

# Select Committee on the Constitution

## Corrected oral evidence: Revision of the Cabinet Manual

Monday 26 April 2021

12.10 pm

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Baroness Suttie.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 18

### Witnesses

I: The Lord Sedwill KCMG, former Cabinet Secretary, Cabinet Office; The Lord O'Donnell GCB, former Cabinet Secretary, Cabinet Office.

### USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on [www.parliamentlive.tv](http://www.parliamentlive.tv).

## Examination of witnesses

Lord Sedwill KCMG and Lord O'Donnell GCB.

Q1 **The Chair:** This is the Select Committee on the Constitution in the House of Lords. Today we are taking evidence on the revision of the *Cabinet Manual*. We have two witnesses this morning, Lord Sedwill and Lord O'Donnell, both of whom are former Cabinet Secretaries. Good morning to you both.

**Lord Sedwill:** Good morning.

**Lord O'Donnell:** Good morning.

**The Chair:** Can we start by asking a general question before we go into thoughts about actual revision? Lord O'Donnell, you said when this *Cabinet Manual* was first being written that it was going to be an essential guide to our system of government. Are you still of the same opinion? Lord Sedwill, do we need a Cabinet manual? Is it fulfilling its purpose?

**Lord O'Donnell:** Certainly. Yes, I think it has been useful. The fact that it has been referred to a number of times when there have been key constitutional issues means that it has been relevant. It is used in the teaching of constitution classes in various universities, which is rather pleasing. I think it needs to be updated, but I am sure we will come on to that. Yes, it is a valuable document.

One does need to remember that it is the *Cabinet Manual* and it is owned by the Cabinet. It is something which the executive arm of government controls.

**The Chair:** We will come on to some aspects of that. Lord Sedwill, do you want to start by giving an overview?

**Lord Sedwill:** Thank you. It is good to be here with you and with my distinguished predecessor, the author of the first *Cabinet Manual*, Lord O'Donnell. I agree with Lord O'Donnell that it is a useful document. I used to refer to it when I was Cabinet Secretary. It is also important to remember that, as well as the points Lord O'Donnell has made, it is a codification of the conventions and laws regulating Cabinet government. It is not the source of them. We may come to that point later, but it is an important point.

In that sense, it is rather like the Highway Code: a plain English version of a panoply of road traffic legislation. The way that road traffic legislation is enforced is a pretty good analogy for the way we think of the *Cabinet Manual*. It is useful in Cabinet government, as the Highway Code is a useful and accessible means of working out how to keep ourselves safe on the roads.

**The Chair:** Of course, the Highway Code is backed by other aspects, and there is a next stage there in terms of penalties. Let me bring in Baroness

Fookes, who wants to follow up on how we start the revision.

**Q2** **Baroness Fookes:** I think we can assume that you think this is a useful guide and should be updated, but can you tell us what the method should be and how often it should be updated?

**Lord O'Donnell:** You are absolutely right: I think it should be updated. Indeed, I said in the foreword to the first and only edition that if it is to be useful it needs to be updated periodically.

Remember that a lot of this was stolen, with pride, from New Zealand. In New Zealand they update it every Parliament. I think Lord Sedwill is of the view that that is the right timing, and I would go along with that. There is a possibility that one might do some online updates in between if there was a significant constitutional piece of legislation, say, but a hardback copy every Parliament seems good to me. On the process for doing it, I think it has to start off being prepared by the Cabinet Office officials for the Prime Minister to take to Cabinet and get Cabinet approval of.

In the process of doing all that, you would want to consult constitutional experts, Parliament and Select Committees, as we did before. Indeed, we consulted the previous Government when we put the first one forward. It needs to be remembered that the first one was commissioned by Gordon Brown when he was Prime Minister and was finally delivered by David Cameron when he was Prime Minister.

**Lord Sedwill:** Yes, I agree with that. We had a project in hand when I was Cabinet Secretary to update the *Cabinet Manual*. Of course, there was a great deal going on with Brexit and other events, which we might well come to this later in the session. We recognised that we needed to update it. We did not manage to complete that while I was Cabinet Secretary, but it clearly should be updated.

As Lord O'Donnell has said, that should simply be a matter of routine so that we are not asking a Government whether now is the right time to update the *Cabinet Manual*. These things are never a priority. There is never quite a perfect time. So personally I would like to see an expectation that the *Cabinet Manual* is essentially released—a new version maybe with only minor updates, or potentially with significant ones, depending on events—at the beginning of a new Parliament.

As Lord O'Donnell said earlier, it is in the end a document owned by the Cabinet, and we should definitely consult others—Select Committees and constitutional experts. However, it would therefore be natural, as part of the introduction of a new Government—we update the ministerial codes and other things at the beginning of new Parliaments—to say to a new or a re-elected Prime Minister, "Here are our proposals for a refresh of the *Cabinet Manual*. Here's the material, the input that we have had. Can we now issue it?" If that became a regular feature, it would not be subject to the vagaries of, "Now is never the right time", because, as you know, that so often disrupts these routine processes.

**Baroness Fookes:** At the moment, it is up to the Prime Minister himself or herself to institute a refresher. You are suggesting that it should not be the Prime Minister, but a routine from the Cabinet Office?

**Lord Sedwill:** I would not suggest that it is essentially detached from the Prime Minister's authority and the Cabinet's authority for it. I am really suggesting that, if it is a discretionary question, there is never quite the right time to do anything of this kind. It is just the nature of government priorities, other priorities and so on.

