



Constitution Committee

Corrected oral evidence: The appointment and dismissal of permanent secretaries and other senior civil servants

Wednesday 22 March 2023

10.15 am

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Falconer of Thoroton; Lord Foulkes of Cumnock; Lord Hope of Craighead; Lord Howard of Lympne; Lord Keen of Elie; Lord Mancroft; Lord Strathclyde; Baroness Suttie; Lord Thomas of Gresford.

Evidence Session No. 1

Heard in Public

Questions 1 - 13

Witnesses

I: Alex Thomas, Programme Director, Institute for Government; Jill Rutter, Senior Fellow, Institute for Government, and Senior Research Fellow, UK in a Changing Europe.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Alex Thomas and Jill Rutter.

Q1 The Chair: This morning we take evidence for our inquiry into the appointment and dismissal of Permanent Secretaries and other senior civil servants. I welcome Mr Thomas, programme director at the Institute for Government, and Ms Rutter, senior fellow at the Institute for Government and senior research fellow at UK in a Changing Europe. Thank you for coming today. I hope we do not put you through too gruelling an exercise because we have lots of questions. On the other hand, we are sure that you will add to our knowledge and understanding of the issue that we are inquiring into.

To open, is there a trend for Permanent Secretaries and other civil servants to leave their posts when a change of Prime Minister or Cabinet reshuffle takes place? Has the existence or non-existence of such a trend changed over time? What is your feeling?

Alex Thomas: First, thank you to the committee for having us. This is a favourite subject of the Institute for Government so we are very pleased to be here and I hope we can make ourselves useful.

On trends, there is a danger of sounding a little like the civil servant that I used to be, in that there is and there is not a trend. To unpack that a little, over time there has been a slight trend in terms of the reduction in length of service of Permanent Secretaries. I suggest that this might relate to the introduction of a five-year fixed-term tenure for Permanent Secretaries, which we may get into as we go on, but that is limited and in its early days.

There is not so much a trend but a cyclical question of Permanent Secretaries turning over more rapidly around certain events. Some obvious examples come to mind. First, in 2010-11, with the arrival of a new Government, some Permanent Secretaries had extended their contracts a little and then ended up quite naturally turning over after the election and the appointment of a new Prime Minister. Similarly, though in more colourful circumstances, in 2019-20 a new Government and various discussions around the performance of Permanent Secretaries and how they got on with their Secretaries of State and the Prime Minister led to increased turnover. Obviously, we recently saw the example of Tom Scholar with the arrival of Liz Truss as Prime Minister and Kwasi Kwarteng as Chancellor. That seemed to be a rare and very explicit example of the personalities there leading to an immediate move.

I would not quite say that there has been a trend and that we can properly identify it, but there has definitely been something of an increasing tendency for turnover. A few examples—Lord Sedwill and Boris Johnson, Tom Scholar and Liz Truss/Kwasi Kwarteng—may suggest that some senior politicians have got into a habit and I would discourage them from going further in that.

Jill Rutter: Alex and I agree on this. We have to delve into what lies behind the numbers to some extent. One piece of thinking by Lord O'Donnell, who was Cabinet Secretary in 2010, was that it made sense, given the possibility of an incoming Government with Ministers who had not been in government before, to have the permanent Civil Service providing a degree of continuity. That prospect of a change of government was why he explicitly went around his colleagues and said, "I know that you are due to go in 2009, but could you hang on a bit longer to see in the new lot?", with the clear expectation that people would then go within the next year or so. You need to look behind the numbers before you say they clearly did not get on with the Permanent Secretaries who they inherited in 2010, which is why there was a mass exodus. We have always had bits of change.

One interesting contrast is with another Westminster system. In Australia, there has been a distinct move to expect a lot of turnover at Permanent Secretary level if there is a change of government after an election. It has almost become an established presumption that lots of Permanent Secretaries will change or lose their jobs, and other people will be brought in to do them. I do not think that the UK is in that position at the moment. How that develops will be interesting as we move forward and see the habits of the Rishi Sunak Government, and any potential change that might come the next time we have a change of government after an election.

Alex Thomas: If you want some numbers, it depends how you define a Permanent Secretary. For the Institute for Government's purposes, we take that as the main heads of department. There are lots of Second Permanent Secretaries and other Permanent Secretaries, but we take the 18 to 20 or so core Permanent Secretary jobs. Of those, five left in 2010 and seven in 2011-12. It then dropped a bit, as you might expect around the political cycle: one and zero in 2013-14. Then it went up to five in 2015, eight in 2016, then five, one and four—but in 2020, it went up to nine. It has been down at two, two and four for the last few years. It hovers around two or three in a "normal" year. For whatever reason, there are some years and circumstances where it pops up to seven, eight or nine.

Lord Falconer of Thoroton: Do you have those figures going back over a long period of time?

Alex Thomas: I do not have them further back than 2010 in our data here but I am sure that we can dig those out for you.

Lord Falconer of Thoroton: It would be good if you could dig them out for as far back as you can.

Alex Thomas: We will have a go.

Lord Foulkes of Cumnock: You mentioned Second Permanent Secretaries. For how long have there been Second Permanent Secretaries and is the procedure for their appointment different from that for

Permanent Secretaries?

Jill Rutter: They have been around for a long time. The trend after 1979 was for a radical diminution in the number of Second Permanent Secretaries. When I joined the Treasury in 1978, probably before Alex was born, it had a Permanent Secretary and four Second Permanent Secretary-ranked people. After a period of no Second Permanent Secretaries, the Treasury edged back to having one Second Permanent Secretary. Then, after the dismissal of Tom Scholar, the Treasury replaced its top management team with one Permanent Secretary, James Bowler, and two Second Permanent Secretaries—the first time really since the Thatcher Government that there have been two of them at the Treasury. Some of the pressures of Covid, Brexit and things of that sort led some departments to bolster their Permanent Secretary by the creation of Second Permanent Secretaries, so we have seen a bit of an uptick in the numbers of Second Permanent Secretaries. On appointments, it is obviously not quite the same as appointing the person who will head the whole department. In so far as it is a promotion, this goes through the promotion procedures set out for senior civil servants.

Alex Thomas: The formal process for appointment is the same in terms of the involvement of the Civil Service Commission and the role of the Prime Minister and Secretaries of State having input on that. Again, we may get on to that later. Obviously, you appoint to a role—generally—so the job criteria for a First Permanent Secretary might be different from that of a Second Permanent Secretary. With the formal process, you can run a process for one role. If someone does not get that job, they can then flip over and get another job, but only if it is seen as sufficiently equivalent through the process. There is a judgment call there.

On the use of Second Permanent Secretaries, Jill is right that numbers have absolutely gone up recently. Jill mentioned the Treasury. The Foreign Office uses Second Permanent Secretaries in diplomatic postings. The Cabinet Office has been very indulgent in its use of Second Permanent Secretaries in growing capacity at the centre. That has been quite a long-standing thing. The newer trend, as Jill implied, is the wider use of Second Permanent Secretaries in departments. The Home Office has had a Second Perm Sec for quite a long time—the immigration Permanent Secretary, if you like, although that changed a little recently. The Department for Levelling Up and other departments have created Second Permanent Secretaries. That is reasonable, to the extent that it bolsters the senior leadership team. I think it muddies some of the accountability and clarity of reporting that is so important for Ministers and the Civil Service.

Jill Rutter: The FCDO is quite interesting because it is explicitly creating a Second Permanent Secretary to focus on the development side of the department. Does that suggest that it thinks that the merger was a bit of a mistake and maybe has not taken place? Are they preparing for a potential new Government to spin out the Department for International Development again? Is that a bit of advance planning? It is explicitly

creating a Second Permanent Secretary role designed to cover off the development side of FCDO. A recruitment process for that is going on at the moment.

Baroness Andrews: To go back to what you said about comparing 2010 and continuity—running across Whitehall to ask people, “Are you happy to stay?”—was the same conversation had in 2019? You used the expression “discussion” with Permanent Secretaries. Of course, there was a higher turnover in 2019. Was the discussion of the same nature?

Alex Thomas: I have been involved in some of these discussions in the past but was not around 2019. My sense and understanding is that there was not quite the same request—“Please hang on for a couple of years”—in 2017-18 that there was in 2009-10. I suspect that that is for a number of reasons. Of course, 2009 was towards the end of a Parliament. It was expected: the election was coming down the road and you could see it from a long way away. It was the same in 2015, but 2017 to 2019 was a more chaotic period, as we all know. My view is that the impetus for that turnover in 2010 and the extent to which it existed in 2015—which did happen a bit in 2015, looking at the numbers—were driven by the election cycle. The impetus for what happened between 2018 and 2021 was a mix of questions around confidence and relationships, Dominic Cummings—who we may also get on to—and his role in Boris Johnson’s premiership, and wider questions about the relationship between senior civil servants and Ministers.

Jill Rutter: Your question asked about Cabinet reshuffles, but there are sometimes Permanent Secretary casualties when there are changes to the machinery of government. The day after the election result in 2019, the abolition was announced of the Department for Exiting the EU and the absorption into the Cabinet Office of its residual staff who did not find jobs elsewhere. That, if you like, stranded the Permanent Secretary there. She was not found another job and ended up leaving the Civil Service. That sequence of events led to Clare Moriarty, who had been appointed just a year before to lead the Department for Exiting the EU, to leave the Civil Service. You sometimes get consequences from changes to the machinery of government. Interestingly, we saw that with the last set of such changes that the Prime Minister announced in late January/February. A series of Permanent Secretary moves were announced instantly, agreed and worked out alongside the machinery of government changes to make sure that incoming Ministers knew who their new Permanent Secretaries would be. Obviously, if you are the Permanent Secretary of a department, you need a department. It becomes a bit problematic if you do not have one.

The Chair: We move on to the position of Ministers and Prime Ministers, and the dismissal and recruitment of Permanent Secretaries and other senior civil servants.

Q2

Lord Falconer of Thoroton: In your experience over the years, has the Prime Minister become more involved in the appointment of Permanent Secretaries?

Alex Thomas: Prime Ministers have probably become more interested in the appointment of Permanent Secretaries and, to some extent, more involved, although that is quite dependent on the personality of the Prime Minister. Some formal changes and developments have given Prime Ministers more of an official role in both setting the terms of job descriptions and selecting candidates. Prime Ministers have always tended to be fairly interested in that. Perhaps one thing that has evolved over time is the role of the Civil Service Commission in running the process. Jill will have a better sense of that.

Lord Falconer of Thoroton: Alex, before you leave this, my question was whether they have become more involved. Your answer was that they have become more interested, which I take to mean that they have in fact become more involved. My experience of Prime Ministers is that if they are interested in something, they become involved in it.

Alex Thomas: That is a fair chain of logic. It comes back to so many things in the British system. There are rules and, if you like, guard rails, but, generally, if a Prime Minister wants to get involved in something, they can—and they do. The level of interest varies; to the extent that it has gone up, there is more involvement. I was the principal private secretary to the Cabinet Secretary from 2016 to 2018, and I would not say that Theresa May, for example, was crawling all over the detail of all those appointments. There were things that she was interested in and got involved in, but she was a person who tended to follow the process, if you like.

Lord Falconer of Thoroton: The question was about both dismissing and recruiting. To what extent have Prime Ministers felt, as the years have gone on, more pressure about delivery, for example, and therefore felt more pressure about getting Permanent Secretaries whom those Prime Ministers believe will help them deliver? If they are not helping them deliver, perhaps they are keener to see them removed.

Alex Thomas: Jill might want to come in, but I think the exposure of Permanent Secretaries, and their accountability as accounting officers and to parliamentary Select Committees, has opened up that process to some extent. In my experience and from my research, I certainly would not say that Prime Ministers from 1997 to 2010 were less interested in delivery. There has always been that kind of involvement in the performance of Permanent Secretaries; what has changed over recent years is that that has become livelier and more public. Whereas 20, 15 or 10 years ago it might have been a smooth exit to another job, from 2019 to 2021 there were more fireworks.

