



House of Commons
Public Administration Select
Committee

**Leaks and
Whistleblowing in
Whitehall**

Tenth Report of Session 2008–09

*Report, together with formal minutes, oral and
written evidence*

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The Public Administration Select Committee

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Summary

In this report we examine the effects of leaks on government. Leaks are damaging to trust within government and trust in government. In particular, they endanger ministers' confidence in an impartial Civil Service. However, we recognise that leaks can raise matters of genuine public interest and that the Freedom of Information Act has changed the legal landscape in favour of the open disclosure of government information. The Public Interest Disclosure Act sets an appropriate framework that balances these competing interests in almost all of the exceptional circumstances where leaking might be considered justified. However, there should also be a mechanism by which evidence that the Government has misled Parliament or the public, or failed to act on concerns that have been raised, can be investigated and reported to Parliament.

We found evidence to support the view that leak investigations within government often fail to find the culprit. Such investigations are constrained by political leaking. There should be independent investigation of breaches of the Civil Service Code by special advisers and a review of the resources available to leak investigators. We are also concerned that the boundaries between criminal and non-criminal disclosure of leaking established by the Official Secrets Act are becoming blurred.

The most effective way to prevent leaks by civil servants is to provide accessible, effective and visible channels by which civil servants of all grades can raise genuine concerns about the conduct of government. Whilst progress is being made increasing awareness about whistleblowing procedures in the Senior Civil Service, more needs to be done to ensure that all grades know how to access them and have the confidence to do so. In particular, much more should be done to ensure that whistleblowers who raise concerns in good faith are protected and feel that their concerns are taken seriously.

1 Introduction

Conduct of the Inquiry

1. We launched our inquiry into leaks and whistleblowing in Whitehall in December 2008. The immediate impetus for the inquiry was the arrest of Christopher Galley, a civil servant, and Damian Green MP, an opposition front-bench spokesman, in connection with leaks from the Home Office. The chain of events in that particular case has been examined by the Home Affairs Select Committee. Our inquiry, leading to this report, was concerned with wider questions that the case raised concerning the disclosure of official information and adherence to the Civil Service Code.¹

2. We issued a call for evidence in December 2008 and received 12 submissions. We held six oral evidence sessions with current and former civil servants, journalists, political commentators, the Campaign for Freedom of Information, the former Director of Public Concern at Work, the Committee on Standards in Public Life (CSPL) and the Civil Service Commissioners. We also held an evidence session with Civil Service unions, covering this and two other inquiries.²

3. This report considers four issues:

- whether leaking information from government can ever be justified,
- the process for investigating leaks,
- how leaking can be prevented and
- the effectiveness of Civil Service whistleblowing policies.

Scope and Definitions

4. The Civil Service Code was introduced in 1996 and revised most recently in 2006. It sets out the core values of the Civil Service and standards expected of civil servants. The Code is part of the terms and conditions of employment for every civil servant. Section 6 of the Civil Service Code states that civil servants “must not disclose official information without authority”.³ However, as the Chairman of the Committee on Standards in Public Life (CSPL) told us, there are occasions when a supposed leak in fact proves to be an authorised disclosure of information or a misunderstanding of publicly available material.⁴ Sir David Omand, a former permanent secretary, argued that a disclosure should only be considered a leak when it contains information “that a civil servant could reasonably be regarded as under a duty to protect”.⁵ In his view, such material includes internal policy-making debate, personal information about individuals, information impinging on commercial

1 Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157

2 Public Administration Select Committee, *Civil and Public Service Issues*, HC 352-i

3 Cabinet Office, *The Civil Service Code*, June 2006, para 6

4 Q 187

5 Ev 3

secrecy or national security and so forth.⁶ He observed that civil servants regularly communicate with people who are external to government and are trusted to use their discretion as to what can be appropriately disclosed.⁷

5. There are also circumstances in which disclosures of information are not authorised but are nonetheless in accordance with established procedures to expose alleged wrongdoing. In particular, the Civil Service Code allows civil servants to approach the Civil Service Commissioners with concerns that cannot be resolved within the department. There are also certain circumstance under which an individual might disclose information to trade unions, nominated officers or lawyers to seek advice. We refer to such disclosures as ‘whistleblowing’ in this report, although we recognise that in common usage the term has a wider meaning.

6. In this report, we define leaks as intentional disclosures of official information where there is a reasonable expectation that the information should not be disclosed without higher authorisation. We have focused on civil servants and, to a lesser extent, ministers. We recognise the vital importance of good whistleblowing procedures in the wider public services, such as the NHS, but these are beyond the scope of this report.

6 Ev 3 ; Q 116

7 Ev 3

2 When can leaking be justified?

7. In this chapter we examine the effects of leaks on government and whether there are circumstances in which they can be justified.

Effects of leaks from the Civil Service

8. Leaks have long been an occupational hazard in government. They are widely seen as damaging. The Cabinet Secretary told us that leaks undermine the confidence of ministers in the Civil Service and reduce the quality of debate inside government.⁸ The letter from the Director of Security and Intelligence at the Cabinet Office to the Assistant Commissioner Specialist Operations at the Metropolitan Police asking them to consider investigating the leaks at the Home Office, referred to the leaks “having an impact on the efficient and effective conduct of Government business, affecting the ability of ministers and senior officials to have full and frank discussions on sensitive matters and undermining necessary trust”.⁹

9. A particular concern, raised by the FDA, the trade union for senior civil servants, and the Civil Service Commissioners, is that leaks endanger ministers’ trust in their civil servants to act impartially regardless of their personal political beliefs. The Commissioners stated that leaks from the Civil Service undermine confidence in its ability to be loyal to successive governments of different political affiliations.¹⁰

10. Sir David Omand also made this point. He went on to say that leaks eroded trust between civil servants, leading to suspicion falling on innocent and guilty alike, and making it more difficult for civil servants to give frank and challenging advice to ministers.¹¹ These points were developed by Sir Suma Chakrabarti, the Permanent Secretary at the Ministry of Justice, who gave an example of a presentation on efficiency savings that was leaked from his department. He told us that the leak had endangered efforts to encourage open debate within the department and that repeated leaks from a single area of a department made it difficult to work with people there.¹²

11. On the other hand, some of our witnesses argued that leaking could result in issues being opened up to scrutiny that would otherwise have been concealed. For example, the journalist David Hencke told us of an occasion when a leak led to parliamentary scrutiny of an issue in the Department for Environment, Food and Rural Affairs that would otherwise have been concealed.¹³ Maurice Frankel, from the Campaign for Freedom of Information, argued that the potential for a leak could be “an important part of keeping government honest”. He considered that the prospect of a leak could be a check on the Government

8 Q 1

9 Ev 69

10 Ev 71

11 Ev 78

12 Q 396

13 Q 118

“going too far” in making public statements that did not accurately reflect the factual information they were based on.¹⁴

12. Leaks by civil servants undermine trust within government, call into question the impartiality of the Civil Service and may also serve to stifle effective policy debate within government. Nonetheless, there is a tension between the need for trust within government and the right of the public to be fully informed on matters of genuine public interest.

Public Interest

13. Sir David Omand argued that, whatever benefits particular leaks might have, they could not be justified. He drew an analogy with a criminal act that has unintended benefits. Just as the criminal cannot justify his action by these benefits, so leakers cannot justify their actions because they bring a genuine issue to light.¹⁵ His view was not shared by some of our other witnesses, particularly in circumstances where individual civil servants felt that the public interest required the disclosure of specific information. David Hencke told us that this was the reason behind most of the leaks he had received from civil servants.¹⁶

The case for public interest leaking

14. We took evidence from two civil servants who had leaked material to the media, Katharine Gun and Derek Pasquill. Ms Gun was working at GCHQ in 2003 when she leaked an email from the US National Security Agency. She did so because she felt that it contradicted the public line being taken by the UK and US governments at the time and because she felt the request made in the email was “immoral, illegal and completely against humanity”.¹⁷ Mr Pasquill leaked information relating to the Government’s engagement with political Muslim groups because he felt the policy was “potentially catastrophic for Britain” and needed to be challenged.¹⁸

15. These individuals leaked this information because they believed it would change the public’s perception of government policy. Defending his decision to leak, Mr Pasquill said he did not believe civil servants should use the media to get policy changed as a matter of course. However, he argued that his position at the Foreign and Commonwealth Office gave him a “special insight” into the issues, his reason for leaking being “to make sure that the public had an awareness of the issues that were involved and that they had an opportunity to see what was going on and could perhaps put us [the FCO] under pressure”.¹⁹

16. Some of our other witnesses accepted that Parliament and the public’s “right to know” could justify leaking in some circumstances. For example, Professor Peter Hennessy cited

14 Q 123

15 Q 132

16 Q 171

17 Q 263

18 Q 300, Q 303

19 Q 300, Q 304, Q 305 and Ev 79

the leaking of the Attorney General's verdict on the legality of the 2003 Iraq war, arguing that the importance of the issue, widespread perception that the war was illegal and lack of transparency from the Government meant that the public and Parliament "needed to know" what the document contained in order to make an informed decision.²⁰ He also discussed cases where civil servants were aware of deception by ministers, citing the case of Sir Anthony Eden lying to the House of Commons about the Suez crisis.²¹

17. Dr Brian Woods-Scawen from the Committee on Standards in Public Life told us that there needed to be a route by which civil servants could raise their concerns with someone outside their departments, such as regulators, law enforcement bodies or the Civil Service Commissioners. He said there were circumstances in which

generally, when you have exhausted, as it were, the internal remedies and you still feel as an employee, whether it is fraud or misrepresentation of information or malpractice...that something of significant public interest is being withheld, I absolutely believe there is a right and a responsibility to go to the appropriate person.²²

He went on to say that in serious cases where "an official believed the public interest was being prejudiced and nobody was doing anything about it" and where they had exhausted all the other internal and external channels then making information public could be justified.²³

The case against public interest leaking

18. Those who argued that leaking by civil servants could not be justified did not dispute that the information disclosed might be in the public interest. Sir Suma Chakrabarti argued that there was a stronger public interest in the preservation of an impartial Civil Service and of the values contained in the Civil Service Code than that in information leaked by civil servants.²⁴ The FDA did not believe leaks by civil servants could ever be justified, stating in their evidence that the role of the Civil Service was to support the government of the day, not be an "impartial umpire" in political disputes. They considered that civil servants owed a duty of confidentiality to their ministers:

for a civil servant to disclose official information without authority means that civil servant is seeking to put their interpretation of the public interest above that of their civil servant manager (their departmental Permanent Secretary or, ultimately, the Head of the Civil Service) and above that of the judgment of Ministers.²⁵

19. This view was supported by the Cabinet Secretary, who told us that it was not the role of individual civil servants to decide what information should be made public.²⁶ Sir David

20 Q 120

21 Q 135

22 Q 191

23 Q 192

24 Q 362

25 Ev 73

26 Q 113

Omand agreed, saying that individual civil servants might not have a complete understanding of events and should seek advice from within the Civil Service, up to and including the head of the department, or take the matter to the Civil Service Commissioners (an option that is discussed in detail later in this report).²⁷ If their concerns were borne out, he saw it as the head of department's responsibility to take such matters up with the Secretary of State and make clear that officials would not act in a way that misled the public or Parliament. If these channels did not produce the result the individual civil servant wanted, then, in Sir David's view, they should either accept the situation, or resign and make the matter public.²⁸

20. Carne Ross, a former diplomat who resigned from the service following the Iraq war, agreed with Sir David Omand, telling us

I do not believe in leaking. I think that if you are in a system, if you are in a ministry, you sign up to its rules and you should stick to them. I think if officials are leaking everything they disagree with, the system rapidly becomes unworkable. I think the only way to address serious concerns about policy is to resign and speak out and join the public debate.

However, he later qualified his statement, saying that there might be a case for leaking where "criminal activity or blatant dishonesty" was involved.²⁹

Public Interest Disclosure Act

21. The Civil Service Commissioners, in their written evidence, took an intermediate position and suggested that they could envisage circumstances in which the unauthorised disclosure of information would be justified. However, they stated that "the bar must be set very high" and pointed to the six areas of disclosure protected by the Public Interest Disclosure Act 1998 (PIDA) as setting the appropriate balance.³⁰

22. PIDA provides limited protection from reprisal for individuals who disclose information relating to a criminal offence, a failure to comply with legal obligations, a possible miscarriage of justice, health and safety, environmental damage or concealment of any of these matters. Individuals qualify for protection under PIDA if they make disclosures through the whistleblowing procedures of their employer or to their employer directly. Disclosures can also be made to relevant regulatory bodies specified in subordinate legislation. Disclosures to others, including the media, can be protected if the individual feels there would be risks attached to disclosing the information internally, or if a qualifying disclosure has already been made, and if it meets conditions relating to the reasonableness of disclosure and good faith. Of particular importance in assessing such conditions are factors such as the seriousness of the matter being disclosed, the person to whom the disclosure is made, whether the disclosure breaches a duty of confidentiality,

27 Q 118, Q 140

28 Q 124, 125

29 Q 354

30 Ev 72

whether the recipient of a previous disclosure acted appropriately on receiving it and whether the wrongdoing is likely to recur or is ongoing.

23. Our witnesses were broadly satisfied with the Act. Sir David Omand stressed its role in protecting whistleblowers who followed internal procedures.³¹ Public Concern at Work were content with the legislative framework although, as we discuss in Chapter 3, they felt it needed more promotion and closer observance within Whitehall.³² As noted above, the Civil Service Commissioners felt that its provisions were appropriate.³³ However, the General Secretary of the Public and Commercial Services Union (PCS) said that there was a lot of misunderstanding about the Act – in particular an erroneous belief that it provided greater protection to whistleblowers than it in fact did.³⁴

Public Interest Leaking - Conclusions

24. **There is a strong public interest in a Civil Service which is able to act impartially to support the government of the day. Leaks by civil servants undermine the trust that is necessary to this relationship. Leaks for partisan political reasons are especially deplorable. The Civil Service Code is clear that information should not be disclosed without authorisation and the leaking of information by civil servants for political purposes, to undermine government policy or for personal gain, is reprehensible.**

25. **Despite this, there are exceptional circumstances in which a civil servant could be justified in leaking material in order to expose serious wrongdoing. This would need to have followed a failure of proper channels both of disclosure and challenge within government. In short, it must be a last resort. The provisions of the Public Interest Disclosure Act 1998 cover the majority of these circumstances and the Act sets an appropriate balance between the competing interests of maintaining a trustworthy Civil Service and protecting the public interest.**

26. **The Civil Service Code also includes the requirement not to mislead ministers, Parliament or others. A civil servant who is aware that the public or Parliament has been deliberately misled by the government has a duty to put this right. This should involve taking the matter to the Civil Service Commissioners so that they can establish the facts independently. If they agree that there is a case to answer, they should have the power to report on the situation to Parliament and disclose the information concerned. However, where Parliament has been misled and decisions are about to be taken on the basis of this misleading information, giving an urgency to the situation, it may be that a report direct to a select committee chairman can be justified as a last resort.**

Freedom of Information

27. The Freedom of Information Act 2000 (FOI) introduced a presumption that official information should be made public – subject to certain exceptions – and a mechanism to

31 Q 160

32 Ev 81

33 Ev 72

34 HC 352-I, Q 7 [Charles Cochrane]

decide whether the release of a particular piece of information was in the public interest. In Maurice Frankel's opinion, a civil servant "tipping off" an outsider as to the existence of specific documents, with the intention that a request under FOI would then follow, should not be considered a leak.³⁵ David Hencke gave an example where this had been done recently and also of a case where officials had suggested he look closely at particular entries in departmental accounts.³⁶ In reference to David Hencke's examples, Sir David Omand said that he could see nothing wrong with the officials' behaviour as they related to "public" information.³⁷

28. Maurice Frankel noted that certain disclosures could be ordered under FOI which would otherwise be a breach of the Official Secrets Act. This was because FOI contained a "public interest" test to determine whether the information should be released, whereas the Official Secrets Act used a test of the harm caused by the disclosure. He gave a recent example where the Information Tribunal had ordered the release of information that could prove harmful to international relations but nonetheless was, in their view, in the public interest.³⁸

29. The Civil Service Commissioners argued in their written evidence that a properly functioning freedom of information regime should weaken the public interest case for making unauthorised disclosures of information.³⁹ However, their evidence, and that of others, suggested that departments had been cautious in their responses to FOI requests. Maurice Frankel suggested that departments had introduced internal data management procedures to minimise the information that could be discovered under FOI. David Hencke observed that timing was often crucial to the impact that disclosed information could have and that the FOI processes could be lengthy.⁴⁰

30. The Freedom of Information Act established the principle that government information should be made public, subject to exceptions, and provides a mechanism by which the public interest merits of disclosure can be determined. Government needs to recognise that this changes the principles that apply to the disclosure of official information, balancing the traditional duty of confidentiality to ministers with the statutory duty to provide information to the public. This means that there may be circumstances in which a civil servant could properly take action to prompt a request under the Act.

31. The existence of Freedom of Information provides a legitimate alternative to leaking information and in so doing should weaken the public interest case for leaking. This will only be the case, however, if government departments act within the spirit of the legislation, in particular by proactively publishing as much information as possible and by ensuring that requests under the Act are responded to quickly and fully.

35 Q 139

36 Q 142

37 Q 142

38 Q 168

39 Ev 72

40 Q 170

Political leaking and self-authorisation

32. We were told by David Hencke that the majority of leaks tended to be political in origin, primarily coming from special advisers or ministers, and undertaken with political goals in mind.⁴¹ Similarly, Professor Hennessy said that one reason for leaking was a desire to embarrass other government departments. Again, he attributed this form of leaking primarily, but not exclusively, to political sources.⁴² The FDA said that political leaking was “corrosive” to morale within government and could take place for short-term political advantage, to trail ideas and gauge public reaction to them or to damage other ministers. They told us that there is a perception in the Civil Service that “the Downing Street machine” plays a key role in politically inspired leaks. They acknowledged, however, that it is difficult to argue that the Prime Minister (and by extension, other ministers) is not authorised to make information available where it is not protected by statute or the Ministerial Code.⁴³

33. Ministers have much more scope to authorise or self-authorise the release of information than civil servants and it is therefore harder to speak of a minister “leaking” information. Two of our witnesses cited the saying “I brief, you leak” to illustrate this difference of authority.⁴⁴

34. The General Secretary of the FDA told us that civil servants should not leak information that is secret, or subject to other restrictions such as pre-release statistics, even under instruction from ministers. He argued that the Civil Service Code gives a basis for civil servants to refuse such requests.⁴⁵ This would include special advisers, who are subject to the relevant section of the Civil Service Code.⁴⁶ However, permanent civil servants have no disciplinary power over special advisers. Under the Code of Conduct for Special Advisers, “the responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment”. As the FDA General Secretary told us, civil servants’ ability to prevent political leaking is thus very limited and a change in political culture would be needed to stop it happening.⁴⁷

35. The partial, premature or anonymous disclosure of information damages trust and morale within government; in particular, leaking against ministers or departments undermines Cabinet-based government. This applies to the anonymous release of departmental information by ministers as much as it does to leaks by special advisers or civil servants. However, no government has seemed able or willing to stamp out this practice.

36. Special advisers are, in theory, subject to the same rules regarding the disclosure of information as other civil servants. However, only the responsible minister has the

41 Q 171; also Ev 75 [FDA]

42 Q 151

43 Ev 74, 75

44 Q 151 [Professor Peter Hennessy]; Ev 78 [Sir David Omand]

45 HC 352-I, Q 48

46 *Civil Service Code*, HC 352-i, Section 6

47 HC 352-i, Q65

power to discipline a special adviser for leaking information. In practice, this is unlikely where the adviser has been acting in what they believe to be the minister's interests. We do not believe this is a desirable situation. The Civil Service Commissioners may be the appropriate body to investigate alleged breaches of this nature, possibly under the proposed power to initiate their own investigations. Whilst such investigations would make recommendations, the imposition of disciplinary proceedings would ultimately have to remain with the minister. Where ministers did not act on the Commissioners' recommendations, the Commissioners should report to Parliament. We believe that this would go some way to ensuring a consistent approach to leaking within government. However, political leaking is a problem that can only be tackled by a change in political culture.

3 How should leaks be investigated?

37. In most cases leaks are investigated internally, either by the Department concerned, or with assistance from the Cabinet Office; however, under some circumstances the police may be called in. This chapter examines how leaks are investigated and punished.

When is a leak criminal?

The Official Secrets Act

38. The current Official Secrets Act (OSA) dates from 1989. At the time of the Bill receiving its second reading, the then Home Secretary said:

We ask the House today to agree in principle that the criminal law should be prised away from the great bulk of official information. We propose that it should be used to protect unauthorised disclosure of six limited areas and we shall be asking the House to agree on the scope and definition of those areas. Within the areas to be protected we introduce a number of tests of harm which the prosecution will have to prove. We mean that the criminal law should protect, and protect effectively, information whose disclosure is likely to cause serious harm to the public interest, and no other.⁴⁸

39. The six categories of information whose disclosure is subject to criminal sanctions under the Act are:

- security and intelligence,
- defence,
- international relations,
- information obtained in confidence from other states or international organisations,
- information likely to result in the commission of an offence and
- information likely to impede detection and special investigations under statutory warrant.

40. The Act also removed the public interest defence, provided for by the 1911 Official Secrets Act, which secured Clive Ponting's acquittal over the leaking of documents relating to the sinking of the Belgrano during the Falklands War. Under the 1989 Act, disclosures relating to security or intelligence made by those within those services or others notified of the Act's contents are an offence regardless of their motivation or impact. Other disclosures are an offence regardless of motivation but only if they are "damaging".⁴⁹

48 HC Deb 21, December 1988, col 460

49 *Official Secrecy*, Standard Note SN/PC/02023, House of Commons Library, December 2008

41. We received evidence that the prospect of prosecution under the Act does deter civil servants from leaking material – even in cases where the Act would not apply.⁵⁰ However, its provisions are not always a sufficient deterrent to leaking; both Katharine Gun and Derek Pasquill leaked information despite being aware that they could be prosecuted.⁵¹

42. Despite the absence of a public interest defence, there have been cases where a similar argument has been used as a defence against prosecution under the OSA. Katherine Gun intended to defend her case on the grounds of necessity of circumstance, a common law defence used successfully by the former MI5 officer, David Shayler, to avoid conviction under the OSA. The defence of necessity applies where the defendant commits an otherwise criminal act to prevent imminent danger to life or serious injury to themselves or someone they feel responsible for.⁵² Ms Gun told us that, in her view, the case against her was abandoned partly because the government did not want to disclose advice on the legality of the Iraq war to the defence and partly to avoid the precedent set by a possible acquittal.⁵³

Misconduct in Public Office

43. The arrests of Christopher Galley and Damian Green MP took place under suspicion of misconduct in public office, a common law offence set out by the Crown Prosecution Service (CPS) as occurring when a public officer neglects or misconducts him or herself in their official capacity to a degree that amounts to an abuse of the public's trust without reasonable excuse or justification.⁵⁴ The level of misconduct required in such a case is very high, a fact the CPS drew attention to in its decision not to prosecute either Mr Galley or Mr Green.⁵⁵

44. The Metropolitan Police referred to the CPS judgement on the Christopher Galley/Damian Green case in their decision not to investigate the leaking of material relating to MPs' allowances. Whilst concluding that a breach of public duty had taken place, they cited the difficulties in obtaining evidence, the high threshold required for a misconduct in public office case to be brought, the "significant hurdle" of a public interest defence, the fact that the documents did not relate to national security and their imminent publication under the Freedom of Information Act as reasons not to prosecute.⁵⁶

45. We do not comment on the specific circumstances around the decision to arrest and then not prosecute Mr Green and Mr Galley. However, the case did raise the question of whether, and when, the offence of misconduct in public office should be used to pursue those accused of leaking.

50 Q 167 [Maurice Frankel]

51 Q 278

52 HL Deb, 17 March 2004, col 145WA

53 Q 310, Q 312

54 CPS Guidance on misconduct in public office, <http://www.cps.gov.uk/legal>

55 CPS Decision on prosecution, Mr Christopher Galley and Mr Damien Green MP, <http://www.cps.gov.uk>

56 Metropolitan Police Service, operational announcement, MPs' expenses leak, <http://cms.met.police.uk/news>

46. The intention in passing the 1989 Official Secrets Act was to limit those areas in which it would be a crime to leak official information. The use of misconduct in public office charges in connection with the leaking of information raises concerns that the boundaries established by the 1989 Act may be becoming blurred. It is important that this common law offence is not used to subvert the clearly expressed will of Parliament in limiting the scope of offences under the Official Secrets Act.

47. This does not mean that misconduct in public office could never be an appropriate charge where there had been a leak of official information; but there would need to be evidence of serious criminal misconduct beyond the leak itself: for example that an individual had taken payment in return for disclosing the information.

48. The recent very public disclosure of the expenses and allowances of Members of Parliament has shown how the leaking of information can sometimes serve the public interest. However, there were suggestions at the time that the information might have been sold for personal gain. If this were true, the police decision not to investigate the leak might seem surprising. Those with access to official information should not benefit personally from its unauthorised release without criminal consequence, even where there is a strong public interest in its release.

How are leaks investigated?

49. It is the responsibility of departmental permanent secretaries, in the first instance, to decide whether to conduct an investigation into a leak. The Cabinet Office may take over responsibility for handling the investigation if the Cabinet Secretary feels that the leak is cross-departmental, there is persistent leaking or in a case of particular sensitivity.⁵⁷ The Cabinet Secretary was clear in his evidence to us that these decisions are taken without ministerial, or prime-ministerial, involvement.⁵⁸ An investigation is carried out internally at first; this may call upon a panel of investigators maintained by the Cabinet Office who have technical expertise in areas such as IT and are experienced in dealing with more serious leaks. Sir David Omand and Sir Suma Chakrabarti both said that using this panel helped them to narrow down the list of suspects and reduce the risks of future leaks.⁵⁹

50. The Cabinet Secretary told us that leak investigations focus on finding the source of the leaks and preventing future leaks rather than pursuing the recipients of leaks. Speaking about the leaks from the Home Office he told us that “I was interested only in the source and stopping it and so preventing the problem.”⁶⁰

51. There is a common perception that the perpetrators of leaks are rarely discovered and that leak inquiries are almost always ineffective. Sir Christopher Kelly, talking of his experience at the Treasury, and the FDA speaking more generally, endorsed this view.⁶¹ The FDA told us that the belief that most leaks stem from political sources results in a lack

57 Ev 67

58 Q 101

59 Q 371 [Sir Suma Chakrabarti]; Ev 78 [Sir David Omand]

60 Q 69

61 Q 199

of will to identify the source, especially as identifying an individual who wishes to remain anonymous is inevitably a time consuming and difficult process. According to the FDA, it is usually only possible to identify leakers where they identify themselves or they are the author of a series of leaks.⁶² Sir Suma Chakrabarti said that the advent of email had made it much harder to identify the source of a leak and that the Civil Service did not always have access to the technical skills and software needed to trace emails.⁶³

52. Sir David Omand did not agree that leak inquiries were always ineffective. He told us that an experienced leak investigator could get close enough to the culprit to be able to prevent further leaks, even where the evidence could not be found to institute formal disciplinary proceedings.⁶⁴

53. The evidence we have received suggests that internal leak investigations rarely find the culprit. In part this is a result of a political culture that tolerates low-level political leaking. We are sympathetic to the position of permanent secretaries, who would not wish to invest heavily in leak investigations only to find that leaks originate with ministers or their advisers. A change in political culture is therefore a crucial step towards the effective investigation of leaks. We also recommend that the Cabinet Office review the resources available to leak investigators to ensure they can meet the increasing demands placed upon them by email and other electronic communication.

Police Involvement

54. In the words of the Cabinet Office, “occasionally it may be appropriate to involve the police in an investigation”.⁶⁵ The Cabinet Secretary told us that the criteria for deciding whether to approach the police are whether the leaks are “serious and persistent” and whether the individuals responsible could have access to material with national security implications.⁶⁶ Another class of case relates to financial or other gain, in particular where it has been alleged that individuals have deliberately sought positions with access to unpublished information with the intention of systematically disclosing it to journalists or others. In such circumstances, the police have also been called in to investigate.⁶⁷

55. It is for the relevant permanent secretary to decide whether to invite the police to become involved, usually following consultation with the Cabinet Office and informal discussions with the police. If these informal discussions led the police to take the initial view that no offence had been committed which warranted criminal investigation then, we were told, the police would not be formally invited to investigate.⁶⁸ Since investigations that involve the police “always involve a serious and damaging impact on the role of a department” the Cabinet Office often takes the lead in such cases. The Cabinet Office told

62 Ev 74

63 Q 377

64 Ev 78

65 Ev 67

66 Q 2

67 Ev 75

68 Ev 77

us it is for the police, in consultation with the Crown Prosecution Service, to decide whether or not to conduct an investigation.⁶⁹

56. The letter from the Cabinet Office of 8th October 2008 inviting the police to investigate leaks from the Home Office gives an indication of the kinds of concerns that can lead to requests for police involvement:

Whilst not all the leaks which concern us merit, taken individually, investigation by the police, we are concerned that there is an individual or individuals in the Home Office with access to sensitive material who is (are) prepared to leak that information. We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks and we are concerned that the potential for future damage is significant. The risk of leaking is having an impact on the efficient and effective conduct of Government business, affecting the ability of Ministers and senior officials to have full and frank discussions on sensitive matters and undermining necessary trust. You will not be surprised to hear that we are also concerned that there must be risk to information about sensitive operations which, if leaked, could give rise to grave damage.⁷⁰

57. The Home Affairs Committee has concluded that the claim in the letter to the police that “there has been considerable damage to national security already as a result of these leaks” was not supported by the description it received of the material under investigation. The Committee went on to note that the Cabinet Office’s guidance on investigating leaks, discussed above, “seems to leave open the possibility of involving the police in an investigation without any suspicion – let alone evidence – that a criminal offence under the [Official Secrets] Act has taken place”. The Committee recommended that the guidance be revised to preclude this possibility.⁷¹

58. David Hencke said that he was “surprised” by the decision to involve the police in the leaks from the Home Office and the arrests seemed “a bit over the top”.⁷² Professor Hennessy said that it was difficult to make a judgement on the specific case, but that he believed that the police should only be brought in where “serious criminality” is involved.⁷³

59. Maurice Frankel of the Campaign for Freedom of Information, was concerned about the Cabinet Secretary’s remarks that a key factor behind the decision to involve the police was the possibility that the person carrying out the leaking might have access to material that could impact on national security. Mr Frankel saw this as breaking down the distinctions established by the OSA:

The moment you get anybody leaking anything you can always say this person is unreliable and the next step is he will release something damaging. All the distinctions laid down by the Official Secrets Act between damaging and non-damaging disclosures are thrown out because you then say we have an

69 Ev 67

70 Ev 68, 69

71 Home Affairs Committee, *Policing Process of the Home Office Leaks Inquiry*, paras 14-17

72 Q 163

73 Q 163

untrustworthy person and who knows what he is going to do next. The whole point of the reform of the Official Secrets Act was not to punish untrustworthiness but to punish damage, not failure to respect procedures, not failure to respect confidences and not the release of embarrassing information.⁷⁴

60. Sir David Omand, on the other hand, said that it was difficult to know, as a Permanent Secretary, exactly what you were dealing with when you began a leak inquiry, in particular whether you were dealing with one culprit or several. He said that it was very important to consult with the police as soon as the possibility emerged that material covered by the Official Secrets Act might be involved.⁷⁵

61. We agree with the Home Affairs Committee that Cabinet Office guidance on the investigation of leaks should be revised to ensure that the police are invited to investigate only where there is evidence that a criminal offence under the Official Secrets Act has taken place. Police involvement may also be appropriate where internal investigation has brought to light evidence of other impropriety, such as a financial arrangement, that could lead to misconduct in public office charges as discussed above.

74 Q 166

75 Q 165

4 How can leaking be prevented?

62. The evidence suggests that leaking cannot be prevented through technical means or the prospect of being caught. As Sir Suma Chakrabarti told us

Those who wish to leak...in the end you cannot stop them leaking because they will do other things. The key issue, it seems to me,...is whether we create a system and a culture which makes people feel they are heard properly and they do not have to resort to [leaking].⁷⁶

63. In this chapter we focus on who has access to information within government and the issues of whistleblowing and departmental culture alluded to by Sir Suma.

Access to information

64. One aspect of the leaks at the Home Office that caused comment was Mr Galley's employment in a minister's private office, despite having a background in party politics. The Cabinet Secretary told us that previous political activity was not a bar to joining the Civil Service and he did not believe that it should be a bar to working in ministers' private offices. He said that any suspicions about an individual's impartiality or trustworthiness would be taken into account when deciding whether to place them in a sensitive post. He accepted that in this particular case there had been an error of judgement.⁷⁷

65. The Chairman of the CSPL said that government had to be "very careful" about who it appointed to private offices and that a mistake was made in this case. However, he agreed with the Cabinet Secretary that he would not want to see a blanket ban on those previously involved in political activity from entering private offices.⁷⁸ Sir Suma Chakrabarti said the key questions for him in determining whether such an individual was suitable for a sensitive post were how recent their political past was and whether they had distanced themselves from it. He also said that he would expect civil servants to be open about their political pasts, which in turn would allow the permanent secretary to be open with ministers.⁷⁹

66. There have been other cases where an individual's background has brought them under suspicion of leaking information. In 2004 a temporary worker at the Cabinet Office was arrested for allegedly leaking information to the *Sunday Times* on a regular basis. She had worked at the paper in the summer of 2003 and subsequently returned to work there. No charges were brought; nonetheless questions were raised about her access to information as a temporary worker.⁸⁰

76 Q 377

77 Q 75-79

78 Q 190

79 Q 389

80 "Police quiz temp over Cabinet Office leaks", *The Guardian*, 16 October 2004

67. The Head of Policy at the Public and Commercial Services Union (PCS) told us that “there is some link” between temporary workers and leaks in government.⁸¹ Sir Suma Chakrabarti said leaks in the Ministry of Justice had not been associated with temporary workers, but he did not think temporary workers should have access to sensitive jobs or information.⁸²

68. Care needs to be taken when considering individuals with an active political past for appointment to sensitive posts within the Civil Service. We do not, however, believe that a political, or journalistic, background should be a bar to such appointments where the individual has been open about their past during recruitment and demonstrated a willingness and ability to act with impartiality and appropriate confidentiality. In general, we would not expect temporary workers to have access to sensitive information.

Whistleblowing

69. The charity Public Concern at Work, which campaigns in support of whistleblowers, suggested that the two key questions a government department should ask itself following a leak are whether the matter had been raised internally and, if not, why not?⁸³ They argued that civil servants who do not believe their concerns will be addressed internally may see an anonymous leak to the media as the safest course of action. They went on to argue that a lack of good whistleblowing procedures leads to more serious wrongdoing, increases the value of information by virtue of the secrecy surrounding it and therefore makes organisations more prone to leaks undertaken in pursuit of private gain.⁸⁴

70. This view was supported by David Hencke, who told us only a small proportion of leaks from government came from civil servants and that, in his experience, these leaks mostly came about because the civil servant was concerned about a specific issue and became exasperated with internal processes.⁸⁵ He said that between 70% and 80% of civil servants who had leaked material to him had made some attempt to pursue the matter through official channels.⁸⁶ This raises two questions: what whistleblowing procedures are open to civil servants and are they effective?

Whistleblowing procedures in Whitehall

71. The Civil Service Code states that civil servants who are concerned that they are being asked to act in a way that would conflict with the Code, or who become aware of others acting in such a way, should raise their concerns initially within their line management chain.⁸⁷ Departmental guidance, which varies from department to department, may suggest that individuals take up the matter with human resources, welfare officers, officers

81 HC 352-i, Q 52

82 Q 388

83 Ev 82

84 Ev 81, 82

85 Q 171

86 Q 147, Q 148

87 *Civil Service Code*, para 15 to 18

with responsibility for standards or others. All departments have “nominated officers” who are intended to be a contact point for civil servants who feel unable to discuss their concerns within their line management chain.⁸⁸

72. Civil servants who are not satisfied with the outcome of the process above are entitled to appeal to the Civil Service Commissioners. The Commissioners are not part of the Civil Service and report directly to the Queen. Their role is to ensure appointment to the Civil Service is on merit and to uphold the Civil Service Code. The Commissioners

hear and determine appeals in cases of concern about propriety and conscience raised by civil servants under the Civil Service Code which cannot be resolved through internal procedures, and report on such appeals.⁸⁹

73. An amendment to the Code in 2006 also means that there is now the option for civil servants to go straight to the Civil Service Commissioners with such appeals, without going through internal departmental procedures.⁹⁰ The First Civil Service Commissioner told us that, in the first instance, they encourage civil servants to discuss their concerns with nominated officers instead of taking it up directly with the Commissioners.⁹¹ However, she indicated that she was able and willing to act on a complaint immediately if appropriate.⁹²

74. Whistleblowing arrangements are not solely confined to internal channels. The Civil Service Code states that “criminal or unlawful activity” should be reported to the police or other authorities.⁹³ Guy Dehn, of Public Concern at Work, said there was a lack of clarity as to what this meant. He told us that the Civil Service Commissioners might be the appropriate people to review the way in which a department had handled a matter. However, he did not think they were the correct people to approach with evidence of “substantive wrongdoing”. He said that, under PIDA, such cases should be raised with the appropriate regulatory body, such as the Parliamentary Ombudsman, the Health and Safety Executive or the Financial Services Authority. He argued that the Civil Service Code should reflect this and that the chairman of a departmental select committee could be an appropriate person to be specified both in the Code and the Act, where, for example, Parliament had been misled.⁹⁴

75. The structure for whistleblowing within the Civil Service allows individuals to raise concerns within their line management chain, provides for an alternative source of advice to that chain in nominated officers and provides for direct appeal to an oversight body. However, there is a lack of clarity in the Civil Service Code regarding the circumstances in which an individual civil servant is allowed or encouraged to approach law enforcement or regulatory bodies with concerns they may have. We recommend

88 *Civil Service Code*, paragraphs 16 and 17; Ev 1 [Sir David Omand]; Ev 70 [Civil Service Commissioners]

89 Civil Service Commissioners, January 2008, *Code of Practice*, p 1

90 *Civil Service Code*, para 18; Ev 70 [Cabinet Office]

91 Q 239

92 Q 212

93 *Civil Service Code*, para 17

94 Q 170 [Guy Dehn]; Ev 83 [Public Concern at Work]

that the Code is amended to give greater clarity on this issue and the circumstances when such disclosures would be protected under PIDA.

76. We have previously recommended that the Civil Service Commissioners should have complete operational and financial independence from the executive and the ability to initiate their own investigations enshrined in statute.⁹⁵ We continue to hold this view.

77. The First Civil Service Commissioner told us that if a concern was raised by the Commissioners and the Civil Service did not respond then they would have a duty to report, probably to this Committee.⁹⁶ **We recommend that, where appropriate action has not been taken by Civil Service management following their investigations, the Commissioners should be able to report this to Parliament. These reforms would add to the Commissioners' credibility as an independent investigative body.**

Advice and procedures for potential whistleblowers

78. Key to a successful whistleblowing policy is how it is communicated. Public Concern at Work carried out an audit of departmental whistleblowing policies in 2007. This was a paper-based exercise, focussing on the advice and procedures departments had in place rather than their effectiveness in practice or the culture of the department. Their report concluded that “while the majority of Government Departments offer their staff some helpful guidance on whistleblowing, few policies fully comply with accepted good practice and some fall far short of it.” Particularly concerning was the performance of the Cabinet Office, which was the lowest ranked of all departments and came in for criticism for being overly adversarial and formal.⁹⁷ The Cabinet Secretary told us that he did not understand how it had achieved such a low score. He said that the Cabinet Office is responsible for the Code and that, as its Permanent Secretary, he constantly stressed its importance. He did not therefore believe that Public Concern's index accurately reflected the situation.⁹⁸

79. The key weakness identified by Public Concern's report across government as a whole was that Civil Service whistleblowing policies focused on keeping concerns within the Civil Service and if possible within the line management chain. The report noted that this was likely to limit the effective response to concerns where internal hierarchies mean that managers are likely to back their own managers or where staff rotation means that a risk identified early on is likely to be “someone else's problem” by the time it materialises.⁹⁹

80. We recommend that the Cabinet Office take a lead role in ensuring that all government departments' whistleblowing advice and policies follow best practice in the field – beginning by reviewing its own advice and procedures. In particular, guidance should make clear the alternatives to the line management chain, the possibility of

95 Public Administration Select Committee, Tenth Report of Session 2007-08, *Constitutional Renewal: Draft Bill and White Paper*, HC 499, para 54, 58

96 Q 214

97 Ev 90

98 Q 115

99 Ev 90

taking matters to the Civil Service Commissioners and the protection offered by the Public Interest Disclosure Act. This guidance should be easily accessible to all grades.

Civil Servants' attitudes towards whistleblowing

81. The civil servants from whom we took evidence did not have much faith in internal whistleblowing procedures. Katharine Gun told us that she leaked information because an internal complaint, in her view, would “not have gone outside of GCHQ and certainly would not have made any difference whatsoever.”¹⁰⁰ Derek Pasquill felt that there was a “patronising attitude” by people at the top of departments towards those lower down who raise concerns.¹⁰¹

82. We also heard from two former civil servants who had considered raising concerns about government policy using internal channels. Carne Ross worked in the Foreign and Commonwealth Office and told us that, in the run-up to the 2003 Iraq war, he felt that “there were real facts which disputed the public reasoning that the Government was giving in the run up to the invasion.”¹⁰² He told us that it was “inconceivable” that a mid-level diplomat like himself could have raised his concerns internally in a way that would have had an impact with ministers. Indeed raising them could have damaged his career:

I would speak out [in meetings], but there are limits to which you can do that without becoming a kind of iconoclast. Whilst it is fun to be an iconoclast, it is not very good for your career.¹⁰³

83. Mr Ross went on to say that the areas he was working in were complex and this meant there were few in the Foreign Office able to spend the time to understand his point of view. He added that the government’s policy had built up a momentum that made it difficult to get opposing views listened to.¹⁰⁴

84. Dr Brian Jones headed a team of intelligence analysts who were asked to comment on drafts of the government dossier supporting the proposition that Iraq possessed weapons of mass destruction. Members of his team raised concerns that the case in the dossier was being exaggerated. He passed these concerns on and in his words “we effectively won that argument”. Subsequently, the Deputy Chief of Defence Intelligence (DCDI) told him that new intelligence – which Dr Jones never saw – had come to light and no more objections to the dossier should be raised. Dr Jones did not believe that any new evidence could be that conclusive and wrote a minute to his line manager and the DCDI saying so.¹⁰⁵ His motivation, he told us, was to protect his team from “being scapegoated in any subsequent inquiry”. He did not take the matter any further.¹⁰⁶

100 Q 297

101 Q 299

102 Q 341

103 Q 340, Q 348

104 Q 342

105 Q 265

106 Q 269

85. It is difficult to assess how typical the four cases discussed above are of the dilemmas facing civil servants who may consider blowing the whistle. In particular, the circumstances leading up to the Iraq war were exceptional. Nonetheless they suggest that there is either little knowledge of, or little faith in, whistleblowing procedures operated by the Civil Service. In three cases, civil servants told us that raising internal concerns would not make any difference, except possibly damaging their careers. The only one to mention the Civil Service Commissioners, Derek Pasquill, felt they would have investigated his case thoroughly but his department would have found ways to stifle the issue and prevent action from being taken.¹⁰⁷ Dr Jones' case is different as his motivation was to protect his team's credibility rather than expose wrongdoing; nonetheless it is a matter of concern that his views did not appear to result in any action being taken.

86. Sir David Omand told us that it was the role of heads of department to “speak truth unto power” and take the concerns of civil servants up with ministers.¹⁰⁸ Sir Suma Chakrabarti gave the example of the Pergau Dam project as a case where a head of department had followed procedure and the department's concerns had come out in the proper way.¹⁰⁹ Such cases demonstrate that **Permanent Secretaries have the authority and duty under certain circumstances to tell their ministers that there are concerns about a particular course of action. The evidence we received suggests there is work to be done to ensure that the civil servants that work for them have the procedures, channels of communication and supportive culture to allow those concerns to reach that stage.**

Awareness of the Civil Service Code and Civil Service Commissioners

87. The General Secretary of the FDA told us that whistleblowing procedures within Whitehall were becoming better known and more credible amongst the Senior Civil Service.¹¹⁰ There is some evidence to support increasing awareness; the Civil Service Commissioners reported increases for 2007/08 in the number of Civil Service Code appeals dealt with both by themselves and at departmental level. The Commissioners received 28 approaches during the year, of which seven were eligible for consideration. This compared to two the previous year and none at all in the three years prior to that. Departments dealt with 27 cases in 2007/08 compared to three the previous year.¹¹¹ The Commissioners told us that they had been concerned by the very low number of appeals they had received in the previous year and had therefore undertaken work to promote the Code and find out how departments did so. They indicated that the increase in appeals in 2007/08 may be due in part to this work.¹¹²

88. The Civil Service Commissioners carried out a survey into awareness and promotion of the Civil Service Code. The survey covered departments responsible for employing nearly 50% of the Home Civil Service. It found that a copy of the Code was given to new starters in 70% of those departments who responded and Civil Service values or the Code itself is

107 Q 333

108 Q 124, 125

109 Q 361

110 HC 352-i, Q 2

111 Civil Service Commissioners, 2008, *Annual Report*, <http://www.cscannualreport.info/i>

112 Q 208 [Janet Paraskeva]; Ev 71

included in 75% of responding departments' induction programmes. 80% of departments had a member of HR staff responsible for promoting the Code and 95% of departments who responded had a copy of the Code on their website.¹¹³

89. The Commissioners have produced a checklist of best practice on promotion of the Civil Service Code. This suggests that departments should: reflect the Code's content in recruitment material, ensure that a copy of the Code is given to all staff on joining, require new staff to sign a statement saying they have read and understood the Code, ensure that training on the Code is built into induction programmes and general management training, and provide help and support to staff most likely to come under Code-related pressures, for example in private offices.¹¹⁴

90. The General Secretary of Prospect told us that the Code "is very little-understood" outside the Senior Civil Service and was poorly promoted to lower grades.¹¹⁵ The General Secretary of the PCS agreed with this assessment. In particular, he said that it was very difficult to find information on the Code and whistleblowing guidance.¹¹⁶ Their members often came to them with concerns instead, primarily about bullying and harassment cases. He said that the union often took up concerns with the department involved with good results, but would be very reluctant to take a whistleblowing role itself unless it was in accordance with union policy.¹¹⁷

91. Although awareness of the role of the Civil Service Commissioners appears to have improved in the last year, they still receive a very low number of appeals considering the size of the Civil Service. Whilst we were told that awareness is increasing among the Senior Civil Service, it is clearly very low outside it. Department heads should actively promote the Code amongst lower grades and ensure that guidance on whistleblowing is accessible and well known. We recommend that departments track the number of cases considered by nominated officers to assess progress and welcome the Civil Service Commissioners' audit of departmental procedures.

92. We are concerned that awareness of the Civil Service Code, the authoritative statement of Civil Service values, does not appear to be universal. The Civil Service Code should be integral to the work of civil servants from their first day. We recommend that the Cabinet Office take steps to ensure all departments and agencies comply with the Commissioners' checklist of best practice. It is particularly important that all new civil servants are introduced to the Civil Service Code, rather than merely told about its existence, on the day that they join and that this is followed up as part of their induction training.

113 Civil Service Commissioners, 2008, *Annual Report*, <http://www.cscannualreport.info/i>

114 Civil Service Commissioners, Checklist of actions for departments, <http://www.civilservicecommissioners.org>

115 HC 352-i, Q 3

116 HC 352-i, Q 6

117 HC 352-i, Q 5, Q 6

Possible reforms

93. The Civil Service Commissioners said that they were trying to enhance the role of nominated officers and provide them with a website through which they could seek advice from each other and share good practice.¹¹⁸ They told us that concerns that are raised confidentially or anonymously are harder to investigate satisfactorily.¹¹⁹ This latter view was echoed by Public Concern at Work, which criticised some Whitehall departments for making promises of confidentiality that could seriously impede, or even prevent, proper investigation.¹²⁰

94. Accepting that confidentiality is not always possible, the Civil Service Commissioners told us that they were trying to ensure that civil servants felt safer going to nominated officers or the Commissioners than making anonymous disclosures to the press.¹²¹ We were told that a complaint about victimisation would fall within the Commissioners' role. However, there was little evidence to suggest that processes exist to involve and protect whistleblowers during and after an investigation. Sir Suma Chakrabarti, speaking as a current Permanent Secretary, told us he thought departments should make more effort to involve whistleblowers in the inquiries they generate and thank them for raising issues. He said

We do not put ourselves enough in the shoes of the whistleblower. It takes quite a bit of courage, I should think, to come and say "I think the department has got this wrong and you should look at this." I am sure we listen very politely and then deal with the complaint and so on but do we...go back to the whistleblower and say "Here is how we are dealing with it. Here is where we are in the process".¹²²

95. The First Civil Service Commissioner said that it was ultimately up to line managers to ensure that civil servants felt safe coming forward but agreed that aftercare of whistleblowers was something she would take up with heads of departments.¹²³

96. It is essential that staff have confidence that using whistleblowing procedures will be a positive experience and not be damaging to their careers.

97. Relatively little consideration appears to have been given to support for whistleblowers once they have raised concerns in good faith. Committed civil servants are extremely unlikely to follow approved channels for whistleblowing if they fear that their careers could suffer as a result; they may see an anonymous disclosure to the press as safer. We recommend that the Cabinet Office, departmental heads and Civil Service Commissioners look closely at how they can improve the safety, perceived and real, of whistleblowing procedures.

118 Q 212

119 Q 227

120 Ev 88

121 Q 217

122 Q 368

123 Q 229, Q 231 [Janet Paraskeva, Dr Richard Jarvis]; also Ev 83 [Public Concern at Work]

98. Dr Woods-Scawen of the Committee on Standards in Public Life argued that leadership was key in ensuring people were willing to come forward with concerns and that the failure of an organisation to respond well to whistleblowing, in particular the victimisation of those who raise complaints, were failures of senior management. He said that senior management should be held directly to account for such failings.¹²⁴ We agree.

99. Sir Suma Chakrabarti told us that he thought internal whistleblowing systems had improved but that he did not think they were yet good enough. He identified a number of improvements in the role of nominated officers he would like to see, including “hotlines” and confidential email inboxes, a much higher ratio of officers to staff, a better spread of officers across offices and grades and processes to ensure issues raised went beyond internal audit and human resources committees and up to the main boards of departments.¹²⁵ Public Concern at Work, on the other hand, questioned the need for nominated officers, now that civil servants could take complaints directly to the Commissioners. They told us that nominated officers were often very senior and this could be off-putting to people wishing to come forward.¹²⁶

100. Nominated officers could have an important role to play in raising awareness of, and willingness to use, whistleblowing arrangements by staff outside the Senior Civil Service, bridging the gap between front-line civil servants and the Commissioners by providing a ‘friendly face’ that staff can seek advice from without being seen to be necessarily raising a complaint. At present, however, nominated officers are often senior people, which may intimidate staff at lower grades and those most likely to need their advice. We agree with Sir Suma Chakrabarti that nominated officers should be evenly spread across grades and offices. Where possible, nominated officers should be individuals with other pastoral roles, such as welfare officers, to improve their visibility, to make them more approachable and to ensure consistency in advice.

101. We also asked those individuals who had leaked information or who had considered doing so whether there were reforms that might have influenced their actions. Katharine Gun said that, in her view, it was important that internal routes were seen to be independent of the line management chain and comprised of people who the whistleblower believed “would not automatically support the government line.”¹²⁷ In particular, she said that induction procedures should point to a route by which genuine concerns might be raised as well as stressing the importance of confidentiality. In her view existing procedures did not achieve this.¹²⁸ Derek Pasquill did not think there were any reforms that would have prevented him going straight to the media.¹²⁹

102. It is important that new civil servants should be informed about their duty of confidentiality when they join. It also important that this induction should include a

124 Q 199

125 Q 368

126 Ev 86

127 Q 332

128 Q 331

129 Q 333

counter-balancing exposition of the public’s right to be informed and make clear the channels that exist for raising concerns and seeking advice where the two appear to come into conflict.

103. Another common theme in the evidence we received was a reluctance to use established procedures because they were perceived as lengthy. Several witnesses stressed the importance of timing to the effectiveness of a leak. Derek Pasquill said that he was motivated, in part, by “a sense of urgency” to make the information available at a critical point in the policy debate.¹³⁰ Katharine Gun repeatedly stressed the importance of timing in her decision to leak in the run up to the parliamentary decision on whether to go to war with Iraq.¹³¹ David Hencke told us that when making information public in a way that might be effective

timing is often of the essence because a decision is basically going to be made fairly quickly, within a week, two weeks, a month.¹³²

As discussed above, the First Civil Service Commissioner told us that she was willing to take concerns raised with her to the Cabinet Secretary immediately.¹³³

104. For whistleblowing procedures to be credible they have to be as fast as is necessary. It is of little use if a whistleblower’s concerns are vindicated six months after the effective decisions are taken. We welcome the First Civil Service Commissioner’s statement that she would act immediately if an urgent concern was brought to her and expect that senior civil servants would do likewise. However, we recognise that the need for investigation, however swift, of official complaints introduces a delay that some whistleblowers may not be prepared to countenance. If they fail to use the available channels, they need to be prepared to accept the consequences.

Non-civil servants

105. We were told that there are ambiguities relating to the position of public employees who work for non-departmental public bodies (NDPBs) or employees of contractors or consultants doing outsourced work for the Civil Service. The General Secretary of PCS told us that the Civil Service Code only applies to civil servants, not the staff of NDPBs. He referred to employees of the Child Support Agency, who were civil servants but will become employees of the Child Maintenance and Enforcement Commission. He said there was a lack of clarity over their position in relation to the Code and whistleblowing. The General Secretary of Prospect agreed.¹³⁴

106. The First Civil Service Commissioner told us that they could not formally investigate complaints by non-civil servants such as agency staff or contractors. However, she said that

130 Q 300

131 Q 332

132 Q 171

133 Q 212

134 Q 49

If an agency on contract to a department is carrying out a piece of work and the complaint comes from them rather than the civil servant...whilst we are not empowered to do anything about it, if we were concerned about it, I cannot imagine for one moment that I would not pick the phone up.¹³⁵

107. Public sector employees in non-departmental public bodies, government agencies and private contractors working for the Civil Service should have similar whistleblowing procedures to civil servants. In particular they should have access to an external oversight body, similar to the Civil Service Commissioners.

