

Public Administration & Constitutional Affairs Committee

Oral evidence: Lessons Learned from the EU Referendum, HC 496

Wednesday 14 September 2016

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Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Mrs Cheryl Gillan; Kate Hoey; Mr Andrew Turner

Questions 1 – 66

Witness

Sir Jeremy Heywood, Cabinet Secretary and Head of the Civil Service

Examination of witnesses

Sir Jeremy Heywood, Cabinet Secretary and Head of the Civil Service

Q1 **Chair:** We are very much truncating this session, and we will send you some written questions, if you could deal with those. We want to deal in particular with section 125, purdah, contingency planning, and the challenges Whitehall faces in the absence of contingency planning. First of all, when you appeared before us last July and you expressed concerns that maintaining section 125 could constrain the Government's ability to conduct business as usual, particularly in relation to Ministerial Councils in Brussels, you said you were, and I quote, "very nervous about putting our Ministers into a position where they have to tread so carefully in the last 28 days", because you were concerned that there was a constant risk of being accused of violating section 125. How right were you to feel so nervous?

Sir Jeremy Heywood: I think it is absolutely right that the Cabinet Secretary takes seriously legal advice that I am given and the Government is given, and we have very clear legal advice about the risks



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of that. As it turned out, we ended up not facing litigation risk in that last 28 days as a result of business as usual, or not facing legal action.

Q2 **Chair:** What difficulties did the application of section 125 during the referendum cause in the conduct of business as usual?

Sir Jeremy Heywood: I think, broadly speaking, we managed through section 125 with great care without huge difficulties.

Q3 **Chair:** There were not any difficulties?

Sir Jeremy Heywood: We had to manage very carefully to avoid difficulties, and that is all we did.

Q4 **Chair:** How many litigation threats did the Government receive over section 125?

Sir Jeremy Heywood: I am not aware of any, but it is possible that there were some that were not brought to my attention. I will let you know if that is the case. There was possibly one from you, was there not?

Q5 **Chair:** Yes, there kind of was. Yes. I hoped you were not going to mention that. How, if at all, has your experience at the EU Referendum changed your perspective on the operation of section 125?

Sir Jeremy Heywood: To be honest, the concerns we had about 125 were twofold. First, the Prime Minister had a very clear concern that the Government should be able to set out their perspective all the way through the referendum campaign. That was the political concern that he expressed repeatedly, and I mentioned it in the Committee as well. Secondly, we had this legal advice that we would have to be very careful to avoid business-as-usual business in Brussels falling foul of the wording of section 125. I think it would still be worth having a look at the detail of the wording at section 125. You and I corresponded extensively over one particular aspect of it, where you had one legal interpretation, I had another, and the Electoral Commission had a third. There are issues around, for example, the inability of the Government to carry on encouraging people to register to vote for fear of falling foul of section 125. I think the Electoral Commission has some concerns about some bits of wording about section 125. But did it play a very big role in the end? No, it did not.

Q6 **Chair:** As one of the campaigners I can tell you it did play a huge role. The atmosphere was transformed in the last 28 days when the Government was prevented from campaigning as it did up until that point.

Sir Jeremy Heywood: Yes. Just to be very clear, what I meant was: did it cause huge difficulties for business as usual? In the event, no.

Q7 **Chair:** The Electoral Commission has previously recommended that the purdah period should be much longer—significantly longer—it should be 10 weeks as opposed to four weeks. That would certainly level the



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playing field, given the way the Government were behaving up until the last 28 days. Would there be any additional difficulties if the purdah period was longer, from your point of view, and what would they be?

Sir Jeremy Heywood: I do not think this is an issue for the Civil Service. I think this is an issue for Parliament and the Government.

Q8 **Chair:** Yes. But you would give advice about concerns you had, and if we tidied it up so it was—

Sir Jeremy Heywood: I think some tidying up of section 125 would be sensible, but I repeat, given the way we managed through it, did it cause problems for business as usual in Brussels? It did not. I would have to take further advice on whether that was because we managed to curtail the amount of business that was done and it would be more difficult to do that if it was a more extended period. But from my perspective as Head of the Civil Service, section 125 risks that were brought to our attention by our lawyers did not materialise in a serious way that really intruded with normal business.

