



## Individual ministerial accountability

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Research Paper 04/31 *Individual ministerial responsibility – issues and examples* offers an introduction to the constitutional convention of ministerial responsibility. It covers significant resignations such as Crichton Down in 1954 and instances where demands for resignations were resisted. This Note looks at the recent debate on the question of individual ministerial responsibility in the context of civil service reform and civil service capability. The question of ministerial responsibility for failures within departments remains a live issue, not least following the failures of the West Coast Main Line tendering process for the rail line within the Department of Transport in October 2012. The Commons Liaison Committee report on 8 November 2012 on the powers and resources available to select committees summarised the issues as follows:

The report finds that “the old doctrine of ministerial accountability (by which ministers alone are accountable to Parliament for the conduct of their department) is being stretched to implausibility by the complexity of modern government” and says that there is a need for “a changed approach”. It recommends that the Government engage with the Liaison Committee in a review of the relationship between Government and select committees with the aim of producing joint guidelines for departments and committees, which recognise ministerial accountability, the proper role of the Civil Service and the legitimate wish of Parliament for more effective accountability.

[“Committee chairs call for review of relationship with Government”](#) 8 November 2012

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# 1 Background

Ministers inform and explain, apologise, take remedial action, or resign in support of the convention of ministerial responsibility. This is not an area regulated by statute, rather practice has developed according to precedent and guidance. Most recently, that guidance has become formalised in the *Ministerial Code*, issued by the Prime Minister at the beginning of a new administration.

The responsibility of individual ministers for their own conduct and that of their departments is a vital aspect of accountable and democratic parliamentary government.<sup>1</sup> Professor Diana Woodhouse has noted that “individual ministerial responsibility had its origins in the need for Parliament to act as a check on Ministers, without having to resort to their impeachment, and in the recognition by Ministers that they must ultimately rely on the support of the Commons for their policies”.<sup>2</sup> Ministerial responsibility is often described as a constitutional convention, yet it is a convention difficult to define with certainty and which, to a large degree, depends on the circumstances of each individual case.

There is a distinction between individual ministerial responsibility and the collective responsibility that each minister has to support the government of which he/she is a member. Research Paper 04/82 *The collective responsibility of Ministers – an outline of the issues* provides background to this constitutional convention.

The *List of ministerial responsibilities* is published online by the Cabinet Office after major ministerial reshuffles and departmental reorganisations. This summarises the role and responsibilities of each government department and its ministers

## 1.1 Development of individual ministerial responsibility

Over the course of the 19<sup>th</sup> and early 20<sup>th</sup> century the government became organised in individual departments, headed by a secretary of state. This replaced earlier models of semi independent boards, such as Local Government Board, Education Board etc. As Professor Diana Woodhouse notes, it was practically convenient for responsibility and control to pass to individual ministers, who could be fully answerable to parliament. Combined with the rise in mass political parties and the increasing responsibilities of central government, the distinction between politician and civil servant became more prominent, and the convention was established that the civil servant reported to the minister, rather than parliament.<sup>3</sup> The Haldane Review of 1918<sup>4</sup> considered how this model of individual ministerial responsibility interacted with Parliament.

Permanent Secretaries and heads of government agencies are appointed as Accounting Officers and have a duty to Parliament to account for the spending of their department/agency. This is usually achieved through the Public Accounts Committee. This convention evolved in the 19<sup>th</sup> century, before the convention on ministerial responsibility had fully developed, and the current legislative basis is under the *Government Resource and Accounts Act 2000*. The PAC therefore summons senior civil servants or public servants rather than departmental ministers.

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<sup>1</sup> Marshall, G (ed.) (1989), *Ministerial responsibility* and Woodhouse, D (1994), *Ministers and Parliament*

<sup>2</sup> Evidence submitted by Dr Diana Woodhouse to Public Service Committee *Ministerial Accountability and Responsibility* HC 313-II 1995-96

<sup>3</sup> Evidence submitted by Dr Diana Woodhouse to Public Service Committee *Ministerial Accountability and Responsibility* HC 313-II 1995-96

Further detail on the role of Accounting Officers is given in Chapter 3 of HM Treasury's publication *Managing Public Money*, The position of Accounting Officers is also set out in paras 5.3-5.5 of the *Ministerial Code*.<sup>5</sup> The permanent secretary leading a department is also responsible to the Cabinet Secretary and head of the Home Civil Service for the effective day-to-day management of their department and its civil servants.

