



Constitution Committee

Corrected oral evidence: The appointment and dismissal of Permanent Secretaries and other senior civil servants

Wednesday 7 June 2023

10.10 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 Keen of Elie; Lord Mancroft; Baroness Suttie; Lord Thomas of Gresford.

Evidence Session No. 6

Heard in Public

Questions 112 - 123

Witness

I: The Rt Hon the Lord Maude of Horsham.

USE OF THE TRANSCRIPT

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

Examination of witness

Lord Maude of Horsham.

Q112 **The Chair:** Good morning and welcome. This morning the Constitution Committee is taking evidence in its inquiry into the appointment and dismissal of Permanent Secretaries and other senior civil servants. The Committee will hear from Lord Maude of Horsham, who is chair of the governance and accountability in the Civil Service review and was previously Minister for the Cabinet Office from 2010-15.

Good morning, Lord Maude. Thank you very much for coming. It is good to have you. We have lots of questions to put to you today, as you would anticipate. Hopefully, you have a little sense of the steer of where we might be questioning. Before I start, are there any opening comments that you wish to make?

Lord Maude of Horsham: No, I do not think so. I am happy to respond to any questions.

The Chair: Thank you very much. I will open by asking you when you anticipate publishing your review into Civil Service governance, and to what extent it will deal with the appointment and departure process for senior civil servants, which is a particular focus of our inquiry.

Lord Maude of Horsham: In terms of timing, I would describe myself as being about eight months' pregnant with it at the moment, but the birth will need to be induced before all that long. Of course, the decision on when to publish it is not mine. That will be a decision for the Government, but there is a commitment to publish it. I hope it will be possible to publish it either in July or September.

The Chair: We might overlap. Going into more depth on the issue of the appointment and departure of civil servants, you have referred elsewhere to a tension between Ministers' limited authority to appoint civil servants and their "near-total accountability for what those officials do", and that this tension could be resolved by allowing Ministers more say in the appointments of senior civil servants. How would you grant Ministers more say without compromising the ability and willingness of civil servants to speak truth to power, or provide the best possible professional advice?

Lord Maude of Horsham: The first point is that I am very committed to, and I do not question in any way, the current system of a permanent, politically impartial Civil Service. That seems to me fundamental. I am not recommending anything that would require changes to the law—primary legislation—or indeed challenge what would be generally understood to be established constitutional norms. Political impartiality is very important.

Ideally, there should be a pretty strong alignment between accountability and authority. That should be pretty much a given. Ministers, collectively at least, have a pretty high degree of control and authority over the

disposition of financial resources, money, but very truncated authority over human resources. These are the two resources, essentially, available to Ministers to deliver on their democratic mandate.

As to changes to the way in which civil servants are appointed, Ministers already have a high degree of involvement in the appointment of Permanent Secretaries and directors-general. That has been the case for some little time. The degree of involvement was marginally increased when I was Minister for the Cabinet Office. The principle was established that the Prime Minister should be given a choice of appointable candidates. That seems to me to be sensible. I am not suggesting anything at all radical in this. I think it could be valuable—I am still examining this—to have more transparency, and for Ministers to have more visibility into how the appointment process works.

We are an unusual system, in that the Civil Service is broadly unregulated. The Civil Service Commission has a quite strictly limited statutory role. It is capable of being expanded under the Act. I will be making some recommendations on how its role should be expanded, particularly with a view to examining and, if you like, overseeing the way in which internal appointments are made at below DG level. I think it is unusual that there is so little scrutiny compared with other comparable systems.

The Chair: We will come on to more in-depth questions about the commission and its powers and transparency, because we too have been looking at what you have articulated. In terms of Ministers having more transparency and visibility over the recruitment process, when Baroness Stuart gave us evidence, she said that one of the issues was that she did not think Ministers necessarily understood the involvement they could have, as set out in the Civil Service recruitment principles. In part, it may be that they do not know, as opposed to wanting more. How do you feel about that?

Lord Maude of Horsham: I think that is right. That is part of the whole thing being much more transparent. Ministers often do not know what their powers are. We will have some things to say in my report about the way in which we prepare Ministers for office. Ministers are shunted into a role, and they may have had no previous experience of doing anything remotely like it. Frankly, there is nothing remotely like being a Minister. We put people into positions of great responsibility with woefully inadequate preparation, and then we rotate people far too often. I will have some suggestions to make on that. We also put Permanent Secretaries into roles of great responsibility with very inadequate preparation and training, but that is another story.

Q113 **Lord Anderson of Ipswich:** I read a very interesting article that you wrote in the *Observer* in April. One of the things you said there was that Ministers had extremely limited authority to put officials of their choice in place. You compared the position with Australia, New Zealand and Canada, and described us as a bit of an outlier in that respect. One might think that an advantage of that system is that it makes civil servants feel

that they are safe in speaking out—as you put it, speaking truth to power. Your article bemoans the fact that only 48% of civil servants feel safe to challenge the way things are done. It sounds rather as though we have the worst of both worlds.

Some might think that by increasing, however subtly, the role of Ministers in the appointment and dismissal of civil servants, one would be worsening rather than remedying the problem of encouraging them to feel safe to speak truth to power. In a sense, by solving your first problem are you making the second problem worse—or is there another dimension to this that you would like to explain to us?

Lord Maude of Horsham: Yes, I think there is another dimension. I do not think these are either/or actually. I think you will hear some Ministers whose concern is not the lack of “yes” people, if you like, who are too compliant, but that too often civil servants are telling them what the civil servants think they want to hear. They are second-guessing what they think the Ministers want to hear. It is absolutely essential that part of the selection process should be that civil servants are robust and strong enough to be able to give challenging, independent and dispassionate advice to Ministers. Frankly, most Ministers would prefer that. Most Ministers do not want to embark on a course of action without knowing what the consequences would be.

There is an argument—it has been made to me, and I have weighed it carefully—for saying that civil servants’ advice to Ministers should be published. That has been done in some other countries. I am not sure that, on either side of the divide, we are quite ready for that yet, but it seems absolutely essential that we should move to a position where, routinely, the data and the evidence on which a decision is based should be published. Quite often there will not be data or evidence, in which case Ministers should be robust enough and confident enough to make the case for what they want to do in its absence. There have been plenty of examples where that has happened, and perfectly properly. Having civil servants, part of whose selection is, “Are you going to give strong, robust advice to the Minister?” is essential. Most Ministers will want that.

Lord Anderson of Ipswich: You have looked into how things are done in other countries. When you have looked at countries where perhaps there is more political influence, have you also found that civil servants have the independence of mind and ability to push back, which, you were saying—and I entirely agree with you—is desirable? If that is right, is there any lesson we can learn from them? Is there any secret source that we could apply in this country that we are not currently doing?

Lord Maude of Horsham: No system is perfect. I have not examined them in detail—time has not allowed that—but I am reasonably familiar with some of them. I have heard it said that in Australia the civil service has become too politicised. In New Zealand there is a reasonably sensible balance, where there is more ministerial involvement in appointments and the system works pretty well.

It is important to be clear about the mischief we are seeking to prevent. First, why do we want a Civil Service that is politically impartial? It has to be ready and able to serve an incoming Government of a different disposition effectively. That is crucial. I will have some suggestions to make that I think reinforce that. The second thing is that there is an argument that you very rarely see it—a lot of the way in which the Civil Service is managed happens behind a veil. There are some unwritten and often unspoken assumptions about what happens.

The power to manage the Civil Service is vested by law or statute, effectively, in the Prime Minister, as Minister for the Civil Service. You would expect there to be a scheme of delegation because the Prime Minister is obviously not personally going to manage all of this himself or herself, yet there is no such scheme. I have sought to know what the delegations are. The only formal delegation letters that exist delegate management powers not to civil servants but to Ministers in charge of departments. The most recent example was a letter sent on my watch by a deputy director—a mid-level civil servant in the Cabinet Office—which I certainly never saw, to deputy directors in the line departments and ministries. That delegates certain powers, although not about appointments, which are implicitly excluded. A lot of this is not explicit. I absolutely guarantee that no Minister in charge of any department has ever seen that letter or is aware that it exists.

