



Constitution Committee

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

Wednesday 29 March 2023

10.20 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 Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 2

Heard in Public

Questions 14 - 39

Witness

I: Professor Dennis Grube, Professor of Politics and Public Policy, University of Cambridge, and Research Lead, Bennett Institute for Public Policy, University of Cambridge.

USE OF THE TRANSCRIPT

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

Examination of witness

Professor Dennis Grube.

Q14 The Chair: Good morning, Professor Grube, and welcome to the Constitution Committee. We are taking evidence this morning in our inquiry into the appointment and dismissal of Permanent Secretaries and other senior civil servants.

Professor Dennis Grube, professor of politics and public policy and research lead at the Bennett Institute for Public Policy at the University of Cambridge is giving evidence this morning. Thank you very much for agreeing to come. We look forward to hearing what you have to say. We have lots of questions. Hopefully, you have been given some indication of where our thinking is. Are there any opening comments you wish to make or would you prefer us to go straight into the questions?

Professor Dennis Grube: Thank you so much for the invitation. It is great to spend this time with you. I am looking forward to our discussion.

If I may make one overarching observation, it would be about the changing nature of the modern government environment, how that is impacting on the work and role of Permanent Secretaries and how we think about the ways in which they should be appointed or dismissed. There is more change afoot than we have necessarily allowed for in the change to our traditions of how we do these things, but I look forward to having that discussion as we go along this morning.

The Chair: You have identified what we are seeking to look at and take a view on. We are interested in the shifts and trends over time in the appointment and dismissal of Permanent Secretaries and senior civil servants.

In your view or on your evidence, is there a trend for Permanent Secretaries and other senior civil servants to leave their posts when there is a change of Prime Minister or a Cabinet reshuffle takes place? Has this changed over time, in your view or on the evidence you have had?

Professor Dennis Grube: Thank you for a very interesting opening question. I will perhaps come at it in a slightly roundabout way. I see a trend towards frustration and disappointment from both sides of what we might call the traditional public sector bargain. Some of my scholarly colleagues would conceive of the public sector bargain as civil servants trading away their partisan views and, to some extent, their public face in return for access to the centre of government and the centre of policy-making and the protective shield of ministerial responsibility and accountability.

There is frustration and disappointment about the sense in which some of that is slowly diminishing. From the politicians' side, the public sector bargain is about having a permanent Civil Service that provides institutional memory on how things work. It provides responsive advice and allows the Government of the day to implement their policies well.

There is frustration on the part of Ministers about whether the Civil Service is fulfilling that function.

That links to your question. What we see as a result of these frustrations are interesting individual instances where someone leaves or is appointed to a senior Civil Service post rather than a systemic change across time. In terms of interesting individual instances, we can think about a spectrum from somebody like Mark Sedwill, who could see what was happening and feel the ground moving and therefore moved on, to somebody like Jonathan Slater, who felt the ground moving rather more strongly, through to somebody like Tom Scholar, who was no longer just being nudged but was pushed.

Those are individual instances, which is not necessarily the same as saying there is a trend. Even in Australia, which I know has something of an unwanted international reputation as a politically rather rough place to be, including for senior public servants, the time in office for a Secretary of the Department of the Prime Minister and Cabinet, which is the equivalent of the Cabinet Secretary in our system here, is between two and four years. That has been relatively constant over the past three decades.

What is changing slightly is the desire of the Prime Minister of the day to make a statement choice in choosing their head of the public service, their Secretary of DPMC. For example, the previous Prime Minister, Scott Morrison, appointed to that position somebody who had been his chief of staff for a number of years while he was Treasurer. There was some criticism of that; there was a perception that it was too political an appointment.

The incoming Prime Minister, Anthony Albanese, has chosen an academic, Professor Glyn Davis, who also has an established reputation as a public policy person, in order to make a statement about how they would like the Civil Service to work or not. Is it a trend? No, perhaps not. Are there interesting individual instances? Yes, certainly, as a result of increased frustration and tension in the relationship.

The Chair: I want to come on to the question of prime ministerial and ministerial involvement in dismissing or appointing. You are saying there is not any hard evidence of a trend, but these interesting individual cases could be early indicators of a change that is taking place in the way the Civil Service operates at a senior level. Is that a fair summary?

Professor Dennis Grube: Yes, I think so. There is a sense of political contestation around these appointments as a result of this tension, which is not to say that suddenly we are appointing nothing but partisans to senior Civil Service or public service roles, either here or in Australia.

Q15 **Lord Strathclyde:** I slightly get the impression—tell me if I am wrong—that what you quite rightly call the modern government environment requires that we should change the way we look at Permanent Secretaries. They need different skills. The potential increased

politicisation is quite a good thing, and prime ministerial and senior ministerial involvement in dismissing and recruiting Permanent Secretaries is probably not a bad thing. Is that a fair reflection of what you are saying, or have I overstated it? It is clearly not the traditional way of doing it in the UK. In other words, has the traditional system been broken down by whatever forces exist? Are we entering a new era?

Professor Dennis Grube: That is a fascinating question, which will lead to a discussion here. The sense I have of the UK Civil Service is that it was built for governing in private, and in the 21st century we are governing in public. If we go all the way back to Northcote-Trevelyan and then through to the Haldane report, there is a sense of tradition around how the Civil Service functions. It functions based on people who know each other well. There is the tradition of senior civil servants having gone to university, whether it be Cambridge, Oxford or other places, with a sense of mutual understanding and respect that comes from a longstanding relationship. That transitions through to the giving of advice in closed ways behind closed doors. That provides the space for an open discussion between politicians and their civil servants, and then, when a policy is ready to be announced, the Minister would come out and announce it.

I am suggesting that has given way to a scenario where we are governing in public much more. Civil servants are in danger of becoming politicised in terms of perceptions of their work, not because they are, in reality, any more political now than they have ever been but because they are more public than they have ever been, which allows for perceptions to be formed about whether they are political.

That is a very long-winded way of answering your question. If we are in this more politicised environment, in an environment in which there is greater politicised discussion around these appointments, we can go one of two ways. We can either allow greater political buy-in into the appointment process, essentially going down the Washington route, or we can restructure the Westminster model to buttress what we would like to see in the sense of having less political interference in this more public environment we are in.

Lord Strathclyde: Which is more attractive? Do you sense that appointments or dismissals have been made because a Prime Minister wants somebody more politically amenable towards their point of view? How do they tell what that point of view is unless they have also had this long-term relationship?

Professor Dennis Grube: The result of governing in a public environment is that Ministers and Prime Ministers, not unreasonably, form views about the likely political sentiments of some senior civil servants.

To provide some Australian context to that, when the Abbott Government came in in 2013, one of their first acts was to sack three serving public

servants. Martin Parkinson, the Treasury Secretary, also announced he would be leaving within a year. He was the fourth.

If you look at the careers of the departmental secretaries who were asked to leave, Andrew Metcalfe, who was in charge of the immigration department, had been publicly in the news defending a very controversial policy of the Government of the day around the Malaysia solution, as it was called. There is a sense in which his politicised identity may have led to the decision, "He has to go when we get into Government". The danger of the public profile is the perception that then flows from it into decision-making around positions and who should be appointed to them.

Q16 Baroness Andrews: This is extremely interesting. In your work you have written about governing in public, the influence of the media and the more contentious environment, but there is still a very powerful lack of transparency in the British Civil Service, which means that, as and when any advice is made public, it is pretty exceptional.

I am wondering whether the comparison with Australia needs to be mediated a bit and whether the tension you talk about inside Whitehall is more a tension caused by a shift in the centre of gravity as to where policy is made. There are so many more influences on policy. I would like your view on that.

You talked about Mark Sedwill and Jonathan Slater. It may be—I do not know—that what leads people to leave and do more interesting things, where they possibly have a bit more purchase than they expected to have, is the fact that policy-making itself is shared by politicians and special advisers. I am sorry; it is a slightly complicated question.

Professor Dennis Grube: The observation inside the question is a very good one. The rise of the spad, if we can put it that way, and the flatter horizontal style of policy networks, meaning that the Civil Service no longer is the sole or even the main repository of policy-making expertise, could certainly lead to frustration among senior appointees.