The *Osmotherly Rules*,<sup>6</sup> issued by the Cabinet Office, give guidance to civil servants on the conventions to follow when giving evidence before a select committee. These Rules have never been formally approved by Parliament. For background see Standard Note 2671 *The Osmotherly Rules*.

The Public Service Committee Second Report *Ministerial Accountability and Responsibility* published in 1996<sup>7</sup> remains the most thorough examination of the issues by a select committee. The immediate impetus for the enquiry was the Scott inquiry into arms for Iraq.<sup>8</sup> But the committee was also concerned to examine developments following the delegation of many government functions to executive agencies since the early 1990s under the Next Steps programme.

In 1996 Derek Lewis, the Director General of the Prisons Service was sacked by the then Home Secretary, Michael Howard, following the release of a report by General John Learmant. The report, which focused on the escape of three prisoners from Parkhurst, criticised the Prison Service's performance since becoming a government agency in 1992 under Mr Lewis' guardianship. When this resignation was not forthcoming, Mr Lewis was dismissed. There was an Opposition motion censuring the Home Secretary for his actions on 19 October 1995.<sup>9</sup> Mr Lewis issued a writ in the High Court alleging wrongful dismissal, and cataloguing a series of incidences where the home secretary became involved in the day-to-day running of the Prison Service.<sup>10</sup>

The Public Service Committee concluded "it is not possible absolutely to distinguish an area in which a minister is personally responsible, and liable to take blame, from one in which he is constitutionally accountable. Ministerial responsibility is not composed of two elements which have a clear break between the two."<sup>11</sup>

Since the parliamentary resolutions of 1997, discussed in the following section, ministers have been under a clear obligation not to mislead Parliament. Other major developments in this area included the publication of a code of conduct for ministers in 1997, entitled the *Ministerial Code*, and increased focus by select committees on scrutiny on the implementation of government policy, as well as a 24 hour rolling news culture. The resulting visibility of senior civil servants has put the concept of ministerial responsibility under strain, according to a number of commentators.<sup>12</sup>

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<sup>4</sup> *Report of the Machinery of Government Committee* 1918

<sup>5</sup> *Ministerial Code* 2010 <http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf>

<sup>6</sup> Departmental Evidence and Response to Select Committees 2009 Cabinet Office [http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/osmotherly\\_rules.aspx](http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/osmotherly_rules.aspx)

<sup>7</sup> HC 313 1995-96

<sup>8</sup> HC 115-6 Session 1995-6

<sup>9</sup> *HC Deb 19 October 1995* c502-547

<sup>10</sup> "Yes Minister, No Minister" 1 November 2012 *Law Society Gazette*

<sup>11</sup> *Ministerial Accountability And Responsibility*, HC 313-I, para 21.

<sup>12</sup> See for example Matthew Flinders; *Politics of Accountability in the Modern State* 2001

## 1.2 Current conventions on conduct of ministers

In respect of their ministerial duties, the conduct of ministers is a matter for the Prime minister rather than Parliament. The *Ministerial Code* states that:

- ... b. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- c. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;<sup>13</sup>

These provisions of the *Ministerial Code* reflect the House of Commons resolution on ministerial accountability, which was agreed on 19 March 1997. The resolution stated:

That, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to Parliament:

- (1) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Next Steps Agencies;
- (2) It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- (3) Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's Code of Practice on Access to Government Information (Second Edition, January 1997);
- (4) Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (January 1996).<sup>14</sup>

The resolution gives civil servants duties toward Parliament only in carrying out the requirements of their ministers. The existing responsibility of Accounting Officers to give an account to the Commons of their handling of public funds was not changed.