Some of the delegation exists implicitly in the Civil Service management code, which sets out how appointments are to be managed. It includes the sentence, “Ministers ... will have a legitimate interest in a small number of posts ... for example where the postholder will work directly to them”. That is buried deep in the long Civil Service management code, which is many tens of pages. I do not think most Ministers would share the view that they have a legitimate interest in only a small number of posts, because they are accountable for what every postholder does. I am not suggesting for a second that there should be a sweeping change there, but I think finding a better balance with, arguably, a stronger role for the Civil Service Commission to invigilate would be important.

The second mischief that you are seeking to avoid is eroding the sense that there is a critical mass of permanent, robust civil servants who have sufficient independence from Ministers that they are able to call out what is not being done right. That is the classic accounting officer role. It is the ability, ultimately, to ask for a written direction. I think that is underused. It has tended to become seen as a sort of nuclear, relationship-destroying act, yet the ultimate safeguard is the ability to require a written direction before proceeding. That absolutely has to be preserved and, I think, de-stressed in terms of the impact it is seen to have.

Q114 Baroness Andrews: In a way, this follows up the exchanges we have just had. It is really helpful that you have identified the problem that you see to be solved in enabling a better and more impartial Civil Service. To go back to the article that you wrote, which was so interesting, two things struck me. One was the reference you have already made to how

you get Ministers to develop successful understanding and relationships before they take up their post, because so much of this is about relationships. What possible changes could you make to enable that to happen?

The second question is about the whole Civil Service. You also say that there is a case for implementing the unimplemented elements of the Fulton committee, from half a century ago. I would be interested to know what they were and how important it is to do that. Would that lay the foundations and would it remove some of the issues you have identified? Would it introduce the sort of challenge, culture and confidence identified by Lord Anderson? I share his sense that if you have somebody who is close to the Minister, it would actually be rather inhibiting for civil servants to challenge. Would introducing the Fulton changes that have been neglected solve some of that problem?

Lord Maude of Horsham: I do not think it is just Fulton. One of the lenses through which I am looking at governance and accountability is the many reforms identified by Fulton 55 years ago, which were not new at that time. Fulton was pulling together a body of pre-existing critiques of the Civil Service. When you read through the literature on all of this, the thing that is most striking is finding how many things continue to be said.

For example, when you read what Kate Bingham wrote or what Tony Blair said in his 2004 speech on Civil Service reform, they are very much the same critiques that Fulton focused on: the dominance of generalist civil servants; the churn; what sometimes appears to be the random movement of civil servants from post to post; the imperviousness and the lack of interchange between the Civil Service and the world outside. It is not just people like me saying it. A number of former Permanent Secretaries have said exactly that; Sir John Kingman, Jonathan Slater and Philip Rycroft have all talked about it. Sir John Kingman delivered a lecture entitled, "Why is Civil Service reform so hard?" That seemed to me to be something I should address because the governance of the Civil Service and its accountability is fairly central to that.

That is a slightly different thing. The three critiques that I mentioned are interconnected. The predominance of generalists is connected with churn and people moving around. We are not developing the deep pools of expert subject matter knowledge that are an important part of the continuity that you should want to see in a permanent Civil Service. That continuity does not exist to nearly the extent that it ought to. It ought to be one of the big benefits of a system like ours.

Before the 2010 election, I remember talking to one of the big consultancy firms, which said, "This is very much against our interest to tell you this, but with one of the departments we work in, we have been there so long and the civil servants rotate so frequently that we now represent the institutional memory". I found that so shocking, and it was one of the reasons why, in the coalition Government, we reduced the spend on consultants by two-thirds, which was empowering for civil

servants, who did not want to see everything difficult being given to consultants. Churn and the dominance of generalists are connected, and so is the imperviousness that has been identified time and again.

Just last December, the Institute for Government wrote a powerful authoritative piece on external recruitment, why we do not do it at all well and why Ministers sometimes embark on what I think are not very practical ideas such as saying everything should be externally advertised by default. That is neither necessary nor practical. The answer is to solve the problems that make it difficult to effectively recruit externally, and then integrate people successfully. Those problems have been identified time and again.

Why do the reforms not get implemented? The first point is that there is no one in charge. Head of the Civil Service has always been a part-time job, with a very narrow exception 40 years ago. Even if it were a full-time job, the head of the Civil Service is not empowered and has no mandate to make it happen; those powers have not been delegated from the Prime Minister to the head of the Civil Service. Even if a dedicated, properly equipped head of the Civil Service had the right mandate, who is going to hold them to account? The textbook answer to that is that civil servants are accountable to Ministers, but I am probably better qualified than anyone to say that that is not going to work. I held that role for five years, which is unusually long. I had reasonable seniority, political clout and the support of the Prime Minister, but at the end of the day you can be waited out, and you are. With a lot of the changes that we put through in that time, some of them have regressed. That happens. It is hard to make these things happen. We are not remotely set up to enable it to happen at the moment.

Q115 Lord Falconer of Thoroton: I am very interested in what you think is wrong. First, you said that the role of the Civil Service is to be politically impartial. Do you have a complaint about whether the Civil Service is not sufficiently impartial at the moment?

Lord Maude of Horsham: No.

Lord Falconer of Thoroton: Secondly, you want the Civil Service to speak truth to power.

Lord Maude of Horsham: Yes.

Lord Falconer of Thoroton: You have quoted the 48% figure that Lord Anderson quoted to you. Do you think the Civil Service is too craven with Ministers?

Lord Maude of Horsham: I have heard Ministers say that, but I do not think that is a deliberate obstruction. I think it is overanxiety to please. One of the things we should be looking for when we appoint civil servants is whether they have a disposition to challenge. I think I quoted in that same article something that appears on the wall of the Civil Service college in Singapore: "It is the duty of every public officer constantly to challenge the way things are done and suggest ways to improve". That is

not only giving permission for, but placing an obligation on, officials to challenge. That is a good culture. We do not have that culture.

The thing about only 48% of civil servants feeling it is safe to question the way things are done is that most of that has absolutely nothing to do with Ministers. Most civil servants never see hair nor hide of a Minister. That is about the culture in the institution, and that has to change.

Lord Falconer of Thoroton: In relation to the most senior appointments—Permanent Secretaries and directors-general, and we are focusing in this inquiry on Permanent Secretaries—if Permanent Secretaries can be dispensed with because they do not agree with a particular policy or they express concerns about it, that would obviously reduce their willingness to speak truth to power.

Lord Maude of Horsham: Yes.

Lord Falconer of Thoroton: Are you worried about, for example, the dismissal of Tom Scholar or Jonathan Slater?

Lord Maude of Horsham: I think that you are absolutely right to be exploring that. The change that we introduced, maybe in 2014, to introduce a five-year fixed tenure, Tony Blair had of course announced in 2004. He announced that all senior Civil Service appointments would be for a four-year fixed term. That, ironically, simply did not happen. It was not implemented in any way that he would have recognised. We always explicitly said that that was capable of being extended. In Tom Scholar's case, of course, it had been extended for a full five years, which again was not necessary. It could have been for a shorter period. Having the possibility, which did not exist before, not to reappoint has, I think, been important.

I have no idea what specifically lay behind the decision in either of those two cases, and whether it was a lack of confidence in the individual. In the case of Tom Scholar, it is not obvious that it would have been a policy difference because the Chancellor, whose decision it was, had only been in post for half an hour. It is hard to see that that would have been the case.

These are big decisions and should not be taken at all lightly. We should be a bit better at being able to say, when there is agreement that a senior figure should be moved out of a post, that it does not necessarily mean that they leave for ever. We should be better and more creative at finding ways of using people.

Lord Falconer of Thoroton: Underlying what you are saying, Lord Maude, appears to me to be that the way we appoint or the way Ministers are involved with civil servants is in some way wrong, or not adequate, because it is leading to a Civil Service that could be better.

You went through with Baroness Andrews a variety of things—being too generalist, too much churn, et cetera—

Lord Maude of Horsham: Those are not controversial. They are uncontested.

Lord Falconer of Thoroton: No, they are not controversial, but what I am not getting from you is: what did you find was wrong in terms of delivery by the Civil Service? You are right to say that you have the best vantage point for the period 2010-15. What has the Civil Service failed to do well that it should have done better during that period? How do you ensure that it does it better in the future without compromising its impartiality and its willingness to speak truth to power? Give us concrete examples.

Lord Maude of Horsham: I am not in a position to give you concrete examples.

Lord Falconer of Thoroton: On discretion grounds or because there are none?

