

Civil Servants, Ministers and Parliament

Part 2

Contents

This book describes and discusses the constitutional and ethical framework which governs the behaviour of UK civil servants. It consists of two parts.

Part 1

Part 1 (which needs to be printed separately) summarises the UK constitution and lists all the main ethical rules with which civil servants must comply. These are collectively often referred to as *the Westminster Model* of government¹.

This description of civil servants' duties is supplemented by comment and practical advice from experienced officials. This includes, for instance, guidance on how to maintain political impartiality, and what civil servants should do (if anything) if Ministers do not take their advice, or if Ministers appear to be 'behaving badly'.

Part 2

This part consists of two chapters which focus on the many pressures on, and criticisms of, the Westminster Model and describe how civil servants may, as a result, be becoming increasingly accountable to Parliament.

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PART 2

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¹ This phrase is useful for many purposes but it has no precise or widely agreed definition.

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Chapter 5 - Blunders and Criticism

Previous chapters have described the role of the civil servants within the UK constitution and have focussed in particular in the relationship between officials, Ministers and Parliament. But no-one can sensibly claim that this *Westminster Model* of government has produced uniformly good results. This chapter explores what has gone wrong.

In no particular order, I have divided the analysis in this chapter into a number of separate (if slightly overlapping) parts.

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5.1 What happened to Speaking Truth to Power?

A fundamental feature of the Westminster Model of Government is that Ministers are not free to ignore official expertise. "Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions"². Officials must accordingly not hesitate to 'speak truth to power'³. Ministers should, for instance, be told in no uncertain terms if officials believe that their programs could not be delivered within the resources and timescales allocated to them.

But many critics argue that the modern delivery-focussed civil service has become much less good at challenging Ministers, and might even have become somewhat politicised. The initial Universal Credit program, for example, seemed unrealistic. Departments' press releases are becoming a little too economical with the truth. And Permanent Secretaries are agreeing too easily to implement Ministers' short-sighted management decisions.

In total contrast, however, other powerful critics - including many Ministers - think that the civil service is far too obstructive. They would be pleased if – but do not believe that - the civil service has indeed become more willing to energetically carry out Ministers' wishes. It is not many years since *The Times* reported "*Whitehall in Worst Crisis ... [officials] think it's their job just to say "No" ... "The Civil Service sees itself as a check and balance within the political system, and that's a problem."* Many other governments have felt similar frustration. This hardly suggests that officials have forgotten their challenge function.

² This is from the Ministerial Code - <https://www.civilservant.org.uk/library/2019-MINISTERIAL-CODE-FINAL.pdf>

³ https://www.civilservant.org.uk/richborne_publishing.html#STtP

One difficulty is that we just don't know whether the challenge function of the civil service has indeed been degraded over time, and if so whether that is a good thing. It has long been thought that one necessary consequence of the close and occasional stressful relationship between officials and Ministers has been the invisibility of civil service advice. But how can we resolve the conflicting arguments, and reduce the amount of blundering, without piercing Whitehall's veil? The rest of this chapter, and the next one, explore these questions in some detail.

5.2 Government Blunders

No Government can claim to be 'blunder-free'. The British Government can certainly be criticised for the way in which it helped carve up the Middle East after the First World War and carved up India after the Second World War. The American Government's reaction to 9/11 was arguably inappropriate. All three of these policy decisions have dreadful consequences decades later.

And yet each of those three blunders can be explained by the politics of the time, where domestic pressures made it very difficult, verging on impossible, for decisions to be taken after careful analysis. The same cannot be said of the extensive list of British policy and delivery failures over recent years. A number of these were identified in Richard Bacon and Christopher Hope's *Conundrum* and Anthony King's and Ivor Crewe's *The Blunders of our Governments*, both published in 2013.

The King/Crewe book analyses the causes of a wide range of pre-2013 blunders, including:

- the poll tax,
- personal pensions mis-selling,
- the Child Support Agency,
- the UK's exit from the Exchange Rate Mechanism,
- The Millennium Dome,
- Individual Learning Accounts,
- Tax Credits,
- the Assets Recovery Agency,
- the farmers' Single Payment Scheme,
- various IT projects⁴,
- the London Underground public-private partnership, and
- identity cards.

I have prepared my own list of other blunders. The full list can be found on my civil servant website⁵ and a shorter list is below.

- Ministers decided to build two new aircraft carriers, despite the money not being available to pay for them. The incoming coalition government subsequently decided to

⁴ Successive administrations had wasted "obscene" amounts of money on government information technology, according to the Commons Public Accounts Committee reporting in July 2011. "Over-reliance on a few large contractors and poor public sector purchasing and management skills have produced a recipe for rip-offs".

⁵ https://www.civilservant.org.uk/library/all_blunders.pdf

proceed with the construction of the ships but not to equip them with aircraft for some years.

- It was difficult to understand the real reasons for the apparent failure of successive governments properly to equip our armed forces in Afghanistan. Was this another example of a failure to resolve the underlying tension between Ministers' wish to provide all possible support for our troops and Ministers' equally strong desire to save money?
- The performance of a small part of the civil service came under severe scrutiny when Virgin Group forced the Department for Transport (DfT) to withdraw its offer of the West Coast franchise to First Group, blaming civil servants for failures in economic and financial modelling and - it was hinted - for concealing the problems and/or giving too strong assurances to Ministers that all was well.
- The UK's bid for the Olympics assumed a public sector funding package of £2.4 billion. London 2012 eventually cost the public purse around £6 billion more than the original estimate.
- In September 2013, the NAO published a devastating report on DWP's 'over-ambitious' Universal Credit program managed by a team with a 'fortress mentality' in which 'only good news was allowed'

And then, whatever you think of the post-2010 'austerity', the UK's decision to leave the European Union, or the politics of the Johnson government:

- the NHS, social care, transport infrastructure and many other central and local government services are currently in a very bad state,
- there are few who believe that Brexit implementation has gone smoothly, and
- the government's preparation for, and initial response to, the Covid pandemic was seriously flawed⁶.

Many politicians and others thought that one solution to Westminster's obvious weakness might be to delegate much decision-making to arm's length experts in the form of regulators. The experience of post-privatisation regulation of telecoms, energy etc. convinced them it was much better to have such decisions taken by apolitical experts who were willing to think long term and well beyond the electoral cycle. This thinking lay behind Chancellor Gordon Brown's decision to delegate interest rate-setting to the Bank of England. Crucially, too, it meant that Ministers could avoid blame when energy prices rose, or patients were refused access to expensive medicines, or mortgages became more expensive.

These trends are discussed in greater depth in my *Understanding Regulation website*⁷. But regulators, too, turned out to be flawed - or under-resourced - or under-powered - and this inevitably led to

- the 2008 financial crisis,
- the Jimmy Saville and Rotherham child abuse scandals,
- the Mid-Staffs Hospital scandal,
- the Grenfell Tower disaster, and
- many more failures of regulatory systems which central Government had designed and for which central Government retained final responsibility.