If there were just an expectation, a new convention, that the *Cabinet Manual* would be updated at the beginning of a new Parliament, that would be straightforward for everyone. The Cabinet Office could then: run a process as Parliaments were coming to an end; use the election period to refine the input; make sure that committees, such as this one, had been consulted; and bring it together in a well-administered programme. That is all I am suggesting.

**Baroness Fookes:** But it has to be kicked off, has it not, and presumably the Prime Minister would have to kick this off.

**Lord Sedwill:** I think we would need the Prime Minister to agree at some point that this would happen, but, to be honest, as soon as it became the pattern that it would be done towards the end of a Parliament in preparation for the next one, I am not sure that the Cabinet Secretary would necessarily need to seek anything other than the most routine permission from the Prime Minister, saying, "I'm intending to get this going as Parliament is coming towards the end".

Q3 **The Chair:** Are there any risks, particularly when you have more frequent elections than we might be expecting?

**Lord Sedwill:** Lord O'Donnell will have a view on this. As I say, I am suggesting that it should be a convention. Clearly if you have elections every couple of years, as we have had recently, because of other political events, you would not necessarily have to issue any significant revisions every time there was a new Parliament, but the expectation would be that that would happen. It might be very straightforward to say, "We've decided not to, because we only had an election 18 months/two years ago, and we haven't done so this time".

That is why I think it should just be a convention, in the regular rhythm of Parliament, that an update is issued. As I said, that update could be very minor or it could reflect more significant changes.

**Lord O'Donnell:** Would it not be rather nice to stick that convention into the *Cabinet Manual* itself?

**The Chair:** Indeed.

Q4 **Lord Howell of Guildford:** I am a bit surprised by this mention of "routine and regular". Lord O'Donnell, you wrote back in 2011 that the content of the *Cabinet Manual* is not static. We are now, 10 years later, in

a totally different media and public discussion environment, and it is all changing incredibly rapidly. I was just looking at all the issues touched on in the suggested updating, all of which may have been impartially treated points 10 years ago but are now all red hot politics and changing very fast indeed. It is quite difficult to see how one can possibly codify, embrace and define all these fast-growing changes when they will be out of date before the ink is dry. I am sorry to sound a sceptical note, but I think that is what one must conclude from the different world we now live in.

**Lord O'Donnell:** It is easy to see the things that have changed, but there is quite a lot in there that has not changed, and it has been a long time. I have been a long time not being a Cabinet Secretary. This came out almost 10 years ago now, as you rightly said, so yes, of course it needs updating, but if it had been updated every Parliament, as we were suggesting, there would not be so many changes to incorporate now.

Having an up-to-date guide that at least tells you where you are at the start would be a very good place for Ministers and officials to start from. As David Cameron said in his foreword to the *Cabinet Manual*, he expects Ministers and officials to be mindful of what is in the *Cabinet Manual*. I think that would be very good for Ministers and officials to have at the start of a new Parliament.

**Lord Howell of Guildford:** You do not think that talking about the royal prerogative, international law obligations, judicial review, devolved Ministers at Cabinet, the announcement of Parliament first or relations with Europe and so on will just fuel a more high-octane disputatious argument of the extreme kind we are getting now.

**Lord O'Donnell:** I do not think so. The fact is that things have changed and were possibly controversial before. If we do change the Fixed-term Parliaments Act, for example, it is really important for officials to understand what the new one is.

You may remember that one draft chapter, on hung Parliaments, was released before the 2010 election. It was very good. It went to a Select Committee, which discussed it. As a result of that, there was cross-party understanding, and understanding by the media, of issues such as it being the sitting Prime Minister's obligation, if he does not have an overall majority, to stay there and work through until he can come up with a recommendation to Her Majesty as to who should take over.

There are some really important things in it. I am very much of the view that having one, as long as it is up to date, is very, very important for the business of government.

**Lord Sedwill:** I entirely agree with that. One point I would add is that having the document is also a restraint. It should not be a running commentary on every political or governmental development, of course, but it is a handrail. Therefore if, as Lord Howell suggests, there is a genuine desire to make some changes to the way government works, the

publication of a new Cabinet manual at the beginning of a Parliament would make that explicit and would require a Government to say, "Actually, we think this convention or that convention is now out of date and we want to proceed differently". That would provide an opportunity for scrutiny, as opposed to some of these constitutional developments being driven entirely by events.

We have been in a remarkable period. Personally, I think the existence of a Cabinet manual enabled us to navigate our way through that period probably more surely than we would have done otherwise.

**Q5 Lord Dunlop:** In the absence of an established convention, who do you think should initiate the process for updating the *Cabinet Manual*? Would it be a case of the Cabinet Secretary going to the Prime Minister to suggest an update? Why do you think there has not been an update for a decade? A decade is a long time, despite all that has been going on. Does this suggest a lack of political interest in the subject?

**Lord O'Donnell:** It takes a while to establish a convention. One reason why I am delighted that your committee is looking at this issue is because I hope you will help in the establishment of such a convention, because I think that would be a very good thing.

Why has it not happened? As Lord Sedwill said, there have been very big frequent changes, we have had short Parliaments, and this has probably not got to the top. Gordon Brown was very interested in constitutional issues. Does the current Prime Minister have an interest in constitutional issues? I suspect probably not. It would therefore be nice if we had that convention and it was just one of those things that would tick through.

I do not think it is something that they are necessarily against. It is just not something that comes to the top of their agenda. They are always fighting some other crises or issue and, to be honest, we are in the middle of a global pandemic and we have had Brexit, so it has not exactly been typical times.