Lord Maude of Horsham: On discretion grounds, for one thing. Also, I have not thought about that specifically enough and I do not have it in the front of my mind. I am not going to wing it on that. The gap between policy and implementation has been noted by many people, including Jonathan Slater, who wrote a very powerful piece a year or two ago for King's College that you will all have read. He called it *Fixing Whitehall's Broken Policy Machine*. It has long been established that there is too big a gap between the people forming policy, which is a mixture of Ministers and policy civil servants in Whitehall, and those who are slightly below the salt who are expected to implement. Bringing those two things much closer together is, again, a long-established thing that is desired but never quite happens.

The truth is that in every successful organisation, and in the leadership of every successful organisation, you want there to be dynamism and innovation and caution and control. If any of those is too dominant, that is bad news. Typically, the accounting officer role represents caution and control, sensibly, and you would want to have that. I would say that one of the roles of the accounting officer should be to ensure that there is a critical mass of independent, permanent, robust Civil Service capability to give strong, challenging advice, but you want the dynamism as well. There is a question—I do not have a firm view on this—as to whether the Permanent Secretary should always be the accounting officer or whether there is a role for some of the ministries that have a very big operational delivery capacity, such as Justice, which you are very familiar with, the Home Office or DWP, where there are really important implementation requirements. But a lot of it is about the activist state, it has to be: these are functions that the state has to deliver.

A question worth considering is whether, in some of those kinds of departments, you might look to see a Permanent Secretary who is not necessarily the accounting officer but who represents dynamism and innovation, with a strong deputy who is the accounting officer who represents the public interest in ensuring that nothing stupid or wrong is

done. We may need to look a little more imaginatively at how some of the structures and models can work.

Lord Falconer of Thoroton: I strongly agree with a lot of that. In your book, Lord Maude, how does that impact on how Permanent Secretaries are appointed or removed?

Lord Maude of Horsham: There always has been the ability for a Minister who has run out of road with their Permanent Secretary to make a change. That has always been the case. From your time in office, you will be familiar with where that has sometimes happened. It should not be frequent, but it will happen, and I have had that myself. It should happen only as a last resort and will obviously require the involvement of the Prime Minister and the head of the Civil Service before it does. You are not going to exclude that, but it should be very much the exception.

Q116 **The Chair:** Lord Maude, just staying with the accounting officer role, of course senior civil servants are accountable to Parliament; it is part of the public interest and parliamentary constitutional framework. We posed this issue when we took evidence from Lord Macpherson and Lord Sedwill. I put the question to them that recent experiences of how certain Permanent Secretaries had been appointed or removed had influenced confidence around exercising the accounting officer role. There was a slight difference. One said that there is greater reticence to use the accounting officer role, because there is lack of confidence, as part of the wider challenge role. Another said that they might rely on it more because they were lacking confidence in their authority, so this was something firm they could hold on to and exercise. How do you change the accounting officer role but, at the same time, strengthen the confidence of senior civil servants that they must discharge their role in relation to Parliament in exercising the accounting officer role?

Lord Maude of Horsham: I do not think I want to change the accounting officer role. I am merely raising the question whether it should always be—there is nothing that requires it always to be—the Permanent Secretary who is the accounting officer. I often discussed with Lord Macpherson, when we were both still in government, the importance of the accounting officer's ability to call for a written direction. We both strongly shared the view that it needed not to be seen as the nuclear, relationship-destroying thing that it had become.

Making differences of opinion much more routine and much more transparent seems desirable to me. Ministers should be confident enough, when they have been asked for a written direction, to justify what they are doing and say, "I see your point, accounting officer, but this is why I think it is none the less good value", and so on. It is making those things more transparent. A lot of what I am after is bringing things that are currently in the shadows out of the shadows, and delegation of the power to manage the Civil Service very much exists in the shadows. There is very little scrutiny of the way in which Civil Service internal appointments are made. Sunshine is a very powerful disinfectant, as we know.

The Chair: I have one last point, and then we will move to another subject. We have seen from the evidence before us, and people are aware of it anyway, that in the last four years in particular there has been a high degree of ministerial turnover. We have heard your points on continuity in terms of churn and other matters, but how does that have the potential to undermine the continuity principle, even if you could get everything else right?

Lord Maude of Horsham: It is very bad for continuity, by definition. You have had four Prime Ministers in less than four years, and that has meant very high levels of ministerial turnover. That is very undesirable. We must hope that there will be less turbulence in the political arena. This has been an exceptional time. It is wrong to draw conclusions for ever from what has been, we must hope, an unusually turbulent period.

The Chair: One cannot draw conclusions for ever, but it may be an opportunity to stress-test how the current system works when it is subject to that kind of political turbulence, and whether that informs you in any way.

Lord Maude of Horsham: Look, we are now, hopefully, through that. We have a Prime Minister with reasonable authority and tenure, certainly until the next election. Things have gone back to normal quite well. I do not think that that period of turbulence has broken the system. It is immensely disruptive in terms of continuity, both for Ministers and to some extent for civil servants, but there was a great lack of continuity among civil servants anyway, to begin with, and too much churn or turnover of Ministers as well.

The Chair: We will move on to the actual process of appointing senior civil servants.

Q117 **Lord Anderson of Ipswich:** Lord Maude, I think you said in your first answer to the Chair that Ministers already have a high degree of involvement in the appointment of senior civil servants and, indeed, Permanent Secretaries. Looking at the Civil Service Commission recruitment principles, that is certainly true. The Minister is consulted on, and agrees, the final role and person specification. They are kept in touch with the progress of the competition throughout. Any views they may have are conveyed to the selection panel. They may meet each of the shortlisted candidates to discuss their priorities and their approach. They feed back their views to the panel. In the case of Permanent Secretaries, when the panel assesses the merits of the candidates, it should assess whether the candidates can work effectively with the Minister. Of course, the final selection decision is taken by the Prime Minister. Does that process provide Ministers with sufficient confidence that those appointed will possess the knowledge and skills necessary to deliver on Ministers' priorities? If not, what needs to be changed?

Lord Maude of Horsham: As I think I said at the outset, I do not think a lot needs to be changed. Ministers already have a high degree of involvement. As I think Baroness Stuart said to you, they do not always

know that and they are not necessarily always told how much they can be involved. That has also changed, partly on my watch.

There was a ludicrous fiction before, when it was said that when a Permanent Secretary was being appointed Ministers could meet the shortlisted candidates, but the purpose of it was not to be an interview; it was for Ministers to brief the candidates on what the Ministers wanted. Everyone knew that that was a fiction. We should not have fictions. There is nothing wrong with a Minister being involved in assessing merit. There is nothing that says that merit cannot be assessed or that Ministers cannot contribute to the assessment of merit, particularly for a role that will be so important for what the Ministers are doing. It was a bit of a struggle to get there because the first Civil Service Commissioner at the time was not, I think it fair to say, enthusiastic about the change, but it made it more open, and Ministers were able to be involved in a much more upfront and above-board way.

Lord Anderson of Ipswich: You do not see any fiction in the recruitment principles themselves. You see a fiction in the perhaps overcautious way that Ministers are sometimes advised that they have to be applied.

Lord Maude of Horsham: Yes. The change we got through was a pretty good change and has helped, but again I think Ministers need to be made aware of what they can do. Too often Ministers are not aware of what they are able to do.

Lord Anderson of Ipswich: What about the definition of merit in the recruitment principles? Are you happy with that? You might have seen that we have had witnesses suggest, for example, that the phrase “at that particular time” ought to be added to the end of the definition. Is there any point in that?

Lord Maude of Horsham: No, I do not think so. The point about merit is that it was introduced in the Northcote-Trevelyan report, which we sometimes forget took 12 years to be implemented. It reminds me of the classic phrase in the Fulton committee report: “We have found no instance where reform has run ahead too rapidly”—a wry understatement.

The point about merit in Northcote-Trevelyan was not actually about political impartiality. It was about removing nepotism and favouritism and ensuring that people who were appointed would be up to the job. Of course, when you are assessing merit there is no objective perfect standard. You are very unlikely, when you are looking to fill a role, to find the perfect candidate. It is really unlikely. You are going to find what you think is the best trade-off between the merits and the less meritorious aspects. Different human beings will take a different view of that. There is no perfect, dispassionate approach. Ministers should be able to contribute to the assessment of merit. But as for trying to dance on the head of a pin on the exact definition of merit—we know what merit means. Basically, it is, “Is the person who is going to be appointed up to

the job? Are they able to do what will be required in the public interest and to deliver the agenda of the Government?" These are matters of human judgment, with all the frailties involved.