⁶ <https://www.civilservant.org.uk/skills-crises.html>

⁷ <https://www.regulation.org.uk/index.html>

5.3 So .. What Caused These Blunders?

King and Crewe, in particular, seemed genuinely puzzled by the fact that our politicians and civil servants are so prone to serious blundering:

[British governments] screw up more often than most people seem to realise. .. Governments of all parties appear equally blunder-prone. .. in spite of government's incessant blundering, the United Kingdom is in many ways a well-governed country. [The majority of] our political leaders ... are genuinely concerned with both the British people's welfare and the country's long term future. .. Compared with the political elites of some countries .. most British politicians and civil servants are models of both rectitude and public-spiritedness. .. these very qualities make the frequency with which they commit blunders the more surprising and disappointing."

They went on to divide the causes into two main groups – human errors and system failures – but they do not specifically criticise civil servants. According to its index, 'civil servants' and 'officials' are mentioned on only five pages of a 400+ page book. This seems odd. After all, the Senior Civil Service outnumbers Ministers by around 40 to 1 and so can hardly avoid taking a share of the responsibility for the blundering. And isn't it supposed to be brilliant at analysing problems and 'speaking truth to power' - and being heard?

Richard Bacon and Christopher Hope (in *Conundrum*) spend much more time looking at the civil service, and being unimpressed:

'One of the most enduring paradoxes is how the civil service manages to take some of the most intellectually gifted people in the whole country and repeatedly make such a hash of things ... it is rather strange that such people seem able to put up with the sustained mediocrity and industrial scale cock-ups that we have witnessed. ... Here would seem to be a classic case of the government squandering one of its most valuable resources - its people.'

One King & Crewe theme was government's failure to learn from previous failures - or even reconsider policies when they are going badly wrong. Neither Ministers nor officials are incentivised to identify and resolve problems as policies are being rolled out, because they will then be associated with what will be characterised as a mistake or a failure. Similarly, they will later not acknowledge that a failure has happened, for fear of suffering political or career damage. This clearly inhibits learning.

There were also systemic problems with the delivery of the government's various programs. Professor King, writing in the Financial Times in April 2012, commented that:-

'Part of the problem is the sheer velocity with which most Ministers evidently feel compelled to act. With the prime Minister either urging them on – or, more probably, not restraining them – they advance rapidly and simultaneously on all fronts: NHS reform, local government reform, law reform, school reform, planning reform, welfare reform, the list goes on. The spectacle resembles a 19th-century cavalry charge, with some horsemen and their mounts inevitably cut down.'

The contrast between Mr Cameron and Margaret Thatcher could hardly be more striking. He is hell bent for leather and makes a speech almost every day as though to ram home the point. Mrs Thatcher was at least as radical a prime Minister but far more

focused and cautious. She had a clear sense of direction but travelled only slowly during the most successful phases of her premiership. Following her first electoral triumph in 1979, she was in office for fully three years before launching her most ambitious projects: trade union reform and privatisation. It was not until 1982 that she abandoned her step-by-step approach towards reforming the unions and encouraged Norman Tebbit (who needed little encouragement) to radically overhaul trade-union law. It was not until 1984, well into her second term, that her government began to undertake the wholesale privatisation of state-owned industries, starting with British Telecom. She looked before she leapt, until, to her cost, she lost the habit.'

5.4 The World is Now Very Different

The previous section makes the case that the Westminster/Haldane system has failed to provide good government over many decades. But the world around, and indeed government itself, has changed out of all recognition since 2019. Is *the Westminster Model* still fit for purpose? Here is what some senior officials and others have said to me:-

In wider society:-

- Public and media have become much less deferential over several generations. This a good thing - but Ministers have responded by requiring Whitehall to become much more defensive, less open to considered criticism, and less willing to consider options before reaching policy conclusions.
- Freedom of Information has accordingly become seen as a threat instead of a codification of what should be done naturally.
- The media – including social media – are now so massive that government has to put a lot more effort into communications activity – but, even so, we all know that a lie can travel half way around the world while the truth is still getting its boots on. Government pronouncements are therefore often rushed, and lack subtlety and accuracy.
- Globalisation, immigration and our past membership of the EU also mean that the government's audience is much more varied than in the past. This exposure to other cultures has many advantages but poses problems for the government's communications teams.
- There is some evidence that society is becoming more polarised, which can lead to ignorance & cognitive dissonance on both sides of the arguments.
- Prosperity has generated a number of 'wicked policy issues' as we have more to spend on food, drugs and alcohol – and on mobile phones and other consumer goods that are so tempting for the criminally minded.

Within Whitehall:-

- Ministers don't understand implications of the cuts in staff numbers that they have ordered. The resultant loss of experience will mean that they will not have civil service support when they need it, nor of the experience/quality that they need.
- Senior officials in particular are now over-stretched, and have little time for getting out and understanding the policy areas and sectors within which they work.
- Civil servants have learned that there is little point in challenging major decisions, however, short-sighted. They instead focus on controlling the (devil in) the detail.
- The market-based approach to appointments led to greater turbulence and less depth of knowledge.

- HMG in many areas no longer acts as a supplier; it instead buys services from and for others. But its procurement and negotiations skills are still pretty weak, and its lawyers are too often out-gunned by their expensive heavyweight private sector opponents.
- 'Fast stream' recruits no longer have a career anchor/home department – they are all nominally employed by HMRC - and their 6 month appointments, rotating around departments, mean they can't gain a deep understanding of any one department's issues, nor gain experience in a Minister's Private Office.

Many of the above comments are echoed by academic commentators:-

Professor Jeremy Richardson makes these points:

- There have been important changes *within* government departments, namely a change in the balance of power between senior civil servants on the one hand, and Ministers and their Special Advisers on the other.
- Many Ministers (and their external advisers, both official and informal) arrive in office with a thorough knowledge of their policy portfolio and their own strong priorities on what policy change is needed. This has led to a shift from civil servants warning Ministers and keeping them out of trouble, reflecting the traditional risk aversion normally attributed to British government, towards 'carriers' of Ministerial ideas, willing to try to implement policies even when lacking broad policy community support.
- There are big risks inherent in the new policy style under which consultation is much more constrained.
- Professor Richardson quotes David Halpern (Head of Number 10's Behavioural Insights Team) as describing life behind the shiny black door of Number 10 as akin to a hospital Accident & Emergency Department:- 'in such a world, there's often not the time, nor the patience, for the answer to be "more research needed"' There is more than a hint here of a 'pop-up' style of policymaking where chaps (mostly!) with seemingly clever policy ideas get to implement them without the need to consider the views of, or seek the support of, the affected interests.

And here are some extracts from Professor Anthony King's *Who Governs Britain?*

- Ministers now] believe ... that if they are to impress ... they must constantly be seen to be taking initiatives [and] if change is desirable ... then it is desirable *now* not at some unspecified time in the future ... Post-Thatcher Ministers are characterised by their impatience. [They] have no incentive at all to think about the longer term future.
- The traditional British civil service ... was dynamic. Generations of senior civil servants regarded it as part of their mission ... to promote causes.
- [The post-Thatcher] change of role meant a corresponding change in the role and mind-set of officials. From now on, officials were to be civil *servants* in reality, at their master's beck and call, eager to do their master's bidding. ... By the time New Labour came to power in 1997, there were few if any of the old style mandarins still in place.
- Many Ministers, with much expected of them and suspicious of their officials, turned for help and advice to ... special advisers ... and ... think tanks.
- More than two decades after the fall of Margaret Thatcher, the vast majority of officials, including the most senior, give the impression of having settled into their new, more subordinate role. ... "We wanted", one of them said, "to avoid a Sir Humphrey image. We became afraid to say "No, Minister". [Another said ...] "Can-do man was in and wait-a-minute man was out.