**The Chair:** Lord Sedwill, you are nodding. Do you want to add something?

**Lord Sedwill:** I agree entirely with that. I think the process to establish this convention would be quite straightforward. It would be a minute perhaps from the Cabinet Secretary, maybe after a report from this committee to the Prime Minister, saying, "I think this is the way we should now do this", the Prime Minister signing that off, and the process established at some point later in this Parliament in order to prepare for the next one after the revision that we have all said is due now. That would then just become a convention until and unless a future Prime Minister and future Parliaments decided to revise it.

As Lord O'Donnell says, it has not been possible to get this to the top of the in-tray because of the extraordinary events that we have been dealing with over the past few years, some of which will involve very significant revisions to the *Cabinet Manual* and some of which, as Lord

Howell suggested a moment ago, could be matters of controversy. The next revision will be a bigger one. Thereafter, hopefully, it could settle into the kind of rhythm we have discussed.

**Q6 Lord Sherbourne of Didsbury:** Is the *Cabinet Manual* designed primarily to reflect how Cabinet government currently works and the current conventions of Cabinet government, or is it designed primarily to explain how government ought to work?

Let me put the question another way. If, after a general election, a new Prime Minister came into Downing Street, you were the Cabinet Secretary and the new Prime Minister said, "I want you now to rewrite the *Cabinet Manual*", would you advise the Prime Minister that you would write it on the basis of how Cabinet government currently worked or how you thought it should be working?

**Lord O'Donnell:** Those are very good questions. The whole point of the *Cabinet Manual* is to be, as it says, "a source of information on the laws, conventions and rules that affect the operation and procedures of the Government". It is endorsed by the current Prime Minister, so those are the guidelines which the Prime Minister believes everyone—his Ministers and his civil servants—should operate by. That is the status of where we are now, and everyone should be mindful of those guidelines. That is what it should be.

There is always the question of whether the Government and Cabinet act in accordance with it all the time. There may be occasions when it does not, but if you have an up-to-date *Cabinet Manual*, the Cabinet Secretary is in a very strong position to go to the Prime Minister and say, "Prime Minister, you do understand that if we do this, that will not be what the *Cabinet Manual* suggests and would therefore possibly be subject to some controversy?"

**Lord Sedwill:** I have nothing to add. That is absolutely right.

**Lord Sherbourne of Didsbury:** If the Prime Minister of the day inherits a *Cabinet Manual* from a predecessor and no changes are made, and in the course of his or her Administration the Cabinet behaves in a less rigorous way than the *Cabinet Manual* would suggest, would that not justify there being a more relaxed version of the *Cabinet Manual*?

**Lord O'Donnell:** I would say no. I would say that what it means is that Parliament should then use the *Cabinet Manual* to ask the Prime Minister precisely why he is not complying with that *Cabinet Manual*.

**The Chair:** You think that the Cabinet Secretary needs a document of that kind for leverage.

**Lord O'Donnell:** It is always helpful, in my view, to have something written down that has some weight behind it, yes.

**Lord Sedwill:** Particularly something written down which the Prime Minister, or an immediate predecessor if they are within the same

Parliament, has endorsed. So it is not the Cabinet Secretary's words but words that the Government, the Cabinet itself, have endorsed. Therefore, in quoting the *Cabinet Manual* one is quoting their own political agreement back to them. That is an important tool in the Cabinet Secretary's box.

**Lord O'Donnell:** Absolutely. That is why at the start of the *Cabinet Manual* there is a foreword by the Prime Minister and one by the Cabinet Secretary.

Q7 **Baroness Suttie:** In addition to the description of relations with the EU, what are the priority areas that need to be updated, in your view? Secondly, what do you think will be the major challenges following the repeal of the Fixed-term Parliaments Act?

**Lord O'Donnell:** In saying "apart from the EU", there is a lot because of Brexit. A huge amount needs to be done there. Secondly, there are the devolution settlements and the legislation that has gone through there. A lot matters there. There are issues like maternity leave for Ministers that have happened. There are things like that.

Picking up on what Lord Howell said about contentious issues, during the period of the very contentious Brexit and the way in which Parliament operated, there were some conventions—how shall I put it?—that we all thought existed that possibly did not exist. Sometimes these were conventions of the House; you may remember the Speaker in the House of Commons making decisions which some thought did not align with the previous conventions. There should be a debate about some of those issues, which is important.

There is also the whole question of war powers. Lord Sedwill is far more expert on those than me, and he might want to add to that.

**Lord Sedwill:** That is one of those specific issues where there has been a shift outwith the *Cabinet Manual* within the last decade or so. There was a re-clarification, which I think was in a Written Ministerial Statement from Michael Fallon when he was Defence Secretary, about occasions on which the Government would authorise military action before a debate in Parliament and it would be considered in Parliament thereafter. That was the basis on which the operation in Syria took place a couple of years ago.

The *Cabinet Manual* would need to be updated to reflect that. That is a good example of a question that undoubtedly Select Committees in the House of Lords and the Commons would be interested in exploring, and where a Cabinet Secretary, and indeed a National Security Adviser, would want to reflect those views in putting forward whatever recommendation for changes they might make to the Prime Minister.

That is a rather specific area, though. As Lord O'Donnell says, the big changes are Brexit, the devolution settlement, and some changes that, as he said, would reflect some of the shift in conventions in the relationship between the executive power, the use of humble Addresses and so on.