The *Ministerial Code* states that ministers are responsible for interpreting the Code but that ultimately they hold office as long as they retain the confidence of the Prime Minister:

- 1.5 Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public. However, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.<sup>15</sup>

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<sup>13</sup> Cabinet Office, *Ministerial Code*, May 2010, para 1.2

<sup>14</sup> HC Deb 19 March 1997 cc1046-1047

<sup>15</sup> Cabinet Office, *Ministerial Code*, May 2010, para 1.5

In respect of their parliamentary duties, as opposed to ministerial duties, the *Ministerial Code* states that ministers:

... must also comply with the Codes of Conduct for their respective Houses and also any requirements placed on them by the Independent Parliamentary Standards Authority.<sup>16</sup>

In these circumstances, ministers may be subject to sanctions or penalties recommended by the Standards and Privileges Committee and agreed by the House or by IPSA's Compliance Officer.

### 1.3 Current issues and ministerial responsibility

The Public Administration Select Committee (PASC) has had a long standing interest in both ministerial and civil servant responsibility to the UK Parliament. Its report *Politics and Administration: Ministers and Civil Servants*, published in 2007, examined the stresses in the traditional model. It found that "there is no consensus, either among politicians or officials, about the way in which ministerial and civil service responsibilities are divided. This means there can be no consensus about where accountability should lie"<sup>17</sup> In Britain the balance between independent appointment on merit and ministers' ability to give political direction through staffing decisions is at one end of an international spectrum ending with the United States.

The report argued that

33. Thus the civil service's relationship with government has long been recognised as more complex than simply being the enthusiastic instrument of government policies. As Dr Matthew Flinders of Sheffield University put it: "In practice, it is quite clear that the bureaucracy has its own implicit values, wants and desires and these may on occasion conflict with the instructions of ministers".<sup>27</sup> Yet the only explicit acknowledgement of this potential for conflict within the current system is when civil servants act in the role of Accounting Officers. In that context, they have a clearly defined role as the guardians of propriety in public expenditure. If they believe a particular expenditure would be a misuse of public funds, they may formally note the fact. The minister may override their objections, but the note is sent to the Treasury and the Comptroller and Auditor General.<sup>28</sup> Such a note will inevitably come to the attention of the Public Accounts Committee.

PASC looked at some comparative examples, including Scandinavia and New Zealand, but concluded that a system in which the civil service was itself beyond political accountability would not be effective. The committee was sympathetic towards more ministerial involvement in the appointment of senior civil servants, noting that the Nolan rules set out in guidance from the Civil Service Commissioners and the Office of the Commissioner on Public Appointments had resulted in a lack of ministerial influence. It noted that was possible to guard against patronage without removing all ministerial choice about suitable appointees. In the remainder of the 2005 Parliament, PASC also explored the feasibility of more external

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<sup>16</sup> *Ibid*, para 1.6

<sup>17</sup> HC 122 2006-07 <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpublicadm/122/122i.pdf>

appointments to the civil service and the appointment of ministers without experience as a member of either House.<sup>18</sup>

The successor PASC committee in the 2010 Parliament heard evidence from Professor Antony King, Jonathan Powell and Lord Turnbull on 15 October 2010 on ministerial and other appointments outside Parliament. The former Cabinet Secretary, Lord Turnbull, discussed alternatives to the traditional model of parliamentary government:

I think there is a growing gulf between the requirements to manage a modern, huge department, with big issues, large budgets and large numbers of people, huge technological issues, issues of science, in which the House of Commons has almost zero capability, and also very international. There is a growing trend for people to come into politics more or less straight from university. They lick envelopes in Central Office, become a Special Adviser, on and on it goes, and by the time they are in their mid-thirties they are Cabinet Ministers, barely touching the sides of real life.<sup>19</sup>

Lord Turnbull's arguments for increasing the talent pool for Ministers by recruiting outside parliament was supported by Jonathan Powell in his evidence to PASC:

There is a reason that in Europe, pretty much all of continental Europe, and the US your gene pool from which you can choose is the entire country to be ministers, whereas here we have 300-odd MPs on the government benches from which you can choose. It is a much narrower group from which you can choose, and I think it would be far better if we were able to do that.