Departmental culture

108. As noted above, the Public Concern at Work report analysed departmental whistleblowing policies on paper. They did not address questions such as the awareness of procedures within the departments, nor the departmental culture within which they operated. Sir David Omand stressed the importance of a departmental culture which took a constructive attitude towards mistakes and encouraged whistleblowing.¹³⁶ Guy Dehn from Public Concern at Work told us they had recommended that departments survey their employees to get a feel for how much confidence there was in the systems outlined above.¹³⁷ The First Civil Service Commissioner told us that there was work underway to audit the effectiveness and promotion of the Civil Service Code.¹³⁸

109. Sir Suma Chakrabarti stressed the differences in culture between departments. He told us that in the year 2007/08 the Department for International Development [DIFID] had around 15 whistleblowing cases, mostly relating to minor abuses such as overtime claims, and in 12 years only “a handful of leaks”. In the Department for Constitutional Affairs he told us there were no leaks at all until April 2007 – just before the Ministry of Justice was formed – and similarly no approaches to nominated officers. By contrast, the Ministry of Justice has had only four cases go to nominated officers since it was founded but a rising number of leaks, more than DFID had in twelve years. These leaks congregated around areas of high political interest such as the National Offender Management Service, prisons, probation and so forth. He drew two conclusions from this, firstly that political interest tended to result in leaks and secondly that an open department, like DFID, which engaged in open policy debate was less likely to suffer leaks because officials were more likely to feel their voice was heard. However, he said such openness was easier to achieve in politically less contentious departments and was aided by the presence of a strong research and analytical base to the department, which the Ministry of Justice was only now beginning to build.¹³⁹

110. Similar views were expressed by Carne Ross. He told us that in the Foreign and Commonwealth Office, officials were encouraged to “tweak at the edges of policy” but not to question the fundamentals of that policy. His view was that diplomats (and by extension

135 Q 255

136 Q 151

137 Q 150

138 Q 208

139 Q 358, Q 359, Q 360, Q 363

other civil servants) should support the government's policy to the wider world, but internally "the most open and, indeed, ferocious debate should be encouraged so that you get the best possible policy as a result".¹⁴⁰ He linked the leaking of information and resignation of civil servants on policy issues to a failure to facilitate internal debate within government on the one hand and a failure by government to be properly accountable to Parliament and the public on the other.¹⁴¹ Derek Pasquill felt that, because the policy he was seeking to change was being driven by ministers and because of the way in which that policy was developing, it was not possible to challenge it internally.¹⁴²

111. Dr Brian Woods-Scawen told us that leaks were associated with "dysfunctional leadership" in both the public and the private sector. He argued that where leadership did not promote internal debate and dissent, it opened the organisation up to the possibility of leaks and whistleblowing incidents.¹⁴³ Sir Christopher Kelly agreed, saying that the ideal would be for a situation where there was complete openness through routine exposure of what happens within government departments combined with an internal culture that encouraged individuals to raise concerns, making leaking unnecessary.¹⁴⁴

112. The evidence we received suggests that a high proportion of leaks by civil servants happen because they feel that information is being ignored or suppressed in policy debate. Government departments should foster a culture of vigorous internal policy debate where dissent is encouraged even on the most sensitive of political topics. The hierarchical nature of the Civil Service can hinder people who are experts in their field, but who are not at the highest levels of seniority, from being able effectively to raise concerns over the direction of policy. We believe this is something that needs to be addressed by heads of department when looking at departmental policy-making processes.

140 Q 353

141 Q 353 and Q 354

142 Q 300

143 Q 191

144 Q 176

5 Conclusion

113. Civil servants have a duty of confidence. This is fundamental to good government. It is not for civil servants to decide for themselves which confidences to keep. A culture of leaking would be very damaging to the operation of government and to the tradition of an impartial Civil Service.

114. However, the context in which this duty is discharged has changed. In particular, the Freedom of Information Act has enshrined a right of public access to whole categories of information, with a public interest test to resolve disputes about disclosure; and the Public Interest Disclosure Act has given employment protection to those who make certain disclosures.

115. This makes it essential for civil servants to know what channels are available to them if they have concerns about what they believe are irregularities, or about information that is being concealed that they believe should be disclosed. They need to have confidence that these channels will be effective and timely, and that using them will not be career-damaging. This is a real challenge for the Civil Service, which it is not yet fully meeting. Proper whistleblowing procedures are the best safeguard against leaking. Our recommendations in this report are designed to help the Civil Service meet this challenge.

Conclusions and recommendations

Effects of Leaks from the Civil Service

1. Leaks by civil servants undermine trust within government, call into question the impartiality of the Civil Service and may also serve to stifle effective policy debate within government. Nonetheless, there is a tension between the need for trust within government and the right of the public to be fully informed on matters of genuine public interest. (Paragraph 12)

Public Interest Leaking - Conclusions

2. There is a strong public interest in a Civil Service which is able to act impartially to support the government of the day. Leaks by civil servants undermine the trust that is necessary to this relationship. Leaks for partisan political reasons are especially deplorable. The Civil Service Code is clear that information should not be disclosed without authorisation and the leaking of information by civil servants for political purposes, to undermine government policy or for personal gain, is reprehensible. (Paragraph 24)
3. Despite this, there are exceptional circumstances in which a civil servant could be justified in leaking material in order to expose serious wrongdoing. This would need to have followed a failure of proper channels both of disclosure and challenge within government. In short, it must be a last resort. The provisions of the Public Interest Disclosure Act 1998 cover the majority of these circumstances and the Act sets an appropriate balance between the competing interests of maintaining a trustworthy Civil Service and protecting the public interest. (Paragraph 25)
4. The Civil Service Code also includes the requirement not to mislead ministers, Parliament or others. A civil servant who is aware that the public or Parliament has been deliberately misled by the government has a duty to put this right. This should involve taking the matter to the Civil Service Commissioners so that they can establish the facts independently. If they agree that there is a case to answer, they should have the power to report on the situation to Parliament and disclose the information concerned. However, where Parliament has been misled and decisions are about to be taken on the basis of this misleading information, giving an urgency to the situation, it may be that a report direct to a select committee chairman can be justified as a last resort. (Paragraph 26)

Freedom of Information

5. The Freedom of Information Act established the principle that government information should be made public, subject to exceptions, and provides a mechanism by which the public interest merits of disclosure can be determined. Government needs to recognise that this changes the principles that apply to the disclosure of official information, balancing the traditional duty of confidentiality to ministers with the statutory duty to provide information to the public. This means

that there may be circumstances in which a civil servant could properly take action to prompt a request under the act.(Paragraph 30)

6. The existence of Freedom of Information provides a legitimate alternative to leaking information and in so doing should weaken the public interest case for leaking. This will only be the case, however, if government departments act within the spirit of the legislation, in particular by proactively publishing as much information as possible and by ensuring that requests under the Act are responded to quickly and fully. (Paragraph 31)

Political leaking and self-authorisation

7. The partial, premature or anonymous disclosure of information damages trust and morale within government; in particular, leaking against ministers or departments undermines Cabinet-based government. This applies to the anonymous release of departmental information by ministers as much as it does to leaks by special advisers or civil servants. However, no government has seemed able or willing to stamp out this practice. (Paragraph 35)
8. Special advisers are, in theory, subject to the same rules regarding the disclosure of information as other civil servants. However, only the responsible minister has the power to discipline a special adviser for leaking information. In practice, this is unlikely where the adviser has been acting in what they believe to be the minister's interests. We do not believe this is a desirable situation. The Civil Service Commissioners may be the appropriate body to investigate alleged breaches of this nature, possibly under the proposed power to initiate their own investigations. Whilst such investigations would make recommendations, the imposition of disciplinary proceedings would ultimately have to remain with the minister. Where ministers did not act on the Commissioners' recommendations, the Commissioners should report to Parliament. We believe that this would go some way to ensuring a consistent approach to leaking within government. However, political leaking is a problem that can only be tackled by a change in political culture. (Paragraph 36)

Misconduct in Public Office

9. The intention in passing the 1989 Official Secrets Act was to limit those areas in which it would be a crime to leak official information. The use of misconduct in public office charges in connection with the leaking of information raises concerns that the boundaries established by the 1989 Act may be becoming blurred. It is important that this common law offence is not used to subvert the clearly expressed will of Parliament in limiting the scope of offences under the Official Secrets Act. (Paragraph 46)
10. This does not mean that misconduct in public office could never be an appropriate charge where there had been a leak of official information; but there would need to be evidence of serious criminal misconduct beyond the leak itself: for example that an individual had taken payment in return for disclosing the information. (Paragraph 47)

11. The recent very public disclosure of the expenses and allowances of Members of Parliament has shown how the leaking of information can sometimes serve the public interest. However, there were suggestions at the time that the information might have been sold for personal gain. If this were true, the police decision not to investigate the leak might seem surprising. Those with access to official information should not benefit personally from its unauthorised release without criminal consequence, even where there is a strong public interest in its release. (Paragraph 48)

How are leaks investigated?

12. The evidence we have received suggests that internal leak investigations rarely find the culprit. In part this is a result of a political culture that tolerates low-level political leaking. We are sympathetic to the position of permanent secretaries, who would not wish to invest heavily in leak investigations only to find that leaks originate with ministers or their advisers. A change in political culture is therefore a crucial step towards the effective investigation of leaks. We also recommend that the Cabinet Office review the resources available to leak investigators to ensure they can meet the increasing demands placed upon them by email and other electronic communication. (Paragraph 53)

Police Involvement

13. We agree with the Home Affairs Committee that Cabinet Office guidance on the investigation of leaks should be revised to ensure that the police are invited to investigate only where there is evidence that a criminal offence under the Official Secrets Act has taken place. Police involvement may also be appropriate where internal investigation has brought to light evidence of other impropriety, such as a financial arrangement, that could lead to misconduct in public office charges as discussed above. (Paragraph 61)

Access to Information

14. Care needs to be taken when considering individuals with an active political past for appointment to sensitive posts within the Civil Service. We do not, however, believe that a political, or journalistic, background should be a bar to such appointments where the individual has been open about their past during recruitment and demonstrated a willingness and ability to act with impartiality and appropriate confidentiality. In general, we would not expect temporary workers to have access to sensitive information. (Paragraph 68)

Whistleblowing procedures in Whitehall

15. The structure for whistleblowing within the Civil Service allows individuals to raise concerns within their line management chain, provides for an alternative source of advice to that chain in nominated officers and provides for direct appeal to an oversight body. However, there is a lack of clarity in the Civil Service Code regarding the circumstances in which an individual civil servant is allowed or encouraged to

approach law enforcement or regulatory bodies with concerns they may have. We recommend that the Code is amended to give greater clarity on this issue and the circumstances when such disclosures would be protected under PIDA. (Paragraph 75)

16. We have previously recommended that the Civil Service Commissioners should have complete operational and financial independence from the executive and the ability to initiate their own investigations enshrined in statute. We continue to hold this view. (Paragraph 76)
17. We recommend that, where appropriate action has not been taken by Civil Service management following their investigations, the Commissioners should be able to report this to Parliament. These reforms would add to the Commissioners' credibility as an independent investigative body. (Paragraph 77)

Advice and procedures for potential whistleblowers

18. We recommend that the Cabinet Office take a lead role in ensuring that all government departments' whistleblowing advice and policies follow best practice in the field – beginning by reviewing its own advice and procedures. In particular, guidance should make clear the alternatives to the line management chain, the possibility of taking matters to the Civil Service Commissioners and the protection offered by the Public Interest Disclosure Act. This guidance should be easily accessible to all grades. (Paragraph 80)

Civil Servant's attitudes towards whistleblowing

19. Permanent Secretaries have the authority and duty under certain circumstances to tell their ministers that there are concerns about a particular course of action. The evidence we received suggests there is work to be done to ensure that the civil servants that work for them have the procedures, channels of communication and supportive culture to allow those concerns to reach that stage. (Paragraph 86)

Awareness of the Civil Service Code and Civil Service Commissioners

20. Although awareness of the role of the Civil Service Commissioners appears to have improved in the last year, they still receive a very low number of appeals considering the size of the Civil Service. Whilst we were told that awareness is increasing among the Senior Civil Service, it is clearly very low outside it. Department heads should actively promote the Code amongst lower grades and ensure that guidance on whistleblowing is accessible and well known. We recommend that departments track the number of cases considered by nominated officers to assess progress and welcome the Civil Service Commissioners' audit of departmental procedures. (Paragraph 91)
21. We are concerned that awareness of the Civil Service Code, the authoritative statement of Civil Service values, does not appear to be universal. The Civil Service Code should be integral to the work of civil servants from their first day. We recommend that the Cabinet Office take steps to ensure all departments and agencies

comply with the Commissioners' checklist of best practice. It is particularly important that all new civil servants are introduced to the Civil Service Code, rather than merely told about its existence, on the day that they join and that this is followed up as part of their induction training. (Paragraph 92)

Possible reforms

22. It is essential that staff have confidence that using whistleblowing procedures will be a positive experience and not be damaging to their careers. (Paragraph 96)
23. Relatively little consideration appears to have been given to support for whistleblowers once they have raised concerns in good faith. Committed civil servants are extremely unlikely to follow approved channels for whistleblowing if they fear that their careers could suffer as a result; they may see an anonymous disclosure to the press as safer. We recommend that the Cabinet Office, departmental heads and Civil Service Commissioners look closely at how they can improve the safety, perceived and real, of whistleblowing procedures. (Paragraph 97)
24. Dr Woods-Scawen of the Committee on Standards in Public Life argued that leadership was key in ensuring people were willing to come forward with concerns and that the failure of an organisation to respond well to whistleblowing, in particular the victimisation of those who raise complaints, were failures of senior management. He said that senior management should be held directly to account for such failings. We agree. (Paragraph 98)
25. Nominated officers could have an important role to play in raising awareness of, and willingness to use, whistleblowing arrangements by staff outside the Senior Civil Service, bridging the gap between front-line civil servants and the Commissioners by providing a 'friendly face' that staff can seek advice from without being seen to be necessarily raising a complaint. At present, however, nominated officers are often senior people, which may intimidate staff at lower grades and those most likely to need their advice. We agree with Sir Suma Chakrabarti that nominated officers should be evenly spread across grades and offices. Where possible, nominated officers should be individuals with other pastoral roles, such as welfare officers, to improve their visibility, to make them more approachable and to ensure consistency in advice. (Paragraph 100)
26. It is important that new civil servants should be informed about their duty of confidentiality when they join. It is also important that this induction should include a counter-balancing exposition of the public's right to be informed and make clear the channels that exist for raising concerns and seeking advice where the two appear to come into conflict. (Paragraph 102)
27. For whistleblowing procedures to be credible they have to be as fast as is necessary. It is of little use if a whistleblower's concerns are vindicated six months after the effective decisions are taken. We welcome the First Civil Service Commissioner's statement that she would act immediately if an urgent concern was brought to her and expect that senior civil servants would do likewise. However, we recognise that the need for investigation, however swift, of official complaints introduces a delay

that some whistleblowers may not be prepared to countenance. If they fail to use the available channels, they need to be prepared to accept the consequences. (Paragraph 104)

Non-civil servants

28. Public sector employees in non-departmental public bodies, government agencies and private contractors working for the Civil Service should have similar whistleblowing procedures to civil servants. In particular they should have access to an external oversight body, similar to the Civil Service Commissioners. (Paragraph 107)

Departmental culture

29. The evidence we received suggests that a high proportion of leaks by civil servants happen because they feel that information is being ignored or suppressed in policy debate. Government departments should foster a culture of vigorous internal policy debate where dissent is encouraged even on the most sensitive of political topics. The hierarchical nature of the Civil Service can hinder people who are experts in their field, but who are not at the highest levels of seniority, from being able effectively to raise concerns over the direction of policy. We believe this is something that needs to be addressed by heads of department when looking at departmental policy-making processes. (Paragraph 112)

Formal Minutes

Thursday 16 July 2009

Members present:

Dr Tony Wright, in the Chair

Paul Flynn

David Heyes

Kelvin Hopkins

Mr Ian Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Mr Charles Walker

Draft Report (*Leaks and Whistleblowing in Whitehall*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 115 read and agreed to.

Summary agreed to.

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

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

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 11 December, 10 February, 26 February, 5 March, 12 March, 26 March, 7 May.

[Adjourned till Thursday 15 October at 9.45 am

Witnesses

Thursday 11 December 2008

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Sir Gus O'Donnell KCB, Secretary of the Cabinet and Head of the Home Civil Service

Ev 1

Thursday 22 January 2009

Guy Dehn, former Director, Public Concern at Work, **Maurice Frankel**, Director, Campaign for Freedom of Information, **David Hencke**, The Guardian, **Professor Peter Hennessy**, Attlee Professor of Contemporary British History, Queen Mary University of London and **Sir David Omand GCB**, former Permanent Secretary

Ev 12

Tuesday 10 February 2009

Sir Christopher Kelly KCB, Chair and **Dr Brian Woods-Scawen**, member, Committee on Standards in Public Life

Ev 27

Thursday 5 March 2009

Janet Paraskeva, First Civil Service Commissioner and **Dr Richard Jarvis**, Head of Independent Offices and Secretary to the Civil Service Commissioners

Ev 32

Thursday 19 March 2009

Katharine Gun, formerly GCHQ, **Dr Brian Jones**, formerly Ministry of Defence and **Derek Pasquill**, formerly FCO

Ev 42

Carne Ross, former Diplomat (by live video link)

Ev 50

Thursday 2 April 2009

Sir Suma Chakrabarti KCB, Permanent Secretary, Ministry of Justice

Ev 56

List of written evidence

1	Cabinet Office	Ev 67
2	Civil Service Commissioners	Ev 69
3	Ken Evans	Ev 73
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5	Dr Brian Jones	Ev 76
6	Sir Gus O'Donnell KCB	Ev 77
7	Sir David Omand GCB	Ev 77
8	Derek Pasquill	Ev 79
9	Public and Commercial Services Union	Ev 80
10	Public Concern at Work	Ev 81

List of Reports from the Committee during the current Parliament

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

Session 2008-09

First Report	Lobbying: Access and Influence in Whitehall	HC 36
Second Report	Justice Delayed: The Ombudsman's Report on Equitable Life	HC 41 (<i>HC 953</i>)
Third Report	Ethics and Standards: Further Report	HC 43 (<i>HC 332</i>)
Fourth Report	Work of the Committee in 2007-08	HC 42
Fifth Report	Response to White Paper: "An Elected Second Chamber"	HC 137
Sixth Report	Justice denied? The Government response to the Ombudsman's report on Equitable Life	HC 219 (<i>HC 569</i>)
Seventh Report	Further Report on Machinery of Government Changes	HC 540
Eight Report	Good Government	HC 97
Ninth Report	The Iraq Inquiry	HC 721

Session 2007-08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (<i>HC 514</i>)
Second Report	Propriety and Peerages	HC 153 (<i>Cm 7374</i>)
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (<i>HC 515</i>)
Fourth Report	Work of the Committee in 2007	HC 236 (<i>HC 458</i>)
Fifth Report	When Citizens Complain	HC 409 (<i>HC 997</i>)
Sixth Report	User Involvement in Public Services	HC 410 (<i>HC 998</i>)
Seventh Report	Investigating the Conduct of Ministers	HC 381 (<i>HC 1056</i>)
Eighth Report	Machinery of Government Changes: Further Report	HC 514 (<i>HC 540, Session 2008-09</i>)
Ninth Report	Parliamentary Commissions of Inquiry	HC 473 (<i>HC 1060</i>)
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499 (<i>Cm 7688</i>)
Eleventh Report	Public Services and the Third Sector: Rhetoric and Reality	HC 112 (<i>HC 1209</i>)
Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlement to Public Services	HC 411 (<i>HC 1147</i>)
Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985
Fourteenth Report	Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants	HC 664 (<i>HC 428, Session 2008-09</i>)

Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123 (<i>Cm 7154</i>)

Third Report	Politics and Administration: Ministers and Civil Servants	HC 122 (<i>HC 1057, Session 2007–08</i>)
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88, Session 2007–08</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90, Session 2007–08</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901
Session 2005–06		
First Report	A Debt of Honour	HC 735 (<i>Cm 1020</i>)
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 (<i>Cm 7374</i>)
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)

Oral evidence

Taken before the Public Administration Committee

on Thursday 11 December 2008

Members present

Dr Tony Wright, in the Chair

Mr David Burrowes
Paul Flynn
David Heyes
Kelvin Hopkins

Mr Ian Liddell-Grainger
Julie Morgan
Mr Gordon Prentice
Mr Charles Walker

Witness: **Sir Gus O'Donnell KCB**, Secretary of the Cabinet and Head of the Home Civil Service, gave evidence.

Q1 Chairman: I extend a warm welcome to one of our regular guests, Sir Gus O'Donnell, Secretary of the Cabinet and Head of the Home Civil Service. Sir Gus, whenever you come something seems to be in the air as it is this time. It is opportune that you should come to see us on this occasion. Overnight you have provided us with an interesting little paper on the role of the Cabinet Office in leak investigations with some more detailed evidence on recent events. Would you kick off by saying something about it?

Sir Gus O'Donnell: Thank you very much for this opportunity which is very timely. I sent you this memorandum to set out the facts because I thought it was important that you should have it in advance. I hope it is helpful. As head of the Civil Service it is my job to uphold its values. The way I quite often put it is that if you cut a civil servant in half—I hope you do not do it very often—like a stick of rock you will find written within his or her values: honesty, objectivity, integrity and impartiality. I think that impartiality is absolutely crucial and it has allowed me to work for prime ministers and administrations of different parties. I hope that those values will be enshrined in legislation in the Constitutional Renewal Bill. It is that political impartiality that allows us to serve the government of the day whatever its political persuasion. Chairman, to quote your words there is no public interest in having routine leaking for political reasons. Civil servants must act in a way that deserves and retains the confidence of ministers while ensuring they are able to establish the same relationship with those they may be required to serve in some future government. For us that is a crucial principle. Leaks undermine the confidence of ministers in the Civil Service, as my predecessors Lords Butler and Turnbull have said; they are corrosive and reduce the quality of debate inside government. If a civil servant feels that as a matter of conscience or public interest there is something about which he or she is concerned there are routes through the management chain and the matter can be reported directly to the independent civil service commissioners. That is part of the new code about which I feel very strongly. When I was appointed Cabinet Secretary I issued a new code

which I believe is simpler and much more accessible to all civil servants. When I go round the country to visit civil servants—I do a lot of it—I make a point of talking about values. I am working with Janet Paraskeva, the Civil Service Commissioner, to ensure that we think of ways to publicise all of that. In this particular case obviously there are matters that I cannot discuss because of ongoing police investigations. I believe that we have been in this situation once before. But I want to make it absolutely clear that when Sir David Normington and I invited the police to consider an investigation neither they nor we knew the source or sources of the leaks. We were concerned that they were coming from someone who could have access to very sensitive material. It is clear from the statement made by his lawyer that Mr Galley was responsible for some leaks, but investigations are ongoing and I cannot say any more about that. On a separate topic, this morning I have published the latest tranche of capability reviews which cover BERR, Communities and Local Government and the Cabinet Office. They outline progress and rescore two years on from the first assessments made in 2006, the steps taken to improve and the areas where we need to make further improvements. In the case of the Cabinet Office obviously we have been spending a lot more time recently on the downturn in the economy in the National Economic Council. If anyone wants to talk about that I shall be very happy to do so. The Civil Service remains in rude health and is attracting more and more people. The number of people who this year have applied for the fast scheme, which we have just closed, has risen by about one third. Of particular importance to me as an economist is that the number of economists who make applications has gone up by almost 50%, so I am very pleased about it. We remain a very attractive employer.

Q2 Chairman: The Committee has said that it wants to conduct an inquiry into the whole issue of leaks and whistleblowing, not focussing on the current case but some of the issues surrounding it. Perhaps we may start with current events and then go into some of the issues surrounding wider investigations. We shall come to Cabinet Office issues later. Let us

talk first about what happened in this case and its genesis. In your memorandum to us talking generally you say that occasionally it may be appropriate to involve the police in an investigation, but the letter you produce from the Cabinet Office to Assistant Commissioner Quick dated 8 September, which you recognise should be 8 October, says: "A number of recent leak investigations, including some conducted by your officers, have raised questions about the security of sensitive information in the Home Office." Having said that it is only occasionally that you involve the police, you indicate in this letter that the police have been conducting regular inquiries into the Home Office.

Sir Gus O'Donnell: That is more general. We involve the police. The kind of criteria we would look at is: is it serious and persistent? Are there risks of the individuals concerned having access to something that affects national security? I am sure you will be aware of the case where an individual was prosecuted for the leak of a JTAC report and was subsequently imprisoned. That was very serious and involved a police investigation. There are occasions when these matters are of such importance that we involve the police. I should stress that we invite the police to consider investigating it; it is their decision whether or not that invitation is taken up.

Q3 Chairman: Therefore, there has been some previous police involvement on particular issues but on this particular matter there has been a series of leaks fairly close to the heart of government in Home Office terms and you had not got to the bottom of it?

Sir Gus O'Donnell: That is right.

Q4 Chairman: And you needed some help?

Sir Gus O'Donnell: Indeed.

Q5 Chairman: You asked the police to come in. I think that the sentence in the letter to them which will generate the greatest interest is: "We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks, and we are concerned that the potential for future damage is significant." To be clear, are you saying that in relation to the particular leak inquiry now going on there has been considerable damage to national security already in relation to those incidents or not?

Sir Gus O'Donnell: Remember that when we started the inquiry the reason for it was our worry that certain information was getting out which potentially was very damaging to national security and that the kind of person who had access to some of the other things that had come out in the newspapers might also have access to secret stuff. It was brought home to me that this was a problem when David Davis gave an interview to *BBC News* on 28 November in which he said, talking about this in general, "Our job when that information comes to us is to make a judgment. Is it in the public interest that this should be known publicly or not? In about half the cases we decide not because we think there are reasons, perhaps of national security or military or terrorism reasons, not to put things in the public

domain, but when it is clearly in the public interest people should know that is what we do." That implies that about half the things being received have a national security interest. I am worried; there is a real problem. I stress that I do not know what the police have discovered about this particular investigation, and it is important that I do not know; it is wholly a matter for them. I do not imply anything about this case, but what I am saying is that we have a problem about information emerging that potentially is quite damaging.

Q6 Chairman: You will see the importance of this because it is claimed that in this particular case the leaks that have led to the disclosure of information were of a politically embarrassing kind, not of a kind which damaged national security. The consequence of that is that a Member of Parliament is arrested, his offices are raided and so on. I think it is important to know whether in relation to that particular case the seriousness was such that it occasioned that action or whether it was part of a more general worry about the Home Office.

Sir Gus O'Donnell: There are two stages to this. The first stage is that when we asked the police to investigate we were worried about a general range of leaks, some potentially very serious. In addition, leaks of a certain kind emerged which did not involve national security but the person who had access to that material might also have access to much more sensitive material. As to precisely what the individual being investigated leaked and saw but did not leak I do not know, and I should not know. That is a matter that the police know but they have not told me; nor would I ask them; that is for their investigation.

Q7 Chairman: Therefore, as of now you do not know whether the general problem in the Home Office with security implications has been addressed by what the police have done in this case or if there is a continuing issue and further things may happen?

Sir Gus O'Donnell: That is correct; there are ongoing police investigations.

Q8 Mr Walker: Who is advising you on your security measures? Clearly, if the police are investigating leaks you must be concerned to stem them but surely they are giving you some ongoing advice as to how to tighten up your internal security to ensure that secret information or stuff of national importance is not getting into the public domain?

Sir Gus O'Donnell: At the end of all these investigations certainly we consider whether there are any lessons to be learnt by us in the way we handle our information.

Q9 Mr Walker: It seems odd that the police are not helping the Home Office to manage its security better as a result of the problems you have just outlined?

11 December 2008 Sir Gus O'Donnell KCB

Sir Gus O'Donnell: As I say, when every investigation is completed there is a "lessons learned" exercise but while they are investigating they do not give us a running commentary on that investigation; that would not be appropriate.

Q10 Mr Liddell-Grainger: Do you have any private investigators, or anyone who is not the police, investigating this matter?

Sir Gus O'Donnell: In this particular case we have a panel of people we employ directly. I want to be clear about that. I have written a letter on that issue in response to an MP. They were investigating it and when we made the decision to call in the police they stopped and it went over to the police.

Q11 Mr Liddell-Grainger: Who is that?

Sir Gus O'Donnell: It is one of the individuals on our panel of independent investigators.

Q12 Mr Liddell-Grainger: Can you say who it?

Sir Gus O'Donnell: I am afraid I do not have his name.

Q13 Mr Liddell-Grainger: Can you let us know who it is?

Sir Gus O'Donnell: There is a panel of people who are security-cleared to do this sort of work.

Q14 Chairman: Let us stay with this series of events. You have said that when you hand it over to the police it is for them to do what they want. After a very short period of time they came back to you and said they had found somebody who they thought was responsible at least for some of this stuff. That was on 17 November. On 19 November a gentleman was arrested, but a few days later on 27 November despite the fact the police went off and did their own business they came back to you and said that imminently they intended to arrest Damian Green and search his offices. You, the Leader of the Opposition, the Mayor of London and Sir David Normington were told about it but it was not until half an hour afterwards that the Prime Minister was told about it. At what point was the Home Secretary told about it?

Sir Gus O'Donnell: To be clear about this, I learned of this after the event. As soon as I learned of it I informed the Prime Minister. I was told when it had already happened. This is something for the police to do, not me; it is for them to decide how they do their investigation.

Mr Liddell-Grainger: Who told the Home Secretary and when?

Q15 Chairman: An issue has arisen about when the Home Secretary knew this. According to your memorandum the Home Secretary was informed at about 3 pm which was half an hour after the event. To many people including former home secretaries it seemed bizarre that the Home Secretary had not been routinely told that the arrest of a Member of Parliament would happen when various other people including the Mayor of London had been told?

Sir Gus O'Donnell: How people should be notified was a decision by the police. Once I was notified I informed the Prime Minister, but it was after the arrest had taken place.

Q16 Mr Prentice: Were you shocked and surprised when Damian Green was arrested?

Sir Gus O'Donnell: I was surprised, yes.

Q17 Mr Prentice: Did you think the arrest threw up major constitutional issues?

Sir Gus O'Donnell: I think we went into this territory when I discussed with the Committee the question of cash for peerages.

Q18 Mr Prentice: At that time the Prime Minister was interviewed by the police on three occasions but was never arrested?

Sir Gus O'Donnell: Indeed. I was talking about situations where a special adviser was arrested, with the police going to her home very early in the morning.

Q19 Mr Prentice: I do not want to be prissy about this, but there is a difference between the arrest of a Member of Parliament and the arrest of a special adviser, is there not?

Sir Gus O'Donnell: From my point of view this is about police independence. They do not consult us about it and that is the way police operations are carried out.

Q20 Mr Prentice: But the police are not above the law; it is not a hands-off decision to allow the police to do what they consider to be right?

Sir Gus O'Donnell: In my view this is a matter for the police.

Q21 Chairman: But at one o'clock on the day Damian Green was arrested the Cabinet Office got a call from the police saying that that afternoon they would make this arrest?

Sir Gus O'Donnell: No, they did not; they got a call saying that there would be a search, not that there would be an arrest.

Q22 Chairman: An MP's office was going to be searched that afternoon. Whoever took that call in the Cabinet Office at one o'clock, when did that individual tell anybody about it?

Sir Gus O'Donnell: I was in a meeting at the time. They informed me some time later and then I informed the Prime Minister.

Q23 Chairman: Therefore, you informed the Prime Minister before it happened?

Sir Gus O'Donnell: No. As I say in the document, it was at about three o'clock.

Q24 Chairman: Presumably, someone told the Home Secretary at that point?

Sir Gus O'Donnell: The Home Secretary at that time was in Brussels and Sir David Normington informed the Home Secretary. The exact time is in the memorandum.

Q25 Chairman: You say that the Home Secretary was informed at about three o'clock. If the Cabinet Office was told at one o'clock do you really suggest that the Home Secretary did not know about this until after it had happened at three o'clock?

Sir Gus O'Donnell: Yes.

Q26 Mr Burrowes: Did any Cabinet Office minister or any other minister know about it until after the arrest?

Sir Gus O'Donnell: No.

Q27 Chairman: Should not someone have told the Home Secretary? All these other people were told.

Sir Gus O'Donnell: I am sure the Permanent Secretary at the Home Office informed the Home Secretary who was in Brussels at the time as soon as he could get hold of her.

Q28 Mr Burrowes: Is it not part of the ministerial code of conduct given the duty of ministers to account for the actions of their departments, particularly in the case of a leak inquiry, that ministers should be told at an early stage?

Sir Gus O'Donnell: I stress this was a decision made by the police in an ongoing investigation. It is a matter for the police and their decision, not ministers or civil servants.

Q29 Mr Burrowes: But at approximately one o'clock the Cabinet Office received information saying that there was to be a search of a Member of Parliament's office. Surely, at that stage that information should have gone to ministers so they could account for the action?

Sir Gus O'Donnell: It is for the police to account for their action in carrying out searches.

Q30 Mr Burrowes: But they are accountable?

Sir Gus O'Donnell: Of course they are accountable and the police have explained their decisions: Sir Paul Stephenson gave a statement about it.

Mr Liddell-Grainger: Why tell Boris Johnson?

Q31 Paul Flynn: It is clear from the reports that the Leader of the Opposition had the information two hours before the Prime Minister and Home Secretary. We know that the police were giving out the information.

Sir Gus O'Donnell: That is correct.

Q32 Paul Flynn: Can you tell me about the admission by David Davis that half of the information leaked essentially were matters of national security which they did not use? There must have been at least half a dozen because they have confessed to six leaks coming through. As the purpose of the leaker is to get the information into the public domain are you satisfied that that individual has not gone straight to the press with information that is a threat to national security?

Sir Gus O'Donnell: You are getting into territories where there is an ongoing investigation. I cannot go into the details of that.

Q33 Paul Flynn: It is not clear from your letter whether you are talking of many of the leaks that have taken place or this specific one at the Home Office. The comment about serious damage having been done to national security already refers not necessarily to the specific leak but past leaks?

Sir Gus O'Donnell: Exactly. This is when we are starting off the investigation and we do not know where it will go. All we know is that information has been getting out. We start with the Home Office but some of this information might be coming from elsewhere. But we have asked them to investigate the Home Office because a number of indicators suggest that that department might be one of the sources.

Q34 Paul Flynn: Can you give us more details about the damage to national security that you think has already taken place because of past leaks?

Sir Gus O'Donnell: I think the most obvious one would be the JTAC leak which appeared in the *Sunday Times* and led to a prosecution. The individual was found guilty and is serving a jail sentence.

Q35 Paul Flynn: We know that these facilities are available to civil servants who believe that decisions have been taken that are contrary to the national interest. The Civil Service has a new path which goes straight to the Commission. I do not know whether anyone has used it yet or whether they use the traditional path of the line manager. Are you happy that the situation is such that if someone has a conscientious objection to what a government is doing he or she can report it via the line manager or to the Commission without any risk to his or her career?

Sir Gus O'Donnell: That is why we have introduced the direct path to the independent Civil Service Commissioners if people want to do that rather than use the line management chain. That important change was made some time ago. For completeness, if a civil servant has a conscientious objection ultimately he or she can resign and there have been occasions when that has happened.

Q36 Paul Flynn: Do you differentiate between leaks that are a threat to national security and those that are just politically embarrassing or are likely to clog up the Government's works or inhibit government activity? Is it true that if you see leaks as being just politically embarrassing there is no question of reporting them to the police?

Sir Gus O'Donnell: I stress that when we started this investigation our reason for calling in the police was not because we were worried about embarrassment but the possibility of more serious things. When people make decisions about what to do next obviously we will take account of the importance of the material that is leaked. Obviously, that is a hugely important area.

Q37 Mr Prentice: Only a couple of days ago we had before us a Treasury minister who said that the Government was becoming increasingly leaky. We

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had major leaks from the Treasury on the pre-Budget report, on the cut in VAT and also the new top rate of income tax. Presumably, an inquiry into these leaks in the Treasury is going on and you must have considered bringing in the police?

Sir Gus O'Donnell: In these circumstances it is the permanent secretary of the department concerned who looks at this first. I have spoken to Nick Macpherson, the Permanent Secretary to the Treasury, and he is very worried about it and is considering how best to take the matter forward.

Q38 Chairman: Including asking the police to come in?

Sir Gus O'Donnell: That is an option. There is a difference in these cases between market-sensitive issues and national security.

Q39 Mr Prentice: There is national security and there may be national economic security. The value of the pound is just dropping through the floor at the moment. There may be material in the Treasury which if leaked could do huge damage to the economy of this country and in those circumstances you would want to bring in the police, would you not?

Sir Gus O'Donnell: I would not want to prejudge any decision. I stress "bringing in the police". You are implying that I can command the police. I can merely ask them to consider whether they would investigate. They look at the issue very seriously and it is ultimately their decision whether or not to take it on.

Q40 Mr Prentice: Have there been any occasions since you became Cabinet Secretary when you have contacted the police, asked them to investigate a leak and they have said, "Sir Gus, we have heard what you say but we have decided not to do so"?

Sir Gus O'Donnell: It is not quite as black and white as that in that there will be a discussion with them about a situation. I have never reached a situation where I have asked them to investigate something and they have turned it down.

Q41 Chairman: But your letter says: "I am writing to ask whether you will consider agreeing to . . ." Are you saying this is just a front?

Sir Gus O'Donnell: Absolutely not. You have a conversation with them first about the nature of the issue.

Q42 Chairman: So, before the letter is written you know that they will agree?

Sir Gus O'Donnell: No, not necessarily, but if it was clear from early conversations that they did not believe it was important then that would be their choice.

Q43 Chairman: Therefore, sometimes in conversations they might say that as yet they do not think their intervention is warranted?

Sir Gus O'Donnell: That is possible.

Q44 Chairman: That happens?

Sir Gus O'Donnell: It is possible.

Q45 Mr Liddell-Grainger: How many times does that happen?

Sir Gus O'Donnell: I honestly do not know.

Q46 Mr Liddell-Grainger: Can you let us know?

Sir Gus O'Donnell: Yes.¹

Q47 Mr Prentice: Are you content that the police can make a decision on whether or not to investigate without going to the DPP or getting legal advice?

Sir Gus O'Donnell: If you refer back to what I said when we discussed cash for peerages, I indicated that one of the lessons of that exercise was that when one got into political territory it was important for the police and the CPS to work together at a very senior level to consider these sorts of issues as early as possible.

Q48 Mr Prentice: There is so much material to get through, so perhaps you would remind me of this matter: in the Damian Green case did the police obtain top level legal advice?

Sir Gus O'Donnell: The police would have been talking to the Crown Prosecution Service along the way. I do not believe the DPP was consulted about this specific issue.

Q49 Mr Prentice: I do not believe he was. This is a learning process, is it not? You would like the police to check things out with the Director of Public Prosecutions before they arrest Tony Wright or Gordon Prentice?

Sir Gus O'Donnell: I am on record as having said in our earlier discussions that I think it really important in these sorts of situations that the police and CPS consider this at the highest levels when getting into areas that might create political controversy.

Q50 Chairman: I understand the role of the police in finding out who is leaking in areas that may turn out to be difficult in terms of national security so you need them as investigators, but if you go to the next stage and begin to talk about the prosecuting authorities and possible charges one question to be asked is: if it is an Official Secrets Act case it is pretty straightforward and you know what the charge will be. Presumably, when you have your conversations with the police and they have conversations with the Crown Prosecution Service one of the first questions is: does it fall under the Official Secrets Act and therefore it is known on what charge to proceed? In this case one of the issues to arise is that the position is unclear. Apart from a disciplinary offence in the Civil Service it is not being suggested, as I understand it, that it is an Official Secrets Act case. There has been no charge of that kind in relation to the gentleman in question and yet an offence has been created to deal with the recipient of a leak

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which is the bit that people find puzzling. When the Official Secrets Act was reformed in the 1980s under Douglas Hurd—I will not quote the changes; you have all of them—it was explicitly to restrict the operation of that Act to centrally sensitive information, not things that were routinely embarrassing to government?

Sir Gus O'Donnell: I do not disagree with that.

Q51 Chairman: We need to know with which category we are dealing here.

Sir Gus O'Donnell: Unfortunately, we are both in ignorance of the police investigations. We do not know and given that it is ongoing it is quite appropriate that we do not know. All I am saying is that at the start we are investigating a situation where potentially there are some important issues of security out there; there are some leaks. Precisely what the individual who has been arrested is responsible for I do not know. He has admitted to certain things through his lawyer's statement. It may be there are other people who are responsible for others; we just do not know. It is then for the police in consultation with the CPS to determine what charges to bring and that will depend on the severity of the leak. Maybe it decides not to charge. Certainly, in the case of Mr Galley based on the statement of his lawyer there has been a clear breach of the Civil Service Code. Whatever else happens there will be an internal disciplinary issue. The individual involved in the JTAC report was found guilty of misconduct in a public office and the Official Secrets Act was not used in that case.

Q52 Chairman: Did the police tell you when they came to you why they were going to arrest the recipient of a leak?

Sir Gus O'Donnell: You have to understand that from my point of view I am interested in stopping the source of the leaks.

Q53 Chairman: But they had done that; they had found the central leaker?

Sir Gus O'Donnell: We do not know.

Q54 Chairman: They found a leaker?

Sir Gus O'Donnell: I do not yet know what they have found. They have arrested someone and there is an ongoing police investigation. That individual's lawyer has made a statement admitting to certain things and that is what we know.

Q55 Mr Prentice: Given what David Davis has said you would expect the police perhaps to interview him because he said that half the material received from civil service moles affected national security and so they did not put it into the public domain. If the police and you are interested in tracking down the moles surely the police should interview David Davis?

Sir Gus O'Donnell: Again, that is a matter for the police; they sort it out. I do not direct the police; I do not tell them who to interview or not to interview. I do not know who they have and have not interviewed.

Q56 Mr Walker: It sounds as if you are more than happy to tolerate leaks that are helpful to government and if they are not that is when you get the police involved. I can imagine Jacqui Smith saying, "Normington, I am being made to look like a bloody idiot here. Sort it out." That is what it sounds like.

Sir Gus O'Donnell: It is not true; I completely refute that. I am very upset by all leaks and that was why I made the statement I did at the beginning about the importance of the political impartiality of the Civil Service and nothing being leaked. I am concerned about all things, whether or not they are embarrassing or involve national security.

Q57 Mr Walker: The behaviour of the Treasury over the past month to six weeks has been disgraceful. I do not say that its your civil servants who are leaking, but am I right in thinking that special advisers are governed by the Civil Service Code?

Sir Gus O'Donnell: There is a code for special advisers.

Q58 Mr Walker: If I may be so bold, I would strongly suggest, even advise, that every special adviser at the Treasury is investigated by the police because some of them have clearly been leaking information that is helpful to government.

Sir Gus O'Donnell: I will pass on that request to the Permanent Secretary to the Treasury; it is for him to decide.

Q59 Julie Morgan: To go back to the statement of David Davis which I find interesting, how big a trigger was it in pushing you to resort to the police?

Sir Gus O'Donnell: It was not a trigger and I had nothing to do with it. His statement was on 28 November and the decision to bring in the police was in October. We were worried that certain information was getting out. The only reason I refer to the David Davis quote is that he made it absolutely clear publicly, so that is in the public domain.

Q60 Julie Morgan: Did the statement of David Davis increase your anxiety?

Sir Gus O'Donnell: No; it confirmed something about which we were worried. The reason we called in the police as spelt out in that letter was that we had concerns that things were getting out, and from what David Davis says it is true that that material was getting to him.

Q61 Mr Burrowes: Was it clear from anything said at the time that decisions were made that the statement of David Davis was accurate? Do you have any evidence of it before that date because you are talking retrospectively in a sense to justify your earlier anxiety?

Sir Gus O'Donnell: I am not. We had real worries that things were getting out.

Q62 Mr Burrowes: In terms of national security?

Sir Gus O'Donnell: Yes. I keep referring back to the JTAC report that got out.

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Q63 Mr Burrowes: I am talking about national security in terms of this particular incident.

Sir Gus O'Donnell: What do you mean by "this particular incident?" When we made the investigation we were worried about the possibility of a number of leaks from the Home Office and that the individual concerned was obviously able to access important and sensitive information. Therefore, we did not know what would be coming out. If somebody has the propensity to leak you are just not sure. If they leak some things will they leak others? It was a big worry for us. We were clear that there had been some investigations of issues where we had not managed to get to the bottom of it, for example Operation Gamble. In that case there were some serious leaks which were absolutely worrying to us in terms of operational capacity. Someone had said something. I have no idea who it was. We looked into it and failed to come up with an answer. We were genuinely worried that things were going on that we hoped the police would come to. I am not yet sure as a result of these investigations whether or not we will find the answer to all of this. What I do know is that we have found one person who has admitted through his lawyer's statement to certain things that are a breach of the Civil Service Code. That is all we know so far.

Q64 Julie Morgan: Was there any contact with the police from the letter of 8 October to 17 November?

Sir Gus O'Donnell: In general they are just left to get on with things. I was not aware of anything.

Q65 Julie Morgan: So, there was no contact until they came back on 17 November?

Sir Gus O'Donnell: I had no contact with them in reference to this. Sometimes I have meetings with senior members of the Met on other issues but we never discussed this with them.

Q66 Julie Morgan: So, there was no indication in that period of what was likely to happen?

Sir Gus O'Donnell: No.

Q67 Mr Liddell-Grainger: Did the Permanent Secretary at the Home Office discuss any of this with you before or after what went on? Has Sir David Normington come to you and discussed it? Did you discuss any of this before the arrest? Was he coming to you to say, "There is a problem with leaks and I must refer this. What are we to do about it?"

Sir Gus O'Donnell: Absolutely. As I made clear in the memorandum, we were worried about the leaks and they were being investigated by an independent member of our panel. Then Sir David Normington and I sat down. We were not making much progress. We were worried about them and then made the decision to invite the police to investigate.

Q68 Mr Liddell-Grainger: It was obvious at the time that they were going to Members of Parliament, or it had to be the press or Members of Parliament?

Sir Gus O'Donnell: Yes.

Q69 Mr Liddell-Grainger: Did you have an inkling that maybe it would end up with a Member of Parliament being involved?

Sir Gus O'Donnell: You have to understand from where we are coming. I was interested only in the source and stopping it and so preventing the problem. In a sense where they go is neither here nor there as far as I am concerned if I prevent these things happening. That is what I want the police to do. Obviously, in trying to do that they may have to talk to people who are recipients, but that is another issue. My main concern is the prevention of leaks at source.

Q70 Mr Liddell-Grainger: Thanks to leaks we know that Sir Paul Stephenson and Bob Quick had a row as to whether or not the police should be involved. If this is not resolved to your satisfaction will you hold a full inquiry as to where you go from here with leaks? Will you be looking at this as an independent or as the Cabinet Secretary in order to get to the bottom of it? If it is not to your satisfaction where will you go from here?

Sir Gus O'Donnell: First, we will wait for the police investigations to finish. We will then look and see if there are any lessons for us in terms of our security procedures. For me that is the main issue. Does this tell us anything about what we should be doing in terms of how we handle information internally?

Q71 Paul Flynn: Do you believe that the recipients of leaks which are threats to national security, whether they are press or opposition Members, should inform you of them?

Sir Gus O'Donnell: The standard advice to anyone who is in receipt of something that gives rise to those problems is to hand it either to the department which is the source of it or the police. We would love them to do that.

Q72 Paul Flynn: Did David Davis hand in the ones that he referred to and thought were threats to national security?

Sir Gus O'Donnell: Not that I am aware of but that is something that we shall be pursuing since his statement.

Q73 Paul Flynn: Accepting what you say about the independence of the Civil Service and its ability to work for the leaders of both parties—your personal record speaks volumes—if someone has a substantial political background, whether he has worked for or stood as a candidate for a political party, should there not be a presumption that that individual does not have access to areas that are overflowing with secrets rather than more generally in the Civil Service? Is that a practical way of ensuring that someone who is a party-political activist is not appointed to a private office?

Sir Gus O'Donnell: In the Civil Service we have rules about political activity. You will know that at various times the question to emerge is: what constitutes legitimate and illegitimate activity? If you are in the fast stream or one of the senior grades you are not allowed to become involved in political

activity, but the more junior grades are allowed to pursue certain aspects. When deciding whether or not to recruit people in the first place they are asked whether they understand the civil service values and they know they must sign up to the code and be impartial in their operations. That is a decision made at recruitment.

Q74 Mr Prentice: At what civil service grade do the political restrictions kick in?

Sir Gus O'Donnell: They are not entirely grade specific, so it would be the fast stream and senior civil servants.

Q75 Mr Prentice: But here we have Christopher Galley aged 26, a former Conservative candidate for a local authority working at the very heart of the Home Office. Are there special considerations when appointing someone to a private office? Are penetrating questions asked?

Sir Gus O'Donnell: Yes. If there had been any prior suspicions that a particular individual was less than completely trustworthy and would not behave impartially that would be taken into account.

Q76 Mr Prentice: Did anyone in the private office Google the name Christopher Galley?

Sir Gus O'Donnell: The fact that somebody in the past has become involved in political activity is not a bar to joining the Civil Service. We have a number of civil servants who have been politically active before joining the Civil Service.

Q77 Paul Flynn: Most civil servants will not get very close to secrets anyway, but if someone is working at the heart of government in a private office he has access to a great many of these things. Should there not be some presumption that a former political candidate now employed as a civil servant should not be working alongside ministers throughout the working day?

Sir Gus O'Donnell: No one would put an individual in a private office if there were doubts about his or her impartiality and commitment to the values. Obviously, in this case someone made that decision and it was wrong.

Q78 Mr Prentice: I am told that Christopher Galley's entry on Friends United website gives his interests as "Centre right politics, the stock market, political satire and the miners' strike." That could be mainstream. Given what we know now with all these leaks occurring over an extended period of time maybe the Permanent Secretary or colleagues in the private office should have had a word with him and asked whether with his centre right politics he was completely relaxed about working in this kind of atmosphere so close to the Home Secretary?

Sir Gus O'Donnell: If the individual concerned had given anyone reasons to doubt that he or she was acting other than completely impartially those considerations would come forward, but there are a number of civil servants whose past includes

political activity and we do not regard that as a bar to becoming a member of the Civil Service and rising through the ranks.

Q79 Paul Flynn: You still are not getting the point. At age 26 you do not have an enormous past behind you anyway, but this man is working in the private office. Is not the lesson to be drawn from this that perhaps in future people with that sort of background should not have access to this vast amount of information?

Sir Gus O'Donnell: He worked in various different places. If you are asking me whether we should ban anyone with a political background from working in the private office I would not do that.

Q80 Mr Prentice: But was Christopher Galley quizzed by senior officials in the Home Office before the police were brought in?

Sir Gus O'Donnell: An investigation was going on and that had not produced an answer.

Q81 Mr Prentice: So, Christopher Galley could have said, "It wasn't me, guv"?

Sir Gus O'Donnell: He could have done.

Q82 Mr Walker: What security clearance did he have that would entitle him to have access to things relevant to this country's national security?

Sir Gus O'Donnell: I think he had clearance up to secret. He would not have got STRAP material.

Q83 Mr Walker: Why would he have been seeing stuff that was relevant to national security if he did not have the relevant clearance to see it?

Sir Gus O'Donnell: Things that are secret are very relevant to national security.

Q84 Mr Walker: But you say he did not have national security clearance or very high grade material?

Sir Gus O'Donnell: I said that his clearance went up to secret.

Q85 Mr Walker: If you have clearance to that level what does it allow you to see?

Sir Gus O'Donnell: Material up to secret.

Mr Walker: Top secret? Everything is secret.

Q86 Chairman: The clerk has just whispered to me that STRAP is classified information. What is perplexing about this conversation is that it makes the achievement of the police less impressive. If they were looking for a leaker they would need to do only a bit of Googling to find out that a Conservative political activist was working very close to the private office. First, what is surprising is that he should be there, which is the point of these questions, and, second, why on earth you did not find it out?

Sir Gus O'Donnell: I am sure that the Home Office knew about this. When he applied they would have had access to things in his past.

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Q87 Chairman: But that was a good clue, was it not?
Sir Gus O'Donnell: It is a clue, but the Civil Service attracts people who are interested in politics and, curiously enough, they have had some political activity over a range of parties. In this particular case he had some centre right issues. We do not ban people from the Civil Service just because they have been politically active in the past; nor do we assume that because of that activity the individual will ignore the Civil Service Code, quite the reverse.

Q88 Chairman: Do you believe that a more general corrosion of the civil service values that you spoke about at the beginning is reflected by a case like this?
Sir Gus O'Donnell: As Lords Butler and Turnbull have said, leaks have been with us for a very long time. This is not new; we have always suffered from leaks. I am sure that all of my predecessors have had problems with leaks and tried to investigate them with varying degrees of success. We think that the practice is corrosive. Is it increasing? I am not sure. I think it is just one of those things. Obviously, we have much more intensive media; there is much more of it and it operates 24/7. The possibilities are increasing.

Q89 Chairman: Here is someone who has offended against the core values of the Civil Service. It was not detected when he was appointed to the Civil Service?
Sir Gus O'Donnell: When he was appointed he had not offended against the core values of the Civil Service; he had not done anything and we just appointed him.

Q90 Chairman: Presumably, potentially he was able to offend against those core values because he had not understood them?
Sir Gus O'Donnell: No. When he was appointed certainly we knew there was political activity in his past, but that is not a bar to becoming a member of the Civil Service. He had not done anything then and it would have been made clear to him on appointment when signing the contract which involved adherence to the Civil Service Code.

Q91 Chairman: He had not done anything but clearly when appointed he did not have civil service values of impartiality, neutrality and so on, because if he did have those values he would not subsequently have done something?
Sir Gus O'Donnell: Later he certainly offended against the code. I do not know whether the individual on day one came in with the object of doing that.

Q92 Mr Prentice: Mr Galley's lawyer said mendaciously that his client was leaking in the public interest, but he obviously contravened the code which is a very good one: "You must not deceive or knowingly mislead ministers or Parliament." He did that. "You must not disclose official information without authority." He did that. "You must not misuse your official position, for example by using information acquired in the course of your official duties to further your private

interests or those of others." I think he did that. Then it says: "If you become aware of actions by others which you believe conflict with this code you should report it to your line manager. If it is criminal you can go to the police"—that is what is said in the code, so it is all good stuff—"or you can take it to the Civil Service Commissioners. The Commissioners can hear appeals." The Committee has recommended that the Civil Service Commissioners should be able of their own volition, I suppose, to go into a department if they suspect impropriety or unethical behaviour. I think I am right in saying that so far that has been resisted by the Government. In the light of all this would you like to see the Civil Service Commissioners have a new power to go in on their own initiative to examine whether unethical behaviour is happening or civil servants or indeed ministers are behaving duplicitously, mendaciously or what?