On your second point, Baroness Suttie, in some ways the Fixed-term Parliaments Act is probably less complex for the *Cabinet Manual* than it might appear. The area that the *Cabinet Manual* did not explicitly cover was exactly how previous conventions would apply in that two-week period were there a loss of a vote of confidence before a second vote of confidence had to be established. The *Cabinet Manual* did not provide guidance on how to handle that two-week period and the role of the prerogative and so on. That was one of the areas that I recognised when I was Cabinet Secretary. We did not face it, but there was a period when it looked quite likely that we would. That was one of the areas that I recognised we would have to address in a revised *Cabinet Manual*.

I suspect that, for our successor, the fact that the Fixed-term Parliaments Act repeal will remove the complications of that two-week period is something of a relief, because it would certainly have fallen into the category of Lord Howell's constitutional controversies as to exactly how that two-week period should operate, and there was clearly no consensus about it. In some ways, repeal of the FTPA probably makes it more straightforward.

**Q8 Lord Hope of Craighead:** My background is that I am a member of the Common Frameworks Scrutiny Committee, which has a very big presence from Northern Ireland, Wales and Scotland, and is very concerned about the relationship between the common frameworks and the internal market Act.

Chapter 8 of the *Cabinet Manual* is about relations with the devolved Administrations, which is exactly the subject I want to probe a little further. You may know that a power in the internal market Act is given to the Secretary of State to give effect to an agreement that is part of a common framework, which would otherwise be struck down by the market access principles themselves. It is a way of making the two systems live together. Our committee took the view that it is a very difficult area. It needs to be fleshed out a bit more as to exactly how that power will be exercised and how it will be done in consultation with the devolved Administrations.

Do you agree that there is room for that in chapter 8 about relations with devolved Administrations?

**Lord Sedwill:** The short answer is yes, but the *Cabinet Manual* itself cannot be the mechanism by which that issue is resolved. It would need dialogue with the devolved Administrations or whatever it might be, whether through the committee that you mentioned or through another mechanism within Parliament. The substantive issue would need to be resolved by political dialogue. The *Cabinet Manual* could then reflect the outcome of that.

It is important, and we have emphasised this a couple of times, that we remember that the *Cabinet Manual* is a codification. It is the Highway Code, if you like. It is not the source of resolutions, so issues of that kind must be resolved outwith the *Cabinet Manual* and then reflected in it.

**Lord Hope of Craighead:** Would it at least merit a footnote to draw attention to the existence of that power? You do that in various other passages in the manual, and at least it flags it up as an issue.

**Lord Sedwill:** You are more expert on the specific issue than I, Lord Hope, but it sounds to me like that would be a sensible proposal.

**Lord O'Donnell:** Going back to the fixed-term Parliaments issue, Lord Sedwill is absolutely right that the *Cabinet Manual* is not the process by which these things get resolved. It simply records what has been resolved. Also, of course, it has to be silent where something has not been resolved, such as the Fixed-term Parliaments Act; things were left somewhat vague and ambiguous, so that is what the *Cabinet Manual* is. When you repeal that Act and put something else in its place, all I would ask is that it is as clear and unambiguous as possible, because that makes it a lot easier to write the *Cabinet Manual*. If you leave ambiguities in legislation, I am afraid you cannot solve them via the *Cabinet Manual*.

Q9 **Lord Faulks:** Chapter 4 of the *Cabinet Manual* begins like this: "Government is a large and complex organisation and so it needs formal and informal mechanisms for discussing issues, building consensus, resolving disputes, taking decisions and monitoring progress". You probably do not want to comment on recent communications, but do you think it would be helpful, in view of the fact that a decade has passed and communication is more informal, if the new revised version of the *Cabinet Manual* was a bit more specific about the proper ways of communicating?

**Lord O'Donnell:** Clearly things have changed. I remember Prime Minister Blair—my first Prime Minister as Cabinet Secretary—not being a great user of mobile phones, at least at the start. Things have changed quite radically.

I think you have to realise that there is not just the *Cabinet Manual*—Lord Sedwill referred to the various codes—so you have to think about the right place to put these things and whether that is how Ministers should operate. There are rules, some of which you want to put in codes and some you want to put in the *Cabinet Manual*.

Clearly we need to be thinking about how to keep pace with the way in which people operate—the increasing use of encrypted messaging services, for example, and the greater use of mobile phones. I would always want to have pretty firm control over the way my Prime Ministers communicated. The idea of Prime Ministers briefing the press directly—I suppose as a former press secretary this would have put me out of a job—does not appeal to me very much.

There should be guidance somewhere. I am not sure that it should be in the *Cabinet Manual*, but there should be guidance somewhere, particularly where there are discussions that really should be noted by civil servants. There should be records of those. In my day, when a Minister was talking to someone in an official capacity, there would nearly always be a civil servant on the line; there would be a record of the

phone call. That was just the norm. Precisely how that can operate in a world of mobile phones is a serious worry. On the other hand, you have to go with the times and the technology and the way people use it, so this is quite difficult.

I can pass on to my successor, who had to deal with this much more than I did, so he had a much harder time.

**Lord Sedwill:** In so many ways. On this specific point, Lord Faulks' question and Lord O'Donnell's response are spot on. Probably the right thing for the *Cabinet Manual* to say—just as Lord O'Donnell was suggesting—is that when Ministers are operating in an official capacity, there must be a record of any conversations they have. If the nature of the interaction means that a civil servant was not present and able to take a record, the Minister should find a way of reporting it promptly thereafter in order for it to go into the official record.