Baroness Andrews: What we are talking about so much is, "Can you rely on these people to deliver your priorities?" You have talked about throwing a light on to some of the shadows. Some of the most shadowy shadows and shadowy people are your spads. Are you perhaps talking about not reforming the role of the Permanent Secretary or introducing more accountability, but other delivery models such as the delivery units, where you could rely on your people to get cracking and deliver? In that case, what is the role of the spad? Does the spad not do the stuff that you want in order to get things done in the way you want them done? How does he or she fit into all of this?

Lord Maude of Horsham: No one disputes the importance of the role of the special adviser. I will have some reflections on that role. By law, they are not allowed to give instructions to other civil servants. The ability to use a special adviser to drive implementation is strictly limited. You can have a special adviser saying, "I want to know what's happening on this", and the civil servant is perfectly entitled to tell them to get stuffed.

Baroness Andrews: It is quite difficult though, is it not?

Lord Maude of Horsham: There are ways of obstructing that are not as direct as I have just suggested. As to effective implementation, you want the sense of immediacy and being able to make things happen quickly. Whitehall is pretty good at that in times of crisis. When Whitehall goes into COBRA mode, it operates very differently. You sit in COBRA and there are screens on the wall and action points come up in real time. There is such a contrast between the way Whitehall operates in crisis mode and in normal times; the difference in tempo is massive—chalk and cheese.

Lord Falconer of Thoroton: To follow up on what Baroness Andrews was saying, it was explicit in the answers—not underlying—that you are describing a Civil Service brilliant in crisis but sleepy and undynamic when dealing with day-to-day formulation or implementation of policy. You are not saying that in order to change that, you need to change the way Ministers are involved in the appointment of Permanent Secretaries. What would you say is the method that would make it less sleepy, more modern and more dynamic?

Lord Maude of Horsham: Lots of people have commented on this. Sir John Kingman and plenty of people have commented on the tendency of "like recruits and appoints like". We tend to appoint people who are in our own image. Sir John Kingman, when trying to answer the question, "Why are Civil Service reforms so hard?" said something like—I do not have the exact words—"Reformers are expecting the people who've got to the top of the current system to reform the system that has got them to the top". That is unlikely.

With some of the reforms it becomes easier to bring people in from outside, who will, if the system is accommodating enough, start to change the culture and introduce more dynamism. I have quoted this before, and I checked it with him to make sure that he said it. You will remember when Sir Peter Gershon came into government. He was a very senior seasoned businessman who was brought in by Tony Blair to look at the efficiency of the Civil Service. He described how, when you come into Whitehall from outside, you find that all the decisions get made behind the wall. You spend your first few months trying to find a door in the wall. Eventually you find the door, but it only opens from the inside.

Finding ways to bring people in is not remotely about political inclination. It is about people willing to challenge the existing culture. In the work I was doing in the Cabinet Office on Civil Service reform and efficiency, I honestly could not give a stuff what the politics were of the people we were bringing in. The person we brought in to set up the Government Digital Service created a world-leading digital transformation programme. I am reasonably confident that he has never voted or contemplated voting Conservative in his life, but he was the best person. He was challenging to the system.

What you often want as a Minister is people who will challenge the culture and who will be disruptive in a good way. Disruption generally, these days, is seen as a good thing, but not generally in the Civil Service. A culture that welcomes intelligent, constructive disruption is a good culture, but that is not the culture we have. Finding ways to bring in people with different attitudes, a different outlook and a different approach to getting things done is really important, but it is not remotely to do with politics or political inclination.

When it was announced that Sir Keir Starmer was appointing Sue Gray to be his chief of staff, it was hard to know who reacted the most strongly. Was it some of my erstwhile colleagues in the Conservative Party or the Whitehall establishment who were clutching their pearls with dismay? I was totally relaxed about that. Sue Gray worked for me for five years. For a time, at her suggestion, she stood in as my principal Private Secretary.

Most Ministers do not mind the politics of the officials who work for them. In fact, you could make the case that you would rather have someone who has political inclinations, even if they are not yours, because they are more likely to understand the motivations of Ministers, which are generally rather more high-minded than we are given credit for, and they are also more likely to respect the democratic mandate. I think we should be much calmer. That was really the point I was trying to make in the *Observer* article, which was rather overwritten in the story that appeared on the front page. We should be much calmer about civil servants having political backgrounds or going on to do political things. That should not be a big deal.

Gus O'Donnell was always very good at making the point that impartiality is not neutrality. I have sometimes heard Permanent Secretaries say,

“Well, of course, we’re obliged to be neutral”. No, you are required not to be neutral. You are required to have sufficient independence to challenge, but you are required not to be neutral. You are there to serve the Government of the day.

Lord Foulkes of Cumnock: You are talking only about politics and political views. You said yourself that reform was introduced in relation not to politics, but to nepotism and favouritism. I am not sure that that has changed as much as you are arguing it has. If you look at the old school ties and the universities that senior civil servants went to, they are still very much—I had better not say old Fettesian—old Etonians and maybe old Haberdashers even, or Oxbridge. It has not worked.

Lord Maude of Horsham: I do not think it is quite as bad as you are suggesting, but you will have seen the Social Mobility Commission’s report on the Civil Service. I noticed, coming back into government after an 18-year sabbatical, that while there was much more, what you might call, conventional diversity, there was much less diversity of outlook. There seemed to be a premium on blandness, whereas I remember from my time in government in the 1980s and early 1990s that you were more likely to find people who were a bit maverick, quirky or eccentric. You do not want them all to be like that, but you want to have enough of that. I think we have lost some of that diversity of outlook.

Again, that is partly the “like recruits and appoints like”. Jonathan Slater was very good on that in his piece for King’s College. I think the phrase in the Social Mobility Commission was “an attitude of studied neutrality”. The commission’s view was that that favoured people from a particular background, who have enough in their background to know how to be much more detached. Jonathan, in his piece—again, I do not have the exact words—said something like, “There could be a tendency for studied neutrality to translate into not giving a damn whether anything actually happens”.

Lord Foulkes of Cumnock: There may be more women, for example, so you are getting a wider variety, but they are the women with pearls you were talking about earlier.

Lord Maude of Horsham: I think you are exaggerating. But the Social Mobility Commission bears out the tenor of what you are saying.

Lord Foulkes of Cumnock: Are there any black Permanent Secretaries?

Lord Maude of Horsham: We have had Dame Sharon White and Sir Suma Chakrabarti.

Lord Foulkes of Cumnock: People are appointing people like themselves. That is what you said.

Lord Maude of Horsham: Yes, I think there is a tendency.

Lord Falconer of Thoroton: Current Ministers talk about “the blob”, referring to Civil Service inertia, which is associated not necessarily with

Etonians but with a metropolitan, remainder, “They’ll never change from this metropolitan elite view of the world” attitude. Do you think that is a tendency in the Civil Service at the moment? Does it need to be more diverse in its outlook than that?

Lord Maude of Horsham: Yes. I do not subscribe to that characterisation, but I think there definitely needs to be more diversity. I do not mean in opinions. It is about temperament and outlook; attitude is the key thing. You want the quirky and some people who are maverick, who challenge received wisdom. There is less of that than there was, and certainly less of it than there should be. We need whatever the opposite of impervious is—more porous—people who are more easily brought in and, frankly, an in-and-out movement that other civil services do better than we do. Then, you are likely to get more of that.

The Chair: The issue of diversity of thinking as a characteristic in addition to the traditional diversity characteristics is a growing phenomenon, in both the public and the private sector, to get the good outfits that organisations want.

Lord Maude of Horsham: Groupthink is a thing. Indeed, if you read the Rede Lecture that Edward Bridges delivered in 1952 called *The Portrait of a Profession*, the profession he is talking about is essentially the policy Civil Service, the Whitehall Civil Service. He talks about it as a good thing that in a department there will be a departmental point of view that you would now describe, maybe, as groupthink.

The Chair: I want to complete this question, because I am conscious that as a committee we have different parts of evidence. On greater ministerial involvement in the appointment of civil servants, some of our witnesses have said that it is very important that that does not lead to the lowering of what is the appointable standard, and that you do not drop it in order to let in a Minister’s preferred candidates. Can you comment on controls, or what you think of that?