Sir Gus O'Donnell: Dealing with the first part of the question, we should be very careful because there is an ongoing investigation into Mr Galley and what we allege he did or did not do. All we know is what his lawyer has admitted to. As to whether we want the Civil Service Commissioners to look into ethical issues and all the rest of it, we changed the code precisely so people can go directly to them.

Q93 Mr Prentice: On appeal, people can go to the Civil Service Commissioners but it does not work the other way round. Civil Services Commissioners could not of their own volition decide that there was a systemic problem in, say, the Cabinet Office or Treasury and go in themselves to look at behaviour.
Sir Gus O'Donnell: My view is that if there are systemic problems we should be addressing them in government.

Q94 Mr Prentice: I shall be corrected by the Chairman if I am wrong, but Janet Paraskeva, the Civil Service Commissioner, is pressing for this.
Sir Gus O'Donnell: I am not sure that she is.

Q95 Chairman: There is an issue about the general power to initiate inquiries.
Sir Gus O'Donnell: You should talk to Janet Paraskeva about it. We have a very good relationship on all these matters. If we believe there are issues between us we try to find ways to address them.

Q96 Chairman: I agree that we should not go into the investigation in detail, but what appears to be distinctive about a case like this is that here we have routine political activity. It is not a tortured civil servant agonising over conscience issues and wondering what to do about something. We are used to cases of that kind. This is routine political leaking and that is why I ask whether there is a new tendency developing where some civil servants think it is all right to do something which at one time would have been regarded as unthinkable?

Sir Gus O'Donnell: I hope not. That is why it is very important we investigate such matters. If we find evidence of guilt—as you say, the lawyer's statement makes clear that Mr Galley has breached the Civil Service Code—we take action on that. We make this very clear to all civil servants. I have said already that I shall write a letter to all civil servants on a number of issues and one matter about which I shall be reminding them pre-Christmas is the importance of adherence to the values, particularly the question of political impartiality.

Q97 Paul Flynn: We have now had two weeks of media frenzy based on the belief that the investigation started because of leaks embarrassing the Government. What we have seen is that the leaks by the individual who it is suggested was responsible for them were ones that would probably be available eventually under freedom of information anyway. Can you just confirm the contents of this letter, that if the leaks were only politically embarrassing this investigation would not have started and the whole purpose of the letter and the beginning of the investigation was the concern for national security?

Sir Gus O'Donnell: Absolutely. I take complete responsibility for deciding to bring in the police. I did that because we were worried about various things. First, obviously some things were emerging; second, we had some suspicions about areas of national security; and, third, the person who would have had access to the material that was emerging would also have had access to other very sensitive material. Therefore, if they are leaking one sort how can you be sure they will not start to leak something else which is even more serious? I stress that we did not know at that time, and still do not know, precisely who was responsible for what leaks and whether more than one person was involved.

Q98 Mr Burrowes: Perhaps we may clarify the issue of discussions and the decision to refer the matter to the police because in relation to this particular instance it is helpful to the general leak inquiry. In relation to this particular instance how involved were ministers in the discussions? For instance, the Prime Minister was involved in the generalities of the leak inquiry, but in what specifics was he involved at that early stage?

Sir Gus O'Donnell: I simply informed the Prime Minister that there was a leak investigation under way.

Q99 Mr Burrowes: Was he involved in any further discussions in terms of referral?

Sir Gus O'Donnell: No.

Q100 Mr Burrowes: Were any other ministers involved in discussions about referring it to the police?

Sir Gus O'Donnell: No. One matter which I think is made clear in the memorandum is that I informed Liam Byrne when the civil servant had been arrested simply as a courtesy.

Q101 Mr Burrowes: To go back to the ministerial code of conduct, is there not an issue about people being held to account for the actions of departments? A significant action in relation to leak inquiries is that ministers should be informed about discussions to refer the matter?

Sir Gus O'Donnell: Obviously, there is overall ministerial guidance, but as head of the Civil Service, I think it quite important that I have the capacity to decide when I want to investigate leaks that are damaging to the Civil Service and I would want to do that. Obviously, ultimately the Prime Minister is head of the Civil Service in terms of political accountability, but in my role I would want to be clear that I had the authority to go in because I was worried about something that damaged civil service values.

Q102 Mr Burrowes: But departmental permanent secretaries are, as I understand from your note, responsible for saying to the police that they should come in?

Sir Gus O'Donnell: What normally happens is that the department will consider an investigation before it calls in the police. Normally, there will be a conversation between that department and the Cabinet Office.

Q103 Mr Burrowes: In your letter you refer to the recent leak investigations. Do you know the period of time that Christopher Wright was talking about in terms of recent leak investigations which raised questions about security and sensitive information?

Sir Gus O'Donnell: We have been worried for a number of years.

Q104 Mr Burrowes: Is that what you mean by "recent?"

Sir Gus O'Donnell: I am sorry. When we talk of "recent" in that sense I would say it is the 2007 to 2008 period.

Q105 Mr Burrowes: For the purposes of our general inquiry will we be able to see copies of letters or referrals just as we received the letter of 8 October?

Sir Gus O'Donnell: Would you be able to see these routinely?

Q106 Mr Burrowes: I am talking about the letters of referral so we can consider the particular threshold that is reached.

Sir Gus O'Donnell: I will think about that. I am not entirely sure that that would be appropriate.²

Q107 Mr Liddell-Grainger: Has anyone reported David Davis to the police for his outbursts? Are they to investigate what he is saying?

Sir Gus O'Donnell: It is a matter for the police.

Chairman: As Mr Yates used to say to us, the investigation will go where it needs to go.

Q108 Mr Walker: When did Mr Galley join that particular office?

² Ev 77

11 December 2008 Sir Gus O'Donnell KCB

Sir Gus O'Donnell: People have assumed that he has been in a ministerial office all the time. He has had a number of different jobs.

Q109 Mr Walker: When did he go in? He was arrested in a particular role. When did he start the role in which he was arrested?

Sir Gus O'Donnell: Not so long ago. The role which he occupied most recently was to back the director of strategy in the Home Office. It was not a private office.

Q110 Mr Walker: You said that the area of concern was 2007 and 2008, so it sounds as though he joined at about that time. As my colleague Mr Prentice said, he has a track record of being involved in Conservative politics. This is almost Whitehall farce. I cannot understand why someone did not ask, "Could it be Christopher?"

Sir Gus O'Donnell: We have a number of civil servants who are politically active.

Q111 Mr Walker: But you have only a few who have access to top secret stuff. I believe that Sir David Normington became incredibly panicked. He was getting a load of bollockings from the Home Secretary. This is farce, and you can barely keep a straight face.

Sir Gus O'Donnell: Not at all. A number of civil servants have in the past been involved in political activity. You are assuming that he was in a private office but for most of time he was not. People have access to important information in support roles in government, and some of our junior staff do that.

Q112 Chairman: Let me widen it slightly in the last minute or two. This is a distinctive case, but I should like to explore with you how civil servants should behave when they have concerns about information that is not publicly available. We now live in a changed world. We have referred to the reform of the Official Secrets Act which has delimited the amount of stuff that is off limits for security reasons; we have freedom of information legislation which has defined new categories of information and the grounds upon which it should be available in the public interest; and we have whistleblower legislation to protect from dismissal people who try to raise concerns in the proper way. All that must affect the context in which civil servants work. I should like to hear from you how you think that converts into the daily life of a civil servant.

Sir Gus O'Donnell: All of those means are ones by which the public can obtain information from government. If they have any concerns at all people can make freedom of information requests. As you rightly say, there are all sorts of avenues.

Q113 Chairman: But if a civil servant sees information that he believes the public ought to know about and that if the public made a freedom of information request they would get it and he might say, "Therefore, why can I not take steps to make it available?"

Sir Gus O'Donnell: Because that is not their job. They can certainly suggest through their line managers that some information should be made publicly available, but in the end their job is not proactively to decide for themselves what is in the public interest. That is not what the Civil Service is about.

Q114 Chairman: He goes to his line manager and says he thinks this information should be in the public domain; there is no reason why it should not be. What do you believe the line manager would do at that point?

Sir Gus O'Donnell: He will consider whether or not there is a case for it.

Q115 Chairman: My sense is that you have not got to grips with the new world. I look at the survey of all government departments carried out last year by the whistleblower organisation Public Concern at Work. It said that the Cabinet Office was lamentable; it got three out of a maximum of 28 points. The director of Public Concern at Work said: "If this was the premiership league the Cabinet Office would be relegated." It does not give the impression that you are really on top of the game in relation to this new world?

Sir Gus O'Donnell: I have no idea why it achieved those numbers, but remember that the Cabinet Office is responsible for the code, so people know about these things. They are stuck with me as their permanent secretary and I bang on about it all the time. I never make a speech in which I do not go on about values. Therefore, the Cabinet Office understands all these issues and it is also very close to the Civil Service Commissioners. From that point of view we probably have to do less than any other department to tell people about it because it is their job; they are working on the code and these issues all the time. Therefore, based on some formal index as to whether or not we tell people, the truth is that this is their everyday job.

Chairman: Thank you. I think we are finished with that for the time being.

Thursday 22 January 2009

Members present

Dr Tony Wright, in the Chair

Paul Flynn
David Heyes
Kelvin Hopkins
Mr Ian Liddell-Grainger

Julie Morgan
Mr Gordon Prentice
Paul Rowen
Mr Charles Walker

Witnesses: **Mr Guy Dehn, Mr Maurice Frankel**, Campaign for Freedom of Information, **Mr David Hencke, Professor Peter Hennessy** and **Sir David Omand** GCB, gave evidence.

Q116 Chairman: I am delighted to welcome Guy Dehn, Maurice Frankel, David Hencke, Peter Hennessy and Sir David Omand. I will not recite your assorted qualifications for being here, that is taken as read, but you together make a glittering panel in front of us to help us with our thinking about these issues to do with leaking and whistleblowing. You are a glittering panel, and because there are a number of you and there are a number of us and this topic is potentially very diffused, we have to be disciplined and we ask you to be disciplined otherwise chaos will ensure. In that spirit I will try and kick off. I will not ask you to say anything by way of introduction so if you have your perorations prepared perhaps you could insert them as we go along. When we had the recent hoo-hah about leaking, you, David, in *The Guardian* managed to get a piece in quoting one of your sources, an anonymous civil servant, which was quite a nice thing to do. In that piece you have this anonymous civil servant saying "Sometimes something appears on your desk and you think God this is absolutely blatant and wrong. Someone should know about this. It is worth doing when you see something that is out of order or when you know the minister and the civil servants are being hypocritical or just lying to the public." Let us stay with that image of our civil servant who thinks like that, the sort of person who talks to you sometimes. I then go to David Omand. You inside government thought a lot about all these matters and have given us a lot paper. It is interesting because you start off by making a caveat of trying to distinguish between different kinds of information where the rubric is: civil servants keep secrets. Your paper is rather more subtle than that because it seeks to identify those secrets which civil servants should keep. It does not say, in a blanket sense, they should do it. You say "I can envisage no circumstances in which a civil servant in post would be justified in disclosing official information as qualified above", that is your own qualification you have given, "without authority." What I want to try and explore with all of you is here we have our civil servant speaking through David here and here we have you, a senior intelligence person, saying it is not reasonable, as I read your paper, to get complete blanket coverage of this doctrine and is only covered by certain areas. Am I misreading you?

Sir David Omand: No, you are not. What I am trying to bring out is the muddled thinking there has been around this subject. You really need to think about

what is meant by official information, what is meant by information deserving of protection, and what is meant by authority and who has that authority to allow the release of information. Every day, every week, there are civil servants out and about talking to the public, talking at conferences and talking to journalists. They are not operating on precisely defined briefs approved by ministers; they are exercising their discretion. They are ensuring there is an informed public both on the nature of government and the issues of government. You cannot, if you ever could, take the line that all information, such as the colour of the office carpet, somehow is information which civil servants have a duty to keep secret. If there was any doubt on the matter, the Freedom of Information Act dispels that. From that it does not follow that all information can safely be released and, therefore, there are categories of protected information, including personal information about the citizen, information about commercial matters, information about national security, and so on. This is where there may be a disagreement amongst those of us in front of you over matters which bear on the confidences which there need to be in the inner most circles of government when it comes to discussion of policy. That is the line I take. Just to pick up the reference to the anonymous civil servant, in my note to you I quoted Warren Fisher that civil servants of the day will have to have the courage to say to their political chiefs "That is a damn swindle, Sir, and we will not put up with it." That has to be the case but that will not be the case if every such conversation is immediately leaked. If I am allowed to make one further point, and I apologise for going on, and that is the ethical dimension of what I would call a genuine leak, that is where an individual wishes to benefit, and continue to benefit, from paid employment, from taking the taxpayers' money and serving the State whilst simultaneously undermining the Civil Service Code and undermining confidence in it by slipping information unauthorised into the hands of a Member of Parliament or journalists. Those who have moral convictions and wish to defend them and stand up for them have to do so publicly starting inside their department by standing up to ministers or senior officials whom they believe are acting improperly.

Q117 Chairman: I do not want to misrepresent you but if you, Sir David Omand, are saying you have to be more subtle about this doctrine than we used to

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be, and you have to be clear about what kinds of information is genuinely to be protected, that makes the kind of civil servant quoted by David in a far more troublesome position than they thought they were. They are now living in a world where even Sir David Omand says things are not as straight forward as they used to be, a world in which we have Freedom of Information legislation, we have Public Interest Disclosure legislation, and they are thinking these things and they think possibly we can do something about it now, can they not?

Sir David Omand: No, they cannot. It will be very clear to a civil servant working closely with ministers, for example in a private office, or someone who has access to security classified information or intelligence information. It is patently clear that this is information they have a duty to keep confidential. If there is any doubt, and this is why we have these procedures, you take advice. You do not rush off, get a brown envelope and pass it over anonymously whilst trying to hang on to your job.

Q118 Chairman: A civil servant who sees that information which he can see would be disclosable under Freedom of Information is not being disclosed by his department and by the minister and steps are being taken not to disclose it, he knows the public interest would say this is disclosable information, what practically does that civil servant do?

Sir David Omand: This happens all the time. Civil servants take advice and that is why they have managers. Senior civil servants take advice. If you are not satisfied, or you suspect there is wrongdoing or a cover-up, you take advice from outside your line management. Each department has nominated senior officers to whom an individual can go if they are in doubt, and now additionally they can go to the Civil Service Commissioners. If after all of that they still believe there is a cover-up, and they have been assured by the head of their department and by the Civil Service Commissioners but they are not satisfied, at that point you either shut up and salute and get on with the job or you have to say this is unconscionable in which case you have to go public. This is the point I was making: a civil servant in post may not leak. You are not then leaking if you have the courage of your convictions and you are standing up and you are resigning your office.

Mr Hencke: With the procedure you have just outlined, if you wanted to be effective in getting something into the public domain, timing really is of the essence. It is not a long inquiry. Can I give you an example? It is not necessarily connected, because of protecting my sources, to the person who is quoted but I will give you an example of something that happened to me in a story that appeared in the paper last year. Defra was proposing a whole series of cuts, which had not been made public, to its budget. There was widespread anger among people in Defra and its agencies that this was happening without the public knowing. It was going to be presented in a way that what they were doing was re-

aligning money. They were basically taking money off very sensitive areas which were supposed to be government priorities, like green issues to do with recycling and also energy and areas like this. What happened there, and it is rather unusual, was I did not have just one mole but I ended up with six; it was a series of molehills in a field. The reason was because they thought that the public should know about it. It was extremely unusual because the Permanent Secretary's internal memo was actually leaked, which was very succinct and well written by Helen Ghosh, explaining all the different cuts and where they were going to be. Basically it was multiple source so there was no one mole responsible for the whole thing because there were series at this time. The exposure of this led a Parliamentary Committee, the Defra one, to call in Helen Ghosh and she had to go public and explain what she was doing. As far as the sources were concerned, although they were normally about the cuts across all this area, and in fact most of the cuts went through, they were satisfied that something that was being hidden, something that frankly the Prime Minister had said was a priority such as green issues, became public and was scrutinised by Parliament. They had to justify what they were doing and everyone could see what they were doing. In my mind that was, in a sense, doing a public service. Can I also add, and it is quite important to say, I find among a number of moles that I have known for a long time in journalism that you will not hear anything for years and suddenly something comes up. It is rather like David going back to the anonymous quote. You will be told about something and it is normally really a last resort.

Q119 Chairman: I saw Sir David shaking his head. By your example in your argument there can some public good that can come from leaking. Presumably your argument, Sir David, is that the process nevertheless is not to be defended.

Sir David Omand: The sort of situation that was described has a down side and, in my view, it would have been possible to resolve that position without compromising the moral integrity of a civil servant so that civil servant should not have been passing that information. A very good investigative journalist such as David Hencke has plenty of ways of looking into stories and writing them up: putting pressure on through putting in FOI requests and all the rest of it. Parliamentary Committees have a certain amount of ability to do that too and it should not be necessary to compromise the integrity of a civil servant. That has a significant down side.

Q120 Chairman: You have been watching all this for years and years and you know all about leaks and spillages. Do you think the Whitehall world lives in a different environment now, because of the things we have described, from how it once was?

Professor Hennessy: Yes. When David joined the Civil Service, which I think was 1970, there was only one whistleblowing, in a wider sense, instrument available to Whitehall and it was a very specific one

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and indeed it was legalised: it was the Permanent Secretary's note as accounting officer under the Exchequer and Audit Act 1866. If there was wrongdoing in terms of Parliament voting money for particular purposes, and those purposes being set aside for another purpose, they had the legal duty as accounting officer to bring it to the attention of the Public Accounts Committee, albeit inside a private loop although the Public Accounts Committee could make the note public. I remember shortly after David was in Whitehall and I was young journalist we used to talk about whether Watergate could happen here. The argument from some of my friends in the secret world in Whitehall was that it could not because the keeper of the secret vote, as it was then called, the Cabinet Secretary, had a co-ordinator of security and intelligence, a job David later filled, beneath him to watch the proper use of money in the secret world. If a Prime Minister of the day had decided to ask the secret services—this is before they were legal and one of them was not even acknowledged in public at that point in peace time—to use the resources of the State to burgle a political opponent's office, for example, the keeper of the secret vote would have to say "This does not go with the rubric of the public accounts system and the Exchequer and Audit Act and I will have to tell the Public Accounts Committee" and it would have stopped. I was never sure if that would hold because it depends at what level operations take place, and David can tell you about the degree of surveillance on this. This is long before oversight of the Parliamentary Committee, and so on, so we are in a different world. We now have the Public Interest Disclosure Act 1998, which admittedly is very precise in those areas where you can blow the whistle: illegality, criminality, health and safety and so on. We also have the Freedom of Information Act. We had the 1989 Official Secrets Act which brought to an end the blanket ban of the 1911 Act, in a very specific way, so that criminality, as applied to Crown servants who disclose in an unauthorised fashion, was limited to those very tight areas, which I think it should have been and I think David and I would agree about that. The jagged area which I think David has drawn us into, and this David has too, is where that network of legitimate recourse through the Civil Service Code to your line manager, to the nominated officer in the department, to the Permanent Secretary and, if necessary, to the First Civil Service Commissioner. In the secret world it is a nominated officer to the Counsellor in the Cabinet Office but they can go no further. It is a completely transformed world in the last twenty years but the jagged edge comes over the question of candour and the duty of candour of a Crown servant in very difficult circumstances. Candour is very necessary for policy making and trust, not just between ministers and civil servants but between officials and officials. In certain circumstances, very serious circumstances, very grave circumstances, what do you do? For example, how would you regard the single most important delayed whistleblowing of our recent lifetime, which is the leaking of the executive

summary of the Attorney General's full opinion on the legality of the Iraq War to Channel 4 News within a few days of the general election of 2005? I think it made a difference to the number of seats your party won in that election. Is it wrong to denounce the official who did that? Remember Freedom of Information had come into effect in January 2005 and, if I remember, instantly the Government had refused to release the full Attorney General's opinion as opposed to the little shrivelled one that the Attorney General gave in the House of Lords on the 17 March 2003. The Freedom of Information route had been tried. The Government was fobbing us off on Iraq, to be honest, in the general election: no inquiry. We have had two inquiries, they said. You know the mantra as well as I do. The first time the electorate had had a chance to hold a government to account which had taken us into what many people regarded, on the inside as well as outside, as an illegal war without due process. The Butler Report was stinging at the lack of due process and that was in the public domain. Do you think that the official—and I do not know who it was; who I suspect had never contemplated leaking in his or her life before—was wrong to bring that executive summary into the public domain? David presumably would argue that that person should have gone up the hierarchical route to the First Civil Service Commissioner or, if it was someone in the intelligence world, to the Counsellor.

Sir David Omand: If you recall, the Deputy Legal Adviser to the Foreign Office resigned over the issue of legal advice and that was the proper course.

Professor Hennessy: She is a heroine and one of the most admirable people in the Kingdom. She has played it by the rules: she has not blabbed. She was the only person who resigned. I have to spare her blushes although I am sure she is not here but she would have been number one legal adviser in the Foreign Office by now if she had not done the honourable thing and played it properly, and we both esteem her for that. She was the only one who went and that was a signal to the rest of us that it reeked. That is why the press was alerted to the fact there was something very, very dodgy about the shrivelled opinion as opposed to the fuller one and, as a result, pressure built for it to be released. The Prime Minister resisted it. Do you remember the Prime Minister was unwilling even to give it to the Butler Privy Councillors until Robin Butler threatened to go public if he did not? Getting that opinion out I think was absolutely necessary for Parliament, and not just the electorate, in the spring of 2005. I cannot bring myself to condemn the official who did that. David knows very well there were a large number of officials, not just retired but still serving, who thought that the processes by which the decision had been taken to go to war were very inadequate as the Butler Inquiry demonstrated in technicolour. They also thought it was illegal but only one resigned. In those circumstances this House and the public needed to know what that Attorney General's fuller opinion said.

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Q121 Chairman: That is interesting but you have taken us further than David Hencke. David Hencke has told us about the public benefits that come from leaking but you are actually justifying leaking on occasion in its own right.

Professor Hennessy: That was whistleblowing albeit with a delayed fuse.

Q122 Chairman: Obviously David Omand does not follow you on this.

Sir David Omand: You cannot base your ethical code on counter-factuals. Suppose a street robbery goes wrong and an innocent man is murdered by a mugger. That victim might in fact have been a terrorist on his way to conduct an attack and many lives are saved by that murder, but it is still murder. Just because there may be cases in which history shows that benefit occurred, does not justify legitimising that kind of activity. I would not recommend that to the Committee as a route to go down. In the particular case that Peter Hennessy describes, it was your job in Parliament to hold the Government to account.

Q123 Chairman: Can I bring Guy and Maurice in because you two between you are responsible for many of our difficulties in this area now because you have together changed the landscape in which civil servants have to operate. What is your take on where we are now?

Mr Frankel: I think the case about Defra is quite interesting. First of all, I want to distinguish that from the one you raise where an interesting piece of paper flowed across somebody's desk and he said "That would make a good story. I think I will give that to David Hencke." There is a difference between that and something being done which has effects which are deliberate. This was factual information about the numbers of job cuts, by the sound of it, being deliberately concealed and an alternative view was being given out. I find David Omand's comment about the moral integrity of the civil servant being compromised is overstating it in a case like that. I think the possibility of that happening is an important part of keeping government honest. I am sure that when the announcements are drawn up and the way in which these things are presented the fact that if the Government attempts to go too far in misdescribing what is taking place and somebody may correct them is quite a useful factor in helping to keep government honest, and perhaps as effective as the prospect of the Freedom of Information Act request coming out. It is very hard to quantify. It is very hard to say people should leak in those circumstances; one would be very reluctant to say that, but the fact it does happen sometimes is actually sometimes a healthy part of the checks and balances without answering the moral dilemma that actually faces anybody presented with that situation.

Q124 Chairman: Can I pick up the Parliament point. Listening to the Defra case it relates to what the Public Interest Disclosure Act says about the role of external regulators that people can go to in certain

circumstances and Peter talked about Parliament. I wondered if it was more legitimate for a civil servant troubled by an issue, possibly the Defra case or another one, to go to a Member of Parliament, to go to the Chairman of the Defra Select Committee and say "I am not going to go public on it but there are issues that you need to know about or that Parliament needs to get stuck into." Would that make a difference?

Mr Dehn: Yes, in my view, it would. Whether the Civil Service Code was developed or whether under the Public Interest Disclosure Act you provided a mechanism, an oversight, by the Chairman of the relevant Select Committee or the collective of Select Committees which I think meets annually, that would, in my view, be a good development. Some of the leaking that goes on to MPs can be party political, in other words you select your MP. You either have your own constituency MP, that may be legitimate, and that was a point that was accepted by Parliament and the Government in the context of the NHS back in 1993, or you could give a role to Select Committees. Can I say there are two bits, picking up the discussion earlier, and the first one is in the context of authority. What the Civil Service Code and what some of the discussions and perhaps, although I have not seen them so I am not clear, Sir David Omand's papers are talking about is managerial authority. Certainly what I and Public Concern were more interested in was what was lawful authority. In other words, part of the problem was, not just within the context of the Civil Service but generally, if the authority was that of the management line then the management line would often have its own self-interest in the way it handled the substantive issue. Also the individual who had the concern would very often have legitimate fears that the management line would not welcome them raising that point. There is a distinction in terms of authority when you say managerial or legal. I do think there is common ground because the example in David Hencke's article to which he referred, and in the example which Sir David Omand quoted of a situation where there is serious wrongdoing, the serious wrongdoing may be by ministers, by a special adviser or by an official what do you want done? From my point of view, and I hope the point of view of many taxpayers and voters, is they would like a mechanism that deters people engaging in serious wrongdoing. I am with Maurice that what you want is there to be mechanisms which induce a sense of self-discipline on the part of people who may be tempted to engage in wrongdoing. This would be good for the Civil Service and for government because it would strengthen, what David Omand talks about, the moral integrity of the Civil Service. The fact is the mechanisms at the moment do not seem to work as well as they might. I think it is common ground that there are examples of malpractice or wrongdoing that ministers and officials, with the benefit of hindsight, also wish had come out. What you want is a culture where people are more likely to pick up these things and raise them in advance rather than after the event with hindsight.

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Sir David Omand: There is one aspect we may be losing sight of which is that part of the Civil Service Code that says that civil servants may not deceive or knowingly mislead ministers, Parliament or others. If a piece of paper comes across the desk and you say "This is suppressing something Parliament is entitled to know about", that is when you take it up either to line management or, if you do not trust your line management, through the other routes and eventually the argument ends up between the head of department and the Secretary of State.

Q125 Chairman: In Civil Service culture does that person become a hero or a troublemaker?

Sir David Omand: That person would be a hero although it may be you put the head of the department in a very difficult position. To give you an example, the Hutton Inquiry into the death of the late Dr David Kelly revealed that I was obliged to say to the then Prime Minister that I was about to appear before a Parliamentary Committee and I was not prepared to fudge questioning on the fact that an individual had been identified. The Prime Minister accepted that advice instantly and accepted that I would, when I went before the Committee, have to explain exactly what had happened.

Q126 Mr Walker: Is leaking good for democracy?
Mr Hencke: Yes.

Q127 Mr Walker: I do not think it is good for democracy because many members think the Executive of the Government is pretty sneaky and tries to hide things and that we need people like you to bring it to our attention so we can bring them before Select Committees and grill ministers.

Professor Hennessy: You wait until you are a minister. I will remember you said that.

Q128 Mr Walker: I never will be but all is fair in love and war. Sir David, you do a lot of shaking your head but I am sure you are an honest guy and will give an honest answer to a straight question. Will David Hencke be monitored by UK Security Services in this country? Are his activities, in your best estimate, monitored by security services in this country?

Sir David Omand: No.

Professor Hennessy: They are slipping up, are they not!

Q129 Mr Walker: Why would they not be because you seem to think he is a danger to democracy?

Sir David Omand: I am not speaking from personal knowledge; I have been retired for a number of years now. The monitoring of individuals by the Security Service takes place of those who are judged to pose a danger to the State. With the greatest of respect, I do not think he does.

Professor Hennessy: They used to tap my phone occasionally but I did not mind. You could cause havoc on a Bank Holiday Monday putting into the test match score or dial a recipe or the weather and

leaving it on for several hours and they would think there is fault on the line. There are games to be played.

Q130 Mr Walker: Who would tap your phone?

Professor Hennessy: Some of my helpers, if I can put it like that, would tell me that when a leak inquiry was on, there would be a Home Office Warrant and they could do this. Some of them were really quite skillful at letting me know. It was a minor inconvenience because I would have to go out on winter Sundays in Walthamstow to find the occasional non-vandalised BT phone to ring up my office. As long as I knew I did not mind at all. I never complained.

Sir David Omand: That was before Parliament legislated, and under the Regulation of Investigatory Powers Act 2000 I have to assure you that such a warrant would not get signed.

Chairman: We will not go along the table and ask if it is true.

Mr Walker: I am very disappointed for David Hencke!

Q131 Kelvin Hopkins: I think in the papers the importance of politicians being able to trust civil servants is emphasised, and that is fine and obviously the case. Is it not also absolutely vital that politicians must know that if they tell lies they are likely to be found out because somebody will leak and tell on them? That is important for democracy surely.

Sir David Omand: I do not accept the second part. It is very important that politicians know that deception does not pay but there are many ways in which in a democracy, particularly with an active Parliament, ministers can be held to account. Setting up a system where you are justifying the breaching of a code of conduct because it has these wider benefits is a very dangerous road to go down. If, as I hope, we have a Civil Service Act and if, as I hope, the Civil Service Code is incorporated in that Act then leaking would be wholly inconsistent with Parliament's intention.

Q132 Kelvin Hopkins: It is vital that we have civil servants who are dedicated to the public interest, have a strong sense of values and ethics. From time to time however they feel they have to do things, good example being the civil servant in the Foreign Office who in the 1930s leaked information to Churchill about what was happening in Germany. He gave Churchill information which led to a major shift in British policy and changed the course of history because if it had not been for Churchill we might not have gone to war. According to a television docudrama that man's career was ruined and he committed suicide, but he felt he was doing absolutely the right thing on behalf of the country. That was a leak which was surely, in retrospect, the right thing to do.

Sir David Omand: You always find in retrospect that even criminal acts sometimes have unexpected benefits but that is not a justification for doing it.

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That is the counter-factual argument. As for the Churchill case, just to bust myths can I recommend the retired Foreign Office Chief Historian Gill Bennett's book on Desmond Morton. The story in the docudrama was, I am afraid, slightly romanticised. Interestingly, and this bears out my point, the Head of the Foreign Office at the time, Robert Vansittart, and the Head of the Treasury, Warren Fisher, were both strong supporters of the line Churchill was taking. There was a committee under Desmond Morton, who had been in operational charge of the Secret Service during of the interwar period, looking at precisely that, German industrial capability. I am quite sure if that individual civil servant had gone to Vansittart he would have been reassured "Leave this one to us", in other words to the heads of the relevant departments. There was no need for that individual to take the responsibility on themselves. That is another issue we have not really brought out in this evidence. If you are not careful you are encouraging individuals to make decisions on issues on which frankly they are not in a position to judge. They may not have the full facts and that is why they need to take advice.

Q133 Chairman: There are different categories here. Is there not a category which you might call principled leaking which are these cases, and Peter pointed to one, where people are tortured by conscience and they try and do what they think is in the public interest in very, very difficult circumstances?

Sir David Omand: These are very rare circumstances.

Q134 Chairman: But they are important examples.

Sir David Omand: Those are exactly the circumstances in which the individual must stand up inside their department and be counted.

Q135 Chairman: I wonder if that argument is being contaminated by what you might call the routine mischief-making kind of leaking.

Professor Hennessy: It is the clutter of low level leaking that gets in the way. It is rare but it is usually on crucial occasions. For example, on his last appearance in the Chamber of the House of Commons on December 20, 1956, in reply to a question from Denis Healey, Sir Anthony Eden said there was no foreknowledge of Israel's intention to attack Egypt which was a straight lie. In the box were officials who knew that was a lie. Very few officials knew about the collusion. There was no mechanism for going to the Head of the Civil Service or the Civil Service Commissioners; it was a different world. Two of them had resigned on the road to war in Egypt and a few ministers did too, Anthony Nutting and Edward Boyle, but not one official, when that was a straight lie to the House of Commons, felt the need to in any way. There was no mechanism in place to expose it. They found it immensely difficult. I know it is only once in a career that this happens, but the whole point of having Crown servants is that they do speak truth under power. We have always talked

about this when I have come to see you. There is no point in having a career Civil Service that is politically neutral and recruited on the basis merit, with all those values to which we sign up, as you were saying Mr Hopkins, if on these extremely rare occasions you do not actually put the wider public interest, Parliament's interest and your conscience's interest first if all other courses of action have been exhausted.

Sir David Omand: It is for the heads of the departments, the senior officials, to make those judgments and, in my experience, they will.

Professor Hennessy: Many of the heads of departments had no idea about the collusion in 1956; it was a very small group. What would you have done if you were the Private Secretary to the Foreign Secretary of the day? What would you have done if you were in full knowledge of the Attorney General's fuller opinion as well as the shrivelled one in 2003? You are a man of conscience and it would have been very difficult for you.

Sir David Omand: It would, but that is where you do not suffer in silence; you expose your problem to your superiors. We now have the First Civil Service Commissioner as well as the heads of department and other nominated officials to whom you can expose this. You can discuss it and in the end the problem drops right back in the lap of the heads of department and their relationship with the Secretary of State and the Prime Minister. As Peter Hennessy has pointed out, there are some nuclear weapons in the armoury of heads of department. Were one of those heads of department at the time of Suez to have said "This is unconscionable and, what is more, I am going to ensure that Parliament is informed" through the chair of the Foreign Affairs Committee of the day or whatever, you may be sure that ministers would have been forced to change their policy.

Professor Hennessy: The Attorney General, Eliza Manningham-Buller's dad Reggie, wrote to Eden saying "We have not been consulted on the legality of the invasion of Egypt. It is illegal. You cannot pretend otherwise in what you say in public. I am not going to resign. If somebody asks me a parliamentary question or the Solicitor General 'Is the war legal?' we will have to say no." Not one Member of Parliament thought to ask. It was a different world.

Q136 Chairman: If in some of these cases someone was to go to a Member of Parliament and say "You might like to ask this question", you are into far more complicated territory than just going through your line manager.

Sir David Omand: What the civil servants are trying to do is to follow their Code, and their Code says they must not knowingly deceive or mislead Parliament. Having taken that issue all the way up the line, if the conspiracy of silence continues then indeed on any matters involving impropriety, the Public Accounts Committee Chair would be the person to be informed. On the Suez case, then in confidence, the chairman of the relevant

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Parliamentary Committee conceivably could be the person. I would prefer to see the civil servant at that point resign and go public.

Q137 Paul Flynn: This was a decision that was taken to go to war. 139 labour MPs voted against the three-line whip. At least 50 expressed doubts about the war and signed EDMs, and so on, against it, and were bullied and bamboozled into voting or abstaining. Leaking that or getting across to an MP to ask the right question could have saved nearly 200 British lives as the vote might have gone against the war. There is a huge difference between a civil servant dropping a hint to an MP or leaking at that particular time when he could have avoided our involvement in that war rather than someone coming along and leaking it a couple of weeks before an election to influence the result there for their own political reasons. Is that not the situation?

Professor Hennessy: I think it was done for more than political reasons in 2005. I do not know but I suspect it was somebody who had been finding it increasingly difficult to live with their conscience ever since seeing that opinion in the first place. I do not know, it is for you judge because you are Members of Parliament, but if you had had the full Attorney General's opinion with all the caveats of March 7, 2003 when you had that vote in your chamber on the eve of war, do you think it might have gone the other way? It is for you to judge. I rather think it would have done.

Q138 Paul Flynn: I am certain it would have gone the other way knowing the colleagues who wrestled with their conscience at the time and bitterly regret that they took the decision by not opposing the war at the time because of the belief in what was being said.

Professor Hennessy: You did not have the wherewithal to make a fully informed decision, did you?

Q139 Paul Flynn: Should the civil servant not be worried about the fact that they did not give some hint or did not suggest that an MP ask that question at the time. Certainly we are all guilty of that, that we did not ask that question. There was strong opposition at the time.

Professor Hennessy: I think the Cabinet is the real culprit, as I have said before. They did not test it out. This is why I hope the Information Commissioner's ruling that the minutes of March 17, 2003 are released is upheld by the tribunal. There is a ruling very shortly on that. We need to know the degree to which they did or did not test out the little shrivelled opinion. Did anybody ask for the fuller one? Under the Ministerial Code they are meant to have the full Attorney General's legal opinion but they did not get it, did they. I have a suspicion not one of them spoke up. An injection of water would have stiffened those bastards' backbones.

Mr Frankel: On the leaking point, there is another option now available which is for an official to say to somebody outside government "Why do you not ask for the following document under the Freedom of

Information Act" and say nothing more about the contents or the significance of the document. It seems to me that is an invitation for somebody to use the authorised proper mechanism for obtaining the information. I hope that would not be regarded as a leak. There is one more thing. The further refinement of that is for the official to make the request him or herself knowing what the document is and in full knowledge of the contents of the document. There is then not even a technical question of "I am entitled to go to journalists and suggest they ask for that document." The official could make the request him or herself so there is absolutely no communication to anybody else. If the information is disclosed, then it is a public document and the official can freely pass it to anyone else or put it on a website.

Q140 Chairman: Is that how things might be in the new dispensation?

Sir David Omand: It is an ingenious argument. I still would rather the individual civil servant took advice, partly to ensure that they really had all the picture explained to them, which they may very well not have if they are only seeing part of the correspondence. I would rather they took advice. In the end the decision as to whether a Select Committee should be alerted to an issue is then one that the head of department should discuss with the Secretary of State. Can you imagine a Secretary of State faced with that actually saying "No, we will continue with our cover-up." They are not going to do that.

Chairman: A straight answer is we probably can imagine a situation like that.

Q141 Paul Flynn: It happened in 1956 with Andrew Nutting's resignation. The whole proposition that there was not collusion between Israel and France that it was not a plausible story made people actually believe it but it was completely obvious it was. The Government persisted with the lie.

Professor Hennessy: He was persuaded not to make a resignation statement to the House of Commons.

Q142 Chairman: There might be sentences uttered which go something like "I do not think it would be helpful to have this made available at this moment" and things of that kind.

Mr Hencke: I was going to say the very example you have mentioned happened to me recently when I was researching a book this year on the miners' strike. A very, very senior civil servant suggested I applied for a specific Freedom of Information Act request for a meeting between Lady Thatcher and Ian MacGregor at the beginning of the strike on a particular date. When it came back it was released under the Freedom of Information Act and it basically enabled me to be able to put in the book that actually the first meeting they had was not to discuss the miners, not to start with, but was a huge row over the channel tunnel and whether it should be a bridge or a road. MacGregor was carrying on at great length that the trade unions were so terrible in this world that if you just left it with a rail link, the

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French and British trade unions would combine together and stop the trains every five minutes. That is a specific example of the sort of thing that has happened. The other thing I have quite a lot in my job is I get advice from senior people on what to look for, i.e. always read a Public Accounts Committee Report backwards because it contains new information that has been released between MPs, and you get a story. The other great one was to look for what was known as the Whitehall dustbin, which is basically when various projects have gone completely wrong, the civil servants ditch the money at the end of the year and write it off in little sentences hidden under Accounts. As a result of that I got a story about Gyles Brandreth, who genuinely thought his colleagues had stabbed him in the back, because in this dustbin was some amazing £250,000 that had been wasted on the taxpayer on a Royal Britain Exhibition in the Barbican. When I rang up the Tourist Board to find out, they said that is Gyles Brandreth's company. Gyles Brandreth at the time was the adviser to Norman Lamont. He was most displeased about this. That is information coming out where you are directed where to look. The last case was just: keep an eye on this because you will be surprised what is done there.

Sir David Omand: Neither of those cases affect the substance of what we are talking about. I happen to know in the first example the person who tipped him off was a retired civil servant. What you are debating there is the interaction between the 30 Year Rule and Freedom of Information and that comes under my category of public information, creating a more informed public as to how Whitehall works and all the rest of it. There is nothing wrong with that. That is not brown envelope leaking.

Q143 Julie Morgan: I want to come in on Iraq. The Deputy Legal Officer resigned and you said she was the only person who did the honourable thing. Obviously the information did not come out until much later. I do not know what the timescale was between her resignation and the information coming out.

Professor Hennessy: Two years almost exactly.

Q144 Julie Morgan: In terms of effectiveness in trying to bring out this vital bit of information she did the honourable thing, but was that the best thing she could have done in the circumstances?

Professor Hennessy: I do not know how she could have done more because she is a very honourable person and believes in proper procedure. I have met her but I do not know her at all well but I suspect due process and proper procedure is what she profoundly believes in. She is a very remarkable person, a top flight lawyer, and does not come into the category of whistleblowing at all. I suspect she was like Martin Luther: she could do no other. She did keep to all the rubrics and has nothing but the esteem of the colleagues she left behind.

Q145 Julie Morgan: It was two years later before this information came out.

Professor Hennessy: Somebody else leaked it, yes.

Q146 Julie Morgan: Looking at that scenario makes you think that somehow something should have come out before then.

Professor Hennessy: I think so, yes, but it is not for me to tell people to take risks with their careers, their mortgages and their families.

Q147 Mr Prentice: I am interested in the civil servants who leak to you. What kind of percentage get on to you after saying they have been totally frustrated having raised the matter internally but it has not been taken seriously and in exasperation they contact you?

Mr Hencke: It is quite high, about 70 to 80 %. They have normally tried to do something about it.

Q148 Mr Prentice: Listening to Sir David, with all the changes that have been made to procedures over recent years, you would think there was a very real alternative for disaffected or disgruntled civil servants agonising over a particular issue to go through the line management and get satisfaction, but you are telling us that is not the case for 70 or 80 %.

Mr Hencke: It is normally a last resort. I have one thing at the moment, and I will not go into a lot of detail, where someone has actually been offered the whistleblower route and discovered that one of the key files which was supposed to be kept on this had been "inadvertently destroyed" by a junior civil servant. They know that if they followed the system right up to the Civil Service Commissioners there would be a big hole in the investigation. They have come to me because they have seen something else I have written about where I have raised behaviour in Whitehall. I did ask direct. I said you have been offered this and then I got this extraordinary explanation "I do not think it is going to work because I know some of the evidence by the people concerned has been destroyed." That is an example.

Q149 Mr Prentice: You have done the survey of the whistleblowing procedures department by department. Clearly they are not sufficient.

Mr Dehn: No. On paper there are a lot that leave a lot to be desired but a lot of it comes back to what the culture is. Can I develop something Sir David Omand said? If you take the Civil Service Code, and it is something that a good number of civil servants take seriously and will wish to comply with, in some respects one of the matters that came up with Galley on issues that came up with Matrix Churchill, on issues that came up with the immigration visa, one would have expected at least one of the civil servants to formally raise that within the routes, yet what actually happens is nobody raises it within the route. One individual feels compelled to go outside and then the focus is on that individual.

Q150 Mr Prentice: There is a difference between department and department. Let us take the Department of Culture because in the evidence that

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you give us they tell the people in their department “If something is troubling you that you think we should know about please tell us straight away. We would rather you raised the matter when it was just a concern rather than wait for proof.” Have there been many leaks from the Department of Culture? You studied these things in detail. Is the Department of Culture less leak-proof than other departments because they have a whistleblowing charter which is more reassuring, if I can put it that way, to the civil servants employed in that department?

Mr Dehn: I would have thought members of this Committee, or the Committee that oversees Culture or David Hencke, would be better informed whether it is better or not. The issue is it was an analysis of what happens on paper; it was not an analysis of the confidence that officials feel. One of the recommendations was that departments would survey their staff as to their confidence in the route and that is one of the key things. You can have something on paper but if people do not believe it they are not going to follow it.

Q151 Mr Prentice: How do you deal with that point? It is all about the culture of the Civil Service. You can have all the rules and regulations set down in writing but the culture prevents civil servants doing what they should do.

Sir David Omand: The first point I would make is it is very important that civil servants look at Parliament and at Committees such as yours and see strong support for the Civil Service Code. The second point is within departments there really must be a constructive attitude where mistakes can be admitted without penalty and, where there are suspicions of wrongdoing, they are raised within the department. There needs to be confidence that they will be looked at properly, that the auditors, if necessary, will be brought in or the senior management will intervene if middle or local management appears to be not doing their job. If you get that culture right then my experience is that when people raise issues they do get resolved. David Hencke’s 70 % figure in one sense is reassuring. I would have been extremely alarmed if he had said that almost nobody who contacts him has used the procedures. At least perhaps there is evidence that people are trying to use the procedures. This is, in the end, about culture but it is very important that your Committee sends a powerful signal that leaking, in the sense in which I have used the term for anonymous passing of information whilst hoping to retain your position, is contrary to the Code and is not something that you approve of.

Professor Hennessy: May I respectfully suggest that you also send a message to ministers and special advisers along the same lines. A high proportion of the cataract of leaks is from political sources. The motivations are not high minded. You know them; you have to live with these people. The motivation very often is *schadenfreude*, which is not a lost obscure opera by Wagner but the pleasure you take in other people’s misfortunes. That is from where most of my leaks used to come of the low grade sort.

It is pure *Schadenfreude*. If a particular department goes into the manure and another department on the periphery of the circulation list of relevant minutes notices this, they have acute pleasure in it because it is not central to their concerns. All sorts of people would leak against the Treasury. When the poor old Civil Service Department existed you could not stop people leaking against its inadequacies. Remember the great Jim Callaghan to the Franks Committee on official secrecy: “I brief, you leak”. It is self-authorisation and that is where most of it comes from.

Mr Frankel: I want to go into something David said about the documents having been destroyed inadvertently. There is a process that has followed the Freedom of Information Act of records management which involves getting rid of documents when you no longer need them for your own purposes, subject to retaining things of historical interest and needed for accountability. Some of this involves a deliberate and accelerated process of destroying emails, and so on, after a very short time. It is always formally justified on the need to keep a clean self-explanatory record whereas in practice the motivation very often is to make sure the material is not there should anybody ask for it. I was on many platforms talking to officials during the run up to the implementation of the Freedom of Information Act and occasionally the people advocating records management would say explicitly if you destroy it you do not have to disclose it. That process is going on partly behind the scenes behind Freedom of Information. There was a leak to *The Times Higher Education Supplement* 12 or 18 months ago from the people carrying out the research assessment exercise on the quality of universities’ research, in which a memo had gone out to everybody to ensure that all reviewers’ notes were destroyed by such and such a date to ensure that if there was a request under either the Data Protection Act or the Freedom of Information Act, there was no material available to be disclosed.

Q152 Mr Prentice: You mentioned one department as an example but is this systemic across the Civil Service?

Mr Frankel: I think the close attention to not keeping emails longer than necessary, unless they are a central part of the decision-making process which has to be documented, is very widespread. I think it is recognised officially as the proper way to manage their records and emails.

Q153 Paul Flynn: There is an inquiry going on at the moment about the sweetener that was given to the American-led company that has taken over the clear-up of Sellafield. It went through Parliament without Parliament discussing it. I do not know the details of that but there has been 140 pages of emails and other documents being released on this which point out, and it is clear from what is in the those documents, that the Government has not been telling the entire truth on this. What shocked me about it was of the 140 pages, ten of them are

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completely black and on the other pages there are bits that have been censored out. It does seem extraordinary that even under Freedom of Information there is a still huge amount being withheld. Are you happy it is withheld for legitimate reasons? Perhaps you do not know this particular case.

Mr Frankel: The Department would say they consider it relates to the process of policy formulation and in the balance of public interest favours withholding it. The difficulty is the person seeking that information has to make a public interest case for disclosure and it is very difficult sometimes to do that when you do not know precisely what the information is. That is why I am attracted by my own earlier suggestion that the official make the Freedom of Information request. The unique difference is this: when it then comes to making submissions on the public interest, the official actually has full the story, in fact much more of the full story than the outsider would have, and that becomes a much more interesting set of public interest arguments put forward for the Department to consider, and perhaps later on for the Commissioner to consider, than if the outsider, like all of us now, had to make the request.

Q154 Paul Flynn: Sir David, you talked about us sending out a strong signal. We all agree about the trivial leaks, the leaks that are given for party political purposes and so on, but should we not also send out a signal that when someone has information they think might be of crucial importance, like the case quoted about the Iraq war, that it is a sin of omission by not contacting, not leaking, not telling an MP to put down the appropriate question? It is not enough to say silent in those circumstances. It is a duty of conscience, where you could have made the difference between our being involved in the war or not, which I believe it would have in that case, for that civil servant to make sure the information was put into the public domain.

Sir David Omand: Hard cases make bad law. Most leaks are not leaks of conscience; they are malicious. I think you will do a huge disservice if you were to couch the point exactly as you phrased it. I think there is a way around this: essentially the duty, at the end of the day, is on the relevant head of department not to remain silent.

Q155 Mr Prentice: Could I come back to what Peter said about what is sauce for the goose is not sauce for the gander and there two sets of rules: one for politicians and one for civil servants. Sir David, what should happen to David Davis, the former Shadow Home Secretary, who said that 50 % of the leaks that he gets have national security implications so he does not pass them on to the press? He has admitted the fact that he is in receipt of sensitive material. What should the official response be to an MP who admits that quite openly and quite publicly?

Sir David Omand: There are two points there. At the beginning of your question you referred to ministers and those around ministers. They authorise themselves to put information in the public domain and they are a frequent source of information to the media. As I have said in my paper, only the Prime Minister of the day can ensure the right standards of conduct in those relationships; it is not a matter the Civil Service can intervene in or we can regulate. The second part of your question takes in the duties of Members of Parliament. In my view, and this is a personal view, if a Member of Parliament comes into possession of information which is clearly information pertaining to national security and, therefore, is deserving of protection, then the duty of that Member of Parliament is to return it to the Government.

Q156 Mr Prentice: I raised with David Davis, as a matter of courtesy and as a convention, that I was going to mention him in the House. I wrote him a little note saying I was going to do this and I got a letter back from him and he said "Dear Gordon," and this is not telling tales out of school as this is a man who believes in publicity and courts it, "thanks for your letter. Why should I return information to the Department so they can arrest more whistleblowers. Anyway, how do you return information delivered orally or electronically? No, this is just a silly gambit by the Government to justify their heavy-handed and draconian tactics and re-write secrets legislation without going through Parliament." That is his justification.

Professor Hennessy: There is security and security. If it is strapline intelligence, it is very damaging if strapline intelligence is disclosed to anybody outside the loop. There is a hierarchy of security. The word is terribly loose. At the top end of it, it genuinely is security. One of the justifications of the 1989 Act, which without being balanced by the Freedom of Information Act I thought was inadequate I admit, was it did actually bring in the ring of secrecy into those areas where justifiable secrecy could be claimed. The previous Act had made it so absurd that our old mutual friend, Clive Ponting, the jury would not convict. A lot of what we are talking about now, in terms of both the legislation and the Codes and so on, stems from the Ponting affair.

Q157 Mr Prentice: This was about strapline security. What do you mean by that?

Sir David Omand: Information which relates to intelligence matters has its own classification system. Anyone receiving this information would be in no doubt that even if they did not understand the full intricacies of the system it would be very clearly marked that this is intelligence information.

Q158 Mr Prentice: Everyone understands top secret.

Sir David Omand: Higher than that, and it is very clear on these documents. If such a document comes into the hands of a Member of Parliament their moral duty, as well as their legal duty under of the 1989 Act, is to return it to the Government.

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Q159 Chairman: Do you think there is a further duty to disclose the source if you know it?

Sir David Omand: Personally, and I am only giving a personal view here, I do not think that is a duty. It is something that the Member of Parliament should consider very carefully in the light of what the information is and for example whether it looks as if this is perhaps posing very serious potential damage to the counter-terrorist effort, in which case it would be common sense to say that whoever is responsible for letting this material out on the loose should be tracked down. Duty is putting it rather strongly.

Q160 Paul Flynn: You mentioned a particular case, which is an impressive one, about the Butler Inquiry. Most civil servants would be inhibited from going through the system, and going through the Commissioner as they can now, by the effect it is likely to have on their careers. Would they not be more tempted to take the same route and leaking them anonymously? Are there many cases of people following your example and going through the system and then their information changing policy or coming into the public domain without any detriment to their careers?

Sir David Omand: The system is set up specifically to give that confidence: whether everyone feels that is an empirical matter. Those designing the system, if I can talk for a moment about the Staff Counsellor for the intelligence agencies, set up that arrangement in 1987 after the Bettany affair so that the whole way it is operated is to give an individual member of one of the secret services who has qualms or doubts, for example about the legality or morality of whatever they have been asked to do, a route to talk it through in complete confidence. If we were talking about wrongdoing by ordinary civil servants then of course that is where the Public Interest Disclosure Act 1998 comes in. That individual, if they made a disclosure within their department, for example to their internal audit department, would be protected. The Act gives them protection through an Employment Tribunal if the department were to attempt, in any way, to either dismiss them or penalise them for having blown a whistle.

Q161 Mr Prentice: Is there any way of our knowing if the system is working? Are there dozens or hundreds of cases of this happening?

Sir David Omand: I have been out of the system for a few years so I do not know what the current rate is. In my day there was a regular trickle of cases where individuals did want to talk through some difficulties. Contrary to the experience of David Hencke, my experience was that once individuals had the full picture explained to them most of the legal and moral stance evaporated. "I did not know that was really what was behind this" or that actually there was an Act of Parliament that permitted us to do this or that. In most cases people would be reassured when they see that, for example on the some contracts issue there is to be a proper investigation. We should bear in mind too that there are unfortunately cases where individuals become

obsessed with a particular issue they are raising and nothing that is done is going to satisfy them. David Hencke will have experience of those obsessionals.

Q162 Chairman: We know such people; they write to us all the time.

Professor Hennessy: Some issues cannot be resolved that way, although I am sure David is right that most can, although I say this as a complete outsider. For example, if you were in one of the security agencies' secret services and you were in receipt of information that had been passed over under liaison arrangements from a country that uses torture on terrorist suspects, or you were involved as an official who had to go to Guantanamo to interview somebody who had been tortured—you would not be there when they were being tortured of course but you would be given access to them afterwards—and you brought that to the Counsellor there is nothing the British Government can do by way of a change of policy because it is out of our jurisdiction. Those are the sort of areas where the real problems might lie. I say "might" because I do not know. I am thinking if I was in the secret world that is probably the sort of thing I would regard as the hardest case.