- ... officials, once the embodiments of departmental continuity, are now at least as transient as their political masters and therefore at least as liable not to have a very firm grasp of what they are doing.
- [A cabinet Minister complained] that his own department's collective memory was so short ... that "... people deal only with the instant they are living in, rather than drawing on any kind of history or knowledge of the detail and background to a particular issue."

Professor Kakabadse says that:

- [Senior] civil servants admit to misunderstandings, misjudgements, feeling inhibited to speak up and, in certain circumstances and with particular Secretaries of State, not knowing how to speak truth to power.
- Even middle-ranking and more junior civil servants described feeling defensive and reluctant to offer opinion, fearing reprimand or being viewed in a negative light.

Longer excerpts from these three academics' writing may be found on my website⁸.

5.5 Whitehall Thinks it Knows Best

The problem with the above analyses is that they are offered by friends of Whitehall - serving or current officials and friendly commentators. Some knowledgeable critics, including a fair number of modern politicians, argue that political elites have for too long been making decisions without reference to the public. The role of the electorate has been to do little more than legitimise politics, rather than to be involved in politics.

The Westminster Model of government, they say, is to a great extent predicated on the view that 'Government knows best'. It assumes that the public does not have the information necessary to make the right decisions. Key decisions are therefore taken by Ministers and/or officials, approved as necessary by parliament.

Secrecy is supposed to ensure that the right decisions are made in the interests of the people. A responsible government is empowered to take strong decisive action, even when opposed by a majority of the population. This is a leadership rather than participatory view of democracy, but it is legitimised by regular democratic elections, when representatives can be held to account for their decisions.

The Haldane Model (mutually interdependent Ministers and officials) also encourages concentration of power at heart of the British political system and 'Government by the elite'. This concentration of power means that senior civil servants can be powerful whilst simultaneously maintaining the polite fiction they are "only advisers". Politicians can, at the same time, continue to maintain that they are really taking all the decisions. In practice, of course, the relative power and influence of senior officials varies very much from Government to Government, and with the characters and experience of the officials and their Ministers. But critics argue that the Westminster/Haldane model is in effect a facade which works to the benefit of both politicians and civil servants, but which disguises the truth from the population at large.

Shielding the inner workings of government can also easily morph into hypocrisy and cover up. The Establishment used to be pretty good at hiding its infidelities, homosexual activity and

⁸ https://www.civilservant.org.uk/library/The_Westminster_Model-Academic_Commentary.pdf

drunken misbehaviour. A good thing, many would say. But it may also have been pretty good at hiding police corruption, paedophilia and other nasties. Not quite the same?

And what about the Establishment's ability to resist policies that it regards as dangerous or illiberal, such as leaving the EU, ditching Trident, bringing back hanging or cutting immigration and overseas aid. Whitehall, like so many other large organisations, already harbours a good deal of group think - often described as 'showing good judgment'. No promotion-hungry Whitehall civil servant was ever going to admit to voting for UKIP, or agreeing with the Scottish Nationalists. A good thing, some would say. Is there not something to be said for initial civil service resistance to the more dramatic or far-reaching pressures for change, at least so as to give the electorate and Ministers time to think again? But it is hardly democracy in action.

There were critics of the secretive nature of the British civil service as long ago as the 19th Century. Sir James Stephen doubted that any bright individual would wish to pursue a career in which ...

'He must devote all his talents ... to measures, some of which he will assuredly disapprove, without having the slightest power to prevent them; and to some of which he will most essentially contribute, without having any share whatsoever in the credit bestowed on others, ... and if any accident should make him notorious enough to become the suspected author of any unpopular act, he must silently submit to the reproach, even though it is totally unmerited by him'.

The modern electorate certainly seem to believe that 'the Westminster Village' is incompetent and/or out of touch with the concerns of those who live outside cosmopolitan London. They see a hypocritical establishment, much more inclined to tell voters to 'do what I say' rather than 'do what I do'. This seems to be leading to declining numbers voting in elections, and declining membership of the main political parties. Many voters seem to be totally disengaged from politics. There was (and is) little persistent anger with those responsible for the financial crisis, for the Iraq war and for the approaching 200,000 Covid deaths, let alone for the other blunders listed above. *The Institute for Government* has reported that there is no correlation between things that the public thinks that government 'should' prioritise and what it 'does' prioritise.

It seems, therefore, that Whitehall needs to work much harder to involve citizens in decision-making. This implies opening to public scrutiny the debates between Ministers and officials.

5.6 Whitehall Does Know Best! - The Case for the Defence

There are many who continue to believe in the fundamental strength of the Westminster/Haldane model. Commentators such as Daniel Finkelstein and Matthew Parris argue that the public do not understand the complexity and long-term nature of government. Politicians (they say) know when they are blundering. They know what needs to be done – at least in the 'wicked areas' such as the environment, tax, foreign policy, pensions, drugs. But they just don't know how to get re-elected after doing it.

Politicians (they say) are not unaware of evidence, but they are often forced to ignore it given the pressure to be re-elected and the influence of pressure and focus groups, and social and other media. Greater civil service accountability, for instance, would not help. The faults in the system (in their view) lie outside government in the ill-informed or unforgiving nature of the electorate and media. Politicians and officials should be allowed to debate, quite privately, how to negotiate the tricky shoals of public opinion.

5.7 Would it Help if Civil Servants were Publicly Accountable?

It is not only politicians who live in the Westminster Village. Is it not time that officials became more accountable for their advice and their actions – or absence of action? Some of them have been intimately involved in the ineffective planning, in ignoring warnings, and in delivering the faulty policies. Surely they cannot avoid taking some of the blame?

It is interesting to consider how officials would react to greater public scrutiny. Many of them, I suspect, would have no problem in principle. Those who have been Agency Chief Executives, or have led Non-Ministerial Government Departments, have generally enjoyed the experience, and have been glad to account for their decisions and performance both in Parliament and via the media.

And Accounting Officers and others are often very uncomfortable (though they seldom show it) when faced with the real world consequences of Ministerial decisions. One example was the Public Accounts Committee tearing into Ministry of Justice officials for failing to identify all the unintended consequences and costs arising out of Ministers' decision to lop £300m off the legal aid budget – and to do it very quickly. I'll bet a pound to a penny that officials would much rather have dragged their feet and not implemented this policy at this speed, and I'll bet they were acutely aware of its consequences, not least for the disadvantaged. Would we not be better governed if the public had had access to those officials' advice and concerns, which might have helped ensure that Ministers did not achieve their policy objectives?

But some MPs are not too worried about exposing differences between officials and Ministers. Cabinet Office Minister Francis Maude saw no problem in such public debates. "A Minister who is confident about what he or she has decided should have no problem in publicly defending it". By way of example, he said that he would like to see much more use made of the 'constitutional safety valve' of written Ministerial Directions to Accounting Officers. They should become 'much more normal' and no longer seen as the nuclear, relationship-destroying option. Indeed, he believed that the fear of using Directions may well have led to officials failing to challenge decisions with which they are uncomfortable, but then failing to implement those decisions.

Lord Maude's and others' encouragement does seem to be having some effect. A number of interesting recent developments are discussed in chapter 6.