Inherent in that tension is a recognition that, under the tradition of Westminster Governments, having a seat at the policy-making table is still built into what we expect Permanent Secretaries to do. If that is no longer reflected in reality to the same extent, perhaps that is a sign of the changing expectations of the role of our senior civil servants. The point is well made.

I would also observe that, in terms of the number of spads and the sense of contestation, Australia is much worse than the UK. Canada is also much worse than the UK. The last time I looked at the figures, there were well over 400 spads in both the Australian and Canadian Governments. That sense of distance, given that there is an extra group of people who are pushing for a role in policy-making that may exclude civil servants to a greater degree than they have in the past, is also very strong in those systems.

Q17 Lord Foulkes of Cumnock: Your evidence is very revealing. It reminds

me of when I was a councillor in Edinburgh in the 1970s. I raised a radical suggestion. I was accused by the Conservatives of being political. I said, "But you are", and they said, "No, we are Conservative. We are not political".

What you have described is the old Westminster structure. The civil servants and the Ministers knew each other because they all went to Oxbridge. Perhaps they went to the same school as well. Perhaps one was a fag of the other. You never know. Then it was Labour that was changing things. Now it is the Conservatives that seem to be worried about politicisation. Is that because they realise they have lost the grip they used to have?

The Chair: We know you are here as an academic.

Lord Foulkes of Cumnock: As an academic, what do you think?

Professor Dennis Grube: Would it be wrong of me to characterise that as a provocative question?

Lord Foulkes of Cumnock: It is a probing question.

Professor Dennis Grube: Those I have met and spoken to from both major parties across multiple countries are concerned about these trends. It is not necessarily a Labour issue or a Conservative issue so much as an issue about continuity of government and the roles we expect civil servants to do.

Lord Foulkes of Cumnock: It was you that raised the Oxbridge connection. I find it very revealing. You are rowing back a wee bit now, but you are right: that does not exist in Australia and New Zealand. They do not have those kinds of snobbish universities, if you will excuse me.

Professor Dennis Grube: My egalitarian sentiments would lead me to say how right you are. I am slightly less sure that it is the case in practice that there is not also a hierarchy of universities in Australia in some sense.

Lord Foulkes of Cumnock: There is not in New Zealand, anyway.

Professor Dennis Grube: If you are fulfilling your role as a civil servant, you are in danger of being accused of acting politically. If you do your job well now, you will have a sufficient public face related to that job that it will allow perceptions to emerge. That might be from Opposition parties or members of the public, who may point the finger at you and say, "You are doing your job politically".

If your job description is to serve the Government of the day loyally, to your best ability, and you do that and, as a result, you are then accused of having politicised yourself, that indicates the difficulty we are in with this more publicly shaping environment.

Q18 **Lord Falconer of Thoroton:** I am surprised by your evidence. You seem to be identifying two trends. First of all, Ministers and Prime Ministers in

the UK have always favoured people they have known from within the Civil Service to be the Cabinet Secretary. Robert Armstrong and Robin Butler, both of whom were private secretaries to Prime Ministers, both became the Cabinet Secretary. It is not surprising that you go for somebody you have seen in action and you think is good.

The change seems to be, post 2010, the Government start sacking Cabinet Secretaries and Permanent Secretaries. That is the big change. You have Tom Scholar, Mark Sedwill and Jonathan Slater. The Permanent Secretary in the Home Office effectively gets pushed out, saying he has been bullied. Surely that represents a change in the trend from the previous trend, where you may have appointed your ex-private secretary to be Cabinet Secretary when you were the Prime Minister; that is very different from what look like much more proactive dismissal.

Professor Dennis Grube: I took the trend question to refer to the length of time in service. There is an interesting discussion, I fully agree, to be had around the nature of the role connecting to the nature of the dismissal.

Lord Falconer of Thoroton: My question is focused on whether there is a change.

The Chair: If you take the trend line in relation to dismissal, what would be the answer? Can you see a difference in the handling of this? We are coming on to the detail of recruitment and redeployment, but, in terms of the evidence you see, has there been a change around recruitment?

Professor Dennis Grube: I would broadly agree with the characterisation that the form of interest that is taken in the performance of civil servants is leading to a more robust form of dismissal. I would think that is in evidence over the past decade in this country and has been in evidence longer in Australia.

The incoming Howard Government in 1996 sacked six departmental heads as their first act in government. It was characterised as the night of the long knives. That was a third of the total. The night of the slightly shorter knives in 2013 represents a similar trend towards using these positions as a way of making a statement about how you wish to stamp your authority upon the public service or the Civil Service and who you then put in place as a sign of how you hope the Civil Service under your tenure will act.

Q19 **Lord Anderson of Ipswich:** Building on that, I wonder whether we could lengthen the historical perspective a bit when we are looking at whether or not there is a trend. You mentioned Northcote-Trevelyan. I would love to know what was happening in the late 19th century when new Prime Ministers came in. Did they replace the head of the Civil Service? Did they replace important Civil Service jobs?

What about the 20th century? I was reading recently about Sir Horace Wilson, who was Neville Chamberlain's head of the Home Civil Service. Clement Attlee said that he had a hand in everything and he ran

everything. On Churchill's first or second day in No. 10 he was threatened, perhaps not altogether seriously, with the governorship of Greenland if he was ever seen in No. 10 again. That was the end of him until he popped up again as Permanent Secretary to the Treasury three years later.

Is that a blip? Is that something unusual? If you were a student of Gladstone or the 20th century Prime Ministers, would this in fact be quite a normal way of going about things?

Professor Dennis Grube: That is an excellent reminder of the timeline we are dealing with. The reason I reach back to Northcote-Trevelyan is that it is seen as such a foundational document for the modern Civil Service and how it runs. It underpins a particular style of operation that makes blips of the kind you are discussing historically rare events.

I would defer to historians of the period, but my perception is that terms were considerably longer and the expectation of a change upon a change in government was really not a part of the conversation. You can trace that back as a much more modern phenomenon. Under my argument, that connects to the more public profile of civil servants being asked to perform roles in more public ways.

For example, when Lord Wilson, Richard Wilson, was standing down as Cabinet Secretary in 2002, he gave a speech in which, already at that point, 20 years ago, he pointed to the sense in which civil servants risk becoming more public figures through things like appearances in front of Select Committees, which is a 1980s-onwards innovation, due to the greater media exposure that flows from appearances in front of Select Committees.

There is this wonderful phrase the late Canadian academic Peter Aucoin used. In his argument, Westminster public services are asked to become promiscuously partisan. They have to support the Government of the day as though they were partisan; the only difference is that they then offer exactly the same level of support to the next Government that come in.

He meant that as a critique because he saw a role for the public service in Canada and the Civil Service here to do something more than simply backing the Government of the day to the hilt. Because the civil servants speak more, they are expected to support the Government when and wherever they are speaking. He saw that as a way of diminishing the distance that normally exists between the Government of the day and the constitutionally based Civil Service.

Q20 The Chair: You referred to the wider shift of governing in private to governing in public and the Civil Service having to adapt to that either by default or by plan, one way or another. I am summarising your words, but you indicated that a country had to adjust to have greater political buy-in in terms of Civil Service appointments and adapt to that openly or buttress the Westminster system as a means of adapting.

Taking either route, is it inevitable that impartiality and quality of advice in terms of truth to power will be compromised? Is there a solution? That

is a very difficult question. Whatever solution is taken, is it inevitable that impartiality and quality advice in terms of truth to power will be compromised or weakened?

Professor Dennis Grube: It is a grave question. It is a question I think a lot about, and I am still developing answers to it. If I am right about the trend within the modern governance environment, I am suggesting that it is changing whether we like it or not. The change is real.

In a sense, we are dealing with that change by tinkering at the edges to try to maintain these underlying traditions, going all the way back to Northcote-Trevelyan, such as the idea of impartiality and the idea of the merit principle, all of which are embedded in the DNA of the Civil Service and, frankly, should be there.

If our goal is to protect that degree of impartiality, can we somehow invest the system with a greater degree of bipartisan trust to allow for the impartiality to continue while serving the Government of the day in what is a very difficult and sometimes hyper-partisan governing environment?