Q9 **Kate Hoey:** Sir Jeremy, on section 125 you also said, when you came here in July last year, that it could constrain the Government's room for manoeuvre, for example, on what you called business as usual matters in the EU Council, and you said you think the Civil Service's main concern would be in relation to what you called the normal activity in Brussels. Some of those will be informal and private, and that it would constrain Ministers, who would have to tread very, very carefully. Do you happen to know how many Ministerial Councils were held during the last, formal section 125 period?

Sir Jeremy Heywood: I am afraid I do not know, but I can get that information.

Q10 **Kate Hoey:** That would be very helpful to know. Had you any feeling that our Government Ministers were in any way restricted by anything that happened under section 125 in any of the "normal", as you called it, activity in Brussels?

Sir Jeremy Heywood: What I will say is that no one brought to my attention a particular problem in that last 28 days in relation to business in Brussels. I would have to talk to Sir Ivan Rogers to see whether on the ground there were difficulties, or it undermined our negotiating position in some way, or people felt inhibited from making points in the way that had been advertised in advance as a potential risk. But at the time no one brought to my attention a problem. That is all I can say at this point.

Q11 **Kate Hoey:** Yes. How often did you speak with our permanent representative in the EU in Brussels? Were you in daily contact with Brussels?

Sir Jeremy Heywood: I am always in daily contact with Sir Ivan Rogers.

Q12 **Kate Hoey:** You will probably have less in the future, hopefully.



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Sir Jeremy Heywood: No, he is very centrally involved in the work that we are all doing on Brexit.

Q13 **Kate Hoey:** You spoke daily to—

Sir Jeremy Heywood: I would not say we spoke daily, but I think he would have brought to my attention if there had been a major problem in that last 28 days.

Q14 **Kate Hoey:** What did you do, if anything, to counteract some of the ridiculous statements and speeches that were coming out of the European Union at Commissioner level and at senior level that were, in many ways, trying to influence how the British people would vote?

Sir Jeremy Heywood: I was not involved at all in talking to the Commissioner about that, but I suspect some Government Ministers might have been. The general view was to keep the Commissioner out of the UK referendum.

Q15 **Kate Hoey:** It did not worry you at all that sometimes they were saying quite ridiculous things about possibilities of what would happen if the British people decided to vote Leave?

Sir Jeremy Heywood: I cannot control what the European Commissioner says, and I am not sure whether it is a positive or a negative for the different sides of the campaign, frankly.

Q16 **Kate Hoey:** Overall, are you saying you are quite happy with the way the European Union Referendum relating to section 125 was conducted?

Sir Jeremy Heywood: As far as section 125 is concerned, the problems that we were advised by our lawyers that might arise, they did not arise. I think there was, as I said earlier, a difference of view about legal interpretation between myself, the Chairman, and the Electoral Commission. As I say, it is slightly odd, that a sensible campaign to try to persuade people to register to vote had to be curtailed in the last 28 days, because I do not think that was necessarily the objective of the section. I think there are things to look at, in an ideal world, if we did not have lots of other things to do. But did section 125 cause a major problem for the functioning of the UK Government, which is my responsibility? The answer to that is no.

Q17 **Kate Hoey:** You presumably give advice to the Prime Minister. That is part of your job as Cabinet Secretary. Did you ever advise the previous Prime Minister, David Cameron, that perhaps he was being slightly over the top on some of the things that he was saying and the way he was campaigning, and that maybe he should be looking more to the example of previous Prime Ministers, like Harold Wilson, who kept a much cooler view on everything and did not get so obsessed about it?

Sir Jeremy Heywood: To be honest, my advice to Prime Ministers is a confidential matter. I am responsible for the Civil Service, and I am very happy to answer any questions on that.



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Q18 **Kate Hoey:** You could have discussed it with him, but obviously you would not want to tell us about secret conversations. I understand.

Sir Jeremy Heywood: Yes. I hear the Committee has a longstanding record of believing in the confidentiality of Civil Service advice.

Q19 **Kate Hoey:** Can you say generally whether you feel that the campaign handled by the Prime Minister was a good campaign? Presumably, as the vote went the other way, you would say there were problems with it.

Sir Jeremy Heywood: The last 28 days was the campaigns, and the Civil Service was doing other things. Prior to the last 28 days, of course we had a role in supporting the Government of the day in its policy, and my job then was to make sure that anything the Government put out was sober, factually accurate, and not propaganda. I think that is what we did. I obviously have no influence over his campaigning activity, per se.