Related to that, a recent insight paper from the Institute for Government said that international and academic evidence shows that meritocratic recruitment is associated with lower corruption. On those two issues—not dropping the standard and maintaining the level of integrity in the system as a whole—would you like to comment on not losing the best of those two dimensions in any reforms to the recruitment process?

Lord Maude of Horsham: Only to say that I completely agree.

Q118 **The Chair:** That will do. Thank you very much. We will move on to the next question, which is on the average tenure of Permanent Secretaries. We have been collating figures from a combination of Cabinet Office and Institute for Government information. From 2019-23 the average tenure of a Permanent Secretary decreased to 3.5 years. The question that flows from that is: can anything be inferred from it? Is it an indication that the stress we have talked about of the last four or five years has meant that the appointment or removal of Permanent Secretaries has not adequately

been protected against politicisation?

Lord Maude of Horsham: I think the average tenure, on those figures, had fallen from four years to three and a half. I do not think there is much to be inferred from that.

The Chair: It is a shorter time span; that comparison is a longer time span in the first instance than in the second. You would pick up elections more in the earlier figures, contributing to the four.

Lord Maude of Horsham: What were the dates for the second?

Lord Maude of Horsham: I honestly do not think there is anything particularly sinister to draw from that, except that it was a period of very high degrees of turbulence. But I agree that something like four years would be better. Indeed, four years was the period that Tony Blair used, and that I originally suggested when we were discussing introducing fixed tenure for Permanent Secretaries and simply implementing what Tony Blair had announced. I was in a negotiation with the then head of the Civil Service. We agreed that five years might work, and I compromised on that, slightly reluctantly.

The Chair: We will turn to another question, which is about the independence of the Civil Service Commission.

Q119 **Lord Foulkes of Cumnock:** I think we are coming to the conclusion that the Civil Service Commission has got more and more power in these appointments over the last few years. Do you think it is independent enough of government?

Lord Maude of Horsham: By government, do you mean Ministers?

Lord Foulkes of Cumnock: Yes.

Lord Maude of Horsham: Yes. I think it is capable of being very independent of Ministers. I think it needs to be able to be much more independent of the Civil Service.

Lord Foulkes of Cumnock: That is a very good point. It used to be a lot of civil servants. Now there are some former civil servants. I was looking at their biographies. Quite a number of them are non-executive directors of departments. They are the sort of people who appear regularly on lists of appointments. There is a list of usual suspects that goes round departments, and there are some people who fit into categories who seem to get appointed. Does that seem to be happening with the Civil Service Commission?

Lord Maude of Horsham: I am not particularly aware of that. I think the Civil Service Commission has historically seen its role as the protector of the Civil Service. Its statutory role is to guard the perimeter and to control recruitment into the Civil Service from outside. There has been a bit of a sense that it is to keep the barbarians from the gate, as it were. It has not seen its role—it is not the role that it was given, to be fair—as to regulate the Civil Service and to provide scrutiny.

If we are to see a step change in the way that these long-established and agreed uncontested reforms of the Civil Service are to be implemented, I think the Civil Service Commission is a natural place to be the accountability body for a head of the Civil Service who would be charged with delivering reform, and delivering strong organisational health and the continuous improvement that you want to see in a great organisation. At the moment, the Civil Service Commission is not remotely set up to do that. Its staff are all seconded civil servants. Although a report back in 2015 suggested that that should not be the case and that it had a right to recruit its own staff, the staff are shared with two other Cabinet Office bodies, ACOBA and the Commissioner for Public Appointments, and its budget is set by the Cabinet Office. It is a bit like saying that Ofgem's budget should be set by British Gas. If it is to be an independent regulator, it needs to be properly independent.

Baroness Stuart is the first ever Civil Service Commissioner, let alone First Civil Service Commissioner, to have ministerial experience, and yet you would think that the perspective of a Minister to know what it is like to be a Minister and what your expectations are of civil servants would be an important perspective to build into the Civil Service Commission. Her two predecessors were both former Permanent Secretaries. One of them was a life career civil servant.

I think the commission has to be robustly independent of the Civil Service, robustly independent of Ministers and to have a much wider role, including the ability to scrutinise internal appointments, because nobody does that.

Lord Foulkes of Cumnock: Are you going to make recommendations about the composition, recruitment, functioning and servicing of the Commission?

Lord Maude of Horsham: Yes.

Lord Foulkes of Cumnock: Good. There seem to be a lot from the south-east of England. People seem to forget that the United Kingdom consists of four parts and that England has a northern part that is as important as London. I hope that might be included in any recommendations you make as well.

Lord Maude of Horsham: It had not occurred to me, but that is a good suggestion.

Lord Foulkes of Cumnock: I also noticed that there was no one with trade union experience on the Civil Service Commission. Trade unions are a big area of public life now, and very influential. It just looked very much like a traditional Whitehall, "Oh, she got an OBE last week so she might be good", and all that kind of thing.

Lord Maude of Horsham: I have been giving a little thought to how Civil Service Commissioners should be appointed. One of the things that occurred to me as a possibility—I have not come to a firm conclusion—is

that I do not think civil servants should be on the interviewing panel, because there is a conflict there. Maybe, particularly for the appointment of the First Civil Service Commissioner, there would be a role for the Chair of the Public Accounts Committee, who will always be a member of the Opposition.

The thing that concerns me about the lack of consistent, sustained progress on Civil Service reform, and building the organisational health and continuous improvement of the Civil Service, is that if it is to be delivered, it has to be done on a very bipartisan, cross-party basis. You have to find ways of securing support so that the progress will transcend electoral cycles and the lifetime of any one ministry or Administration and will not be dependent on there being some annoying person like me being the Minister responsible. You have to find some way of what I am calling the "stewardship obligation" being driven and held accountable in a way that is separate from the normal accountability of the Civil Service to the Government, to Ministers, for the dispatch of the business of the Government of the day.

Lord Foulkes of Cumnock: It is a very good suggestion that the House of Commons in some way might be involved in that. I think that would be a good step forward. The United States seems to involve Congress much more in these kinds of appointments.

Lord Maude of Horsham: Yes. If you were to have an expanded role for the Civil Service Commission, you would want there to be an annual report to Parliament. You will always have conflicts. There will always be the potential for tension between delivering the reform programme and delivering the business of the Government of the day, even if it is only competition for bandwidth. At the end of it, as I am, hopefully, not doing anything that challenges established constitutional norms, the will of the Government of the day has to prevail.

The Institute for Government has said that we should make it all statutory and that there should be a statutory board. That just builds in potential conflict. The answer is transparency. If the delivery of agreed reforms is sacrificed to the needs of the Government of the day, in the model I am examining the head of the Civil Service would be held accountable by the Civil Service Commission, which would then report to Parliament. Ministers would then be accountable to Parliament for why it happened. Again, it is all about more transparency and throwing light on these things. Too much of it happens behind a veil.

The Chair: We are coming on to questions on the Senior Leadership Committee and its relationship with the Civil Service Commission, so I will not pick that up here.

Just to finish off this block of questioning, Lord Maude, when you referred to greater scrutiny of internal appointments, what about the decision to proceed by exception and not have open recruitment? From the evidence that we have received from both the previous and current First Civil Service Commissioners there was a sense of the commission not having

sufficient control over the decision process by not proceeding by open competition. What do you feel there, or do you think that should be left?

Lord Maude of Horsham: I do not think it is terribly practical to assume that every appointment should be externally advertised. My understanding is that the policy that Ministers announced was that it should be by default unless Ministers agreed. I am told that that has not necessarily been the way it has worked. I do not have visibility into that.

Are you talking about the sorts of exceptions set out in the recruitment principles, where the Civil Service Commission has itself said that there can be exceptions to the requirement for a free and open competition?

The Chair: Yes. It seems to lack transparency as to how the decisions to use the exceptions come about.

Lord Maude of Horsham: The key thing is that it has to be approved by the commission because the commission is the guardian of that, and it should be. It is for the commission to say, "We are happy that this appointment can be made on merit but without having a fully open competition". There will be plenty of examples. The idea that, when you seek someone with particular aptitude, skills and experience from outside, the appropriate way to do it is to advertise and filter down because all these people are queueing up to come and take on these jobs, probably for a significant pay cut, is not the way the world works. In the normal world you go out and proactively seek and woo. The recruitment process is not winnowing out the people who are not suitable; it is finding the one who is suitable and persuading them to do it.