5.8 It's Just as Bad (or Worse) Elsewhere

Before we get too depressed about the state of British government, it is important to be aware that there are plenty of other blundering governments, so maybe the 'Westminster Model' is not solely, or even mainly, to blame for the UK's dismal performance. Here are some extracts from James Thomson's entertaining and sobering analysis of the disaster that was the Vietnam War: *How Could Vietnam Happen?: An Autopsy*⁹. In his article, Thomson identifies a number of factors that shaped Kennedy and Johnson's disastrous Vietnam policy - and many if not all of them can be seen to contribute to other major blunders in the UK and elsewhere.

⁹ https://www.civilservant.org.uk/library/1968-James_Thomson-How_Could_Vietnam_Happen.pdf

The first factor was ignorance of prior history and false perceptions of current developments in the Far East, exacerbated by the absence (or banishment) of real Vietnam or Indochina expertise.

"Here the underlying cause was the "closed politics" of policy-making as issues become hot: the more sensitive the issue, and the higher it rises in the bureaucracy, the more completely the experts are excluded while the harassed senior generalists take over (that is, the Secretaries, Undersecretaries, and Presidential Assistants). The frantic skimming of briefing papers in the back seats of limousines is no substitute for the presence of specialists; furthermore, in times of crisis such papers are deemed "too sensitive" even for review by the specialists.

Another underlying cause of this banishment, as Vietnam became more critical, was the replacement of the experts, who were generally and increasingly pessimistic, by men described as "can-do guys," loyal and energetic fixers unsoured by expertise."

Then there was the Effectiveness Trap (see chapter 4.6) and Bureaucratic Inertia, ...

"... the collective inertia produced by the bureaucrat's view of his job. At State, the average "desk officer" inherits from his predecessor our policy toward Country X; he regards it as his function to keep that policy intact—under glass, untampered with, and dusted—so that he may pass it on in two to four years to his successor. And such curatorial service generally merits promotion within the system. (Maintain the status quo, and you will stay out of trouble.) In some circumstances, the inertia bred by such an outlook can act as a brake against rash innovation. But on many issues, this inertia sustains the momentum of bad policy and unwise commitments—momentum that might otherwise have been resisted within the ranks."

... not to mention Wishful Thinking and Bureaucratic Detachment

"By this I mean what at best might be termed the professional callousness of the surgeon (and indeed, medical lingo—the "surgical strike" for instance—seemed to crop up in the euphemisms of the times). In Washington the semantics of the military muted the reality of war for the civilian policy-makers. In quiet, air-conditioned, thick-carpeted rooms, such terms as "systematic pressure," "armed reconnaissance," "targets of opportunity," and even "body count" seemed to breed a sort of games-theory detachment. ...

Perhaps the biggest shock of my return to Cambridge, Massachusetts, was the realization that the young men, the flesh and blood I taught and saw on these university streets, were potentially some of the numbers on the charts of those faraway planners. In a curious sense, Cambridge is closer to this war than Washington."

Last, but not least there was the investment in Human Ego.

"Men who have participated in a decision develop a stake in that decision. As they participate in further, related decisions, their stake increases. It might have been possible to dissuade a man of strong self-confidence at an early stage of the ladder of decision; but it is infinitely harder at later stages since a change of mind there usually involves implicit or explicit repudiation of a chain of previous decisions.

To put it bluntly: at the heart of the Vietnam calamity is a group of able, dedicated men who have been regularly and repeatedly wrong—and whose standing with their contemporaries, and more important, with history, depends, as they see it, on being proven right. These are not men who can be asked to extricate themselves from error.

5.9 Some Structural Issues

Finally ... it is important to recognise that the issues discussed in this book are part of a wider discussion involving many constitutional and political issues.

Numerous attempts to achieve significant 'civil service reform' have failed because they have been too narrowly focussed. They have in particular not been willing to consider changing the relationship between civil servants and Ministers, and between both of these and Parliament. This problem is discussed in more detail on my *Civil Servant website*¹⁰.

There are also separate interesting questions concerning the effectiveness of Cabinet government. Does modern government need a strong centre and, if so, what does this do to the role of Cabinet Ministers - and of No.10? The 1960s Labour Government had two-day Cabinet meeting. Would that be unimaginable today, or a welcome development? A 2005 House of Commons Research Paper¹¹ discusses these issues in some detail.

Some argue, with compelling evidence, that there are fundamental problems with the nature of the British state. Nick Tyrone, for instance, commented in 2023¹² that:

'Britain is fundamentally poorly governed ... The current government wants to blame this on the civil service, but that's projection ... The vast majority of the dysfunction comes, sadly, from our elected officials ... This isn't a partisan point I'm making either. Labour governments tend to be just as bad as Tory ones.'

This argument was made at much greater and more devastating length by Ian Dunt in his book *How Westminster Works ... and Why It Doesn't*.

It is interesting, too, that recent developments have strengthened the position of senior officials who wish to challenge the feasibility of Ministers' policy decisions - that is the government's ability to carry out the proposed policy effectively and credibly. This is discussed further in chapter 6.

¹⁰ <https://www.civilservant.org.uk/csr-homepage.html>

¹¹ https://www.civilservant.org.uk/library/2005-HoC-The_Centre_of_Government.pdf

¹² https://www.civilservant.org.uk/library/2023-Nick_Tyrone-This_week_in_Brexitland.pdf

Chapter 6 - Increasing Accountability

Earlier chapters have suggested that UK Governments might 'blunder' less often if a light could be shone on their inner workings, and in particular on interactions between ministers and civil servants. Why should officials be sheltered from informed parliamentary and other external comment on their role in major failures? Should it not be possible for those harmed by such failures to tell whether:

- Ministers refused to listen to sensible advice, or
- Officials failed to communicate sensible advice in a persuasive way, or
- Officials advice was very poor?

And the possibility of subsequent scrutiny might encourage senior officials to push back more strongly when they encounter obviously wrong-headed or excessively short-term Ministerial proposals.

This chapter accordingly summarises some tentative moves that have already taken place towards increased accountability for civil servants.

It also warns that progress will be slow unless and until Members of Parliament themselves improve the way they interact with both ministers and officials.

I have divided the discussion into these sections:

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6.1 The Story So Far

Whatever the strength of the arguments for and against greater civil service accountability, there does seem to be a long-term but almost imperceptible trend towards increasing the public accountability of the most senior officials.

The first sign of this trend was the creation of Next Steps Executive Agencies when the Thatcher administration decided that it was reasonable to hold officials rather than Ministers accountable for failures of administration. It was felt that the doctrine that Ministers should be held personally responsible for every failure in a department, however distant and minor, had never made much sense in theory or in practice. Ministers should certainly look for assurance that the right people and systems were in place, but they should not feel they need hands-on control. The more control they assert, the more they will attract blame for failures.

Next came a proliferation of regulators, charged with making many politically sensitive decisions independently of Ministers, including setting energy prices, encouraging competition in postal services, and deciding what medicines may be prescribed. The regulators are often criticised for

being unelected, but their Boards and their staff are certainly much more accountable than their opposite numbers (and often ex-colleagues) in Whitehall departments.

Other developments which might have encouraged more effective accountability include:

- Corporate Manslaughter, Human Rights, and Freedom of Information legislation,
- the increased use of Judicial Review
- the Inquiries into events etc. such as Hillsborough, Bloody Sunday, Child Abuse and Grenfell Tower, often years after the events being investigated.