Q20 **Kate Hoey:** I will not go on to the booklet, because I think my colleague is going to raise the question of the great, expensive booklet that went round the whole country telling us what a disaster it would be if we were to vote to leave. Do you regret that?

Sir Jeremy Heywood: No. The Government wanted to put out a leaflet, as the Government had done in 1975 and during the Scottish Referendum, and it was a Civil Service duty to support the Government in doing so. My job was to make sure there was nothing in that leaflet that was inaccurate.

Q21 **Kate Hoey:** You stand by that? There was nothing in it that you felt was inaccurate or biased? I do not mean biased in a—

Sir Jeremy Heywood: It set out the Government's position. It clearly set out the Government's position. The Government was explicit that that is what it did. I think every fact in that was very carefully checked and triple checked, and that was the job that we had to do in the Civil Service to make sure there was nothing in there that could be accused of being propagandist or factually inaccurate.

Q22 **Kate Hoey:** How long did it take to put together?

Sir Jeremy Heywood: I cannot quite recall, but several weeks. Not of constant work, but it was in draft for several weeks.

Q23 **Mrs Cheryl Gillan:** On section 125 would it be fair to say, Sir Jeremy, that now we have had two referendums, the Welsh Referendum and the EU Referendum, where section 125 has not interfered at all in the business of Government—

Chair: The AV Referendum.

Mrs Cheryl Gillan: Also the AV referendum: three. That is like the Spanish Inquisition. We have had three referendums.

Chair: And the Scottish Referendum.



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Mrs Cheryl Gillan: And the Scottish Referendum. Four, there were four referendums. It is fair to say that they have not interfered with the business of Government at all. It is quite a good section, is it not?

Sir Jeremy Heywood: We have managed to keep the flow of necessary business through without it interfering unduly. We have obviously had to be careful.

Q24 **Mrs Cheryl Gillan:** But it is fair to say that there was good precedent for saying that section 125—we have been quite easily able to continue the business of Government.

Sir Jeremy Heywood: We discussed all this at length in a long committee hearing some time ago.

Q25 **Mrs Cheryl Gillan:** Yes, I know. I know, but it is fair to say that. Section 125 is quite a good section to have in there for referenda, if you are in favour of having referenda and if you have to have them.

Sir Jeremy Heywood: The Government was so convinced after a parliamentary debate, as you know. But I do think there are one or two clauses—

Q26 **Mrs Cheryl Gillan:** I think the Government was so convinced after a vote, rather than the parliamentary debate. But that is another matter.

Sir Jeremy Heywood: Yes, they enthusiastically embraced it in the Bill. But I do think there are some clauses in there—or some bits of wording—that would repay further scrutiny if the time ever arose.

Q27 **Mrs Cheryl Gillan:** Did you feel that the action of the Government at the time on this put unnecessary pressure on the Civil Service?

Sir Jeremy Heywood: No, not at all. The one thing that I would say about this whole phase was that there was an unfortunate, and in my view inaccurate and unfair, perception out there in some quarters that the Civil Service was operating in a biased way. I think that was quite damaging, and I very much regret it. I regret that this issue was not thrashed out in Parliament when Parliament debated this whole thing. As far as I am concerned, the Civil Service's position is very clear. In the period up until purdah the Civil Service has a duty under the constitution to support the Government of the day. After that we absolutely have a duty to comply with section 125, and that is exactly what we did.

I do not think we behaved improperly, I do not think we behaved in a biased way, or an unfair way, or a constitutionally improper way. Yet the perception was out there that we were exceeded our brief in some way or were biased, and that was very unfortunate. I think that partly was because there was not sufficient understanding, even in Parliament, frankly, as to what our role is when the Government has a position and there is nothing in the Bill that stops the Government from using the Civil Service.



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Chair: We have been all over this before, and I want to come to Civil Service impartiality if we have time. But on the question of the booklet, do you want to ask this question about the timing?

Q28 **Kate Hoey:** Yes. I was trying to really tease it out. You seem to have had contingency plans for the booklet some time ago. I really would like to know when planning started, who did it and whose idea was it? We know how much it cost, but are you aware that it did raise a huge amount of anxiety, and in my view raised a feeling that the Government had overstepped the mark?