The Civil Service Commission is the right body to oversee and invigilate that process. I believe that Baroness Stuart and the commission are looking at ways to do these things differently. Again, the Institute for Government has done extensive work on this, which I think is invaluable.

Q120 **Lord Mancroft:** Would you turn your attention to the appointment of the Cabinet Secretary specifically? Do you think the process is sufficiently open and transparent? If not, what do you think could be done to make it so?

Lord Maude of Horsham: I am assuming that by Cabinet Secretary you mean the combined Cabinet Secretary and head of the Civil Service.

Lord Mancroft: Yes.

Lord Maude of Horsham: I think you have probably discerned from what I have said that I think these should be two different jobs. It is ludicrous to suppose that with a huge programme of agreed reforms that consistently does not get implemented or sustained, which is a huge change-management programme, the right person to deliver that, on a part-time basis, is also the right person to be the Prime Minister's principal policy adviser and co-ordinator. You only need to state the proposition to see how completely untenable it is.

I do not find many people who disagree with that. The people who disagree with it tend to be people who have either held the role or aspire to hold it. The argument they make is one I respect, which is that all authority flows from the Prime Minister, the Cabinet Secretary is the person who sees the Prime Minister every day, and therefore they speak with the authority of the Prime Minister and that is the only way you will ever get anything done. I have worked at or near the centre of government at various times in the last four decades, so I understand the force of that, but the short answer is that it does not work because the agreed reforms do not happen or are not sustained. You need to find a different way of making it work. I think the way the centre of government is set up is eccentric these days and an outlier compared with similar, comparable systems in a similar Westminster-type arrangement.

The role of the Cabinet Office has burgeoned, partly as a result of reforms that I led. I started to create a functional model, where the cross-cutting implementation functions—procurement, digital and IT, and property—were much more strongly led from the centre. That has meant that the Cabinet Office has become very big and unwieldy, with extremely confused accountability, and partly functions as an extension of the Prime Minister's office and partly as an implementation centre. I do not think it is sustainable. The accountability is so confused that I will be recommending some changes to that.

On the appointment of the head of the Civil Service/Cabinet Secretary, I would see those roles as being very different roles in the future. I do not think they need to be done in a very different way from what is prescribed in the recruitment principles, with strong involvement of the Civil Service Commission, and ultimately there is no way of avoiding its being a decision for the Prime Minister.

Lord Mancroft: I do not disagree with you about separating them for the reasons that you have given, but if you separate the two roles is there not going to be a natural tension between them?

Lord Maude of Horsham: Not necessarily. There may be tension. Tension can be constructive and positive. When I talk about dynamism and innovation versus caution and control, there is tension there and it is good tension. It depends how you organise the centre of government. In the way I envisage it, there would be very different roles with different accountability.

Lord Falconer of Thoroton: But has it not been tried in the past and failed? The point you make is that all power flows down from the Prime Minister, and the Cabinet Secretary is closest to the Prime Minister. There have been occasions in recent years when there have been people who have been appointed as the head of the Home Civil Service. You were a strong, powerful Minister promoting that, with the ear of the Prime Minister, over a five-year period, and the Cabinet Secretary still dominated, to the extent that—this is not a criticism—Civil Service reform did not happen, even though there was an experienced person from external business in a similar role to the one you are envisaging. What

went wrong, and what do you need to change it?

Lord Maude of Horsham: We went through several iterations. First, the mistake we made when the now Lord Kerslake was appointed as head of the Civil Service was not to make it a full-time role. He wanted, and did, continue to be Permanent Secretary of DCLG, as I think it then was. The argument was that he would not have authority with other Permanent Secretaries unless he was running his own department. I think the flaw is in the premise and is that the head of the Civil Service is not empowered. Even a head of the Civil Service like Gus O'Donnell, who took it very seriously and was very committed to driving change, would say that his only levers were cajolery and persuasion. The head of the Civil Service is technically the line manager of Permanent Secretaries, but not in the sense that he or she is able to give them instructions.

As part of what I think should be a comprehensive scheme of delegation of the Prime Minister's statutory power to manage the Civil Service, it seems to me that if you are going to create this single dedicated role of head of the Civil Service, separate from the Cabinet Secretary, there has to be a specific delegation of that management power that will give that person authority. It has not been tried. With John Manzoni, I was very involved in bringing him in and devising the role, but it was explicitly a subordinate role to the head of the Civil Service. He was not the head of the Civil Service. Jeremy Heywood was the head of the Civil Service and Cabinet Secretary.

Lord Falconer of Thoroton: Was Jeremy Heywood interested in the cross-cutting issues, human resources, financial control, the overall culture of the Civil Service, et cetera? Did he not leave that to Manzoni?

Lord Maude of Horsham: Yes. John Manzoni was appointed as chief executive of the Civil Service only six months or so before I left, so I did not see most of that. Jeremy was a reformer. Temperamentally, he was a natural reformer. It sometimes got played back to me because there was lots of talk about us being at loggerheads, but actually he would often say, "Francis and I have much more in common than people would think". We were both restless reformers.

The problem Jeremy had was that his biggest focus was on being an utterly brilliant policy adviser and co-ordinator. When Gus O'Donnell was head of the Civil Service and wanted to focus more of his attention on that—you will probably know more about this than me—Jeremy was brought into No. 10 and became Permanent Secretary. He actually picked up quite a lot of what the conventional role of the Cabinet Secretary would be, freeing Gus to be more of a head of the Civil Service, but without the authority.

You will always need the cajolery and persuasion, building, getting buy-in and good will. Anyone who drives a big change-management programme knows that communication, getting buy-in and good will and taking people with you is essential, but at the end of it you have to have authority. The head of the Civil Service has never had that authority,

partly because the responsibility for the Civil Service has always been divided between the Civil Service department or the Cabinet Office and the Treasury. That creates confused accountability and diffused authority.

Baroness Andrews: How do you give the role that authority? What is necessary? Will you be thinking about legislation?

Lord Maude of Horsham: No, you do not need legislation. CRaG—the Constitutional Reform and Governance Act 2010—vests the statutory power to manage the Civil Service unequivocally in the Prime Minister as Minister for the Civil Service. So it is completely possible for the Prime Minister to delegate that authority to the head of the Civil Service, but that has never happened. As I say, so much of this exists in the shadows, and trying to piece together how that power is delegated is incredibly difficult. I referred to the mysterious letters that emanate from the Cabinet Office at middle-ranking level, which in fact delegate power to Ministers and not to Permanent Secretaries. The rest of it you have to try to piece together from the Civil Service management code. Again, it is not explicit about delegation; you have to piece it together. There are gaps. There are lacunae in it.

Baroness Andrews: Would you be looking to articulate new powers or overlooked powers? Would that have any effect on any of the questions we are asking this morning? Would that resolve the issue of the Cabinet Secretary, who would have been able to step in if there had been a head of the Civil Service, in relation to Tom Scholar, for example? Would you see that sort of appointment giving a new agency or arm to the protection of senior civil servants?

Lord Maude of Horsham: It is a good question. I do not think I have a perfect answer to that. This is not about new powers. It is about how the existing power to manage is delegated, and to whom and in what form. Too much of it operates by assumption and unspoken and unwritten convention.

How do you avoid the Tom Scholar situation? These things will sometimes occur. It could have been handled differently. Was it about specific authority? Probably not, because at the end of it you had a Chancellor and a Prime Minister who seem to have agreed that the change was needed. When that happens, it will get done, and actually so it ought to, really. At the end of it, the will of the Government of the day has to prevail. Could you put a bit more process around it and see if there is a way of making it work, finding a way through? Probably, but at the end of it, if there is a decision, there is a decision.

The Chair: Earlier, Lord Maude, you said that the Cabinet Secretary's appointment is a decision for the Prime Minister—I do not think we need to debate that—but the process control for getting to the candidate that the Prime Minister wishes to appoint should be with the Civil Service Commission. That is sorting out where authority and power lie in the process, but what about the transparency of that? Is there a case for greater transparency? Obviously, just recently, there has been all sorts of

speculation about what did and did not happen at various points. Is there an argument for more transparency?

Lord Maude of Horsham: Transparency to whom?