Parliamentary scrutiny has improved, too, since Departmental Select Committees were first established in 1979. Their Chairs are no longer appointed by the Government, and they have the opportunity (if they wish) to question senior officials about *Feasibility Directions* and *Accounting Officer Assessments*. These are two of five proposed or implemented innovations within government:-

- **Policy Directions** were intended to encourage Ministers to follow robust policy processes.
- **Procedural Directions** were intended to encourage Ministers (including the Prime Minister) to follow the processes outlined in the Cabinet Manual
- **Feasibility Directions** are intended to encourage Ministers to authorise expenditure only on feasible projects,
- **Senior Responsible Officer** appointments require senior officials in charge of major projects to report progress direct to Parliament (thus ensuring that officials would challenge projects with over-demanding objectives etc.)
- **Accounting Office Assessments** require senior officials to approve in advance all significant initiatives, policies, programmes and projects, and so be able to provide assurance to Parliament that those activities provide value for money and are feasible etc.

I look at each of these later on in this chapter, but I first return to the possible effect of the Corporate Manslaughter legislation.

6.2 Corporate Manslaughter etc.

Senior officials are increasingly aware of the threat of manslaughter and other criminal and civil litigation, but seem to be struggling to respond.

The problem is that civil servants will willingly implement policies which increase death rates (by increasing speed limits or cutting prison staffing numbers, for instance) but they would not follow an instruction that would lead to the death of a known individual. Can this distinction hold firm?

Here are some examples.

- Ministry of Defence civil servants discovered that they might be prosecuted for criminal negligence following the 2006 crash of an RAF Nimrod aircraft. The subsequent Inquiry held the MoD procurement team accountable for failure to maintain oversight of the cumulative and dangerous effect of changes to the aircraft. The report described an MoD stricken by "organisational trauma" induced by the overwhelming objective of finding savings.

"There was no doubt that the culture of the time had switched. In the days of the RAF chief engineer in the 1990s, you had to be on top of airworthiness. By 2004 you had to be on top of your budget if you wanted to get ahead."

Put shortly, the MoD had sacrificed safety to cut costs, and this had led to the deaths of 14 people. In the event, there were no prosecutions although compensation of £15m was paid.

A book published in 2019 went further and claimed that a hundred British military personnel had died in avoidable accidents over the previous 35 years because of cost cutting etc. by the Ministry of Defence.

- The Times reported (8 February 2020) that the danger of a corporate manslaughter prosecution had been raised in 2011 when officials were discussing the removal of hard shoulders on some stretches of motorways. The consequential danger of a car being stranded in front of fast-running traffic caused a lawyer to ask "whether corporate manslaughter had been considered" if a motorist were to die as a result.
- The 2017 Grenfell Tower tragedy, in which 72 people died, is still being investigated, including by the police who might decide to bring prosecutions. Might this include the department responsible for drafting or enforcing building regulations?
- In April 2022 the High Court ruled unlawful the policy of discharging patients from hospitals to care homes during the Covid pandemic. Health Secretary Matt Hancock later admitted to the Covid Inquiry that the Government had not (as he had claimed in 2020) thrown their protective arms around care homes.

The above examples suggest that senior officials need to be aware of their departments' possible liability if asked to implement, or work within, policies which they believe likely to harm others. But it will be difficult to design sensible, practical advice and training.

Should civil servants also be concerned that they might individually be investigated following an avoidable death?

I am not aware that such an investigation has ever taken place but the General Medical Council has grappled with a similar problem. Its answer was not impressive:-

- Dr Bawa-Garba was a well-respected and experienced doctor who agreed in 2011 to work in an understaffed and unsafe hospital environment but then, under pressure, made mistakes which led to the death of a child. She was prosecuted and found guilty of manslaughter. The GMC in response issued guidelines telling doctors that if they were required to work in understaffed, unsafe environments then they must create a paper trail flagging that up. But this put doctors in the impossible position of being forced to choose between
 - refusing to work in such circumstances, and therefore not only being in breach of contract but also potentially harming patients, or
 - risking civil or even criminal action if they do choose to work, having identified the danger.

I am not aware that that advice was superseded, although Dr Bawa-Garba was eventually allowed to resume caring for patients.

6.3 Policy Directions

The Institute for Government were the first to suggest that it might be possible to improve civil service accountability by expanding the role of Ministerial Directions¹³ beyond those which give ministerial cover for a decision to spend money which does not meet the tests of regularity, propriety, and value for money.

The Institute's 2011 report **Making Policy Better** speaks for itself:

We propose adding a fourth Ministerial Direction:- poor policy process, where the Accounting Officer (usually the Permanent Secretary) is not satisfied that the fundamentals of policy making have been adequately observed. This recommendation builds on current practice. The Treasury currently recommends that AOs should exercise judgement on when they need to “take a principled decision”.

One of the standards they should use to make this judgement is whether “clear, well-reasoned timely and impartial advice” has been provided, and whether the decision is in line with the aims and objectives of their organisation – both of which relate closely to our proposed fundamentals. Furthermore, this new criterion could be seen as an extension of the current value for money criteria, since there is a good case that a poorly made policy will provide poor value for money.

The Treasury is already considering extending AOs’ responsibilities to ‘feasibility’, but our proposal would also embrace the wider way in which policy is made.

Where the Minister wanted to override the objection, they could do so, but would need to give a ‘policy direction’. Such a change would sharpen the incentives for both parties. AOs would act in the knowledge that they could be held to account by the departmental select committee for the quality of the policy process, whether or not a direction was issued.

Since the direction would be sent to the relevant select committee and published on the department’s website, the Minister would be publicly accountable for taking action despite civil service concerns. The point of extending the AO remit in this way is not to ensure more directions are issued, but to make clear to officials, and in particular the head of department, that they must take responsibility for good process. **By extension, this will give Ministers a stronger incentive to observe good policy process.**

I have emphasised the final sentence above because it indirectly explains why there was very little chance that Ministers would accept this constraint on their ability to seek political advantage by making bold promises.¹⁴ Indeed, I am not aware of any later consideration of the idea. However, as noted by the IfG, the Treasury were already examining the introduction of Feasibility Directions (see further below).

6.4 Procedural Directions

¹³ <https://www.civilservant.org.uk/directions-overview.html>

¹⁴ Policy Directions might, for instance, have obstructed Prime Minister Cameron's *Big Society* and Prime Minister May's *Social Mobility* announcements. Peter Hennessy recalled that he had been told that the Big Society was more "a state of mind" than a specific idea. An official said that the Big Society announcement was “like publicising a new car badge without first designing the car”.

In parallel with all the above, the Public Administration and Constitutional Affairs Committee supported a proposal from *the Better Government Initiative* informed by Chilcot's criticisms of Blair government decision-making before the Iraq War. The suggestion was that

- Prime Ministers should continue to be asked to consider, after appointment and after each election, how they propose to make important and sensitive policy decisions, including the way in which they expect to work with Cabinet colleagues, share legal advice, and the like. Their decisions should continue be recorded in an updated Cabinet Manual.
- However, unlike now, Ministers would know that they would be held to account if they were to deviate from the processes laid out in the Manual.
- This accountability would be ensured by having the Cabinet Secretary and/or individual Permanent Secretaries seek a 'Procedural Direction' when asked to support Ministers operating outside the terms of the Cabinet Manual.
- Unlike the already well-established Financial Directions, Procedural Directions might be kept quiet until the need for secrecy had passed, but the responsible Ministers would know that they would one day be held to account for their decision.