Lord Falconer of Thoroton: Is there more prime ministerial involvement in moving a Permanent Secretary on, whereas previously, that might have been done by the Civil Service itself?

Alex Thomas: I do not know. Jill?

Jill Rutter: It is very interesting. Obviously, you have your own experiences here, but when I first joined the Civil Service, it was very clear that the then Permanent Secretary to the Treasury was not highly regarded by the incoming Chancellor and was not regarded as a key source of policy advice.

Lord Falconer of Thoroton: Is this in 1997?

Jill Rutter: No, in 1978. In 1979, we had a change of government. It is all quite well documented, but, at the time, the process was not to sack him or move him on but more one of courteous sidelining. When I was in the Chancellor's office, we effectively knew never to invite the Permanent Secretary to critical meetings and things such as that. The Chancellor rearranged the deckchairs: the chief economic adviser moved on and was replaced by somebody much more sympathetic, but I think he retired in the natural course of things and was replaced by somebody much more sympathetic to the Government's new take on economic policy, who was recruited from outside. That was Terry Burns, now Lord Burns.

The Permanent Secretary became a not very important figure in terms of policy advice. Everybody in the Treasury, even at my extremely junior level, knew where the power was and which officials the Chancellor was looking to for advice. The Permanent Secretary then retired and probably joined the House of Lords; I am not sure. That happened in quite a civilised way, but, de facto, there was a massive power shift inside the Treasury and, very rapidly after, the Permanent Secretary and the Chancellor fell out over the first Conservative Budget.

Moving on, under the new Labour Government you get some clear examples of Secretaries of State deciding they want to dispense with the services of their current Permanent Secretary. I am not sure to what extent the Prime Minister was that keen or involved, or had a view, but that was probably facilitated by the Civil Service finding an acceptable exit route for the Permanent Secretary in question, who was moved out in a relatively low-key way. A replacement more to the liking of the Secretary of State was then found.

Lord Falconer may know this better than I, but there are some examples where it is clearly on the record that the Prime Minister wanted a Permanent Secretary to be moved but the Secretary of State was very keen to hang on to the Permanent Secretary, because, while the Prime Minister had lost confidence in the Permanent Secretary and thought they were doing a useless job, the Secretary of State rather liked their Permanent Secretary. In those struggles, at least in the short term, the Secretary of State won out over No. 10. There have always been these things.

As Alex said, there used to be processes whereby Permanent Secretaries were dispatched. We saw some examples in Cameron's coalition Government, both on the Liberal Democrat and Conservative sides, where Ministers were perhaps not desperately happy with the performance of their Permanent Secretaries, and exit routes were found.

The difference now is that Ministers or advisers are much more willing to make public that they are dispensing with the services of their civil servants, so rather than it all being discreetly managed behind the scenes, it is now out in glorious technicolour and briefed to the papers. We even had advance briefing that certain Permanent Secretaries were on a very obvious hitlist.

That has redounded before. One of the examples that we heard was when it appeared that special advisers for the Secretary of State for Work and Pensions were briefing quite heavily against his Permanent Secretary in the 2010-15 Government. It almost became an existential struggle between the Cabinet Secretary and that Secretary of State to hang on to that Permanent Secretary, who stayed in place despite the fact that there was a lot of briefing against them.

It is more about presentation and the willingness to be seen to be tough on civil servants and dispense with their services, for whatever reasons—whether related to delivery or not. One of the really frustrating things is that, when Permanent Secretaries move, Ministers do not have to give reasons why they are dispensing with their services.

Lord Falconer of Thoroton: My sense is slightly different. There has always been an issue about the Treasury—well, not always, but it is quite common for there to be a Treasury problem of some sort—and that has lasted since time began. With us, it was a very, very big deal for a Permanent Secretary to go because Ministers did not like him or her.

My sense is that that is not such a big deal and that the trend between 2010 and 2022-23 is for the Government to make it public when they do not like the Cabinet Secretary or a Permanent Secretary, and that has made the tenure of Permanent Secretaries much less secure than previously. As Jill said, if you wanted to keep your Permanent Secretary, the Prime Minister could not do much about it; that was absolutely everybody's experience.

What is your comment on the sense that there has been a change and that it is now much easier for Ministers to get rid of a Permanent Secretary than it was previously?

Jill Rutter: You are right that it used to be quite a big deal. It was not exactly a failure on both sides, but it used to be a big thing to want to move your Permanent Secretary on and it would involve lots of people. In the few instances that were happening, both sides agreed that it was best discreetly managed away from the limelight or to find some way of accommodating it, such as managing through and just waiting for the person to get the message that maybe it was time for them to reconsider their position and go.

I definitely agree with you—I am not sure about Alex—that it has moved from being something quite difficult and rare to something that is not exactly a badge of honour but one of the symbols that you are a Minister prepared to take on the Civil Service blob. It is evident that you will look

askance at the performance of your Permanent Secretary, and that is nothing to be ashamed of. There is no sense that you have failed to make the relationship work, but instead one more of "I'm taking this lot on".

What is really intriguing about the "hard rain" year of 2020, with Dominic Cummings, and the departure of quite a lot of civil servants, as Alex mentioned, is that you had a lot of sound and thunder about Permanent Secretaries moving on, but the replacements were so conventional. You would have thought they were moving people on to get very different people in who would bring external skills to the Civil Service, really change the ethos of departments, and so on. But in many cases, the really obvious Civil Service candidates for the jobs kept on being appointed as replacements: people who had grown up in those departments and things like that. There was a bit of a mismatch. Whether they then offered a better and more acceptable service to Ministers, you would have to ask the Secretaries of State.

Alex Thomas: You might almost think the point was the dismissal, rather than bringing in someone new. Given that conventional people were appointed, the objective was not to get new people in but to intimidate or change the dynamics in the Civil Service.

I definitely agree that there has been a period where Permanent Secretary dismissal or Civil Service-bashing has been seen as a virility test rather than as a failure, as Jill said. The reason I struggle slightly with your trends-over-time point is that I do not know whether that is a trend over time. It is observable from the Johnson-Truss period. The Gove question is interesting, but, for me, the Cameron and May eras were perhaps less distinguishable from what had gone before.

To go back to your original question on the Prime Minister, again, as Jill drew out, Secretaries of State have always—rightly—been intensely interested in who their Permanent Secretary is; it rightly absolutely matters fundamentally to the department. There has been a trend over time of more prime ministerial interest and involvement, but that is of a piece with more prime ministerial interest and involvement in delivery and in the running of the Government as a whole. That points to a broader question about prime ministerial leadership of government and willingness to get into the weeds of delivery, and, therefore, interest in the people doing that delivery.

Lord Falconer of Thoroton: I should have said that my son was a senior civil servant until December. I declare that interest.

Q3 **Lord Mancroft:** One of the suggestions has been that Permanent Secretaries and other civil servants would be replaced because they had not been perceived as sympathetic to the politics of their Secretary of State. Is it the issue of political sympathy or could it be—I am, in a way, more interested in this—that Secretaries of State, or whoever, felt that the civil servant or the Permanent Secretary was either being obstructive or failing to perform in implementing policies? Is it an issue of sympathy or of obstructiveness?

Alex Thomas: I agree with you that the latter question is more interesting. Jill and I were talking earlier, and I think we agree that it is personalisation not politicisation. I have not seen any evidence that Secretaries of State or Prime Ministers have dismissed or appointed Permanent Secretaries because of a capital “P” political sense of fellow travelling, or anything like that. There is an increasing demand from Prime Ministers and Secretaries of State to have a personal relationship and to have made an appointment personally in these very senior appointments.

In my experience, the formal performance management of Permanent Secretaries does not always bear that much relationship to the sympathy between the Secretary of State and the Permanent Secretary. The institution might have a different view on the performance of someone than the individual Secretary of State does. There can be a tussle between how the Civil Service perceives that a Permanent Secretary is doing and how a Secretary of State perceives that, but, ultimately, if a Secretary of State is not happy and loses confidence in their Permanent Secretary, they either do what Jill suggested happened more in the past and sideline them, or, as now happens, the Cabinet Secretary and Head of the Civil Service ends up dismissing them. If you have lost the confidence of the Secretary of State, there is nowhere really for you to go as a Permanent Secretary.

Jill Rutter: As Alex said, he and I agree that it is more about the personal than the political relationship. By and large, one of the hallmarks of people who come up through the Civil Service route to end up as Permanent Secretaries, even with these quite long-term Governments that we now seem to have, is that they have usually worked successfully for Governments of different colours.

For example, Tom Scholar—whom I knew very well when he was at the Treasury as a young person; I declare that personal interest—first came to prominence in Gordon Brown’s office when he replaced the principal private secretary whom Gordon Brown did not get on with. He worked very successfully with Gordon Brown, then moved on and worked very successfully with David Cameron, and, as far as we could see, with Philip Hammond and Rishi Sunak. Was his downfall under Kwasi Kwarteng about his political views?

The Tom Scholar example is quite interesting because you felt that there may be elements of personal clashes from the then Prime Minister’s time as Chief Secretary to the Treasury. In my experience, Treasury Permanent Secretaries never had any time for junior Treasury Ministers and they counted the Chief Secretary as a junior Treasury Minister. You never got any airtime with them. Speaking as a former private secretary to the Chief Secretary, we would never get the Permanent Secretary to talk to the Chief Secretary—even though they went on to be Prime Minister—because they always dismissed them and focused entirely on the Chancellor. There may be a personal element there but, in a sense, that was not a political view. Tom Scholar had worked quite successfully

across Labour and Conservative Governments, if we take that partisan view, but there was a sense that he represented a way of Treasury thinking that would not chime well or was not what Kwasi Kwarteng was looking for in his Permanent Secretary when he became Chancellor in September last year.

Q4 Lord Strathclyde: I have been interested by all your answers, which were not quite what I expected. You pulled your punches much more than I thought you would, particularly on the question of the trend and how all that went. I know that you come here with enormous experience at a very senior level in the Civil Service, so you really do know what you are talking about, but I get the impression that it is not really about politics; it may to some extent be a bit about personality. It may be about making a statement “pour encourager les autres”, which is an interesting view. That is the impression that I get from what you have said so far. If I am wrong, do please say so.

Is there a standard process for the dismissal or the redeployment of the most senior civil servants, and, if so, how does it work in practice? Or is it more “make it up as you go along”?

Alex Thomas: There is a process, but my view is that in practice it is more make it up as you go along. The performance management of Permanent Secretaries is a matter for the Head of the Civil Service and Cabinet Secretary. Currently, the same person is doing both roles. It operates much as it does in the rest of the Civil Service; there is no magic about the Permanent Secretary. There are mid-year and end-year reviews, a set of objectives and, “Have you achieved your objectives? Let’s see”.

As part of that process, the Head of the Civil Service will take evidence and input from the Secretary of State of the relevant departments, other Ministers as seems appropriate, as well as other civil servants, and take their own view. The formal process is a management conversation into which Ministers and Secretaries of State have an input. If that then results in dismissal, so be it.

Of course, to go back to where I started, it does not really work like that. That did not happen in 2020 or in 2011; it is far more a question of ministerial confidence from the Secretary of State. A Secretary of State might express their lack of confidence in a Permanent Secretary and there might then be a period of, “Can we make this work? Can we find a way out of this?”, although there might not be that period, as I suspect happened in 2020. Ultimately, if the Secretary of State and the Prime Minister agree that a Permanent Secretary has lost their confidence, there is not that much the Cabinet Secretary can do to resist, because the Cabinet Secretary is sort of boxed in. Equally, if the Cabinet Secretary concludes that the Permanent Secretary is not performing, they take the necessary measures.