Sir Jeremy Heywood: Obviously I was aware that some people thought that. It was widely reported at the time. I cannot remember whose initial idea it was, whether it was the Prime Minister's or the Chancellor's, but obviously the idea came from the politicians. The Civil Service would not suggest something like that. Our job was to work out whether that was a reasonable thing for Ministers to ask us to do. In the pre-purdah period it was, because they made it very clear to Parliament and publicly they fully intended to articulate a government position on this, and that being the case, it was the Civil Service's responsibility to support them in that.

Q29 **Kate Hoey:** Had you thought about this and planned it from, say, January?

Sir Jeremy Heywood: I do not think it was as far back as that, no. We had not even done a deal in Brussels in January. This is something that has come up after the deal had been done and as the Government was thinking about how it was going to use the period between then and the start of purdah.

Q30 **Chair:** Did anyone ever discuss with you a different timing for the publication of the booklet?

Sir Jeremy Heywood: We did discuss the timing question. There was never any intention of doing it in the last 28 days, let me be clear, but there was an issue around how we could minimise the impact on the other elections that were happening around that time. There were the London elections, there were Scotland elections, I think there were Wales elections, so there was a concern that it should not interfere for those campaigning periods. We had to duck and weave. We talked to the Electoral Commission to some extent about that and tried to find the right timing that was not in the purdah, the local election purdah, or devolved Administration purdah. That was the timing question that we debated.

Chair: Mr Turner, I think we should have one question about the publishing online issue.

Q31 **Mr Andrew Turner:** Yes. This is quite a long question. You will recall the purdah-related issue that arose during the campaign was the question of what constitutes publishing in an online context, and in particular whether materials published on a website by the Government before the purdah period began could remain online during the final 28 days. What



is your view and why?

Sir Jeremy Heywood: The legal advice I had, which I communicated to the Chairman of this Committee several times, I think, was that publication meant new publication and, therefore, leaving material that had already been published was perfectly consistent with section 125. That is the legal advice that we had. What we did was we removed all the links to it, so someone had to actively go and find it, but we did not go as far as to take down all the material that had previously been published in that last period. That was our interpretation of the law.

Q32 **Mr Andrew Turner:** You are saying that it was available, but it was not something that automatically came up on someone's screen?

Sir Jeremy Heywood: Correct.

Q33 **Chair:** I think, under the circumstance, it was quite a good compromise. I think you have already said, just for clarity, you accept that the present drafting of section 125 does not address this online publication question. We had a difference of opinion, and it would be helpful if we resolved it by amending section 125 at some stage in the future for future reference.

Sir Jeremy Heywood: At some stage in the future, yes.

Q34 **Chair:** Moving on to the question of Civil Service impartiality, which, as you know, the Committee has taken a great interest in before. After our 2015 report on the Scottish Independence Referendum, the Government's response was that it would reform the Civil Service management code to "provide absolute clarity on this point", that is on the question of how civil servants should behave during referendums, and would share a revised code with PACAC in due course. It is now several months since we received that assurance—in fact, more than a year—why has this not happened?

Sir Jeremy Heywood: It should have happened, and I think we will be doing it shortly.

Q35 **Chair:** Very good. Can you give us an indication beyond "very shortly" of when this will be?

Sir Jeremy Heywood: I am hoping in the next month or so. Obviously we have new Ministers so we want to do it as part of a general refresh of the relevant chapter of the management code, and as a matter of tidiness we are doing it together with some other changes as well. We will need to discuss it with the Minister for the Cabinet Office, but hopefully in the next few weeks.

Q36 **Chair:** On the question of the Special Adviser's Code, I had a disagreement with the Prime Minister about a particular Special Adviser who we were very clearly advised had breached the Special Adviser's Code by tweeting a very public attack on a Cabinet Minister. The code is very clear that Special Advisers must not take public part in political controversy. Do you agree that tweeting personal attacks on Ministers is



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taking part in political controversy?

Sir Jeremy Heywood: The Prime Minister of the day took the view that there had been no breach of the Special Adviser's Code in that case.

Q37 **Chair:** Let us take that as read, but I am asking for your—

Sir Jeremy Heywood: As far as I am concerned, it was good news that that Special Adviser stopped tweeting.

Q38 **Chair:** If any other Civil Servant had tweeted an attack on a Government Minister, how would you have reacted to that?

Sir Jeremy Heywood: I would have been very angry, and would have stopped it immediately.