That would probably be the key here. Something of that kind would be enough for the *Cabinet Manual*. There would then presumably need to be some separate guidance on what that means for WhatsApp, for texting, for this, that and the other, or indeed for private conversations. As Lord O'Donnell suggests, that is how the *Cabinet Manual* can essentially be the umbrella for more detailed guidance that might sit elsewhere. However, the key principle—that official conversations should be on the record—is one that the *Cabinet Manual* could certainly encompass.

**The Chair:** Thank you. That is very helpful. Let us move on.

Q10 **Baroness Drake:** We have talked about the points of strain and contention, which have been rather increasing in recent times. It is argued that a body of evidence is growing that there is a government reluctance to abide by the *Cabinet Manual* expectations and a reluctance to update the *Cabinet Manual* for similar reasons—a few examples include the role of the court, House of Lords appointments, ministerial accountability, and devolution.

Against that background, how should the inclusion or revision of potentially contentious areas of the *Cabinet Manual* be approached, and what is the preferred approach to a consensus being reached on those contentious issues?

**Lord O'Donnell:** It remains to be seen for this Prime Minister, once he has got through the virus episode. I would like to think that there may well be a revision of the *Cabinet Manual*, so I am optimistic on that front.

On your point about contentious issues, I have to come back to this point: remember who owns the *Cabinet Manual*. This is the executive branch of government, so it is for the Cabinet Secretary to prepare drafts and to have discussions, but essentially at the end the Prime Minister will take this to Cabinet and it will be cleared by Cabinet. They own it, which is very important.

You can consult with all the relevant people along the way, and I would always strongly advise that. You can try to sort out some of these contentious issues as far as you can, but in the end what the *Cabinet Manual* will summarise will be the positions that the executive branch of government and that Prime Minister have decided to come to and include in the *Cabinet Manual*. I think that solves that issue.

**Lord Sedwill:** Just to recall a point Lord O'Donnell made earlier in this session, the fact that these conventions are written down in the *Cabinet Manual* means that there is then the opportunity, if there is a perception that a Government are not following those conventions, for Parliament to scrutinise that and to hold the Government publicly to account for doing so.

The fact that they are written down makes that a more natural process and gives Parliament a more natural hook to be able to do that. However, in the end these are political matters, and therefore the Prime Minister and Cabinet, with the advice from the Cabinet Secretary, must decide what they want in the *Cabinet Manual* and what they are prepared to see. That, of course, is then subject to scrutiny from Parliament, which is right in our system.

**Baroness Drake:** Lord Sedwill, in your opening remarks you said that the main purpose of the codification is to set out the expectation of the behaviour of government, even though it is the Cabinet itself that has defined what that expectation should be. If there is an area of constitutional uncertainty, should the *Cabinet Manual* not acknowledge that and at least lay out in that area of uncertainty what rules the Cabinet say the Government will hold themselves to or will expect to influence their conduct, rather than not facing up to it, avoiding it or not integrating it in the manual?

**Lord Sedwill:** It would depend on the issue. Lord O'Donnell may well have faced examples of this in his time in the early years of the coalition Government, which you might want to refer to. There would be some on which it might just be sensible for the *Cabinet Manual* to remain silent, as Lord O'Donnell said earlier. There will be others on which it might make sense for the *Cabinet Manual* to indicate that there is no consensus and then remain silent. I think that is just a matter of judgment according to the importance of the issue.

Q11 **Lord Howell of Guildford:** I was just smiling slightly in all the talk about recording and minuting meetings. I well remember Sir William Armstrong—one of your predecessors, long before Robert Armstrong—warning me that the Freedom of Information Act would certainly lead to less freedom of information, much more secrecy and many more meetings without minutes. I do not know whether that has turned out. My impression is that he was absolutely right in that forecast.

More immediately, we just heard Lord O'Donnell say that the *Cabinet Manual* has to be silent on unresolved issues. That seems to me to be a very big statement, because practically all these issues are unresolved. It

is very hard to define an issue today in the digital revolution age, with this fantastic connectivity, identity politics and all the rest, and the changing of even the nature of parliamentary majorities, which are talked about as though they are solid things when, as we know, with every MP getting 1,000 emails a day or more, the whole nature of majority is changing inside the parliamentary system.

All this is bound to lead to some feeling that putting anything down in these areas we have been discussing is merely setting the scene for more argument and more debate. I am sorry to continue to sound sceptical, but the more I hear the more sceptical I grow.

**Lord O'Donnell:** When things are changing fast it is quite important to have some kind of anchor, and I think the *Cabinet Manual* provides an anchor for things that have been agreed and are accepted as convention. If the way people are operating moves away from that, at least you have something to tell you that they are moving away from a previously established convention, so I think that is right.

The fact is that things are moving fast and there is identity politics and all the rest of it, so I always say to people, "Be very, very careful about the way you legislate, because legislation, by its nature, is a rather fixed beast and can be rather constraining when you're legislating in an area that is moving very, very fast". I have always thought that part of the problem in politics is that the people who are running politics tend to be politicians who sit in both Houses and therefore tend to have a view that legislation is the answer to a number of problems when there are other answers, let us be honest.

On your point about freedom of information, I think there are a number of Prime Ministers through time who have said, "Oh my goodness, this is a problem", and of course you will find that, when you have rules about things, people will find ways to get around them. We need to say, "Look, here are the rules. Here is how you should behave", and try as far as possible to get people to operate in a way that allows proper recording of official discussions, which should be recorded, and for the accountability process to be in place.