Lord Howard of Lympne: I would like to share with the committee and our witnesses an episode from my time in office, which may be

analogous, in some respects, to more recent events. After I had been Home Secretary for a few months, the Permanent Secretary, Sir Clive Whitmore, retired. Over that period, I had come to the conclusion that the whole culture of the Home Office needed pretty radical change. I knew that I could not appoint Sir Clive's successor, and I did not try to do that, but I resolved that I would not have as his successor someone who had spent most of their career in the Home Office and was imbued with its culture.

At the time, the Civil Service had—as it probably now has—a pretty efficient system of succession planning, and had lined up to succeed Sir Clive someone who had indeed spent most of his career in the Home Office. I said that I had nothing personal against the person concerned but that I would not have him. Robin Butler, then Cabinet Secretary—now Lord Butler—came to see me at least twice to try to get me to change my mind, and I would not. It went to the Prime Minister, who backed me.

To come to more recent events, for what it is worth, I think the decision to dismiss Tom Scholar was very foolish, but we are here to discuss not whether it was foolish but whether there was any constitutional impropriety in it. Liz Truss and Kwasi Kwarteng had made it clear that they wanted to change the culture of the Treasury and to have someone who was not imbued with what they regarded as Treasury orthodoxy. My suggestion, on which I would like the witnesses' view, is: were they not as entitled to do that as I was to do what I did 30 years ago, way back in 1993? They were, after all, the political, elected heads of the Treasury and of the Government. Were they not constitutionally entitled to do that?

Alex Thomas: The irony, of course, is that they got someone who was absolutely imbued with Treasury orthodoxy, but that was more to do with the circumstances at the time. I do think they were entitled to do that, as you were when you were Home Secretary, Lord Howard. The fundamental principle here, which to an extent is constitutional, is that the person appointed needs to have demonstrated that they are capable of doing the job. Whether it is wider public appointments or Permanent Secretary appointments, they go awry when there is a suggestion that someone is not competent and capable to do the job and might have been appointed for some other reason. I happen to think that that is more of a question for wider public appointments than it is for Permanent Secretary appointments, but perhaps that is because I was a civil servant and have a distorted view on that.

As in so many of these things, it becomes a negotiation, as it did with you in the Home Office and may have done in the Treasury more recently. It becomes a negotiation between the Secretary of State or Chancellor, the Prime Minister and the Head of the Civil Service and Cabinet Secretary. My view is that the main objective is that that negotiation is done on an informed view of what the job is and how the candidates have performed through a fair and open merit-based process, after which you have an informed discussion about who is best to take up the job.

This points to another aspect of this. I sometimes wonder whether Secretaries of State—Lord Howard, it sounds as though you were very much not in this camp in the Home Office—do not quite pay enough attention right at the beginning of the process to the job description and the nature of the job to which they are recruiting. Secretaries of State and Prime Ministers have a formal role of input to the job description for these roles, and if part of that job description is to move away from the institutional culture that may have developed, for one reason or another, it is absolutely legitimate for the Secretary of State or Prime Minister to come back to that and say, “This candidate does not meet that part of the job description, on which I have firm views”, and for that to be part of the process.

Jill Rutter: It is not unconstitutional to dismiss a Permanent Secretary, as Alex said. There may end up being employment law issues, but it is not a huge breach of the constitution. However, there is an interesting question about the process around that. Normally, as a civil servant, you would expect to take your lead from the Minister. You would expect the Minister to come in and say, “This is what I’m planning to do”, and, potentially, say to the Permanent Secretary, “Are you up for it?”. If you say, “Well, actually, no, I’d rather leave”, that is fair dos. You would resign, retire or do whatever you wanted to do, saying, “No, I honestly don’t think I’m the person to do that”, or, “I’m very out of sympathy with you”.

How far did Mr Kwarteng see the wider picture? The Treasury had just lost—retired—their Second Permanent Secretary, who had been in place for a long time: Charles Roxburgh. With him gone and by taking out Tom Scholar, who at that point had not been replaced, they lost the top leadership team of the Treasury. If you took the time to look at the top leadership team of the Treasury, you would say that its knowledge of financial markets was embodied in two people at the most senior level: Tom Scholar, who had helped the UK through the 2008-09 financial crisis when working for Alistair Darling; and Charles Roxburgh, who had first been DG and then Second Permanent Secretary, running the financial services and business relations side of the Treasury. If you were looking at what set of skills and knowledge we need in the top Treasury management team, you were dramatically weakening your bench strength.

This is still a big problem at the Treasury. James Bowler, Cat Little and Beth Russell are all excellent people, but none of them come out of that macroeconomic, financial services, market side of the Treasury. The Treasury has definitely been weakened. It will build that strength back up, but it has lost another couple of people in the last few weeks who have moved to other jobs outside.

If you were saying, managerially, “Is this the Treasury we need, and can we replace that knowledge and expertise rapidly?”, you might have had pause for thought. I do not know to what extent that was part of the conversations with both Tom Scholar and Simon Case before Kwasi

Kwarteng and Liz Truss made their move to dismiss, but it left a really big gap during September in the ability of the Treasury to serve the Chancellor, the Prime Minister and the country.

Alex Thomas: As well as the skills gap, the critical point about the Scholar dismissal was time. Procedurally, in both efficacy and propriety terms, that should not have happened on day 1 or day 7, or whatever it was. It would be far more proper for a Chancellor and a Prime Minister to come in and take a view over the course of weeks and months about the leadership of the department, rather than to do it on day 1. The thing that most concerned me about that dismissal was the timing of it.

The Chair: You are saying that, because of the timing, due process could not have been followed.

Alex Thomas: Yes.

Jill Rutter: You would expect a new Chancellor to come in and say, "This is what I'm looking for. This is what I want", and maybe after two or three months to say, "We can't work together. This isn't working out".

The Chair: I have got the point on that.

Lord Thomas of Gresford: If I might open up another point, I was interested in your saying that nine Permanent Secretaries were removed in 2020. Is that right?

Jill Rutter: They left or were removed. They were not necessarily removed.

Lord Thomas of Gresford: Of course, there was a great divide in the country between remainers and leavers. Is there a perception that that influenced so many to leave or be sacked?

Alex Thomas: Jill has written about this topic, but I think that there was a perception among senior Ministers that the Civil Service was institutionally anti-Brexit. As far as civil servants' personal views are concerned most of them, or a majority, probably voted remain. I do not think that that was a justified concern because, in my view and experience, the Civil Service was going hell for leather to try to implement Brexit. However, it had quite a severe consequence for the trust between senior Ministers and senior officials. That loss of trust was part of the heady brew of 2020 that enabled Boris Johnson and Dominic Cummings to take various decisions about the dismissal of Permanent Secretaries. Brexit was part of that context, but it was more about trust and confidence than it was about remainers and leavers.

Lord Thomas of Gresford: Is it unconstitutional when a Prime Minister says, "I want my Permanent Secretaries to be on my side on the question of leave—on that side of the divide"?

Alex Thomas: I think that a Cabinet Secretary's or Permanent Secretary's view on Brexit is and should be totally irrelevant. To the

extent that it is a constitutional question, yes, it is unconstitutional to say that.

Jill Rutter: We may come on to this, but civil servants obviously have their own political views. Burke Trend never voted because he thought that it was completely inappropriate for a Cabinet Secretary to vote, but most probably do vote. Most probably voted in the referendum, and some are on the record as having said that they were quite upset at the outcome. That said, the Civil Service knows that its views as such do not count. We do not stand for election. This is a thing people who go into politics find hard to understand. It is very interesting when people change from the Civil Service to politics, as it really is two mentally separated spheres.

One of the preconditions of going into the Civil Service is that you recognise that you will be working for the Government of the day and fulfilling their agenda, not your agenda. DExEU recruited lots of people from within the Civil Service and from outside. A lot of people across the Civil Service recognised not just that there were huge promotion opportunities in Brexit, which there definitely were after a period of Civil Service pay freezes and stagnant promotion, but that it was also a massive intellectual challenge to try to make this work.

Then you play into the personalities of Secretaries of State. Frankly, I think that this goes a bit to the quality and competence of Secretaries of State. If your Permanent Secretary comes to you and says, "We are trying to make Brexit work, but there are these logistical problems we need to deal with that are a consequence of Brexit", you have one of two outcomes. You have a Secretary of State who says, "You are just trying to frustrate Brexit. Get on with it. Believe in Brexit", or you have people who say, "I can see that those are managerial consequences we have to deal with. These are my decisions and this is how we are going to go about tackling it". Work that we in the Institute for Government did on Whitehall and Brexit showed that it played out very differently in different departments as they were doing the preparations for UK exit—a no-deal exit. Secretaries of State had different levels of receptivity to the practical consequences of Brexit.

There is a more general problem for the Civil Service as a whole flowing from Brexit.

The Chair: Can we finish on this?

Jill Rutter: Okay, sorry.

The Chair: Do you want to finish your sentence?

Jill Rutter: I was going to say that there is a wider problem about use of evidence and acceptance of analysis, particularly economic analysis, by people who are pro-Brexit that has cast another shadow over ministerial-Civil Service relations and made them quite difficult, to be honest.

Q5 **The Chair:** Can I move on to the next question? We are looking at this

through a constitutional lens. You can look at it through different lenses, but this is ours. Mr Thomas, you can open on this one. In your view, or your knowledge, how are the *Civil Service Commission Recruitment Principles* applied in appointments to very senior posts? Where appropriate, can you pull out distinctions on whether it is purely an internal competition or involves external candidates?

Alex Thomas: Most Permanent Secretary competitions—in fact, most senior Civil Service competitions now—are supposed to be available and open to external candidates. On the external candidate question, the obstacles to external candidates coming in are more cultural than procedural. These competitions are generally open, but the sorts of skills that Permanent Secretaries and senior civil servants demonstrate—and that Ministers and other senior officials want—are often the ones that are grown by a period in the Civil Service.

I am not sure that this is quite what you were getting at in the question, but, when it comes to the formalities of the Permanent Secretary competition, the role of the Civil Service Commission is very important. There is an important set of constitutional questions around the Civil Service Commission: how the commissioners operate, who heads it and the extent to which it is a guardian of impartiality around the process.

My final observation on this, although I feel that I have not quite answered your question, is that in my knowledge and experience of watching senior civil servants, the ones who succeed tend to be those who do not come in at Permanent Secretary level from outside, but who have come in as a director-general or a director and have moved up. It is absolutely the case that the Civil Service should be more open to more senior people from different walks of life, but in practice it tends to work, and the conditions for success tend to be there, if they have knocked around in a couple of senior Civil Service jobs before they become Permanent Secretary.

The Chair: Obviously, we have looked at the recruitment principles and the Civil Service senior appointments protocol. Are we correct in thinking that there is no statutory underpinning where it is an internal appointment to a Permanent Secretary position, as opposed to an external candidate?

Alex Thomas: The Civil Service Commission is underpinned by statute and plays the same role in these appointments as regards recruitment, whether the candidate is external or internal. There is not a distinction in that sense.

You may be asking about managed moves. The Civil Service is quite grade focused, or seniority focused, when it comes to how the recruitment process works. Whether you are coming in from outside or inside, the entry to a grade at these very senior levels will be through a process that is run by, and often chaired by, the Civil Service Commission. Whether you are internal or external, that is clear, but if you are already a director-general or a Permanent Secretary, the

movement within that grade to a different job is much more fluid and flexible. It is absolutely the case that the Cabinet Secretary, with the agreement of the Prime Minister and the involvement of the Secretary of State, can just flip pre-existing Permanent Secretaries between jobs.

I think that that gives a fair degree of flexibility, to be honest, if they have demonstrated the ability to operate at that level. What would be more challenging would be moving people who were doing very different jobs. A Permanent Secretary in the Cabinet Office could be doing a very different job from the head of HMRC, for example, so you would need to make sure that the individual had the right skills before just flipping those jobs.