Q39 **Chair:** Yes. We are very pleased it did stop immediately. The Twitter account went very silent after that. What lessons do you think we should draw about that from the way the SpAds Code is enforced?

Sir Jeremy Heywood: I am not sure I would draw a general lesson from it. It is a very specific incident. We just need to make sure that we are absolutely clear where the standard lies. I am very clear where the standard lies.

Q40 **Chair:** How confident are you that no Special Adviser was, by implication, offering favours, or preferment, or even honours, or Government contracts, or possible future appointments, in any way during the referendum?

Sir Jeremy Heywood: No one has ever made that suggestion to me before. I have never had any hint of that, so I am confident.

Q41 **Chair:** I can say I have had more than a hint of it.

Sir Jeremy Heywood: If you want to discuss that with me separately—

Q42 **Chair:** I might discuss it with you offline.

Sir Jeremy Heywood: Most of those things that you say could have been offered could not have been offered by Special Advisers, because they have no control over any of those things.

Q43 **Chair:** They were speaking on behalf of the Prime Minister; I am sure without the Prime Minister's knowledge.

Sir Jeremy Heywood: The Prime Minister would not have done such a thing. I don't think the Prime Minister would have done such a thing.

Q44 **Chair:** What would be the consequences were a Special Adviser to be found offering such patronage?

Sir Jeremy Heywood: That would clearly be in breach of the Special Adviser's Code.

Q45 **Chair:** Would it be a breach of the law?



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Sir Jeremy Heywood: I would have to take legal advice on that, but certainly it sounds extremely improper.

Q46 **Chair:** In guidance to Ministers and Special Advisers about referendums, would it not be a good thing to remind people that public office is not to be abused in that way?

Sir Jeremy Heywood: Let me think about that. If there is any plausible evidence that that is something that people have contemplated, then I agree it should be addressed explicitly in the guidance. I would have thought it was just common sense that that should not be happening.

Q47 **Chair:** Finally on the question of Civil Service impartiality, what do you think the referendum campaign did for the reputation of the Civil Service's impartiality?

Sir Jeremy Heywood: As I say, I think overall the Civil Service handled itself very well during that period, but there were some accusations of bias and partisanship, which were unfortunate. I regret those, but overall, I said to the Civil Service as we started the process, "You will be judged by the accuracy of the documents that you support and your adherence to purdah". The work we did in helping the Government produce the documents that Parliament had told the Government to produce was work of good quality, at real pace, documents of great rigour and accuracy. I think in purdah the Civil Service was completely invisible, as you would hope. I hope people will reflect over that whole period and think, "The Civil Service did its job".

Q48 **Mrs Cheryl Gillan:** One of the most surprising things to working civil servants, and certain ex-civil servants, and people like me was under the leadership of the last Prime Minister, he repeatedly said that he was not allowing the Civil Service to carry out any contingency planning. I appreciate there was some work on financial stability done in the Treasury, which would have been expected. Could you tell me if that was indeed the case? Is it absolutely true that the Civil Service did no work at all on contingency planning for a Leave vote?

Sir Jeremy Heywood: No. This has become a very odd debate. Clearly, as you say, significant contingency planning was done on the issue that was most likely to be an immediate issue, which was the work done by the Bank of England and the Treasury, which is well known. Thank goodness they did do that contingency planning, frankly, because I think the financial market's reaction was much reduced as a result of the work that was done, and as a result the markets remained fully functional throughout that period, and a significant adjustment was made without any disturbance to the functioning of the market. That was good.

In addition, as you know, Parliament asked the Government and, therefore, the Civil Service, to do extensive work on certain documents, alternatives to the European Union's membership, an outline of the deal, something on the rights and obligations, and so on. That work was extremely valuable to us as we started to get our heads around what



would happen if there was Brexit. Obviously there is no particular model that the Prime Minister is looking to adopt. We want a British model, not a pre-existing model that does not work for us. Obviously getting our heads around EA membership, WTO membership, all the different sorts of trading agreements that other countries have managed to negotiate, was really valuable work. It required a lot of work by the Civil Service. Some of that was captured in the documents that we produced, but all of that background work and the economic analysis the Treasury did around it is valuable work for us now.