Sir David Omand: Yes, and speaking hypothetically, that is exactly the sort of case where the Counsellor would be able to explain the policy that the Government and the agencies were following: the active programme of trying to persuade countries who engage in such forms of interrogation to desist and use more humane and more efficient methods, coupled with the view of the courts that if your duty is to protect the public then you have a duty to use information that may bear on the protection the public and not disregard it because you might suspect it comes from a tainted source. Such information would never be admissible in a British court, thank goodness, but if that information could be the difference between life and death in stopping some terrorist plot then the police and the intelligence agencies have a duty to have regard to it. The other point to make is it is a hypothetical case because this kind of information simply comes as a telephone number or an address and does not come with a little label saying where it came from.

Q163 Mr Liddell-Grainger: The Damian Green affair opened up an awful lot of things. Do you think there is any case that MPs, who are here as elected representatives, who receive leaks—and we all receive leaks, every MP, the whole time—they can be from local government, from national government, from journalists who want comment or do not want us to ask questions in the House, that police should be used to get to the bottom of a leak?

Mr Hencke: I must say I was rather surprised that they decided to use the police, particularly the fact that Parliament seemed to have allowed the police in on that scale. We have always assumed that MPs would have a lot of protection because people would have to have the confidence to come to them and tell them things knowing that the police were not going to be chasing them up. Frankly, it does seem a bit

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over the top. I was always amazed when Sir Gus O'Donnell gave evidence to you that they were thinking of using the police over a Treasury matter as well.

Professor Hennessy: I think the police should be used only in those cases—and this not just affecting MPs but generally—where serious criminality is suspected rather than low grade stuff. It is difficult to judge, without knowing more detail than we do have, about the Damian Green business and the official—and I do not know what the legal position of that official is so I am going to be careful—from the Home Office who is alleged to have been passing over stuff routinely. As an outsider the bit that did surprise me was the lack of due care and attention within this building by the authorities in letting them in that way. Parliament has to have a special position, and historically it has had a special position and it is vital that it retains one, but again, the law of the land is the law of the land. You have to be careful in all of these cases. I do not think there was enough care taken. It is very difficult and I still do not think I am in a position, not having sufficient information on that case, to come down hard and fast but I can understand why the reaction was as it was in your chamber, if I can put it like that.

Q164 Mr Liddell-Grainger: You mentioned Gus O'Donnell and when he came before us, and in fact was coming in on another inquiry, he was invoking that there might be security implications, there might be this or that, but nowhere along the line, as far as I am aware, was there any suggestion that this man had any access to security detail whatsoever at the Home Office and the rest of it. I just wonder if Gus O'Donnell was doing what was his master's bidding, which was to try and nip this in the bud because in the Public Administration Committee we tend to go down these routes and we will always do so. Is it right that we should have this spectre of the Cabinet Secretary coming before us suggesting something for which there is no evidence? Nobody has come up with any evidence, even the inquiry has not so far and even this House has no evidence on that. Is that acceptable?

Sir David Omand: I have no evidence on that case whatsoever.

Mr Liddell-Grainger: Is it acceptable? You are our intelligence crew so tell us.

Q165 Mr Prentice: Before you reply, Sir David Normington, the Home Office Secretary, said he knew of at least one piece of leaked information which had implications of national security so of the stuff being passed from the Home Office there was at least one item that had implications.

Professor Hennessy: I do not think Sir Gus O'Donnell would have been deceiving you. I think he is a very straight and honourable man. The trouble is that in private offices there are relative levels of clearance between the number one Principal Private Secretary and others, I think from memory. At the same time, all sorts of stuff flies through sensitive private offices. I do not want to come out

and say, because I cannot, that there was a security element but it does not seem to me that is a confection of an explanation that Gus O'Donnell brought. I am sure he believed it.

Sir David Omand: There is risk in *ex post* thinking just because it is thought that the identity of the leaker is now known. At the time an investigation is launched, and I have done this myself as Permanent Secretary of the Home Office and in other departments, you are not sure what you are going to find. It may be that there are several areas of concern: you might worry that you have a single large problem and it might turn out you have several different problems. You do not know that when you set off. The stress I placed on the Civil Service Code means that my approach to this was, and would still be, that this is essentially a disciplinary matter under the Code so that is your starting point. Unless, as Peter Hennessy says, you have some reason to believe that the case may end up involving potential prosecution under the Official Secrets Act, the normal route would be for you start off with an experienced investigator. There is a panel of these people maintained by the Cabinet Office, who are used to investigating espionage or other cases, and you bring them in and they do a mole hunt. It is very important though at the first sign that you may be getting into territory that could involve the Official Secrets Act that the department then consults the police. The police after hearing the case will either say: go ahead, continue with your investigation but here is some wise advice about the evidential chain so if you do uncover something you have not wrecked the evidential chain on which a court case might rely, or they might say there is *prima facie* evidence here of criminality and as the police we intend to investigate. That is their decision and it is not the department's call, it is not the Government's call and it is not the Cabinet Secretary's call. You would have to be very careful if you thought to keep the police out of this if you had some suspicion that OSA material might be involved.

Professor Hennessy: I was subject to a bit of this 34 years ago when I wrote a story in *The Times*, which was a wholly serious newspaper that took these things seriously, about the delay in the positive vetting system. It was the era of incomes policies which the more aged colleagues will remember. There was a shortage of positive vetting officers and they had fallen a year behind. A young Communist in the private office of a Permanent Secretary if he had not come clean on his form and said "I am an active member of the CPGB" would have been seeing Cabinet material for at least a year. I wrote all this up in *The Times*. I was very young then, not the benign old creature you see before you today—a bit pushy—and there was an inquiry into my security on the grounds, which somebody leaked to me, that if he is getting stuff like this about positive vetting, the Cold War was still on, what else is he getting and who is he talking to. Is he talking to Colonel Vladimir Knockabollokoff in the Russian Embassy, for example, which of course I was not. The conclusion of the leak inquiry was leaked to me

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but I did not mind the inquiry into my security and decency, as it were; I would have expected them to do that. One must not be too sensitive about these things.

Q166 Mr Liddell-Grainger: You must have been delighted about the Damian Green affair because it was blowing out of the water this secrecy thing. The police had stepped over the mark and gone into Parliament and taken computers. This is what you should dream about. This is great because this is going to blow the thing out. If people are going to come to Members of Parliament, they are going to leak to us. We might be getting the police but we are not going to allow this to happen again. You must have been delighted.

Mr Frankel: I was as mystified as most other people about what could possibly have been under the covers that provoked that extreme reaction and I am still mystified. I am mystified by the argument that if somebody has access to material going through the Home Office, and is leaking, he is quite likely to be leaking classified material as well as the next step. The moment you get anybody leaking anything you can always say this person is unreliable and the next step is he will release something damaging. All the distinctions laid down by the Official Secrets Act between damaging and non-damaging disclosures are thrown out because you then say we have an untrustworthy person and who knows what he is going to do next. The whole point of the reform of the Official Secrets Act was not to punish untrustworthiness but to punish damage, not failure to respect procedures, not failure to respect confidences and not the release of embarrassing information. If you are too quick to go to the argument, he showed a propensity to leak. The next thing he leaks from our department could well be classified material and then that whole system of restraint, or self-restraint on the part of the regulatory enforcement, has gone.

Q167 Mr Liddell-Grainger: There are 487,000 civil servants, according to Lord Digby, so we have 487,000 potential leakers have we? Should they be leaking, Maurice?

Mr Frankel: I do not commend leaking as such. I do not think it is something one inherently commends but I think the prospect of it is an important safeguard on the honesty of government. The fear of it is a restraint on what ministers will do and I think that effect is healthy. On the other hand, I do not say to people "I think you should leak that." I do not say "Have you got any good stories that you can pass me or David Hencke" or anything like that. The fact is that the willingness of ministers to blow the whistle sometimes, never mind civil servants, that whole process is a safeguard. Not very long ago I had a former MAFF civil servant phone me up telling me something about the failure to investigate BSE properly. He made it clear that he was only now telling it to me because he had left the Civil Service. I said why he did not do something about it at the time and he said "I was worried about the Official

Secrets Act." The time in question was after the new Official Secrets Act, that is post-1989, and there was no remote possibility that he could have been committing an offence under the old Official Secrets Act yet he was so intimidated by the legal sanctions on top of the procedures that he kept quite about something he should have done something about. It is possible he might have been able to put it right going through internal procedures but whatever it was the public interest in that case, and it was a failure on the science side to do something which certainly should have been done, was damaging to the public.

Q168 David Heyes: The question really is about what ought to be in our report at the end of this. What would you recommend? Is there a need, for example, for a complete overhaul of the law in this area or for more law? I take comments from any of the panel but I will start with Maurice. You mentioned the destruction of information to avoid FOI requests. Does that require a change in the law or additional law or indeed any other area that we have been talking about? Is the present legal framework coherent or not?

Mr Frankel: There could be helpful work done on discouraging an over-emphasis on destruction of records the moment they are not strictly needed or required for long-term purposes. The greatest problem we have on the Freedom of Information side are the delays in the process and the delays in investigating complaints, which means the fact that information could be obtained by procedurally correct means, as opposed to leaking and so on, that channel which should diffuse the pressure that leads to leaks its the ability to do that is undermined by the length of time it may take if you have to take something right the way through the system. That is a serious problem. The Act itself is good in most respects but the slowness of the process is a real problem. You also have significant discrepancies now between the Freedom of Information Act and the Official Secrets Act over the corresponding categories. For example, you have information about defence and international relations whose disclosure might be harmful and would therefore be an offence under the Official Secrets Act. It would be exempt under the Freedom of Information Act but it might be disclosable legitimately on public interest grounds under the Freedom of Information Act. You do have the situation where somebody could be prosecuted, convicted and jailed for disclosing something to which they would have no public interest defence but which the Tribunal might require to be disclosed. There has, in fact, just been a very interesting case of that where the Tribunal has required the disclosure of some information about arms sales to Saudi Arabia where the Tribunal agreed that disclosure of the information was harmful to the relations between the UK and the Saudi Arabians. The exemption for international relations was triggered but it said that it should nevertheless be disclosed on public interest grounds because it threw light on the possible involvement of

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British officials in bribery. The disclosure of that information outside of Freedom of Information would be a criminal offence, but disclosure of it under Freedom of Information is not a criminal offence if it is justified on public interest grounds.

Q169 David Heyes: Do you have any sense we need more law?

Sir David Omand: I do not think we need more law other than the Civil Service Act and the enshrining of the Code in legislation and then it is 'physician heal thyself'. It is about Parliament and its Committees making sure that officials live up to what is in the Code, including that powerful statement in it about not knowingly allowing Parliament to be misled. Then within the Civil Service it is about making sure these arrangements do work, and they work speedily, to resolve the case and, in the end, making sure that heads of department are aware that they have a very significant responsibility, in Warren Fisher's words, to say when necessary "This is a damn swindle, Sir, and we will not stand for it."

Q170 Chairman: Thank you for coming, Sir David, and by all means slip away. We are grateful for your evidence.

Professor Hennessy: I would accept everything that David Omand said and endorse it but add a couple of things. The Civil Service Act. I am not sure we are going to get it inside a Constitutional Renewal Act because if you look at the Queen's Speech it says "develop proposals" but does not say a Bill will be brought forward. As Mr Attlee said of the H bomb, that needs watching, and I think your Committee is the real one to do that. Maybe I am misremembering the Freedom of Information Act 2000, because Maurice can recite it in several languages and when he is asleep, but I thought it was an offence already to destroy documents in anticipation.

Mr Frankel: It is only an offence if you do it after they have been requested and the purpose is to prevent the disclosure.

Professor Hennessy: I agree then that is not enough. The other thing I hope you will look at is on the 30 Year Rule, which people used to pretend in Whitehall had gone but it has not and still operates under the old Public Records legislation. It may well be coming down to 20 but they have not announced the result of the review yet. If it does, they will add an extra year on with each year's release until we get down to 20 years from 30. This is delayed accountability. This is delayed Freedom of Information if you like. I fear the Government will pretend, as they did with the Freedom of Information Act, that it will be resource neutral which of course it was not. A lot of people's time in the records divisions have been taken away from the 30 Year Rule. We still cannot get Cabinet minutes until after 30 years, as you know, because of fire fighting on FOI. The other thing you might want to keep an eye on, and this Committee spoke very eloquently about the need for it two years ago, is official histories. There is a review under Sir Joseph

Pilling in the Cabinet Office of the official history programme. I think it would be very timely if you reminded people of the high value that this Committee placed, as indeed I do, and I think Richard Wilson was with me that day, on official history. I am with David: no more law, tightening up of various bits but it is the spirit of it. It is always in the end a human factor question. You can have all the codes and all the statutes in the world but if people will not speak truth under power and breathe life into those Codes it will not work. It is the human factor that bothers me more than the legal one.

Mr Hencke: I was to going strongly endorse what Maurice says about the Freedom of Information Act. The reason why the Defra leaks were important to us is they can take 28 days to reply. Civil servants are brilliant at finding little excuses: it is too expensive or the way you have phrased this means we have decided to have an internal appeal and there is not a time limit on that and they can take their time. In that case it would not have come out in time. It had to rely on a leak because by the time you had got it under those other channels it would have been past history and they would have done it. I think this is really important, legislation like the FOI, I would love to bring it down to 14 days to concentrate their mind because in some countries it is lower.

Mr Frankel: The problem is the time limits are not being observed and shortening the time limits is not going to answer this particular problem.

Mr Dehn: I think from the point of view of whistleblowing legislation and the Code, because the Code does talk about civil servants being obliged to disclose evidence of illegal conduct to a relevant authority, it is not actually that clear in the scheme who the relevant authority is. In other areas of the whistleblowing legislation there is what Public Concern might call stage two disclosure which is normally a regulatory body which has an oversight of the substantive wrongdoing: the health and safety, the financial misconduct, tax or whatever. The Civil Service Commissioners are sometimes portrayed as having that role, as being a port of call, but I do not think they are actually the correct port of call for the substantive wrongdoing. They may be the correct port of call to review how a department considered a matter. Whether it would be the Ombudsman, whether it would be what the Chairman was suggesting giving some more formal status to Select Committees as being bodies that people can properly pass serious concerns to, I think that would be a good step in restoring public confidence in the arrangements. Sir David Omand said it was very important that people redoubled efforts to make the arrangements work. There is enormous experience at Public Concern at Work. Former colleagues of mine are behind me and at no point really did the Cabinet Office engage with Public Concern at Work with this. When they consult the only people they appear to consult are the trade unions. I have no problem that the trade unions will not have useful things to say but there is an enormous amount of experience about what is being done in other areas in terms of how you can make arrangements work,

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how you can give people confidence, and if the Committee felt it appropriate to encourage the Cabinet Office to engage with Public Concern at Work there is no harm and I think some good would come from that.

Q171 Paul Flynn: Can I invite David, because of your long career in this area, to suggest something we might beneficially put in our report. One of the areas perhaps we might talk about reflects your career. You said that often the media is the only way of exposing certain wrongdoings that are going on but often the collaboration between the media and MPs who have privilege, who can use privilege that you really cannot do which can advance cases and use Parliamentary questions and so on, is it not a case for saying that ethical leaking is an important lubricant of modern democracies?

Mr Hencke: Yes, I would. Coming back to my point, I think there are very few people who actually do leak in Whitehall. Normally I find it is because they thought of trying to raise it, or have raised it one way or another, and it is just getting nowhere. They do not want to go into a long procedure with the whistleblower thing because that would take quite a long time. Timing is often of the essence because a decision is basically going to be made fairly quickly, within a week, two weeks, a month. There is a huge difference between civil servants, which I think is a small number and it is exasperation, and politicians and special advisers which is on a large scale. There are even lunching arrangements between individual journalists and ministers that go on every day where information passes hands. There is a lot of difference there and there is a case for the civil servants, for the ethical point you made.

Q172 Mr Prentice: I cannot let the moment pass given that we have *The Guardian* in front of us and Maurice Frankel. You told us a few moments ago that the FOI legislation is good but the problem is the length of time it takes to deal with FOI requests. I put in a request about Lord Ashcroft, and so did *The Guardian*, it must have been about 10 months or coming up for a year ago. I wanted two bits of information because Lord Ashcroft was elevated to the peerage in 2000 after promising to bring his tax affairs on shore. I want to know what form did this assurance take, was it oral or in writing, and to whom that assurance was given. That is just so simple but it has still not been dealt with. It has gone through all the internal reviews. I have asked the Cabinet Secretary about it and now it is lost in the

system somewhere. How are these requests prioritised? This is not complicated. It is incredibly political; for some people it is radioactively political. How are these requests prioritised?

Mr Frankel: This is a request which has gone to the Information Commissioner?

Q173 Mr Prentice: Yes.

Mr Frankel: That is where the problem is at the moment. Quite a high proportion of cases are taking between two and three years before they come out of the Commissioner's office. The figures that show there is a high rate of cases dealt with in a short time largely refer to cases which are procedurally invalid and they are basically rejected as not requiring investigation. The cases that go through full investigation are taking an inordinate amount of time in the office. The Commissioner's office now say they have adopted a prioritisation system where they select for faster treatment cases which involve significant issues of wide public interest or where there is a wider implication. We just do not know. We have no figures and no way of knowing how effective that policy is. I suspect what it means is those cases do not go to the end of a queue and have to wait until all previous cases in the queue are dealt with before their turn is taken. The investigation process itself sometimes takes 18 months to two years even if an investigation begins straight away.

Q174 Chairman: I need to put it to an end. I am grateful for the session. As ever we grapple with two goods: one good is to maintain confidence on the part of the Civil Service because that is a good thing to do, and the other one is to make sure that information which needs to come out comes out. We wrestle with that in this area, as we do in others and it has been a very helpful discussion in helping us to form our views on that. Sir David Omand wanted to quote Sir Warren Fisher to us. What decade was Warren Fisher?

Professor Hennessy: He was head of the Home Civil Service from 1919 to 1939 and Permanent Secretary of the Treasury.

Chairman: So he gets it on the record, and it is a lovely quote if people have not read it in the submission he gave. This is Warren Fisher between the Wars saying "We shall need men who have the guts to stand up to their ministers. As English politics gets increasingly Americanised we will find ministers more and more inclined to do shady things and the civil servants of the day will have to have the courage to say to their political chiefs 'That is a damn swindle, Sir, and you cannot do it'."

Tuesday 10 February 2009

Members present

Dr Tony Wright, in the Chair

Paul Flynn
David Heyes
Kelvin Hopkins
Mr Ian Liddell-Grainger

Julie Morgan
Mr Gordon Prentice
Paul Rowen
Mr Charles Walker

Witnesses: **Sir Christopher Kelly** KCB, Chair, and **Dr Brian Woods-Scawen**, member, Committee on Standards in Public Life, gave evidence.

Q175 Chairman: Perhaps we could turn our attention to Leaks and Whistleblowing. Are there any introductory remarks you would like to make?

Sir Christopher Kelly: Whistleblowing was clearly a very important issue for the Committee in its early years. We set down a number of principles in a number of reports which were, on the whole, widely accepted. We returned to the subject in 2005, when the main recommendations were that regulators should take a particular interest in the whistleblowing arrangements in the bodies which they were responsible for regulating, and that departments and public bodies should make sure that the whistleblowing procedures they had, not only formed part of a general culture of openness and so on, but also were widely understood when that failed. In that respect, it is disappointing that the Public Concern at Work survey, which they did I think in 2007, suggests as far as departments are concerned—and I do not think anyone received full marks in their survey—that while some departments were better than others, there were still very large numbers of departments which had not seriously begun to address that issue.

Chairman: Thank you for that.

Q176 Mr Liddell-Grainger: In your opinion, is there any place for people that leak?

Sir Christopher Kelly: That depends on what you call a leak. One would like there to be a situation in which there was such complete openness about what went on inside government departments through routine exposure, even without the operation of the Freedom of Information Act, and a regime inside departments which allowed people, which encouraged people, to raise concerns when they thought things were happening which should not be happening, that leaking was completely unnecessary. But there will be occasions when that is not the case. On those occasions, I would prefer that two things happen: one is that people use the whistleblowing procedures which now exist, which would normally be the right course, but, second, if you were a civil servant and you thought something was going tremendously wrong then one would like to think that people had sufficient integrity to resign over the issue rather than to leak it.

Q177 Mr Liddell-Grainger: We have had some spectacular leaks. Every MP, from the top down, tends to be a recipient of leaks. Some of us are more

bothered about our leaks than others. Do you think that it has now undermined public trust? Are leaks seen as a good thing or a bad thing in your eyes?

Sir Christopher Kelly: If I were a member of the public?

Q178 Mr Liddell-Grainger: Yes.

Sir Christopher Kelly: If I were a member of the public.

Q179 Mr Liddell-Grainger: Perhaps it is not a fair question. You are not just a member of the public.

Sir Christopher Kelly: I suspect that as an ordinary member of the public I would enjoy the results of leaks and I probably would not think about the impact on trust between civil servants and ministers and the other way round.

Q180 Mr Liddell-Grainger: Is that not the problem: that the public want leaks because they want to know what this Government is up to?

Sir Christopher Kelly: Yes.

Q181 Mr Liddell-Grainger: The Government does not always want to tell the public what they are up to. Therefore, given what you have said to start with, do leaks not have a place in the way our political system works?

Sir Christopher Kelly: Mr Prentice was suggesting that I did not give simple answers to simple questions. The real answer to your question “Do I think leaks have a place?” is no, they should not have. What should happen is a much greater degree of routine transparency in the flow of information out of government departments and elsewhere.

Q182 Mr Liddell-Grainger: One of the problems is that whistleblowers, regardless, cannot be adequately protected. If they are within the leaked system they are not going to be protected. Let us be absolutely honest about it, their life will be made hell and they will be forced to go and count beans in Stornoway or somewhere equally as lovely. How does the Committee for Standards in Public Life get around that? How do you protect the people who need the most protection and are prepared to stand up and be counted?

Sir Christopher Kelly: The reality is as you describe it: there are some circumstances in which it is possible to whistleblow and have your anonymity retained. The law has been changed, as you know, to

provide people with protection. But you are absolutely right: one of the dilemmas is that very often whistleblowers will find it very difficult to remain anonymous. They ought to receive protection under the Act, but, as you imply, there must be ways of honouring your obligations under the Act while still cutting someone off from the things that give them satisfaction in their jobs.

Q183 Mr Liddell-Grainger: Do you feel that the Act is strong enough? If it had to be changed—and I say “if”—how would you look to change it to give protection?

Sir Christopher Kelly: I am not an expert in this field and it would be wrong of me to—

Q184 Mr Liddell-Grainger: I ask you to do a bit of crystal ball gazing.

Sir Christopher Kelly: I am not an expert in this field, but, on the face of it, the protection which the Act gives is quite substantial. It is not obvious to me that the problems lie in the strength of the Act so much as in the inherent difficulties with blowing whistles in circumstances in which, particularly since you are encouraged to raise your concerns first with the management line, the possibilities of remaining anonymous must often be fairly small.

Q185 Mr Liddell-Grainger: We have had a fairly high profile incident with an MP. On receiving leaks—and we all get leaks—come on, let us be honest—should MPs use them?

Sir Christopher Kelly: Should you use them?

Q186 Mr Liddell-Grainger: Yes. Should MPs be allowed to use leaks? If so—providing it is not security issues, I accept that—should we therefore not have some form of immunity to use information that should be in the public domain? I think it is the job of an MP, basically.

Sir Christopher Kelly: I do not have any difficulty with that. Provided we are not talking about security issues, as I say, I personally—and this is not an issue we have discussed in Committee—have no difficulty with MPs using leaks. As you say, a lot of what you do would be a lot more difficult if you were not able to.

Q187 Mr Liddell-Grainger: It would not be as much fun either, I can tell you. If the culture, therefore, is one of leaks, and you are not going to stop leaks because that is the way of the world and we court leaks and the press themselves court leaks—we feed off each other, let us be honest—you can only try to contain leaks in a way that is mandatory on both sides. Is that possible or do we just have to take each individual case as it comes along?

Sir Christopher Kelly: Is it possible to contain leaks? As other people, I know, will have said to you, what appears to be a leak is not always a leak. One minister’s briefing is a leak. Some things which are described in the press as leaks are nothing like leaks. I have seen things reported as leaks which have been the subject of press notices. There are plenty of things which are described as leaks which are not

really leaks at all. Should they be contained in some way? As I say, if there was much greater routine observance of the principles of the Freedom of Information Act, then the need for the sort of thing which is often described as leaks but which is really explanation or briefing will become much less.

Mr Liddell-Grainger: Thank you, Chairman.

Q188 Paul Flynn: We had some impassioned evidence about one of the whistles that was not blown and that is on the question of the Iraq War and the advice on the Iraq War. There was a prominent resignation by a civil servant who chose not to leak the information. Had she done that, it is conceivable that Britain’s involvement in the Iraq War would not have taken place. It might have altered the decision in the House of Commons, because it was a narrow vote anyway and if MPs had realised it was an illegal war they would have changed things. Should it not be a positive duty on civil servants to leak in those instances? Should we not regard whistleblowers who do leak in other cases—and there are other famous cases, on the *Belgrano* and so on, where the whistleblower has a greater status and their career is protected. Should the whistleblower look forward to a few knighthoods?

Sir Christopher Kelly: Again I am not an expert on this area. But it is my understanding that the Civil Service Code does require people, if they see circumstances in which Parliament is being misled or whatever, to take action. I think an obligation is there already. I share the respect that other people have for the individual who did resign over Iraq. Did she make the right decision in simply resigning and not making it apparent the reasons for her resignation? These are very much personal decisions. I do not know enough about her circumstances to know what I would have done in the same case.

Q189 Paul Flynn: The other side of the coin is the allegation that in one department, in a small team very near the Minister, there was somebody who was a party political activist, who stood in election and so on, who was allegedly regularly leaking matters that were confidential. Is that situation not completely impossible? Is it not right that the person concerned, who had been actively political, should be looked at askance when appointments were coming up? Should there not be a bias against appointing them into such positions?

Sir Christopher Kelly: I read the transcript of that. I do not think I would support a situation in which anyone who had been a political activist was never allowed to be appointed to the Civil Service. There are plenty of examples of people who have done that.

Q190 Paul Flynn: It is the private office.

Sir Christopher Kelly: Would I want to be careful about who I appointed to private office? Answer: Yes, I would. Self-evidently, after the event, a mistake was made in putting that individual there. A blanket ban, I am not sure I would be in favour of.

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Q191 Mr Walker: Dr Woods-Scawen, you have come from the private sector, PWC. You must have a view on leaks. Maybe if some people working for our banks had done a bit more leaking about their bosses cooking the books, we would not be in the terrible mess we are in now. What is your perspective on this high-minded debate we are having at the moment?

Dr Brian Woods-Scawen: Whether you call it leaks or whistleblowing, it generally flows from dysfunctional leadership in the public and the private sector, because it is leadership that does not encourage a culture of open debate, of sharing views, of dissent. You can trace an awful lot of it to leadership. Is there a responsibility? Yes, there is, but, generally, when you have exhausted, as it were, the internal remedies and you still feel as an employee, whether it is fraud or misrepresentation of information or malpractice—the whole range of things we are talking about, not just policy advice—that something of significant public interest is being withheld, I absolutely believe there is a right and a responsibility to go to the appropriate person. In some cases in the private sector that may well be to the regulator and regulated industries, and that would have been the next step in financial services. In some cases, in the Civil Service for example, there are the Commissioners. I think the consequence is that the burden of proof on you has increased, because independent people have looked at it and decided that there is not a case to answer, but that should not of itself prevent you making public the information, having exhausted all of those internal and prescribed external remedies. There will always be cases. ENRON, for example, was discovered by a whistleblower. Would anyone say that the whistleblower should not have acted in that way? Absolutely not. It is right and in the public interest that that kind of scandal is uncovered. It must not be for trivial matters, it must not be the first port of call, but there is a residual space for this.

Q192 Mr Walker: Do you have some sympathy for the whistleblower in the Damian Green case, if I might call it that, who saw that the Home Office, which is meant to be protecting the citizens of this country, was going around employing people who were illegal immigrants? Do you think he was perhaps acting in the national interests? Some people have said that he was leaking sensitive material and that jeopardised the very safety of our country, but I would have thought that the fact that people were being employed who were illegal immigrants was jeopardising the safety of this country as well. Can you see the moral dilemmas that he would have faced?

Dr Brian Woods-Scawen: There are always going to be moral dilemmas in these things. Almost by definition you are not talking about things that are straightforward. I do not know a lot about the detail of that case but I would make some general observations. First of all, if any civil servant is leaking information for party political advantage, that seems to me wrong. Second, the question I posed earlier: “Have all the internal remedies be

exhausted?” would be an important question. If they had, and an official believed that the public interest was being prejudiced and nobody was doing anything about it, having raised it with all those appropriate people, yes, I think they should do it.

Q193 Mr Walker: Your advice to whistleblowers, in conclusion, would be: “If you have a problem with the way your department is being run, do not go to an opposition Member of Parliament but probably go straight to the press.” That seems to be what you are suggesting.

Dr Brian Woods-Scawen: I think you have to go to the place which is going to have the most impact on your concern. There would not be a single answer to that. I do think that in every case of external whistleblowing, somebody should be asking the question: Is there something about the culture and tone of the leadership of this organisation that has made this happen?

Mr Walker: Thank you.

Q194 Kelvin Hopkins: I draw something of a distinction between leaks which can be mischievous and not really something which you would take strong action about, and whistleblowing, which is about where something is wrong. I am reminded that “Hard cases make bad law”. We look at core cases, where there is a procedure for whistleblowers—an apparent management procedure where you can go to a senior person, and someone is found out, someone is found guilty of corruption or some bad behaviour within the organisation—and yet the informant is still victimised after that. There must be some sort of protection. In the past, when trade unionism was much stronger, trade unions gave protection to people in those circumstances. Trade unions in many organisations now are either non-existent or very weak, and we have to have more protection in law. Could there not be some stronger protection in law for whistleblowers where, for example, a manager has been found to be corrupt or someone has been prosecuted successfully as a result of their whistleblowing?

Dr Brian Woods-Scawen: The problem is you are dealing with real people in real situations. If people are going to have to work together and things have happened in their relationship, that is not always easy. It could well be that there should be stronger protection in employment tribunals. In the last complete year there were 1300 employment tribunals where there was an allegation or defence of victimisation under the whistleblowing procedures. Interestingly, only 25% of those were adjudicated because the rest were settled, so there is clearly an instinct on the part of employers to settle matters that might damage their reputation in terms of not responding to whistleblowing becoming public, and that does not seem to me to be great. But I do think there is one other obligation which could be imposed on leadership of organisations in both the private and the public sector, and that is in annual reports,

to confirm that the board or whatever the leadership body of the organisation is, has reviewed and is satisfied with the whistleblowing arrangements in their organisation. The fundamental problem here, I think, is that in many organisations, in both sectors, whistleblowing is not taken seriously by senior management. I think pressures have to be put on senior management to take it more seriously.

Q195 Kelvin Hopkins: The pressure can only come from one of two places really. One is through the law and the other is through some sort of employee organisation, like a trade union. In all those cases presumably the management ultimately backed off and did a deal because they did not want to lose in the tribunal—because it would be unlikely to be the other way round, I would think—but many organisations and many employees cannot take things to tribunal because they cannot get representation, there are no trade unions in the workplace, so protection in law for those people ought to have a role.

Dr Brian Woods-Scawen: If we are going to take whistleblowing seriously—and the Act was a first step at this, I do not think anyone would say that the Act is the final step—then there must be a legal framework for whistleblowers. If there is no legal framework for whistleblowers then whistleblowing is never going to be very effective. The question is: is the Act a final destination in terms of protection? I do not know but I would be surprised, because you learn from experience and then you move on. If we are serious about whistleblowing playing its full and important role in both the public and private sectors, then certainly the legal framework for protecting whistleblowers appropriately—not protecting them against malicious allegations, not protecting them against taking action when they have not exhausted other remedies, but ultimate protection—is important.

Q196 Kelvin Hopkins: Our focus is really upon the Civil Service. In the last month a constituent has come to me, whistleblowing about his employer who is breaking the law. He is fearful of me mentioning the name of his solicitor or mentioning his name in any circle whatsoever because, if there is an investigation, the upshot of that will be that he loses his job. He says, “Don’t raise my concerns with others, whatever you do.” Those circumstances have to be challenged. They can only be challenged if there is some proper legal redress, some office locally where you can go as a whistleblower and say, “This isn’t right.”

Dr Brian Woods-Scawen: I do not disagree with that. I would just say that I do not know and I have not thought enough about what that protection should be. If there is not effective protection for whistleblowers, then there will be less whistleblowing.

Q197 Mr Prentice: Is there a document out there that lists leak inquiries that have been initiated and what happened?

Dr Brian Woods-Scawen: Not to my knowledge.

Sir Christopher Kelly: I have no idea.

Q198 Mr Prentice: So we do not know.

Sir Christopher Kelly: I do not know.

Q199 Mr Prentice: I remember last year there was talk about a leak inquiry into the Treasury, a very, very important issue. I think it was the cut in VAT that was leaked beforehand. It has just disappeared into the ether, yet the leak inquiry into what happened in the Home Office has consumed acres of newspaper space. I am intrigued to know whether anyone monitors these. Ministers are always saying, “We are going to have an inquiry,” or senior civil servants are saying, “We’re going to have an inquiry into this leak” and then it all disappears into a puff of smoke.

Sir Christopher Kelly: My experience of these things, which is now very out-of-date because I left the Civil Service in 2001, but it included a spell in the Treasury, is that leak inquiries very seldom result in any concrete outcome. I do not know whether that is true generally. The difference between those cases and the case that we are talking about, or rather not talking about, is that the police were involved.

Dr Brian Woods-Scawen: Certainly, in all of this, if there is one recommendation you could make that could potentially make a difference, it would be that, if there is whistleblowing where either individuals are victimised or the organisation was not shown to have responded well to the initial allegations, then the senior management of the organisation should be held to account, because it is a failure of senior management.

Q200 Mr Prentice: It is all there in the Civil Service Code, as Sir Christopher said. If a civil servant feels that something is happening and Parliament is being misled, then that person can speak out. It is a question of how the Civil Service Code is translated into good practice. We want a culture in the Civil Service which makes it okay for civil servants to speak out if they think there is impropriety, the rules are being bent. You understand.

Sir Christopher Kelly: Absolutely.

Q201 Chairman: We had an interesting exchange on all this a week or two ago, when Peter Hennessy was here with Sir David Omand—you have probably read the transcript.

Sir Christopher Kelly: I have read it, yes.

Q202 Chairman: It was wrestling with the circumstances in which one might properly whistleblow. I do not want to traduce him, but I think Peter Hennessy came down on the side of thinking yes. He could see there were circumstances in which you would, and that got him into talking about the Iraq case and the war in the Foreign Office and so on. Sir David Omand’s view, civil servant, was no. He thought there was not a case, that if you just used the proper procedures and civil servants did their jobs properly, then it could all be taken care of. Faced with the seven principles of public life, would

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someone in one of these dilemmas find the seven principles of public life helpful to them? I suppose I am asking you where you come down on this argument.

Sir Christopher Kelly: Where do I come down? I partly answered that question, or I tried to answer it, before. It would be nice to think that there was no place for leaks, either because, as David Omand told you, there was sufficient freedom of information anyway or because the whistleblowing arrangements worked adequately. But the real world often is not like that and sometimes things happen. Clearly, with something as major as the Attorney General's opinion on the legality of the Iraq War, it would be very difficult for someone who thought that something seriously wrong had happened there to go on working in the Department which allowed it to happen. But there may be other circumstances in which people feel equally strongly, but where either because of their personal circumstances or the difficulty of finding other jobs, they see difficulty in using a whistleblowing procedure because they would be identified and they fear being victimised. There may then well be circumstances in which a leak was the right course of action for someone who wants to behave in accordance with the principles of public life. I say that with some hesitation, because integrity is one of the important principles and I am not certain that doing that could be said to show integrity. But nevertheless, there may be circumstances in which that would be the right thing to do.

Q203 Chairman: That is an interesting answer. I am grateful for it. Not many cases, as far as we can see, seem to go up through the system inside the Civil Service. The Civil Service Commission do not seem to deal with many. Either that is because these are not issues that detain people very much or because people do not feel perhaps that this is a system which is genuinely something they feel they can use. We had a discussion in a previous session as to whether Members of Parliament might be seen in some sense as an external regulator to whom one might go. I am not asking that question. I am asking this question:

If someone thought you were an external regulator to whom they could go in terms of the provisions under the whistleblowing provisions, would that be reasonable?

Sir Christopher Kelly: Would it be reasonable to come to us? If somebody did think there was no one else to come to but me or some other member of the Committee, then the arrangements that are supposed to exist would have broken down. Because, as you say, there is the ability to go to the Civil Service Commissioners, either directly or because you are effectively appealing against not being heard, and I think it would be, as I say, a sign of arrangements not working if anyone did come to us. It has not happened in the past twelve months. From time to time, just as I am sure in your postbag, in our postbag we get people raising what are often individual grievances, but they are not usually of a kind which look like whistleblowing. They are much more of a kind: "I have been very badly treated by my boss". I am sure you get those sorts of letters all the time.

Q204 Chairman: We have had a good go at you—no, I mean we have had a good discussion!

Sir Christopher Kelly: Both statements are applicable.

Q205 Chairman: As you have seen, we take a close interest in your work.

Sir Christopher Kelly: Yes.

Q206 Chairman: We hope you appreciate that. If we are critical, it is partly because it is in our blood stream but also because we want to urge you on, I think.

Sir Christopher Kelly: Indeed.

Q207 Chairman: I think you probably, in your inner self, want to be urged on. Perhaps between us we could get there. We are really grateful for this afternoon to both of you. Thank you for helping us with our inquiry.

Sir Christopher Kelly: Thank you for giving us the opportunity. I am delighted to be urged!

Chairman: Thank you.

Thursday 5 March 2009

Members present

Dr Tony Wright, in the Chair

Paul Flynn
David Heyes
Kelvin Hopkins
Mr Ian Liddell-Grainger

Julie Morgan
Mr Gordon Prentice
Paul Rowen
Mr Charles Walker

Witnesses: **Ms Janet Paraskeva**, First Civil Service Commissioner, and **Dr Richard Jarvis**, Head of Independent Offices and Secretary to the First Civil Service Commissioners, gave evidence.

Q208 Chairman: It is a great pleasure to welcome Janet Paraskeva, who is the First Civil Service Commissioner, accompanied by Richard Jarvis. Thank you very much for coming. As you know, we wanted to talk to you really about two matters relating to current inquiries we are doing. The first is on the area of leaks and whistleblowing and the second is on the whole business of external recruitment to the Civil Service, and I think you have something to say at the beginning of each session.

Ms Paraskeva: If that is all right and, first of all, some comments on the leaks and whistleblowing inquiry. First of all, thank you very much. It is always a privilege to have the opportunity to come and share, and be questioned on, the issues that we raise. You know that one of our main roles is to hear appeals from civil servants under the Civil Service Code and part of that involves us working with departments to promote the Civil Service values under the Code because, we think, that is part and parcel of that responsibility. In our written evidence to you, we have provided some more detail on that, and clearly I am happy to answer any questions that you have on it, and also explain some of our current activity in promotion because we have really put some energy behind that, I think, in the last year/18 months. The other thing, I hope, you will remember is that, as Commissioners, we were actually concerned that in the past the Code was really not known about, or not known about as much as it might have been, by civil servants, and of course the drafting of the new version of the Code in 2006 helped some of that because it did put the language into a more easily understandable format and into the document itself. We also then worked with permanent secretaries because, as the senior managers, it was very important to them, so we worked with them to publish a good practice checklist and it is that checklist, which I will talk about later, on which we are auditing those departments against right now in fact, as we speak. Our role formally of course is to hear appeals that come to us and very few come to us and I have, in front of this Committee before, expressed surprise as to how few appeals actually reach the Commissioners. Because of this, last year we held two surveys, one to ask departments exactly how they were promoting the Code and the second to really dip our toe in the water to find out exactly what departments were doing in terms of the appeal structures they had set up. That was really

preparatory work to the audit that we are now involved in which is much more formal and much more rigorous. We are doing this, not because we are able to within our powers, but because we have agreed with the Cabinet Secretary that this is a good thing to do. It is a rigorous audit using an external company to help us with the analysis of the procedures that exist in each Department so that civil servants can feel that there is a safe place to raise any concerns that they have within their Department or indeed directly to us, as they have been able to since 2006. I think it remains our belief that it is healthier in an organisation if concerns that individuals have, are raised properly either within line management or to the structures that exist within that Department. What we want, after all, is a culture in the Civil Service where people are not frightened either to speak truth unto power, as it were, but also to raise concerns, if they have them, and for those matters to be dealt with properly within those departments. Having said that, there must be a safety valve because some people might be intimidated. It may be that their direct line manager might be very senior, so there must be somewhere that they can come and, rightly the place is directly to us, as Commissioners. One of the things that we perhaps may want to explore with you is how we might better signpost the whistleblowing procedures, if we are going to call them that, to civil servants because, although the number of appeals to us has increased since we have been doing our promotion work, we need to find out from the audit exactly whether that is sufficient cover for civil servants who find their own procedures either too difficult or too obscure to actually use. I suppose the only other thing that I might want to say by way of introduction is on the issue of leaks and just to make our position clear, as Civil Service Commissioners, which is that no civil servant should feel that they have no option but to leak. There must be a procedure that is safe enough for them and confidential enough for them not to feel that they have to break the Code and go outside the behaviour that we would expect of our impartial Civil Service.

Q209 Chairman: Thank you very much for that. Could you just tell us your view of the kind of circumstances that you think would justify a civil servant whistleblowing or leaking?

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Ms Paraskeva: Well, if they are whistleblowing within the organisation, then I think, if I can, I will limit my remarks to that because I do not think I would be advocating in any way whistleblowing outside of either the systems that departments have or directly to us. If, for example, a department was misusing information about their targets and perhaps targets that had been overachieved in one year and banking them so that their targets for the next year might look better, then, if somebody were to bring that issue to us, that is exactly the kind of issue that we would want to hear and that somebody ought to feel able to bring to us.

Q210 Chairman: Is that the kind of issue that you have been getting?

Ms Paraskeva: That is an exact example of an appeal that we actually upheld and went back to the Department and asked for changes in that behaviour.

Q211 Chairman: But you can see, can you not, that, if you are a civil servant and you find that kind of thing happening and you are worried about it, it is not a career-enhancing move, is it, to go to your line manager and say, "I think we're getting up to things we shouldn't be getting up to here"?

Ms Paraskeva: No, it is not a career-enhancing move, which is why of course departments not only invite people to talk in line management terms, but have a nominated officer, who is not part of line management, to whom the civil servant can go and raise this matter. Each Department is required to have nominated officers and we are trying to enhance that network of nominated officers and, as we speak, we are working on a confidential website for them so that they can be in communication with each other over the kinds of issues before them and indeed with our office, with the office that Richard heads, if they have queries that they need to explore with us, and we are trying in every way that we can to actually support the networks that exist for people. As you say, it is not career-enhancing, so somebody is not necessarily going to tap the shoulder of their boss and say, "Look, I really don't think we should be fiddling the figures in this way", but they may need to let somebody know that that is going on because that is not proper behaviour. Fortunately, it is only a small number of people and only in a small number of cases where this may happen and people do believe in the values of the Civil Service and they do use the structures that are there.

Q212 Chairman: David Hencke from *The Guardian*, when we had all the recent leaking in the Home Office, wrote a nice piece quoting, anonymously of course, a civil servant, with the civil servant explaining why, not a particular one, but why in general a civil servant might feel prompted to leak. He said, quoting the civil servant, "Sometimes something appears on your desk and you think, 'God, this is absolutely blatant and wrong, someone should know about this' . . . It is worth doing when you see something that is out of order, or when you

know the Minister and senior civil servants are being hypocritical or just lying to the public". Now, such an occasion is not impossible to imagine, but it must be mightily difficult for a civil servant, even with a nominated officer, even with a Civil Service Commission, to think that, within the system, they can get anywhere with this, must it not?

Ms Paraskeva: I can see that it is difficult of course if you are in that situation, but we surely do not want to encourage an organisational culture in the Civil Service where people do not feel safe to raise issues within it. I think the onus is on us, as Civil Service Commissioners, and it is on departments to make sure that the structures are there that people can feel safe that we are providing an environment where it is possible to put your hand up and say, "This is wrong", and your career not to be damaged by that. I would hate to think that we were encouraging a Civil Service that felt that it could only really raise matters of concern by going outside. Therefore, for us, as Civil Service Commissioners, I think we need to look at whether in fact we are promoting the fact that this particular civil servant could have come directly to us, and I look at my emails seven days a week and, if there is something there that is urgent and important enough, I would go straight to the Cabinet Secretary with it.

Q213 Chairman: If someone like this comes to you and you look at it, what happens then?

Ms Paraskeva: As I say, I would usually consult the Office, but that is not necessarily the case and, if it is something very, very urgent, I would have to act. Fortunately, we have not had a whole stream of these activities, but my policy would be to, first of all, check the facts obviously because one does not want to suddenly escalate something that was only partially correct and, in the first instance, I would need to consider whether I should raise the matter with the Permanent Secretary. If it were a matter of some seniority, a much more critical issue, then I would raise the matter directly with Sir Gus O'Donnell.

Q214 Chairman: Yes, and then what happens?

Ms Paraskeva: Then he would have to take action. If he did not take any action and I was concerned that action should have been taken, then of course we do have a duty to report, and I guess I would report to you.

Q215 Chairman: So we have got our civil servant who thinks that the Minister is telling less than the truth about something and perhaps thinks the public would have access to this information if anyone put a Freedom of Information request in and, therefore, there is a public interest in it being available, but his department was happily helping the Minister not to give the full truth, so this brave person comes to you and you go back to the Department and say, "Well, this is not quite right, is it?" and the Permanent Secretary explains that they are doing their job, they are serving the Government of the day. Then what do you do?

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Ms Paraskeva: Well, if I am still concerned about the behaviour, then, as I say, I would go to the Cabinet Secretary because, if it is a matter of ministerial pressure being put on civil servants, that is not a matter for us, as Commissioners, but it is a matter that the Cabinet Secretary would no doubt raise perhaps even with the Prime Minister.

Q216 Chairman: It is difficult to feel, as I say, that this civil servant's career is going to be greatly enhanced by all this. What I am getting at is that you can see why someone in that position might think that some alternative routes are preferable, can you not?

Ms Paraskeva: Well, I cannot see that their career is going to be enhanced very much if they go to the press either. Frankly, there is much greater safety for them to come to either their nominated officer in their department or directly to us.

Q217 Chairman: But they can go to the press anonymously, they can do a brown envelope and, therefore, they will have the satisfaction of knowing that this information does become public without putting themselves on the line. Can you not just see in terms of how the world works that—

Ms Paraskeva: Of course I can, but, as I say, I do not think that that is the kind of Civil Service that we want to encourage. We need a different, and I do believe we have a different, ethos in our Civil Service actually and I do not think I would want to go anywhere near the slippery slope of saying to our civil servants, "Look, we can't provide you with a protective environment to raise those concerns". We have got to somehow even further enhance the culture that exists within the Civil Service of there being safety to raise matters of concern.

Q218 Chairman: Okay, let me just ask you about those. We know that civil servants are now within this environment of public interest disclosure, whistleblowing legislation and freedom of information, and that does make, I think, an altered environment from how it used to be. We know from surveys that have been done by Public Concern at Work that practice inside the Civil Service on making known whistleblowing provisions is extremely patchy and undeveloped, and what I really want to know is, given what you have said about your role in the system, should you not be out there really describing this new framework to every civil servant so that they do get the confidence to be able to come to you?

Ms Paraskeva: I agree. Our role is actually to help departments do that, but, in addition to helping departments do that, we have actually been taking on that role ourselves corporately through sponsoring the Cabinet Secretary's awards, through the events that we have held on Civil Service Live which have been directly about promoting the values, and indeed we have 1,000 civil servants up in Gateshead on Monday, if any of you happen to be there, for two sessions on the Civil Service values. We make sure that the values are on their mouse mats. We have held a number of promotional activities and

written in publications that we hope people read to try to make sure that the values are known and not just that the values are known, but the people know that they can come to us. I am also looking into our own procedures to see what else we can add to people's knowledge about the way in which we work and how they approach us. I think the question for us is: how much more can we do that is appropriate to encourage people to come to us rather than necessarily get caught in, or feel that they may get trapped in, their own departmental structures? I think this is genuinely a problem, because one does not want to encourage people to go outside of their department if they do not have to. We ought to be there for situations where people feel intimidated or, indeed, where they believe that urgent action is required. We should not be there for the everyday, or else you would be resourcing something that was disproportionate.

Q219 Julie Morgan: Could you tell us a bit more, as far as you are able, about the 27 situations that you have dealt with? In response to Tony, you said that missing targets was a typical sort of case, but could you expand?

Ms Paraskeva: Some of them of course we do send back because they are HR issues; people sometimes get confused and the appeals that they bring are actually mixed with HR issues, so we have to differentiate between those issues which are properly appeals under the Code such as misleading ministers, giving ministers information which is not quite accurate; contracts, people being concerned that contracts may have been awarded to people's friends and, therefore, allegations of impropriety; the deliberate distortion of statistics for whatever reason, and targets I have already mentioned, but the distortion of figures, I think, is one of the things that is clearly something that people worry about and the timing of the publication of such figures; the risk of breach of health and safety regulations; and failure to take account of expert advice when people see that expert advice has been brought in and then nobody takes any notice of it. Those are the kinds of issues where we have needed to launch investigations where we quite often uphold and, in a couple of cases, where we have not necessarily found the accusation to be true, but nonetheless, when we have looked at the procedures, we have been able to say that the procedures are not entirely clear and, therefore, required some redress to the procedures.

Q220 Julie Morgan: What percentage is upheld?

Ms Paraskeva: I think the majority. I think of 12 appeals in the last while that came to us, nine were upheld and three not.

Q221 Julie Morgan: And, if the appeal is upheld, you then make recommendations to the Department? What is the process?

Ms Paraskeva: That is right, we then make recommendations to the department and then we go back to check that the recommendation has been carried out—we do not just leave it there. Obviously,

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in order to close the situation, we need to go back and check that that recommendation has been followed.

Q222 Julie Morgan: What about the situation of the individual civil servant who has raised the issue to begin with? Are you able to check how they then cope in that department, having been through this procedure?

Ms Paraskeva: That is not something actually that is within our power or gift to do and it is a question as to who looks after them. One has to ensure, I think the departments must ensure, that those procedures are there to protect that individual, but I think it is a question that probably does need to be addressed within departmental management as to how the welfare of a member of staff who has raised a concern is then properly looked after.

Q223 Julie Morgan: Because it does seem that, if there were only 27, those people must have felt pretty strongly if they have come to you and it must be as a result of something they had a burning feeling about, so it is very important to follow that up afterwards.

Ms Paraskeva: Indeed.

Dr Jarvis: I was just about to say that obviously we do go back to the appellants with the outcome of the appeal.

Ms Paraskeva: But the aftercare, I think, is an issue.

Q224 Julie Morgan: It is the aftercare I am talking about, yes, if you want to encourage people to use this method.

Ms Paraskeva: I think it is a very serious question. It is clearly not within our gift or resource, but it is a very important question that we need to explore, I think, perhaps with permanent secretaries as to how that can be handled after an appeal.

Q225 Julie Morgan: The other issue is the length of time this takes. From when a person has raised it individually within the department first and then comes to you, what sort of period of time are we talking about?

Ms Paraskeva: Obviously each individual case will be different, but we will respond very quickly ourselves and set up an investigation. Some of them may take months to investigate fully, but it will absolutely depend on the particular instance. I think that, when I was here last time, something had been in the newspapers that I was concerned about and it turned out in fact to be a Ministerial Code issue, not a Civil Service Code issue, but we reacted immediately. I wrote by email to the Cabinet Secretary, he acted immediately with the relevant Permanent Secretary and we found out what the matter was, and that was within a matter of a couple of days. On the other hand, if somebody has raised an issue where we need to launch a full investigation, that obviously can take a number of months.

Q226 Julie Morgan: And the civil servant would remain in the department while this investigation was going on?

Ms Paraskeva: Yes.

Q227 Julie Morgan: Which could obviously be an uncomfortable position to be in.

Ms Paraskeva: It could indeed be, yes. Confidentiality is a rather important issue here because of course at the end of the day it becomes more and more difficult to investigate if somebody is not going to allow their name to be known in any allegations.

Q228 Julie Morgan: I am assuming the name is known.

Ms Paraskeva: Not necessarily. It might be known to us, but we do not necessarily go back, we would not go back to the Permanent Secretary and say, "Hey, Sally Bloggs has just telephoned us", but we would go back and raise what the concern was, so we would not be in the business of exposing in that way, but of course at the end of the day, as I say, if there is a full investigation, then clearly we have to interview people.

Q229 Julie Morgan: The point I am really trying to make is about looking after the person who has been so bold as to make the claim.

Ms Paraskeva: Yes, and I think it is something that we will take away from this meeting and talk to permanent secretaries about. It is something we might be in the business of accidentally causing, as it were, by being here, but it is the proper business of line management to support their staff and, as I say, in the development of a culture that we want in the Civil Service of people feeling safe to do so and not harming their career if in fact they do speak the truth in this way.

Q230 Mr Walker: Are you slightly concerned about the vitriol being rained down on the Office of National Statistics? I know it is not whistleblowing, but we have senior civil servants who are told to be completely impartial and neutral, they are trying to do the right thing, and they are basically being trashed by sections of government. Does that cause you concern because that must poison the well somewhat?

Ms Paraskeva: Our role, I think, in all of this is pretty clear, that the civil servants in the Office of National Statistics could have come to us, and perhaps this underlines what we have been talking about which is that they may not understand our role perhaps clearly enough, but those civil servants could have and, maybe should have come to us and raised those concerns immediately they felt that kind of pressure. Of course, there is another regulator involved in this particular issue, the Statistics Commission. But for those civil servants, it is sad, in a way, that they may not realise that they could actually pick up the telephone or email our office and tell us the pressure that they were under, if it was pressure that they felt.

Q231 Mr Walker: Dr Jarvis, do you want to add anything to that?

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Dr Jarvis: On the point about protection for people who raise concerns. Just to say that the Commissioners would consider the case of a civil servant coming with a concern that they have been in some way victimised for raising a concern within the department. That would fall within the ambit of the Commissioners' role.

