government Response to the Committee's Twenty Third Report of Session 2010–12	HC 313
Third Special Report	Strategic thinking in Government: without National Strategy, can viable Government strategy emerge? Government Response to the Committee's Twenty Fourth Report of Session 2010–12	HC 573
Fourth Special Report	The role of the Cabinet Secretary and the Resignation of the Chief Whip: Government Response to the Committee's Eights Report of Session 2012–13	HC 968
Fifth Special Report	The Prime Minister's Adviser on Ministers' Interests: independent or not? Government Response to the Committee's Twenty Second Report of Session 2010–12	HC 976

Session 2010–12

First Report	Who does UK National Strategy?	HC 435 (HC 713)
Second Report	Government Responses to the Committee's Eighth and Ninth Reports of Session 2009–10: Goats and Tsars: Ministerial and other appointments from outside Parliament and Too Many Ministers?	HC 150
Third Report	Equitable Life	HC 485 (Cm 7960)
Fourth Report	Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments	HC 601
Fifth Report	Smaller Government: Shrinking the Quango State	HC 537 (Cm 8044)
Sixth Report	Who does UK National Strategy	HC 713
Seventh Report	Smaller Government: What do Ministers do?	HC 530
Eighth Report	Cabinet Manual	HC 900
Ninth Report	Pre-appointment hearing for the post of Parliamentary and Health Service Ombudsman	HC 1220
Tenth Report	Remuneration of the Parliamentary and Health Service Ombudsman	HC 1350
Eleventh Report	Good Governance and Civil Reform: 'End of Term' Report on Whitehall plans for structural reform	HC 901
Twelfth Report	Government and IT—"a recipe for rip-offs": time for a new approach	HC 715
Thirteenth Report	Change in Government: the agenda for leadership	HC 714
Fourteenth Report	Public Appointments: regulation, recruitment and pay	HC 1389
Fifteenth Report	Smaller Government: What do Ministers do? Further Report with the Government Response to the Committee's Seventh Report of Session 2010–12	HC 1540
Sixteenth Report	Appointment of the Chair of the UK Statistics Authority	HC 910
Seventeenth Report	The Big Society	HC 902
Eighteenth Report	Change in Government: the agenda for leadership. Further Report	HC 1746
Nineteenth Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary	HC 1582
Twentieth Report	Government and IT—"a recipe for rip-offs": time for a new approach. Further Report	HC 1724
Twenty-first Report	Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council	HC 1621
Twenty-second Report	The Prime Minister's adviser on Ministers' interests: independent or not?	HC 1621
Twenty-third Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary. Further Report	HC 1914
Twenty-fourth Report	Strategic thinking in Government: without National Strategy, can viable Government strategy emerge?	HC 1625