The example that springs to my mind is the Federal Chancellor in Switzerland, who is essentially the chief bureaucrat. He is voted in by a vote of Parliament. It is done by secret ballot. Others are able to stand against him. That is done every four years. The public service commissioner in Canada is largely selected by the Prime Minister as a Governor in Council appointment, but, in order to take that position up, there has to be a resolution of the House of Commons and the Canadian Senate in support of the holder of that position.

It is not entirely radical to think about ways in which we can protect the non-partisan integrity of those positions, potentially using Parliament as one mechanism to avoid this sense of a loss of trust in the midst of a political battle of a partisan kind.

Q21 Lord Anderson of Ipswich: I have a process question, I am afraid. You have spoken to us, to some extent, about the practice in other countries, particularly Australia. You have told us about the differences in the number of spads and so on. If you are looking at the standard process for recruitment, redeployment and dismissal of senior civil servants, which we know from our Civil Service Commission recruitment principles in particular, how different is that process in other countries that share the Westminster system of Government?

Professor Dennis Grube: I would characterise the answer as not nearly as different as one might expect across a diverse range of countries. The extent to which Prime Ministers and Ministers are interested in the appointment of their most senior officials is a constant across our family of Westminster countries. That is nothing new. Prime Ministers and Ministers have always been interested.

When that has been running alongside a shared view of the need to maintain the impartiality of the Civil Service to select particular kinds of

civil servants, that has worked reasonably well. The answer to the process question is that in Canada they are Governor in Council appointments, which is essentially prime ministerial appointments of deputy Ministers. The Prime Minister will discuss those selections with the clerk of the Privy Council and with the president of the Public Service Commission of Canada, but it is essentially a prime ministerial appointment.

In Australia, that same group of players is present. The Secretary of the Department of the Prime Minister and Cabinet is consulted; the Australian Public Service Commission head is consulted and will provide a report to the Prime Minister on any candidates who are brought forward. It is then in the Prime Minister's gift to make that decision.

A potentially interesting difference is in dismissal. In the New Zealand system, the head of the Public Service Commission in New Zealand has a greater role in dismissal than in other countries. If a Minister or the Prime Minister feels a departmental head or chief executive, as they are called in the New Zealand system, is not performing or has done something wrong and should be dismissed, they will write to the head of the Public Service Commission and say, "Can you please investigate whether this person should be dismissed?" and it is then the head of the Public Service Commission who will make that decision, which feels somewhat different to the prime ministerial gift being withdrawn, as it were, in the UK or in Australia.

Lord Anderson of Ipswich: One distinctive feature of our process, as set out in the recruitment principles, is the existence of a selection panel on which the Prime Minister or the Minister, as the case may be, does not sit, whose job it is to produce a list of appointable candidates from which the Minister can choose. My understanding is that, certainly according to the latest version of the principles, the Minister is entitled to meet the shortlisted candidates and ask them questions but is excluded from the deliberations of the panel itself. Is there anything equivalent to that in the countries you have mentioned?

Professor Dennis Grube: Again, I would characterise that as relatively normal for those other countries, Australia, Canada and New Zealand. There is an expectation or an understanding that Ministers will be consulted and that Ministers may have the option to shape the position description or give advice to the panel. They will then step aside to allow the panel to make the decision that is made.

Lord Anderson of Ipswich: Is there an independent element on the panel? Who sits on these panels?

Professor Dennis Grube: It depends on the country, but the Public Service Commission looms large and sits on these panels. The Secretary of the Department of the Prime Minister and Cabinet also sits on them. To the extent the Public Service Commission has some strength as an independent body, it is the provider of the independence.

Lord Anderson of Ipswich: You have mentioned dismissals. Concentrating on recruitment, do you see any features of any of the processes in any other Westminster-style countries that you think we could learn from with advantage in the UK?

Professor Dennis Grube: It is one of the challenges across our systems that we are looking for talent well beyond the Civil Service to try to draw in other actors, and yet the reality again and again is that the vast majority of these appointments are, in the end, experienced civil servants and experienced public servants. That is the result that the process, as it stands, gives us, but it is also a reflection of what Ministers want and value in terms of the need to have people who understand how the public service runs.

Q22 **Baroness Andrews:** I want to pursue the dismissal aspects of this. You talked about a night of the long knives in 1996. Which Government came in at that point? If in fact they succeeded in getting rid of a third of their Permanent Secretaries, was there any explicit public process, or was it simply a political decision in each of those cases? Was the decision taken by the Prime Minister or by departmental Ministers? Was there any political fallout? The Permanent Secretaries' trade union is pretty powerful, but did anyone publicly say, "The Westminster system is no longer valid. We are breaking all the rules here of proper process. This should not have been done"? What was the political and the professional fallout? There is quite a series of questions there.

Professor Dennis Grube: There were undoubtedly or definitely critiques from some of my academic colleagues, who are great upholders of the Westminster system, and there was some criticism in the media, but we also have to understand the context. This was after a long period of government. The previous Government had been in office from 1983 to 1996.

Baroness Andrews: This was the Labour Government.

Professor Dennis Grube: It was the Labour Government. The incoming Prime Minister, John Howard, after the length of time the previous Government had been in power, undoubtedly politically wanted to place his stamp. This was one way in which he chose to stamp his authority. He selected a very strong head of the Department of the Prime Minister and Cabinet, Max Moore-Wilton, to take up that position. His persona was seen as one way in which John Howard's political authority was coming in.

It is a statement that is made. The Westminster system, in my reading of it, does not have a problem with that to the extent that we are reliant upon traditions and conventions of action. The tradition and convention of action would suggest it is rare and not necessarily desirable for an incoming Government to sack six departmental heads. If we are relying on a system built on tradition and convention, it is only as strong as people's desire to uphold that convention.

If circumstances allow and the political will is there, there are many options open to a Prime Minister. In recent times in the UK, we have seen elements of the same operation. The removal of Tom Scholar, for example, was a statement moment by the political leaders of the day. It is not the norm, but, because we rely on convention and tradition, it is merely a bucking of convention and tradition rather than something more.

Baroness Andrews: Yes, I accept that, by and large. In the case of Tom Scholar, the nature of the advice he was likely to be providing was a big issue. When you get rid of six Permanent Secretaries, the Prime Minister is deliberately setting out to be totally different from the previous Prime Minister and is putting his people in place to represent that difference.

Last week we were discussing the absence of any proper process around dismissal. It seems to me that this was writ pretty large in Australia at that time. Nobody challenged the absence of that process or what it might do to the character and the leadership of the Civil Service as a whole.

Professor Dennis Grube: I accept that point in the sense that the voices raised against it were not strong enough or with a sufficient sense of outrage to suggest to a future Prime Minister that this was not a course of action that should be pursued or was pursuable.

My general point around convention and tradition is that a lot of our system of government works because we have conventions and traditions. Some flexibility or ambiguity is helpful, but around the appointment and dismissal of Permanent Secretaries perhaps it is not so helpful. It would be, in terms of HR processes, quite rare for that kind of approach to be acceptable in any other place.

Baroness Andrews: You would be in an industrial tribunal quite quickly.

Q23 **Lord Foulkes of Cumnock:** You mentioned the Public Service Commissions in Canada, Australia and New Zealand. Are they similar in composition to our Civil Service Commission?

Professor Dennis Grube: Yes.

Lord Foulkes of Cumnock: Do they have the same power roughly?

Professor Dennis Grube: Roughly, yes.

Lord Foulkes of Cumnock: How are they appointed?

Professor Dennis Grube: That varies slightly. The head of the Public Service Commission in New Zealand is essentially still a prime ministerial appointment, but, as I was alluding to, in Canada there is now this requirement that a resolution of both the Senate and the House of Commons supports the appointment. In Australia, it is in the gift of the Prime Minister, who may take advice from the Secretary of the Department of the Prime Minister and Cabinet.

Lord Foulkes of Cumnock: Is the person appointed seen to be independent if he or she is appointed by the Prime Minister in that way?