The Chair: Do you think that the Civil Service Commission has the authority or powers to ensure consistency of application of the recruitment principles? Are there any issues there?

Alex Thomas: When it comes to the formal running of competitions, I think that the Civil Service Commission is fairly well placed. The balance is probably about right as regards Ministers being able to shape job descriptions, to be involved at various agreed points through the process and then to select or reject the top candidate on the list.

The question about the role of the Civil Service Commission is whether there is a more formal role, other than the first commissioner sitting on the senior leadership committee, which is the internal succession planning forum for these things. Could that be formalised for internal transfers? I would be inclined not to go down that route, because it would gum up the process quite a lot and, broadly, it works. If I were interested in enhancing the role of the Civil Service Commission, I would look more generally at its role in setting the job descriptions for the Cabinet Secretary or the overall objective and purpose of the Civil Service, rather than saying that there is a big problem in the recruitment principles.

The Chair: Do you have any evidence of recent appointments departing from or skating around the edges of, rather than fully embracing, the recruitment principles?

Alex Thomas: The honest answer is that I do not know. I have not seen evidence in Civil Service Commission and Permanent Secretary-level appointments of those principles being breached. I would draw a gentle contrast with some of the debate around wider public appointments, where, quite rightly, there has been a fair degree of criticism about pre-briefing certain candidates or stacking appointment panels. The questions are far more acute in the wider public appointments field than they are in the Civil Service, where the evidence is uncertain, but the honest answer is that I do not know.

The Chair: Ms Rutter, do you want to add any comments?

Jill Rutter: I think that there is a bit of a grey area around the way in which Cabinet Secretaries are appointed. That is treated as another

Permanent Secretary move, but it is clearly a very different job from just being a departmental Permanent Secretary. Sometimes it is competed and sometimes it is not. For example, with the appointment of Lord Heywood, it was blindingly obvious that he was going to get the job. Maybe it just spared everybody the time and effort of running a competition, but it is quite interesting.

If you are looking at expanding the role of the Civil Service Commission, you may want to look at whether it should have any role in dismissals.

Alex Thomas: I have one very brief further thought on that. The fact that the “conventional” candidates have tended to be appointed suggests to me that the Civil Service Commission is having the role that you would expect in the appointment process. Whether that is the right role, and whether more external experience should be brought in, is a different question. My worries about the appointment and dismissal of Permanent Secretaries are more around the “pour encourager les autres” dismissal aspect we were talking about earlier than the formal recruitment process.

Q6 Lord Falconer of Thoroton: I am very interested in what you said about the Civil Service Commission. You said that it was there to protect the impartiality of the Civil Service, which is a constitutional feature of the way in which our government is run. Can you define for the committee what you say that the constitutional protection of the Civil Service should be? I have in mind how that has played on to both appointment and dismissal in the Civil Service.

Alex Thomas: I do think that it is important. It goes back to the underpinning of the Civil Service Code and the Civil Service Commission in the Constitutional Reform and Governance Act 2010, passed at the very end of the last Labour Government. It is important that the Civil Service Commission has that statutory underpinning and responsibility to protect the impartiality of the Civil Service. It is very important that an organisation exists with that dab of statute attached to it. I think that 2020 could have been considerably more damaging for the Civil Service had the Civil Service Commission not existed and had there not been a statutory underpinning and some authority to the process that needed to be gone through for appointments.

The key constitutional point here is on impartiality and the fact that that is part of the Civil Service Code, is set out in statute and feeds through to the Civil Service Commission. There is a question, which I have written about. I think that the current First Civil Service Commissioner, Baroness Stuart, is currently doing a very good job, but she is someone who comes from a political background. At the time when she was appointed, I thought that, for all her qualities, it was a mistake to appoint someone who has come from a political background, albeit that she is now a Cross-Bench Peer, to that job, whose very essence is to be a guardian of impartiality.

Lord Falconer of Thoroton: I am just trying to find out where the line is. Lord Howard described his involvement in the appointment of the

successor to Sir Clive Whitmore, which seemed to me entirely proper and appropriate. There is nothing wrong with a Minister saying, "I want somebody who is able and wants to change the culture". However, what is your comment on the dismissal in advance of a Permanent Secretary? I am not asking about the wisdom of that. Everybody agreed that it was a stupid thing to do. The question is: was it constitutionally improper to fire somebody like that—I am thinking of Tom Scholar—because it undermined the principle of impartiality, as if saying "If this person is not on our side, and we do not think that he is, we are going to fire him"?

Alex Thomas: The same would apply, although it did not happen, to some of the briefings around Simon Case when the Truss Government were coming in. This assumption that a very senior official should and will change at the same time as a Government—or a Minister—change is constitutionally unhealthy. It comes back to the procedure point and the timing point we were talking about earlier in relation to the Scholar dismissal.

You could argue, although I have not thought through how it would work, that the Civil Service Commission should have a stronger role in safeguarding the process around a dismissal. It should absolutely not make it impossible or too hard for a Permanent Secretary who is not performing to be dismissed, but there should be some kind of procedural guardianship, which is the same kind of role that it plays around appointments by chairing or being involved on panels. You could get the commission involved in the performance management side of it, if you like. As I said, I have not thought through how that would work, but it is an interesting question.

The Chair: Are you saying that, if you are getting too much of a pattern of changing the Permanent Secretary when you change members of the Cabinet, you begin to beg the question of the impartiality of the Civil Service?

Alex Thomas: Correct. I agree with that.

The Chair: You have raised the issue of the Civil Service Commission and whether its reach should go to dismissal as well. That is fine. I suspect that discussion of the Civil Service Commission will come up in other evidence, so I wanted to make sure that we had that.

Lord Foulkes of Cumnock: It is clear that the role of the Civil Service Commission is crucial. It has a lot of power. Could you describe the arrangements for the appointment of Civil Service Commissioners?

Alex Thomas: Yes. The First Civil Service Commissioner has particular arrangements. There is a recruitment process like any other, but before the appointment there is an extra stage where the Government are supposed to consult with the leader of the Opposition and the leaders of the Scotland and Wales Governments. I do not think that that is a particularly strong safeguard. For all Baroness Stuart's qualities, and despite the fact that she is doing a good job, when her appointment was

announced they objected to that, or signalled that they were not happy with it and would not have made it themselves, so the consultation was fairly minimal. That is my sense around that.

I am not an expert on the appointment of the other commissioners, but I do not think that the same safeguards apply. Clearly, it is constitutionally important not that those commissioners come from somewhere entirely away from the world of politics, but that they bring in expertise in recruitment, impartiality and confidence.

Lord Foulkes of Cumnock: This seems to be key. It would be useful to have a bit more detail about how the others are appointed. You have made a very good point in relation to Baroness Stuart, who is a Peer and was very prominent in the Vote Leave campaign. She was a Labour MP and was then appointed by the Conservative Government to the House of Lords, which was a very controversial decision. Has that created problems?

Alex Thomas: As I implied a moment ago, I would distinguish between that and how she is actually doing the job. From her public comments, she seems to be taking it seriously. She has talked about her role as a guardian of impartiality. She is focused on the skills that the Civil Service needs. I have no concerns about how she is carrying out the role. There is a constitutional question as to whether someone with that political CV is the best person to do the job, and I have said previously that I do not think that that is right. It is a rare job where someone with an explicitly political background should not be appointed. That is my take.

Lord Foulkes of Cumnock: And against the advice of the Scottish and Welsh First Ministers.

Q7

Lord Anderson of Ipswich: I should declare an interest as a member of the advisory board for the Institute for Government's review of the constitution. On this one, I would very much like your advice about what all this means in practice for the attitudes and effectiveness of civil servants if we move into a world where it becomes more common to recruit, redeploy and dismiss senior civil servants on the basis of their perceived sympathies with the political objectives of Ministers. What effect do you think that will have on civil servants themselves?

I do not know the Civil Service as you do, but, certainly where appointments are concerned, it would be quite surprising to me if very senior professional civil servants were willing to abandon the principles of a lifetime, including the principle of impartiality, because of the way in which the political wind happened to be blowing at the time when they might be in line for one of these senior appointments. In view of the evidence that you have given, the question may sound a bit hypothetical, but Ms Rutter mentioned that Australia has gone quite a bit further down this line than we have. Perhaps there is some experience from there that it would be helpful for us to know about.

Jill Rutter: In Australia and New Zealand, there is more distance between Ministers and their departments. In New Zealand, certainly,

Ministers sit together with their political advisers, and their departments are rather more at arm's length. They have formal contracts between Ministers and their departments. They are slightly different systems, but you could see a tendency that we could end up going in that sort of direction.

The real worry for the Civil Service is how willing you are to give inconvenient, uncomfortable advice to your Minister if you think that your career is hanging on a knife edge and that saying, "Minister, are you really sure? Minister, that seems very unwise. Minister, none of the evidence suggests that this is a sensible route", is career limiting. What do you then do as a civil servant? That is a real worry, both if you think that you will get a reputation for being difficult that will affect your promotion prospects and if every conversation that you have with a Secretary of State ends up with the potential for them to take against and dismiss you.

This is one of the key reasons why we value an impartial Civil Service. You could say, "Has the Civil Service actually been good enough at this?" I think that the Civil Service should do more to improve the quality of its advice and be prepared to put that more into the public domain, so that people can see whether civil service advice is any good. You want civil servants who feel that they can give the best possible advice to Ministers about how Ministers achieve their objectives and the consequences of achieving them. That is the chilling effect you are primarily worried about. After all, that is why we like a permanent Civil Service.

One other thing we were talking about in relation to Ministers' preferring their own civil servant is that we see absolutely unprecedented levels of ministerial churn. One of the benefits of our system is supposed to be that the Civil Service provides a degree of continuity. We had four Chancellors last year. If you were expecting a new Permanent Secretary to come in every time there is a new Minister, that would wreck one of the assets of our system.

Lord Anderson of Ipswich: Would you go so far as to say that it was constitutionally inappropriate for things to move any further in that direction?

Jill Rutter: Constitutionally unwise, perhaps, rather than inappropriate. There is a debate to be had about whether you want to move to a system with more explicit political appointment. I do not think you should do that through the back door. You should have a proper, explicit debate about the basis of the Civil Service if you want to do that: what successive Governments are looking for in their Civil Service and how you can best meet the needs. What you do not want is to have a quasi-compatibility and acceptability test come in through the back door.

The Chair: Staying with the point about its being constitutionally unwise, if there were a departure from the current principles to greater politicisation or personalisation, how might that impact on a Permanent Secretary's role as a principal accounting officer? I looked up the four

tests: regularity, propriety, value for money and feasibility. Would it impact on their discharging of that role? Would they carry such a role?

Alex Thomas: I think that it would. You are right to alight on that as the constitutional way into this, if you like. The accounting officer role and the letters of direction or request for direction that sit alongside it are a really important part of the constitutional accountability of our system, so I think that it would have an effect on that.

It goes back to Jill's point about the chilling effect. It is absolutely right and appropriate for a Minister to have fellow travellers, whether politically or personally, with them—people they can rely on, trust and, if it so happens, they may go back a long way with—but those are special advisers or other informal advisers. It is formally important as regards the regularity of spending of public money, the propriety questions and everything involved in those four tests that a Permanent Secretary feels the heat on that—and feels the heat from Parliament from that. That goes to the point about 'ministerial directions' that I think should be used far more regularly. The Matthew Rycroft request for a direction on the Rwanda scheme made it a lot easier and clearer for all concerned. Constitutionally, in a broader sense, and in policy terms, it was a helpful way of proceeding.