One example, had this mechanism already existed, might have been Tony Blair's failure to circulate pre-Iraq War legal advice to Cabinet colleagues. Another might have been a challenge to David Cameron's instruction that officials should not undertake contingency planning for a 'leave' vote in advance of the Brexit referendum.

The Constitution Society supported the proposal and suggested that a revised and extended version of the Cabinet Manual should be subject to Parliamentary approval.

This attempt to fetter Ministers' discretion was, of course no more welcome to the Government than had been the IfG's suggested Policy Directions (see above). Even so, the quality of the Government's two formal responses was disappointing.

Rather depressingly, since the proposal was clearly directed only at departures from established procedures, not the merits of a policy, the initial response completely misrepresented it as being "for a formal Ministerial direction to be given, if Ministers decided to go ahead with a policy against the advice of officials". Having set up this misrepresentation HMG then (quite rightly) rejected its own foolish proposal.

The second response wasn't much better. The rejection of the case for a procedural direction was based on a distinction between accounting officers' direct responsibility to Parliament and Permanent Secretaries' responsibility to Ministers and the prime Minister for the conduct of departmental business. But this was a false distinction since permanent secretaries have a duty to Parliament as Accounting Officers for the efficient conduct of their departments.

The committee's first report, the Government's first response, the committee's second report and the Government's second response can all be read on the *Understanding the Civil Service* website¹⁵.

6.5 Feasibility Directions

¹⁵ <https://www.civilservant.org.uk>

Feasibility Directions were introduced in 2011 and allowed officials to require Ministers to direct them to proceed with projects even if officials had put on record their doubts that the project's objectives could be achieved either at all, or within the timescale and resources stipulated by the Minister.

The Treasury defined feasibility as follows:

Feasibility often overlaps with value for money and/or propriety. The judgement to be made is whether government has the ability to carry out the proposed policy effectively and credibly. Precedents, market testing and pilot studies can give confidence that a new policy or proposal will be feasible. Conversely, warning signs include novelty, high administration costs, high error rates and significant compliance costs. Where there is doubt about the quality of administration, the proposed course may well also be inefficient or improper.

The deliverability assessment of a major project is also an aspect of feasibility. Where delivery concerns have been raised (for example, in a gateway review), the full accounting officer assessment would normally be expected to note those concerns, and reflect any mitigating actions taken or planned as a result. Although the accounting officer might expect to be notified of these concerns as soon as they are raised, it is preferable for the written assessment of feasibility to be prepared once any mitigating actions have been taken, so that the accounting officer can also take those into account.

Whitehall watchers awaited the first feasibility direction with great interest. Would it be seen as evidence, yet again, of Ministers unrealistic expectations, driven by short term political considerations? Or would it be evidence, yet again, of the need for Ministers to be able to override their cautious, unimaginative and unambitious civil servants?

It was quite telling, therefore, that a 2016 National Audit Office report asserted that Accounting Officers "appear to lack confidence to challenge Ministers where they have concerns about the feasibility or value for money of new policies or decisions, not least because standing up to Ministers is seen as damaging to a civil servant's career prospects".

Even then, nothing much appeared to change. *The Times* reported, in early 2019, that the retiring head of the National Audit Office, Sir Amyas Morse, was concerned that the balance of power between Ministers and senior civil servants had shifted, with officials increasingly unable to challenge bad decisions.

"I still don't think we've sorted out the question of the interaction between the political agenda and delivering good results and value for money," Sir Amyas said. "There's pressure to do things too quickly or to announce very high-profile world-beating projects. Allowing Ministers to have a say in the appointment of senior officials has led to a position where Ministers have a great deal of power over their civil servants. That's unfortunate. They're intelligent people. They understand that the consequences of disagreeing with a Minister are likely to be pretty ugly."

The first Feasibility Direction eventually appeared in 2018 when a Minister took responsibility for the risks associated with accelerated introduction of new 'T Level' exams. This was a perfectly sensible and uncontentious use of the mechanism.

A small number of further Feasibility Directions were issued by the Business Secretary as his officials rushed to support the private sector during the 2020 COVID-19 crisis.

6.6 Senior Responsible Officers

The 2013 introduction of SROs looked more promising. SROs were to be personally accountable, including to Parliament, for the delivery of major projects such as the National Cyber Security Programme. The key principle had until then been that civil servants who gave evidence to such committees do so “as the representative of the Minister in charge of the Department and subject to the Minister's instructions”. But MPs could now, for the first time, question civil servants about their delivery of major projects such as the (delayed) introduction of Universal Credit. The new rules now provided that “Senior Responsible Owners (SROs) for Major Projects” are “expected to account for and explain the decisions and actions they have taken to deliver the projects for which they have personal responsibility”.

It was hoped that newly appointed SROs might be concerned to ensure – before accepting their appointment – that they were not suffering from appraisal optimism, and that their project was properly resourced and had sensible timescales and objectives. This would reduce the chances of their having to account to their Permanent Secretary and Parliament when things went wrong. And it would ensure that a senior official – the SRO – was forced to challenge Ministers if a major project were being established without proper resources etc. But it could work very badly if SROs were to do what officials had done in the past, which was to accept that Ministers are entitled to demand rapid action with limited resources, and so sign up to achieving what they privately believe to be unachievable.

In practice, little at first appeared to have changed. SRO appointment letters were little more than that. They specified neither the programme's objectives nor its resources or timescales. And most departments at first decided to appoint very senior staff as part-time SROs, rather than nominate those officials who were truly responsible for key projects. The SRO for the National Cyber Security Programme was for instance told that he would need to devote only two days a month to the role:-

“I am writing ... to confirm your appointment as Senior Responsible Owner (SRO) of the National Cyber Security Programme ... This will be a part time role which requires two days per month. As SRO you have personal responsibility for delivery of National Cyber Security Programme and will be held accountable for the delivery of its objectives and policy intent; ...”

But SROs were strengthened by the introduction of Accounting Office Assessments - see further below. The (later stage) Universal Credit SRO appointment letter, for instance, required the SRO to prepare an Accounting Officer Assessment 'if the programme might depart from the four standards (regularity, propriety, value for money and feasibility), or from the agreed plan – including any contingency – in terms of costs, benefits, timescales, or level of risk'. It was also firmly linked to the Business Case, so the SRO was personally accountable for delivering the intended economic and net present values.

Indeed, the various publicly available Universal Credit appointment letters show that the relevant SRO was able to renegotiate the programmes timescales and be clear to Parliament what the reasons were. This will have followed private negotiations with his Ministers. So this particular Minister/official dynamic appeared to be working very well.

6.7 Accounting Officer Assessments

As from 2017, and following a Public Accounts Committee recommendation, the Treasury announced that ‘*Accounting Officers should personally approve, in advance, all significant initiatives, policies, programmes and projects*’ and so be able to provide assurance to Parliament that those activities provide value for money and are feasible etc. The guidance went on to say (emphasis added):

The analysis should consider the issue in the round. **A Ministerial policy decision cannot be sufficient justification alone for proceeding.** The accounting officer’s job is to try to reconcile Ministers’ policy objectives with the standards for use of public funds.