The Chair: To Parliament, I suppose.

Lord Maude of Horsham: The right transparency is the Civil Service Commission, or the First Civil Service Commissioner in this case, having full transparency of what is going on and being in a position to oversee the process in a robust way.

The Chair: Coming back to the point about whether you have one post or two posts between the head of the Cabinet and the head of the Civil Service, if you have a situation where Permanent Secretaries have to speak truth to power, they will want to be confident that whoever occupies, if they are separated, the head of the Civil Service role carries authority and clout. Otherwise, their confidence is dented because they are not sure that the other person is playing to the same tune or is willing to do what is necessary.

How do you deal with that? If it is all about human resources and managing a change process, how do you deal with the soft issue that speaking truth to power and all of the things that go with that require strength and authority at the top, even though at the end of the day the decisions are Ministers' or Prime Ministers' decisions, which is not questioned?

Lord Maude of Horsham: I do not think there is any perfect way of doing this. It is about leadership and personal authority as well as mandate-type authority. I do not think there is a perfect way of achieving it, nor has there ever been. Again, the Civil Service Commission should be the guardian of the public interest in having a critical mass in the Civil Service or having robust, sufficiently independent officials with the capability and the temperament to deliver robust, challenging advice. I do not think there is a perfect way of securing any of that.

The Chair: It contributes to the argument that the powers of the commission should be strengthened.

Lord Maude of Horsham: Yes.

The Chair: I have one final point. Coming back to Tom Scholar, we were given seven instances of removals of civil servants—I think that was the evidence we received—where people were unhappy about the merits of those removals. In a sense, I do not need to go through those, but were they just exceptions? Were they one-offs and there was not much you could do?

When one looks at the removal of Tom Scholar, it was not just an unfortunate process in replacing a Permanent Secretary. This has been in some of the evidence we have; it actually undermined wider confidence—the market or other—in the governance structure, if you take the

combination of OBR, the Bank of England and the Treasury. So I come back to my point. How do you manage the stress in the system? You cannot necessarily contain the implications just to the fact that you have had an unfortunate HR process.

Lord Maude of Horsham: No, sure. The short-lived Government of the day made that decision. It had all the effects that you describe and, six weeks later, they were gone. Actually, you could make the case that the system worked. Checks and balances were operated in a pretty powerful way.

The Chair: The control at the end of the day is in Parliament itself.

Lord Maude of Horsham: Yes.

The Chair: Okay, thank you. We will move to the next question, which is on the potential formalisation of the departure or redeployment process of senior civil servants.

Q121 **Baroness Suttie:** You have, to a certain degree, just touched on this question, Lord Maude. If, as you described it, the relationship between the Minister and the senior civil servant runs out of road, do you think there is a case for greater formalisation of the departure and redeployment process, perhaps along the same lines as the Civil Service Commission recruitment principles?

Lord Maude of Horsham: Yes, possibly. If a decision gets made that there has to be a change, it should be exceptional. It should not be done remotely lightly, and I cannot imagine that anyone would do it lightly. There is definitely opportunity to look at whether the answer is that the person just gets a pay-off and goes, or whether there are ways of using people in different roles after that.

Baroness Suttie: What role do you think the Cabinet Secretary should play in that process? Should it be a more formalised role?

Lord Maude of Horsham: It is inconceivable that the head of the Civil Service would not be intimately involved in that decision. You would want the head of the Civil Service to be someone of sufficient personal authority and gravitas to be able to interrogate the reasons for it and whether there is a way of resolving it, short of there being a final decision for the person to leave. There should absolutely be a role for the head of the Civil Service in that.

Baroness Suttie: Should it be a slower process? We have heard from other witnesses that if the relationship is such that it clearly is not going to work, that should happen quickly. Do you think there should be a cooling-off period?

Lord Maude of Horsham: I think that would be good practice in any circumstances, whether or not it is a Permanent Secretary. Unless there is an absolute fallout, you would expect there to be a period of reflection

to see whether there was a way to solve it before you made the final decision. That is just good practice.

Lord Thomas of Gresford: I take it that you would not consider half an hour—as you referred to the departure of Tom Scholar—as anything like a proper process. Do you think there should be a process at all, or should it be left in some sort of unformed way, dependent on the circumstances?

Lord Maude of Horsham: It will depend on circumstances. Those were very unusual circumstances, we must hope, but good practice would suggest that a more measured approach would be beneficial.

Lord Thomas of Gresford: Are you likely to set out what good practice should be in that situation?

Lord Maude of Horsham: I was not planning to, but you have asked sensible questions about that so I will reflect on it.

Q122 **Lord Falconer of Thoroton:** We have heard quite conflicting evidence about the role of the Senior Leadership Committee. Baroness Stuart said its role was to approve managed moves. Later, she was rather unclear about whether the Senior Leadership Committee's role was to determine whether there should be an external advertisement. Lord Sedwill said it had a role in Permanent Secretary appointments, but it was not clear what. First, do you think that the Senior Leadership Committee's role should be made more transparent?

Lord Maude of Horsham: I think the governance arrangements for the Civil Service generally should be made more transparent. At the beginning of the coalition Government we had a rule that every department should publish an organogram, which should be kept current, of who occupied which roles. I think that has fallen into desuetude. I have seen various documents setting out what the governance of the Civil Service is, which would make Byzantium look straightforward.

There is a Civil Service Board and then there is a Senior Leadership Council, and there are various other governance-type bodies around. It is not clear to me what the role of the Senior Leadership Council is that could not be undertaken by a properly constituted Civil Service Board. It has typically always been chaired by a mainstream Whitehall life career civil servant. To the extent that it has a role in succession planning and succession management, there may be an argument for it.

I have a huge respect for the current chair, Sir Chris Wormald, who is the very best kind of traditional Whitehall civil servant, but there will always be a tendency for a body like that, chaired by a lifetime Whitehall civil servant, to think about the same kind of people in terms of succession. It is not clear to me what the role is, but I think greater clarity about the role of all these bodies and transparency about who they are, what their role is, who sits on them and so on would be beneficial.

Lord Falconer of Thoroton: Do you think the First Civil Service Commissioner's role on the committee should be changed, regularised or

given more importance or less importance? Do you have a view on that?

Lord Maude of Horsham: There would be an argument for the First Civil Service Commissioner to chair the Senior Leadership Committee, if it is to exist in that form. Given the importance of what I think should be the role of the commission in overseeing the organisational health of the institution of the Civil Service, succession planning is fundamental. If you are to have a Senior Leadership Committee or something like that, which is very focused on senior appointments and succession planning, separate from the Civil Service Board, there is a very strong case for the First Civil Service Commissioner chairing it.

Lord Falconer of Thoroton: What is your understanding of the role of the Senior Leadership Committee in determining whether it should be a managed move, an internal competition or an external competition? What is your view, as a matter of good practice, of how that should be determined?

Lord Maude of Horsham: My view is that at a senior level—certainly at Permanent Sec/DG level—that is a crucial role for the First Civil Service Commissioner, but agreeing with Ministers and the head of the Civil Service. That is a conversation, and seeking agreement. They will not always necessarily agree but there is no perfect process for that other than having the conversation.

Lord Falconer of Thoroton: Should the Civil Service Commissioner have more of a role in determining what civil servants can do when they leave the Civil Service? It is ACOBA at the moment. Maybe the Senior Leadership Committee has some role; I am not sure. Should the Civil Service Commissioner be in the driving seat on that?

Lord Maude of Horsham: I do not know, actually. That is a good question. I do not know whether the SLC would have that role, but obviously when people leave, the departments they are leaving from make representations to ACOBA, as they do for Ministers as well.

The retrospective role of ACOBA has been a big disincentive for people coming into the Civil Service from outside. Typically, when you go into a new senior role what you can do afterwards is set out at the outset. It is in your appointment; it is in your contract. It is a big disincentive, or so it has been represented to me, for people coming in not to know what they might be able to do when they leave. There is some thinking going forward on that in ACOBA. It is much better for people to know in advance what the restrictions are going to be on what they can do afterwards.

These things can be managed better. There is some quite good thinking going on with ACOBA and in the senior reaches of the Civil Service about people perhaps going through what you might call a detoxification process while they are inside the Civil Service, to make it easier for them to move on to things outside. Again, pragmatism is the key.