Getting to the constitutional questions, we – perhaps – all agree that the Civil Service should be impartial, but there is always a debate about whether it is or should be independent. The debate about whether the Civil Service is independent is an interesting one. My personal view that the Civil Service is not independent. It is quite important that we recognise that it is not independent. It is not a 'thing' over there that can sit in judgment on Ministers or the Government. It is an agent of the Government of the day, but that must sit alongside impartiality.

There is a constitutional argument for that, but there is also an argument from utility, which is that Ministers should want the best advice. It is enormously in Ministers' own interest to create the conditions for civil servants to give them the best possible, most honest advice. One of the problems with some of the dismissals and the context that those have set is that they have undermined Ministers' own interests, so that they do not always necessarily get the best advice. I do not think that that is a threat to impartiality or that civil servants are suddenly going to lose the habits of a lifetime and start talking in blue, red or yellow terms, but there is a tendency to hedge advice that means you are not always as up front about some of the problems and constraints, whether they are money, time, quality, the broader context or the deliverability of a Government's objectives.

Jill Rutter: I have argued in a separate paper, as a contribution to the Institute for Government's constitutional review, that we need to reset ministerial-Civil Service relations and to give Permanent Secretaries more duties to bolster their upholding of propriety and regularity, as well as potential recourses to the ethics adviser or something like that if they think that Ministers are breaking those principles. It was very notable

that when the Cabinet Secretary gave evidence to the Public Administration and Constitutional Affairs Committee in the summer he talked about having a Government which liked to test the boundaries. You did not get the sense that the Civil Service was actively patrolling those boundaries and that making sure that Ministers do not transgress was a very easy task. We need to look at ways of doing that.

We all learn to serve the Government of the day, but there are some areas where we really want the Civil Service to serve a longer-term public interest, not least to be ready for things like potential changes of direction or government. It is really interesting to think about how you try to strike a wider public interest duty. The New Zealanders have their stewardship function. There is an interesting conversation to be had about how you do that without the Civil Service developing a Civil Service view and imposing that on Ministers who do not share it.

Alex Thomas: You definitely have to be careful about the perma state problem. Very briefly, I would add contingency planning to that list. It may be outwith the committee's terms of reference but there is a question around propriety and regularity. There is also a question about the long-term sustainability of the state. The experience of the last few years suggests to me that we should take the long-term constitutional underpinning of contingency planning more seriously.

Baroness Andrews: This is really interesting stuff. I found, as a junior Minister, that there probably was in fact not enough challenge. It raises huge questions about the training and culture of the Civil Service as a whole. Jill, you talked about transparency and the quality of and access to advice. The Matthew Rycroft example is really interesting. How do we build in a confidence that we have a right to know that advice under appropriate circumstances in order to explain the judgment that Ministers eventually come to? Is there some way to do that within the constitution? The notion of independence versus impartiality is absolutely critical; it is not a think tank. In cases where there are really important and difficult decisions, how can we encourage the exchange of advice and more public discourse without breaking confidences on all the issues that Ministers hold very close to themselves?

Alex Thomas: That is a brilliant question. There are two things, in particular. There is a responsibility on Ministers to help create the conditions where they are able to be challenged. One thing we at the IfG will always say to any incoming Minister who asks us is, "Don't just accept advice at face value, but make clear at the start that you do want that challenge from the civil service". This goes to Jill's Civil Service reset point; I think there is a role for more statutory underpinning about the sorts of things that the Civil Service should be challenging on and have more direct accountability for, but that is a slightly separate debate.

The second point is about policy-making. The Civil Service and Ministers understandably are quite precious about the space for policy advice and challenges. I absolutely do not think you should have Ministers' scribbles on a policy submission made public within 20 minutes of the submission

going out. Particularly in a hyperactive media world, space is needed to tease out all the difficult and sometimes very controversial things you would not want to say in public. But at the very least, we need to take much more seriously the underpinning evidence being more public. Impact assessments have never been great, but there has been a degrading in their quality and the evidence that sits underneath decisions, and a tendency to retrofit the evidence to make a decision that the Civil Service might think Ministers have already arrived at. More open public accountability for the quality of the evidence being presented to Ministers, at the very least, would help the Civil Service to be held more accountable for that.

Jill Rutter: We have argued for that before. When I was working at the Department for Environment, Food and Rural Affairs, when FoI came in, we were planning what were called two-part submissions, because we thought the evidence base would be FoI-able and we would be forced to put that into the public domain—not the advice to Ministers about what to do with it but the evidence base we had used. The Cabinet Office managed to see that off and we never had to do that. I am not sure that was particularly in the public interest.

Forgive me for saying this, but I think there was a big Civil Service loss of confidence in 1997 over the transition and the advent of the new Labour Government with very developed relationships with their special advisers, which tended to reduce the Civil Service to hearing, “We’ll make the policy decisions. We’re not that interested in your views. We’ll just get on. Your role is to sit there and implement it”. We saw a downgrading of Permanent Secretaries to see themselves not so much as principal policy advisers to Ministers but much more as departmental managers.

I came from a department—the Treasury—where there was quite a lot of challenge, certainly in the Conservative years. Other departments had very different cultures about the extent to which you challenged and the extent to which you disagreed in front of Ministers. We did a report in 2011 at the Institute for Government called *Policy Making in the Real World*. We interviewed lots of civil servants and Ministers about policy-making in the New Labour Government. Many seemed to take the view that challenge was not welcome and spent a lot of their time trying to second-guess what Ministers wanted. We heard from Ministers that they did not welcome civil servants trying to second-guess the politics and where they wanted to end up. They really wanted better advice. There seemed to be a bit of a breakdown of communications, leaving both sides rather unsatisfied.

Baroness Andrews: I want to make a comment, because my earlier question was only partially answered, about the role of the delivery unit. The question Alex raised is: what is the job of the Permanent Secretary? Where does policy fit? Who holds the power over it, and how does the notion of delivery and who is responsible and accountable really fit? These questions are not necessarily pursuable in today’s context, but it is a really important series of issues.

Alex Thomas: We may, and probably should, do a project on the role of the Permanent Secretary at the IfG. As to the role of the Permanent Secretary in the current context and how best you either bring together or separate out responsibility for the leadership and management of the department from policy advice and delivery mechanisms, my instinct—maybe because I am institutionalised—is that it is useful for all those three to be held together in the person of the Permanent Secretary. What skills you need to be a Permanent Secretary, what authority you need and how much personal accountability you hold beyond the accounting officer role are quite fundamental questions that may be beyond the scope of this inquiry, but very interesting.

Lord Falconer of Thoroton: I completely agree with Alex when he says the Civil Service is not independent; the Civil Service is there to serve the Government of the day. Its impartiality makes it capable of serving the Government of the day; it is not Tory; it is not Labour. You lose that impartiality if the Government expect the Civil Service to become Tory or Labour, depending on which complexion they are. It does have a role in ensuring propriety and regularity, to use Jill's phrase.

Could you draw a distinction for the purposes of the evidence between, on the one hand, saying it is not independent, it is serving the Government of the day, and, on the other, that it has to ensure propriety? Plainly, it would be wrong for civil servants, for example, to collude in government giving money to the wrong people for the wrong reasons. Define for the committee where the line is to be drawn between propriety and independence.

Alex Thomas: There are different aspects to it but there is a clear propriety line around the accounting officer test: if money is being spent improperly, if Parliament has not authorised money, or if something is illegal or reasonably considered to be illegal, there are those accounting officer tests. The reason I would like to see more ministerial directions, frankly, is that it gives Permanent Secretaries—civil servants—the authority to say to a Minister, "I am not prepared on my own integrity and view of the propriety of this to be held accountable for it. It's over to you if you want to do it". There is a nice, quite bright line around propriety there.

There is a much muddier situation when the Cabinet Secretary, or somebody nominated by them, is asked to investigate ethical questions around Ministers. We have blurred the lines between the formal accounting officer propriety that the world can look to the Civil Service to uphold and, if it cannot uphold it, to request a direction—although I would like to see more of them, as I keep saying—and this sense that somehow the Cabinet Secretary, or a nominated deputy, is the fount of all ethical investigatory process. As we have seen, in the end, on those ethical questions about the conduct of Ministers, the Cabinet Secretary is entirely beholden to the Prime Minister's view. It is important that we do not muddy the waters between that particular propriety angle and the accounting officer test.

Jill Rutter: There are some interesting grey areas. In a sense, the value-for-money test is the easiest one to articulate of the accounting officer responsibilities. It is interpreted a bit too narrowly as, "You write a cheque". There are many other things government does that have resource costs, not least on the tax side, where the Treasury is completely wimpish in not accepting accounting officer responsibilities for some of the ways in which government makes tax policies. It puts it all into a bucket called "policy", while expecting its spending colleagues to challenge.

There are other areas—for example, upholding the integrity of the public appointments process. We have the Commissioner for Public Appointments, but Permanent Secretaries have a duty to make sure their departments are running those processes properly without having to resort to the public appointments commission. We have seen some concerns about the way in which those have been conducted in the past or whether candidates are appropriate and so on. There are a range of those areas.

There is also a really interesting set of issues. I was recently in Australia, which has quite a powerful anti-corruption commission at state level. One of the things the New South Wales anti-corruption commission is looking at is whether what it calls systemic pork-barrelling—funding allocation decisions—are appropriate and justifiable on objective evidence. If you have a limited pot of funding, how do they allocate it and have they done so in a fair, transparent and reasonable way, without political bias and things like that?

There are some interesting murky areas that should be explored in greater depth. There are question marks about what the responsibility of the Civil Service is in helping Ministers to do what they want and how far they have a slightly separate view about the proper stewardship of public money, of public resources and burdens across the economy.

The Chair: We need to move on as we have some other important questions to get through. Thank you for that. Lord Hope, your question goes back to the *Civil Service Commission Recruitment Principles*.

Q8 Lord Hope of Craighead: Yes, a slightly more precise question. I have been looking at the text of the *Civil Service Commission Recruitment Principles*. It is interesting that it has gone through a series of editions. The first edition I have before me is 2010; 2012 is the next one. In 2015 there is a significant difference, which I will identify in a moment, and then 2018, which is the latest edition so far as I am aware.

To begin with, in the first two editions, the reference to Ministers is quite gentle, if I put it this way. "Ministers may need to give final approval to the most senior appointments. Where a Minister has an interest in an appointment, it is important that they are consulted at the outset to agree the terms on which the post is to be advertised", and so on. That formula reappears in 2012.

When we come to 2015, the wording changes quite dramatically. It says:

"Where the relevant Minister has an interest in the appointment, the Chair of the panel must ensure that the Minister is consulted on and agrees the final job and person specification ... in particular to ensure that there is sufficient external challenge from outside the Civil Service". Then it goes on to say that the Minister may meet candidates and so on, but always with a member of the commission, and that the Minister may not be a member of the selection panel, which is obvious enough, and may not add or remove a candidate from the competition. However, the involvement is much more precise and specifically provided for.

How did that change come about? Has it made a significant difference to the way the process is handled? When one sees a reference to "the relevant Minister", does that include the Prime Minister as well as departmental Ministers?

Alex Thomas: On that last question, yes, it can, although the Prime Minister has other more formal roles in the processes, as you will have seen from the recruitment principles.

On why it changed, there was quite a lot of discussion around this in the coalition Government period. Lord Maude, as the Minister for the Cabinet Office at the time, was very interested in this as part of the Civil Service reform programme that was happening. There was also a specific review—the Grimstone Review in 2013 or 2014—and the significant change in the 2015 edition, as you rightly highlighted, is as a result of that review.

Has it changed the process? Less than you might think was my experience and view. It largely formalised a process that had been happening anyway. It goes back to some of our earlier discussion around the involvement of Secretaries of State and the Prime Minister in these appointments. You create a process—a channel—for these things to happen. I think it happens more systematically and in a more managed way. The points of job description, candidate list and selection go more formally to Ministers and ultimately the Prime Minister. If a Secretary of State was determined to shape a recruitment competition before 2015, he or she would have done so, and they will do the same after 2015. I am less excited about that as a change in practice.