The full accounting officer assessment should provide a frank examination of the key issues including any sensitive issues. It should address the essence of the policy which is being delivered, its purposes and its prospect of successful delivery or implementation. **It is therefore not usually published in full**, but is shared with the Treasury. A summary of the key points from an accounting officer assessment of a major project should however be prepared and published.

Officials are not obliged to prepare an AO Assessment immediately a Minister indulges in some blue sky thinking. And the Treasury’s guidance allows a bit of wriggle room later on:

Often, big intricate decisions have long lead times. In such cases, it is good practice to make the accounting officer assessment in principle at an early point, firming it up at suitable strategic points as the policy or proposal is developed. This makes for orderly evaluation of the key features of the policy, with no surprises at the final decision point. Apart from providing time to redesign a policy or proposal, early assessment may flag up how the proposal can be better designed to meet both Ministers’ and parliament’s requirements, or whether there is a for a Ministerial (or board) direction, particularly when proposed spending is imminent or an existing spending stream no longer complies with the four accounting officer standards.

It is useful to distinguish *policy* assessments from *major projects* assessments.

The Treasury allows summaries of *major projects* assessments to be shared with MPs. Here is their guidance:

Parliament has been given a role in monitoring ‘major projects’:

Accounting officers who have considered an assessment for a project in the Government’s Major Projects Portfolio (GMPP), in line with this guidance, and approved it, should provide to Parliament a summary of the key points from the assessment which informed their judgement.

But *policy* AO Assessments (for plans that fall outside the GMPP) do not need to be shared with Parliament. Here is the Treasury again:

Accounting officers may choose to publish similar information from assessments made in other circumstances at their discretion, but there is no requirement to do so.

It is of course very unlikely that Accounting Officers will choose to publish the more controversial Assessments. So MPs will not be able to assure themselves that sensible policy decisions are being made ... unless – perhaps supported by the National Audit Office and the media – Select Committees start insisting on seeing individual AO Assessments. If this were to happen, we might begin to see a significant improvement in the way this country is governed. But Parliament has seemed relatively weak since 2016, and possibly well before then, so this author, for one, is not optimistic.

My pessimism was not dissipated by an exchange in a Public Accounts Committee hearing in September 2020 when the PAC asked to see the Accounting Officer Assessment of the approach taken by Ministers in deciding which 'struggling' towns (and hence constituencies) were to benefit from the £3.6 billion *Towns Fund*. There were fears that too much politics had intruded into decision making but the relevant Permanent Secretary politely refused to publish his assessment of the program. "My understanding is that they are not normally published".

The Committee asked whether the Accounting Officer might nevertheless 'be willing for the Committee to have a private look at the papers?' We have done this a number of times with other documents from Departments.' Next month, however, the Committee reported that (emphasis added):

The £3.6 billion Towns Fund was introduced at pace by the Ministry of Housing, Communities and Local Government (the Department) in summer 2019. It relied upon Ministers selecting which towns would receive funding from a ranked list prepared by officials. The Department claims it had good reasons for this approach, but we are not convinced by the rationales for selecting some towns and not others. The justification offered by ministers for selecting individual towns are vague and based on sweeping assumptions. In some cases, towns were chosen by ministers despite being identified by officials as the very lowest priority (for example, one town selected ranked 535th out of 541 towns).

The Department has also not been open about the process it followed and it did not disclose the reasoning for selecting or excluding towns. This lack of transparency has fuelled accusations of political bias in the selection process, and has risked the Civil Service's reputation for integrity and impartiality. We are therefore disappointed that, although the Department's Permanent Secretary confirmed he was satisfied the selection process met the requirements of propriety and regularity, a summary of his Accounting Officer assessment remains unpublished.

It is still far from clear what impact the Department expects from the Towns Fund, when it expects to see the benefits, and how it will measure success both at the town level and across the whole programme. The Department says that it wished to give money to towns which it deemed unlikely to have the expertise to succeed at bidding for funding through an open competition; which also raises concerns about whether those towns will have the capacity to spend the money well.

A July 2022 National Audit Office report about AO Assessments revealed that they could not tell how many AO assessments had been carried out. The NAO concluded that Accounting Officers were not consistently publishing and sharing their assessments in line with Treasury guidance. Many of the summaries that were published were published far too late to permit

proper transparency and scrutiny. And those assessments that had been published did not always make clear that issues had been considered by AOs when making their judgements.

All in all, therefore, it does not appear that AO assessments are as yet achieving the objectives that were envisaged when they were introduced.

6.8 Will We Notice the Difference?

The story so far is that we don't have Policy or Procedural Directions but we do have Feasibility Directions, Senior Responsible Officers and Accounting Officer Assessments. Will they, after a slow start, eventually make a difference?

The author's view is that there will continue to be limited resistance from senior officials but the main problem is lack of interest from Parliament.

Civil Servants

Most senior officials would of course welcome improved policy- and other decision-making. But they worry that greater openness would in practice open up areas of conflict with their political masters and that would be new, scary territory.

Ex-Cabinet Secretary Sir Andrew Turnbull made this point when interviewed on the BBC's Westminster Hour in January 2015. Describing the 'bargain' entered into between Ministers and civil servants, he noted that the former benefit from frank advice and commitment from officials, but the civil servants are not then criticised publicly. If officials were to face public criticism then they would need a right of reply.

They would certainly appreciate the chance to push back when weaker ministers tell journalists that unpopular policy decisions were forced on them by their officials. It was, for instance, 'the Treasury' and 'civil servants who live in the South-East' who were apparently to blame for the decision not to extend HS2 to Leeds. This behaviour could not survive the introduction of true and honest accountability for civil servants.

Anonymity also suits senior civil servants, of course, when they do make mistakes. Many are understandably very reluctant to accept blame - especially as there are few comparable jobs outside the Senior Civil Service. Private sector execs who make mistakes can generally rebuild their careers elsewhere. Civil servants cannot.

The good news (as noted above) is that the introduction of SROs seems not to have damaged any individual minister-official relationships. The Universal Credit SRO was able to develop a positive relationship with their minister during the later stages of Universal Credit implementation - and the result appears to have been the exceptional response to the pressures that the Universal Credit system faced during the Covid pandemic. It is to be hoped that other SRO/ministerial teams will be similarly successful.

Much the same applies to Feasibility Directions and AO Assessments. Previous types of Ministerial Direction were once regarded as nuclear weapons - more effective in the silo rather than launched. But they have come to be seen as a grown-up way of allowing Ministers to account for political decisions to override strict value for money criteria. SROs' ability to prepare Accounting Officer Assessments are similarly unlikely to be used every day, but they

might, over time, help curb Ministers' desire to order officials to achieve challenging objectives within impossible timescales and with inadequate resources.

MPs

Accountability is effective only if those being held to account know that their behaviour will be judged in a fair and consistent way against a clear model. If they will not be judged in this way then they will not adjust their behaviour to meet the needs of that model.

It follows that if civil servants are to become more publicly accountable then those who judge them need to have clear principles which are consistent with the Civil Service Code. Can MPs be trusted to be good judges? The signs are not good.