Q232 Mr Walker: Are you concerned about the relationship that civil servants have with permanent secretaries? Are you concerned about the constraints that they feel they operate under? Do you feel that there is a culture now where people do not want to come forward because they are frightened?

Ms Paraskeva: No, actually I do not. I think that, by and large, we have a very positive culture in the Civil Service and a very safe culture in which people operate. The Civil Service is half a million people, so we are talking about tiny numbers of people. That does not mean that they are less important, but we do need, I think, to keep it in proportion. We are talking about a few people who have not managed to find the appropriate place to speak up about their concerns. Now, those concerns might be of such magnitude that we will need to make absolutely sure that every structure is in place and procedures are there that they can follow easily and confidentially.

Q233 Mr Walker: Do you feel that the pressures and conflicts between the role of special advisers and civil servants have been addressed? There was concern around those relationships early on in this administration's tenure, but do you think those have now been addressed?

Ms Paraskeva: It is not something that normally, as Commissioners, we would comment on, but, since you ask me, as I see it operating, it appears to actually work very well and in many senses the special adviser is there to put the political overlay on the objective advice that comes from the Civil Service, and that seems to be actually a fairly positive way of working.

Q234 Paul Flynn: Since 1979, there have been at least 14 major reviews and actions in the Civil Service to reform its structure and the culture, starting with Derek Rayner's Efficiency Unit in the Cabinet Office, Richard Wilson, Sir Andrew Turnbull's Departmental Change Programme and there was a recent one, the Capability Review, to which the National Audit Office gave less than top marks. 14 reviews—why have they all failed?

Ms Paraskeva: It is tricky to even try to enter that debate, as a Civil Service Commissioner, when our role is really about regulating the entry to the Civil Service and then regulating the appeals against the Code.

Q235 Paul Flynn: You said that the ethos is different now, but, if the ethos had been changed, we would not have needed review number six if number five had worked, or we would not have needed review number nine if number eight had worked, 14 reviews.

Ms Paraskeva: I think in any organisation, and many of us, I am sure, round this table have run organisations, one needs to continually review one's ability to deliver, and my understanding of the most recent Capability Review was about departmental ability to deliver against government objectives, and it was one of the ways in which the Cabinet Secretary was trying to inject the kind of measures within central government delivery that we expect of local authority delivery, for example.

Q236 Paul Flynn: It is being claimed that the central ethos in the Civil Service is based on the unimportance of being right, that those civil servants who have bright ideas who are not timid or passive and who want to express themselves are the ones whose careers wither. If we take the news today, there are hundreds of examples like this and particularly in the Defence Procurement Department of the Chinook helicopters, and I am sure there was someone, some civil servant, someone in the Ministry of Defence deciding that it was not a good idea to vandalise new helicopters when they came on line or to delay any kind of decision. Is it not true that that is the ethos there, that the ethos is to remain silent *au maitre*? Otherwise, if they do challenge whatever the accepted foolishness of the day might be, they are likely to find that they are going to be punished with their career coming to a full stop or not progressing, but is it not a culture of timidity and passivity?

Ms Paraskeva: I do not think we know that. I do not believe that a culture exists of timidity and fear. One of the things that our audit will do, because it will be a rigorous audit, is to actually find out exactly what the procedures are in departments. The other thing that we are going to ask for, and have already asked for, is for the departmental staff surveys which happen annually to ask each individual civil servant two sorts of questions: one, whether they actually know about the procedures that exist; and, two, whether they feel confident that they could use them. We will, I think, get some answers back from civil servants themselves which will, I think, be able to give you a fuller answer than I can. People themselves will give that information through their staff surveys in confidence. We do not know, is the answer, I think, to your question and, therefore, we have to try and find out from civil servants themselves whether they know of the procedures and whether they feel safe enough to use them.

Q237 Paul Flynn: And this will be review number 15, will it?

Ms Paraskeva: No, it is not a review. It is part of the annual departmental surveys. What we have asked is that the annual staff surveys, which happen every year as it might in any organisation, includes within it two very particular questions that we want answers to because it is all very well for us to conduct our audit, asking permanent secretaries and HR directors and the internal audit and nominated officers what they have got in place, but it is quite

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another thing to say to civil servants, "Given what they say they have in place, does that work for you?" and we want to know that as well.

Q238 Paul Flynn: Sir John Hoskins was brought in to look at the problems of the Civil Service in 1982 and one of his conclusions was, "I am suggesting that the concept of political neutrality for the Senior Civil Service is in an impossible position where they have to become passive, doing what they are told but no more just when a supreme effort, will or imagination is called for. If a country's problems require radical remedies, you need a radical government, but how can you have a radical government without radically minded officials?" Is this not true and is this not what we need now, these radical solutions, and do we not have our civil servants with their eyes bandaged and their minds switched off?

Ms Paraskeva: Again, you ask me a question which, in many senses, it is not my role to reply to, but I will not resist it. I actually think that having as one of our values political impartiality is absolutely vital to the Civil Service. On the question that you asked about special advisers, we have special advisers who are there to put the political overlay. I think that what we have in this country is an impartial Civil Service and it is one that has stood the test of time. I do have a worry about its future and that is that, frankly, that could be changed overnight if we do not get the Constitutional Renewal Bill on to the statute book because of course the values of the Civil Service, which include political impartiality, are only there by an Order in Council which at the moment means that any government of the day could change that at the stroke of a pen. At least, if we are going to have a debate about whether or not the senior echelons of the Civil Service should be more politically involved, let us have that debate in Parliament and, therefore, let us have the values of the Civil Service on the face of a Bill which, I know, this Committee has tried to promote. We are very keen to get those values on the face of legislation.

Chairman: We could go much wider than we are this morning and I want to hold us back, if I can, to the territory that we are on.

Q239 Paul Flynn: I have just a final one about the figures, the statistics. I represent a large number of civil servants who work in the statistics office who have been coming to see me since 1988, very concerned that the value of their work, the objectivity of the work they produce could be wrecked by a partial government of one side or another. The Government, to their great credit, have set up the independent national Statistics Authority and we find ourselves now in a position where there is tension between the civil servants and the Government on these figures. Have you any view of this in your role on the Commission as to how you should be protecting, in my view, the freedom of the civil servants in the Statistics Authority to make their case for objective statistics that are not distorted by politicians of either side?

Ms Paraskeva: Clearly, one of the ways in which you could help us is to help promote our role if people in the Office for National Statistics do believe that they are put under pressure in that way. One of the other questions you have asked me from time to time is the whole business about whether we should have discretionary powers to investigate, and for a while I was not keen and then I was encouraged by you to think that through in greater detail for where else could people expect an investigation to come from? I think we agreed in the end that we might well be involved in an investigation if we saw a matter so serious or in fact so systematic, and I repeat that because, if what we were hearing from any source was that there was a systematic concern, then clearly that would be exactly the kind of issue that might cause the Commissioners to launch an investigation of their own to see just what was going on.

Q240 Chairman: Yes, I think that comes out of Paul's last question and, as you say, we have sort of touched on this with you before, but it is the extent to which you just have to rely upon individual complainants coming to you so that, if you read in the newspapers that there is an issue around the Civil Service, even you, as the Commissioners, cannot actually just wade in there and try and find out what is going on, can you?

Ms Paraskeva: No, we cannot.

Chairman: Which is a kind of disability.

Q241 Paul Flynn: On your mouse mats, is there a duty on civil servants to blow the whistle if they come to a situation like the Iraq War, for instance, where we know that one civil servant resigned, but has never made a statement since then? You obviously have a lead there of saying, "Do not do this and do not do that", but should it be urged as the positive part of your problem that at certain points, when something is so awful, they have to blow the whistle and it is their duty to blow the whistle?

Ms Paraskeva: But there is not, but indeed that has been the subject of some conversations between Commissioners and our Office over the last weeks partly because of your inquiry on whistleblowing and partly because of one or two of the things that we have read about in the newspapers. We have ourselves wondered whether or not that would be a way of promoting and we have concluded that we should not put under everybody's mouse hand, "Call us if you're in doubt" because actually we do not think that is the right thing to do. What they should do is call their nominated officer within their department, so what we want to try and do is to encourage permanent secretaries to really promote the role of the nominated officer in that department. As I say, we have established this network of nominated officers with a confidential website for them to talk with each other and with us so that we will be getting much more information about what is actually going on in the body of the church, so to speak, in the future. I think it is in those kinds of ways that we should be working rather than setting up something kind of alongside which, apart from anything else, would just be ridiculously expensive

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to resource because there would be then no structure within the department for weeding out that which is important from other just general everyday enquiries.

Q242 Mr Prentice: Digby Jones is a great showman of course and he told us a few weeks ago that half the Civil Service should be sacked and he clearly thought they were pretty useless. Were you disappointed by what Digby Jones said?

Ms Paraskeva: You do keep asking me questions outside my remit!

Chairman: I think we would like an answer though!

Q243 Mr Prentice: It neatly leads on to my next question, but I would like your observations on my first.

Ms Paraskeva: I was disappointed with that kind of statement, yes. Where is the evidence, is, I think, what I would want to say.

Mr Walker: Good for you!

Q244 Mr Prentice: Last week, we had Liam Byrne in front of us and he spoke about the incredible shrinking Civil Service, down 70,000 or 80,000. Those jobs have not just disappeared into the ether, but many of them are being carried out by private contractors and your writ does not run to the private sector. Is this an issue that you are addressing? Is there a problem there?

Ms Paraskeva: You are absolutely right, we have no remit to deal with anything other than that which comes to us from a civil servant.

Q245 Mr Prentice: Have you examined this in any depth at all because great slabs of work that used to be covered by people operating under the Civil Service Code and under the Official Secrets Act are being carried out by people who may well be agency staff, may well have a criminal record, may well be dealing with sensitive information, but be wearing a tag? Have you looked at this?

Ms Paraskeva: Interestingly, the issue of agency workers has come on to our radar screen, not actually because of the whistleblowing issue, but because of the other part of our role which is being the guardians of entry to the Civil Service because you can imagine that a large department needing to employ caseworkers very quickly could go to an agency and take the first thousand names off the agency list and then, after a little while, want to convert them into full positions of civil servants. We do not let that happen in fact because of the regime that we have about appointment on merit, and departments, I have to say, have been, by and large, very straightforward about this. Where they have wanted to do this, they have telephoned the Office and said, "We'd like to make these people civil servants now", and we have said, "Well, sorry, you can't just do that. There has to be a proper process of merit test which would enable their conversion from agency worker to full Civil Service status".

Q246 Mr Prentice: What about a situation, let me be specific, where the Department for Work and Pensions contracted out to Capita responsibility for managing the personal files of millions, eight, nine or ten million files, on citizens that had personal details? Have you spoken to the Department for Work and Pensions about the nature of the contract that they have with Capita to ensure that this sensitive information is going to be handled appropriately? Have you made those kinds of enquiries?

Ms Paraskeva: We have not because that is part of the management of the Civil Service and that would be really treading across the line from our role as regulator into different territory.

Q247 Mr Prentice: But you understand what I am getting at, do you not?

Ms Paraskeva: I do understand what you are getting at and I think that while not stepping outside of our role, if you like, there is a question about how the values of the Civil Service are upheld by those who are contracted to deliver for the Civil Service, and I do think that that is an important issue for us to look at and indeed to raise to see how those matters are handled. The contractual arrangements and the way in which departments deal with that is a management issue, but how the values of the Civil Service are translated and then how we can make sure that those values are protected, I think, is a question that we could be asking, so thank you for that.

Q248 Chairman: That is a fruitful line, is it not, because the Ombudsman, if you remember, confronted this same issue about people who complain about public services that are being delivered by other people, and she has taken the view, and this has now been acknowledged, that her writ can run wherever those public services are being provided whomsoever they are being provided by.

Ms Paraskeva: Yes.

Q249 Chairman: By extension, those people who are acting, as it were, as civil servants by carrying out Civil Service functions, you would think, ought to be governed by something like your Code.

Ms Paraskeva: We have meetings planned with Ann Abraham to explore best practice as regulator in this area, and that is something that we may well discuss with her. It is not within our ambit, but I do understand the question that you are raising and I can see that, whilst the management of the Civil Service is not our business, actually asking the questions about how and who looks after those interests through that kind of delegated responsibility probably is.

Q250 Paul Rowen: I want to ask you about blogs. Is it permissible for civil servants to blog, do you think?

Ms Paraskeva: It was a question that we asked in one of these question time sessions that we had with around a thousand civil servants last year, and I asked it of a panel of retired permanent secretaries, even of Sir Gus O'Donnell, and there was a qualified

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yes. They thought it was okay, provided that the information that they place there does not breach the values of the Civil Service, the same as any other kind of communication any civil servant might have. I think there are those of us, and we are probably in not dissimilar generations, who still think of something that happens electronically as different, but it is only another way of speaking to each other, and I think for young people, certainly my grandchildren, it is just how they communicate, so why would you not put it in a blog if you would say it or write it in public, so why not write a blog? It is not the writing of the blog that is the problem, it is what you put in the blog that is the issue.

Q251 Paul Rowen: Well, there was of course one instance last year of an unnamed civil servant who used a blog as a mechanism to actually release sensitive information.

Ms Paraskeva: But in olden times, before we had all of this electronic stuff, they might have put it on a placard somewhere. It is just another way of saying it and it is a pretty effective way of getting the word out of course and, therefore, in every sense it is more accessible to many more people, but, as I say, it is not the blog, it is the content of the blog that one would be concerned about.

Q252 Paul Rowen: Given you talked about modern communications and modern technology, how are you using that to actually encourage civil servants who have concerns to whistleblow in the right manner?

Ms Paraskeva: A couple of years ago, we decided to do all sorts of things on our website instead of through paper, including our Annual Report and Statistics. I have to say that the huge numbers of people who do not just click on, but actually use the video clips and so on has been really very rewarding because it does show that actually that is the way that increasing numbers of people are communicating. But, as well as that, there are the channels that we have, as I was saying earlier, with nominated officers opening up confidential chatroom-type facilities with each other and with us. The other group of people that we found out were important in all of this when we dipped our toe in the water with the informal survey this year were the heads of internal audits. One of the things that we found out was that, where departments had effective arrangements for whistleblowing, they often used their internal audit staff to deal with the investigations, so, when I met with permanent secretaries yesterday morning to make sure that they were fully aware, having written to them about the audit because it is a pretty fast timetable they are being expected to work to, I said that it was really important that they involved their director of HR, their nominated officer and their head of internal audit, but, in addition to that, of course we would expect the permanent secretaries themselves to actually sign off the arrangements that they were responsible for.

Q253 Paul Rowen: Do you, or do the departments, have a facility for someone to whistleblow anonymously? For example, if a civil servant, and it could well be a senior civil servant, does not wish to damage their career, but is concerned about a certain action, are they able to send you a confidential email?

Ms Paraskeva: Absolutely. Confidentiality is tricky but may be necessary, but, yes, of course we would receive them.

Q254 Paul Rowen: Would you expect them to say who they were or can they do it anonymously?

Ms Paraskeva: They can do it anonymously, yes, and, if it sounds like something serious, one needs to be careful, I think, with anonymity. Sometimes it is the only way people can feel safe and, therefore, they may be telling you something terribly, terribly serious, or they may also be frivolous and just trying to cause a bit of nonsense because they have not got the promotion they wanted or whatever, so you have to be terribly careful with every complaint that comes before you, whether or not somebody has said who they are. But there is absolutely nothing at all to prevent somebody raising a concern with us anonymously; we will take it just as seriously as we would if there were a name attached.

Q255 Paul Rowen: Going back to the issue of agency workers or outsource work, would you consider it if an agency worker or somebody working for Capita, say, emailed you to say, "Are you aware that the Ministry of Defence are doing this and it is illegal?"

Ms Paraskeva: Formally, we can only receive complaints from civil servants. I think the question that Mr Prentice raised is an important one that we need to think about because, if an agency on contract to a department is carrying out a piece of work and the complaint comes from there rather than the civil servant, if that was a concern, whilst we are not empowered to do anything about it, if we were concerned about it, I cannot imagine for one moment that I would not pick the phone up.

Q256 Kelvin Hopkins: Just following the Chairman's arguments in his opening, even anonymity is difficult because, with a subject area, the finger would be pointed pretty quickly one would think. However one wraps it up, the reality is, and you can use metaphors, that, if you whistleblow, you are going to finish up managing a power station in Siberia rather than having the dacha in the sunlit woodland. That is just inevitable. What I am concerned about are the long-term effects on the Government and the Civil Service. Is there a degree of progressive degradation? Public trust is not high and we have seen a number of unfortunate statements by ministers which have seemed to be not absolutely true perhaps. There was the knife crime statistics issue most recently which was very worrying, but we have in the past had a reputation for honest government, I think, and effective democracy. Is not all of that threatened with progressive degradation if we do not really take these matters much more seriously? I should say that I agree with everything you have been saying.

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Ms Paraskeva: Of course, there is a threat that things go wrong if we do not take these issues seriously which is, I think, why we have upped our profile and why we are trying to do more and more to make sure that there is a safe place for people to go. It is a shame, is it not, that the press will not cover some of the good things that happen because we all know that good news does not sell newspapers, but there is an enormous amount of proper challenge that goes on within the Civil Service. Those of you that have been involved yourselves with civil servants know that senior civil servants who engage with you are not a pushover and they come with objective advice which might not always be at ease with what particular ministers are looking for. I do not think the kind of degradation and fear that we see individual examples of is in any way endemic across the Civil Service. We have no evidence that that is the case.

Q257 Kelvin Hopkins: We blame the media, but the media pick up on things which are real problems, and while the 90% may be inconsequential, the 10% is serious, for sure.

Ms Paraskeva: Yes, I do not deny that, but I do think we need to be careful to keep it in proportion, I do think we need to be careful, while doing that, to listen to the messages in all of that and to see what it is we can do, if there is any weakening, to actually shore up the muscle within our Civil Service to behave well.

Q258 Kelvin Hopkins: Finally, looking at it from the other end, the problem for the civil servant is that recent governments have been media-obsessed, and have been concerned with presenting ideas—and an image. ‘Spin’ is a word we use a lot, and the pressures on civil servants to go along with things which are not quite true or are not quite accurate must be much higher now than they were in the past when Clement Attlee used to read the cricket scores in the newspaper and ignore the rest. The world has changed. Should we not be pointing the finger at government and saying that government has to clean up its act and stop doing these things? We had a number of issues during the Blair era, in particular, “A good day for burying bad news”, that kind of thing. It is very difficult for you actually in your position perhaps to say this, but should we not say to government, “If we want to save the reputation of government in Britain, if we want to restore public trust, we have to stop doing things which sometimes necessitate civil servants leaking, sometimes whistleblowing, and being concerned constantly about things not being as they should?”

Ms Paraskeva: I think that, while our business is the Civil Service Code, there is alongside it of course the Ministerial Code, and I think we would be happy to be involved in anything in a discretionary way, if you like, which would help ministers also recognise the kinds of pressures that they put on their civil servants, which in the end, if they got out of proportion of course, could disproportionately damage the Civil Service that is there to serve them.

Q259 Kelvin Hopkins: It seems from your Annual Report that not every civil servant is given a copy of the Code as soon as they are employed. Would it not be sensible, especially for those who come from outside, that they are given a copy of the Code and given a very thorough induction course, “You are now a civil servant and you have different values. This is not about making money, this is about serving the public honestly”? Would that not be a good thing?

Ms Paraskeva: Absolutely. Every civil servant should have a copy of the Code. When we are involved in competitions we ask about the Code and one of the things we ask in our compliance monitoring is whether the Code is part of the information pack given to all applicants. We have also suggested that this should be something that is rigorously applied in the induction process. When we chair competitions, which we do for the top 600 posts, then the Commissioners will themselves ask questions about the values of the Civil Service to all candidates not just those who come from outside. Because we are the guardian of those values we want to make absolutely sure that people coming from outside understand that those values are things that they are signing up to and that they understand what that actually might mean for their behaviour. In the Best Practice Guidelines that we produced with permanent secretaries in 2007, we talk there about induction and the promotion of the values and the Code as being an integral part, and it would be one of the series of questions that we will ask about in our audit, “What’s going on? What happens?”, and then, when we come to the staff surveys, as I said, we will ask the staff, “That is what was intended, that is what the permanent secretaries signed off is on offer. Did you get it?”

Q260 Chairman: A final question regarding what we were talking about earlier on, the whistle-blowing matters, just so that we can complete the circle. When we talk about this, we tend to talk about it entirely in terms of the Senior Civil Service. People who have these problems working in a particular environment and so on. What I would like to know from you is, do you get complaints from down the ranks of people who just think that there are fellow civil servants who are not doing things which the Code says that they should do?

Ms Paraskeva: Yes, we do.

Q261 Chairman: In numbers?

Ms Paraskeva: Not disproportionately. The meeting in Gateshead on Monday will be with around 1,000-odd quite junior civil servants who work in the large call centres and so on up in the North East. We have already emailed them to ask them for questions for our question time session on the values, so we know from that experience the kinds of issues as well as those that come to us more directly and they are often, “My mate is fiddling his expenses, what do I

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about it? What should I do? Whom should I tell? Flexi-time is being abused by somebody I see”—and it is always somebody else of course that they are reporting on. Those kinds of things are emerging and of course that is exactly the kind of information that we need then to feed back into line management so that these issues can be addressed.

Q262 Chairman: Thank you for all that this morning. I have tried to stop us getting into the wider territory. We are allies in trying to get the Civil Service to build in the legislative programme this year and I hope that our alliance will bear fruit.

Ms Paraskeva: I hope so too.

Chairman: Thank you very much for this morning.

Thursday 19 March 2009

Members present

Dr Tony Wright, in the Chair

Paul Flynn
Mr Ian Liddell-Grainger
Mr Gordon Prentice

Paul Rowen
Mr Charles Walker

Witnesses: Ms Katharine Gun, ex GCHQ, *Dr Brian Jones*, retired MoD official, and *Mr Derek Pasquill*, ex FCO, gave evidence.

Q263 Chairman: Let me call the Committee to order and make a start. We may be joined by some more Members shortly, but I would like to make a start if we could. Can I say how grateful we are to you all for coming along. As you know, we are doing an inquiry into the whole area of leaks and whistleblowing in Whitehall and you have all interested us in that respect, not because you have all been leakers or whistleblowers, but because you have all had to think about what you were doing in the context of things that you were believing, and then, after you, we are taking some video evidence from a former diplomat in New York who asked similar questions. We are constrained by the fact that we have got about an hour before we have to do the link to New York, but I would like to perhaps start by getting all of you to say something very quickly about the dilemmas that confronted you and that then made you do what you did, if I can put it like that. Katharine, could I start with you. I think we know broadly your story, but if you could just distil it into just exploring that dilemma with us.

Ms Gun: Okay. First of all, I did not join GCHQ with the intention to be a whistleblower, of course, but when I was aware that the invasion of Iraq (back in January 2003) was imminent, I was a recipient of an email from the National Security Agency in the US, and the email was pretty straightforward, directly requesting GCHQ to help them, basically, eavesdrop on the six swing nations that were currently at the time sitting on the Security Council. The email asked us to get any information that could be used against them in order to achieve a “yes” vote for the second resolution, which would authorise the invasion of Iraq, and the email said, “US favourable goals”. It seemed to me that the US intention was to invade Iraq, even though at the time, publicly, Tony Blair and George Bush were actually talking about diplomatic solutions, but behind the scenes that email immediately made clear to me that what they wanted was in fact war and I felt that what they wanted to do, by bribing and potentially blackmailing those six swing nations to vote “yes” for war, was immoral, illegal and completely against humanity when lives were at risk at the invasion of Iraq, so I decided to leak it.

Q264 Chairman: You decided to give the information, I think through a friend, to a journalist.

Ms Gun: Through a contact who knew Yvonne Ridley, who then passed it on to Martin Bright, who published it in *The Observer*.

Q265 Chairman: We shall want to ask you some questions, but we are not going to do that at the moment, we are just going to hear the stories at the moment. Brian, can we turn to you.

Dr Jones: I think there were probably two phases to my situation, and it is rather complex but I will try and put it in a nutshell. At the front end, if you like, I found myself in a situation where problems were brought to me by my expert staff of intelligence analysts concerning the preparation of the dossier and the drafts that they had been asked to comment on. In fact, we are not talking about absolutes here, which is what made the whole thing very difficult, but the assessment of the DIS experts was that we could not be sure, on the basis of the intelligence we had seen, that Iraq actually had stockpiles of WMD, and late drafts of the dossier were still, we felt, exaggerating that particular aspect. I think, to be frank, in the process we effectively won that argument, and it was only when additional intelligence was brought into play—this was intelligence that we never saw, that we were told was highly sensitive, that we were told was absolutely conclusive, and at that point the members of the DIS, in particular the Deputy Chief of Defence Intelligence (DCDI), who was one of my line management, told us that we would make no more objections to the dossier—I thought that was an unreasonable request. Of course I could not be sure how sure he was of his ground, and so at that stage, I must say under some pressure from the disquiet of my experts, I wrote a minute to my immediate boss, and copied it to DCDI, explaining that we simply could not back off from our assessment on the basis of the information available to us. I was a little, well, very uncertain that a single piece of additional intelligence could have made the difference that was being claimed, and I was suspicious that there was an attempt, as I have said and as I have written in other evidence, to finesse us as a particular problem. There was another member of my staff who separately wrote with the same—. Later on there was exposure, with the Hutton Inquiry and so on, and that was a different matter almost. I will talk about that if you like.

Q266 Chairman: Just establishing the facts, unlike Katherine, you did not feel the need to resign but you did write this memo setting out your concerns.

Dr Jones: Yes, it was confidential, of course.

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Q267 Chairman: And then you retired subsequently.
Dr Jones: Yes, that was unrelated to this.

Q268 Chairman: That is helpful. We shall come back to you as well. Derek, could I turn to you. You tell us you were inside the Foreign Office. What was it that made you do what you did?

Mr Pasquill: I think an important element in the process that led me to make my decision to leak information was the sense of surprise and shock that I experienced when I discovered that things were perhaps not as they might be, or should be, and the catalyst for this particular sense of discovery or shock was an article in *The Observer* which was published on 14 August 2005 by Martin Bright. As a result of reading that article, I made a decision to contact the journalist. That was a process, from my perspective at that time, of information gathering. I wanted to find out why he was thinking along those particular lines, and I had a chat with the journalist and then, subsequent to that meeting, I made a decision to leak information to him.

Q269 Chairman: Let us go now to some questions that bear on this general dilemma that you found yourselves in. I will start and I will bring colleagues in.

Dr Jones: I realise I have missed a very salient feature from what I said to you. My motivation, really, for writing that memo was that I was determined that my group, and myself, I guess, would not be scapegoated in any subsequent inquiry.

Q270 Chairman: I understand that; I have read that you said that. Here we have got people all faced with dilemmas who responded in different ways, and I suppose that is the question. Why did you respond in the way that you did, and do you think, in retrospect, that was the right thing to do? Perhaps staying with you, Brian, for the moment: now that we know what we know, what you were saying was vindicated. In other words, this dossier was being over-egged, there were pressures to make it of a certain kind, and you, who knew about WMDs, were saying, actually, no, this is putting it far too strongly. What I thought, reading again all this stuff that you had done, is if someone like you had resigned at the time in the build-up to war, that would have had a dramatic effect, would it not? You did the proper thing, you wrote the memo to your superior; it made not a blind bit of difference.

Dr Jones: Why did I not resign is your question, I guess. To be honest, that did not occur to me. It was not something that entered my mind. You are not the first, obviously, to make the suggestion that you have, and when it was first made some time in 2004, I think, that did stop me in my tracks. It was something I had not thought of until it was put to me in that way. It is rather difficult, having gone through everything, to go back to that time and the circumstances and all the other pressures, but I have thought it through and, if you like, this is a sort of retrospective excuse, if you want. I doubt that a single resignation at that time, or a single voice, would have had much effect, not least because, of

course, the argument, as Katherine has said, was very strongly, "We are not in a war-time situation; this is not about a war."

Ms Gun: Could I possibly interject, because I read a previous transcript of a hearing that you had with Sir David Ormand, and it was mentioned in that hearing that there was a Foreign Office legal adviser who resigned right at the lead-up to the war. At the time everybody in this room said, "Oh, she did the honourable thing", and, "She was an upstanding member", but in my own personal view—this is no attack on her personally but perhaps an attack on the media establishment itself—her resignation hardly caused a flutter in the media and, in fact, she did not actually go into much detail about why she resigned, and she has been very private about that. I think, had she resigned, coupled with a bit more clarity as to why she resigned, that would have caused more of a brouhaha, and I think Sir David Ormand also suggested that investigative journalists like Mr Hencke could have dug deeper to find out why, but I think nowadays it is really difficult for journalists to dig deep, because I have been told by members of the National Union of Journalists that their investigative journalist side of the media is being cut, and cut, and cut back all the time, so there is actually very little money in the whole broadcast media and print media on issues about investigative journalism.

Q271 Chairman: The case of Elizabeth Wilmshurst, who you are referring to, is an interesting one. She did resign, simply because she took a different view on the legal position.

Ms Gun: That is right.

Q272 Chairman: And she felt it was incompatible with continuing in her job, and that was a very proper response.

Ms Gun: Correct.

Q273 Chairman: What I was going to ask you was this. You were at GCHQ. GCHQ, I imagine, gets involved in all kinds of dirty tricks; that is what that world is about. Presumably you knew, when you entered that world, that it was a world of dirty tricks and when you came upon a dirty trick, you had presumably signed up for that, had you not?

Ms Gun: There are dirty tricks and there are dirty tricks. Of course, I know that in the course of business negotiations, public administration type negotiations, and so on, there is a deal of carrot and stick going on with regard to the people who have a specific criteria they want to meet and those that they are trying to get to sign up to that criteria. However, on this occasion we were not just talking about issues that were to do with economic development or trade negotiations and so on, this was a matter of life and death, it was a matter of war and peace, it was a matter of invading a sovereign nation which had done absolutely nothing to harm our nation or the US, and, therefore, I felt that the poor Iraqi civilians, who we now know have died in their hundreds of thousands, if not millions, would still be potentially living today.

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Q274 Chairman: But you were in the wrong job, were you not? You had signed the Official Secrets Act, you felt as you did and it was pretty certain that you were going to get into trouble, was it not?

Ms Gun: Yes, it came upon me as a very big shock, because, of course, I was doing my job on a day-to-day basis—of course I cannot go into that now or at any stage for the rest of my life—but I sat happily with my conscience doing what I was doing because it was not putting anybody's life in jeopardy. However, what we were being requested to do was politicise intelligence, and we have subsequently found out, thanks to the leaking of the Downing Street memo, that policy was being fixed around intelligence. I think that tells us exactly what was going on at the time, and I think that when it comes to issues of war and issues of innocent civilians' lives and putting our military personnel into harm's way, there should have been far more transparency and clarity, and there was not.

Q275 Chairman: I have been reading the things you have been writing subsequently: "Civil servants are disgusted by the manipulation of truth, even outright lies. I urge those in a position to do so to disclose information which relates to this planned aggression." That is about Iran. I think GCHQ was not a very shrewd career choice, was it?

Ms Gun: I changed over the course of my employment whilst I was there, and, to be perfectly honest, I think a lot of linguists do as well. This is a totally different issue altogether, but it is an issue surrounding people who work within the intelligence services who are linguists, and this is a difficulty that all the agencies have, because as a linguist you are already familiar with another nation, you have a love, possibly an affinity, with a nation, where you have spent time learning the language and studying the culture and meeting the people, and then, when you join an intelligence service like GCHQ, or MI5 or MI6, many linguists find, and I say linguists especially because of this experience with people of different nations, that it goes against what they have come to believe in.

Q276 Mr Prentice: Had you been tempted to leak before?

Ms Gun: Absolutely not, no. This was a matter—

Q277 Mr Prentice: But you went on anti-war marches. You are quite a politicised kind of person.

Ms Gun: About the Iraq War I was. That was a single issue that I felt very strongly about because I did my research. In September 2002, as part of my work at GCHQ, I went to San Diego for a multinational conference, and we boarded an aircraft carrier which was three days later bound for the Gulf. This was September 2002. So I knew that, if you like, all options on the table, as George Bush likes to put it, clearly invasion was on the cards, so I started to do some research. I did not buy hook, line and sinker what the media was telling us or what Tony Blair and George Bush were telling us, I decided to buy books written by people who had done research, and there was clearly not a case for war, and so, based on this,

when I saw this email that wanted us to give the US this information which would allow them to get UN authority, that was why I said: "This is the end of the line; I have to cross it."

Q278 Mr Prentice: When you leaked, were you aware (and this is a question to you as well, Mr Pasquill) that you were breaching the Official Secrets Act and you could be sent to prison?

Ms Gun: Yes.

Q279 Mr Prentice: You were?

Ms Gun: Yes.

Q280 Mr Prentice: And you did it anyway. Mr Pasquill.

Mr Pasquill: Yes, that was clear.

Q281 Paul Flynn: The issue we are discussing is the one that has been the gravest decision taken by Parliament for decades, one which we have all agonised over, because the vote we took was not about the war going ahead—the war was going ahead anyway—but whether Britain should be involved in the war at the cost of nearly 200 British lives and billions of pounds. Did it occur to you to contact parliamentarians? Looking back on what you did, do you think that might have been a more effective course?

Ms Gun: At the time, no, it did not occur to me.

Q282 Paul Flynn: Dr Jones, looking back in retrospect, I think what you are saying is that you wanted to protect your position and how it was going to be seen in later years, but do you think that it would have been far better, at the stage before the vote was taken in March 2003, to contact parliamentarians with the information that you had?

Dr Jones: No, because the information I had was not absolutely clear. There were uncertainties, because there was information I had not seen.

Q283 Paul Flynn: Can I say, I had *déjà vu* about what you said, because we were told as Members of Parliament that there was some secret information that was so dreadful and no-one would tell us what it was, that this would convince us, and this was the line that was being pushed in Parliament, as it was being pushed to you. In retrospect, what was that secret information and would it have made any difference to your view?

Dr Jones: I have never seen that secret information.

Q284 Paul Flynn: Did it exist?

Dr Jones: Yes, it did exist, and I think both the Intelligence and Security Committee and the Butler Review saw that information.

Q285 Chairman: It was too secret for you, was it not?

Dr Jones: Yes, it was supposedly sensitive and held within a very small compartment because of its sensitivity. Lord Butler, in fact, subsequently in his review said they could see no reason why we did not see it, but, of course, I was not aware of that and, whilst information of that sort is quite unusual, this

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was by no means unique. That is a fairly common thing to arise, and in the intelligence business you accept that that is the case. Also, I was dealing with classified information; all the information was very classified. That induces a sort of mindset in an intelligence analyst in the intelligence world that makes stepping out of those boundaries very difficult.

Q286 Paul Flynn: It is important that we know this for future decisions. We might have to take a decision on Iran, or various other things, in the future. The position in Parliament was that 139 Labour MPs voted against a three-line whip, 16 Conservatives, the whole of the Liberal Democrat MPs, but there were 50 other MPs, Labour MPs, who announced their opposition to the war who were bribed, bullied, bamboozled into abstaining or voting for the war. If that information which you possessed had been put into the public domain, those 50 might have changed their minds and Britain would have avoided the terrible cost in blood and treasure that we suffered.

Dr Jones: I think, again, it is a matter of timing. By that time war was inevitable, and I felt the war was not inevitable until the first shot was fired. That is the way of politics and the way of war, as you know. By that time I had retired, I was no longer privy to the detail of what had happened in the few weeks I had been away. It was something that I did not contemplate, and I do not think I would have.

Q287 Paul Flynn: If I can ask you now, we have seen the Civil Service Code, and I think you probably are better aware now than you were then of what options were available to you. Your advice to someone in your position now, if they were in a similar situation where information they have could avoid another damaging decision like this, would you say that they had a duty to leak?

Ms Gun: It is a very, very difficult question, because, of course, what I did did not avert the war. I do not know whether, once again, it was an issue of timing, but you say that these MPs were bribed and bullied to vote yes for the war, or for UK participation. When exactly was the vote in the Houses of Parliament?

Q288 Paul Flynn: In March 2003.

Ms Gun: Yes. So, presumably, it was not the first Sunday in March, because the memo that I leaked was published on the first Sunday of March. It was a fairly explosive story, I imagine. I was not circulating the streets of Westminster; I do not know what people were discussing at the time; but why was that story not picked up, and the MPs who voted, why did they not say, "Hang on a minute, tell us what this is all about, please, Jack Straw, Tony Blair"?

Paul Flynn: I think if we had known more about the reasons, that the war was an illegal war—that certainly did not come into the parliamentary domain at that time—that would have had a profound effect, the evidence that was to bind Britain's hand would have had a profound effect as well.

Q289 Mr Prentice: I was interested in what you were saying about everything being compartmentalised. You were the country's leading expert on chemical and biological weapons. We know that. When the second dossier appeared, the one that was written by the PhD student in California, did you know about the provenance of the second dossier, and, if you did, what did you do about it?

Dr Jones: By the time it appeared, I had retired.

Q290 Mr Prentice: You had retired.

Dr Jones: In addition to that, our expertise was in weapons and weapons programmes. I think the second dossier was—

Q291 Mr Prentice: Did you see anything? It is difficult to remember from this distance exactly what happened when, but when it became public that the second dossier that was referred to by Colin Powell in the United Nations had been drafted by this PhD student in California, did you talk to anyone about that? Did you feel it was an absolute disgrace that Parliament was being hoodwinked, even though you had retired? I understand that.

Dr Jones: Yes, I suppose I did. It was not something I focused on particularly. I had heard Powell's speech at the UN.

Q292 Mr Prentice: He congratulated Jack Straw on this dossier?

Dr Jones: I was not focusing very much on that. I thought Powell's whole speech was a misrepresentation of the situation as I understood it. I must say, I was rather surprised on a number of occasions. I was surprised that the dossier was not more criticised than it was, for example. I do not think it needs someone with my expertise to look at the dossier, for example, and see the difference between the Prime Minister's foreword and what was in the main body of the dossier. I think, as the dossier was going to press, part of my reaction was, "My gosh, as an intelligence community we are going to be crucified for this."

Q293 Chairman: This is why I asked you the question earlier on, and in a way it is unfair to put it like this to you because you behaved with absolute integrity as a public servant all the way through, but from our perspective, thinking of that chronology of events, I think if a defence intelligence expert at a crucial moment, when all that discussion about the dossier was going on, had said publicly, "Actually, there is a mismatch between what it says at the front of this document and what the document actually contains", in the way that you have just put it to us now, that would have had a very significant impact on you.

Dr Jones: Can I risk offending you, gentlemen?

Q294 Chairman: It is not a high risk.

Dr Jones: I am not sure about that particular situation, but having seen all that has happened since the Iraq War and the evidence that has come from the various inquiries, beyond that very small group of people, of MPs, who have, as it were, seen

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through some of the nonsense, I think for someone like me it has been very disappointing that so little has happened as a result of those inquiries. I feel you gentlemen from time to time have been either deliberately or accidentally misled and that those incidents have not been followed up. I think that there is a degree of laxity about it, and that, if I may say, will not encourage people like me or my colleagues to come to you.

Q295 Mr Prentice: This is a question to the three of you, I suppose. Were you aware that the Civil Service Code says that ministers and civil servants must not do anything knowingly to mislead Parliament, but that was what was happening?

Ms Gun: I suppose that is given as taken. I do not think you would expect ministers to deliberately mislead. I think I worked on the assumption that that is the way it should work, but, no, it did not occur to me. Possibly because I had not researched and did not know which minister would be particularly sympathetic and who I should go to, but also for me it was definitely a time question. I felt we were running out of time, I felt the rhetoric was accelerating and that invasion was absolutely imminent.

Q296 Paul Rowen: Could I ask either of you who whistleblow, why did you not go to your superior officer and raise your concerns? Why did you go straight to the media?

Ms Gun: Personally, for me, once again, it was a time issue.

Q297 Paul Rowen: How did you know it was a time issue?

Ms Gun: As I said, because of the rhetoric. The media was practically having a field day with the 'shock and awe' campaign that the US was displaying for the world to see. I felt that really going to my line manager, as efficient and lovely a woman as she was, subsequently upon my revealing that it was me, all GCHQ would have done would have been to have taken a sort of, "Oh, yes, dear. Thank you for telling us, dear. We will bear this in mind", and just drawn it out and swept it under the carpet and, on top of that, put me on the top watch-list of most dangerous persons in the organisation. It would not have gone outside GCHQ and certainly would not have made any difference whatsoever.

Q298 Chairman: As I understand it, you did not even consider going through the internal procedures, did you?

Ms Gun: No, because working on the inside, there are people whose views are similar to my own but they dare not speak their mind, and wish to keep their jobs, which I perfectly understand, but there is a vast majority of people who have group-think and group-think is such that people do not dare think outside the boundaries.

Q299 Paul Rowen: Mr Pasquill, you had concerns about another officer in the Foreign Office. You hint in your article at the fact that he had been seconded

to the Labour Party, and that, of course, raised eyebrows. Did you not feel that if you reported those concerns to one of your senior officers that that would have been taken seriously?

Mr Pasquill: Before coming here today I read some of the previous transcripts of the sessions that you have held here, and I would like to refer to Sir David Ormand's comments of 22 January. I think his answer on that occasion, you could apply that to the different government organisations, and so on. He said, "Leave this one to us." I think that is the language of the kindergarten or the nursery. To my mind, that is very patronising, and part of the problem is that patronising attitude; that the people who are making the policies and making the decisions have all the information perhaps at their fingertips and that people who have reservations about certain policies, do not have the full facts and should seek advice before making revelations to the media.

Q300 Paul Rowen: But it has subsequently been proved, in your case, that your concerns were well-founded and, to some extent, the Government have changed their policy. Do you not think, by having that debate internally, you could have not brought about a change of government policy anyway?

Mr Pasquill: No, because I think that the policy that I was objecting to or had reservations or concerns about was being driven by senior people in the Government, it was being driven at ministerial level at the FCO and the Home Office, and it was one of their key priorities to have a successful outcome to this particular project and they were in a position of wanting to accelerate the delivery of the results that they were expecting from this particular policy. Hence a sense of urgency on my part during the autumn 2005 to make sure that the public had an awareness of the issues that were involved and that they had an opportunity to see what was going on and could perhaps put us under pressure.

Q301 Paul Rowen: Do you think what you did has succeeded in changing the way the Government goes about dealing with various Muslim groups?

Mr Pasquill: I would like to refer, potentially, the Committee to a recent report by the Policy Exchange, and I quote from this report which was issued a week ago. The authors are Shiraz Maher and Martyn Frampton and one of their main conclusions is that a new generation of young Muslims is being radicalised, sometimes with the very funds that are supposed to be countering radicalisation. Those were my observations back in 2005 and they are being repeated in 2009.

Q302 Paul Rowen: You have not changed government policy? It has not had the desired effect.

Mr Pasquill: I will make a reservation there. There were significant steps being taken by government, and I refer the Committee to a speech made by Ruth Kelly on 11 October 2006 where she took a significant step, making a statement on behalf of British values, British responsibilities and asking certain Muslim organisations, Muslim groups, to

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sign up to those shared values and shared responsibilities. I think there were factions of people within government that had a clearer handle on the problem than perhaps some other organisations.

Q303 Chairman: You have written, and you are saying it now, “I wish to reveal that the Government was pursuing a potentially catastrophic policy for Britain”. That was your deep feeling.

Mr Pasquill: Yes.

Q304 Chairman: But the question is: why did you think yourself entitled to decide that for yourself? The deal was that you had joined an organisation to which you owed a duty of confidentiality. You had signed the Official Secrets Act. You had not been invited to decide whether you thought your policy was better than the organisation you were working for, and if you found it incompatible to work for it, why did you not just resign and then proclaim all these things afterwards?

Mr Pasquill: That is a fair point. That was an option I could have taken. If I disagreed with the policies to the extent that I did, then, yes, an option would have been to resign. I took the best course of action that I thought was best for the national interest, for the public interest, which is the important point here, I think. This was an opportunity to involve the public in the debate, and sometimes I think that the Government needs the public’s help to achieve some clarity.

Q305 Chairman: But if we have every public servant deciding that from now on they will work out for themselves what they think is in the public interest, irrespective of what the organisation is that they are working for, which they have signed up allegiance to, that government would be undoable in those circumstances, would it not?

Mr Pasquill: Yes, I agree. I am not advocating that civil servants round the country start deciding that they can have an input into policy which is not being promoted by ministers or the organisation as a whole and that individuals seek to enlist the help of the media for their particular concerns, but I think I was in a privileged place. I was right at the heart of this unit in the Foreign and Commonwealth Office which was driving policy on preventing radicalisation of young Muslims. According to my perspective, I had a special insight into this problem. What I found was that it was almost embarrassing to raise these concerns because it was so blindingly obvious that something was not going right here.

Q306 Mr Prentice: On your own admission, in 2005, when you joined the unit in the Foreign Office, you said in your article in *The New Statesman*, “I did not have a great deal of knowledge about British Muslim politics.” So, unlike Dr Jones, you were not an expert at all. You just happened to be working in this unit, picking things up as you were going along.

Mr Pasquill: I think that is the value. I think that is because I did not have expert knowledge. I was in a position—

Q307 Mr Prentice: Oh, Mr Everyman!

Mr Pasquill: No, I was in a position not to be blinded by the trees and still see the wood.

Q308 Paul Flynn: Why do you think the prosecutions against, Ms Gun and Mr Pasquill, did not proceed? What was the reason behind that?

Ms Gun: For dropping the charges against me?

Q309 Paul Flynn: Yes?

Ms Gun: It is still somewhat of a mystery. We know that the Attorney General’s advice was leaked. We know at the time that my case was dropped there was a lot of pressure for the Attorney General to provide his first legal opinion, and of course that was part of my defence that they do so, and now that we see that there was difference of opinion between his first legal advice and a subsequent page of advice that he gave to Parliament, that may have been one reason.

Q310 Paul Flynn: You thought that in the evidence in the public court it would have been revealed that the Government was advised by the legal advisers that the war was illegal?

Ms Gun: My defence team asked the then Attorney General for every scrap of paper that he had written in relation to the war. So, yes, we wanted that. In fact a little birdie had told us, if you like, that there was a difference of opinion.

Q311 Paul Flynn: In the position now, if somebody leaks now in these circumstances and the Government or whoever is prosecuting you does not have any reason to conceal information, the leaker now might well go through the full course of a prosecution and imprisonment.

Ms Gun: Correct.

Q312 Paul Flynn: Is that right?

Ms Gun: It is possible. I think another potential reason for my case being dropped at the time was possibly that they felt a jury would acquit and I would have a not guilty verdict, and that potentially the defence that we were preparing, which was the defence of necessity, would then have had precedent and been set down in an OSA case. Subsequent to my case being dropped, David Blunkett and other members of Government have talked about tightening the OSA. I believe that before Labour was in power, before 1997, in opposition, Labour talked about reforming OSA, not tightening OSA, and I think that in my case and perhaps in Mr Pasquill’s case, if the jury had acquitted and there was a not guilty verdict, they would have been forced to reform the OSA.

Q313 Paul Flynn: Your view, Mr Pasquill in your case?

Mr Pasquill: About the failed prosecution?

Q314 Paul Flynn: The what?

Mr Pasquill: Could you repeat the question?

Q315 Paul Flynn: Why do you think the prosecution did not continue to its logical end in your case?

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Mr Pasquill: I think for the reasons put forward by Martin Bright and John Kampfner, it would have been embarrassing for the Government, for ministers, such as Ruth Kelly and perhaps other ministers, to be called to give evidence and for them to admit to having been influenced, having sought advice from the editor and from the journalist Martin Bright about government policy on dealing with this particular area. I think that would have been a huge embarrassment to the Government at the time and, yes, I think that is possibly a reason why the prosecution did not go ahead.

Q316 Paul Flynn: Dr Jones, returning to what you said, the two inquiries by parliamentarians were both carried out by committees, the Foreign and Commonwealth Committee and the Security and Intelligence Committee, who were cheerleaders for the war. What do you think Parliament should have done that we have not done?

Dr Jones: I am sorry?

Q317 Paul Flynn: You were critical of the fact that Parliament has not exposed the truth of what happened at the time. What do you think we should have been doing?

Dr Jones: It really was not so much the reports of the Foreign Affairs Committee and the Intelligence and Security Committee that I was referring to as, I was going to say, the report of Lord Hutton, but the thing about the Hutton Inquiry was that so much was revealed in evidence to provide a very broad picture and then, of course, Lord Hutton chose to stick very closely to his terms of reference when he reported. So it is perhaps the evidence to Hutton and some of the things arising in the Parliamentary debate following Lord Hutton's report and then, further, the report of the Butler Review that I was really referring to. I think there is information there that was undone.

Q318 Chairman: I think you are right.

Dr Jones: Could I come back to Mr Prentice's question about the requirement on civil servants not to allow parliamentarians to be deceived. I think I was always very well aware of that, and I think the only time on which I could be absolutely certain that a misunderstanding arose in relation to the Foreign Affairs Committee was when they said that no civil servant had raised an objection. In a very positive way, they said that the Foreign Secretary, Jack Straw, at the time had told us that. Mr Straw had not, in fact, said that, and that was when I wrote to my department, in the way I am required to, saying, "Look, this is not right. What should I do about it?", and that really got the ball rolling and took me in that direction.

Q319 Mr Prentice: But you had gone into public print to say that the first dossier should have been qualified—there should have been caveats, and so on so forth—but from where you were, because decision-making was so compartmentalised, you were not in a position to be absolutely certain there was not another bit of intelligence that would have made the difference. That is what it is all about.

Dr Jones: I was told there was intelligence.

Q320 Mr Prentice: You were told there was this little nugget of intelligence that you were unaware of (and you were the top man in the country for biological and chemical weapons), not disclosed to you but that would make a huge difference. We understand that. The Prime Minister has promised an official inquiry into Iraq once our troops come home. Would you like to see civil servants being invited, as a matter of course, to give evidence to that inquiry if they feel they have got something worthwhile and germane to say? There may be civil servants out there buried in the system that have quite important information, information that did not surface in Butler, did not surface in Hutton, but could shed a light on the decision-making that took us to war.

Dr Jones: I am hesitating because it is a very open question—

Q321 Mr Prentice: Maybe that was an unfair question.

Dr Jones: —in the nature of any future inquiry, but in principle and within the constraints of official secrets—

Q322 Mr Prentice: And if they felt Parliament was misled, yes.

Dr Jones: I think that civil servants should be able — For example, when I gave my evidence to the Butler Review, you said I was the top man in these various fields.

Q323 Mr Prentice: You are, I think.

Dr Jones: The real experts were the technical experts who were working to me, if you like. I was a part of the synthesis and the filter. So I would hesitate to say that, but I did suggest at the Butler Review that they should speak to other experts, the experts who worked for me, and they did do that, but they would not have, I think, if I had not suggested that they did.

Q324 Chairman: I think you are absolutely right to castigate Parliament, which I think has behaved abysmally in this matter: endless bleating about the need for an inquiry but a complete failure to insist upon one. I would remove this committee from that indictment, because we have pressed endlessly for it and, indeed, have produced reports arguing the case for a parliamentary commission of inquiry but got nowhere with it, but I think you are absolutely right on the central charge. Could I go back to the Hutton Inquiry? When you were asked by Hutton how you would have reacted if a member of your staff had given the sort of information to journalists that David Kelly had given—concerns about the contents of the dossier—you said, "I would have thought they were acting well beyond the bounds of what they should have been doing. I would have been very disappointed and very annoyed." From this vantage point, would you change that answer?

Dr Jones: I do not think so. It was a difficult question for me to deal with because I could see that Mr

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Dingemans was asking a clever question because he did not want to ask me about Dr Kelly, and Dr Kelly's wife had given evidence the previous day, I think, and it was very moving and so the whole thing was very difficult. I answered the questions he gave to me, taking a little time to think about it, and I was giving an answer that related to a member of my staff, if a member of my staff had done that, and I think my disappointment would have been that that member had not come to me to discuss the issue with me. Indeed, in terms of what happened, and I have heard suggestions that I might have gone even further, my whole process of action was based on approaches to me by my staff. They had come to me and said, "Look, there is something that we do not like here. We are not managing to get our point of view across. We do not understand why", and I represented that in the most positive way I felt I could.

Q325 Chairman: I think what is interesting for us, and this is why we wanted to ask all of you to come, is that you bring such different ways of thinking to the dilemmas that you found yourself in. Just listening to you, Brian, tell me if I am wrong, but I do not think you are the sort of person who would ever have thought about breaching confidences, leaking, going outside the system. I do not think you thought, as a public servant, that was something that was conceivable—tell me if I am wrong—whereas I think, Katherine and Derek, you were in the market for this if the moment came along. What I am interested to ask you two really is, what kind of internal system would it have required for you to have made use of it in the circumstances in which you found yourself, or is there no kind of internal system that you think would have met the case? Tell me, first of all, whether you think I am right.

Dr Jones: I can imagine circumstances where the consequences and time factors could mean that that was the only option available to you, that is what your conscience told you to do, so I would not rule it out completely. My first inclination is to say I would try all the internal channels of complaint and argument first, but I can see there are circumstances when someone might not do that. I do not know how I would have reacted if I had had anything as definitive as perhaps Katherine saw. What she was seeing was much more definitive than anything I had at that time.

Q326 Chairman: So if you had not been told that there was this little secret nugget of intelligence which you did not have access to, which supported what was being said, you might then have taken a different view.

Dr Jones: It was not only that. Of course, intelligence assessment is a matter of dealing with uncertainty. You can rarely be completely sure that you have all the information, all the pieces of the jigsaw, and so it really is quite difficult on that basis, especially when numbers of other experienced intelligence people might take a different view.

Q327 Paul Flynn: You had the firm view that the evidence as presented to Parliament by the Prime Minister was exaggerated, was sexed up, and did not reflect the balance of the probabilities.

Dr Jones: That was my view, yes.

Q328 Chairman: And that if a fair assessment were presented to Parliament, Parliament might have taken a different decision.

Dr Jones: Yes, but, again, there is no certainty there. I thought, looking logically at what was said, the arguments that were made, they were not totally convincing; indeed they did not convince a significant enough proportion of parliamentarians.

Q329 Chairman: Has anything changed since 2003 at the time when you made your decisions and now as far as a civil servant presented with a piece of information they think should be in the public domain? Is there anything there that has been reformed that would improve the transparency?