It is important that Ministers, up to the Prime Minister, are able to shape these competitions in that there are people appointed who they can work with and in whom they have confidence. It is also important that the system, as we have been talking about, is not politicised or impartiality-challenged. The balance is broadly right there.

I would note two things. First, as we have been talking about, dismissal is not covered. Dismissal is a far more potent weapon in some of these things than appointment. Secondly, particularly given the churn of Ministers, we have put all this energy and attention into, "How precisely do we involve the Secretary of State in this recruitment principle?", and they are reshuffled the next week and the Permanent Secretary is there

for five years. The overengineering of some of this process makes one feel there is sometimes a bit of angels on pinheads in it.

Lord Hope of Craighead: Why did the reference to the need for sufficient external challenge from outside the Civil Service not appear in the previous editions? It comes in in 2015. Was there a defect there that had been identified?

Alex Thomas: In that period of Civil Service reform, there was a general desire to get more external challenge into the Civil Service, whether that was open policy-making, as it was called at the time, with more challenging of policy advice or into appointments. I cannot remember whether it was in 2015 or later, but there was also a bit of a sense that the Civil Service Commission and the First Commissioner post, in particular, had been occupied by a series of ex-civil servants. Again, perfectly reasonably, opening that up a little bit, there is nothing wrong with an ex-civil servant—he says with self-interest—bringing in external challenge to be able to say, “Are you doing this in the best possible way? What’s the best practice from other sectors?” That is no bad thing. There was a strong sense of that at the time. Frankly, that was legitimate.

Jill Rutter: There was a sense at the time of the *Civil Service Reform Plan* that Ministers’ desire, in theory, to attract and appoint external candidates was being somewhat frustrated by the system. Some of that was designed to ensure that external candidates were given a fairer crack of the whip. As Alex has pointed out, Ministers’ extreme revealed preference is for insiders. Ministers like the theory of having lots of external, new people from business coming in to do jobs from outside. However, either they do not attract good enough candidates because the salaries are not competitive or, ultimately, they decide they want the person who is going to manage the Whitehall system for them and win those battles, so it does not seem to happen. Part of the desire to make sure there is external challenge in the recruitment process was another attempt to open up Civil Service appointments more.

Lord Hope of Craighead: Did that apply at all levels of seniority? I can understand at the beginning, but this document applies throughout at each level. Is that principle important at each level?

Alex Thomas: It tightens with seniority, as you might expect. The principles of recruitment apply throughout. The processes apply more rigorously to the senior Civil Service, so the top three or four grades. The involvement of the Civil Service Commission in recruitment applies more tightly to director level and then director-general level appointments. Then there is the particular process involving Ministers around the Permanent Secretary appointment. The process tightens as you go up.

The Chair: Thank you very much. Can we return to the issue of ministerial involvement in the appointment of senior civil servants?

Q9 **Lord Strathclyde:** I get from your evidence that there, perhaps, is not as much of a problem in all of this as we originally thought. Apart from

some of the specific examples that you have used, to do with Tom Scholar, Brexit, the Johnson and Truss Governments, there has been a continuing debate—fairly low level at the moment—about whether there should be more political involvement and political appointees as civil servants, particularly on a change of government. It would be interesting to hear your views on that, particularly if you felt this would affect the constitutional independence and impartiality of the Civil Service. I think it clearly would, but it would be interesting to hear from you.

In that context, can I raise the question of Sue Gray? Earlier on Jill talked about mentally separate spheres, which obviously she has handled extremely well. If she rose to work for the leader of the Opposition, would you not agree that it is hardly surprising that there must be some suspicion among Ministers if a senior civil servant goes to do something politically? I make no criticism of Sue Gray in saying this.

Alex Thomas: There is a lot in that. I will come to Sue Gray in a moment. On the political appointment question, it is important to distinguish between the types of appointments. Special advisers are temporary civil servants, but they are allowed to be political. Civil servants can sometimes fall out with special advisers but it is a bit of a myth that there is this antagonism. Good special advisers are absolutely worth their weight in gold to civil servants. They expand the reach of Ministers and help to resolve questions. If the Government are prepared to take the hit of a few media stories criticising lots more SPADs, I would be very relaxed about more special adviser recruitment.

Then there are the slightly murky policy advisers or specialist advisers. Ministers might come into a department and say, "Actually, I'd like a few more people, not necessarily politically fellow travellers", as we said earlier, "but who get the programme and who are related more directly to me as a Secretary of State". There has been a bit of a tendency, previously through what are called extended ministerial offices but more generally, to run quasi-Civil Service appointment processes where policy advisers are appointed. There is nothing deeply wrong with that but it starts to just pull away at the thread of Civil Service impartiality. I would rather regularise that in some way and say either that these are career civil servants or that there is an expanded specialist or special adviser category there. Then there is the "politicisation" of career civil servants, which, for all the reasons we have been saying, would be unwelcome. The principle of impartiality is very important for successive Governments.

On Sue Gray, there are two factors. I will try to tread carefully but, I hope, not unhelpfully. One was the timing of it and going directly from a very senior job potentially—I suppose we do not know whether it will happen—into a political job. The other was the nature of the jobs that Sue Gray has done. There are not many civil servants like Sue Gray who, I am sure, many of us in our different forms have worked with. There is something quite exceptional about it.

There is no reason for a moment to doubt that Sue Gray would behave with professional integrity in moving from the Civil Service sphere to the political sphere, but it is why the Advisory Committee on Business Appointments, ACOBA, rules matter. The observation I would make is that there is not really a political channel for that. Those rules were designed to avoid commercial or financial conflicts of interest, or lobbying, because political moves like this are quite unusual. This gets to the point of the extent to which Sue Gray had contact with the Labour Party while she was a serving civil servant, which is a very muddy and unclear area, as there are no clear rules around that.

It is certainly arguable that to assure confidence in the system you might want to create a rarely used but defined route for someone who wants to switch horses in the way that Sue Gray may be doing, to agree a set of reasonable cooling-off periods, agree the restrictions that would apply and, as we argue more generally, give ACOBA more teeth in enforcing them generally.

Jill Rutter: On politicisation, I am not sure we want more political people necessarily because there are lots of politicians in government departments. It is quite interesting the way in which we see people appointed: as Lords Ministers, at the Treasury, there was Lord Deighton and Lord O'Neill coming in to run particular areas of policy. Lord Frost is an interesting example of someone who has the set of being a diplomat, a special adviser and a Minister, and ultimately ending up in the Cabinet. An interesting question is how easy our system makes it to bring in talented individuals to do tasks that Ministers want done.

We saw some of this around the Covid response with rows about Kate Bingham and Baroness Harding—bringing in outsiders. Should we regularise Ministers' ability to tap in to people who may have quite a lot to offer the country, but satisfy people that there is a genuine need and it is being done for the right reasons? Is it transparent enough and not just, "I'm tapping up some of my friends to do these things", without necessarily having to burden them with being Members of the Lords for a long time and having to do Lords' PQs? Some of them take legislation through; I think that has surprised some appointees from the business world, who have come in to do a ministerial job and discovered quite what being a Lords Minister entails. There is an interesting question about whether we need to flex up that ability.

On Sue Gray, if there was only one civil servant who anyone had heard of last year, it was probably her. It clearly gave a political bonus, with her being a bit of a trophy catch, but it also raised hackles across the board. It is difficult, and I slightly hope that might give both her and the leader of the Opposition some pause for thought about whether it was a wise move if you wanted to protect the long-run reputation of the Civil Service.

There is a question mark. We are used to operating in politically restricted grades in the Civil Service. It does not stop you applying to be a parliamentary candidate and things like that, which I always thought

was a bit weird. An interesting question is whether we should have a politically super-restricted grade for the most senior civil servants about them not going directly into political jobs, of which this is possibly the first ever instance. As Alex says, when people look at overhauling ACOBA, how you would deal with political conflicts of interest needs to be looked at as well as business appointments. However, there is a whole set of reasons for overhauling ACOBA, apart from that.

Lord Howard of Lympne: I too have been looking at the commission's recruitment principles, in particular paragraph 27, which reads: "Candidates must be assessed on merit, and they should not be treated more or less advantageously because of their previous or current activities, affiliations, or the employment of their friends, partner or family members". How is it possible to assess the suitability of anyone for any post without taking into account their previous activities?

Alex Thomas: Lord Howard, this is a very good question. I am not going to jump to defend the drafting of the recruitment principles. What that section is getting at is that the overriding principle of recruitment is merit, rather than political affiliation or contacts. It is an ethical guard rail. I would entirely agree that merit is entangled with previous and current activities. We can pass that bit of sloppy drafting back to the Cabinet Office, I suspect.

Jill Rutter: One thing that Civil Service recruitment at all levels undervalues—and there has been some attempt to sort this—is knowledge and experience in the relevant area. We had a particular example with Lord Howard wanting to change the mentality of the Home Office and desperately wanting someone who had not been institutionalised in it. We underweight across the Civil Service knowledge and understanding of an area and generally assume that civil servants can pick up any subject area and perform equally well. I would hope that was not excluded there. It is notable that neither the Treasury nor the FCDO is generally prepared to appoint Permanent Secretaries who have not spent their entire careers in those departments.

Alex Thomas: There is a deeper point here to make up for my slightly frivolous first response. The First Civil Service Commissioner made this point at a panel at the IfG the other day. There is a slight fetishisation of fairness over merit sometimes in the Civil Service, perhaps, like any bureaucracy. If you take the recruitment principles of merit, fair and open competition, there is a tendency in the Civil Service to think more about open competition and fairness sometimes than about merit. That is not a conspiracy, but there are certain human resources rules that suggest that a recruiting manager should not have a performance report available to them for someone internal whom they might be recruiting. That seems to me to be denying yourself the information that you need to make a good hire. So, in an effort to level the playing field between internal and external applicants, sometimes the Civil Service recruits with one arm tied behind its back.

Lord Howard of Lympne: If we are going to be critical, as I think we

should be, of the drafting of this paragraph, we ought not to overlook the reference to affiliations, which on the face of it might mean that, if a previous president of the Flat Earth Society applied for the job of Permanent Secretary of a department with some responsibility for science, that would be completely ignored. Can we point out reference to affiliations as well as activities in the drafting of this particular paragraph?

Alex Thomas: I agree. I make no comment on whether previous Permanent Secretaries are members of the Flat Earth Society or not. Many of these rules develop in response to particular incidents. There is value to a more thorough look at all of this.

Talking about affiliations, as part of the fallout from the Lex Greensill affair, where Bill Crothers had been double-jobbing as a civil servant and, for a period, working for Lex Greensill, that is not about recruitment so much. Until that emerged, we assume now that double jobs are better recorded, that speaks to a fluidity around some of these arrangements that is not particularly healthy for the Civil Service.

The Chair: Going back to the Scholar and Brexit incidents, were these exceptions to what is normal custom and practice arrangement with the recruitment and dismissal of senior servants, or were they instances where the current processes, procedures and principles were subjected to a stress test and they failed the stress test? Therefore, it is not that they are exceptions—it is that the practices and principles you apply do not work in difficult situations, where you have a radical change in fiscal policy or a national change like Brexit. What do you say to that?

Alex Thomas: Regarding the stress test, on appointments you can say they broadly pass the test, which goes to Jill's point. I am though wary of falling into the trap of saying that if an appointment is conventional it means it is a good appointment, because it absolutely does not.