Professor King pointed out that the question of accountability to Parliament was logically different from whether a minister should actually be a member of Parliament and said that most central European states had mixed executives, where some were MPs and some came from an unelected background. This has implications for ministerial responsibility, as commentators have argued that ministers' behaviour and willingness to accept responsibility is modified by the need to retain the confidence of Parliament.

#### **1.4 Constitutional Reform and Governance Act 2010**

The civil service was given a statutory basis in part 1 of the *Constitutional Reform and Governance Act 2010*. This was the culmination of several years of recommendations from Lords and Commons select committees, notably the Public Administration Select Committee, and was a commitment of the incoming Prime Minister, Gordon Brown, in June 2007. The Act gave the Minister for the Civil Service power to manage the civil service, but appointments to the civil service are to be made on merit on the basis of fair and open competition and the Civil Service Code was given statutory underpinning.

The legislation on the civil service had all-party agreement, and the broad thrust was uncontroversial. The provisions were intended to put into legislation generally agreed principles on an impartial and permanent civil service, which had previously been the subject of non-statutory codes.

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<sup>18</sup> Outsiders and Insiders: External Appointments to the Senior Civil Service HC 241 2009-10 <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/241/24102.htm> and Goats and Tsars: Ministerial and other appointments outside Parliament HC 331 2009-10 <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/330/33002.htm>

<sup>19</sup> HC 944 2008-09 Q1

## 1.5 Public Administration Select Committee and Strategic Government

Since the 2010 election, under the new chair Bernard Jenkin, PASC has developed an interest in the need for strategic thinking in government. Its July 2011 report *Good Governance and Civil Service Reform: 'End of Term' report on Whitehall plans for structural reform* examined the reform and corporate change programmes of individual Government departments. There followed PASC's April 2012 report *Strategic Thinking in Government: Without national strategy, can viable Government strategy emerge?* which expressed concern at the absence of national strategy at the centre of Government.<sup>20</sup> Most recently, it has produced progress reports on strategic capability from each of the ministerial departments in the Civil Service, and from the NHS.<sup>21</sup> Mr Jenkin has clashed with Oliver Letwin, minister of state at the Cabinet Office, over Mr Letwin's interpretation of the PASC reports. Mr Jenkin drew attention to the PASC conclusion that:

We believe that there is considerable unused capacity for strategic thinking in Whitehall departments which should be allowed to grow and flourish. This cannot be achieved if Ministers continue to insist that strategic thinking should be largely the preserve of Ministers.<sup>22</sup>

PASC also recommended in its September 2011 Report on Civil Service reform *Change in Government: the agenda for leadership* that the Government that consider whether the Haldane model was still relevant:

The convention of ministerial accountability and the Whitehall departmental structures derived from the Haldane Report at the beginning of the last century have, on the whole, stood the test of time. However, in light of the radical devolution of power and functions proposed by the Government, it is timely to consider the development of a new Haldane model to codify the changing accountabilities and organisation of Government. We invite the Government in their response to this report to explain how they will take forward this work or how the existing model remains relevant in these changed circumstances.<sup>23</sup>

In his evidence to the Lords Constitution Committee inquiry on the civil service on 23 May, Mr Jenkin said:

That churn at the top has promoted generalists rather than specialists as departmental heads. Decision-making, as reported by many non-executives, has become slow and risk averse, paradoxically adding risk and cost to every decision. Worst of all, however bad the final decisions turn out to be, however many billions of pounds are wasted, no Minister or civil servant seems to be individually accountable or responsible for what has happened. There is also a sense that the senior civil service has lost its confidence to assert rigour and discipline in the conduct of their departments in the form of good order, good governance, good procedure and objectivity.<sup>24</sup>

On 22 October 2012 Mr Jenkin called for a royal commission or cross-party inquiry to investigate relations between ministers and civil servants, arguing that "too many senior and

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<sup>20</sup> [Strategic Thinking in Government: Without national strategy, can viable Government strategy emerge?](#) April 2012