Professor Dennis Grube: It is a very good question. There is something here about the culture of government in different countries as well. In New Zealand, my sense is that they are seen as more independent. The Public Service Act of 2020 vests quite significant power in that position in a way that indicates they have some independent judgments to make.

In Canada, the appointment is for seven years. That is quite a deliberate indication that the appointment is not about the particular party in power for a particular period of time. The appointee is more independent.

Lord Foulkes of Cumnock: Have there been any controversies about any of the appointments, as we have had here?

Professor Dennis Grube: We academics find controversy everywhere, but in the last five or six years there was an instance where the public service commissioner in Australia was seen as a potentially slightly politicised appointment. I would have to remind myself of the exact circumstances of that. It was not a controversy in the sense of it being on everybody's lips in every coffee shop in Sydney.

Lord Foulkes of Cumnock: They are very powerful here. Civil Service Commissioners can decide whether to have open competition. That is a very powerful and influential decision, is it not?

Professor Dennis Grube: It is. It is interesting that in the Australian version of the merit principle open competition is written into what is required of merit. We know a merit appointment is a merit appointment if there is open competition as part of it. That is clearly an important choice.

Q24 **Lord Falconer of Thoroton:** Professor Grube, you have told us that senior civil servants are becoming more public. You referred to Select Committees and you referred to them giving media interviews. What effect has that had on the dismissal and recruitment of civil servants? In particular, I have in mind the more recent prominent dismissals of public servants in the UK, Sedwill, Slater and Scholar.

Professor Dennis Grube: This is a really interesting area. If you become a sufficiently public figure—by “public figure” I do not necessarily mean celebrity civil servants in the Beyoncé range of publicity—that you will have statements on the public record and you will have had to support quite difficult policy situations, a Prime Minister and the Ministers who might be in the Prime Minister's ear will have a view from those things around whether you might be difficult to work with.

Lord Falconer of Thoroton: That is a different issue. I am talking about the publicity element. What effect has that had on their dismissals and then subsequently on recruitment?

Professor Dennis Grube: I am building my argument in the sense that, because you have become more public, the opportunity for a perception of you emerges from that, which can then play through to a decision to dismiss you or a decision to start to seed the ground publicly for your dismissal or for a shift or a change. Those things are possible because of the more public profile.

Lord Falconer of Thoroton: Could you make a connection between that answer and any one of the three dismissals I have referred to?

Professor Dennis Grube: Education was a particularly difficult issue during the pandemic, as we all know. It became a hot topic of public conversation with many strong views around the performance of Ofqual, the Permanent Secretary, Jonathan Slater, and the Secretary of State, Gavin Williamson. As a result of that public controversy and that public contestation, the view was formed that somebody needed to take responsibility for that. Without knowing intimately the details of the individuals concerned, I would be surprised if that did not play into the decision around the dismissal.

Lord Falconer of Thoroton: I do not see what that has to do with whether Jonathan Slater was a more public figure. Looking at it as an observer, I did not think Jonathan Slater was a public figure in any shape or form. I am not quite sure what connection you are saying his dismissal has with the fact public servants generally are more public figures.

Professor Dennis Grube: If I can go back to Lord Wilson's 2002 speech, the changing nature of public political contestation exposes public servants to public political contestation in ways they were previously not exposed. That is not necessarily the same as saying, "Jonathan Slater was on the front page of every newspaper and we must dismiss this man". The strongly political nature of the arguments that were being had placed greater pressure on the Government of the day to be seen to be taking action, which led, potentially, to his dismissal.

Lord Falconer of Thoroton: It is not the fact that they are becoming more public figures; it is a means of demonstrating action.

Professor Dennis Grube: I would make the argument that the two are connected.

Lord Falconer of Thoroton: Explain how.

Professor Dennis Grube: If we think back 20 or 30 years, as a member of the public, I did not know who the heads of our security agencies were, the heads of MI5 and MI6. If we fast forward to the current day, those offices are not only well known but they give public speeches about the nature of the security environment in which we find ourselves. Demonstrably, that is a more public profile. When things go wrong, if things go wrong, that will connect through to the perception of whether those people should be in post. Again, it is a different form of celebrity to being on the front page of the paper every day.

I remember a great phrase of Lord Hennessy's. He said that a Permanent Secretary is barely a household name in their own household. We have moved on from that era, but that contributes to the circumstances in which they find themselves.

Lord Falconer of Thoroton: You are saying that senior civil servants have a greater public profile. Should that change the way they are appointed and dismissed? This exchange suggests to me they are not appointed or dismissed on the basis of greater publicity but as a means by which a Minister can demonstrate something. Should that give the Minister a greater choice in senior dismissals or appointments?

Professor Dennis Grube: If I am right, if change is happening, we have the choice to embrace the change and move towards a more politicised mode of appointment and dismissal, or to turn to different ways to buttress our existing Westminster traditions. I am not in favour of greater control of appointment and dismissal by Ministers as a result of the trends that are happening. I am trying to draw attention to the sense that, because there is change in our governing environment, that will change the matrix of decision-making around those appointments.

Lord Falconer of Thoroton: It should be resisted.

Professor Dennis Grube: We need to make a definitive choice because otherwise it will happen by stealth.

Lord Falconer of Thoroton: No sensible objective observer would say, "Let us allow Ministers to sack senior civil servants in order to demonstrate a political point". That would not be sensible as a policy, would it?

Professor Dennis Grube: I take that as a slightly leading question.

Lord Falconer of Thoroton: It is intended to be a leading question, but you can say no to it.

Professor Dennis Grube: We have seen it as a matter of practice on several occasions in Australia. It is within the boundaries of the current Westminster tradition, but it is not desirable.

Q25 **The Chair:** Staying with Lord Falconer's point, there are two issues here. First, there is the shift of government from the private to the public arena. It is also about whether civil servants are appearing more publicly. Are you saying that, if there is a greater shift to governing in public, rather than governing in private, making Civil Service heads roll becomes a public political statement by government? You make a political statement through sacking a senior civil servant. Allegedly, you do not want Treasury orthodoxies so you make a political statement. Is that what you are saying also happens?

Professor Dennis Grube: Yes. I was jotting down the different reasons why we might wish to sack or move a Permanent Secretary. We might want to do it to put in our own people, our own partisans. There is little

evidence of that: that we sack in order to put in place somebody who is demonstrably of either party.

We sack to make a statement about who is the boss, as in the John Howard approach in Australia. There are elements of that in the approach that we saw with the removal of Tom Scholar.

We might remove people because we are not sure they have the right skill set. On the whole, there is little evidence of that, although I am sure we could have a debate around the idea that Treasury orthodoxy is so baked in to somebody that they are not capable of thinking of policy from a different perspective, which I doubt.

We can choose someone that we work with better, because we have history with somebody, or we feel that our personalities do not gel and so we require a different person to work with. To the extent that we see changes, we see them on that sort of basis of personalisation. Let us not call it a trend. Let us call it interesting instances of removing people as a political statement of intent.

Lord Falconer of Thoroton: In the UK, the new trend that you are identifying—correct me if I am wrong—is the trend to dismiss the senior civil servant to make a political point. That is new.

Professor Dennis Grube: Let me walk back the trend and refer to it as “interesting instances”. Those interesting instances are new, yes.

Q26 **Lord Hope of Craighead:** I think you said that you are not in favour of greater ministerial involvement in dismissals or redeployments. That raises a question, if you go back to your phrase of relying on tradition and convention. Is it enough now for us to rely on tradition and convention, or do we need to develop principles, such as the recruitment principles, which are designed to deal with the problems of dismissal and redeployment? Without clarity, there is a risk, is there not, of a continuing drift to greater involvement, which you disapprove of?

Professor Dennis Grube: The short answer is yes. Let me give a slightly longer answer to make clear what I am saying yes to. The time is ripe for a greater formalisation around these processes of both appointment and dismissal in particular. The convention has been shown to only be as strong as the desire of a Government to uphold the convention. There are dangers in that, in particular in the way the dismissal function is now carried out.

Lord Hope of Craighead: Let us assume that you are right about that. Where do we go to achieve this statement of principles? Is it back to the commission? Are they the proper people to set to work, define the principles and make them public, or is there somebody else we should look to?