As to the fact that Permanent Secretaries and other senior officials have tended to be recruited from the same stable, it is too soon to tell whether the system survived that stress test or not. The conversation this morning has certainly made me reflect more on the point about dismissal and it could be argued that the system failed the stress test on dismissal of Permanent Secretaries. There should be much more process and a higher bar to do the sorts of things that happened in 2020. The Government need to justify much more rigorously and, over a reasonable but not indefinite period of time, why they wanted to take the action that they did in dismissing a Permanent Secretary.

The Chair: We will move on to the next question. One thing we are keen not to miss is senior civil servants working for Scottish and Welsh Governments, because they are part of the UK Civil Service.

Q10 **Lord Foulkes of Cumnock:** Do you see particular challenges in relation to the Permanent Secretaries in Scotland and Wales, who, as you know, remain part of the UK Civil Service and can attend the Cabinet Secretary's weekly meetings, but are politically responsible to the

Scottish Government and the Welsh Government? Do you see particular challenges, including the arrangements for appointment and dismissal?

Alex Thomas: Benefits and challenges, yes. The question is, stating the obvious, whether the benefits outweigh the challenges. As to benefits in terms of a coherence to the UK Government, there is a binding quality to that. If you are a Unionist, you would welcome that. However, in the interests of co-ordination, as we saw through the Covid pandemic, anything that weakens co-operation and co-ordination between the different Governments of the UK, or anything that strengthens it, rather, is to be welcomed. Having them as part of a single organisation is a benefit. There are also some benefits, though not always taken up, to secondment and circulation of people with different skills and expertise between the different geographic parts of the Civil Service.

You asked about drawbacks. Yes, it creates tensions: through the 2014 Scottish referendum, through different positions on Brexit, and through the ongoing debate on independence in Scotland. There are similar but perhaps less intense tensions in Wales. It is for the Cabinet Secretary, Head of the Civil Service and the respective Permanent Secretaries to manage.

I do think it is manageable. I have sat in on the weekly meetings of Permanent Secretaries for a period. If something particularly came up that would be awkward on all sides to discuss, then the Scotland, Wales and Northern Ireland Permanent Secretaries, who often attended as well, would step back from that discussion. There is though also an oddity to the performance management of a Permanent Secretary. If the Cabinet Secretary phones up the Scottish First Minister saying, "How's your Permanent Secretary doing?", that creates a slightly odd dynamic. The Scottish First Minister, particularly if they are from a pro-independence party, might not feel inclined to have that conversation in as deep or constructive way as a UK government minister might.

Perhaps it is beyond the subject here, but the things that cause most problems on that are the housekeeping/back office-type questions. I worry about pay. They are riding different horses for Civil Service pay between, nominally, one organisation, but the context, the conditions and the political decisions about pay might be quite different. Often, those tensions emerge at working level. There is no right or wrong answer as to whether they are separated out or not. It definitely creates frictions in the system that need to be carefully managed to maintain one civil service across GB at least.

Jill Rutter: Alex is completely right on working. Look at the contrast between the relationship of the Northern Ireland Civil Service, which obviously has its own challenges in having repeatedly to deal with periods of no Ministers, and a particularly different relationship with the UK Government. When they actually had to work together, they did work quite well together. We saw a very high-profile example of interchange when Sue Gray went across to be Permanent Secretary at the Department of Finance in Northern Ireland, which is not far short of about

as many as you can name with the Scottish Government. A Permanent Secretary moved in when Peter Housden went there, which is quite interesting.

One of the questions is opportunities for Whitehall-based civil servants, whom many people have criticised for having an inadequate understanding of the devolved Governments, to move into the Scottish Government and vice versa. There are a few more opportunities now that government departments are increasing their dispersal programme and locating more functions. Part of the Cabinet Office is moving to Glasgow. There are the revenue departments and so forth; so there are more of those opportunities. Over time, there is more logic towards them probably spinning off into separate civil services.

I remember a friend, a DG, who had a very big job in the Welsh Government, applying for an equivalent director-general job back in the UK Civil Service. With his Welsh experience, he was clearly the person who had done that job, albeit in the Welsh Government. However, he was told that Welsh government experience did not really count for anything in the UK Civil Service. If the Government really do want to encourage interchange, they should be a bit more willing to recognise the benefits of serving some time there. Otherwise, it might make sense in the longer term to spin them off into separate civil services, but maintain the links like they have with the Northern Ireland Civil Service.

Lord Foulkes of Cumnock: That is helpful. I raise one specific example. Suppose a devolved Government were clearly operating in areas that were reserved areas to the United Kingdom Government and Parliament. How could the Permanent Secretary in that Scottish or Welsh Government cope with that?

Alex Thomas: It comes back to the ministerial direction point. If something is unlawful or improper in the Permanent Secretary's view, they need to seek a direction to do it.

Lord Foulkes of Cumnock: From whom?

Alex Thomas: From the Minister in the devolved Administration.

Lord Foulkes of Cumnock: But if that Minister's view was different from the United Kingdom Government's view, is there not potential for a major conflict there?

Alex Thomas: Yes. The same could apply at a UK level if a Minister does not think a direction is required. If a civil servant is saying, "I cannot do this action without a direction", and the Minister is saying, "I don't think you need a direction. I'm going to refuse to direct you", then you have a stand-off, but the status quo is that the thing does not happen, which seems to me to be right. Yes, you would have a major conflict then. The same would have been true if the Home Secretary had refused to direct Matthew Rycroft on the Rwanda scheme, for example.

Jill Rutter: Permanent Secretaries manage to do things collectively even though their departments may be at total loggerheads. One department may refuse to disclose information to another department and things like that. The Permanent Secretaries would still get together, manage collective issues and focus on those discussions of more management issues than trying to resolve policy differences between their departments.

Lord Thomas of Gresford: I am interested in the relationship between the civil servants who serve the Secretary of State in Gwydyr House and those in Cardiff who serve the Welsh Government. Those in Cardiff are still part of the UK Civil Service. Is there any priority? How do you see it? How do they communicate?

Alex Thomas: Between the two bits of the Civil Service?

Lord Thomas of Gresford: Yes.

Alex Thomas: The practice varies a bit between departments. Departments that are very used to working across boundaries—and I worked in Defra for a period—co-operate. Things like animal diseases do not respect borders and so on. The co-operation is quite thick and quite good, I would say. With other departments, where things are more strictly devolved or not devolved at all, they might have less contact.

Formal intergovernmental ministerial committees are sometimes useful and sometimes perhaps less useful, with fault on both sides around that.

In terms of the day-to-day relationships, it is quite functional. It comes back to this question of impartiality and being able to serve different Governments equally. Sometimes that happens at the same time if you are serving different Governments in Westminster and in Cardiff or Edinburgh. There can, and should, always be more interchange, but I do not think there is a constitutional difficulty in the relationship. They recognise that they are working in different organisations and to different Governments, but with part of the same code of impartiality, integrity, honesty and objectivity.

Jill Rutter: When the UK Government had to prepare for a no-deal Brexit, Defra sent quite a lot of people over to bolster preparations in Northern Ireland because it knew that there was a huge capacity problem in the Northern Ireland Civil Service, even though it is a separate civil service. They sent UK civil servants over to help the Northern Ireland Civil Service with its preparation. They knew that was critical for the UK government objectives of Brexit.

That might have been harder, and we have seen some of these arguments when the Executive was there and Ministers give different directions about preparation. We have seen some conflicts over that, but people know that you serve your Minister and the Government you are working for.

Alex Thomas: It does not feel terribly different from phoning up a different department when your Ministers are at loggerheads. We know our remits. "Can we have a conversation around this?", sticking to the departmental position but having a relationship.

Lord Thomas of Gresford: You are happy with the machinery that exists at the moment for consultation between the two, even though they are pursuing different policies.

Alex Thomas: On a working level in the Civil Service, there can and should be more personal contact and interchange. That is an effectiveness and relationship problem, not a machinery question. Jill and other colleagues are much better placed to talk about the bigger questions on the overall co-ordination machinery around devolution and the intergovernmental groups. That has reformed and improved a bit recently, but we would argue that there is still a fair way to go on that.

Jill Rutter: The tensions come at a political level, and there are consequences of those political tensions. As I say, there are also tensions between departments in the UK. When I was at Defra, we could not get information we needed out of the Department for Transport. Alistair Darling, I think, was Secretary of State and adamantly refused to let his officials share any information with us. It is not unknown even within the same Government.

The Chair: Special advisers and other actors.

Q11 **Baroness Suttie:** I would like to move on to the role of special advisers and other actors such as specialist advisers. Both of you have already touched a little bit on Dominic Cummings, and indeed the experience of 1997 and New Labour.

Can you say a little about the involvement of special advisers and specialist advisers in the recruitment and dismissal of Permanent Secretaries? Do you identify a difference between special advisers and specialist advisers in this regard? Do you think it has changed in recent years?

Alex Thomas: On special versus specialist, there are interesting differences in how they operate, but in this particular regard I am not sure there is that much difference.

Formally, special advisers are not involved in the recruitment or dismissal of Permanent Secretaries. I think that is right. It is a matter for the Minister or the Prime Minister, and it is very important that involvement is done in the name of the Prime Minister or the Minister.

To some extent, of course, Ministers can take advice from whoever they want about the merits or otherwise of a candidate. A private conversation between a special adviser and a Minister or the Prime Minister about the quality of individual candidates is fine. That is a Minister taking soundings from someone, helping them to reach their view. But it is important that a special adviser is not involved in that process as a kind of formal

consultee. We only have his tweets and evidence to go on it, but I think that Dominic Cummings's sense of, "I appointed so-and-so", or, "I dismissed so-and-so", is deeply unhealthy. It obviously formally comes back to the Prime Minister and is done in the name of the Prime Minister. A reinforcement and underpinning of that important principle would not go amiss.

Baroness Suttie: Thank you for that. I am sorry, I should have declared an interest as a former special adviser myself.

My second question is about social media, and the role of social media. Obviously, special advisers have a code of conduct. Do you think that needs to be updated in relation to the increasing influence of social media in these issues in terms of public announcements by SPADs? Would it be helpful to roll that out and change or modify the code of conduct for special advisers?

Alex Thomas: On announcements, special advisers are subject to the same rules in their own personal tweeting or other bits of social media as civil servants. I would not say there is a particular problem with special advisers personally while they are in office making things known on social media, unless there is a particular example that you are interested in.

Jill has spoken about this, but there is a question about the role of special advisers in official government accounts and social media accounts from departments, where there have been a few occasions—some of them have been rolled back and some have not—where you can detect the hand of a special adviser or a political adviser in the messaging that goes out. A reinforcement of the principle that government communications should be accurate and impartial would be very good. Some of the things that the Northern Ireland Office was putting out during Brexit about "no border" were just wrong.

There is also a question about what special advisers might say after they leave office and how they might treat the confidences that they are privy to. To some extent, there have always been people writing books and commenting on their time in government. That is a fairly informal process. The important thing is that the things that are really important to remain private or secret, for national security or other reasons, remain secret, but I may have missed the point of your question.

Baroness Suttie: It is perhaps enforcement of the actual code of conduct rather than amending the existing code of conduct.

Alex Thomas: Yes.

Jill Rutter: I would reiterate Alex's point. Every time we attribute something to a special adviser, we effectively undermine ministerial accountability. We should not let Ministers get off so lightly with pretending it is a SPAD. It is a Minister who appoints a special adviser. They have no authority save that which comes from their Minister. If we attribute X or Y to a special adviser, they can only do anything because

the Minister gives them permission to do that. They must not be seen as a separate entity from that Minister. It is just a way of deflecting blame.

The Chair: Given that exchange, in your view is there anything in the code of conduct for special advisers that needs relooking at in terms of potential indirect influence or involvement in the appointment and dismissal of senior civil servants?

Alex Thomas: It is a very good question. I wish I had reread the code of conduct before coming here. We can reflect on that. The code of conduct for special advisers is essentially the same as for civil servants, but with a political exemption. It goes to Baroness Suttie's point about enforcement. There are, and should be, sufficient safeguards for civil servants and special advisers in how they behave in these appointment processes.