**The Chair:** Lord Sedwill, you are nodding. Do you want to add anything?

**Lord Sedwill:** No. Lord O'Donnell sets it out very well. The *Cabinet Manual* offers an opportunity for some of these debates to be explicit. If you write a convention down, there is then the opportunity for Parliament to say, "Actually, that decision or that action by the Government looked to us to be in breach of a convention that was written down", in this case in the *Cabinet Manual*. Without that, there is even an argument about whether the convention exists, let alone whether someone has moved to the other side of the line.

I do not think we should overestimate the importance of the *Cabinet Manual*. It is not a written constitution. It is not the source of these things. But having these things codified means that committees like this can hold Governments to account for the way they conduct themselves.

That has to be, especially in a fast-moving world, good for parliamentary democracy.

Q12 **Baroness Suttie:** I am keen to ask you both how you think the issue of spads and their role and influence should be tackled in the manual.

**Lord Sedwill:** There is, of course, a special advisers' code, and there may be a perception that the role of special advisers is changing. My own view is that this is much more cyclical than we think. We all have rather short memories about these things. Gus will well recall the controversy about the power of special advisers—Alastair Campbell and Jonathan Powell—who, under an Order in Council, were given the authority to actively task civil servants. One can think back to William Armstrong's time, when there were special advisers who were as powerful as some of those who have attracted recent controversy. So these things are quite cyclical.

Of course, spads are an important part of modern governance. They add to the political grip on governance and therefore are at least, or should be, a positive element of a Government in the way they conduct themselves. One would expect to see the way that injection of political talent is handled being reflected in the *Cabinet Manual*, but more likely amplified in a special advisers' code.

**Lord O'Donnell:** I agree with all that. As I think the questioner will recognise, good special advisers are incredibly useful for government and Ministers. Bad special advisers are disastrous for Ministers. Let us be absolutely clear about this: if anyone needed any proof of it, recent events back that up. I have always advised Prime Ministers and other Ministers: "Choose your special advisers carefully".

**Baroness Suttie:** Yes, and never become the story yourself.

**Lord O'Donnell:** Exactly.

**The Chair:** Tempting though it is, I think we should move on.

Q13 **Lord Faulks:** I want to ask you both about what role, if any, Parliament should have in the manual. Before giving you a chance to answer that, I might refer you, Lord O'Donnell, to a remark you made in a lecture shortly after the *Cabinet Manual* was published. You said this: "Of course it is right to give Parliament and others an opportunity to comment—as we are doing—but as my predecessor Lord Butler said to the Lords Constitution Committee, it is in the end 'by the Executive for the Executive'". Do you agree with that still?

**Lord O'Donnell:** Most certainly, and it is what I have been saying right from the start. What is important about the *Cabinet Manual*? Curiously enough, it is in the name. It is the *Cabinet Manual*. It is done by and for the executive branch of government. There is nothing to stop Parliament coming up with a manual of its own. The Lords could do it or the Commons could do it; we have Erskine May. I would argue that the *Cabinet Manual* is rather more user friendly than some of the publications

we have out there, which are rather dense, if I might put it that way, in other respects.

We need to understand that, and no one should claim that the *Cabinet Manual* somehow has been endorsed by Parliament. Parliament will have been consulted, but it is a creature of the executive arm of government. Lord Butler was spot on, as ever.

**Q14 Lord Howarth of Newport:** I am still a little uncertain in my mind about the status of this document, what its authority is and whence its authority is derived. Lord Sedwill referred to it as a codification and compared it to the Highway Code. These are analogies and metaphors, and they still leave me a little uncertain. We are told that it is owned by the Cabinet and endorsed by the Prime Minister. How, all the same, does it obtain its authority? Members of the Cabinet are birds of passage and conventions are pretty flimsy these days. Should the *Cabinet Manual* not be brought to Parliament to secure the confidence of Parliament, and in that way derive a clearer authority and be anchored, at least for the time being?

**Lord O'Donnell:** We made the decision and the Prime Minister has made the decision that this was very much their document. They decided on what was in it and what was not in it. They would certainly consult Parliament along the way, but it was, as it says, a guide for Ministers and officials. The Prime Minister said at the time that all should be mindful of the guidance in it. That is how they saw its use—as being something that helped Ministers and officials to understand the rules, conventions, legislation and so forth at the time. Certainly Parliament had been consulted along the way, but this was a government document.

There is nothing to stop Parliament deciding that it wants to look at this document and make suggestions, as your own committee could do, as to how it should be changed and how those changes should be reflected in a new version of it. In that sense it is fine, but in the end it has to be owned by government.

**Lord Sedwill:** I agree with that. Of course, the option is always open to Parliament to shift these conventions. We saw that in the last Parliament over the use of humble Addresses, for example, in the other House. The *Cabinet Manual* might reflect the way that the Government need to respond to that issue, but the actual shift in the power balance came from Parliament itself in the use of the humble Address. I just use that as an example.

If Parliament chose to involve itself in this area, not simply to give advice to government on how government and the Executive themselves were going to construct such a document, that is also open to Parliament. Parliament in the end is sovereign; Parliament can set the rules. Parliament could write a piece of legislation that captured a great deal of this, just as it has in other areas. In the absence of that, the *Cabinet Manual* itself is, as Lord Butler said, a document by the Executive for the Executive in the conduct of their business within the Executive

themselves, but also in the Executive's behaviour towards the other branches of government.

**Q15 Lord Howarth of Newport:** Could I ask our witnesses about the *Cabinet Manual's* role as a public-facing and educational document? What are the risks of an out-of-date manual being in the public domain in that context?