<sup>21</sup> PASC *End of term report 2011-12* HC 316 2012-13

<sup>22</sup> Institute of Government Guest Blog [Why Mandarins Matter: A Response Bernard Jenkin](#) 19 September 2012

<sup>23</sup> Public Administration Select Committee, Thirteenth Report of Session 2010-2012, *Change in Government: the agenda for leadership*, HC 714, para 93

<sup>24</sup> <http://www.parliament.uk/documents/lords-committees/constitution/CivilServ/ACSEvidenceFINAL.pdf>

distinguished mandarins had been allowed to depart, leaving a group of permanent secretaries who were “jacks of all trades and masters of none”.<sup>25</sup>

## 1.6 Public Accounts Committee

Since the election as chair of the former Labour minister Margaret Hodge to the Public Accounts Committee (PAC) in 2010, the Committee has been more assertive in requiring senior and former civil servants to give evidence. House of Commons Standing Order 148 was amended to allow the PAC to appoint its own special advisers, rather than relying on the Comptroller and Auditor General and the National Audit Office. Examples of new assertiveness which have attracted media attention included requiring a senior lawyer at HMRC to give evidence under oath, and summoning a former Permanent Secretary to give evidence on a particular project for which he had been responsible.

Mrs Hodge made a keynote speech on accountability in public services on 15 March 2012, available on the PAC website, in which she referred to criticism of her treatment of senior civil servants by Lord Gus O’ Donnell, made when he was Cabinet Secretary in 2011. Mrs Hodge argued that the doctrine of ministerial and civil service accountability were no longer fit for purpose:

The traditions surrounding civil service accountability are steeped in history. It was the Northcote-Trevelyan reforms introduced under Gladstone in the 1850s which articulated the idea of a non-partisan civil service, selected on merit and ability and not on patronage and influence. This formed the basis of the Civil service we know today.

Through the Haldane Report after the first world war to the introduction of the Osmotherly rules in 1980 and to Robert Armstrong’s memorandum in 1985 the doctrine of ministerial accountability to Parliament and civil service accountability to ministers became embedded and now traditionalists want to defend that principle whilst modernisers believe it needs reform.

Robert Armstrong articulated the principle when he said: ‘The civil service has no constitutional personality separate and apart from the Government of the day. The duty of the civil servant is first and foremost to the Minister of the Crown who is in charge of the Department in which he or she is serving.’

The current arrangements can be seen as equally valuable and frustrating to both ministers and politicians.

They are helpful because ministers can always put up their hands and say ‘Not me Gov’ when things go wrong, as Theresa May did recently on the Border Agency’s lax interpretation of vetting people entering the country, whilst civil servants can escape criticism for major cock-ups on new IT projects or defence contracts

They are maddening because politicians resent having to accept responsibility for mistakes made by civil servants and civil servants resent being blamed without being able to clear their name in public. The old doctrine of accountability isn’t fit for the 21st century.<sup>26</sup>

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<sup>25</sup> “Government should face Royal Commission over Whitehall “crisis of confidence” 22 October 2012 *Daily Telegraph*

<sup>26</sup> PAC Chair delivers keynote speech on ‘Accountability in today’s civil service’ 15 March 2012 Public Accounts Committee website <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/policy-exchange-speech/>

Not all commentators have agreed with the approach of Mrs Hodge. Sue Cameron, writing in the *Telegraph* noted:

MPs, of course, are free to challenge the doctrine that ministers, not unelected civil servants, are answerable to Parliament. It would make government as we know it unworkable, but if MPs want such a radical change, then they should initiate a debate. Change should not come about with a handful of MPs on one committee subjecting public servants to the kind of yah-boo knockabout that voters so despise in politicians. "If she's not careful," said one insider, "a senior official will walk out." The pity is that after being supine for so long in the face of an overweening executive, MPs on select committees are resurgent. They are holding ministers and others to account more effectively than ever before, whether it is John Whittingdale's committee pursuing Rupert Murdoch or Stephen Dorrell's team scrutinising the NHS reforms. <sup>27</sup>