Certainly when I was in the Cabinet Secretary's Office or when I was a principal private secretary to a Secretary of State, when these issues came up, the Civil Service was, at least in my experience, quite careful about protecting the integrity of a process so that the influence of special advisers was via discussion with their Secretary of State or with the Prime Minister rather than formally in the process. My suspicion is that it was around the enforcement of that.

When it comes to a very senior special adviser to the Prime Minister, going to Jill's point, it is the responsibility of the Prime Minister. That was another example of our constitutional system coming under strain with a Prime Minister who was prepared or willing to indulge the pushing of boundaries that had previously been respected.

Jill Rutter: Rather than social media—and we obviously do not quite know who it is because they are unattributable briefings—when you have a newspaper printing that the Government have a target list of Permanent Secretaries to get rid of, or want to appoint X or Y, pre-judging competitions, "This is a very good candidate", or, "X or Y is a Brexiteer", all of that is phenomenally unhelpful to the good functioning of the Government, and Ministers ought to take responsibility for making sure that does not happen.

As we said, that ended up as a bit of a tug of war over the Permanent Secretary at DWP between the Secretary of State and the Cabinet Secretary, and probably preserved the Permanent Secretary in office slightly longer than he might otherwise have been there because it became a bit totemic, but I think that is behaviour that should be clamped down on. It is quite difficult because, by definition, it is behind the scenes and does not have names attached.

Alex Thomas: It comes back to a theme across a lot of these things, which I know the committee will be intensely aware of. There is a sense that you get trapped by the rules being the rules for their own sake. The reason we talk about these things is because it is not in the interests of good government to have lots of briefings about Permanent Secretaries

because that undermines their position and undermines their authority within the department.

If you are a Prime Minister or a Secretary of State interested in achieving the most that you can achieve in government in your time in office, a lot of this stuff is just counterproductive.

Q12 Baroness Andrews: This is a huge question. It is about the nature of merit and its historical application. I promised the committee that I would not go back to the Northcote-Trevelyan reforms and the notion of the examination in the Civil Service. You have touched on the role of knowledge, and knowledge being power. You said it is relatively underweighted now.

My question is slightly larger than the one in front of me. If the concept of merit still holds, what is the relationship between knowledge and judgment as you want to see it in the Civil Service? I am thinking of Kate Bingham's response to her dismay that there were not more scientists running for Permanent Secretaries. Is there a more profound fear of expertise and where it sits in the Civil Service, and is that part of what we are seeing in the response of Ministers in the fear of challenge?

This is not a question simply of sympathy and political alignment or anything. It is more to do with confidence, intellectual power and where the real expertise and knowledge sits.

Alex Thomas: I did reread Northcote-Trevelyan yesterday in preparation for this so I feel better prepared. It is a huge question, and I could go in lots of different ways with it. There is an undervaluing of knowledge, but let us not also undervalue skills, whether they be leadership, management or judgment. It goes back a little to the impossible job that we ask Permanent Secretaries to do. I do not want to get out the violins too much, but it is a role that requires a combination of all these things.

The reason why merit is so important is because the Civil Service does not really have any other legitimacy other than merit. If the Civil Service cannot demonstrate on an ongoing basis to Ministers that they are the best people to do that job, whatever set of skills that requires, that undermines the principle of an impartial Civil Service, because there is no magic legitimacy somewhere else from which the Civil Service gains its authority.

The deskilling of the Civil Service is a profound constitutional question. Ministers, more or less aggressively but quite reasonably, can say, "Hang on, I am accountable for all this stuff and I am not able to appoint the people who are there to make it happen for me". Senior civil servants do get this, but there is a constant need to really be on top of the mix of skills that very senior civil servants need—leadership, managerial, knowledge and expertise—to constantly re-fight the argument that an impartial Civil Service is the best way of doing it, if indeed it is. You can go down a different route.

Jill Rutter: It is very interesting if you look at the question of scientists. There are obviously scientists who have a science background and join the Civil Service. There are some, but not as many as there are economists and quite a lot from arts and humanities.

There is a really interesting thing about the role of people brought in as chief scientists. Clearly, we were very lucky with the people at the top of the scientific professions at the time of the pandemic. They had strong backgrounds both in drugs research and epidemiology at the Department of Health. It is really quite interesting if you observe which chief scientific advisers succeed in government and which make much less of an impact. It is very variable. They can be equally skilled outside, but there are those who see their role as quite contained and narrow and, in a sense, do not find themselves getting involved in the trade-offs and the difficult issues that policies need. They do not really relish the roles and are slightly withdrawn.

There are others who absolutely love being able to bring their knowledge, insights, expertise and connections into helping the Government to solve problems and absolutely flourish in the roles. I do not think we do enough, when we bring in those sorts of people, to support them in making a success of those roles. This is a thing that the Civil Service does incredibly badly, partly because it does not recognise that it has any particularly intrinsic knowledge and skills itself, and so it just assumes that anyone from outside can pick it up on day one and will flourish. For quite a lot of people, whether from business, academia or wherever, it is really quite a big job to make the transition into government. It is a very different operating environment from one you have ever done. The Civil Service is quite brutal in not helping people to make that transition.

Baroness Andrews: I would love to pursue that with you because it is a really interesting question—the tension between professionalism and expertise, and the traditional notion of the merit in the Civil Service as it is explained. I will not do that but just ask my final question, if I may.

Do you think there is a case for revisiting the definition of merit? It is not vague, but it is rather monochrome about what we expect to see, particularly in the light of the questions on transparency. If we knew more about what we were asking of civil servants, and what they had the right to expect in terms of greater protections, would it require a more robust definition of merit?

Alex Thomas: There is a case for revisiting it, as there is with the objective of the Civil Service as a whole. There is sometimes a tendency in these discussions to get slightly lost about what the point of the Civil Service is. We have argued that you should have a clearer objective for the Civil Service overall, which would be to serve the Government of the day and to maintain the capability of the state, or something like that. Then you get into merit, but it is quite hard to talk about merit in the abstract. That may be why it is a fairly general discussion.

The Government have made progress over the past 10 years or so about what it calls the functions: digital, IT and data, some questions over human resources, and commercial and procurement skills. It is very hard to talk about merit in the abstract other than as a principle. What you need to do is get into the level below that and have some really crunchy definitions of what merit looks like for someone who is, yes, a Permanent Secretary but is a leading or senior person in those functional areas, which would include the policy civil servant giving advice. We should remember that is only about 30,000 civil servants out of nearly half a million.

Jill Rutter: As Alex says, it is difficult to extract merit from the job you are asking someone to do. It goes to Lord Howard's point about the job description. What are the critical things that you want that job to do?

There is also a bit of trouble—this goes to some of the comments that I was making about the Treasury—when you focus on the Permanent Secretary. One person will not have everything. What matters to the Secretary of State is being able to take a more rounded view of who is in their top team. Who are the people to whom they will be looking to support them in fulfilling their objectives? Also, and this is more for the Prime Minister, there is a bit of a stress test of, "If that person isn't Secretary of State for ever, will that fulfil the next person's objectives as well?" It is quite an interesting question of making sure that you have the right top team, as opposed to just the right Permanent Secretary.

The Chair: Lord Foulkes, are you happy to waive your question?

Lord Foulkes of Cumnock: I was going to say that merit is a subjective judgment and not an objective judgment. I think you have proven that. Lord Strathclyde and I have different definitions.

Lord Strathclyde: I think you have tremendous merit.

Q13 **Lord Falconer of Thoroton:** That would be beyond argument. Do you know the document senior appointments protocol?

Alex Thomas: Yes.

Lord Falconer of Thoroton: It is the one that says what process you use; whether you use an internal competition, an external competition or a managed move, which I understand to be the Prime Minister and the Cabinet Secretary deciding who will get the job.

As I read this document, there are people who decide which sort of move it is going to be. Whether it is going to be open to people who are not civil servants or closed just to those who are civil servants is decided by some body called the senior leadership committee. I understand that the senior leadership committee has on it the First Civil Service Commissioner—one person—so I assume that all the rest of them are senior civil servants.

Alex Thomas: Apart from the Government's lead non-executive director.

Lord Falconer of Thoroton: The lead non-executive director, the Civil Service Commissioner and how many senior civil servants?

Alex Thomas: I guess it will change over time, but it is a fair number.

Lord Falconer of Thoroton: So they are rather in the majority.

Alex Thomas: Yes.

Lord Falconer of Thoroton: I understand this document to be saying that you only go for an external competition and ask somebody outside to apply if the position is that the "internal pool of potential candidates does not have the skills required".

Alex Thomas: I cannot remember exactly when that document was released.

Lord Falconer of Thoroton: I will tell you: 2011.

Alex Thomas: That is quite a—

Lord Falconer of Thoroton: This is not the current position.

Alex Thomas: Quite a lot has changed in that. Specifically, the post-Grimstone review changes that were made changed some of the recruitment principles. It has been on and off a bit since 2015, but reinforced recently that all senior Civil Service posts should be advertised externally. That is out of date, although—

Lord Falconer of Thoroton: This no longer reflects the view. This is obviously a lot of senior civil servants deciding that we are absolutely fine and that we do not need to have external adverts. Is there a document now that contains the position?

Alex Thomas: No. I was looking at this in terms of that protocol and others. The best and most recent document is the 2018 recruitment principles from the Civil Service Commission—

Lord Falconer of Thoroton: But that does not say when you issued the communication.

Alex Thomas: I do not think the Cabinet Office has updated that since. It has said, and reinforced recently, that all senior Civil Service jobs will be advertised externally unless there are exceptions. I cannot remember the criteria, but there are some quite limited exceptional criteria. We can certainly send it to you.

Lord Falconer of Thoroton: Can you point us to where that is?

Alex Thomas: What is sitting behind your point, which goes to the value of opening up the Civil Service and having a bit more external challenge in the Civil Service Commission and elsewhere, still stands.

Lord Falconer of Thoroton: From my own experience in the law, the

more you think you can keep on replicating your own type to be perfect in senior roles, the more things become a little problematic. This document is plainly the Civil Service determining whether you have an external advert. There needs to have been some change. I just do not know where it is to be found. If it is not written down, that is a slightly worrying sign.

Alex Thomas: I will send you the information on the senior Civil Service by default recruitment. I do think there is value for the committee in looking at the past and up to date position.

Jill Rutter: The lead non-executive director potentially has a good link to an interested Cabinet Office Minister, as John Browne did to Lord Maude. It is quite a powerful figure.

Lord Falconer of Thoroton: Thank you.

The Chair: Lord Hope asked a series of questions on the updating of the recruitment principles. The issue we are particularly looking at, given the issue now, is that there have to be exceptions to the principle to it being open. I can see the exceptions provisions in the recruitment principles, but are we clear how that exceptions set of rules and principles apply?

Alex Thomas: And, crucially to Lord Falconer's point, who decides that? I suspect it will be an internal decision.

The Chair: That would be helpful. You are obviously under no obligation to comment, but we talked about the Civil Service Commission, the membership of it and its remit. Under the CRaG, Schedule 1, paragraph 3, it sets out the appointment element. I think you said yourself that you were suddenly thinking more about dismissal as much as recruitment.

Having reflected, if you want to give us any comments about the strengths and weaknesses of that, or future-proofing of those requirements, that would be helpful. I am sure the issue of the commission is going to come up at some point for further discussion.

That was a marathon run. I was probably too indulgent with some of my colleagues at an earlier stage, but we got there, although a bit late. I am sorry about that. Thank you very much indeed. We gave you a lot of questions. I think between us we rather stimulated each other's thought processes as well as receiving the really informed information from you.

Thank you very much indeed. It is much appreciated. I am sorry that we kept you longer than we had hoped.