The Chair: Adding to that last point, do you think there is sufficiency of process, control and clarity of what is required to manage conflicts of interest of people coming in?

Lord Maude of Horsham: Yes. Managing conflicts of interest is not something unique to the Civil Service or government. It should not become a big thing in itself. Grown-up, serious people are quite used to managing conflicts of interest. Plenty of institutions find ways of doing it that are perfectly satisfactory. It will not always be perfect, like most things, but there is nothing unique to requirements to manage conflicts of interest. Again, openness is the key.

The Chair: That is a very good point. I just thought we would complete the discussion to cover that point.

Baroness Andrews: I am still really confused about the role of the Senior Leadership Committee.

Lord Maude of Horsham: You are not alone in that.

Baroness Andrews: That is encouraging. To put it bluntly, is its role to advise or to approve?

Lord Maude of Horsham: I do not know. I am not aware that anything is written down about what its role is. Again, a lot of these things exist behind a veil.

Baroness Andrews: If it were to advise, who would it be advising? If it were to approve, who would it be approving to, as it were? That is the accountability question, obviously.

Lord Maude of Horsham: I wish the committee well in finding answers to those questions. And if you find answers, I will be very happy to hear.

Baroness Andrews: Maybe we should ask Chris Wormald, who is hardly a typical civil servant, as you say.

Lord Maude of Horsham: He is excellent.

Baroness Andrews: He is indeed excellent, yes. Thank you, Chair.

The Chair: Lord Keen is going to take us into a discussion on civil servants in Scotland and Wales and the issue of appointments.

Q123 **Lord Keen of Elie:** Good morning, Lord Maude. I want to canvass with you the challenges involved in the appointment of Permanent Secretaries to the devolved Administrations in Scotland and Wales. Obviously, these appointments form part of the GB-wide Civil Service, but we know that formally the Permanent Secretary and those beneath the Permanent Secretary are politically accountable to Scottish Ministers, for example, and to the First Minister in Scotland. That makes perfect sense in the context of their addressing policy issues that arise within the boundaries of devolved competence.

In addition to that, they have a responsibility to address the interface between devolved competence and reserved powers. For that, one might have anticipated that they had some accountability to the Westminster Government. To underline that tension, if I can put it that way, can I cite the recent example of the new First Minister having appointed a Minister for Independence in Scotland? That is an appointment that, on the face of it, lies well outwith the boundaries of devolved competence and might have invited some comment from the Permanent Secretary in Scotland as to, first, the competence of that appointment and, secondly, the legality of the expenditure that would be incurred in regard to that matter.

I apologise for the rather lengthy question, but I would be interested in understanding your perception of the position, and what you feel can be done, going forward, to try to resolve what appears to be a tension.

Lord Maude of Horsham: Yes, there is a tension. We have a classically British muddle. For historical reasons, there is a separate Northern Ireland Civil Service with its own structures. There is some interchange between it and the GB Civil Service. You would not design it like that and it is obviously a completely different approach from the other devolved Governments, where the Civil Service has remained part of a unified Civil Service.

There is the additional eccentricity of the Diplomatic Service having a separate statutory existence from the home Civil Service, with its own approaches, although most staff in the Foreign Office would now not be members of the Diplomatic Service. There are numerous people in the Civil Service across Whitehall who are doing international things who would not be part of the Diplomatic Service. It is way beyond my remit to opine on all of that, except to observe that it is mildly eccentric but probably not worth the bother of trying to make it all perfect.

The specific issue you raise is inherent in the way that devolution was done. There was obviously a deliberate decision at that time not to separate the Civil Services in Wales and Scotland. I honestly do not have an answer to the conundrum that you pose, except to recognise that there will always be areas of tension of that kind.

Lord Keen of Elie: It is sometimes difficult to be a servant of two masters, but is there a case for stating explicitly that the Permanent Secretary in Scotland, for example, has an obligation of accountability to the Westminster Government as well as to the First Minister in Scotland, in order that you address fully and effectively what I referred to as the interface between devolved competence and reserved matters?

Lord Maude of Horsham: You are a proper expert on this, and I am not. You have had to preside over those boundaries. You saw some of this in the dispute over the authority of the Scottish Government to run their own independence referendum, which then got adjudicated in the Supreme Court. As I understand it, the Lord Advocate—

Lord Keen of Elie: The Lord Advocate is the legal adviser to the Scottish Government as well as head of the Criminal Prosecution Service in

Scotland.

Lord Maude of Horsham: Yes, but that is a political appointment. It certainly used to be a ministerial appointment.

Lord Keen of Elie: It is explicitly a ministerial appointment in terms of the Scotland Act.

Lord Maude of Horsham: This is very far from being my special subject, but, as I recollect it, that postholder made representations that were different from the intention of the Government. I honestly do not know what the answer is. It may well be that there is none.

Lord Keen of Elie: We cannot anticipate one in your report.

Lord Maude of Horsham: No.

Lord Foulkes of Cumnock: It could have serious implications for the appointment and/or dismissal of the Permanent Secretary in Scotland. Suppose the Scottish Government go even wilder than they do at the moment and the head of the Civil Service in Scotland says, "No, I'm not going to do that". Could he be sacked?

Lord Maude of Horsham: It is probably apparent that this is not something I have thought about. Thinking about it now, I wonder whether the answer in those circumstances would be for the head of the Civil Service—or whatever the role is entitled—to ask for a written direction, to make it public in that way, and whether that would be a written direction that gets reported to the Scottish Parliament or to the Westminster Parliament. I do not know the answer to that. I think that is the safeguard.

Lord Foulkes of Cumnock: The situation is rather complicated. This is where Richard and I agree on something, which is unusual. It is a political issue and a party-political issue. There are 20 UK civil servants helping a Minister who is appointed to cover what is, technically, a reserved area to carry out a political campaign. I was looking at some of his activities. He is going around the country speaking to SNP groups about the case for independence. It is like a Labour Government in Scotland appointing a Minister for Socialism to go around preaching the advantages of socialism to groups around Scotland. I think that would be improper, would it not?

Lord Maude of Horsham: I do not think there is any constitutional norm that prevents Ministers doing political campaigning.

Lord Foulkes of Cumnock: No, but not paid for by the UK taxpayer. Specifically, when I was a Minister in Scotland, I was told that I could not go to a party-political meeting in a ministerial car, for example. I could not even go to a ministerial engagement and then do a political meeting at the same time. We had to separate them completely. That was made very clear to me.

Lord Maude of Horsham: Yes. I do not think I have an answer to this.

Lord Foulkes of Cumnock: We will need to take it up elsewhere.

Lord Thomas of Gresford: We do not, as yet, have a Minister for Independence in Wales. You will be aware that in recent years the Sewel convention has been operated so that the Westminster Government have legislated without the consent of the Welsh Senedd, and of course the Scottish Assembly, on numerous occasions, so there is tension building up there. Where does the Permanent Secretary stand in such cases? He is answerable to Welsh Ministers. Is he also answerable to the Welsh Secretary of State in Westminster? There is a muddle, which we hope you might sort out.

Lord Maude of Horsham: I would not want to get your hopes up that I am going to sort it out. I think the answer is that if the Permanent Secretary of the Welsh Government, or indeed the head of the Scottish Government, feels that they are being asked to do something that is outwith the devolved powers, there is a remedy, which is to ask for a written direction. That would be the right remedy and it would bring some transparency.

I would not assume that the Permanent Secretary in a devolved Government has a reporting line to the Secretary of State for Wales. The Secretary of State for Wales has their own office, the Wales Office in Whitehall and Cardiff, which is their machine, as it were. I think there are remedies, but they are remedies that exist when something improper or ultra vires is being attempted by a Minister.

Lord Thomas of Gresford: Would you not think, therefore, that there should be a separate Welsh Civil Service, as there is in Northern Ireland?

Lord Maude of Horsham: There is absolutely an argument for that.

Lord Thomas of Gresford: It would simplify the situation.

Lord Maude of Horsham: It would simplify things, but I am not sure. It would be disruptive. There would be lots of implications and from my point of view, where what I am being asked to look at is big enough and complicated enough already, I feel that it is not for me.

The Chair: Thank you very much. We are only two minutes over our scheduled time, so we have done well on the timing. Thank you so much for coming. We have aired a lot of things and it has been very interesting listening to your comments to us, which have given us lots to think about. I appreciate the time you have taken. Thank you very much indeed for coming.