Lord O'Donnell expressed some satisfaction earlier that the *Cabinet Manual* is being used as a text for teaching students in schools about the constitution. Lord Sedwill, on the other hand, said that the *Cabinet Manual* is not a written constitution. Again, I am a little hazy about the status of this document. It seems to go beyond being a kind of mechanic's manual for Ministers and officials to being a document that is supposed to be quite declaratory of the nature of our constitution and to be used for educational purposes and for the better understanding of the public. Can you clarify how it fulfils all these roles simultaneously?

**Lord O'Donnell:** I would argue that its primary role is the one we have been talking about: as a guide for Ministers and officials. As a secondary objective, because it is public, it is out there and it certainly has been used. The constitution courses I was thinking of were more ones that would be used in universities, but certainly I have heard that it has been used in schools.

I have confidence that the people teaching at universities, one of whom is on this committee and who has probably taught his students about it, would say that this is written over 10 years ago. One of the essay questions might be, "How relevant is it today? What things have changed? If you were updating it, how would you need to update it?" I think we should give the teachers and the students a little more credit that they would not take it as gospel, nor should they.

It is a creature of its time, but it is also, I think, a very useful creature when you are trying to teach people about constitutional issues in a country that does not have a written constitution. It has these very strange things called common conventions. I remember the first time that I came across this and asked the naive question, "When does something become a convention?"

**The Chair:** Indeed.

**Lord O'Donnell:** I do not think that we ever resolved that issue.

**The Chair:** I can see Lord Sedwill agreeing, so I will bring Lord Hennessy in at this point. It might be appropriate. We have a problem with Lord Hennessy's microphone. In the meantime, Lord Howell wants to come in.

**Q16 Lord Howell of Guildford:** I wanted to come in after Lord Hennessy, who has been a pillar of wisdom on the evolution of Cabinet behaviour and the importance of an independent civil service, which remain absolutely essential. Anyone who writes that down certainly gets my full support. Guides to what should be good behaviour in order to have a stable system of governance and one that has respect and trust are

admirable. One could not question that. In these revolutionary times, everyone recognises that the whole constitutional structure is in flux thanks to the digital revolution, connectivity and everyone carrying a world opinion or an echo chamber in their pocket, as Madeleine Albright once described it.

Thanks to all that, my question is whether it is worth embarking on this exercise in this particular document, which just now is being questioned as to its source of authority. We have the Ministerial Code. We have a commitment by the Government to have a royal commission on constitutional reform. We have our own endeavours in this committee. We have endless other committees all beavering away and we have fundamental challenges to what used to be the conventions buzzing in the air. Is this the right time to be trying to pin it all down again and issue something which schoolchildren and other authorities can take as useful? I do not know. It is a very hard case to make.

**Lord Sedwill:** I think it is necessary but not sufficient, to use a phrase beloved of economists like me and Lord O'Donnell. Of course, there are many other sources of these issues, this committee's proceedings and so on. Lord Howarth was not entirely in favour of my Highway Code analogy, but I do not think it is a bad analogy. The Highway Code is not the source of road traffic legislation, but, for those of us who learned to drive, having that very complex set of legislation—legislation that would fill a room the size of any of the offices of those of us who were in government—and expecting everyone to understand all that would not have worked.

Finding a way of writing it down in plain English, trying to codify it and therefore sometimes exposing where different parts of legislation might be inconsistent—in the case of the *Cabinet Manual*, where conventions might be in tension—is a useful part of ensuring good Cabinet governance. If we did not have it, we would almost certainly want to invent something very like it.

You are right that some big updates need to be made because of the constitutional flux of the period that we are in, and some of those will be a matter of political controversy. From my perspective, if the publication of a new *Cabinet Manual* at some point later in this Parliament brings those issues on to the agenda of this committee and committees in the House of Commons and so on, all to the good. We should not have conventions shifting without proper debate and exposure.

Conventions have shifted, particularly in the last Parliament, without experienced parliamentarians really having the opportunity to say, "Are we absolutely sure that we want this particular convention to be junked, or this particular convention to be moving in quite such a radical way?" under the pressure of events. The *Cabinet Manual* provides a vehicle perhaps for that kind of discussion to happen. It does not mean that in its absence it would be impossible, but it is a useful vehicle for that kind of discussion, particularly in times of flux.

**Lord O'Donnell:** There is another advantage that I have found. In putting it together, it forced us as officials to think through all these things, to think through the Executive's relationship with Parliament. Some officials were better at this than others and it was important that we learned as we developed the document.

The other part of this, which I should not leave out, was the fact that we talked to a number of key constitutional experts in order to test out these things. Dare I say it, I could reveal, and I will probably be hung, drawn and quartered for this, that one of those constitutional experts was indeed Lord Hennessy. He was someone whose wisdom we took when we asked, for example, how the royal prerogative was viewed, and all those sorts of issues.

It was quite useful for us inside and for subsequent discussions with Ministers about what should be in and what should not, and why certain things needed to be there. I think that everybody learned quite a lot through this process, and we should not discount that.

**The Chair:** You did not quite make the text sing and be poetry, though, as Lord Hennessy had wished.

**Lord O'Donnell:** That is certainly true.

**The Chair:** I do not know whether Lord Hennessy's microphone is working. The technology is defeating him at the moment, I fear. Lord Dunlop has another question in this area.

Q17 **Lord Dunlop:** We have talked about educating the public and I wanted to ask about educating Ministers. How aware do you think Ministers generally are of the *Cabinet Manual* and its contents? What efforts are made to ensure that newly appointed Ministers have it as part of their initial briefing packs or induction process, however informal that process may be?