In addition, while we did not set out to produce a Civil Service version of what Brexit looks like, and we did not have the equivalent of a manifesto commitment that we could plan against as you would have in a general election period, we did, of course, as a Civil Service, in that last 28 days, look at what was being said by people advocating Leave and try to understand what were the issues—the policy issues—that were likely to immediately arise on 24 June in that case. I do not call that contingency planning, because it was not a plan. There was not an end state that we could plan against and say, “These are the five components of Brexit, let us work out a plan for each of them”. But we did a significant amount of thinking, and all of that work is extremely valuable now.

Q49 Mrs Cheryl Gillan: How did you feel when the Prime Minister was specifically saying that he was not making any plans for a Leave vote?

Sir Jeremy Heywood: What we didn’t do is what happens during a general election campaign, when you have a manifesto from the opposition that has some very specific pledges and you engage and talk to the opposition directly to try to understand those and start to prepare the legislation and so on. We did not go as far as that and that is, I think, the red line that he imposed.

Q50 Mrs Cheryl Gillan: He did stop you doing what the Civil Service would normally have done, say, in the run up to a general election. You can say that this is a big enough event that there were two distinct outcomes. He stopped you doing more preparation than you in fact did by his instructions?

Sir Jeremy Heywood: He did not want us talking to the Leave campaign and working out elaborate plans for what would happen in the event of a Leave, for sure. But did we use the time usefully to prepare facts, analysis, options that would subsequently become useful? Yes, of course we did. That is why, from the whole period from 24 June onwards, we have been working flat out—but not from a standing start—on the issues that now need to be addressed.

In addition to the policy thinking that we started to do in our heads, we also started thinking about the organisational changes. The idea of creating a separate trade department, for example, that was something that I discussed with my senior team. We had an away-day to discuss the



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sorts of issues we would have to confront on 24 June, and that organisational thinking was also part of it.

Q51 **Mrs Cheryl Gillan:** Did you have that away-day in the purdah period?

Sir Jeremy Heywood: Yes.

Q52 **Mrs Cheryl Gillan:** Yes. In fact, the purdah period was very useful for the Civil Service to not continue to obey the instructions to limit your working on the potential vote Leave, and you were able then to go into full Civil Service “protect the UK’s interests” mode and work on both scenarios.

Sir Jeremy Heywood: I do not want you to put words into my mouth. As I say, we did not do the equivalent of what is done during a general election campaign of taking a specific plan that was out there, which had been promised by—

Q53 **Mrs Cheryl Gillan:** No, I am not asking about a general election campaign. I understand you are anxious to make that comparison, but during that purdah period you were able then to address what was obviously—you were behind the curve if there was going to be a Leave vote because of political instructions.

Sir Jeremy Heywood: Yes. Just being very clear, it would not have been possible for the Civil Service to come up with “the plan” for Brexit. That is a very complicated issue on which there are many different strands of opinion, even within those people who were campaigning for a Leave. Therefore, we did not have a set of propositions that we could then do a serious plan for, nor did we talk to the Leave campaign. It was different, and there were constraints, but I still felt we did some very useful work over and above the specific work that the Bank of England and Treasury did.

Q54 **Mrs Cheryl Gillan:** Was the Prime Minister aware of your Brexit away-day with your senior team?

Sir Jeremy Heywood: I do not think he was, but he had no reason to be.

Q55 **Mrs Cheryl Gillan:** Was the Chancellor aware of your Brexit away-day with your senior team?

Sir Jeremy Heywood: I do not know. Treasury officials were involved, whether they told the Chancellor, I do not know. But I was using Civil Service resources in a sensible fashion during a 28-day period when Ministers were mainly out campaigning to do sensible background work on something that might become useful on 24 June. That is my job.

Q56 **Mrs Cheryl Gillan:** What I am looking for, yes, is that reassurance that despite any political instruction the Civil Service, in a time when the country is facing the equivalent to a general election, or one of two paths, that the Civil Service is continuing seamlessly to produce the work that is



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needed to underpin whatever the outcome is. I think that is the assurance that the public is looking for. Despite all the other conversations that have gone on around the huge problems with the referendum, I think that is what people want to know, that our British Civil Service is continuing to do absolutely what is necessary to make sure that the UK is in a good position no matter what the outcome is.

Sir Jeremy Heywood: I have tried to explain what we did and what we did not do. We did not do the equivalent of what we would do at the time of a general election, and we did not develop our own plan because I do not think that is the Civil Service's job. I think it is a job for politicians to define the negotiating objectives and the end state that is desired. But we did very useful background work, some of which had been requested by Parliament, some of which we did off our own bat. There was nothing in what the Prime Minister told me that prevented me from doing that.