Mrs Hodge reiterated her views to the Lords Constitution Committee on 23 May 2012 (see below):

I think that you just have to accept the reality that Ministers cannot be accountable for much that happens. To take an example of a procurement decision, the NHS IT system was a complete shambles that cost £6 billion. Can you really say that Ministers were accountable for that? Big procurement decisions are one example. I think that we have to try to move to a definition where Ministers are responsible for policy formulation and there is greater accountability of the civil service for policy implementation. That is difficult and blurred, and there will no doubt be areas where disagreements will arise, but select committees are actually pretty adept at sorting out where responsibility and accountability lie. That is hugely important.

In addition, the fact that we have a much more fragmented public sector increasingly means that Ministers are not accepting accountability for what happens in, for example, an NHS trust or academy school. Indeed, yesterday we had an inquiry into the work programme and the performance and integrity of private providers such as A4E. Ministers are not accepting that accountability. If that is the way that they are going to go, we need to recognise that and change our conventions in that regard. From the PAC's point of view, we must follow the taxpayer's pound and we must have proper accountability. That is why I think that there have to be changes. <sup>28</sup>

## 1.7 Lords Constitution Committee inquiry into the civil service

The Lords Constitution Committee have been conducting an inquiry into the civil service following the enactment of the *Constitutional Reform and Governance Act 2010*. Written and oral evidence has been published and is available from the website.<sup>29</sup> A report is due before the end of 2012. Its issues and questions paper included a series of questions on the relationship between civil servants and Parliament as follows:

### **The accountability of civil servants to Parliament**

9. In what circumstances, if any, is it appropriate for civil servants to be held directly accountable to Parliament?
10. Would direct accountability risk the politicisation of the home civil service?

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<sup>27</sup> Gus O'Donnell's anger reflects a growing rift between mandarins and MPs, *The Daily Telegraph* February 1, 2012

<sup>28</sup> <http://www.parliament.uk/documents/lords-committees/constitution/CivilServ/ACSEvidenceFINAL.pdf>

<sup>29</sup> <http://www.parliament.uk/documents/lords-committees/constitution/CivilServ/ACSEvidenceFINAL.pdf>

11. If so, is civil service politicisation always and necessarily something to be avoided? In what circumstances should it be permitted, and what would be the benefits of politicisation?

12. Where civil servants should be held directly accountable to Parliament, is there a case for (enhanced) parliamentary involvement in their appointment?

13. Is there a case for redrafting the Osmotherly Rules? If so, what, if any, involvement should Parliament have in the process? <sup>30</sup>

The Osmotherly Rules featured in much of the evidence from former ministers and senior civil servants. Further background on the Rule is set out in Standard Note 2671 [The Osmotherly Rules](#).

Other matters under discussion were the viability in practice of traditional notions of ministerial responsibility, given the fractured nature of the central public sector (NDPBs etc) and the question of pre-appointment hearings for new Permanent Secretaries. When Francis Maude appeared before the Committee on 18 July 2012 he was open to persuasion on the witnesses who should appear before select committees:

**Mr Francis Maude MP.** I do not have rigid views about it, to be honest. I do not have a rigid view that more civil servants should not be able to give evidence. I think one needs to tread carefully in these areas. As you were saying, in terms of the British constitution, the introduction of select committees at all is a relatively recent phenomenon and their role has been developing. It is developing all the time. They hand out, as Lord Powell says, thrashings periodically and, as a recipient of those thrashings, one would obviously wish for them to be fairly equally distributed.

I genuinely do not have a very strong view about it. Just as I believe that former permanent secretaries, former accounting officers, should be able to be brought back in front of the Public Accounts Committee to talk about projects they have overseen in the past, I would be equally relaxed about former Ministers doing the same. I think we should continue to be accountable for what we do even after we have moved on. <sup>31</sup>

He indicated that a review of the Rules would not take place until after the Committee has reported. (Q351)

## 1.8 The Coalition Government's policies

Francis Maude was appointed Minister for the Civil Service in the Coalition Government formed in May 2010. Initially, the policy emphasis was on transparency and efficiency, with a focus on improving procurement and reducing costs. Further detail is given in Standard Note 5769 [Civil Service Reform](#), published in November 2010.