House of Commons Select Committees are supposed to investigate the causes of both policy successes and policy failures with a view to learning lessons rather than ascribing blame. They typically call for a wide range of evidence including from experts outside government, and they often analyse issues very thoroughly. But their influence is severely curtailed by ministers' insistence that civil servants who appear before such committees (other than the Public Accounts Committee) do so under instruction from Ministers¹⁶. Officials giving evidence are accordingly cautious and defensive, and these traits are carried through - with perhaps more serious consequences - when drafting departmental evidence and responses to committee reports.

Select Committees can also often appear to be more interested in seeking political advantage than in learning useful lessons. MPs will often question in unfair or unreasonable ways in order to make political points and/or to appear 'strong' in the eyes of their colleagues and constituents. They also sometimes criticise officials when they cannot get at responsible Ministers, or at other responsible civil servants. Such behaviour certainly catches the attention of Whitehall - and sometimes the media. The resultant video may get plenty of 'views', especially on social media. But civil service colleagues rally behind such victims so that this form of 'accountability' leads neither to career detriment nor to any change in the behaviour of the victims or others.

Even the Public Accounts Committee (the PAC) seldom attempts to exert real influence over the way the government machine is managed. Most Accounting Officers' primary aim, when dealing with the NAO or the PAC, is to avoid censure. They appear to assume that they won't learn anything from such interactions, and they don't believe that the purpose of the exercise is to improve or learn in any way. Worse still, many very good PAC reports have little or no impact. There is no follow up. The reports seldom if ever feature in civil service training programmes - although videos of embarrassed Accounting Officers certainly do, thus encouraging further defensiveness. Apart from this, everyone involved in a report just shrugs and moves on to the next issue.

Michael Coolican reinforces this impression in his book *No Tradesmen and No Women*:

The repetitive nature of the issues that come before the Public Accounts Committee reinforces the point that there is little interest amongst civil servants in learning from the mistakes of others. Although more senior civil servants are aware of the committee, its reports are not widely read and so it is not surprising that the lessons are not absorbed.

¹⁶ See Part 1.4 - The Osmotherly Rules

Why do MPs show such little interest in holding the executive to account?

Their behaviour can in part be explained by their character and experience. Politicians are tribal animals and the vast majority have little or no interest in, or experience of, managing large organisations, or even in policy-making. Their career prospects depend upon their debating and deal-making skills and upon their ability to attract favourable media attention, not on their effectiveness in Select Committees.

Most of the media, too, have little interest in government itself, as distinct from its personalities. As Robert Saunders ruefully commented following the First Reading of the Safety of Rwanda Bill in December 2023:

So much of the news coverage of the Rwanda vote is about what it means for the PM's authority, rather than its implications for policy, for the constitution &, indeed, for asylum-seekers. Respectfully, if that's all we're going to focus on, it might as well be in the sports news

Politicians therefore focus on gaining political advantage by criticising fellow politicians, and ministers in particular, rather than unelected officials. It can be fun to tear into hapless officials, but there are no votes in it.

Ministers, for their part, are reluctant to admit that they are not solely responsible for important decisions and achievements. Every senior official is well used to ministers claiming full public credit for a successful negotiation or initiative to which they have devoted only a tiny fraction of the time devoted by their officials. (To be fair, however, most decent ministers are very grateful in private.)

Ministers who appear to have made poor decisions will not want to publish the advice they receive. They would of course be happy to do so if the advice had proved to be poor, for they might then be excused for following it. But they wouldn't want to publish advice which was correct - and which they had ignored. As they could hardly be allowed to pick and choose which advice to publish, they can't or won't publish anything, and so blame cannot be allocated or shared.

MPs also want to be able to continue to write to fellow MPs (currently serving as ministers) about all aspects of a department's performance. Their constituents are much more impressed by 'a letter to the Minister' than by a letter to an official, even though they usually amount to the same thing. A small number of MPs have even refused to correspond with Agency Chief Executives, for instance about Driver and Vehicle Licensing decisions.

All in all, therefore, both I and many other commentators think it highly unlikely that either Parliament or the media will begin to hold government to account any time soon. David Allen Green nicely summarised the position in a January 2024 Substack:

Few if any sensible people expect our current political system to require ministers to be honest. Reply-guys and other cynics may aver that it was ever thus: but the resignation of John Profumo seems not only long ago but in another political universe.

This wide acceptance of political dishonesty does not remove the demand, at times, for our ministers to be honest. And it also does not remove the demand, at times, for ministers to provide true and full information. What it means is that the demand for

accountability has switched from parliament and our media to judicial and quasi-judicial processes, such as judicial reviews and public inquests.

In judicial and quasi-judicial processes, ministers and senior officials give evidence under pain of the criminal offence of perjury. They are also obliged to disclose information under the potential (and sometimes actual) pain of court orders. They may hold the public in contempt, and they may also be in contempt of parliament; but contempt of court is still a thing that matters.

Perhaps this is why certain types of politician and pundit want to discredit and remove any judicial and quasi-judicial accountability for those with public power. Perhaps.

But, to take two examples familiar to readers of this Substack: it should not have been the Supreme Court that exposed that no minister or official would sign a statement of truth as the genuine reasons for the infamous 2019 prorogation; and it should not have been the Covid inquiry that compelled ministers and former ministers and advisers to disclose the true substance of what was going on (and not going on) during the pandemic.

In both cases it really should have been parliament and/or the news media forcing this hard accountability against an unwilling executive. But it was left to statutory powers of disclosure and the formal requirements for witness evidence instead.

Some may complain that this meant there are judges and lawyers over-stepping some mark. But the sad reality is that it has ended up with judicial and quasi-judicial processes because the political processes have failed to get to the hearts of the matters. The problem is not so much judicial and legalistic expansionism, but a collapse of political accountability by any other form.

This is not a good thing. The solution, however, is not to attack those remaining aspects of our polity that can force accountability on reluctant office holders and officials, but to make parliamentary and other forms of democratic accountability stronger.

It should not take a judicial review or a public inquiry to properly hold a minister or official to account; yet if that is all we have got then, it there is no alternative.

Chapter 7 - End Notes

Chapters 1 to 3 of this book include a description of civil servants' duties and responsibilities as they were first summarised in my book *How to be a Civil Servant*. That text was cleared, in advance of publication in 2000 and again in 2004, by the Cabinet Office, where I once worked. I am not aware that the Cabinet Office has subsequently announced any significant changes to those duties and responsibilities.

I have added a considerable amount of further material and comment, drawing as far as possible on official publications as well as on think tank, academic and other expert writing. This principally appears in Chapter 1.2.3 (The Haldane Report), Chapter 2.2.8 (Compliance with the Law) and Chapters 4 to 6. To the best of my knowledge, the resultant text is accurate as of December 2023.

My personal style guide mandates 'civil servant/service' rather than 'Civil Servant/Service' except where quoting document titles or other writers.

I would be very grateful if readers would draw my attention to any errors or omissions. Notifications of stray or missing apostrophes, and similar gaffes, are of course particularly welcome. My email address for this purpose is ukcs68@gmail.com. Any necessary changes to the text will then be listed on the *Understanding the Civil Service* website¹⁷ and incorporated in future editions.

Please also do not hesitate to suggest ways in which the text might be clarified or improved. And, if you have found this book helpful, please recommend it to others and/or add Amazon reviews. These will encourage me to produce further editions for other readers.

Martin Stanley
London
December 2023

¹⁷ www.civilservant.org.uk