Q57 **Mrs Cheryl Gillan:** Would you have done more had the Prime Minister or the Chancellor admitted or thought that there could be a Leave vote? Was there more you could have done? Would we have been in a better position had they faced that as an option?

Sir Jeremy Heywood: No, I do not think there is much more I could usefully have done, to be honest. We were getting on with the background work, but there was not—you can correct me if I am wrong—a clear blueprint that was out there for Brexit that we could have said immediately, "Right, we now know what we are going to have to do in week 1, week 2, week 4, etc. We know this piece of legislation is going to be required and this particular pledge". We did lots of useful work, lots of thinking about how we would cope with the surge in demand for Civil Service expertise in certain areas, and as a result of that work I think we started in a better place than we otherwise would have done. Of course, the Government of the day was very committed to carrying out and implementing the negotiation it had achieved with Brussels, so we also had to do some work on that as well.

Q58 **Mrs Cheryl Gillan:** What are the lessons that you have learned from this, and what are the lessons for politicians as well?

Sir Jeremy Heywood: I was pretty happy with the way we spent our time, to be honest. This is a very, very complicated subject, as everybody knows, and it is not going to be sorted out by the Civil Service working for 28 days in purdah, half on one outcome and half on the other. Do not forget there was lots of business as usual to deal with then as well. We still had a Government. There was not a huge amount of time in that period, but I think we used that time very sensibly to get ourselves up the learning curve on a number of issues and to understand very much what the Leave campaigners were saying so we understood the sorts of questions we were likely to be asked after the referendum result if it went in that direction. But of course it still leaves a very large amount of work to do, and that is what we are doing right now.



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Q59 **Mrs Cheryl Gillan:** Surely before a referendum is called or given on whatever the subject, it is incumbent upon the Government of the day to at least have a much better scoped-out way forward than we had with this referendum. It felt as if the Government was only prepared for one outcome and not for the other.

Sir Jeremy Heywood: I think that is an issue you need to address to politicians. There is something in our system that makes politicians very reluctant to put their names to two different scenarios in any sort of even-handed way. It just does not work like that, unfortunately.

Q60 **Mrs Cheryl Gillan:** I hate to say, I did manage it on the Welsh Referendum.

Sir Jeremy Heywood: We, as a Civil Service, live within the constraints and try to do the useful work that we can get on with during those periods of purdah, and that is what we did.

Q61 **Mr Andrew Turner:** Is this the same pattern with other referendums in the United Kingdom?

Sir Jeremy Heywood: To be honest, I think we did less work. We did zero work on Scotland. That was a very, very clear, and binding, and tight instruction. On this one we did not have, as I say, any discussion with the Leave campaign. We did not develop our own plan, but we were able to do a bit more background work, partly because Parliament had asked for certain alternatives to be scoped out and published. As part of that work we had to analyse the Canadian deal, the WTO option, and so on. A number of the issues that were being talked about by the Leave campaign—or some elements of them—we had already been asked by Parliament to help the Government prepare papers on them. The lesson, in a sense, for Parliament here is: if parliamentary opinion wants certain work done, it lies in your hands.

Q62 **Chair:** It has been put to us that we need to explore how our system of representative democracy is going to cope better with this occasional overlay of direct democracy. I am sure if we did not already have a system of contact between civil servants and Shadow Ministers before a general election it would not be started now, but because it is in our culture, it happens. What thought have you given to perhaps putting in some formal process so that if the Prime Minister calls a referendum there is a far more automatic understanding that the Civil Service will be doing certain things, as it seems you were doing under the radar, perhaps without the Prime Minister's knowledge? How should we generate an expectation that it is the responsible thing for Whitehall, if not the politicians, to prepare for both eventualities?

Sir Jeremy Heywood: I think hearings like this, inquiries like yours, are precisely the way to surface and stress test some of these issues. It is a very difficult area for the Civil Service because we do support the Government of the day. Of course, if the Government of the day has agreed with Parliament that we should do some other work, then we can



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do that other work as well. But we cannot do it without authority. What I was doing was not contingency planning, just to be very clear. I was not talking to the Leave campaign, and nor were my senior team, but we were trying to make the best use of the time available with sensible preparatory work that might be needed in a different outcome. I think that was fully consistent with what the Prime Minister would have been comfortable with. I do not feel as though I need to square every hour of my day or what I do with the Prime Minister. I am the Head of the Civil Service and a Cabinet Secretary, so if I think there is some useful work to be done, then that is what we will do, unless we have been told we cannot do it. I think it would be a very sensible thing to carry on discussing with other witnesses if you get into an inquiry on the EU Referendum.