Professor Dennis Grube: To the extent that other countries give us models to follow, the most recent model is the New Zealand one, which is why it is in my mind. It has made the decision to vest greater power and

responsibility in the Public Service Commission as the place that looks after the hiring and firing of senior civil servants, essentially, and the processes involved in them. It is able to generate a perception of independence, which is so important if we are to overcome the politicised contexts around which these events happen.

Lord Hope of Craighead: Is there a difference between dismissal and redeployment? Think of the effect on the individual of dismissal. It can be very severe. One would have thought that the effect of redeployment would be less so, because there is a continuation of employment within the Civil Service. Does that suggest that greater emphasis on the need for principles should be directed to dismissal, or should they be treated the same?

Professor Dennis Grube: I conceptually very much agree with you. There is an enormous distinction between redeployment and dismissal, so they should not be treated the same. It is useful to have genuine clarity around how that is done and the circumstances in which it is done, so that we are not simply redeploying people only in lieu of otherwise sacking them. There are clear guidelines around how that needs to work.

Lord Hope of Craighead: I have two questions, perhaps moving slightly away from my particular point. Do we have anything to learn from the reported recruitment of Sue Gray as chief of staff for the leader of the Opposition? How far that has gone for the moment is not widely known and I am not really concerned with the detail of her position. Do we have anything to learn from the reported change in her position about the impartiality of civil servants?

Do we also have something to learn about publicity? I am not sure that it is within the ethic of the Civil Service for senior civil servants to promote themselves publicly, but there are ways in which it just happens. You are called before a Select Committee and you have to make a speech, or you are invited to do something, the press get on to it and so on. Is this something, in the trend that you are taking about, where there are risks that civil servants run into? Whether or not they like it, they are being promoted into the public arena, which is contrary to the ethic that they began with when they entered the service.

Professor Dennis Grube: I very much like that characterisation. It reminds me of Lord Wilson's phrase that the Civil Service has a gene against this, in terms of this reluctance to be drawn into the public domain, and yet the nature of Sue Gray's work in particular placed her in the public domain, whether she liked or chose it or not.

Our dilemma here, in some ways, is not a new one. We want to attract the very best, most interesting, intelligent, brightest people to work in government, as politicians and as senior civil servants. The problem is that, if they are good at their job, they will make all sorts of connections and networks while they are doing it. That is why having a process, as we do with the committee, looking at business appointments, et cetera, that

allows some time between how you have served being in politics or in the Civil Service and what you do next, is important.

The test on Sue Gray is whether there is any indication that she was anything other than a frank and fearless, non-partisan civil servant while she was carrying out that role. I do not see evidence that she was anything other than a frank and fearless, non-partisan civil servant while carrying out that role.

Should we therefore ring-fence civil servants from ever doing anything else? That is too harsh a bar, but propriety by itself is not sufficient. We must have the perception of propriety, which is why the committee that advises government on this needs to have the teeth to indicate that we need a period of one year, or whatever the period is, to allow for any perceptions of impropriety in the appointment to pass.

Lord Hope of Craighead: Her position is interesting, because she went into the public domain. She was asked to carry out this inquiry as to what happened in Downing Street. There is an element of accident in the way in which senior civil servants, like it or not, are promoted into the public arena. Should that worry us, going back to your point earlier about the choice of a Minister, or the Minister's preference for somebody who has become well known for various reasons? Does that worry you, compared with decisions based solely on merit?

Professor Dennis Grube: Does it worry me? It does concern me. My concern is based on the sense that, if you are drawn into the public arena simply by doing your job well, serving the Government of the day and carrying out an independent inquiry for the Government of the day and, as a result of that, you expose yourself to certain perceptions about whether you are politicised, that is difficult. We are placing civil servants in a position where we are either saying, "Do not do your job so well that you become a household name", or, "Do it that way and run the risk".

We could think back even to the "plebgate" inquiry and Jeremy Heywood having to run that. There is this sense that difficult things land on the desks of senior civil servants, we ask them to deal with these difficult things as part of their job and, as a result, they may face perceptions of politicisation.

Q27 **Lord Strathclyde:** I do not have anything to add to the Sue Gray question, which you have covered very well. Going back to some of the things you have said, you pointed out that there have been "interesting instances" when certain things have happened. Does that offend entirely against the principles of having conventions and traditions?

I got from what you said that actually the system of conventions and traditions works pretty well generally, albeit that there has been a change over the last 30 years of civil servants having to go to Select Committees. There is also now the challenge of social media and so on. Where they are asked more process questions, rather than policy questions, they have to defend the process but not necessarily the policy,

which, naturally, is up to the political system.

Professor Dennis Grube: It is a really interesting point to think about the conventions and the role they play in our governance. I completely agree with that. If we take ministerial accountability and responsibility, the idea that, if something goes wrong in your department, you should take responsibility and resign is an embedded convention of Westminster governance. It almost never happens. Ministers generally will resign as a result of personal missteps that are not necessarily related to policy. The policy response now is often, "I'll look into it and I'll fix it".

We need the flexibility of convention around that. I am not as convinced that we need the same extent of flexibility around the appointment and dismissal of Permanent Secretaries. There are places where greater flexibility is really helpful to us. There are places where it allows for—how do we characterise it?—moving away from convention and making political statements that are not necessarily helpful in hiring and firing sorts of matters.

Lord Strathclyde: You are saying that there is a tension between the two. I suppose that we are looking at how that tension works in practice.

- Q28 **Lord Anderson of Ipswich:** My question comes directly after Lord Strathclyde. It is really just a question of clarification. You answered Lord Hope that yes, you thought that there should be some principles in place governing ministerial involvement in dismissals and redeployment. You mentioned the New Zealand model and you spoke about guidelines. Can I be clear what you think those guidelines should deal with? Should they simply deal with the process for dismissal and redeployment, or should they venture into the territory of criteria for dismissal or redeployment?

Professor Dennis Grube: It is a fascinating question. The role of a Permanent Secretary is so unique. The range of business that may come across their desk is so, again, unique that setting up specific criteria for dismissal leaves open the possibility that we will set the criteria wrong or not cover every potential circumstance. In that case, having some clarity can lead to unintended consequences.

That said, the New Zealand wording is for "just cause". I would have to do further research into whether they have explained in greater depth what "just cause" means for the public service commissioner to move towards dismissal of a chief executive in the New Zealand system. So it is greater clarity without necessarily a list of 10 things for which you can be sacked quite as specifically as I envision the criteria set.

- Q29 **Baroness Andrews:** This is more of a reflection than a question. There is the idea that the Select Committee is somehow an untoward exposure of civil servants. It is part of a process of opening up government over the past 30 years, making it available to interrogation, explanation and greater transparency. It is a perfectly routine appearance by a civil servant, which we would absolutely want to anticipate. There is a difference, though, between that and the provocative article or appearance, which is very rare and raises a lot of other issues.

There is also something to be considered about the role of the public expert, who is also a civil servant, as we saw over the pandemic, and the implications and sensitive position that they get into when they are seen to be advising government and that advice is not taken. There is a subtlety here that we must take into account when we are making some of these judgments about what is appropriate, what is likely to happen and the perception that that will create about the business of government and the role of a civil servant. I wanted to reinforce what Lord Strathclyde was saying about the difference between process and policy.

Professor Dennis Grube: I am reminded, in constitutional terms, of the indivisibility of executive government, of Ministers and civil servants, going all the way back to Haldane, if not earlier. There is the slight tension that is then built in to civil servants giving evidence to Select Committees, for example.

In one model, you are accountable to Parliament, in the sense that, as an accounting officer, you come to Parliament and Parliament is fully entitled to ask you questions, as opposed to, "I am an indivisible part of executive government and, under notions of ministerial responsibility, it is not for me to answer questions but for the Minister". Is there a tension there?

Baroness Andrews: We could have a very interesting discussion on the Haldane principle and whether that still holds.