In June 2012 Mr Maude launched the [Civil Service Reform Plan](#) designed to modernise civil service by improving capabilities, culture and leadership. However, the Plan noted that “the current model of a permanent, politically impartial Civil Service will remain unchanged”. <sup>32</sup> One aspect of the Plan was the Contestable Policy Fund giving departments an opportunity to seek external input to its policy making function. On 1 August 2012 Mr Maude announced the first award, as set out in a Cabinet Office press release:

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<sup>30</sup> Call for evidence Lords Constitution Committee <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/inquiries/parliament-2010/accountability-of-civil-servants/>

<sup>31</sup> <http://www.parliament.uk/documents/lords-committees/constitution/CivilServ/ACSEvidenceFINAL.pdf>

<sup>32</sup> [Civil Service Reform Plan](#) June 2012 Cabinet Office p8

The Minister for the Cabinet Office will commission an external organisation, such as a think tank or academic institution, to review how other governments and multilateral organisations are structured and how they operate. The winning bidder will be asked to make policy recommendations for how these approaches might be applied by the UK and will present these suggestions to the Minister.

The review will analyse the structure and operation of governments including those of Australia, Singapore, the United States, France and Sweden - and the balance between impartial bureaucracies and administrations appointed by democratically accountable Ministers. The review will specifically consider the New Zealand model of Civil Service accountability where there is a contractual relationship between Ministers, who set clear outcomes, and Heads of Departments, who are accountable for delivering them.<sup>33</sup>

In support of the initiative, Head of the Civil Service, Sir Bob Kerslake was quoted as saying:

“Open policy making must become the default in Government – Whitehall does not have a monopoly on policy making expertise. Of course, excellent policy managers within departments will continue to support Ministers in securing collective agreement and, most importantly, translating policy ideas into reality.”<sup>34</sup>

In September 2012 Mr Maude announced that he was commissioning research from the Institute of Public Policy on how to make the civil service more effective and politically accountable. According to media reports, the review is intended to look at radical options including formally contracting departmental permanent secretaries to complete certain ministerial objectives.<sup>35</sup> The review is due to be completed by the end of October 2012.

On 2 October 2012 Mr Maude spoke at an Institute of Government event, complaining that there were cases where “permanent secretaries blocked agreed government policy from going ahead or advised other officials not to implement ministerial decisions”. In response, the senior civil service union protested:

"By making accusations against permanent secretaries who are unable to defend themselves publicly, Francis Maude risks a severe loss of trust between the most senior civil servants and ministers," said Dave Penman, from the First Division Association.<sup>36</sup>

Mr Maude also argued for ministers to play a greater part in the selection and appraisal of senior officials.<sup>37</sup>

In a speech to the think tank Politieia on 23 October 2012, the Secretary of State for Education, Michael Gove, commented on the need to tackle a risk-averse culture within the civil service and the NAO and PAC:

But far too often the Whitehall machine is risk averse. Media commentary rarely allows early errors to be seen in context as experiments which will generate improvements. And the NAO and PAC, the most influential watchdogs in the country, are some of our fiercest forces of conservatism.

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<sup>33</sup> “Looking abroad for next steps in Civil Service Reform Plan” 1 August Cabinet Office

<sup>34</sup> Ibid

<sup>35</sup> “Ministers commissions study into civil service reform” 18 September 2012 *Guardian*

<sup>36</sup> “Civil servants blocking government policy- unacceptable” *BBC News*

<sup>37</sup> “No minister! Senior civil servants deliberately block policy, says Francis Maude” 3 October 2012 *Daily Telegraph*

Time after time the NAO and PAC report in a way which treats any mistake in the implementation of any innovation as a scandalous waste of public money which prudent decision-making should have avoided. And yet at the same time it treats the faults of current provision as unalterable facts of nature – like the location of oceans and mountains – which should be accepted as the design of a benign Providence.<sup>38</sup>