Q63 Chair: How unreasonable would it be for there to be contact in the three months before the referendum between the leading political figures and the Civil Service—the leading political figures in the dissenting side of the referendum campaign and the Civil Service—in order for you to gather information and understanding in preparation for a different outcome? How unreasonable would that be?

Sir Jeremy Heywood: It would be similar to what happens on general elections. I would be cautious about it, though, because it is not a precise analogy. For example, quite late on in the campaign, I think the Leave campaign, or some elements of the Leave campaign, put out a sort of five-point plan as to what would be the most urgent marching orders, as it were, post victory. Obviously we looked at that, and we discussed it as a senior Civil Service team to make sure we would know what the answers were to the questions that would naturally arise if we were asked to do that on 24 June. Very little of that has come to pass.

You need to know who you are talking to. A political party has a leader, has a manifesto, and has a clear set of promises. Then you have a campaign that has many different strands. We could have put our eggs in that particular basket and ended up doing a whole pile of work on something that turned out to be completely irrelevant. I think the work you do is necessarily going to be fairly generic, but it can still be quite useful, and it is more about getting yourself into a mindset.

Q64 Chair: What is the biggest challenge in the absence of such preparation, or as much as perhaps we would have liked? What is the biggest challenge Whitehall now faces?

Sir Jeremy Heywood: Whitehall faces the same challenge that everybody else faces on this one, which is: it is a complicated issue. The British public have voted and that is very clear. The Government's commitment to implement that is very clear and, therefore, the Civil Service's mission is very clear. What it is in all its dimensions, the legal, negotiating, economic, security, all these different dimensions, it is a very complicated issue. We are knee-deep in that work now. We are mobilising very quickly. We have created two new departments from a standing



start. I think we are at about 80% fully staffed up in terms of the senior teams of those things. We have created about 60 or 65 senior jobs, and virtually all of those are filled. We are moving forward very rapidly organisationally and in terms of doing the analysis. These are complicated issues that have not been analysed for a very long time, but I am very happy with the work we are doing. I am very proud of the way the Civil Service has risen to this challenge.

- Q65 **Chair:** There has been much speculation about the employment of outside consultants, contractors or lawyers. I am bound to say you want to keep the lawyers away from it until you have decided what you want to do. Could you just explain one thing? Apparently McKenzies were engaged by civil servants before the change of Prime Minister. How many have been engaged and what are they doing?

Sir Jeremy Heywood: I will have to come back to you on that, Mr Chairman. I am not aware of that. But we definitely have made ourselves open to consultancies, accountancy firms, project management specialists, and of course lots of individuals, and we have collected together the CVs and enquiries from many, many hundreds of people now. The challenge is to know when is the best time to deploy the right external expertise. We can get some useful expertise in terms of managing the work flow, but hiring individuals to help with particular trade negotiations, for example, there is no point in hiring expensive talent until we are actually starting that process. Having lots of expensive and very capable people on our books in advance of need is something to be avoided, because we have to be economical about this. We are currently in the business of trying to work through the many, many expressions of interest that we have had from all around the country and trying to work out how best to make the use of that galaxy of talent.

The other great thing is the number of very enthusiastic civil servants who are just queuing up to come and work in these two new departments. Some people have said, "How are you going to attract the talent?" We almost have the opposite problem; we have so many people that want to work in these departments that we need to make sure that all the other important policy priorities of the new Prime Minister can be properly staffed. Anyway, this is a nice problem to have compared to other problems we might have had.

- Q66 **Chair:** We will return to all the Civil Service issues in our forthcoming inquiry on the Civil Service. I don't have any further questions, unless anybody else does? I do apologise for the thinness of our attendance, but we have lost quite a number of our Committee to the Labour frontbench, Ministerial Office and other pastures, and until the new Select Committees have been established we have no capacity to have elected new members. We are short staffed at the moment. Not short staffed, shorthanded, I should say. We are very well staffed. Thank you for your understanding of that point, and thank you for coming before us today.

Sir Jeremy Heywood: Thank you very much.



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