Q30 **The Chair:** Before we move on, could we go back to Lord Strathclyde's question? My summary of his words—he will correct me if I am wrong—is, "Do interesting incidents necessarily undermine conventions and practices when looked across over time?" Your reply was that it is the extent of the flexibility in moving away from those conventions and practices, which I presume can be either in volume or type. To put some flesh on that, would you like to suggest UK examples that indicated that the risk of exercising flexibility was too great, in terms of undermining the conventions and practices, so we can get a qualitative feel for what you are saying there?

Professor Dennis Grube: If I understand your question correctly, it is about the extent to which the dismissal of somebody like Tom Scholar is against convention.

The Chair: Yes.

Professor Dennis Grube: The extent to which that was against convention is highlighted in the reaction that came to it. The shock was an indication of the strength of that convention and therefore the surprise at its breach, including the manner of its breach and the way it was, essentially, foreshadowed as an instance where we would simply not be following the convention on this occasion.

The Chair: Are there any others? We are all rather focused on Tom Scholar. It is a big issue, but do you have any other instances that you would nominate as indicating moving away too far or with too much flexibility?

Professor Dennis Grube: I see less of those instances in the UK than I do in other countries, in particular in Australia and Canada. The tensions are the same, but, up until this point, the strength of the convention has been greater in its demonstration here. The idea that you would come in and, as a political statement, move or dismiss your senior civil servant is noteworthy.

- Q31 **Lord Falconer of Thoroton:** You have given interesting instances of occasions where it might be said that the conventions have been broken and it has led to more politicisation or personalisation in relation to the recruitment, redeployment and dismissal processes around senior civil servants. What effect does that have on the role of a Permanent Secretary as an accounting officer—in other words, a senior civil servant who has to say, “I am not going to agree to the expenditure of public money unless you give me a specific direction”?

Professor Dennis Grube: In many ways, the shift towards what I would characterise as a more hyper-partisan environment right now, which we have seen, let us say, over the past half-dozen years, and not just in the UK, places the accounting officer side of a Permanent Secretary’s role in difficult waters. On one side, you are finding yourself engaged in ever more political battles in your Permanent Secretary role, with the requirement to offer frank and fearless advice and push back as required.

In your accounting officer role, you have to defend your management of the department in a way that does not bleed into the hyper-partisan politics that you are also wrestling with on the other side, the other aspect. It speaks to this inherent tension that we were just discussing about whether your accountability to Parliament is in tension against your indivisible partnership with the executive Government of the day.

Lord Falconer of Thoroton: Interestingly, just then you referred to the hyper-partisan atmosphere over the past half-dozen years, not just in the United Kingdom. Do you regard the hyper-partisan atmosphere in the last half-dozen years in the United Kingdom as being a contributor to, for example, the dismissal of Tom Scholar, Jonathan Slater and Mark Sedwill.

Professor Dennis Grube: It is incredibly difficult to remove events from the context in which they occur. Would those movements and dismissals have occurred in exactly the same way under previous Administrations in previous times? I do not think that they would.

Lord Falconer of Thoroton: Would they have occurred at all? What are the comparables before that six-year period? What is the comparable to, for example, the removal of Sedwill as the Cabinet Secretary? What is the comparable to the removal of Tom Scholar as the Treasury Permanent Secretary that you have in mind? It may not be precisely the same circumstance, but something that you would regard as similar, with a UK background.

Professor Dennis Grube: In the UK setting, I struggle to point to a comparable circumstance to what we have seen in that past period of half

a dozen years. There was the discussion we were just having around whether the convention has held stronger, longer here than I think that it has in other countries.

Lord Falconer of Thoroton: You have accepted that Tom Scholar looks like a breach of the convention. You used the word “breach”. Are you saying that, before Tom Scholar, and maybe Sedwill and Slater, there had not been breaches like that? If you could point to the breaches previously, I would be interested.

Professor Dennis Grube: An immediate breach, if we stick with that term, of that nature does not spring to mind.

Lord Falconer of Thoroton: Do you think that the Sedwill and Slater removals look like breaches?

Professor Dennis Grube: I do not want to get hung up on the word “breaches”, as opposed to “unusual instances”.

Lord Falconer of Thoroton: Would you regard Scholar as a breach or an unusual instance?

Professor Dennis Grube: That is a—

Lord Falconer of Thoroton: Silly question?

Professor Dennis Grube: No, I was going to suggest that it is a fine line. I am not sure that I am entirely comfortable with one side or the other, except to say that it was a particularly interesting and rare instance.

Q32 **The Chair:** Staying with this point of Permanent Secretaries as accounting officers, we discuss and consider at great length how civil servants should serve the Government and Ministers, whether to describe and explain or actively defend government policy. I do not want to particularly go there, but the principal accounting role brings in serving the public interest, because it is actually a constitutional check on ministerial actions and it alerts the public to lack of propriety and high standards of public conduct.

I noticed that, in one of your own pieces, you refer to the evidence from Lord Macpherson for a House of Commons committee as to his advice regarding currency during the Scottish independence referendum. He says that he agreed to that being published because he had a duty to serve the national interest. That suggests—more than suggests—that the role of civil servants is not only to serve the Government and Ministers. There is a duty to the public interest and accountability to Parliament.

What do you say about trends in the shift to public government, defending the integrity of that second role of defending the public interest and a willingness to ask for ministerial direction? We had evidence from others last week saying that there should be more instances of Permanent Secretaries asking for ministerial directions and there might be a chilling effect on them exercising that public interest function that

they have. What do you say about that?

Professor Dennis Grube: That is another very interesting question. Citing or relying upon the national interest component to support your actions gives rise to the question of who determines what is in the national interest in any given circumstance. We can either adopt the sort of model that New Zealand has adopted, which is that briefing papers that go to Cabinet are publicly released once the decision has been made, or hold to a tighter tradition of not revealing advice to Ministers.

The spectrum in between is ill defined and, again, an area of convention, essentially, where it is unusual to do that, as Lord Macpherson himself noted. It is not an action that he takes regularly or often. It was the unusual circumstance of the Scottish referendum that led him to view this as a moment where the public interest or the national interest required him to release this piece of information.

The fact that it was supportive of the position of the Government of the day is interesting in terms of whether we would expect Permanent Secretaries to release a view if it was against the view of the Government of the day on the grounds that it is in the national interest to do so. Could we allow that kind of action without some kind of political firestorm resulting from it? There is a tension there. The beauty of the ministerial direction is that it is a resolution to that tension, because it gets us away from "I have personally assessed what is in the national interest in this case", towards democratic accountability from a Minister saying, "I will take responsibility for the decision in this case".

The Chair: Do you think that the Permanent Secretary role as accounting officer and the willingness to use that procedure is impacted by public government?

Professor Dennis Grube: Yes, to some extent. I have to look at the figures on this, but I am surprised that it is not perhaps a more common occurrence than it is. It is a structural, allowable response from a Permanent Secretary in a difficult governing environment to rely upon that. The traditions of Civil Service work, understandably and appropriately, are to try to find ways to work with Ministers and the Government of the day and to navigate disagreements or provide advice in ways that do not end up with a ministerial direction at the end. That tradition is quite strongly embedded still in civil servants. That may be diminishing the number of times that they are willing to go to what is, in a sense, the end of the spectrum, which is to seek a ministerial direction, rather than some other way of defusing a situation.

Q33 **Lord Foulkes of Cumnock:** I was interested in your Nicholas Macpherson example, but I am looking at it from another point of view, with devolution now, since 1999, in Scotland. We have civil servants in Scotland who are part of the UK Civil Service and the Permanent Secretary, as I understand it, comes to meetings that the Cabinet Secretary has every week. He or she is involved with discussions and debates there but is responsible to Ministers in Scotland. How does he or

she reconcile that? To whom is he or she ultimately responsible?

Professor Dennis Grube: It is a very difficult thing to ride two horses. There are so many constitutional accommodations that we have in the way we set up the Civil Service that run into difficulty in this kind of instance. If we go back to the indivisibility of the Civil Service from the executive Government of the day, which executive Government of the day are we then talking about? Is it the Government at Westminster who, in the case of devolution, are essentially making laws for England? Is the Permanent Secretary in Scotland or Wales an indivisible part of somebody else's Government, as it were?