Margaret Hodge issued a statement in response:

Of course we support innovation. The only way departments will be effective in dealing with deficit reduction is to find new ways of working, but the government cannot use the badge of "innovation" to disguise incompetence, ill thought through programmes and ideologically based policies implemented in haste."<sup>39</sup>

### 1.9 West Coast Main Line procurement decision

On 3 October 2012, the Secretary of State for Transport, Patrick McLoughlin, announced that that the competition to run trains on the West Coast Main Line had been cancelled following the discovery of significant technical flaws in the way the franchise process was conducted.<sup>40</sup> The flaws uncovered related to the way the procurement was conducted by department officials and three were subsequently suspended. One of those suspended, Kate Mingay, subsequently protested that there had been "complete inaccuracies in the portrayal of her role and took legal advice."<sup>41</sup>

Margaret Hodge, chair of the Public Accounts Committee, argued in response that select committees should have the power to call individual civil servants to explain their actions.<sup>42</sup> In contrast, Professor Vernon Bogdanor argued that "the organisation and competence of the civil service is a ministerial responsibility. It was therefore for ministers to ensure that officials had the necessary skills and it was ministers to scrutinise the minutiae before assuring parliament that all was in order"<sup>43</sup>

Sir Bob Kerslake and Francis Maude produced a joint article for the *Telegraph* on 5 October 2012 which argued that the Civil Service Reform Plan initiatives would help equip the civil service:

Civil Servants have been telling us for some time that to implement policy effectively, they need more commercial skills, better sharing of expertise and better training at managing major projects.

Our reform plan addresses these needs, tying together a range of actions that will strengthen the capability of the Civil Service and identify missing skills. The new Commissioning Academy will help make the public sector a more commercially savvy client while our Major Projects Leadership Academy will significantly improve the quality of Whitehall's project management. These are examples of first important steps to deal with the problems.<sup>44</sup>

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<sup>38</sup> The Conservative Party Speeches Michael Gove Politeia Think Tank speech 23 October 2012

<sup>39</sup> [Politics Home](#) "Margaret Hodge MP: response to speech by Michael Gove on the work of the PAC" 23 October 2012

<sup>40</sup> "West Coast mainline franchise competition cancelled" 3 October 2012 *Department of Transport*

<sup>41</sup> "West Coast main line civil servant Kate Mingay speaks out" 6 October 2012 *BBC News*

<sup>42</sup> "The rail fiasco's real culprits must not escape" 9 October 2012 *Times*

<sup>43</sup> "In the west coast rail blame, the principle is clear" 5 October 2012 *Guardian*

<sup>44</sup> "Civil servants must learn to take orders with 'energy and enthusiasm' 5 October 2012 *Daily Telegraph*

## 1.10 Liaison Committee report

The Commons Liaison Committee report *Select committee effectiveness, resources and powers* was issued on 8 November 2012. The report summarised current debate about the role, purpose and organisation of select committee. Among the topics it addressed, the Committee was concerned to make clear that the Osmotherly rules should not be used to avoid accountability:

**113 ...We do not accept that the Osmotherly rules should have any bearing on whom a select committee should choose to summon as a witness. The Osmotherly rules are merely internal for Government. They have never been accepted by Parliament. Where the inquiry relates to departmental delivery rather than ministerial decision-making, it is vital that committees should be able to question the responsible official directly – even if they have moved on to another job. It does of course remain the case that an official can decline to answer for matters of policy, on the basis that it is for the minister to answer for the policy, but officials owe a direct obligation to Parliament to report on matters of fact and implementation. This does not alter the doctrine of ministerial accountability in any way....<sup>45</sup>**

The Committee concluded that a thorough review was required:

**16 We recommend that the Government engage with us in a review of the relationship between Government and select committees with the aim of producing joint guidelines for departments and committees, which recognise ministerial accountability, the proper role of the Civil Service and the legitimate wish of Parliament for more effective accountability.**

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<sup>45</sup> Liaison Committee second report [Select Committees: Effectiveness, Resources and Powers](#) HC 697 2012-13