Ms Gun: Of course, I do not work at GCHQ any more and I do not know what steps they have taken, presumably, for another incident such as my own to happen again. I do not think what they would be considering reforming would be how to assist somebody like myself. I think what they would be trying to do, subsequent to my dismissal, would be to tighten up on their security division interview processes and to try and pick out candidates such as myself, but that is just pure guesswork. I do not know what is actually going on there, but in the policy area, I do not think there has been anything which would—. We have seen with Derek's case, he was charged, of course, the charges were dropped, and then there were the other two, O'Connor and Coughlin.

Q330 Mr Prentice: We have had the new Civil Service Code, which was issued, I think, in 2006, whereby disaffected civil servants, civil servants with a concern can take their concerns to the line management or go outside the Civil Service to the Civil Service Commissioners. So things have changed since 2006. You were dismissed for gross misconduct, Mr Pasquill, in August 2008, but you are challenging this.

Mr Pasquill: Yes, I am challenging this. I think the suggestion earlier that I was perhaps in the market for making revelations is incorrect, but that would be to deny the surprise that I felt on discovering the seriousness of what I saw as the wrong approach to this particular policy, and so I am contesting this gross misconduct charge.

Q331 Mr Prentice: I understand that. We do not want to prejudice any action that you bring in the Industrial Tribunal for gross misconduct. Can I pick up this business about ethical behaviour, because I think Tony touched on this: how we get civil servants to consider the ethical dimensions of matters they deal with. It is difficult at GCHQ, is it not, when your whole *raison d'être* is to spy and eavesdrop? It is a bit fanciful, is it not, to run courses on ethics at GCHQ?

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Ms Gun: I can tell you what they do not tell you at your introduction, or at the start of your career there, is what you should do if you come across information that you feel contravenes the law. I think that should be part and parcel of the introduction and it should be made quite clear; it should not be one of these things that is in small print at the back of a handbook. When you join, rather than bludgeon it into your head that you should never ever upon death speak to anybody outside of GCHQ about what you do, they should say, "Okay, we agree that this is a murky world, we agree that the world is not black and white, that there are shades of grey. If you believe there is something which is totally against what you believe in and it is against possibly the law even, please do this and do not do this", but I do not think they talk about that.

Q332 Chairman: I think that is a really helpful answer, but that brings me back, finally, to the question I raised a few minutes ago, which I would like the two of you to answer, which is the one that says: can you imagine any kind of machinery that would have made you take your issues up within the machine rather than outside? We have had the first Civil Service Commissioner come here, who says you can bring your concerns to her and, if she is not satisfied with what she gets, she will come to us and tell us about them. So there is a route. What I am asking you really is would there not be a route of that kind that, when you meet issues of this kind in your work, you might want to use?

Ms Gun: I think, yes, if you felt that it was not a partisan route, if you felt that you were not just going up the chain of command with people who are basically all going to agree with policy and agree with government, then, yes. I think if there is a route that is made clear to all employees, then it is a possibility, for certain cases. I would stress that in my case, once again, I believe it was a time issue and I really feel, as Martin Bright has subsequently said,

they wish they had gone to print with that story when they were only 10% sure of its authenticity rather than 99% sure of its authenticity.

Q333 Chairman: I take your point about the time issue. Derek, do you want to add a word?

Mr Pasquill: Yes, I think it depends very much on the individual and, speaking purely from my own experience, in my particular circumstances I do not think there would have been any route that I would have been content to use rather than going to the media straightaway, and I think it revolves around the question of trust. If there is that lack of trust about the procedures, about whether the concerns are kicked into the long grass and so on, if that level of trust is absent, then, as I did, I would go straight to the media.

Q334 Chairman: You would not have trusted the Civil Service Commissioner to have dealt seriously with the points that you wanted to raise.

Mr Pasquill: I think the Civil Service Commissioner would have dealt seriously, they would have followed the procedures, they would have been absolutely scrupulous in following these procedures, but I think there would have been opportunities for the Home Office and senior ministers perhaps to quote national security concerns or international relations would be damaged if this inquiry goes further, and I think there may have been ways found of perhaps sitting on this particular concern and shunting it off.

Q335 Chairman: We are going to have to stop, but can I tell you how really useful this has been for us in thinking our way through these issues because I think it is only when you can discuss them with people who have had to work them through for themselves that we do really get inside them. Thank you very much indeed for your time and for coming along this morning.

Ms Gun: It has been a pleasure. Thank you very much.

Witness: **Mr Carne Ross**, ex FCO, gave evidence by video link.

Q336 Chairman: Good morning. Can you hear us?

Mr Ross: Yes, I can.

Q337 Chairman: Thank you very much for joining us.

Mr Ross: Thank you for having me.

Q338 Chairman: There is a slight delay on the line, but we will have to cope with that as we go along. Could I ask you, first of all, you know that we are doing our inquiry into whistleblowing and leaks. You are neither of those things, but you are someone who has taken a very independent view, indeed, resigned from the Foreign Office, set up on your own, gave evidence to the Butler Inquiry on Iraq. Could you just tell us something about what brought you to the point that made you leave the Foreign Office?

Mr Ross: In a word, Iraq. Iraq was the reason. I was the UK's Middle East specialist on the UN Security Council for four and a half years. My main responsibility was dealing with Iraq. Testifying to the Butler Inquiry made me feel that I could not honestly continue in the Foreign Office, so that was why I left.

Q339 Chairman: We are exploring the different decisions that people made, particularly around Iraq. Did you ever consider resigning before the war, when it would have made some real impact, I think?

Mr Ross: It is a good question and one I have wrestled with for many years. I certainly did, and I drafted resignation letters in the run up to the war and I am afraid I did not send them. I wish, looking back, that I had. There are various reasons why I did not. I think one was that I felt that there was such a

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momentum towards war, such urgency about it, that anybody who put their hand up at that point would have been somehow crushed. I could not articulate to you then, or even now, what I necessarily meant by that, but there was just a very strong sense that this was a force far greater than little me, though I did consider it at the time.

Q340 Chairman: We have been asking other people whether they felt able to take up their worries internally inside the organisations in which they found themselves. I think you are saying, are you not, that within the Foreign Office you thought it would have been inconceivable for you to have taken up these concerns in any way that had any effect. Is that so?

Mr Ross: On an issue of this kind, which was profoundly political, which was clearly led from the top, from Number 10, I think it was inconceivable. I do not think there was any real way that somebody at my level—I was a mid-level diplomat, I was the First Secretary at the UK mission—could have raised these concerns in a way that would have been taken heed of. My colleagues in the mission, and to a degree in London, were people one could certainly talk to and raise questions with and have a debate with, but that was very different from raising concerns in a way that ministers could pay attention to or even getting one's concerns to ministers. So I felt, certainly on that issue, the internal mechanisms were not there. By the time I submitted my evidence to Butler, I was on sabbatical from the FCO, I was, in fact, on secondment to the UN in Kosovo, so I had no direct colleagues to discuss my concerns with, but even then, too, I think I would have concluded the same thing, that there was no internal way to raise questions like this. Indeed, when I submitted my evidence to Butler, I asked him and his team not to reveal my identity to the public, to the FCO, for fear that it would damage my career. At that point I intended to stay in the FCO. I had just been promoted to the senior management structure and I thought that it would be very damaging to my career prospects if my evidence and what was in it became known more broadly within the office. You will see, if you look at the Butler list of witnesses, there are two anonymous witnesses at the end, and I am one of those.

Q341 Chairman: Was it the case that you had different judgments than the prevailing ones in the Foreign Office at the time or that you felt you had knowledge that was not being given proper account of?

Mr Ross: What a good question. I think it was both. As I think the history of the Iraq War will reveal, there were both problems over the knowledge and the judgments of that knowledge. I felt that it was not just a judgment about the threat and the available alternatives to war; I felt there was clear information, clear data. I had read the intelligence on Iraq for four and a half years, been part of the Joint Intelligence Committee process, for instance, had taken part in US/UK bilaterals on Iraq every quarter for four and a half years, and during that

time the assessment of Iraq and the assessment of our intelligence on Iraq was very clear. It was that there was no significant threat from Iraq, from WMD, or from anything else. There were also other quite complicated issues in my evidence which I felt were substantive facts of policy. For instance, that Iraq, the Saddam regime, was dependent on illegal oil exports for its survival. This was something that was universally believed within the UK and US Governments. Therefore, I felt (and perhaps this is a judgment part) that something could have been done about those illegal oil exports to undermine the Saddam regime and this was an available alternative to war. I felt this was a matter of fact, that the US and UK Governments had not explored this alternative to war. One could call that a judgment perhaps, and others might feel that way, but I felt that there were real facts which disputed the public reasoning that the Government was giving in the run up to the invasion.

Chairman: Thank you for that. I am going to ask one or two colleagues to also ask you questions now.

Q342 Mr Prentice: You believed that sanctions was a real alternative to going to war against Iraq. You have just told us that there was this oil money. I think you mention two billion that kept the Saddam regime running and, without that two billion, Iraq and Saddam Hussain would have just imploded. Why was it impossible to get colleagues and the FCO to put forward this alternative, a robust sanctions regime, to ministers?

Mr Ross: You are getting to the heart of the matter, and I am glad of that, because it is not often that I have been asked that question, least of all by parliamentarians, but one problem which I go into in my evidence to Butler and, indeed, I enlarged upon in an article I later wrote for *The Financial Times* is that this policy was very complicated. There were not large numbers of officials in the FCO who understood it because of its complexity. I do not blame them; it was just that they did not have the time that I and others had to spend on it. It was very much my speciality. I spent a lot of time at the UN on sanctions work, trying to make sure that the Saddam regime did not garner this kind of illegal revenue. There were other political problems. These illegal flows of oil went through the Gulf, they went through Jordan and they went through Turkey. Both Jordan and Turkey were regarded as allies in the containment strategy against Iraq, and these illegal flows were regarded as some kind of reward for these allies, for their co-operation in containing Iraq. The fact that those rewards were, in fact, the things sustaining the Saddam regime was a paradox of the policy that nobody was really prepared to address. I and American colleagues also tried to raise this with more senior officials and, ultimately, with our ministers on several occasions, without success. For instance, when ministers came to New York to visit New York for talks, I would try to take them aside and raise the subject with them. I would sit with them, for instance, in their cars back to the airport and try to put it to them, and on occasion I did succeed in making them listen about it and they were

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very sympathetic to my arguments, but, somehow, because of the complexity of it, it got lost in the policy machine. There is a kind of momentum to policy which it is difficult to sometimes alter that flow.

Q343 Mr Prentice: At its simplest, you are saying we could not afford to upset key allies—Turkey, I think you mentioned, and Jordan—because they were benefiting from the illegal export of oil from Iraq. That is what you are telling us.

Mr Ross: That was a clear calculation, yes. That was what we believed and we discussed with the US.

Q344 Mr Prentice: Why was it impossible to get the attention of, as you mention, key ministers? You talk about having discussions in cars on the way to the airport and so on. What is wrong with the system that someone like you, steeped in Iraq, reading the papers for four and a half years, cannot get the attention of government ministers in the Foreign Office?

Mr Ross: That is a good question. I do not think it is because the ministers themselves were stupid or unsympathetic. On the contrary, I think they were quite alive to these arguments when I got a chance to put them to them, but ministerial life in the Foreign Office and, I suspect, other ministries these days, is a very hectic business and it does not lend itself to deep immersion into complex policy, and if that immersion happens, it happens very rarely, likewise for senior officials, and I think there was a degree to which Iraq ultimately became a very simple choice. The view was in senior levels that sanctions were falling apart. This was not, in fact, true. Therefore, the only alternative was military action, and, in fact, the first premise was not true and the second alternative was not the only alternative, but I think there is a simplified process that goes on in policy-making from the complexity at the base to simplification at the summit, and, of course, I am sure ministers would dispute this and would, I am sure, feel that their lives were extremely complicated and they had a very complicated and sophisticated understanding of the world, but I think the world has actually got in some ways too complicated for the kind of policy-making system we have for it.

Q345 Paul Flynn: You have taken the view, I believe, that foreign policy in this country is distorted by the supremacy of commercial British interests rather than in the interests of alleviating suffering and poverty throughout the world. Could you talk about your present work on drawing attention to the suffering of people in the Western Sahara, which is an issue that does not figure, I do not think, at all on the radar here now? Should we not be better doing this within the Foreign Office rather than doing it in the areas that you are doing it now?

Mr Ross: Would it be better if I was doing it in the Foreign Office or we were doing it?

Q346 Paul Flynn: Both, yes. You are exercising your influence. If we are talking about people, you are in mid-career, you are a young man: what would someone do in the Foreign Office now if they felt there was a major weakness in our foreign policy?

Mr Ross: I would make a distinction in the first place. I think the Western Sahara is an area where commercial interests and our strategic interests with Morocco trump more humane and legalistic concerns about resolving the dispute in Western Sahara. That is one issue where I feel that. I do not necessarily feel that in general, but I did, indeed, work on the Western Sahara when I was a diplomat in the FCO, and one of the strange things about it is that I felt I had to abandon my own personal conscience in dealing with it and take a more conventional view of the dispute, namely that what I thought were British interests, namely commercial and strategic interests with Morocco, should be superior to my own personal humanitarian and human rights concerns for the people of the Western Sahara who are denied their right to self-determination. One of the perversities of being an official is that sometimes your own conscience is overwhelmed by what you think is the mental framework that you should adopt as an official. I wrote a chapter about this in my book. If you want to read about this subject in more detail, I explore this very conundrum. I am now advising the Polisario Front, which represents the people of the Western Sahara, with Independent Diplomat, the diplomatic advisory group I founded after leaving the Foreign Office, and, indeed, that does give the freedom to follow perhaps matters of conscience and to help more marginalised people than I felt in the Foreign Office. That paradox is often very real to me. I wish I could have done more as an official, but by the time I dealt with the Western Sahara I was very much steeped in a culture where one is led to believe that British interests defined by officials like me are superior to all other concerns, and that frames British policy on Western Sahara to this day. The UK does nothing on the Western Sahara. If you ask a minister about this in Parliament, they will say that the UK support the UN peace process in the Western Sahara. They have been saying this for 32 years since Morocco occupied the country in 1975—I am sorry, 34 years. I think this is a shameful fact and the UK could do a great deal more to use the EU to pressure Morocco to allow the legal requirement for self-determination to take place.

Q347 Paul Flynn: When you were in charge of UK policy on Afghanistan, you had many doubts about the policy, and you said the allies did not understand Afghanistan, that they were trapped in their fortified compounds, were naive about the willingness of the War Lords to seize power and that they were far too optimistic in the belief that opium production could be curtailed. These were your views just after 9/11. Do you think you were in a position in the Foreign Office to influence government on those clearly far-sighted views which in subsequent events proved to be accurate? Do you think the Civil Service, and you with an informed position there did influence policy

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or could you have done more to have influenced policy for the better rather than end up in the dreadful position where we are in Afghanistan now?

Mr Ross: I had absolutely no ability to influence UK or US policy on Afghanistan before we invaded. I was certainly not in charge of Afghanistan policy. I was the official responsible for Afghanistan on the UN Security Council after 9/11 before the invasion. I helped draft the resolution, for instance, that set up ISAF, the international security force in Afghanistan. My views about Afghanistan became clear to me when I was posted to Kabul after the invasion, where it was clear we had a very, very limited understanding of what was going on. I was writing political reports back to London. I felt that I had no real expertise, no real knowledge to base those reports upon, and yet I was required to send these reports which have by their very aesthetics a kind of authoritativeness about them—from the Embassy in Kabul, this is what is going on in Afghanistan that you in London need to know—and I think a paradigm was built up about what the UK and allies could achieve in Afghanistan, which was wholly unrealistic in terms of building democracy. There was very, very little expertise on Afghanistan in the FCO or, indeed, the State Department. I remember sitting in New York with the two newly appointed Special Envoys for Afghanistan from the US and the UK before the war. They were meeting to co-ordinate policy, both very intelligent, very decent men. Neither had visited Afghanistan, neither had worked on it before, neither spoke its languages. They had, however, both read the same three books about the place. Could I have influenced policy? Of course not. I was in New York during 9/11. There was such a burning rush for war, for that invasion, to remove the Taliban, attack al-Qaeda in its home base, which I entirely agreed with, which I entirely thought was legitimate, but that momentum for war was unstoppable. Putting up your hand internally, or in any other way, at that point to say, “Hang on, our objectives here are unrealistic. Afghanistan is a complicated place that we do not really understand”, that kind of thing is guaranteed in the FCO of that time to condemn you to a lifelong reputation as a kind of naive trouble-maker and the sort of postings that follow for officials of that kind. That would have been my lot.

Q348 Mr Liddell-Grainger: Your disillusionment with the FCO started a long time ago. I think it started probably with Yugoslavia, when you said that we should have an arms embargo on everyone, and I think your quote was this, “was deeply mistaken and inhuman”. Given it had gone on so long, why did it take you so long to make the decision in your own mind to resign? Surely you should have started leaking to people like David Hencke in *The Guardian* and others to bring this out to the public slightly quicker.

Mr Ross: I do not believe in leaking. I think that if you are in a system, if you are in a ministry, you sign up to its rules and you should stick to them. I think if officials are leaking everything they disagree with, the system very rapidly becomes unworkable. I think

the only way to address serious concerns about policy is to resign and speak out and join the public debate. The Foreign Office is dealing with very, very political issues. It is a deeply political ministry. It is not dealing with the most effective way to deliver healthcare or education, which are, of course, themselves political questions, but everything in foreign policy is political, and these are judgment calls about what the right thing to do is which sometimes are clearer in retrospect than they are at the time. I felt for my career that I wanted to become a senior diplomat and influence policy for the better, and I did speak up in policy debates. I remember one of my American colleagues saying of the US/UK bilaterals on Iraq that they were, in fact, trilaterals because there was the US, UK and Carne Ross, because I would speak out, but there are limits to which you can do that without becoming a kind of iconoclast. Whilst it is fun to be an iconoclast, it is not very good for your career.

Q349 Mr Liddell-Grainger: I agree with that totally. You were a speech writer to the then Foreign Minister, Malcolm Rifkind, pre 1997.

Mr Ross: I was, yes.

Q350 Mr Liddell-Grainger: Did you try to educate Malcolm Rifkind, who is a fairly intelligent character, on some of the stupid things we are doing then in the former Yugoslavia?

Mr Ross: I did not, no. I would not have stayed his speech writer for very long if I had. The speech writer job at that time was, and still is as far as I am aware, relatively junior, oddly enough, in the Foreign Office system. I was not in his private office, I was in a separate department and I would be told what to write for a speech and drafts would go up. I have the greatest of respect for Malcolm Rifkind, but it was not a very close relationship and certainly not one where I was asked my opinions about policy. I have to say, you are focusing on Yugoslavia, certainly today I am very critical in retrospect of UK policy on the break up of Yugoslavia and the arms embargo on Bosnia, et cetera, but I think I have made clear in my writing that this is retrospective criticism. At the time when I was in the embassy in Bonn during the break up of Yugoslavia, I was quite happy to repeat the “lines-to-take” that I was sent from London, and me and my colleagues were sent, saying that the arms embargo was the correct thing and that this was a civil war that needed to be contained. I only got to know the former Yugoslavia better much later, and thus realised the mistakes of this approach.

Q351 Mr Liddell-Grainger: What I am trying to get at is not particularly what happened when, but why you became disillusioned in the way that you did. You dealt with a lot of things where you fundamentally disagreed as a person but also as a diplomat. It took you 15 years, basically, to say, “Enough is enough. I have done all this. I am coming out.” You did not leak, you do not agree with leaking. You have done all the things by the book, but you then felt you could not go up the ladder to

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say, "We are wrong on this." Do you feel that perhaps you missed a lot of chances all the way through?

Mr Ross: Yes, that is right. It is a really good question. Again, there are some fairly deep and personal considerations about what I do and I have done with my life. It is not terribly easy for me to answer it. I really believed in British diplomacy. I really wanted to be a diplomat. It was my life's dream to become a diplomat. I loved the job. I greatly enjoyed my colleagues. The work was unbelievably interesting and fascinating. I had incredible responsibility. I have met Yasser Arafat many times, I visited Israel, the West Bank, I went to Afghanistan, I sat with War Lords in the Hindu Kush, surrounded by Special Forces teams protecting us. I negotiated with Iraq. I was negotiating international law on the Security Council in the middle of the night. It was great work. So it was desperately difficult to detach myself from the job that I loved, from the self-image that I loved, that of the diplomat who knows everything, who is in control, who is at the top of the pyramid, arbitrating the world's affairs. I loved the status of it. Indeed, to this day, I still miss it, and it took a very big aberration like Iraq to create the rupture. If it was not for the Iraq War, I would still be in it today. I would still be in the FCO, and it was a very difficult departure. Actually it was not a simple decision: "I disagree with the war, therefore I am leaving." I admire those who are able to make such straightforward binary decisions. For me it took a matter of years. I went on sabbatical shortly before the war began. I studied at university. I then went on secondment to the UN and it took those two years, actually, to construct for myself an exit, I guess. So that is the truth. I was very committed to the career and I was prepared to make the political compromises that were involved, despite the calls of my conscience.

Q352 Mr Liddell-Grainger: Can I ask one last question, and do not take this the wrong way. I want to know how much this was motivated by self-preservation and selfishness. Did you decide: "I cannot leak because they are going to stuff me. I want to have a career in the future. I want to be an international diplomat. Therefore, I have to make a calculated decision to go under my terms in my way without really blighting myself as a jerk", whatever you want to call yourself? Did you say consciously in your mind, "I am going to make a very selfish decision and this is how I am going to do it, so I can carry on in my career as an international diplomat"?

Mr Ross: There were very selfish reasons involved, partly about self-preservation and partly about being independent and free, but they were nothing to do with my career. There is no doubt my career would have prospered if I had stayed in the Foreign Office. I was doing quite well; I would have been a head of department. My next job was to be head of department in the Foreign Office, ironically, dealing with post war reconstruction. That was the job I was due to do after returning from my secondment. As you know, there is no job as a diplomat unless you

are working for a government. I have constructed something new with Independent Diplomat, this non-profit consultancy that I established, but that path was not available when I left. I thought my diplomatic career was over when I quit and I suffered a long period of depression as a result because I did not know what I was going to do in the world. I had really, from a very early age, as a child, in fact, imagined myself as a diplomat, so it was the fulfilment of my lifelong dream. To do something else was very, very difficult for me. So those reasons that you suggest were not, in fact, at play.

Q353 Paul Rowen: You have written that there is a culture in the Foreign Office of actually giving the minister, the Foreign Secretary, what he wanted to hear. Do you think that inhibits people from being outspoken?

Mr Ross: Of course it does. I think it is very difficult to say to a minister or a senior official that UK policy is fundamentally wrong about this. You are encouraged to tweak at the edges of the broad fundamentals of policy. Certainly in my day in the Foreign Office you were not encouraged to question those basic fundamentals. That may be different today; I cannot comment on how things are in the Foreign Office today. It very much depends on the personality of the Foreign Secretary and the sort of culture he or she encourages in the ministry. It is not difficult to say, "I want contrary views. I encourage that. Please do make sure there is a contrary view included in every submission on policy." At the same time, it is not always easy always to be contrary, and in the diplomatic service there is a degree of loyalty required to the party line. Unfortunately, however, in my day in the Foreign Office, that had infiltrated into the internal culture. I always felt it was entirely correct to demand that a British diplomat should stick to the party line externally, when speaking publicly, when speaking to other countries, but internally I felt that the most open and, indeed, ferocious debate should be encouraged so that you get the best possible policy as a result. I fear, in my day in the foreign office, that was certainly not the case, but, as I say, that may be different today.

Q354 Paul Rowen: Do you feel that there are only circumstances where it is legitimate for someone in your position to leak?

Mr Ross: I think if they are aware of criminal activity or blatant dishonesty to Parliament, to the public, I think that there is a case for leaking in those circumstances. Having resigned, I think it is desperately difficult to resign. I do not think it is easy, and it is asking an awful lot of somebody to give up their entire career and their livelihood over a political concern, but I think those circumstances of leaking should be very limited. It might be helpful if your committee were to define them, who knows, but, as I say, I do not think a culture of leaking is to be encouraged because it makes government almost impossible, civil servants will not feel able to write things down to their ministers, contrary views or otherwise, and I think it is ultimately destructive to a proper system, but the system also needs to be

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correct in itself. It needs to be held more accountable. I think one of the reasons people leak and people resign and perhaps one of the reasons you are having this discussion is because in recent years there has been a more fundamental failure of transparency and accountability in government. I feel very strongly that there is still not proper accountability and scrutiny into what happened over Iraq, for instance. There should be a full public inquiry or parliamentary inquiry into the decision-making that took place. Hutton and Butler are by no means sufficient for that purpose, and it is disgraceful that the Government pretends that they are. A lot of decision-making, a lot of facts have yet to come to light in the run up to this war which should come to light which the public deserves to know, and if you had those systems of accountability and scrutiny, then leaking and other things and the more aberrational behaviour from civil servants would be less necessary. I suspect that what you would find if you looked at this historically, you would find an increase in leaking and resigning and civil servants misbehaving and talking out of turn when the Government has actually failed itself to be properly transparent and accountable to Parliament and to the people. I would think you would find these two things correlated, which is perhaps why there has been such a bout of it over the last few years.

Chairman: Thank you.

Q355 Mr Walker: What things do you know about the Iraq War that the public do not know, and would you like to share them with the public now?

Mr Ross: I walked into that! I am happy to let my evidence to the Butler Inquiry stand as my view. It is only my view; I was not the whole story by any means. I had a particular take on it from my standpoint at the UK mission, somebody who had been involved in Iraq for many years. There are many other people involved who have yet to tell their story, who have yet to be questioned by you, Parliament, or anybody else. There are many documents that should come to light. For instance, the intelligence assessments from JIC (the Joint Intelligence Committee) in the run up to the war should be scrutinised, should be available publicly. I see no reason why those cannot be released now that the war is long over. I think there should be a full paper transparency of this, the decision-making, the legal discussions on the legality of the war, et cetera, et cetera. I think that is all required, clearly.

Q356 Chairman: I am going to end the session now, but I want to thank you for speaking so frankly to us. I think it is a source of enormous regret that the Foreign Office cannot accommodate people like you. That is a huge cultural challenge for us to think about, and we are grateful for your time, and we are particularly grateful for the fact that you had to get up so early in the morning in New York to come and talk to us, but thank you very much indeed.

Mr Ross: Thank for what you have said. Thank you for having me.

Thursday 2 April 2009

Members present

Dr Tony Wright, in the Chair

Paul Flynn
David Heyes
Kelvin Hopkins

Julie Morgan
Mr Gordon Prentice
Mr Charles Walker

Witness: Sir Suma Chakrabarti KCB, Permanent Secretary to the Ministry of Justice, gave evidence.

Q357 Chairman: It is a great pleasure for the Committee to welcome this morning Sir Suma Chakrabarti, Permanent Secretary to the Ministry of Justice. This Committee has benefited from your wisdom at certain points in the past in your previous incarnations and it is a particular pleasure to see you again now. As you know, the Committee has been doing, amongst other things, an inquiry on the whole area of leaks and whistleblowing and this is the concluding session of that inquiry. We wanted someone to come and speak, as it were, from the Government and for the Government on how it sees these issues and how it sees the system and you are the person. Would you like to say anything by way of introduction?

Sir Suma Chakrabarti: Thank you very much, Chairman. It is nice to be back after such a long break. The last time I was here was with Clare Short and we were discussing public service agreements, targets and so on. What I would like to do is help the Committee with outlining the departmental perspective on the issues you have been discussing. I have read through the transcripts of evidence by others and there are some interesting issues that emerge from that. I have worked in five different departments but as Permanent Secretary of two: DFID for nearly six years and now 16 months at MOJ so I will focus particularly on those two departments. They tell an interesting tale of how these issues are handled in different departments, different cultures and so on. If there is one thread that runs through what I am going to say, I think the context in terms of politics and media interest is a major issue; the interplay of that with departmental cultures, because they vary quite a bit; and the third bit of the theme will be around staff confidence in the systems. You will not hear from me a defensive line that we have got it absolutely right; I do not think we have yet. It is improving but what you will hear I hope are some ideas for further reform of the system.

Q358 Chairman: Would you say something more about those first two points? Could you expand on those?

Sir Suma Chakrabarti: If I may start with a couple of statistics which tell you how things are handled differently in DFID and MOJ and understandably so. My last year as Permanent Secretary in DFID was 2007/2008 and there were, from memory, 15-odd whistleblowing episodes, all of a fairly minor nature around things like overtime claims and things like that but important. In the 12 years of DFID there have been just a handful of leaks, not necessarily all

to do with DFID but DFID was involved. Contrast that with the Department for Constitutional Affairs, as it was before May 2007, no leaks in living memory until April 2007 and, as far as I can work out, no approaches to nominated officers or anything like that. The MOJ was created in 2007 since when we have had only four cases go to nominated officers: three in the National Offender Management Service and one in the main headquarters. There were four in two years but we have had quite an increase in the number of leaks, many more than DFID has had in 12 years. That brings out a couple of things for me: one, the political and media interest being quite an important part of this. In day-to-day politics the media interest is not around international development issues. I was lucky as Permanent Secretary of DFID as I did not have to worry in the way David Normington or someone at the Home Office would have to worry about how issues are playing here and all that. I was able to get on and try and change the culture of the department and do good policy work with my team. That is quite a major issue because as we imported criminal justice programmes and as we evolved the National Offender Management Service, prisons and probation, into the Ministry of Justice it is interesting that that is where the leaks have congregated around, that set of issues, because they are of high political interest and the media is understandably interested in them. The other thing is culture and what is the business of the department about. In DFID there are very few leaks, because the policy debate in DFID is so open, including porous boundaries actually in discussing very openly with politicians, with academics, think tanks, and so on, that staff do not feel the sense of "I am not being listened to. I am not being heard." It is much more difficult in the whole arena of criminal justice, although Jack Straw and I are trying very much to change that culture. Part of what we are trying to do at the MOJ is create a much more open culture so the staff feel much more confident they can be heard and then I think the leaks issue will die away slowly.

Q359 Chairman: As you say, it is the political and media pressure which above all explain the different cultures of those two departments in this respect, is it not?

Sir Suma Chakrabarti: That and I think culture takes a long time to change. I do not want to go back in the mists of time but it is quite interesting that DFID, from Barbara Castle's time on, as Overseas Development Minister in the 1960s, has had a very

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strong professional cadre: economists, engineers, etc. The sense of challenge around what is good policy was very strong from when I joined the organisation in the mid-1980s. You felt it was OK to say, “Actually, I read that evidence differently.” It is quite interesting that at the MOJ one of the things Jack and I are trying to do is build up our research and analysis staff. It was very, very small. We did a survey and it was one of the smallest in Whitehall. For a department of 80,000 people it was tiny given the policies we were looking at. That is something we are trying to build up because that will lead to a much more challenging and open culture.

Q360 Chairman: We heard interesting evidence a couple of weeks ago from a Carne Ross who was the diplomat who resigned following Iraq. He had a number of things to say to us one of which bears directly on what you are saying now. He said he wanted the Foreign Office to be an open learning culture, very much as you described DFID, that would have a single face to the world but inside would be very dynamic and lively. He said it was because it was not that he felt there was such a problem. If that is true, and if departments do differ so greatly, and that has repercussions for things like leaks and whistleblowing, what can the centre do—and you are someone who has been at the centre, the Cabinet Office, and did the work on the Cabinet Office—to make sure that the culture of departments actually is of one kind rather than the other?

Sir Suma Chakrabarti: One of the roles of the centre is to try and argue for very good policy making. In my view, and many others’ view, in most areas of policy there is a small list I would have which would be exceptions, and I think David Omand gave you the list of exceptions. In most areas it is possible to have a grown-up debate. You will improve policy if it is more open and I think the Cabinet Office should be pushing that. When I was in the Cabinet Office you will recall that I helped create the Performance and Innovation Unit which is the precursor to the Strategy Unit. The whole point of that unit was to be more like an American think tank, more like a Brookings Institute, which would try and discuss policy with a wide set of people outside the Civil Service, brought in from outside, put things on websites, which was radical at the time ten years ago, and have workshops involving lots of people outside. It had two types of report: the “of the Government” report which said this has been tested and the Government buys into this, and it had “to the Government” reports which said essentially “This is still speculative and the Government will want to consult further on it and think about it but we are putting it into the public domain as well.” That led to some very interesting and good policy making and staff felt very empowered by that whole process. The Cabinet Office has a role to push that example out to the areas where it can.

Q361 Chairman: Can I ask you if, in your career—and you have been a public servant for many, many years—you have ever been in a situation yourself where you have thought that whistleblowing was an option?

Sir Suma Chakrabarti: No. I was reflecting on this because I thought this might come up. There have been occasions, of course, in all civil servants’ careers where you deeply disagree with the decision of the government of the day. Let me highlight one, because it is in the public domain and everyone knows about it, the Pergau Dam. I was the Private Secretary to the Minister for Overseas Development at the time, Lynda Chalker, and my Permanent Secretary was Tim Lankester at the time. We looked at the evidence and clearly this was a bad project in development terms. Tim asked for a direction from Douglas Hurd because the Overseas Development Administration, as it was, was under the Foreign Office at the time. It all came out but we followed process. He was right to ask for a direction but he did not go to the papers. The economists, the engineers, who had worked on the project and appraised it, none of us went to the papers. We followed process and I think actually improved things immeasurably. The International Development Act came in because of this project which says you can only give aid now for poverty reduction purposes. The fact that all directions after that point have to be notified from the Comptroller and Auditor General and then on to the Public Accounts Committee Chair came in after that. This was a major public policy benefit, it seems to me, for following the process and not leaking.

Q362 Chairman: Let me try the question slightly differently. Can you envisage circumstances in which a public servant might legitimately whistleblow. The area that has tested this greatly in recent years has been Iraq. We had evidence from some people a week or two ago, including Dr Brian Jones who was the defence intelligence expert, who did very much as you are describing in relation to Pergau Dam. He put the memorandum in to make sure that he and his colleagues were not going to be scapegoated afterwards. What I am going to ask you is would there not have been a proper case for someone who was so worried about the distortions that were being imposed upon the intelligence evidence in the run up to war not to do something pretty dramatic about it?

Sir Suma Chakrabarti: It rather depends on one’s definition of public interest. I am one of those people who defines public interest in this country as having an impartial Civil Service able to serve any government. If that is the case, then the Civil Service Code matters enormously to me and that is my definition of public interest. Under that definition I do not think it is right to go down that route. If you feel very strongly as a matter of conscience, which it clearly can be, you do what Elizabeth Wilmshurst did. I think that is a very noble thing to have done.

Q363 Julie Morgan: I was interested in your description of the differences between different departments. I noticed you said that you and Jack Straw were in discussion about how you can make the Ministry of Justice more open and transparent. Can you give us some ideas about what you would do to make that happen?

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Sir Suma Chakrabarti: There are some things, particularly when you are creating a new ministry, which are to do with structures, skills, systems, and they are, if you like, quite important. In this case, one of the things that I thought was very important, and Jack agreed—and he is quite into numbers like me—is actually building up the research and analysis side of the Ministry, as I mentioned earlier, because this was incredibly weak compared to what we needed. If you talk to criminologists out there they say it is not a ministry or a set of people who really engage with them as they would wish and we wanted to change that. We protected that area at a time when we were cutting budgets elsewhere. That is a structure and skills issue. I would say the biggest issue when you try to create this sort of culture is behaviours. Do the ministerial team, Jack and other ministers, and the senior officials, me and my board, exhibit the behaviours that we want in the Ministry in order to encourage greater openness? This goes behind the usual description of open doors and “Come and talk to me any time that you want.” That is helpful, of course, and we all do that but it is much more about trying to reach, in our case, 80,000 staff through the Senior Civil Service and the Ministry and others and saying these are the principles by which we will live and actually then making judgments about the people around how they do their jobs. We do not just say, in my case when I appraised my director-generals, “Did you actually carry out your business objectives” but “How did you carry them out? What did you do? Did you run a meeting in a way that other people at the meeting felt they were being heard rather than being told what to do?” Those behavioural aspects are incredibly important and that is what I tried to do with DFID and that is what Jack has encouraged me to do very strongly and supported me in the MOJ.

Q364 Julie Morgan: Were you able to reach thousands of staff involved?

Sir Suma Chakrabarti: It takes time. As I said earlier, culture takes a long time to change. It is easier in some parts of the organisation than others. It will take a good five years to get to the culture that he and I want to get to; you cannot do it overnight. Partly it is about changing some of the people because some people have grown up in a culture and are not willing to change; partly it is about role modelling behaviours and advertising good behaviours. Once a month I have staff celebration lunches. These are great because I can talk to a whole range of people from different grades who are mainly out in the field and not in London. They bring extraordinary learning but they also see that senior managers want to hear from them. My career started a very long time ago, 25 years ago. I remember at that time it was impossible to talk to the Permanent Secretary or ministers. They went up and down in separate lifts from the rest of the staff. It is a completely changed world. The idea that you could say to the Permanent Secretary “I think you have it wrong” was out of the question. These were omniscient, omnipotent people. That is the sort of culture we are knocking back and we are trying very hard to do that.

Q365 Julie Morgan: You can tell the Home Secretary he is wrong now?

Sir Suma Chakrabarti: I have spent my lifetime often telling ministers they are right and often telling them “I disagree but I will faithfully implement what you have decided.”

Q366 Julie Morgan: These lunches you have to draw people in, how do you decide who to invite?

Sir Suma Chakrabarti: I do not pick them necessarily. I have groups out there in the businesses to pick the people who have really done things to turn around culture in their smaller units. We get each of them to tell stories to each other about what happened and what also held them back. I do not just want them to talk about how wonderful it was but also what are the things that held back the more open culture which we are trying to create and the change in performance we are trying to create so we get some learning across the businesses.

Q367 Julie Morgan: Obviously that is the culture you want to reach but in the meantime do you think that the internal systems that are there are satisfactory for people who want to use the internal whistleblowing systems?

Sir Suma Chakrabarti: They are a lot better than they were a few years ago but they are not good enough is where I am on this.

Q368 Julie Morgan: What would you like to see done?

Sir Suma Chakrabarti: There are a number of ideas. I was quite interested in reading the Public Concern at Work survey of 2007, and of course Janet Paraskeva is doing her own audit now and we will have the results and your Committee will have some ideas. Here are some ideas that I know both DFID and MOJ have been kicking around. Can we make the hotlines, which some departments have and some do not have, much more available across all departments so every department has that sort of thing? Can we have confidential email boxes? I think that would give staff a lot of confidence. Those are two ideas. Secondly, nominated officers. I do not think it is enough to have across 80,000 staff six nominated officers, which is what we have in the MOJ. It beggars belief. It could be that the four cases we have had in two years were because we have had insufficient staff on this. It could also be that we have not enough diversity in the nominated officers. I was looking at their grade, their seniority, where they are from, what career experience they have and I did wonder if you are a prison warder way out somewhere in Haverigg in Cumbria would you feel that you could approach these people. Would you know any of these people? I think that is an issue. Non-executive directors are interesting. The National Offender Management Service is very good on this. One of their non-executives is also a nominated officer and two of the four cases have gone to him which tells me that people may feel some confidence not necessarily going out of the department but at least going to someone who is not directly in some sort of line management chain. The

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other thing is about giving whistleblowers much more attention after they have made their complaint. We do not put ourselves enough in the shoes of the whistleblower. It takes quite a bit of courage, I should think, to come and say "I think the department has got this wrong and you should look at this." I am sure we listen very politely and then deal with the complaint and so on but do we, in dealing with the complaint, go back to the whistleblower and say "Here is how we are dealing with it. Here is where we have got to in the process." I think we probably value the duty of confidentiality to the person we are investigating, or the group we are investigating, at that point more than we value the whistleblower and we have to value them equally in that process. Secondly, I think at the end of the process there should be aftercare of whistleblowers. I do worry that it is sort of "That is it; it is over." Whether your complaint is upheld or not upheld we need to go back and get them involved, thank them for what they did, for raising the issues, but also to get them involved in trying to redesign the system if there are improvements that could be made. Finally, there is an issue around corporate governance, whether enough is being done to ventilate these issues from either the internal audit committee or the human resources committee up to the main board. There is an interesting issue as to whether there is a pattern emerging. I did my own analysis before I came here which is what I revealed at the beginning as the pattern in the MOJ. We should be discussing that at the board and we have not been so there is a corporate governance issue as well. There are also some issues for the Cabinet Office but we can touch on that later.

Q369 Chairman: Assuming that there is that collection of things that could be done, and you have identified those for you in your department, whose job is it to make sure that those kind of proposals would be generalised across government?

Sir Suma Chakrabarti: In the end I think it is the Cabinet Office. The Cabinet Office owns the overall procedures and processes on this; they would set the standard framework if you like. The Cabinet Office ought to be, as part of the development of the centre, even if it is not a very interventionist centre, looking at best practice across departments and saying "This works. This does not seem to work so well. You should try this. Department X should try that." I have talked to the Cabinet Office before I came to this hearing and they are up for doing something like that after Janet Paraskeva and you have reported.

Q370 David Heyes: That issue of consistency would apply also to how you investigate leaks and there is again a lead role for the Cabinet Office. How effective and appropriate do you think the current procedures and processes are for investigating leaks and could we do it better?

Sir Suma Chakrabarti: There are one or two areas where we could do it better. Let us just go through the process as it is at the moment. It is worth describing because I have had to go through it a few times since I joined the MOJ. What happens at the

moment is the departmental security officer every day goes through, for example, the press cuttings, and he would receive reports from other people as to things that might look like a leak. One of the issues he has to decide with my office and myself on certain occasions is: is this really a leak? That is the first decision. Sometimes people jump to conclusions that this is a leak when it is a misinterpretation of a press notice we put out probably more than anything else and it is not really a leak at all. Sometimes it is not malicious but a complete accident: someone has gone off piste in briefing, a briefing which has been agreed with ministers, and so on. That is the first decision to make: is this really a leak? Then there is an issue about establishing an audit trail. How did this get to there? Who was involved? Terms of reference would have to be agreed with me, the set of interviews would have to be done and then there is a report to me. At that stage there is an issue, if it is looking quite serious, as to whether we need to bring in someone from the Cabinet Office list. The Cabinet Office has a list of investigators who can basically do a more technical analysis particularly on the IT systems. That is the stage when we have to make that decision: is this worth going down that route? That is where some of the issues now arise for improvement. This is not something about the Cabinet Office but actually about technical capability in the Civil Service. What I have found, from anecdotal memory, is it was easier to conduct these leak investigations in the era before email existed. Then there has been an era when it has become much more difficult because email gets sprayed around and it is very difficult to locate where it came from. Now the technical tools are beginning to exist where you can actually with email trace where the leak has come from. That is the thing that is not yet widespread enough in usage in departments. It is called a track and trace system. There is a technical issue, and having a list of Cabinet Office investigators who are really on top of that technical skill is something we really need to have.

Q371 David Heyes: Is there an implied criticism of the Cabinet Office investigators in what you say?

Sir Suma Chakrabarti: No. In the one instance where I have used them in the last year, they were incredibly helpful and they narrowed down the field because they were able to use some of the technical skills. In fact, they pointed out that if we recalibrated our IT system in a certain way they would have been even more successful. They could narrow it down to a few people and they could have gone down to the actual person. They were giving us good advice so it was useful I would say.

Q372 David Heyes: How often have you used them yourself?

Sir Suma Chakrabarti: Only once in the last year.

Q373 David Heyes: Did you form a judgment about their effectiveness? You say they need to move with the times with the new technology to deal with

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electronic communication but in other ways did you sense that they were up to the job and were the appropriate people to use?

Sir Suma Chakrabarti: On the basis of one contact, yes, I did. I thought this person was incredibly helpful and did not just carry out the investigation and stop there but actually said there are some systems issues that you might want to think about which would help in the future.

Q374 David Heyes: Who do they report to?

Sir Suma Chakrabarti: They are on the Cabinet Office list. In terms of the actual investigation, they are reporting to me because their report comes to me through my departmental security officer and then there is a notification to the Cabinet Office of what they have done as well.

Q375 David Heyes: Is there learning taking place as a result of those investigations? You could perceive the act of the investigations to be a safety valve rather than something that people learn from a changed procedure. What are your views on that?

Sir Suma Chakrabarti: There is insufficient learning going on I suppose is the burden of my remarks. What we have got is a system which has many pros, this whole delegated system. For the last 20 years we have been pushing decisions of power away from the centre into departments, whether it is pay, policy and so on. It is much more departmentally run now including this whole leaks and whistleblowing process. What I would like the Cabinet Office to think about, post your report and Janet Paraskeva's work, is whether standardisation is required in this area. It does not look right to me to have the survey from Public Concern at Work which shows departments spread, and some departments which are quite similar, in very different places. I am sure in the two years since then there has been some narrowing of the gaps, however that looks odd to me. If I was the centre that is what I would encourage them to do: to have some standardisation but then to have a bit which is tailored for different businesses.

Q376 Mr Walker: What you said is if you are going to leak use your home computer. You have now basically put on the record that you can check any computer used by any of your civil servants for distributing leaks, so the parks of London will now be full of people handing over brown envelopes.

Sir Suma Chakrabarti: If I really thought that the Civil Service was full of leakers going to parks and doing that then I would not stay in the Civil Service. I do not think that is what the Civil Service is like.

Q377 Mr Walker: Now that it is known that civil servants can have their emails tracked by this new super-duper software surely they will just find other ways of leaking?

Sir Suma Chakrabarti: Those who wish to leak, and this has been said in evidence to you by others as well, in the end you cannot stop them leaking if they want to leak because they will do other things. The key issue, it seems to me, for people like me, managers of the service, is whether we create a

system and a culture which makes people feel they are heard properly and they do not have to resort to this. They can resign if they do not agree with the decision.

Q378 Mr Walker: You said earlier in your evidence that you needed to change some of the personnel within your team. Do those people know who they are who are not performing culturally?

Sir Suma Chakrabarti: Yes. Whether it has been in DFID or the Cabinet Office before that, I am completely open with these people on a personal basis as to what sort of performance we need and where they are and where I am in terms of these issues.

Q379 Mr Walker: When you say that they cannot adopt the culture, what are the barriers to them adopting the new culture that is being driven forward? What is stopping them embracing the new way of work?

Sir Suma Chakrabarti: I'd best talk about myself. I grew up in a culture which allows you to be good at certain things and then you are put into a different context where you are required to adapt and it is quite tough. In my case, having turned 50, it is quite difficult to suddenly find a different way of doing things. You can do incremental stuff I am sure but we do find it tough, as all of us do I think. The question then is at what pace can you go? There will be people who you need because there are elements of their experience which are vital for delivery of the department's agenda but you also want them to shift in the way they handle their work.

Q380 Mr Walker: It was announced on Monday that there is going to be an end to early redundancy of senior civil servants so many of the tools and mechanisms at your disposal for moving people on or out have now been removed. How are you going to change the culture given it is now so much more difficult, as of Monday, for you to move people on?

Sir Suma Chakrabarti: We will see what comes of that. There are discussions going on in how to implement that approach on redundancy and early retirement. If that was the only tool in our locker, then I would forget it but there we were in DFID trying to move the culture on in some aspects too and it was incentives within the organisation that helped do it. People who go to that organisation are incredibly committed to the agenda of that organisation and what helps to move them on is not whether person X or person Y should be moved out of the organisation but whether we are rewarding through promotions, through a clear sign of promotion if you like, the behaviours on the way. Who is getting on and who is going up the organisation has a telling effect and we judge them by behaviours.

Q381 Mr Walker: What you did say earlier on was that you wanted to get people out of your department. Do you get them out of your department into retirement or do you get them out of your department into someone else's department?

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Sir Suma Chakrabarti: First of all, I want to get certain people out wherever I have been who will block the reform needed to make the organisation effective. That is not a massive number of people but there are certain people of course in any organisation. I think I have a duty as a civil service person not to shift the problem somewhere else. When permanent secretaries ring me up because some of my staff have applied for jobs, I give them an honest appraisal. I do not say, "This is the best person I have ever seen" simply because it might suit me. You have to think about the corporate good of the Civil Service. You also have to face up to the fact you have a management job here and you should not displace it to someone else.

Q382 Mr Walker: Knowing that you do that, do you feel your staff may not be honest with you? You may have staff who want to challenge you and fundamentally disagree with your management style and some of the decisions you are taking yet they might be stopped from challenging you as robustly as they might knowing that if they decide they cannot work with you, or you decide you cannot work with them, they are going to find it very difficult to find work elsewhere in the Senior Civil Service because you are on the phone to the Permanent Secretary of the other department giving an honest appraisal? Do you understand what I am saying? There are some quite interesting dilemmas here.

Sir Suma Chakrabarti: There are some dilemmas there but I do not think they are that big. The number of staff we are talking about is quite small and so far, in my experience, it does not seem to have stopped them from telling me where I am going wrong. I encourage that because I want to get away from this sense that the Permanent Secretary always knows best. It is important for us as permanent secretaries, compared to our predecessors, to say more openly "I do not know the answer to that" or "We may have got this wrong" or "I may have got this wrong and I need to shift." I do not have a problem with that as long as I do not keep saying it too often or I should not be in the job.

Q383 Paul Flynn: Did you have a Pergau Dam moment when Jack Straw decided to veto the publication of the Iraq war minutes?

Sir Suma Chakrabarti: I do not want to talk about that because what civil servants thought is not in the public domain on that one. Essentially what we did was deal with the process. It is true that it was a Cabinet decision and Jack published it. We did not have much more role than that.

Q384 Paul Flynn: Do you think this is an example of leading from the top in creating this atmosphere of transparency and trust when the Secretary of State decides to censor documents that should be in the public domain?

Sir Suma Chakrabarti: This goes back to the David Omand list of issues which would require ultimate ministerial authority before officials disclosed information. If you recall, David was saying, and I

agree with him very much on this, that there is a vast space of information released every day. I come here with my brief, which is not cleared by Jack, and talk openly; I am self-authorising. I am using my discretion but there are a set of issues which must remain in a more private space if we are to have a proper discussion.

Q385 Paul Flynn: If we take this particular issue, it is one that Katharine Gun and Carne Ross decided to wreck their career over. They felt so strongly and impassioned about this that they gave up their job, their pension and so on. It is a decision that Parliament is still wrestling over. We might well, as parliamentarians, have sent 179 British soldiers to die in vain in a war that was based on a lie. Is there anything more important than that in which a civil servant has the duty to leak and try to put information into the public domain that could have altered that decision?

Sir Suma Chakrabarti: There will always be, through any civil servant's career—and the Iraq war was undoubtedly one of the biggest issues, and I was Permanent Secretary at the DFID at the time—where civil servants will feel extremely strongly about a subject and think about their options. Obviously Carne Ross thought in the way he did. I know his case a bit better because he was in the FCO at the time. My own view is for me, as a civil servant, what overrides that is my continuous objective of public interest which is around observing the Civil Service Code and being able to say, hand on heart, whether I like the decision or not, I can serve any government.

Q386 Paul Flynn: Katharine Gun said if she had gone to a line manager or someone else she would have been told "There, there, do not worry your pretty little head about this. It will all come out in the wash" and nothing would have been done. Carne Ross said that all he could do was nibble around the edges of the decision and ultimately he went from that. Clearly it was a principled decision that he made. Is it not sad that there is not a place in our Civil Service for people of these high principles?

Sir Suma Chakrabarti: There are many people of very high principles in the Civil Service. Just because you do not go public does not mean you do not have high principles. The interesting issue, from what they have said to you in their evidence, is whether the systems, in the two organisations they were in, were frankly good enough for staff to have confidence in them. Clearly what they were saying is they did not have that confidence.

Q387 Paul Flynn: Carne Ross said if he had made a fuss about this internally he would have been marked—not his words—with a black spot and he then would be consigned to a future not in a beautiful embassy in Paris or Washington but would probably end in up Belarus or Baku or somewhere.

Sir Suma Chakrabarti: I thought you were going to say Ouagadougou or somewhere like that, somewhere I know at least. I cannot comment on that. It is not the Foreign Office I know and it is not

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the Foreign Office that Peter Ricketts, my colleague, is trying to lead. The Chairman said earlier that Carne Ross was saying the Foreign Office do not have an open and learning culture but actually both Michael Jay and Peter Ricketts have been trying very hard to change the culture in the Foreign Office, clearly from Carne Ross's point of view not enough. I do not know what would have happened to him or his career. How can I know?

Q388 Paul Flynn: If we can look at those who leak not for ethical reasons but for commercial reasons or political reasons or for private gain, Claire Newell was an example. I think she was a journalist and she was accused of taking up the job and then leaking several embarrassing things about the Government in *The Sunday Times* about Cabinet splits, and so on, the introduction of identity cards. This seemed to me purely a career move by this woman for financial gain. She was employed, I understand, as temporary staff. Evidence has been given to us that perhaps we should look more carefully at temporary staff to avoid people coming in in this way. How can this be done?

Sir Suma Chakrabarti: I am talking from the MOJ experience because we do have a number of temporary staff. Looking at the pattern of leaks we have had, they have not been associated with temporary staff; there is no correlation there. What is important, it seems to me, with regard to temporary staff is making sure the basic personnel security standard processes are really followed so we know much more about the identity, the employment history, the suspended criminal record, what these people are doing. I gather she was in a sensitive post in the Cabinet Office in a minister's office. I do not think those posts should be open to temporary staff. You have to go through the whole security clearance, the counter-terrorism clearance, to get into those posts. That is where I would be.

Q389 Paul Flynn: One presumes the great mass of the Civil Service very rarely see anything that is worth any value as far as the papers are concerned. We had another case where the allegation is that someone was strongly politically motivated and had been a candidate for a political party, which was not the government party, and was using his position, in a very sensitive position, in order to leak repeatedly. Should there not be some kind of system? We do not want to ban people with strong political motivations from being in the Civil Service but should we be more on guard against that?

Sir Suma Chakrabarti: I wonder which case you are describing. I obviously cannot discuss the case because there is an investigative processes going on but on the general principle I agree with you very strongly that we should not be barring people who have a political past from joining the Civil Service. The question, it seems to me, rests much more around sensitive posts like the private office—how recent was their political past? If you were running in an election only a few months ago and then you went into private office, I think that would give me cause for concern. As I understand it, in the case you are

describing the person may well have had one or two other jobs before he went into private office so, in a sense, an understandable view might be that he has already distanced himself from his political past and, therefore, could be put into the private office post. Even with my principle, I think he might well have passed. You have to make a judgment. I have come across fast streamers in my career. When I was in the Cabinet Office I remember one fast streamer who very honestly said, "I worked for the Liberal Democrats as an activist just before I joined the fast stream." I was able to have a discussion with ministers as to whether they were comfortable with her being so quickly working with them. It was a Labour administration and they were comfortable with that. She was very honest and upfront about it and we should expect that of the civil servant as well.