**Lord Sedwill:** Perhaps I can go first, having been in this more recently. It is part of the induction, essentially. I would expect Permanent Secretaries, as they welcome a new Minister, to give them quite a big briefing pack about their department. I would normally expect that briefing pack to include at least some key references and, probably annexed to it, the Ministerial Code, the spad code and so on, and the *Cabinet Manual*. That is an important feature of induction for Ministers and, again, although it may not be poetry, it is a good summary for them of how things operate.

Some Ministers come into a job and are very experienced, and you adjust your briefing accordingly, but I would expect this to be part of an induction certainly for Ministers who are coming to the Government for the first time. They would be well advised to have read it if they had those ambitions, to be honest.

**The Chair:** Very practical advice.

**Q18** **Baroness Doocey:** There is no doubt in my mind that a document that is 10 years old needs to be updated. However, I have some queries. What is the point of a rewrite when there is no enforcement mechanism for contraventions, just the suggestion that Ministers should be mindful, I think you said, of what the document says? Would an update perpetrate the myth that there are conventions and norms that are being followed all the time when, in reality, the Government can and do blatantly ignore the rules when it suits their purpose?

David Cameron did a preface to this particular document in which he talked about our system being admired around the world as an example of transparency and accountability. If you were advising the current Prime Minister at the moment, do you believe that this claim could be made by the Government in the same way today as it was by David Cameron when he wrote this 10 years ago?

**The Chair:** Lord O'Donnell, you were there 10 years ago.

**Lord O'Donnell:** Indeed, and I would stand by what was said then. On the question of enforcement mechanisms, again it comes back to the nature of this. This is a guide, and David Cameron said that Ministers should be mindful of the guidance in it. Some of the things are rules, some are legislation, some are conventions, but there is still plenty of room for manoeuvre there where Ministers may take different views about how to interpret things.

It is not black and white by any means, but, on the point you make about deviations from transparency and all the rest of it, in order to define a deviation you need a starting point to say where you have deviated from. If you have a Cabinet manual, you have a list of things that you are starting from and that in an ideal world you would not deviate from. It makes it easier to assess whether you are being as transparent as you should be and as you have claimed, and all the rest of it.

Certainly our Government and our form of governance have their strengths and weaknesses, and there are various academic exercises that try to sort those out. I would look to the work done by the Blavatnik School of Government, for example, to look at the effectiveness of civil services in government, on which we tend to come out rather well, still. Obviously there are areas where we could do better, there is no question about that, and there is always a need for reform. As Lord Howell has said many times, we are in a world that is changing very fast. The whole concept of digital government has changed quite radically and requires very different skills inside the Civil Service. It also creates very different opportunities for the way parties can govern.

This is fast moving, and the question is whether you are better off, in a fast-moving world, having something that lays down what everyone believes are the rules of the game, as far as one can. I have always taken the view that that is a good thing to have, rather than saying, "Oh, it's all up in the air and we don't have a clue". It is much more difficult then.

**The Chair:** You would leave the consequences and sanctions for breach

of the Ministerial Code just to be the political fallout.

**Lord O'Donnell:** Yes. What everyone has argued, and Cabinet Secretaries have argued, is that, in the end, others can decide if there is a breach of the Ministerial Code, but it is for the Prime Minister to decide on the sanction resulting from that breach of the Ministerial Code. That is what is important in our system. You cannot have officials doing that.

**Lord Sedwill:** I think that is right, and that is an illustration of the broader point that Lord O'Donnell was making. Accountability for breaches of what in the end are political conventions, even if they are very long standing, in our system at least are political consequences. Governments derive their authority from Parliament. Parliament does have the opportunity to hold Governments accountable. As Lord Howell suggested earlier, the nature of majorities is no longer quite the way it was perhaps when all of us were starting out. The nature of social media means that MPs often feel more independent than perhaps they did in the past.

Therefore, there is the opportunity for Parliament to hold Governments to account if it feels they have breached any of the conventions, whether it is conventions in the Ministerial Code or conventions codified in the *Cabinet Manual*. In our system, that is the enforcement mechanism. It would be a very big step to try to apply a different one to areas that are matters of convention and judgment.

**The Chair:** Do you think it is frustrating for Cabinet Secretaries if Ministers do breach this manual or the guidelines and increasingly ignore it?

**Lord Sedwill:** I do not think that I would agree with "increasingly". That is a judgment, but, again, these things do tend to go in cycles. When I was a very junior diplomat, in fact, we had the whole cash for questions scandal, which disrupted the reputation of a Government 25 or 30 years ago. These things do happen from time to time. The strength of our system is that they come out and people are held accountable. Governments are damaged when it happens, their political authority is damaged when it happens, and Parliament in particular has the opportunity to amplify and accelerate any scrutiny of this behaviour.

Good governance is in the DNA of Cabinet Secretaries. That is what we try to ensure. Therefore, it is disappointing when that does not happen, but it would be wrong to think that we should be part of the enforcement mechanism. The enforcement mechanism must be in the political arena.

**The Chair:** Lord O'Donnell, do you want to add anything?

**Lord O'Donnell:** No, I agree with everything that Mark has said.

**The Chair:** I am sorry that we have not had Lord Hennessy, who has seen this through from the beginning. We have Lord Hennessy back, but I do not know whether we will be able to hear him today. We will have to try to resolve his issues. We will hear him again, but unfortunately you

cannot get the benefit of his expertise today. Thank you both for giving your evidence today. This is just the start of our inquiry so you have given us some food for thought. Thank you very much. With that, I will end the meeting.