That places them in a very difficult position when we consider the heat of many of the political arguments between the nations of the United Kingdom. That said, there are benefits to joined-up governance across the Civil Service to having the unified Civil Service role. Part of the goal with changes such as they have made in New Zealand is to create a more unified sense of Civil Service, a more single unit. There is appeal in the rest of the world to moving towards a more unified form, but we are faced with a unique situation here in the United Kingdom with the devolved nations.

Lord Foulkes of Cumnock: A servant of two masters is the way of describing it in theatrical terms. There are two examples at the moment. One is gender reform recognition, where the Scottish Parliament has passed an Act but it has been blocked by the UK Government on the basis that it has an effect on the Equality Act, which is a United Kingdom provision.

Then there is the disposal of containers, which they are trying to introduce in Scotland and which is creating huge problems. In Scotland they are going to have to produce bottles that are sold only in England, or England and Wales. That creates huge problems. How does the Permanent Secretary advise on that?

Professor Dennis Grube: Very carefully. And with some difficulty. Those are two examples. Over time, those examples will grow to the point at which the disaggregation from the unified Civil Service model—insisting that a Permanent Secretary in Scotland or Wales is a unified part of the UK Civil Service—will shift for exactly those reasons. If you are to serve the Government of the day, you need the opportunity to provide frank and fearless advice on policy questions to the Government whom you are serving. We need to be clear about which Government that is.

Lord Foulkes of Cumnock: Our witnesses last week seemed to imply that it was not really different from differences between two Whitehall departments that could be resolved by discussion. It is really, is it not, especially if there are political differences between the Government in Scotland and the Government of the United Kingdom?

Professor Dennis Grube: I understand the point about the Whitehall departments. It will come as no shock to people on this committee that

there are disagreements between Whitehall departments that have to be managed and navigated. But I would suggest that there is a qualitative difference between negotiating between departments both serving the same Government and negotiating between one Government here in Westminster and another Government at Holyrood or in Cardiff.

Lord Foulkes of Cumnock: You say that it is unique to the United Kingdom? What about Canada? Have there been similar problems between Quebec and the Canadian Government?

Professor Dennis Grube: I know the Australian case better than the Canadian case in that circumstance. Every state has its own civil service, or public service in the Australian parlance, that serves the state government of the day.

Lord Foulkes of Cumnock: They are separate.

Professor Dennis Grube: They are separate to the Commonwealth public service. That makes sense when you think about the degree of political rancour that often occurs between the states in Australia. From what I understand, the provinces in Canada face exactly the same difficulties.

Q34 **Lord Hope of Craighead:** Before devolution, I think it was part of the career path of somebody appointed to, particularly the Scottish Office, but I am sure it would be the same in Wales, to spend some time at Westminster, simply to make sure that the integration of the Civil Service was established within the traditions within which that individual was working.

Provided that has continued after devolution—I think it has, but I may be wrong—there is an awareness built into the way in which the senior servant, as he or she moves up the process, operates. To some extent, one can measure up to the problem that you have identified by the way in which the Civil Service itself organises the career path of the individual. Would you agree with that? Otherwise, if it is somebody living in Wales, or Scotland, for their entire career, given the effect of devolution, it is very difficult to see how the two masters can be served. If your career has got you used to the idea that there are indeed two masters, it may be easier to measure up to the task.

Professor Dennis Grube: I certainly do not disagree with that observation. In my mind, I wonder whether both are possible. For the purposes of movement within the Civil Service, you have unified practices that allow movement, but a recognition that, while you are serving in Scotland and serving the devolved Government in Scotland, you are serving them as though they are your Government of the day. If you return to Westminster, you will serve the Westminster Government as your Government of the day. There is that clarity around which Government you are serving, which does not then preclude open movement between services.

Lord Hope of Craighead: Geographically, there is of course a UK

presence in Edinburgh, with its own office. The civil servant could just be moving across the street from one building to another, but obviously there is a different atmosphere depending on which building you are in. I wonder whether this has implications for the recruitment to the very senior position.

You can imagine that, when you come to the choice of somebody to become a Permanent Secretary, one might think that one would not be restricted to people who had been working in Scotland. There would be people with experience in Whitehall as well. Do you think that that can survive with the present situation now? The recruitment would always have to be somebody who is, essentially, a Scotland-based or Cardiff-based civil servant.

Professor Dennis Grube: Perhaps it is my stretching my conception too far. It is too sunny an Australian conceptualisation. If we have free movement, as it were, between different arms of the Civil Service, there is absolutely nothing to prevent the Scottish Government saying, "I'd like to bring this person up from London to fill this role. It is great to have somebody who understands the Westminster, as in the London, world. When they are here, we have set up the guidelines to expect them to serve the Government of the day as being the Scottish Government of the day".

I very much take the point that it is in fact undesirable to limit the career paths of senior civil servants. It is undesirable in the sense that government will work better the wider your experience across the UK, so I believe we are in agreement.

Q35 **Lord Strathclyde:** You have been very helpful in clarifying the role between Ministers and civil servants. What about special advisers? Do you see them being increasingly influential in the appointment, recruitment and dismissal of civil servants, or is that a little bit overdone by the press, media, political opponents and so on? It would be interesting to hear your views on that and also whether a code of practice that governs the behaviour of special advisers should be updated to make sure that they do not play any kind of role.

Professor Dennis Grube: The special advisers are such an interesting invention, are they not? Some of the writing about them has this sort of constitutional shadow, even in the Australian setting. We have a clear conception of the dance, as it were, between the Civil Service and the democratically elected Executive. Into that, we have now inserted this third force, without necessarily understanding exactly what role they will play when they are there.

In terms of the recruitment of civil servants, I see very little in the code of conduct for special advisers that says in any formal way that they are and should be involved in the selection of civil servants, or they are advising and should advise on the selection of civil servants. Our problem, such as it is, is not necessarily with the formal guidelines.

Our issue is with the informal truth that, if I am a serving Minister and have spads that I know and trust around me, would I not ask them for their view on somebody? That is highly unlikely. It is very natural that I would do that and it is very natural that the spads would then offer that view. Depending on the power and influence of the particular special adviser, that might be a very persuasive view in the process.

My fear would be, if we updated the code of conduct to say specifically that special advisers should have no role in appointing civil servants, whether that is sufficient to close the door towards informal consultation, which I suspect will happen anyway. To the extent that it is a solution, I am not sure it would solve the problem as we are conceiving it.

Lord Strathclyde: This sort of informal consultation is not a huge problem. As you said, it is a very natural reaction.

Professor Dennis Grube: The challenge is if that consultation occurs in public, to go back to my theme. If you have conversations in public, led by particularly influential advisers, who are saying, "This civil servant should go", or, "This civil servant should not", that is different.

Lord Strathclyde: Would you say that there are also some "interesting instances" over the last 25 years when special advisers have been appointed who have clearly had a very political role vis-à-vis the Civil Service?

Professor Dennis Grube: Yes. Dominic Cummings obviously springs to mind, but we must not forget that Alastair Campbell was also quite an influential figure in new Labour, as I recall. There are, unfortunately, instances where spads less able than those two that I just mentioned also find themselves in the limelight.

Q36 **Lord Falconer of Thoroton:** I was going to ask about the Dominic Cummings-type instance. What you said about the Minister seeking informal advice from a special adviser as to the position of senior civil servants is obviously inevitable and not a bad thing. Describe what you think went wrong with the Dominic Cummings example.

Professor Dennis Grube: At the end of the day, the constitutional position, such as it is, of special advisers is that they are the indivisible creature of the Government and Minister that appoint them. If we have a problem with the behaviour of a special adviser, the person who needs to take responsibility for that is the person who employs the special adviser, who needs to say, "It is not appropriate to publicly speculate or to lead a public debate in this way". That is where the clear chain of accountability currently sits. Who else can discipline a special adviser, other than the Minister or Prime Minister for whom they work?

Q37 **Baroness Andrews:** This is a big question. I am sure that we can crack it in the remaining moments. How would you describe the concept of merit in what you describe as this changed situation? Does it still hold? Does it apply in a slightly different way to senior civil servants now? Would you agree with previous evidence we have had that it is probably

time for a redefinition? If so, how would you redefine it?