Q390 Paul Flynn: You talked about the courage of people who leak and the isolation they feel. We have heard that there is very little support for them afterwards and they suddenly become very isolated. Do you think that is a satisfactory position, for those who take their complaint up through the administrative channels, to suddenly may find themselves ostracised?

Sir Suma Chakrabarti: I do not think this is satisfactory and this is one of the things I would like to see changed, whether we call it aftercare or what. If your complaint is upheld, of course you feel vindicated, and rightly so, and I think you should be thanked from very senior levels, and possibly from the Permanent Secretary, for actually raising the issue. You should also then be involved in asking why it happened and trying to help the Permanent Secretary and the rest of the board as to how we can improve the system. Even if your complaint is not upheld, you should be thanked for having the courage to raise the issue and have the full explanation of why it was not upheld and making sure there was no victimisation as well. It is quite important for the system to check if this person has been hard done by afterwards so the feelings of Carne Ross and others of bad postings, or whatever it is, are not the reality.

Q391 Chairman: When you replied to one of Paul's earlier questions you talked about the public interest in being a good civil servant and keeping confidences and so on. Is not the trouble that there is more than one public interest? It is undeniable that there was a public interest in Parliament and the public knowing more about the intelligence in the run up to the Iraq war than was the case. There is a rival public interest which in some cases may be greater than the public interest that you describe.

Sir Suma Chakrabarti: It is absolutely right that there are different public interests here at work, particularly in this Iraq case. The judgment I would make—and other civil servants like Carne have made a different judgment—is that the overriding one for me is good government generally rests on me and my team being able to serve any party in government and that is more important. We should use other systems to try and ventilate the issues

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around Iraq or whatever the other issue might be where the public interest case is also strong. It is not denying that there is not a public interest in the Iraq case, there clearly is. People felt very strongly about it and did what they did. I do not deny that. One has to make that personal judgment—which is the overriding public interest for a public servant?

Q392 Chairman: Your minister eventually resigned.

Sir Suma Chakrabarti: Yes. I am well aware of it and I was heavily involved in it with her. She took a different view.

Q393 Kelvin Hopkins: You have used the word “culture” a lot. I think this is very important—a sense of principle, commitment, esprit de corps of working in the public interest and all of that—but if you talk about culture changing, my impression is that the culture has changed considerably. We have perhaps been through a bad period and we are now getting things back on track in a more modern form. Is that your feeling? What you describe in your own department sounds very admirable.

Sir Suma Chakrabarti: It has gone through ups and downs. What I can do is trace a 25 year trend. In my 25 years in the Civil Service I think, by and large, things have improved for those who wish to speak up, challenge, and so on, compared with when I joined. Also the sorts of people we are encouraging into the Civil Service is probably a better match for what the Civil Service needs to do. For example, I would say ten or fifteen years ago we were still promoting on the basis of just intellectual merit and not really worrying about managerial competence enough. Because of freedom of information, which I welcome, and because of open information generally, there are lots of things out there which tell us we are not doing a good enough managerial job. If those same laws had existed 20 or 30 years ago, there would have been the same issues. If anything, management of those delivery issues is far better now than 25 or 30 years ago. I can see that in the aid programme which I knew very intimately, but also now in the prison and probation service. Look at the number of escapes down by a massive margin and re-offending rates down. You can see this and this is to do with managerial competence being much more valued than when I joined.

Q394 Kelvin Hopkins: There are also differences horizontally, between departments. The problems that arise—not in your department which seems to be admirably run under your watch, but if one looks at the Foreign Office there have been complaints, and even more about the Home Office. Defence is a sensitive area but in the Treasury clearly something has gone horribly wrong because they did not appear to spot what was happening. Did nobody leak that they were being told to keep quiet about our economic problems? We have the worst economic crisis in 100 years and yet no-one saw it coming.

Sir Suma Chakrabarti: I do not think I should be commenting on other people’s departments as I do not know enough about how they are run but I can commentate as an observer on Whitehall more

broadly. Going back to your first question and looking at this with it, one of the things that we rubbed out was market intelligence in certain departments. If you look at when I was in the Cabinet Office worrying about the car industry in the West Midlands, it was striking then that I was having to get information from as was the Department of Trade and Industry at the time, from merchant bankers, because they were still doing analysis around the car industry, and from academics. We had rubbed out some of that intelligence about how does this market work, how does the industry work, because we had been pushing work out of the Civil Service if anything. There is an issue around that which Whitehall does need to think about more procedurally.

Q395 Kelvin Hopkins: Carne Ross, when he came before the Committee, described a culture of giving the minister what he wanted to hear and said “Internally, I thought that the most open and indeed ferocious debate should be encouraged, so we would get the best possible policy as a result. In my time in the Foreign Office that was not the case.” We have often talked about speaking truth unto power and I personally have emphasised the importance of debate, particularly on things like economics. Has that kind of debate been combed out over the last two or three governments?

Sir Suma Chakrabarti: I can only go on my experience. The sorts of jobs I have been in and the people I have worked with we have done a lot of speaking to power, truth unto power, in the way that one Warren Fisher keeps getting quoted in all the evidence. We have done a lot of that, whether it is the Pergau Dam nearly 20 years ago through to policies of today. We discuss, debate and suggest different options. We say to ministers, “I do not think this is going to work. It looks good on paper but delivery-wise I am not sure we can bring it off.” Those sorts of debates are going on all the time. We are having a very good debate around some of those issues right now in our ministry with ministers. I have not seen that supposition. It keeps cropping up in every era. It was said in the 1980s as well that the Civil Service does not speak truth unto power, to that government, but it is not my experience.

Q396 Kelvin Hopkins: I have nearly a quarter of a century of experience working in two bureaucracies myself, one of which was modelled on the Civil Service. They were similar in their bureaucracy, with a democratic leadership, one of which was the TUC. Within those organisations there was trust in the sense that one could raise, at any level, as an officer—I was a research officer—and say, “I have concerns about this” and be treated with respect, perhaps to be told “Unfortunately that is the policy” and one would accept it. None of us would ever have dreamt of leaking because we had a loyalty and a sense of the importance of the integrity of the organisation. We had that sense of trust which is so important. Was that broken in the Civil Service?

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Sir Suma Chakrabarti: No, I do not think it is broken. I think it is very strong in my department, this bond to each other. It is a very good point you make and I should have brought it out. In all the evidence you have heard so far that I have been reading, what has been brought out much more is the worry about the corrosion of trust between ministers and officials. That is, of course, true and I agree with what other witnesses have said to you on that but what has not been brought out so much is the potential of corrosion of the trust between civil servants. Just as in the TUC—and Bill Callaghan talked to me a lot about that and his experience there—it is the same in the Civil Service. If you think in a particular area of policy there are people who are leaking all the time, it makes it quite difficult to work with those people. You do not know where you are. You do not know if you are going to have an open conversation and find it in *The Times* the next day and that breaks that bond. We need to work at that very strongly. By and large there is very strong trust. Can I give you a concrete example of this because I think it might bring it to light? Last autumn a presentation I gave to the MOJ ministers on how we would make our efficiency savings work was leaked to *The Times*. It was on the front page of *The Times*. That leak came after six months of a very open process of discussion within the organisation about how on earth we were meant to live with the budget we had been given and discussion involving the unions as well. It was very open because we wanted to be honest and have a debate about this. When it was leaked, of course it was written up in a way as to suggest this was all news—and actually it was not news at all to staff—and there were lots of misinterpretation of options we had been thinking of. It did give the civil servants and the ministry and the ministers pause to say “We are on this path to creating this culture, is this the right thing to do because this is what happens when you do this?” Thank God Jack and his team and the civil servants’ leadership decided to stick with the plan, with the project, but it did go to the heart of that, which was your point about trust. Openness requires trust as well and responsibility.

Q397 Kelvin Hopkins: Within one of these bureaucracies, not the TUC, I saw latterly politically motivated small groups determined to change the direction of the organisation, to change the culture of the organisation, to break what was inside it and to thrust in a new political culture, a new direction, ignoring both the democratic processes of the organisation and also the long-established ways of working within the democratic structures. The thing was smashed quite easily, by political force, if you like. I saw a parallel between recent governments of both colours and that situation. Would you think that is fair?

Sir Suma Chakrabarti: I have not seen that in that way. I think the analogy works in a department. I would say if you look at the pattern of leaks in the MOJ they are coming from a group of people, not a large number, who are against the process of change. They are either against the creation of a new

ministry, because a lot of leaks were around the organisation structure for example, or against possibly the bringing together of probation and prison services into the new National Offender Management Service. It is actually anti-changing the way things are done. There is always a small group in all departments, the vested interest group if you like, who want things to stay where they are.

Q398 Kelvin Hopkins: When one has a problem with a government perhaps being complicit in torture, and extraordinary rendition, and a civil servant is aware of that and thinks this is so appalling that something must be said, at that point your rather comfortable view of discussing things does break down if a government is absolutely wilful and determined to drive ahead and not have these things exposed. Does that not have to be challenged?

Sir Suma Chakrabarti: If a civil servant knew that sort of thing was happening, then they should be raising it not just with the nominated officers, and what have you, within their department but I think that is such a big issue they should raise it with the Cabinet Secretary directly and with the Civil Service Commissioners. They have a right now to go direct to the Civil Service Commissioners. That is a big red flag, that sort of issue, where they should be doing that. I am sure the Cabinet Secretary would be very open to that direct access on those suspicions.

Q399 Mr Prentice: When people see the Government subverting proper procedures or decisions that have been taken which are not ethical, then very often they feel obliged to speak out. That is certainly what happened with Katharine Gun—you have read her evidence—the women who worked in Cheltenham. She told us that when she was appointed she was given the spiel about the Official Secrets Act, and so on, but there was a kind of flip side: what you do if you witness behaviour which is unethical. What is happening in the Civil Service now to tell civil servants, when they see something which is clearly unethical happening, they should speak out?

Sir Suma Chakrabarti: What we are saying is you must raise it. Again, I go back to the survey done by Public Concern at Work which showed that certain departments—DCMS and DFID came top of that poll—are saying outwardly to their staff, “If you think something is unethical, if you think there is wrongdoing, it is your duty to speak out to express that.”

Q400 Mr Prentice: Did they give examples of unethical behaviour or is it just left to the individual? If you feel in your bones that what you are seeing is wrong, then speak out, or are there concrete examples? Katharine Gun had the emails and everything.

Sir Suma Chakrabarti: I have not seen the DCMS guidance. I would say that is certainly something that could be improved in the guidance and one of the improvements one would want to bring in. For example, “If you see this happening, this is what you should do about it.” It is true in the four cases the

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MOJ—I am not allowed to discuss them—at least two of them involved what I would call unethical behaviour and certainly should not have been going on. It was good that the whistleblowers went straight up through the system in this way, as you say not down the process and they have been dealt with straight away. It would be good to give examples, not the actual naming of people but to give more examples of how we do this.

Q401 Mr Prentice: Like proper procedures being subverted. There is this fiction of cabinet government in Britain, as if all members of the Cabinet sit around the table and chew the fat collectively, but it just does not happen like that. There are any number of cases where procedures are short-circuited or there is fancy footwork in some way, is there not?

Sir Suma Chakrabarti: If processes are being short-circuited, then as the person who is obviously concerned and accountable for processes in my department I would want to know because I do not think you make good policy if you do that. There are lower level types of things, behaviours which are unethical, relationships and so on, issues like that, which should not be going on and those also need to be picked up. At the heart of the question, and my answer is, there is a problem in the Civil Service in that we tend to be very shy, because we cannot discuss individual cases, of advertising what the trend of cases is. We can anonymise the cases but it would be good to give some examples of what exactly constitutes bad behaviour, with some examples that people can relate to, not in terms of jargon, and also what happened in some of those cases and how we handled them. It is odd that I can only talk about Pergau Dam because it is 18 years ago. It would be nice to be able to talk about some cases in the last ten years which, even if they are not public, we can talk about in a generalised way to show that an action was taken and what these cases were about. Again, this would raise confidence of staff in the system if we could do that and that is an issue in the Civil Service. An analogy is poor performance. People believe we do not tackle poor performance. It is certainly true ten years ago we were really bad at it. We are not there yet but we are a lot better than we were because of the better managers we now have in place. Because we cannot talk about individual cases when we have got rid of people, people have this impression we are doing nothing about it where actually in every department there is much more progress on that. It would be great if we could talk about the trend of this in some way. It would give staff and you much more confidence that we do tackle these issues.

Q402 Mr Prentice: I am not going to ask you the details about Christopher Galley but when is the process going to be completed on the Christopher Galley case?

Sir Suma Chakrabarti: I honestly do not know. It is not in my body of work.

Q403 Chairman: On your previous answer, it would be extremely helpful if we had collated across departments all the kinds of cases that were coming up through the system in this way, as you say not naming the cases but describing the categories of cases they were and what the outcomes were. That would tell us both what was going on and also give people far more confidence if they saw that there was a system in place, that these were the kind of issues being dealt with. It is remarkable that we do not have any collation of that kind?

Sir Suma Chakrabarti: In preparing for this hearing, what was striking to me is I had to go with my team and do some research on my old department and my current department and, yes, we had the data but it is not as if it is collected across government in any systematic way. One recommendation I would have thought would be quite interesting out of this review, and also Janet Paraskeva's review, might be: could we collect the data and could we tell these stories in a way that people can connect to and understand so they could have confidence in the system?

Q404 Chairman: All we get is the report from the Civil Service Commissioners which tells us the small number of cases which go to them and something very briefly about them. At that level we get it but routinely the system beneath that we do not see.

Sir Suma Chakrabarti: I agree with you on this one.

Q405 Chairman: Can I abuse my position by saying I would like you to answer one more question which is not about this at all? We have been doing for quite some time, and are just concluding, a report which we have rather grandly called Good Government. The intention is to try and look at what we do well and what we do badly, in a general sense, in government and to report on that. We are about at the end of that process but I am struck by the fact that in a way you had to do that exercise for the Cabinet Office not so long ago. You began that by talking about what you thought were the key characteristics of UK government. I am not going to read them all now but it means that you thought your way through some of the things we have been thinking about. You say, as one of the key characteristics of modern politics, a desire to be seen to be in charge drives centralising tendencies and how to reconcile this with the vast and varied business of government. I know that we can have an interesting seminar now on all this but can you try and sum it up for us and tell us, in a nutshell, having thought about it, what we do well and what we do badly and what we might do better?

Sir Suma Chakrabarti: On the latter part of that question, I rest my case on the World Bank's analysis of governments. They rate civil services and government institutions and the UK comes first. Of all the overseas governments it is still seen internationally as the best. That is not to say that we should not be learning lessons from other places. One of the problems in the British Civil Service is we do not look enough at some lessons from elsewhere. It is not that we have to transplant everything but there are lessons from other places. In this area, for

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example, the OECD has done a study on whistleblowing in practice and other places and we should be looking at that. We should be asking ourselves what we can learn from that. As to the first part of the question, when I reflect on culture, how we work and the impact politics has, the problem with some of our politics is it encourages a culture of certainty. You cannot be wrong and if you admit that you might have changed your mind, as Keynes said on new information "I change my mind, what do you do", that is a no-no because the media will go after you. That creates certain incentives and you have to be very big and strong to withstand those incentives it seems to me. You can have a very open policy process with lots of challenge, and so on. You have a decision on what the policy is and you implement it faithfully as a civil servant. You should not then be questioning it because it is the implementation phase. What happens then, when you go to the third phase where you evaluate policy, you say "Did this work in the way we expected?" The answer should be it cannot have worked perfectly, this is public policy. You are not selling widgets. You are trying to deal with human beings who have different ways of behaviour so you will not get a scientific, certain, outcome. It is right, through that evaluation process, to open up the aperture of discussion around policy and try and refine and improve that policy. The problem is, at that point, politicians fear the media will go for them. "You have changed your mind so you got it wrong, did you not?" It creates a really bad downward spiral in public policy making. It makes it very difficult for good ministers and civil servants to try and do the right thing which is where we have a joint interest. We are both interested in getting public policy as right as we can. I think that is a problem.

Q406 Chairman: That is fascinating and also gloomy because what you are saying is it would be extremely good to have an open learning way of doing government in this country but actually that is undoable in the circumstances in which we live.

Sir Suma Chakrabarti: It is doable in certain areas clearly. In International Development it has been done and that is good. It is interesting that because it is not the stuff of day-to-day politics it is easier there to do than in some other areas. I would like to have more of that. In the MOJ we are trying to move towards that. There will always be David Omand's

list of issues where it is very difficult in any circumstance to have an open discussion but it is actually a very small list and most of this we should be able to do.

Q407 Chairman: We have not asked you about political leaking. When the FDA came and spoke to us they said the main problem, as they saw it, was leaking by politicians not by civil servants. Finally, is that a big problem and can anything ever be done about it?

Sir Suma Chakrabarti: In the ministries where I have been Permanent Secretary, no, it has not been an issue at all. It is an interesting definition because ministers after all are the ultimate authorisers of what you can officially disclose and what you cannot. A question seems to me is more when ministers put information to the public domain themselves are they going through a process of discussion and decision making as to what should be presented and who should put it in the public domain. In the ministries I have worked in as Permanent Secretary that has happened. Jack Straw, Clare Short and Hilary Benn have been sticklers, first of all, for making sure Parliament knew first before anything was in the public domain and going through that process of discussing who should put it in the public domain and when, so I have not had that experience.

Q408 Chairman: You have special advisers who are doing media work all the time. Presumably they are a big conduit for stuff getting into the press.

Sir Suma Chakrabarti: I have worked with a range of special advisers in both DFID and MOJ very closely and that has not been the case. The special advisers, in a sense, reflect the ministers they work for. Although very different characters, Clare, Hilary and Jack actually care quite deeply about process, they are united on that, and, therefore, a special adviser would not be of that mode anyway.

Q409 Chairman: You are a refreshing breed of Permanent Secretary.

Sir Suma Chakrabarti: That is very worrying; I have probably said too much.

Chairman: We have had, therefore, a more than usually interesting session. We are extremely grateful to you for coming along and talking to us in the way you have. Thank you very much indeed.

Written evidence

Memorandum from the Cabinet Office

THE ROLE OF THE CABINET OFFICE IN LEAK INVESTIGATIONS

1. This memorandum sets out the roles of the Cabinet Office and the Cabinet Secretary in dealing with unauthorised disclosures of Government information (commonly referred to as leaks).

ROLES AND RESPONSIBILITIES

2. Leaks are both a breach of Security and of the Civil Service Code. The relevant paragraphs of the Code are at Annex A. The Cabinet Office, on behalf of the Cabinet Secretary as Head of the Home Civil Service and as Chair of the Official Committee on Security, has responsibility for co-ordinating security matters across Government and for ensuring that civil servants meet the minimum standards laid down in the codes. Within Government, responsibility for ensuring compliance with the requirement of the codes and of security policy lies with Departmental Permanent Secretaries. It is for Departmental Permanent Secretaries to take decisions on whether leak investigations into the unauthorised disclosure of information originating in their Departments should be carried out. The Cabinet Secretary is responsible for this in respect of the Cabinet Office. In certain circumstances, eg when cases are cross-Departmental or involve especially sensitive information or where there is evidence of persistent leaking, the Cabinet Secretary may decide that it is appropriate for the Cabinet Office to take the lead. The Cabinet Secretary is supported by the Director, Security and Intelligence in the Cabinet Office in carrying out these functions.

3. Leak investigations will normally be carried out within Departments using investigators from an independent panel drawn up by the Cabinet Office. These investigations report to the Departmental Permanent Secretary who will decide what actions to take as a result. These actions might range from disciplinary action against an individual civil servant to improvements in process and procedures if weaknesses are discovered.

THE INVOLVEMENT OF THE POLICE

4. Occasionally it may be appropriate to involve the police in an investigation. Departmental Permanent Secretaries are responsible for taking the decision to do so. Normally, before any decision is made to involve the police, Departments will discuss the matter with the Cabinet Office. By definition such cases will always involve a serious and damaging impact on the functioning of a Department and will involve suspicion of leaking sensitive information. Given this, it is not unusual for the Cabinet Office to take the lead in such investigations.

5. If the police are invited to become involved, the final decision on whether they will investigate is always a matter solely for them. There are thresholds that have to be met before a police investigation can begin and only the police, in consultation with the Crown Prosecution Service, can make the necessary judgements. Once an investigation has begun, its course is a matter wholly for the police to determine. They will keep the Cabinet Office and Departments informed and will liaise to make arrangements for access to Departmental premises, to interview staff, etc. Once the police have begun an investigation, its conduct is properly outside the direct control of Departments. Police investigations into leaks of government information have in the past normally been conducted by the officers of what was called Special Branch. This unit is now part of Counter Terrorism Command following internal restructuring at the Metropolitan Police.

THE ROLE OF MINISTERS

6. The Cabinet Secretary and Departmental Permanent Secretaries are responsible for the effective and efficient operation of their Departments. Included in these responsibilities are those for ensuring the observance of the Civil Service Code and effective security in their Departments. These responsibilities are carried out independently of Ministerial direction. Given the nature of many leaks, it would not be appropriate for Ministers to determine whether or not they should be investigated or whether or not the police should be invited to consider an investigation. It is normal for Permanent Secretaries to inform their Departmental Minister where a leak investigation is underway and whether it is an internal investigation or one carried out by the police. Depending on the seriousness of the leak, the Cabinet Secretary will judge whether the Prime Minister needs to be informed.

THE ROLE OF THE CABINET OFFICE IN THE HOME OFFICE LEAKS INVESTIGATION

7. In this particular case, the Home Office was faced with serial leaking. The most recent leaks pointed to an unknown source or sources close to Home Office Ministers. In addition, and increasingly over the last three years, there have been leaks of highly sensitive information from within Government, including information that was held in the Home Office which the unknown source(s) may have had access to.

8. The Home Office Permanent Secretary, Sir David Normington, was concerned on three counts:
- the systematic leaking of Home Office information was having a detrimental effect on the operations of his Department;
 - the source or sources of the Home Office leaks was close to the heart of the Home Office where highly sensitive material is generated and received; and
 - there was a danger that the Home Office's most sensitive material was at risk.

9. These matters were discussed between Sir David Normington and the Cabinet Secretary. They agreed that the Home Office should seek assistance from the Cabinet Office and, following further discussions, it was decided to seek police assistance. As a result, the Director, Security and Intelligence in the Cabinet Office wrote on 8 October 2008 to the Assistant Commissioner Specialist Operations in the Metropolitan Police to invite him to consider an investigation. A copy of that letter is attached at Annex B.¹ Assistant Commissioner Quick responded agreeing to an investigation.

10. Once the police investigation was underway, the role of Cabinet Office officials has been to act as liaison between the investigating team and the Home Office in order to provide relevant information and access to Departmental premises and staff. A description of the police contacts with the Cabinet Office over the arrests of the Home Office official and Damian Green MP is at Annex C.

11. Since these arrests, the Cabinet Office has maintained its position as liaison between the Metropolitan Police and the Home Office over the investigation. There have been no discussions with the police about the current status of their investigation, which is a matter for them and the prosecuting authorities, nor any discussion of the substance of any of the interviews the police have had with either the Home Office official or Damian Green MP. Cabinet Office officials have also provided information on request to Ian Johnston, Chief Constable of the British Transport Police, in connection with the review of the case which he has been asked to undertake by the Acting Commissioner of the Metropolitan Police.

December 2008

Annex A

RELEVANT EXTRACTS FROM THE CIVIL SERVICE CODE

CIVIL SERVICE CODE

You must always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings. (Para 5)

You must not disclose official information without authority. (Para 6)

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 the Civil Service Code, no matter what your own political beliefs are. (Para 13)

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 the same relationship with those whom you may be required to serve in some future Government. (Para 13)

RAISING MATTERS OF CONCERN

The Civil Service Code (paras 16-18) provides for civil servants to raise matters of concern. It encourages individuals to raise matters with their line manager or someone else within line management chain.

Alternatively you may report the matter direct to the independent Civil Service Commissioners. (Para 18)

In certain circumstances, the Public Interest Disclosure Act may also apply.

Annex B

NOW UNCLASSIFIED

CABINET OFFICE: CONFIDENTIAL INVESTIGATIONS—8 SEPTEMBER 2008

Leaks

I am writing to ask whether you will consider agreeing to an investigation into a series of leaks, probably originating in the Home Office, which is causing considerable concern to the Cabinet Secretary.

A number of recent leak investigations, including some conducted by your officers, have raised questions about the security of sensitive information in the Home Office. Whilst not all the leaks which concern us merit, taken individually, investigation by the police, we are concerned that there is an individual or individuals in the Home Office with access to sensitive material who is (are) prepared to leak that information. We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks and we are concerned that the potential for future damage is significant. The

¹ This is as the letter was sent. It should be noted that it was issued with the mistaken date of 8 September 2008, which was a mistype when the letter was created.

risk of leaking is having an impact on the efficient and effective conduct of Government business, affecting the ability of Ministers and senior officials to have full and frank discussions on sensitive matters and undermining necessary trust. You will not be surprised to hear that we are also concerned that there must be risk to information about sensitive operations which, if leaked, could give rise to grave damage.

If you are content to agree to an investigation into these matters, my staff will be happy to brief your officers on the detail. Equally, I shall be happy to discuss with you any arrangements for the oversight of the investigation.

Knowledge of this request is held very tightly here, in the Home Office and in the Security Service and will continue to be so.

A copy of this letter goes on a personal basis to David Normington, Jonathann Evans and to Robert Hannigan and Ciaran Martin here.

Information contained in this document may be subject to exemptions under the Freedom of Information Act (in particular the National Security exemptions in sections 23 and 24). Before considering information in this document for release under the Act, you should contact the Intelligence and Security Secretariat in the Cabinet Office for advice.

To note: Date mistyped on original letter above. This should read 8 October 2008.

Chris Wright

Annex C

DETAILS OF POLICE CONTACT WITH CABINET OFFICE OVER ARRESTS

1. On 17 November, the police informed Cabinet Office officials that the early arrest of a Home Office official was likely. The Home Office Permanent Secretary was informed and he informed the Home Secretary. No Cabinet Office Minister was informed, nor was the Prime Minister.

2. On 18 November, the police informed Cabinet Office officials that a junior Home Office official would be arrested the following morning. The police requested assistance in gaining access to the official's desk and cupboard in the Home Office.

3. On 19 November, Mr Christopher Galley, a junior Home Office official, was arrested. The Cabinet Office and Home Office were informed once the arrest had been made.

4. On 27 November, at approximately 1pm the Metropolitan Police informed the Cabinet Office that four properties connected with an Opposition Front Bench spokesman would shortly be searched. Three were the subject of warrants under s.8 of the Police and Criminal Evidence Act and one was to be searched with permission. The Metropolitan police told the Cabinet Office that this information was also being given to the Leader of the Opposition, to the Mayor of London in his role as Chair of the Metropolitan Police Authority and to Sir David Normington.

5. At about 2.30pm on 27 November the Metropolitan Police informed the Cabinet Office that the MP had been arrested and that it was Damian Green. The Cabinet Secretary informed the Prime Minister just before 3.00pm. The Home Secretary was also informed at about 3.00pm.

Memorandum from the Civil Service Commissioners

INTRODUCTION

1. The Civil Service Commissioners welcome the Public Administration Select Committee's inquiry into unauthorised disclosure in government. The Commissioners work with departments and agencies to help them promote the Civil Service values expressed in the Civil Service Code. We believe it is important that the values enshrined in the Code, and the routes open to civil servants to raise concerns when faced with ethical dilemmas, are well known and understood throughout the Civil Service and by the public.

2. To assist the inquiry we thought that the Committee might find it helpful if we briefly set out our role; explain how we hear appeals from civil servants under the Civil Service Code; outline the work we do in helping departments promote the Code; describe our on-going work in relation to the Code; give some thoughts on the unauthorised disclosure of information; and finally set out some conclusions.

ROLE OF THE CIVIL SERVICE COMMISSIONERS

3. The Commissioners are independent of the Civil Service and of Government. We are appointed by the Crown on merit following public advertisement and a fair and open selection competition.

4. The Civil Service Commissioners have two primary functions, as detailed in the Civil Service Order in Council, 1995, as amended. First, we are responsible for upholding the principle that selection to appointments in the Civil Service must be on merit on the basis of fair and open competition.

5. Second, we hear and determine appeals raised by civil servants under the Civil Service Code. We were given this role when the Code first came into effect on 1 January 1996. The Code is part of the contractual relationship between civil servants and their employer. Although the Commissioners have important functions relating to the Code, responsibility for the Civil Service Code rests with the Cabinet Office. We worked closely with the Cabinet Office to revise and refocus the Code in 2006, but the Code is not “owned” by the Commissioners.

HEARING APPEALS FROM CIVIL SERVANTS UNDER THE CIVIL SERVICE CODE

6. The role of the Civil Service Commissioners in hearing appeals under the Civil Service Code is outlined in the Civil Service Order in Council:

The Commissioners may hear and determine appeals to them by a member of the Service under the Civil Service Code and for this purpose:

- may regulate their own procedure; and
- may require the parties to any appeal or to any investigation occasioned by an appeal to provide such information and other assistance as the Commissioners shall think necessary or appropriate; and
- may make recommendations.

7. When a civil servant has concerns that they have been asked to do something which goes against the values described in the Civil Service Code, or believes that they have witnessed the actions of others which go against the values, they should first raise it within their own line management chain.

8. As an alternative to this, or if the concern cannot be resolved within the line management chain, the matter can be raised with a Nominated Officer within the department. Nominated Officers are appointed in all departments and agencies to help civil servants with issues under the Code and to provide a route outside of the management chain for them to raise concerns.

9. The Nominated Officer may help the civil servant to resolve the issue or may offer advice and assistance to help the civil servant pursue the matter further. If the issue has been considered within the civil servant’s own department but he or she is still not satisfied then they can approach the Civil Service Commissioners. The Commissioners may also decide to accept an appeal that has not gone through departmental processes.

10. The ability to hear appeals direct from civil servants, without the necessity to go through departmental processes first, was given to the Commissioners at the time of the introduction of redrafted Code in June 2006.

11. The Commissioners pressed for this change, arguing that it was important that there should be a direct route to us for situations in which appeal through the line management chain was impractical; or in situations where the urgency or importance of the appeal meant that it was desirable that it should be considered by independent regulators as soon as possible.

12. Not all approaches to the Commissioners requesting investigations of appeals under the Code are taken forward, for example, when the appellant is not a civil servant, or because the matter is not one that falls under the Code.

13. If the Commissioners accept an appeal then we will launch an investigation. The Commissioners tailor their approach to the appeal to the needs of the individual case. For the most complex cases Commissioners may convene separate evidence gathering sessions with the appellant and the department and might also call upon outside experts.

14. At the end of the appeal process the Commissioners make recommendations. The Commissioners are free to decide what recommendations they make, and to who.

15. We recognise that there may be cases where our investigations lead us to believe that there may be evidence of a major and/or systematic failing of the Civil Service values that warrants in-depth and extensive investigation, of the nature and scale of an official inquiry. We consider that one possible recommendation from any appeal we hear might be that there should be an independent investigation of this scope and significance, armed with sufficient resources and powers. It may be that a body other than us would be best placed to conduct such an inquiry, and this might be the substance of our recommendation.

HELPING DEPARTMENTS PROMOTE THE CIVIL SERVICE CODE

16. Since 2003 the Commissioners have, at the suggestion of the Committee on Standards in Public Life, and with the agreement of the Cabinet Secretary, been working with departments to help them promote the Code. We have also been surveying them on their efforts to promote the Code, especially through their induction and training processes. The Commissioners give the findings of these surveys in our Annual Report and also record information supplied to us by departments on the number of appeals under the Code that have been resolved at departmental level.

17. A new edition of the Civil Service Code was drafted in 2006. We worked closely on the new text with a group of Permanent Secretaries supported by the Cabinet Office. The new text was intended to be more relevant to all civil servants and focused specifically on four core Civil Service values: Honesty, Integrity,

Objectivity and Impartiality. The Cabinet Office conducted a three month consultation exercise on this text, during which nearly 2,000 comments by civil servants and relevant organisations were received. The revised text was launched by Sir Gus O'Donnell in June 2006.

18. The working group of Commissioners and Permanent Secretaries that had drafted the new Code continued to meet to consider how best it could be promoted. In July 2007 the Cabinet Office and the Commissioners jointly issued the Best Practice Checklist to assist departments and agencies in their promotion of the values in the Civil Service Code. [Copy attached.]

19. In addition, we have sought to find imaginative and engaging ways to help promote the values in the Civil Service Code to civil servants. We sponsor the Cabinet Secretary's Award at the Civil Service Awards, which goes to the individual or team that have most clearly demonstrated the Civil Service values in their work. The Civil Service Commissioners were also active participants in the Civil Service Live event in April 2008. We ran a lively 'Question Time' debate on Civil Service Values. We also had a stall for the three days of the event and were pleased to meet many civil servants from around the country and to share insights and experiences.

20. Possibly as a result of the enhanced activity on promotion of the Code, the Commissioners have noted an increased number of approaches from civil servants seeking to raise issues under the Code with us.

COMMISSIONERS' ON-GOING WORK ON THE CIVIL SERVICE CODE

21. The Civil Service Commissioners have heard appeals under the Civil Service Code since it was first introduced in 1996. The numbers of full appeals that have come to the Commissioners since then have not been great. Nor have departments reported significant numbers to us that have been formerly raised and resolved at departmental level.

22. In our Annual Report for 2006–07 we noted the very small number of formal appeals that reached us or were formerly raised and dealt with by departments; and expressed some concern that this might indicate that civil servants were not clear or confident about issues that might be raised under the Code or that appeals might not be centrally recorded by departments.

23. Therefore, in our Annual Report for 2007–08 we reported on two voluntary surveys we had undertaken (http://www.cscannualreport.info/Our_surveys/). One asked all departments and agencies how many appeals had been resolved at departmental level. We received information on 27 cases which was a significant increase from the three cases that had been reported to us in the previous year. The second survey was sent to the major employing departments and agencies and asked them what they were doing to promote the Code in line with the recommendations in the Best Practice Checklist. The responses indicated a great deal of positive activities within departments to promote the values in the Code.

24. Building on the survey work we did last year, we have now agreed with the Cabinet Secretary that we should introduce a more systematic audit of departments and agencies policies and procedures for the promotion of the values in the Code and their handling and recording of concerns raised under it. We will publish the results in our Annual Report in July.

25. We are also progressing through a re-assessment of all our policies and practices in handling Civil Service Code appeals. We want to benchmark ourselves against best practice. A result of this will be new information for civil servants and the public explaining clearly what our role is, how we will go about fulfilling it, and the standards that we set ourselves and against which we can be judged.

UNAUTHORISED DISCLOSURE OF INFORMATION

26. The Commissioners believe that a fundamental cornerstone of the constitutional settlement in this country is that there is a permanent Civil Service which serves and is loyal to the government of the day but acts in such a way that it can maintain the same relationship with future governments, whatever their political colouring. It is fundamental to our system that governments trust the Civil Service to serve them fully and effectively, whatever the personal political convictions that individual civil servants may hold.

27. One of the Code's illustrations of the core value of Integrity is that a civil servant must not disclose official information without authority, both when in the service and also after having left. The Commissioners believe that the unauthorised disclosure of information by civil servants undermines the notion of an impartial Civil Service. As the Civil Service Code says, civil servants 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 the same relationship with those whom you may be required to serve in some future Government.

28. It is extremely unlikely that the Civil Service as a whole will be able to retain the confidence of Ministers, or potential future Ministers, if those Ministers believe that members of the service are likely to systematically release information without authorisation.

29. This is not to say that there are absolutely no circumstances at all in which unauthorised release of information is justifiable, but that the bar must be set very high. As is noted in the Committee's Invitation to Submit Written Evidence, in certain circumstances the Public Interest Disclosure Act 1998 (PIDA) provides protection against victimisation for disclosures of information in the public interest. We believe that PIDA has struck the appropriate balance in protecting six specific and manifestly important areas of disclosure.

30. We are not convinced, given the routes available to civil servants to raise issues under the Civil Service Code, that there are circumstances wider than these that would justify unauthorised disclosure.

31. In principle, the Commissioners believe that ethical issues, including situations where information is being withheld and an individual civil servant believes it should be released, should be handled within the organisation where they arise, if this can be achieved.

32. A healthy organisational culture coupled with good management should allow an organisation to resolve most ethical issues that arise. If this is done within an open and trusting working environment then the organisation will also be able to learn from the experience of resolving the issue.

33. However, even within the healthiest of organisations, there will be times when an individual is not satisfied with the way that an issue has been handled internally. In these circumstances it is important that they have a clearly signposted route to a body outside their organisation, and independent of it, that is empowered and resourced to investigate. This is the role the Civil Service Commissioners can play in the Civil Service.

34. We believe that it is right that, in most cases, ethical issues, including concerns about information that a department holds and is not publishing, should be considered through a department's own internal processes before an appeal is brought to the Civil Service Commissioners. However, we believe it is also right that the Commissioners have the discretion to take appeals direct if we consider that this is the appropriate thing to do.

THE BROADER CONTEXT OF INFORMATION RELEASE

35. The Commissioners believe that the Freedom of Information Act 2000 is a significant and welcome piece of legislation. It establishes the principle that information should be made available to the public proactively; and also on request, unless specific factors argue that it should be exempt. And even then, for most exemptions, the public authority holding the information needs to carry out a public interest balancing test. Unless the reasons for withholding the information outweigh the reasons for release then the information should be released, even though it is potentially exempt.

36. Decisions made by the Information Commissioner and the Information Tribunal suggest that in some cases government departments may have been overly cautious in applying exemptions. But we share the Information Commissioner's hope that as the Act beds in and public authorities become more used to living with it, more and more information will be proactively made available to the public.

37. It appears to us that a properly enforced Freedom of Information regime severely weakens any suggested justification for unauthorised release of information in the public interest.

SOME CONCLUSIONS

38. We believe that the current Code does fulfil the ambitions of the working party that drafted it. It is a clear statement of the core Civil Service values, with relevant examples of what they mean in practice.

39. The role of the Civil Service Commissioners is a vital part of the structures that allow civil servants to raise, and have considered, matters of concern relating to the values of the Civil Service.

40. Unauthorised disclosure of information by civil servants threatens to undermine the value of impartiality, which is one of the foundations of the relationship between the Civil Service and government which has evolved over the last 150 years.

41. We believe that the limited circumstances in which it may be justifiable for a civil servant to reveal information without authority are provided for in the Public Interest Disclosure Act 1998.

42. Ultimately, it seems to us that the issue of unauthorised disclosure of information highlights the vital importance of a healthy organisational culture. If an organisation values its staff and their ideas and encourages them to raise issues and concerns in a trusting environment; if it clearly communicates to its staff that it wants them to raise issues of concerns and clearly signposts how that can be done; if it provides mechanisms for its staff to discuss concerns within and also outside the management chain; and if it provides access to an outside and independent body to hear appeals if internal mechanisms have not produced a resolution; then we believe the motivation for unauthorised release of information will be very greatly diminished. It may not be possible to stop such disclosures altogether. But we believe that no civil servant should ever feel that they have no alternative but to leak.

43. Finally, we share, and have been long-term supporters, of the Committee's view that the values of the Civil Service and the independent role of the Civil Service Commissioners would be further strengthened if they were established in statute. We remain hopeful that the Civil Service legislation contained in the Draft Constitutional Renewal Bill will be introduced during this parliamentary session.

February 2009

Memorandum from Ken Evans

I have just been watching the broadcast of your committee's interviews of Katharine Gun *et al.*

You and your colleagues asked questions related to what procedures should exist to allow the legitimate concerns of civil servants to be drawn to the attention of "those who can do something about it".

In particular, Ms Gun said that in her experience, her introduction to GCHQ DID NOT contain any explanation of what action she should take if she found something that was against the law.

Watching the exchanges brought to mind my service as a Royal Air Force Officer and as a pilot of nuclear bombers during the 1960's.

The RAF required us to attend formal courses on law and on the contents of the "Manual of Air Force Law" (MAFL).

In particular, I recall that we were told that each individual officer had a DUTY to obey ONLY those orders which he or she judged to be lawful. We were well schooled in the procedures required to judge whether an order was lawful or not and instructed to act accordingly.

After watching the aforementioned broadcast I am appalled that no such code appears to exist within the Civil Service.

I hope that you and your colleagues will take appropriate action to ensure that the Civil Service Code is "upgraded" in a way that puts duty as a citizen before duty as an employee of the Civil Service.

March 2007

Memorandum from the FDA

The FDA welcomes the opportunity to respond to the inquiry into intentional unauthorized disclosures of information from within government. We have sought to answer the key questions identified by PASC, and are grateful for the invitation to supplement this written submission with oral evidence.

1. *What are the circumstances, if any, in which a civil servant would be justified in disclosing official information without authority?*

1.1 The FDA does not believe that there are any circumstances in which a civil servant would be justified in disclosing official information without authority. Civil servants owe a duty of confidentiality to the elected government of the day. This should be life-long, and is a core principle of the Civil Service which in turn reinforces the principle of political impartiality.

1.2 The Civil Service Code offers a mechanism for any civil servant to raise concerns, without breaching the duty of confidentiality, that something untoward is happening within their department (or in the wider Civil Service), and places an obligation on civil servants to raise any concerns they have about the actions of others. This includes the reporting of "criminal or unlawful activity to the police or other authorities" (CSCode paras 15 – 17)

1.3 It is also important in the context of this inquiry to remember that the Civil Service "supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament" (CSCode para 1). In other words, the Civil Service is not some 'neutral umpire' between Ministers and Opposition, and the concept of political impartiality means that all civil servants will serve the elected Government of the day with dedication and professionalism, but will serve a different political administration with equal dedication and professionalism, regardless of the personal political views of civil servants themselves.

1.4 For the Civil Service to function effectively there must be a relationship of trust between Ministers and the civil servants, which the unauthorised disclosure of information breaches. Ministers, and the wider public, must be able to rely on that duty of confidentiality. For a civil servant to disclose official information without authority means that civil servant is seeking to put their interpretation of the public interest above that of their civil servant manager (their departmental Permanent Secretary or, ultimately, the Head of the Civil Service) and above that of the judgment of Ministers.

1.5 As background, the FDA campaigned for a number of years, following the acquittal of Clive Ponting in 1985 in his prosecution under the Official Secrets Act, for the introduction of what became the Civil Service Code. As a consequence of the FDA's campaign, Parliament accepted and endorsed the introduction of the Code.

2. How appropriate and effective are the routes open to those civil servants who see a need to disclose official information beyond their management chain (for example to the Civil Service Commissioners)? How could they be improved?

2.1 A civil servant who is concerned about some issue, and therefore feels the need to disclose official information beyond the management chain to which they have been authorized to circulate information, has at least three options. Firstly they could take the matter through to their Permanent Secretary. If they did not feel that this was appropriate or they feel concerned by the response, the matter can be taken up with the Head of the Home Civil Service, and any civil servant can ultimately appeal to the Civil Service Commission. Although the Code explains that a civil servant should take a concern through a line management chain, it also allows an individual to take a matter direct to the Civil Service Commission (or to the police, as noted above), and individual civil servants need to be aware of this right. The FDA believes this is an appropriate and satisfactory mechanism.

2.2 An individual might also seek, on a confidential basis, to raise the matter with their trade union.

2.3 The key area of improvement would be to ensure that all civil servants are aware of the detail of the Civil Service Code, of their rights as well as obligations, and of the nominated officer within their department. We remain concerned that this is not common knowledge in all departments, and we cannot stress too strongly the importance of addressing this.

2.4 A further potential channel for unauthorised disclosure is through publication of newspaper articles or memoirs by a civil servant who has previously left civil service employment. Sir Christopher Meyer is an example. Again, the FDA believes that this is inappropriate and is supportive of recent attempts by the Cabinet Office to strengthen the rules governing such disclosure in the media. That said, the FDA believes a distinction needs to be drawn between the unauthorised disclosure of official confidential information in this way, and retired civil servants using the knowledge and experience they have gained in their careers to offer commentary and analysis of unfolding contemporary events; civil servants in this situation can add substantially to the public and political understanding of the issues in question.

3. What are the effects of unauthorised disclosures of information on the operations of government?

3.1 The FDA believes that unauthorised disclosures of information ('leaks' in other words) are corrosive of trust and the effective operations of any government department. If the leaks are from civil servants, and Ministers lose confidence in the confidentiality of civil servants within their department, it damages, potentially for the long term, the civil service as a whole and can raise questions about the political impartiality of the Civil Service, which is one of its core principles.

3.2 However, as explained below, the FDA believes that most unauthorised disclosures of information in fact stem from political sources within government, that is, from Ministers or special advisers. Special advisers are of course civil servants themselves but unless otherwise stated they are excluded from the term civil servant used in this document.

4. How appropriate and effective are existing processes for investigating unauthorised disclosures of information? How could they be improved?

4.1 The existing processes for investigating unauthorised disclosures are in the main relatively ineffective. This is primarily because most such unauthorised disclosures stem from political sources and in these circumstances there is little real desire to identify the source of any such leak. Even where such a leak has potentially come from a civil servant it can be a very time consuming and difficult process to identify the individual concerned. Experience suggests that this is only occasionally possible unless the individual chooses to identify themselves by one means or another, or is the author of a series of such leaks (which in turn assists any leak enquiry by allowing the potential identification of those who would have had access to the breath of information being disclosed).

4.2 There are occasions when, to be frank, a leak inquiry is launched purely as a gesture. It can be questioned whether there is any value in such action, even as a deterrent. At the same time, even when there are grounds for believing that a civil servant may have leaked information, it is important that individuals receive a fair hearing, and departments do not simply seek to scapegoat people. This is particularly important where there is media interest in the issue, and one should not underestimate the pressure that the glare of publicity can bring upon an individual who is not used to being in the "public eye".

4.3 It should also be noted that in some limited circumstances leaks have stemmed from individuals whose primary reason for seeking civil service employment was to gain access to information. There have been incidences of national newspapers directing the purloining of information in this way although the FDA is not aware that any formal action against an individual or media outlet has ever resulted.

5. *What action is taken against civil servants who disclose information without authority? Is the action appropriate?*

5.1 The FDA accepts that unauthorised disclosure of information is a serious disciplinary offence that can warrant dismissal. However, a criminal prosecution of a civil servant who has leaked information should be contemplated only in the most serious of circumstances (for example when it can be clearly shown that national security is potentially undermined).

6. *How appropriate and effective is the law governing the disclosure of official information (including the Civil Service Code)? How could it be improved?*

6.1 The FDA considers that the Civil Service Code provides an effective mechanism for governing the duty of confidentiality owed by civil servants to Ministers (albeit with concerns about how effectively this has been communicated as we set out above). However the FDA considers that at present the Civil Service Code is essentially in the gift of Ministers and considers that incorporating it into statute (whether through a stand alone Civil Service Act or as part of a wider Constitutional Renewal Act) would be desirable.

7. *How appropriate and effective are the arrangements governing the disclosure of official information by ministers and special advisers? How could they be improved?*

7.1 The FDA believes that the majority of leaks in fact occur through political sources. There are a variety of motives for such leaking. On some occasions it would appear that the leaking has been done to, in effect, test public reaction to a proposed initiative by allowing its disclosure in the media at an early stage. It can also be undertaken for short term political advantage, when information is released earlier than would have been the case. The deliberate disclosure of partial and misleadingly selected statistics about knife crime in November 2008 is a case in point, which the Government might well have “got away with” had it not been for the vigilance of the UK Statistics Authority. It is also apparent that some leaking takes place on a purely malicious basis to cause damage to other Ministers. There is a widespread view in the Civil Service that the ‘Downing Street machine’ plays an important role in many politically inspired leaks (although this raises the issue of what should be regarded as ‘unauthorised’ since, except where constrained by statute, it is surely not possible to speak of the Prime Minister not being authorised to deal with government information as he sees fit).

7.2 The effect of all such behaviour by political sources within government can be damaging to morale across government in the round, and it is certainly regarded as corrosive by many departments. In addition, it may well add unnecessarily to the burdens on hard pressed officials.

7.3 However, there appears little action that the Civil Service itself can take in such circumstances. Although as noted above special advisers are technically civil servants and therefore under the authority of the departmental Permanent Secretary, in practice she or he is almost powerless to act unless the Minister concerned or the Prime Minister is willing to sanction such action. The FDA is not aware that this has ever been sanctioned. It is hard to envisage a way in which this matter can be addressed as it is a question of political culture, not of sanction.

7.4 A further disturbing trend has been the tendency in recent years for both Ministers and special advisers to publish memoirs soon after leaving office, and whilst the Cabinet Office has sought to “edit” such publications, individuals have not always agreed changes. This deliberate and self-interested behaviour by politicians sets an unwelcome example to civil servants, and has the potential to undermine trust more generally in government. In principle, the approach to the memoirs of civil servants and of Ministers should be on a comparable basis.

8. *Is there anything that Whitehall can learn from the approaches of other sectors or countries?*

8.1 Civil servants, particularly in the core government departments, work in a highly political environment where information is always a valuable currency. The Civil Service has a high standard of professional conduct and integrity, and leaks by civil servants are rare. We believe that the civil service acts, by and large, fairly and promptly where leaks are identified as having a civil service source, and that the main problem that needs to be addressed is a political culture of systematic leaking.

8.2 That said, the FDA campaigned long and hard for the introduction of the Civil Service Code and we believe that it is matter that requires a continuing and continual vigilance on the part of the senior management of the Civil Service, the Civil Service Commissioners and Parliament to ensure that every civil servant understands both understands their obligation of confidentiality but also their rights if they believe that a breach of the Code is or has occurred.

Memorandum from Dr Brian Jones

I had the privilege of giving evidence to the Committee as part of its consideration of “Leaks and Whistleblowing in Whitehall”. Having read the uncorrected transcript of my evidence I offer the following additional comments in further clarification, and hope they may be useful.

POINT 1

I am not sure I made the circumstances of my own case completely clear, especially when answering questions about why I did not speak out before the war, at least to MPs. There are a number of issues I should explain.

Perhaps the most important contextual issue was the combined culture and nature of both Whitehall and the “intelligence community”. Civil servants in Whitehall (and elsewhere) are required to act in accordance with and in support of government policy. However, intelligence analysts must not allow the analysis itself to be influenced by policy. There is, therefore, a degree of separation between what an analyst produces and the related policy of the Government and, after many years in the job I developed an approach of avoiding close scrutiny of the policy issues relating to my work. This will have been a factor that affected my thinking, or lack of it, about any future policy decisions the Government might make on Iraq. It is always the right of politicians to make decisions that do not obviously reflect intelligence assessments, so long as they are prepared to accept the consequences if their judgements are in error.

The dossier “Iraq’s Weapons of Mass Destruction” was, of course, unique in bringing intelligence and policy so close together although our perceptions of that closeness are to some degree retrospective. The document did not, in so many words, advocate a specific policy and, although many believe it made a case for war, the Government argued at the time and continue to argue, that it did not. (And the Butler review supported the Government position on this). Also, the assessment of the dossier (as opposed to the Foreword)² did not offer certainty. We (the DIS analysts) argued that, in the context of the Foreword, the lack of certainty should have been made more obvious in the main document. Further, as I discussed, it was suggested that there was information which was not available to us that reduced the degree of uncertainty.

I considered at this time not whether I should take my concerns outside the system (leak or blow whistles), but whether I should raise them with the Permanent Under Secretary, as would have been the official way. I concluded my case was not strong enough for that and I thought no further on the matter. (I could not have contemplated taking my concerns outside the system until I had exhausted all official channels). Because I felt the case was not strong enough to do this, seeking an alternative means of expressing my concern was not a factor, and I resorted to the defence against scapegoating which I explained. There was no impediment, such as consideration of future career prospects, to dissuade me from raising my concerns within the system vigorously because of my age, and my declared wish to take early retirement for personal reasons. However, had I been younger and in mid-career, I may well have judged the likely negative impact of making life difficult for so many senior people would not have been a wise course to follow. That impact would, of course, have had implications for the whole of my family.

When I referred in my evidence to timing, you should be clear that the publication of the dossier (September 2002) was well separated from the war (March 2003—almost six months), and I retired in mid January 2003. In the meantime there had been a JIC paper that seemed to cast doubt on the unseen intelligence and which I assumed would be taken into account in any future policy decision. By the time of the war vote I could not know whether more definitive intelligence had been obtained and was in no position to make an authoritative statement. (Q 286)

The Committee should be clear that up to and beyond the war, I was prepared to give senior (JIC level) officials the benefit of the doubt with regard to the totality of the intelligence they had seen, their interpretation of it, and their view of the bigger picture. However, government evidence to the Foreign Affairs Committee after the war caused me to be suspicious that a cover-up might be in process, and the first two weeks of evidence to Hutton convinced me of the intention of either the Government or officials, or both, to avoid the revelation of important elements of evidence. It was the failure of any witness before me to raise the issue of the extra intelligence that was most convincing. It was this failure of anyone to accept responsibility either for incompetence or, more likely, a failed gamble, that prompted my subsequent actions.

² Indeed I felt the provenance of the Foreword was uncertain. I tended to look upon it as an “add-on” for which No 10 was responsible. My colleague who also wrote a memo expressing concern included direct criticism of the Foreword. In evidence to the FAC, Sir Peter Ricketts, then Policy Director at the FCO and a member of the JIC, said the Foreword had the approval of the JIC, whilst Sir Joe French, who had been Chief of Defence Intelligence and a member of the JIC, told Hutton that he saw it as a political statement rather than an intelligence statement.

POINT 2

The first few weeks of my retirement saw the focus of my attention on many other things and the obviously “dodgy”, plagiarised dossier was not an issue that I thought much about. (Q 291/2) Not least because its subject matter—methods of concealment—was not a mainstream area of analysis for my experts. Other parts of the DIS studied this. (Q 290)

I hope these comments are helpful.

March 2009

Memorandum from Sir Gus O’Donnell KCB, Secretary to the Cabinet Office

PASC APPEARANCE: LEAKS AND WHISTLEBLOWING IN WHITEHALL

When I appeared before the Committee on 11 December, I said that I would write to you and provide additional information relating to the first half of the session, which was on Leaks and Whistleblowing.

Mr Liddell-Grainger asked if I could provide the number of times that the Government has asked the police to investigate a leak and they have declined. David Burrowes asked if I would provide copies of previous letters inviting the police to investigate leaks. When a referral is made to the police of a potential leak that may have resulted in criminal offences being committed, it is for the police to decide independently whether or not to pursue such an investigation. Departments refer such leaks to the police in writing after careful consideration and initial consultation with the police. Once a written referral has been made, the police can decide not to pursue an investigation after further consideration on their part after the referral. If however, the initial view of the police is that no criminal offences have been committed or a criminal investigation is not warranted then a formal referral will not be made to them and we retain the option to investigate internally with recourse to internal disciplinary procedures. However, it has been the policy of successive administrations not to publicise the independent decisions of specific police investigations into leaks nor to comment on specific outcomes where they do not result in prosecution.

January 2009

Memorandum from Sir David Omand GCB

PRELIMINARY OBSERVATIONS

We should be considering here only official information that a civil servant could reasonably be regarded as under a duty to protect, not all the possible information that might be acquired in the course of official duty, such as the colour of the office carpet.

That point is relevant to consideration of who should have the authority to agree to release of information outside official channels. There is for example a clear public interest in civil servants engaging with local government, professional groupings, academics, think tanks, industry and others in order to be able to draw on experience relevant to current agendas and to promote a more informed view of the work of the Service and of government generally. Ministers should recognise therefore that, although they hold the ultimate authority under which civil servants operate (the Carltona principle),³ they have to trust their senior civil servants to use their discretion in this sort of information release, without seeking to be over-controlling.

Such an approach makes it easier to narrow down the ranges of official information that in the interests of good government ought to require high-level authorization before disclosure, and should merit protection from unauthorized disclosure. Examples include (not exclusively) information about internal policy-making debate, including relations between Ministers and between Ministers and their civil servants and other advisers; information that is commercially sensitive; information about private individuals such as their tax position or medical status; and information that bears on national security, the prevention and detection of serious crime and the economic well-being of the nation. Papers dealing with such categories of information ought to be protectively marked to alert the reader to their potential sensitivity, but the duty to protect such information extends beyond the written word since even disclosing casual conversations can be damaging. Information that relates to secret intelligence is especially sensitive, and has its own classification system. Only the originator of such information may authorize its release; the recipient of an intelligence report, however senior, is very unlikely to be in a position to judge unbriefed the potential damage of disclosure.

³ The duties imposed upon Ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department...constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority’ *Carltona Ltd v. Commissioners of Works* [1943] 2 All ER.

RESPONSES TO PASC'S KEY QUESTIONS

1. *What are the circumstances, if any, in which a civil servant would be justified in disclosing official information without authority?*

I can envisage no circumstances in which a civil servant in post would be justified in disclosing official information, as qualified above, without authority. A civil servant who believes that the public has a right to know information which has not been released, or wishes publicly to expose suspected wrongdoing or has an issue of conscience over a policy that the Government is pursuing, must seek advice from their line management, or from the nominated officers in their Department, or if they wish from the First Civil Service Commissioner (equivalently, from the Staff Counsellor in the case of the Intelligence Agencies). If the matter remains unresolved to the satisfaction of the individual, and the individual civil servant cannot in all conscience accept the decisions of his superiors on the matter then resignation would naturally follow. The individual would then be free to pursue their case in public having taken, we must hope, legal advice about their continuing responsibilities under the Official Secrets Act 1989.

2. *How appropriate and effective are the routes open to those civil servants who see a need to disclose official information beyond their management chain (for example to the Civil Service Commissioners)? How could they be improved?*

There is no reason why the routes open, including to the Civil Service Commissioners, and in the case of the intelligence agencies to their Staff Counsellor, should not be both appropriate and effective. My experience is that when such avenues are properly used then most problems can be sorted out to the satisfaction both of the Department and the individual. Departments have adopted a system of "nominated officers" so that civil servants know there are experienced senior officials outside their line management chain to whom they can go privately to discuss issues of conscience or other problems they may be experiencing that they do not wish to discuss with their own managers. I would hope that such a system is adopted universally within the Civil Service.

3. *What are the effects of unauthorised disclosures of information on the operations of government?*

Leaks have a cumulative corrosive effect on trust between colleagues within the Civil Service, between Ministers, between Ministers and civil servants, and between the public and government. Anonymous leaking is an act of cowardice, causing suspicion to fall on the innocent. Ministers must have confidence that advice is being tendered impartially and civil servants must be confident that they can privately speak truth unto power. As Sir Warren Fisher put the point:⁴

"We shall need men who have the guts to stand up to their Ministers. As English politics get increasingly Americanised, we will find Ministers more and more inclined to do shady things—and the civil servants of the day will have to have the courage to say to their political chiefs, 'That is a damned swindle, Sir, and you cannot do it'".

4. *How appropriate and effective are existing processes for investigating unauthorised disclosures of information? How could they be improved?*

It is sensible that the Cabinet Office through the Official Committee on Security (SO) maintains responsibility for leak investigation policy, and for the commissioning of leak investigations concerning several departments or cabinet and its committees, but leaves the Permanent Heads of Departments to initiate investigatory action for problems that arise in their areas. I have in the past used experienced investigators drawn from the panel maintained by the Cabinet Office with satisfactory results. However when there is suspicion that the person leaking may have access to security classified information, and thus there may be the possibility of an offence under the Official Secrets Act 1989, then it would be prudent for Departments to consult the police, who in my experience may well be content for an internal investigator employed by the Department to continue the investigation guided by legal advice so as to avoid any possible contamination of the evidential chain should it come to that. But it is a police call whether to mount a criminal investigation.

Contrary to popular belief it is often possible for an experienced leak investigator to narrow down the field of suspects so that action can be taken to stop a leak, even when there is not the evidence to institute formal disciplinary proceedings. It is also the case in my experience that many press reports that appeared to be leaks from officialdom turn out on examination to be the result of unattributable briefing from political circles. The individuals concerned may well consider themselves to be in a position to self-authorise the disclosure of official information on the old adage: "I brief, you leak".

⁴ Cited in Chapman, R.A. (1984), *Leadership in the British Civil Service*, (London: Croom Helm).

5. *What action is taken against civil servants who disclose information without authority? Is the action appropriate?*

Civil Service disciplinary procedures are well understood and provide for the individual to be informed of the charge, to take legal advice and to put forward their defence. Each case has then to be considered on its merits, judging whether the breach of the conditions of employment including the Civil Service Code represents an irretrievable breakdown of trust between employer and employee in which case dismissal would normally follow.

What is never justified is for the individual to attempt to cling to the benefits of paid office, whilst covertly passing over information in breach of their duty under the Civil Service Code. To quote Sir Warren Fisher's 1928 statement of the duty of an official:⁵

"he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests...nor is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed". When it is established that an individual has used their position to benefit themselves then dismissal should be the outcome.

6. *How appropriate and effective is the law governing the disclosure of official information (including the Civil Service Code)? How could it be improved?*

It would help reinforce Civil Service disciplinary procedures to have the Civil Service Code put on a statutory basis.

7. *How appropriate and effective are the arrangements governing the disclosure of official information by ministers and special advisers? How could they be improved?*

This is, in my view, a matter for the Prime Minister, in ensuring that Ministers are clear about the standards they should uphold under the Ministerial code. Ministers and special advisers are of course subject to the Official Secret Act 1989 and its sanctions in the same way as any other person subject to the Act.

January 2009

Memorandum from Derek Pasquill

I would like to make the following observations with regard to questions 306 and 307 (copied below)—I understand that these comments may fall outside the guidelines you have attached, but from my perspective, I think it would be discourteous of me not to make the attempt to correct a potential misunderstanding on the part of the Committee due to misleading statements I may have made:

Q306 Mr Prentice: On your own admission, in 2005, when you joined the unit in the Foreign Office, you said in your article in *The New Statesman*, "I did not have a great deal of knowledge about British Muslim politics." So, unlike Mr Jones, you were not an expert at all. You just happened to be working in this unit, picking things up as you were going along.

Mr Pasquill: I think that is the value. I think that is because I did not have expert knowledge. I was in a position—

Q307 Mr Prentice: Oh, Mr Everyman!

Mr Pasquill: No, I was in a position not to be blinded by the trees and still see the wood".

The point here, which is one I also made in answer to question 305 "I had a special insight into this problem" is that over a period of six months, February to July 2005, and sitting at the desk of the FCO's Islamic Issues Adviser for part of this period, I had direct experience, resulting from exposure to documents as well as attendance at meetings of the Whitehall-wide cross-departmental working group/steering group on preventing radicalisation among British Muslims, far in excess of that available to any hypothetical "Mr Everyman".

When I leaked documents to a journalist I was in no doubt that I was acting against the received wisdom of many at the FCO, however, this is what whistleblowing is about: taking a critical look at received opinion, finding it lacking, and alerting the public. If whistleblowers are in the market as Dr Wright suggested, then I think whistleblowers intervene in the market to give the organisation for which they work the opportunity to pause and think.

The key document which I found most surprising and shocking in August 2005 was the powerpoint presentation "Working with the Muslim Community: Key Message", Strategic Policy Team, Home Office/FCO, July 2004, (Document 8: Policy Exchange pamphlet, "When Progressives Treat with Reactionaries") containing this insert, and from which I believe all the Government's policy confusion flows:

⁵ Reproduced as an annex to FCO Historical Department Note, LRD No. 14 February 1999.

“The root of the reformist movement can be traced to the Muslim Brotherhood (Hasan Al Banna) and Jamaati Islam (Maulana Maududi), which was orthodox but pragmatic.’ However the reformist trends have evolved into a progressive and liberal movement, adapting to their own socio-political context, especially those in Britain”.

The reason I found this document shocking was that by August 2005 I had made sufficient progress in my reading, and experience, to be in a position to recognise what was being proposed here (the mainstreaming of political Islam in the UK by the Home Office/FCO); and the surprise resulted from the perception that I had been extraordinarily dense over the preceding six-month period in not linking the Muslim Council of Britain to the Jamaati Islam/Muslim Brotherhood prior to reading Martin Bright’s article in the Observer, 14 August 2005. In other words, the Observer article was the prompt which gave me the opportunity to reconsider the information I had in my possession at the time.

I have no doubt the Government’s policy of supporting the Jamaati Islam/Muslim Brotherhood in the UK over the past few decades has been damaging to the long-term public interest—the scandal is that the government department, namely the Foreign and Commonwealth Office, which could have supplied valuable expertise and guidance in preventing radicalisation of British Muslims, was pursuing objectives not necessarily coterminous with the interests of the UK. The mystery remains as to why the FCO should think its policy of using the Muslim Brotherhood as peace-brokers has any hope of long-term success—a mystery which Parliament might consider following-up through various Select Committees and other forms of inquiry.

Note 1: I would hope that the reformist trends of the Jamaati Islam/Muslim Brotherhood construction are never mistaken for either a liberal or progressive movement while its leaders and members continue to be guided by the writings of Al Banna and Maududi. It is the responsibility of those in Government making decisions in this sphere to inform themselves of the nature of this reform movement, which I believe remains deeply antagonistic to pluralistic and liberal democracy as it is understood in the UK.

March 2009

Memorandum from the Public and Commercial Services Union

INTRODUCTION

PCS welcomes the opportunity to make a written submission to the Public Administration Select Committee. PCS—a union representing over 300,000 members, the majority of whom work in government departments, agencies and public bodies—also welcomes the invitation to give oral evidence as the inquiry topics are issues that are of concern to our union.

LEAKS AND WHISTLEBLOWING IN WHITEHALL

PCS does not encourage or support intentional unauthorised disclosures of information from within government, especially where they are likely to have adverse impact on the operations of government.

However, it is important to differentiate between information leaking for personal and political gain and whistleblowing which is more difficult to deal with because of the apparent overlap and or contradiction, in some cases, between the Official Secrets Act and the Public Interest Disclosure Act.

This tension has been played out in recent times in the cases of Derek Pasquill (FO), Katherine Gun (GCHQ) and David Keogh (MOD), all of whom were covered by the Official Secrets Act at the time they carried out whistleblowing. Charges against Mr Pasquill and Ms Gun have been dropped but Mr Keogh was convicted under the Official Secrets Act despite arguing that he felt he had a moral duty to make the disclosure as it was in the public’s interest.

The various departments and agencies have their own internal policies on whistleblowing but all of them flow from the standard of behaviour set out in the Civil Service Code, and based on the Civil Service core values of impartiality, honesty and objectivity. Whilst civil servants are expected to abide by the Code and the core values, special advisers, who are also classified as civil servants, are expected to abide by the Code but “do not have to show their political impartiality or objectivity”. Instead, the “Ministerial Code and the Code of Conduct for Special Advisers place duty on Ministers and Special Advisers to uphold the political impartiality of the Civil Service and not to ask civil servants to act in a way which would be inconsistent with this Code”. This guidance gives rise to a number of questions which the Select Committee may wish to examine in terms of whether it helps generate a climate in which leaks and whistleblowing can occur. For example:

- Why do the core values set out in the Civil Service Code not apply to all civil servants? If it is not possible for the core values to apply to all civil servants, then the Code needs to give a clear definition as to who a civil servant is.

- Does the exemption of special advisers from the core values in the Civil Service Code encourage actions on the part of special advisers which can lead to leaks or whistleblowing by civil servants covered by the Code? PCS has expressed concerns in the past, and remains concerned at repeated attempts by some ministers to expand the role of special advisers.
- Do ministers and special advisers in reality refrain from asking civil servants to act in ways which would be inconsistent with the Civil Service Code?
- In cases where ministers and special advisers do not, do civil servants feel able to resist without any repercussions, especially those in the middle and lower grades?
- Does the Code provide clear guidance for departments on whistleblowing? This is a crucial question in view of the fact that a survey of departments carried out by Public Concern at Work in 2007 using good practice criteria endorsed by the Committee on Standards in Public Life and the Government itself identified the Cabinet Office as the worst amongst government departments.

Once again, whilst we do not support intentional unauthorised leaks of information nor encourage whistleblowing, our general advice to members is that anyone considering making disclosures about their employer's activities should first seek union advice. We are also concerned that many civil servants are not made aware of how the legislation to protect "whistleblowers" is implemented in the Civil Service and how that implementation may differ from elsewhere. This is part of a general concern we have about the lack of any service wide programme to make civil servants and recruits to the Civil Service aware of its standards and values such as those set down in the Civil Service Code, although we understand that a programme is now being planned.

March 2009

Memorandum from Public Concern at Work

RESPONSE TO THE PUBLIC ADMINISTRATION SELECT COMMITTEE'S INQUIRY INTO LEAKS AND WHISTLEBLOWING IN WHITEHALL

1. The Government has long grappled with how to prevent leaks from the Civil Service. In the past, even the most draconian measures have failed and it is unlikely that leaks will ever be completely preventable. In this submission, we seek to explain how good whistleblowing arrangements can assist in reducing their occurrence. As such our comments to the inquiry are focussed on answering questions 1, 2, 5, 6 and 7 asked by the Committee.

2. There will inevitably be circumstances when information may come across a civil servant's desk that will give them cause for concern. Whilst we would hope that in most cases this could be raised internally with the appropriate person within the Department, there will be times where this is not a feasible option. How can the matter then be handled so that damaging disclosures (to the press or for political purposes for example) are less likely?

3. At present there is a risk that a civil servant, fearing their concern will not be addressed internally sees an anonymous leak to the media as the safest form of protection. Ultimately, whilst the media may not be the starting point, it is vital in a functioning democracy and can be very effective in encouraging people to regulate their behaviour or to answer difficult questions if they fail to do so. However the media is a means of exposing and may not be the most effective way to resolve or prevent wrongdoing. This is why if the Government is serious about a culture that does not lend itself to leaking in a way that is unnecessarily damaging to Government and the public, the value of making whistleblowing work has to be understood.

THE CURRENT LAW

4. At present the Official Secrets Act 1989 (OSA) imposes criminal sanctions on the unauthorised disclosure of certain categories of "official" information. There is no justification or defence in the OSA for disclosing this information without authority.

5. However, the catalyst for this inquiry was a series of disclosures which fell outside what would be considered official information under the OSA and some of this information may have been disclosable under the Freedom of Information Act 2000 (FOI).

6. We are not of the view that the existing legal framework for when information can be disclosed, consisting principally of the FOI and the Public Interest Disclosure Act 1998 (PIDA), needs readjusting. However, it does need further promotion, closer observance and a less protectionist response from Whitehall. Ensuring the legislation works as a system of checks and balances for good government is about embedding the principles of the legislation in the culture in which civil servants operate.

7. Parliament specifically included Crown servants when enacting PIDA and PIDA treats Crown servants no differently from any other employee, civil servants no differently to special advisers. So the framework is there, the question is whether it has been given effect.

8. PIDA does not encourage the anonymous leaking of information because (a) such action may raise questions about whether the disclosure was made in good faith and (b) anonymity makes it harder to establish if any reprisal was because of raising the concern as this would require evidence the employer knew the official had made the disclosure. On this basis alone it is clear that if whistleblowing arrangements are working well, raising a concern openly and internally, with the protection of PIDA, should be a more attractive option to an individual who might be worried about their own position.

GOOD PRACTICE

9. The key questions we suggest Government Departments should be asking when a leak occurs are as follows:

- (a) Had the matter already been raised internally?
- (b) If not, why not?

10. Whilst PIDA provides the framework for protection of an individual, it is the backstop for when whistleblowing has resulted in reprisal. Good whistleblowing arrangements should ensure no reprisal against a civil servant who raises a concern in good faith, but they are dependent on strong leadership from the top. Without this there is a risk that whistleblowing arrangements just consist of a policy: all too often ill thought through, legalistic and/or difficult to understand, and under promoted. Senior management must understand the importance of establishing good whistleblowing arrangements and recognise that the failure to do so can only be detrimental to the organisation that they are responsible for.

11. The Government acknowledged this in its White Paper Response on Standards in Public Life⁶ and stated it recognised the “importance of ensuring that staff are aware of and trust the whistleblowing process and for the need for boards of public bodies to demonstrate leadership on this issue”. If those at the heart of Government do not make it clear how seriously they take whistleblowing and lead by example it is unlikely that a civil servant will raise their concern internally or with a regulator and more likely that they will stay silent or make an anonymous wider disclosure.

12. Good whistleblowing arrangements will help detect and deter wrongdoing at the earliest opportunity. If staff know that it is safe and acceptable to speak up, this will deter serious wrongdoing in the first place. Ultimately an individual who is looking for information that can be traded for private gain is assisted by a culture of silence: the information is an exclusive, no one else has raised the concern so there has been no opportunity for the organisation or Department to address the wrongdoing. Such a culture of secrecy provides fertile ground for malpractice and this is what needs to be addressed by fostering an open and accountable culture.

13. Whilst the first step is for those at the top of an organisation to take the issue in hand, the next is clear and coherent guidance. Public Concern at Work conducted a review of Government guidance on whistleblowing and all Government Departments’ whistleblowing policies in 2007.⁷ What our analysis revealed is a gap in leadership had resulted in many Departments falling short of good practice. The report is relevant to the Committee’s inquiry and is attached at appendix A. It contains detailed commentary on how Departments might improve their policies and sets out how to best comply with the six criteria for good practice as outlined by the Committee on Standards in Public Life (CSPL).

14. Our recommendations in this regard remain the same. There is still the need for an urgent review of the Directory of Civil Service Guidance to ensure consistent and clear messages are given to Departments on whistleblowing policies.

15. As the Committee has already noted, guidance on good whistleblowing arrangements has been set out by the CSPL. Further guidance on how to get it right can be found in the recently published British Standards Institution *Whistleblowing Arrangements: Code of Practice* (The Code of Practice). This can be downloaded at www.pcaw.co.uk/bsi. The Code of Practice incorporates guidance from CSPL and 15 years of our experience in public interest whistleblowing. The Code of Practice is designed to help organisations understand the benefit and importance of good whistleblowing arrangements. We recommend the guidance be endorsed as a means of informing good practice throughout Whitehall. We would be pleased to discuss how we may assist in this regard.

INDEPENDENT ADVICE

16. Where staff are worried about what to do if they suspect wrongdoing in the work place, access to independent advice is invaluable. This will provide them with a safe haven to discuss their concern and receive advice on how to proceed sensibly and responsibly. Such advice can be sought from a union or Public Concern at Work, who provide free confidential advice to individuals faced with such a dilemma.

⁶ Cm 6723 December 2005.

⁷ I understand the committee has a copy of our report entitled Whistleblowing in Whitehall. This can also be found at <http://www.pcaw.co.uk/policy/civilservice.htm>

EXTERNAL OVERSIGHT

17. We welcome the revised Civil Service Code and the clearer guidance given to civil servants if they believe they are being asked to act in breach of the code and that, where necessary, a civil servant can approach the Civil Service Commissioners directly.

18. The Code is overarching guidance for civil servants and provides some routes to external oversight in relation to criminal matters. We understand from our correspondence with the Civil Service Commissioners that their remit is to look into matters concerning the behaviour of civil servants and not to receive substantive concerns about wrongdoing. On this basis they have said it would not be appropriate for the Civil Service Commissioners to become a prescribed regulator under PIDA 43F.⁸ Clearly there is a gap in external oversight if this remains the position.

19. As our report revealed, the guidance for civil servants who might wish to raise a concern externally is unclear. Who should they go to outside the Department? A lack of such guidance may well mean the default is to resort to a media disclosure. The impression that a concern can only be raised internally may also trigger protection for a media disclosure as the individual may have reason to believe they will be victimised for raising a concern with a regulator.

20. To provide sufficient clarity as to routes outside of the Department we suggest that the Chairman of an appropriate Select Committee, such as the Public Administration Select Committee, could be the prescribed person under PIDA 43F for civil servants. Not only will this ensure the Civil Service Commissioners' role remains intact under the Code but it will re-establish parliamentary oversight without the interference of party politics. It will provide further reassurance as this provides access to an independent body that is clearly distinct from the Civil Service.

ASSURANCES AGAINST REPRISAL

21. The very first step in this process is to ensure the systems exist and that they are trusted—for this to work, civil servants need to see the arrangements working in practice, with no reprisal. That way the internal route will be the default in almost all cases.

22. Whistleblowing arrangements can make clear that assurances in the policy will not apply to a member of staff who maliciously raises a matter they know to be untrue or discloses information for personal gain. In such circumstances disciplinary action may well be appropriate.

23. However few situations are clear cut. As such, we believe that any action taken against an individual for whistleblowing should be very carefully considered in light of the potential chilling effect both on whether an individual might raise a concern in future.

24. Recent events have caused much confusion over when and how civil servants may disclose information. Now more than ever, clear guidance is needed to ensure that silence does not become the preferred option regardless of the risk.

PROMOTION AND MONITORING

25. We note that since the revised Civil Service Code has been actively promoted the Civil Service Commissioners have received significantly more contacts they deem legitimate under the Code than in years past and put this in part down to the promotion of the Code.⁹ We recommend that once good whistleblowing arrangements are in place they are included as part of staff induction, that staff receive training on the arrangements and that they are regularly promoted and annually refreshed.

26. We note in addition the Civil Service Commissioners have surveyed Departments on how well they promote the Code. We suggest as part of a health check on whistleblowing arrangements, Departments annually survey their nominated officers and ask:

- (a) How many whistleblowing concerns have you received?
- (b) How many were partly or wholly well-founded?

We suggest Departments publish these results and give a gist of the kinds of concerns that were raised and where possible indicate success stories. All too often it is only those that end in disaster that people know and talk about.

SUMMARY OF RECOMMENDATIONS

1. A Chairman of an appropriate Select Committee becomes a prescribed person for civil servants under 43F PIDA.
 2. The Cabinet Office demonstrates leadership and issue guidance on best practice for whistleblowing arrangements.
 3. Such arrangements include clear guidance for staff on how and when they may approach the relevant regulator.
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⁸ Letter of 25 July 2003 from Baroness Usha Prashar CBE to Guy Dehn, Public Concern at Work.

⁹ Civil Service Commissioners Annual Report 2007–08.

4. Departments revamp and refresh their whistleblowing arrangements to ensure they meet good practice.
5. All departments be required to report on the efficacy of their whistleblowing arrangements in their annual report.
6. Training be given to management and nominated officers on handling a concern.
7. Annual surveys of nominated officers on the number and types of concerns received.
8. Periodic surveys of all staff to promote whistleblowing and gauge staff awareness.
9. New staff be issued the revised whistleblowing guidance alongside the Civil Service Code.

February 2009

Appendix 1

WHISTLEBLOWING AND WHITEHALL

A review of how the policies of Government Departments comply with accepted good practice on whistleblowing

INTRODUCTION

This paper reviews the advice that Government Departments give their staff on whistleblowing, in the light of the good practice set out by the Committee on Standards in Public Life and accepted by Government (set out in Annex A). The time is right for such a review as the value of whistleblowing in promoting accountability and deterring malpractice is now being recognised at the top of Whitehall. The new Civil Service Code issued in June 2006—the relevant sections of the Code are set out at Annex B—for the first time mentions the Public Interest Disclosure Act 1998 (PIDA).

The purpose of the review is to assess where good practice in Whitehall is on this issue and to inform the work of Departments as they develop their whistleblowing arrangements. It should be stressed that the review looks only at the content of Departmental policies and it does not assess the extent to which those policies are promoted by Departments or work in practice. This is something that we will return to in the light of the Government's recognition—stated in its White Paper Response on Standards in Public Life (Cm 6723, December 2005)—of the “importance of ensuring that staff are aware of and trust the whistleblowing process and for the need for boards of public bodies to demonstrate leadership on this issue”.

As the League Table on page 12 shows, while the majority of Government Departments offer their staff some helpful guidance on whistleblowing, few policies fully comply with accepted good practice and some fall far short of it. The major flaw stems from what appears to be a concerted desire and intent that whistleblowing concerns should be kept internal in all circumstances. The origins of this flaw lie in the Directory of Civil Service Guidance (extracts of which are in Annex B) which is used by Government departments to comply with the law and good practice. The result of its errors are that a good many policies flout accepted good practice on whistleblowing, ignore the Civil Service Code and are misleading about the statutory scheme for whistleblowing in the Public Interest Disclosure Act.

METHODOLOGY

In August 2006 we wrote to Government Departments asking them to send copies of their current whistleblowing policies or to confirm that the policies we had collected in 2005 were still current. We were grateful for the co-operation we received from most Departments. We should record however that, despite reminders, we received no reply from the Cabinet Office, the Department of Trade and Industry (DTI), the Department of Constitutional Affairs (DCA) or the Department for the Environment, Food and Rural Affairs (DEFRA). We have in these cases assumed that the policies they supplied to us in 2005 remain operative.

We reviewed each Department's policy against six criteria, based on the good practice recommendations of the Committee on Standards in Public Life, set out in Annex B. After a draft of this paper and the rankings were supplied to those departments that had participated in the survey, we reviewed the analysis in the light of comments received and added one additional criterion—rating how well we consider the policy would give reassurance to an official unsure whether or how to raise a concern. The overall rankings we gave each Department are set out in the league table on page 12 (which also explains the abbreviations used here for Departments' names). These rankings represent our estimate of how far Departments meet the basic requirements of setting out advice to staff on policy. As stated above, this was a paper review and did not cover key issues such as how the guidance is communicated to staff, how it actually works in practice and whether staff are aware of it.

THE SEVEN CRITERIA

1. *Commitment & clarity*

Leadership is paramount. In order to deter and detect malpractice, it needs to be made clear at the highest levels of the organisation that it treats malpractice seriously and welcomes employee concerns. If employees are unsure of their organisation's commitment to these two points, it is unlikely they will raise concerns about malpractice. The same principle applies to Government departments.

It is good practice to make clear at the outset that the Department is committed to achieving the high standards of conduct. For example:

The Department of Health is committed to achieve the highest possible standards of service and ethical standards in public life. Members of staff should not feel intimidated in reporting wrongdoing that should be disclosed or raising matters that they feel concerned about.

Placing a whistleblowing policy in this context is helpful as it gives the right signals and helps embed a positive approach to accountability. It is useful to go on to say that staff are encouraged to raise concerns even if they have only a suspicion—'if in doubt, raise it' is an encouraging message which some Departments make explicit (DfES). The Department for Culture, Media and Sport (DCMS) elaborates as follows:

If something is troubling you which you think we should know about, please tell us straight away. We would rather that you raise the matter when it is just a concern rather than wait for proof.

We think this strikes the right tone: it is misguided for employers to suggest to staff that whistleblowing is confrontational. Nor is it desirable to urge whistleblowers to keep silent until they have proof. In this context statements like "the more evidence you can present the better" (MOD), though not untrue, might encourage amateur investigation and prove unhelpful to the Department and indeed to the whistleblower (as the courts have held an overzealous investigation can jeopardise protection under PIDA).¹⁰ The message "You do not need proof; that is our responsibility" (DTI, FCO) is better.

It is important that the policy distinguishes between public concerns (whistleblowing) and private grievances and gives practical examples of each. Some Departments have done this, and the following useful examples of public concerns have been given:

- fiddling expenses claims (MOD);
- rigging a contract for personal gain (MOD);
- misuse of official information to further private interests (DfES);
- bias in the public appointments process (DfES);

as against examples of grievances:

- not having been promoted (MOD); and
- harassment/bullying (MOD/DH).

In our view it is unhelpful and counterproductive to mix in with concerns about wrongdoing matters of individual conscience—such as the options for an official who is strongly against abortion when his or her policy work takes the official into this field.

Cabinet Office advice to staff is in need of amendment. It is headed "Procedure for use by Cabinet Office staff who wish to make an appeal under paragraph 11 of the Civil Service Code". This is hardly inviting or reassuring to an official who is concerned about some possibly serious wrongdoing but is unsure to whom they should talk. Additionally it is unsatisfactory because the term "appeal" is overly formal, if not adversarial and inaccurately describes the purpose of those who raise whistleblowing concerns.

While supporting documents and FAQs can be very helpful, clarity is not aided where there is an inconsistency between these documents. For example, the FCO supplied staff with a circular, a chapter of guidance, a leaflet and a sheet of 'Frequently asked questions' which are not always consistent with each other.

2. *Offering an alternative to line management*

It is right to encourage staff to see their line manager as the normal first port of call. However there will be cases where staff do not wish or think it appropriate to use the line management chain. Their concern may relate to the behaviour of an immediate manager and in some cases they may be reluctant to refer the matter further up the management chain. The option of by-passing this chain is consistently made available, but there are a variety of approaches. These are the contacts within Departments, but outside line management, which are named in policies:

- Nominated Officers (generally)
- Officers with professional responsibility for standards (MOD);
- Departmental advisers specialised in whistleblowing (DfES, MOD, DTI);
- Internal audit (DH, DCLG, DCMS, DCLG);

¹⁰ Bolton School v Evans (Court of Appeal) [2006] EWCA Civ 1653.

-
- HR (DCMS, DfID, DfES, FCO, DCA);
 - Welfare Officers (HO, DCA, DFID);
 - A Risk Assurance Division (DWP);
 - A Departmental whistleblowing hotline (DWP, DEFRA); and
 - Special routes for particular issues—notably special contacts (sometimes a hotline) for suspicions of fraud (DFID, HO, DH, MOD, FCO).

Trade Unions and the Civil Service Commissioners are also mentioned in this context. This will be confusing to some as they are not part of the Department's command and control. In our view they each fall more properly under other sections and we deal with them below.

Usually more than one of these options is available. However in a few cases, Nominated Officers are the only contact mentioned (SE, HMT, DCA, Cabinet Office). As they tend to be very senior officials, who may not be or be seen to be readily approachable, that may prove counter-productive—particularly if the single Nominated Officer is also the source for advice on how to approach the Civil Service Commissioners if the official is dissatisfied with his/her response (SE). Now that the role of the Commissioners, including their willingness to consider taking reports direct, and their contact details, are clearly spelt out in the Civil Service Code, there seems no need to interpose anybody between the civil servant and the Commissioners.

3. *Access to independent advice*

In situations where staff feel unsure whether or how to raise a concern or where they suspect the overall management may condone or not wish to learn about some improper conduct, staff will find themselves in a dilemma about raising the concern with internal contacts. For this reason, they need to be able to discuss their concerns with an independent body.

Not all policies address this point. Where they do, they mention one or more of the following possibilities:

- Trade Unions (DCMS, DfES, DH, DFID, HO, DTI, Cabinet Office, DCA, DEFRA);
- Public Concern at Work (PCaW) (DCMS, DfES, DH, DFID, DWP, HMT, DTI, DEFRA);
- An independent professional external provider (the Employment Assistance Programme) (FCO, DFID);
- Legal advisers (DCMS, DH, DTI, DEFRA);
- A named contact at the NAO (FCO, DCLG); and
- The Financial Services Authority's helpline (DH).

The last two of these are external regulators and are unlikely to hold themselves out as being a source of confidential advice—they fall more properly under the section which deals with raising concerns externally (see section 5 below). Departmental legal advisers will have a primary duty to their Department rather than to the individual official and so should fall more properly under section 2 above.

4. *Openness and confidentiality*

Several policies contain sensible statements about respecting whistleblowers' confidentiality. One good example is DCMS:

The Department recognises that you may want to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. However, in some circumstances, this may make it more difficult to fully investigate the matter. If the situation arises where we are not able to resolve the concern without revealing your identity, we will discuss with you how we can proceed.

This statement is helpful. The assumption is that concerns are raised openly but where confidentiality is requested, it makes clear there will be advance consultation if it proves difficult to resolve the concern without revealing the whistleblower's identity.

Conversely, whistleblowers, especially in cases where they are only voicing suspicions, may not be encouraged to come forward by policies which:

- make clear that in any case, their report, and the conclusions of the Nominated Officers on it, will go to the Permanent Secretary (HMT); and
- state starkly that confidentiality “cannot be protected where this would have an adverse effect on any disciplinary, civil, or criminal proceedings” (DH).

On the other hand, policies should not encourage staff to assume or seek anonymity. On this issue, the DCMS policy is again worth quoting as a good example:

Remember that if you do not tell us who you are, it will be much more difficult for us to look into the matter or to give you feedback. Accordingly, while we will consider anonymous reports, this policy is not designed to deal with concerns expressed anonymously.

Anonymous disclosures will also raise immediate questions about the motivation, good faith and reliability of the whistleblower. One policy (DfES) states that whistleblowing covers certain cases of discrimination “where the whistleblower has good reason to preserve their anonymity”. The difficulty here is that in cases of specific sexual discrimination or harassment it is very difficult for an employer to proceed lawfully or effectively without the evidence of the victim and to imply otherwise can only sow confusion and raise expectations that cannot be delivered.

While there is nothing in the legislation about respecting whistleblowers’ confidentiality, one policy (FCO) claims the Act ‘gives an assurance of confidentiality’ for disclosures made in the right way.

We believe open reporting should be encouraged, that staff should understand that their identity may be deduced even if it is not disclosed, and that withholding their identity can increase the focus on the messenger, rather than the message. DCA’s policy is strong on open reporting, saying “you are encouraged to put your name to any disclosures you make. Concerns expressed anonymously are much less credible and more difficult to investigate fully...”. While this is good, it does not mention the option of raising the concern in confidence should an official be worried, with good reason or not, about possible reprisals from a manager or colleagues.

One policy states “if you raise a concern in good faith, ie not maliciously... your discussions with any of the above officers/units remains completely confidential” (FCO). This is an undeliverable promise: the content of the discussion, at least, will need to be revealed if any action is to be taken by the Department on any serious wrongdoing.

5. Whistleblowing outside

Staff need to be aware of when and how they may properly raise concerns outside the Department—for example with an external auditor, a regulatory body or a law enforcement agency. Not only is this an obligation on officials, where there is evidence of a criminal or unlawful act, under paragraph 17 of the Civil Service Code, but it is a key aspect of the statutory scheme in PIDA. This is the main area where Departments seem to have real difficulty, caused largely, we assume, by the inaccurate advice given in the Directory of Civil Service Guidance. This Guidance sets out a purely internal procedure, with the possibility of reporting to the Civil Service Commissioners if the whistleblower is unhappy with the response, and then states that ‘these procedures should also be followed if you wish to make any other disclosure covered by the 1998 Act’. This advice conflicts with PIDA’s approach and has the unintended effect of triggering the protection for media disclosures (because it will give officials reasonable cause to believe they will be victimised for going to a prescribed regulator). Not surprisingly, some Departments have been misled by this central advice and their policies are seriously defective as a result (eg FCO, DCMS, SE, DCA, Cabinet Office).

While internal reporting should be encouraged and is the most readily protected form of disclosure under PIDA, some Departments go beyond encouraging it by making general statements implying it is the only option. As we have said, not only does this flout good practice accepted by Government for the whole of the public sector, it ignores the Civil Service Code, and fundamentally misunderstands and misdescribes PIDA. Examples include:

- whistleblowing . . . enables staff to be protected while reporting unethical, criminal or unlawful activity to employers (DfES);
- a person is protected if they make a disclosure in good faith to their employer or to a person appointed by their employer to receive disclosures (FCO);
- staff are encouraged to raise matters through internal procedures where appropriate and practical, and the legislation specifically refers to compliance with internal procedures authorised by an employer (HO); and
- two conditions must be met. The first is that the disclosure is of a certain type—ie what is known as a “qualifying disclosure”. The second is . . . to make a disclosure internally in the Department (MOD).

In the absence of other advice, staff reading these statements are unlikely to understand that external reporting is also protected in a wide range of circumstances. If they are unsure whether their department will deal with the issue or will protect them from reprisals, this approach leaves staff with two simple options—the first is silence and the second is the anonymous leak. While some policies (DfES, DEFRA, DTI) suggest that whistleblowers should seek advice from their Trade Union or from PCaW on when to raise concerns externally, best practice as set out by the Committee on Standards in Public Life, accepted by Government and reflected in the Civil Service Code is that policies should address the options for external disclosure.

Some policies mention the Civil Service Commissioners, but usually emphasise only their role as a final appeal when the whistleblower is not satisfied with the outcome of the internal procedures (HMT, DfES, DCMS, Cabinet Office, DCA). In fact the Commissioners have recently been allowed to accept a case which has not been raised locally first and so they no longer exercise what is purely an appeal or review function. However, while we accept the Commissioners have an important and welcome role to play, we do not think they should be the sole external body mentioned in a policy. First, their remit at present appears more akin to reviewing how a concern has been handled or how a whistleblower has been treated rather than whether

the concern about malpractice has been substantiated and needs to be addressed. Secondly, while the Commissioners are independent of Departments, that may not be the impression that all civil servants have. For these reasons, there seems to us to be a need to mention other external contacts such as those statutory bodies prescribed under PIDA.

This does not imply that policies should spell out exactly when going to the media is allowed—indeed policies can sensibly say they should not be read as authorising media disclosures. However in our view it is counter-productive and extreme to say that going to the media would almost certainly constitute a disciplinary offence. We agree that going direct to the media is unlikely to be helpful or a sensible first port of call in almost all cases. The circumstances in which PIDA protects media disclosures—essentially where they are both justified and reasonable—are uncontroversial and Departments should recognise the balance in the Act. What is important is that the policies should clearly set out independent external bodies that can be contacted and it is this we now consider.

Under PIDA, staff are protected if they report to a prescribed regulator. PIDA protects disclosures to specified regulators because the existence of such protection makes it more likely that concerns will be properly raised and addressed internally and far more likely staff will have the confidence that they will. This beneficial effect can only be achieved if staff and managers are aware of the external route. MOD has made this clear to their staff in these terms:

PIDA also offers legal protection if you should make your disclosure to a relevant regulatory body—such as, for example, the NAO or the HSE—provided that you have a genuine and reasonable belief that something is wrong.

It is not the case, as DEFRA's policy states, that the whistleblower must have a 'good reason' before raising the matter outside the organisation. DEFRA's policy defines 'good reason' as including cases where employees reasonably believe they will be victimised, or that the organisation will cover up the matter. This is wrong and shows they are confusing the conditions for reporting to a regulator with those for making a wider disclosure (eg to the media).

The National Audit Office will have a clear interest in any financial matters likely to be raised under whistleblowing policies and it is for this reason that it is prescribed under PIDA in respect of "the proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services". But the helpful role of the NAO and of prescribed regulators in general is not well explained and is an area where most Departments could improve their guidance.

In this context, some misleading advice is given about compliance with confidentiality requirements. The Civil Service Code makes it clear that disclosures to appropriate authorities is authorised and PIDA itself makes it clear such disclosures are protected, notwithstanding any duty of confidence. It is therefore misleading to say that "A civil servant choosing to make a disclosure externally... would need to take account of their duty of confidentiality in regard to information not in the public domain" (HO). This is not a relevant factor under PIDA or the Civil Service Code where a civil servant approaches a regulator.

6. *Sanctions*

As part of the critically important protection for bona fide whistleblowers, policies should make clear to both management and staff that victimising employees or deterring them from raising a concern about fraud or abuse may be a serious disciplinary offence. Equally, it should make clear that abusing the whistleblowing process by raising unfounded allegations maliciously may also be a serious disciplinary matter.

We think that the DCMS policy gets it right by assuring whistleblowers that they will not be subject to disciplinary action if they raise a matter in good faith, but adding:

this assurance does not extend to someone who maliciously raises a matter they know is untrue.

It is important that Departments recognise that the fact a concern may not turn out to be well-founded does not mean it was not raised in good faith. Accordingly it is counter productive for a policy to state this may be so by saying "staff who make claims which are untrue, vexatious or malicious may be subject to disciplinary action" (DH). The same policy says elsewhere, confusingly, that staff may be disciplined for making "mischievous, malicious or vexatious complaints which they know to be untrue". The latter seems to us the correct statement: the public interest is served if staff come forward with concerns that are honestly believed, even if they turn out to be untrue. It is also served if staff come forward with true concerns even if their motives may be mixed. We think it self-evident that it is only if a report is both untrue and maliciously motivated that there may be a need to invoke disciplinary procedures.

Another policy (MOD) states that whistleblowers qualify for protection provided the disclosure "is not knowingly false or malicious and you have no vested interest in the outcome". This takes an erroneous view of the statutory regime and, we believe, of the wider public interest. While there is no public interest in encouraging staff to raise concerns that they know are false, there could yet be in cases where they themselves are motivated by malice or where the whistleblower may be seen to have an interest in the outcome—for example the dismissal of a corrupt and disliked boss.

Some policies state that “if you make a disclosure to someone outside the internal whistleblowing procedure and if what you say breaches the Official Secrets Act, then you may be subject to criminal and/or disciplinary procedures” (DEFRA, DTI). It is true that under PIDA a disclosure is not protected if the whistleblower is shown to have committed a criminal offence by making it, but this does not hinge on whether the disclosure is internal (within the Department) or external (eg to a regulator). As the Official Secrets Act is limited to cases where damaging disclosures are made which affect security, defence, criminal investigations or international relations, it is unlikely to be breached by whistleblowers other than in rare cases. This will be worth making clear, since there remain myths in and out of Whitehall about the scope of the 1989 Official Secrets Act, deriving from memories of the obsessively insecure 1911 Act.

7. Reassurance

After the initial consultation with the participating departments on the draft report, an additional criterion has been included in the assessment of departmental whistleblowing policies. This criterion addressed how well we rated the policy as giving reassurance to a staff member who read it so that he or she would raise a concern in line with it. In performing this, we drew on the experience generated from our helpline which enables us to pick up on issues and common problems that whistleblowers face when they first come across potential wrongdoing and are unsure whether or how to raise their concerns.

The Department of Health policy is an example of a weak policy in this respect. Its use of confusing flowcharts and the section entitled “Interaction With Legislation” does little to reassure the reader. This policy also confuses the legal test for prescribed bodies with wider tests. The policy of the Ministry of Defence deals both with handling concerns and raising concerns—resulting in a document that has two different purposes and two distinct readers.

OTHER ISSUES

In an attempt to assist Departments review their whistleblowing arrangements, we set out below other issues which they should also be considering.

Staff awareness

Staff should be informed of the policy and the contact points in induction packs and as part of training courses. They should also be regularly reminded of them by such means as emails and posters. It is vital that staff trust the contact points and they should be assured of their discretion and probity. Telling good stories will help—all too often it is only negative whistleblowing stories that become known.

We have little information on how Departments ensure awareness, though we know most have placed their policies on their websites. This is a helpful step, but not sufficient to ensure awareness. We are aware that dissemination of the policies is patchy in practice, and that GRECO, the Council of Europe’s anti-corruption body, recommended in its Second Report on the UK published in 2004 that the issue should be covered in in-service training. We also note that the Government agreed, in its response to the Tenth Report of the Committee on Standards in Public Life, that there is a need for regular communication to staff about the avenues open to them for raising concerns. It will be important for the Cabinet Office to follow up these points.

Review

There is evidence that many Departments revised their guidance during 2006, whether in response to the new Civil Service Code or as a result of the review of policies by the NAO. In general these changes have been positive. Nevertheless we encourage Departments not to leave the matter there but to monitor their procedures regularly. Ideally Departments should annually review how the procedures work in practice, check levels of staff awareness and trust, and refresh the policy as needs be.

By contrast, the absence of any reply to or acknowledgment of this research from the Cabinet Office, the Department of Trade and Industry, the Department of Constitutional Affairs or the Department for the Environment, Food and Rural Affairs paints another picture. It suggests that in these leading departments there has been no review and none is planned to ensure departmental policies comply with the statutory scheme, Government policy and the Civil Service Code.

Public Interest Disclosure Act 1998 (PIDA)

We are glad that all the guidance we have seen shows some awareness of PIDA and we are pleased that this recognition of the statutory scheme is now picked up in the new Civil Service Code. Indeed, if anything, we feel there may be too much emphasis on PIDA in the policies of the Department of Health and the Ministry of Defence as the law is only an safety net to a good policy which comes into play when things have gone wrong. As an example, policies occasionally refer to the concept of reporting ‘under PIDA’ (FCO, DCMS). This phrase seems to be based on a misunderstanding: it makes no difference whether or not the whistleblower says they are reporting under PIDA. The Act protects disclosures which comply with its tests, even if the person making the disclosure is unaware of its existence.

SUMMARY AND RECOMMENDATIONS

As this review shows, while the clear majority of Government Departments offer their staff helpful guidance on whistleblowing, few policies fully complied with accepted good practice and some fell far short of it. The league table on page 12 rates the whistleblowing policies of Government departments against each of the six criteria of accepted good practice and against a seventh, the reassurance the policy would give an official unsure whether to raise a whistleblowing concern or not.

While congratulations are due the top scoring departments on the content and tone of their whistleblowing policy, the performance of the bottom three departments places them firmly in the relegation zone. There is one important caveat to this exercise—it is a review of the policies as stated, it does not assess how each department does in practice encourage or discourage its staff to raise concerns and how well its staff and managers are aware of and confident in the arrangements.

As this review shows a major flaw in many of the policies stems from what appears to be a concerted desire to insist that whistleblowing concerns should be kept internal in all circumstances. Such misplaced and counter-productive advice appears to be the result of the erroneous provisions in the Directory of Civil Service Guidance (extracts in Annex B). By suggesting—albeit wrongly—that the legislative framework creates a hermetically sealed internal process for public interest whistleblowing, the Guidance gives managers little encouragement to address any substantive concern which may cause disruption or embarrassment. This is especially the case where an organisation’s hierarchical style means a senior manager’s default is to back his manager or where the rotation of posts means there is a good chance that by the time the risk does eventuate it will be someone else’s problem.

With the new Civil Service Code expressly citing the protection in the Public Interest Disclosure Act, its referral to the Directory of Civil Service Guidance as a source of valid information suggests a lack of coherence and leadership at the centre. The fact that the Cabinet Office languishes at the foot of the league table reinforces that impression.

We recommend that:

- The Cabinet Office should amend the Directory of Civil Service Guidance without delay so it provides accurate and helpful guidance on the Public Interest Disclosure Act and reflects the new Civil Service Code;
- The Departments at the foot of the league table (Communities & Local Government, the Scottish Executive and the Cabinet Office) should urgently upgrade their whistleblowing arrangements;
- All Departments should annually review their whistleblowing arrangements in the light of any serious incidents that have occurred where it is reasonable to assume that an official should have had a genuine concern about the issue ; and
- All Departments should ask staff about their awareness of and confidence in the whistleblowing arrangements as part of their annual staff surveys.

LEAGUE TABLE OF WHITEHALL DEPARTMENTS
ON WHISTLEBLOWING GOOD PRACTICE

<i>Department</i>	<i>Commit & clarity</i>	<i>Options outside line manager</i>	<i>Indepen- dent advice</i>	<i>Openly & confident</i>	<i>External o'sight</i>	<i>Sanction</i>	<i>Re- assurance</i>	<i>Total</i>
Culture, Media and Sport (DCMS)	3	4	4	4	4	4	2	25
International Development (DFID)	3	4	4	4	4	3	2	24
Education and Skills (DfES)	4	3	4	3	2	4	3	23
Home Office (HO)	3	3	3	4	2	4	2	21
Trade and Industry (DTI)	3	2	4	3	2	4	4	20
Department of Health Environment, Food and Rural Affairs (DEFRA)	3	4	4	2	3	3	0	19
Transport (DfT)	3	3	4	3	2	2	2	19
Work and Pensions (DWP)	3	2	2	3	2	4	3	19
Foreign and Commonwealth Office (FCO)	3	3	4	2	1	2	2	17
Defence (MOD)	2	3	3	3	1	2	2	15
HM Treasury (HMT)	3	4	0	3	2	2	0	14
Constitutional Affairs (DCA)	3	2	3	1	1	2	1	13
Communities & Local Government (DCLG)	1	1	2	1	1	1	2	9
Scottish Executive (SE)	2	2	0	0	1	0	1	6
Cabinet Office	0	1	1	0	2	0	0	4
	0	1	1	0	1	0	0	3

Annex A

GOOD PRACTICE ON WHISTLEBLOWING

Since its launch under the chairmanship of the late Lord Nolan, the Committee on Standards in Public Life has continued to highlight the role whistleblowing plays “both as an instrument of good governance and a manifestation of a more open culture”. Its approach and recommendations have been adopted by the Combined Code and regulatory bodies as relevant to organisations in all sectors. Emphasising the important role whistleblowing can play in deterring and detecting malpractice and in building public trust, the Committee has explained:

“The essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course”.

In making this work, the Committee has said that “leadership, in this area more than in any other, is paramount” and that the promotion of the whistleblowing arrangements is critically important. The Committee has long distinguished a ‘real’ internal whistleblower from an anonymous leaker to the press and has recently stressed that the Public Interest Disclosure Act should be seen as a “backstop” for when things go wrong and not as a substitute for an open culture. The Committee’s early recommendations were accepted in the 1997 White Paper on The Governance of Public Bodies.

Drawing in part on the practical experience of Public Concern at Work, the Committee has recommended that a whistleblowing policy should make the following points clear:

1. The organisation takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistleblowing concern from a grievance.
2. Staff have the option to raise concerns outside of line management.
3. Staff are enabled to access confidential advice from an independent body.
4. The organisation will, when requested, respect the confidentiality of a member of staff raising a concern.
5. When and how concerns may properly be raised outside the organisation (eg with a regulator).
6. It is a disciplinary matter both to victimise a bona fide whistleblower and for someone to maliciously make a false allegation.

However good the written policy is, how it works in practice is critical. As the Commerce & Industry Group state: “How an organisation responds to a whistleblowing situation is the litmus test of its corporate governance arrangements which proves whether they are genuine or just lip service”. In its most recent report the Committee on Standards in Public Life “emphatically endorsed” additional elements of good practice drawn from Public Concern at Work’s evidence that organisations should:

- (i) ensure that staff are aware of and trust the whistleblowing avenues;
- (ii) make provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;
- (iii) continually review how the procedures work in practice; and
- (iv) regularly communicate to staff about the avenues open to them.

In its 2005 White Paper on Standards in Public Life, the Government responded that “it agrees on the importance of ensuring that staff are aware of and trust the whistleblowing process, and on the need for the boards of public bodies to demonstrate leadership on this issue. It also agrees on the need for regular communication to staff about the avenues open to them to raise issues of concern”.

Annex B

EXTRACTS FROM EXISTING CENTRAL ADVICE TO CIVIL SERVANTS

THE CIVIL SERVICE CODE

The new CSC, issued 6 June 2006, includes the following:

- 15 Your department or agency has a duty to make you aware of this Code and its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.
- 16 If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department’s nominated officers who have been appointed to advise staff on the Code.
- 17 If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain; alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate authorities.

18 If you have raised a matter covered in paragraphs 15 to 17, in accordance with the relevant procedures,¹¹ and do not receive what you consider to be a reasonable response, you may report the matter to the Civil Service Commissioners. The Commissioners will also consider taking a complaint direct. Their address is:

3rd Floor, 35 Great Smith Street, London SW1P 3BQ
Tel: 020 7276 2613
email: ocsc@civilservicecommissioners.gov.uk

If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.

THE DIRECTORY OF CIVIL SERVICE GUIDANCE

The Directory of Civil Service Guidance dates from 2000. The existing text (vol 2 pp 54-56) summarises the 1998 Act effectively. It then goes on to state that:

6. The Civil Service Code advises that you should report any actions that are inconsistent with its provisions (paragraph 11). First you should raise the issue with your line manager. If for any reason you would find that difficult you should report the matter to the nominated appeals officer within your department.
7. If you are unhappy with the response you receive, you may report the matters to the Civil Service Commissioners (paragraph 12 of the Civil Service Code). Exceptionally the Civil Service Commissioners will consider accepting a complaint direct.

These paragraphs are more introspective than PIDA and difficult to reconcile with the Civil Service Code which states (now in para 17) that evidence of criminal or unlawful activity should be reported to “the police or other appropriate authorities”.

PIDA protects disclosures to statutory regulators such as the National Audit Office because the existence of such protection makes it more likely that concerns will be properly raised and addressed internally. However this beneficial effect can only be achieved if staff and managers are aware of the external route. Contrary to the spirit and letter of PIDA, paragraph 8 of the Guidance then states:

8. These procedures should also be used if you wish to make any other disclosure covered by the 1998 Act.

The final section of the Guidance emphasises this different approach and is difficult to reconcile with the legislation:

Will I be protected if I blow the whistle before going through the internal procedures?

9. Only you can make this judgement, and in doing so you will need to consider the preceding paragraphs carefully. It is preferable and this is at the heart of the Public Interest Disclosure Act to raise the matter internally if appropriate and practical. It is after all in the interests of the organisation and its workforce that issues and concerns are aired in this way. If you are in any doubt you should speak to your departmental nominated officer. Your conversation will be treated in absolute confidence

First, this implies that internal disclosure is not whistleblowing. Secondly, it gives an overly complicated and negative impression of the protection available where an official goes, say, to the National Audit Office, the Information Commissioner or another prescribed regulator. Thirdly, as expressed it appears to put the departmental nominated officer in an impossible position if he is told of some serious malpractice as he is expected to keep it confidential rather than see that it is dealt with in the Department's interests.

¹¹ The whistleblowing legislation (the Public Interest Disclosure Act 1998) may also apply in some circumstances. The Directory of Civil Service Guidance gives more information: www.cabinetoffice.gov.uk/propriety_and_ethics.