Professor Dennis Grube: Good heavens; that is a difficult question. In answer to the point about whether the component parts of merit have changed in relation to Permanent Secretaries, for example, there was very little call for Cabinet Secretaries in the 1960s or 1970s to be good with social media. The technological shift and the extent to which a senior civil servant now needs to be media savvy or have the capacity to deal with and understand how issues may find their way into the media and lead to disruption for the Government are factors that would now be taken into account when recruiting a Permanent Secretary as part of the question of whether they are meritoriously deserving of the role. There is that side to it.

I agree with you that the conception of merit, going all the way back to Northcote-Trevelyan, is locked into the DNA of the Civil Service and plays an important part, so I am certainly not an advocate of getting rid of merit. I would be an advocate for us to have a close look at what we mean by merit in 2023 that we may not have meant by merit in the 1850s.

Baroness Andrews: I suspect that what you describe, in terms of media knowledge and so on, is more about capability than merit. What is the balance that we should expect between knowledge and judgment? We are talking about the role of the Permanent Secretary here. What is the job they have to do and what do they need to be able to do the job, not least to withstand the sort of political pressure that we have been talking about this morning?

Professor Dennis Grube: I would argue that the core skill of a well functioning senior civil servant is good judgment. Good judgment, assessed in a merit-based procedure, is an incredibly difficult thing to assess. How else do we judge it other than on past activities or actions undertaken in previous leadership positions and whether that judgment was sound?

It is difficult to exercise sound judgment if you do not have sufficient knowledge in an area to know what sound judgment would look like. We need that balance and need to look at that balance when we are considering what merit means in the modern Civil Service.

Baroness Andrews: Do you think that, if we had more Permanent Secretaries who came from a different sort of discipline, who were more specialist than generalist, they would be in a better position to defend themselves against removal? For example, we have more engineers and scientists in the Civil Service that we have had before. We certainly have some of them at the top of the Civil Service. Do you think that they are in a stronger position, because of what they know or what they can call on, to stand up to a Minister who says, "I do not agree. You do not share the same values and views as me"?

Professor Dennis Grube: There is a very interesting debate in the literature in Australia between a former public service commissioner, Andrew Podger, and a former secretary of the Department of the Prime Minister and Cabinet, Peter Shergold, over whether frank and fearless advice is a question of contract or a question of character. There are elements here where I suspect that fighting against your removal from your position as Permanent Secretary has less to do with your knowledge base at that moment than with your judgment and capacity to read the politics of the moment and understand what the courses of action open to you are.

Whether you have deep scientific knowledge, deep engineering knowledge, deep knowledge of the classics or not, for that decision much more will depend on the experience that you have acquired through your years in the Civil Service. That comes back to why we end up with so many of our leaders in the Civil Service being people who have been in the Civil Service for some time to gain that judgment.

Lord Falconer of Thoroton: I am very surprised to hear that it was possible that anybody could have thought in Australia that to give incomplete and frightened advice was within your contractual obligation. Would you like to comment on that? I am very interested in this debate that was going on.

Professor Dennis Grube: The full nature of the debate is that Mr Podger was asking, if Permanent Secretaries or departmental secretaries are moved on to contracts of between three and five years, if you are coming up to the moment of contractual renewal, whether it will not be a part of the matrix of your decision-making to be aware of this moment and to then pull your punches slightly in your advice.

Lord Falconer of Thoroton: That would be okay.

Professor Dennis Grube: He was suggesting that it is not okay. The response from Peter Shergold is to say, "You either have the character to give frank and fearless advice or you do not. It is a part of your role as a senior public servant to do that. That is not a question of your employment conditions That is a question of your character and judgment".

The Chair: People's demonstration of their character often varies according to the circumstances they are in.

Q38 **Lord Hope of Craighead:** The word "merit" itself is so embedded in the whole idea of public appointments that it is difficult to get away from it. It is the way that it is defined. The way it is defined in the recruitment principles is as follows: "Merit means the appointment of the best available person, judged against the published criteria for the role". I wonder whether, when we reach the level of Permanent Secretary, there are published criteria. I do not know the answer to that.

Further down, it is quite obvious that there are. We judge the merit and find the person best equipped to fulfil the role. By the time you reach the

level of Permanent Secretary, the ability of the individual is not in doubt at all. Does it really depend on a definition of the published criteria, if they are relevant at that stage at all?

Professor Dennis Grube: For exactly the reasons you outlined, the issue is that the criteria, in order to allow for the kind of unique skill set you are looking for, become amorphous criteria, in the Australian circumstance anyway, around, "Have you demonstrated leadership and can you show your adherence to Civil Service values?", all of which you would hope a Permanent Secretary candidate could do comfortably. Yet it does not necessarily get to the heart of what we want you to do as an answer to those criteria.

Lord Hope of Craighead: It is so easy to tick all the boxes, but there is something left, which goes beyond merit and is a question of judgment at a different level. What would that be? What would the criterion be then? If merit is satisfied fully, what next?

Professor Dennis Grube: That is an excellent question and I am tempted to take it as a rhetorical question because it is too difficult.

Lord Hope of Craighead: Is it personality?

Professor Dennis Grube: It is one of the contributing factors. If we go back to my opening point that the governing in private system is built on people who know each other well, you have had the opportunity previously to form a view of the character of most of the people you are going to be interviewing for a position. You have the capacity to form a judgment about what comes next after merit, based on experience and history with a particular candidate. It is very difficult, if that is absent, to replicate it in a series of criteria that say something beyond merit is demonstrable on a job application, as it were.

Lord Hope of Craighead: One obviously wants to retain merit as a criterion. There is something else there that is probably incapable of definition. Would that be right? It is a question of the ultimate judgment against the character and personality of the individual.

Professor Dennis Grube: That is a judgment that is exercised. I agree. It still then leaves me slightly uncomfortable, because it becomes a grey area for the judgment of the Prime Minister and the Cabinet Secretary, or the first Civil Service commissioners of the day. Who is to say that I have this component above merit, but candidate B does not? And yet I can think of no better alternative, so maybe I need to think more.

Q39 **The Chair:** I will throw in one last question. Do not worry if it is outside your area of study. Most of our discussion today has been on this era of public government and the implications for Ministers and civil servants and the relationship between the two. It potentially impacts on how Parliament and Select Committees engage with civil servants, which is probably a point we have not reflected on.

Instead of the norms of civil servants—discuss delivery, describe and

explain policy—potentially they are being seen more by Parliament as a front line to defend government policy itself. It was just getting your view on whether that is happening and whether that carries implication. The whole relationship is across the three. It is the Ministers, the civil servants and Parliament. Do you want to make any comments about the implications of that for the future role of the Civil Service?

Professor Dennis Grube: In some ways, Parliament, of the three, is the most underutilised component in helping to shape or form an impartial public service. The way Select Committees are currently structured, depending on the Select Committee, is not dissimilar, I suspect, to, let us say, Senate estimates committees in Australia, where there is, essentially, a feeling among civil servants that they are there to be got and they are trying to not be got, as somebody I once interviewed put it.

Instead of a learning form of accountability, there is a drama-tinged blaming form of accountability. Instead of helping Select Committees arrive at conclusions on how to govern better, civil servants are protecting perhaps themselves or their Ministers from political criticism that might otherwise flow. I wonder whether there are ways we can do that better. The issue for me is that, if I am right in my characterisation of the current governance environment as heavily contested, hyper-partisan political conversations, it does not leave a lot of room for civil servants appearing before committees to lift their head above the parapet and take a risk in having a more expansive conversation.

There is a discussion in some other jurisdictions about whether there is an appropriate level to have that at, in terms of mid-term strategic thinking that civil servants can do without annoying the Government of the day. Perhaps that is an opportunity where I could imagine more fulsome conversations between civil servants and Select Committees that start to take on more of a learning and foresight nature, rather than a “Don’t say the wrong thing and end up in the newspaper” circumstance.

The Chair: We have kept you for a long time. Thank you very much. I hope you go and relax and have a nice lunch. Thank you for taking all our questions. You have been very helpful and informative and helped our thinking. We very much appreciate you coming. Thank you very much.