



Public Administration Select Committee

Oral evidence: [Civil Service impartiality and referendums](#), HC 1149

Tuesday 8 April 2014

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Members present: [Mr Bernard Jenkin](#) (Chair), [Paul Flynn](#), [Sheila Gilmore](#), [Kelvin Hopkins](#), [Greg Mulholland](#), [Lindsay Roy](#), [Mr Andrew Turner](#)

Questions 1-99

Witnesses: Professor Michael Keating, University of Aberdeen and Professor Jim Gallagher, University of Oxford gave evidence.

Q1 Chair: I welcome our two witnesses to this first session about Civil Service impartiality and referendums. Could I invite each of you to identify yourselves for the record, please?

Professor Gallagher: I am Jim Gallagher. I am Gwilym Gibbon fellow at Nuffield College, Oxford. For the avoidance of doubt, I advise various people, including one of your competitor Select Committees. Nothing I say today has anything to do with any of the people whom I advise.

Professor Keating: My name is Michael Keating. I am a professor of politics at the University of Aberdeen. I am the Director of the Scottish Centre on Constitutional Change, which is a centre backed by the Economic and Social Research Council to do impartial analysis on the referendum.

Q2 Chair: Are either of you involved with either of the campaigns?

Professor Gallagher: I am, yes. I advise the Better Together campaign.

Professor Keating: I am not.

Q3 Chair: You are not involved with either of the campaigns?

Professor Keating: No. Our centre does talk with civil servants of both Governments on an equal basis, but without commitment.

Q4 Chair: Are you out on in-or-out, or is your view private? Have you published your view on the referendum question?

Professor Keating: The centre has no view on the referendum question. None of the members has pronounced one way or the other. I myself will not pronounce, because we have an agreement that we will not take sides on this, and we will keep our personal opinions to ourselves.

Q5 Chair: Very good. We have a lot of questions and I will enjoin my colleagues and myself to be very short and quick. If you can also give quick answers, it will help us enormously. If I feel you are going on a bit too long, I am afraid I will pull you up. Can I start by asking a very general question, which I think is going to become more of a current question? What do we mean by the Northcote-Trevelyan settlement in today's age? One might summarise it as a permanent Civil Service, answerable to but not appointed by the Ministers they serve.

Professor Gallagher: I spent 30 years as part of the Northcote-Trevelyan machine, so I have some personal experience of this. The view that I still take is that a permanent Civil Service, that will serve whatever Ministers the democratic process puts on top of it, is a desirable thing. It is a desirable thing particularly in a smaller jurisdiction, simply because one does not have the resource to have two supplies of able people waiting in the background to operate the alternative, which is a spoils system, where the administration changes all of the top advisors when the administration changes.

Two things have changed since Northcote-Trevelyan. The Government has gotten very, very much bigger and much more managerial, and the political process has got much more in-your-face and 24-hour. That means that civil servants nowadays look much more like managers in public services. Typically, Ministers now want, can, and should have explicitly political advice as well as permanent advice. Putting those two things together, I think you still have a workable system.

Professor Keating: I broadly agree with that, except I think the trend for having outside recruitment is a healthy one, with people coming in and out of the Civil Service and exchanges with the private sector, with different tiers of public administration. I have also thought for a long time that it would be good to have a more explicitly committed level of civil servant, such as they have in other countries. That would not be going deep into the Civil Service as a spoils system, but having senior civil servants who have the confidence of Ministers and who might be expected to move on somewhere else if the Government changes.

Q6 Chair: In that context, what do we mean by the words “impartial” and “impartiality”? There are degrees of impartiality, such as detachment, indifference or transferrable allegiance. What do we mean by an impartial Civil Service?

Professor Gallagher: In the sense of political impartiality, it is, in my view, like an elephant: you know it when you see it, but it is quite difficult to define it. In practice, it means that you behave in such a way that any plausible potential Minister, who might be your boss, would be able to work with you. They would be able to sustain—and I am almost quoting, here, from the Civil Service Code—the confidence of the Minister you presently work for and an alternative Minister. That is what impartiality means.

Professor Keating: Yes, I think that is true. In addition, you would not be publicly identified with one side on controversial issues.

Q7 Chair: How enthusiastic should civil servants be for a particular Government's policy?

Professor Gallagher: In my view, civil servants should serve Ministers not merely loyally and efficiently but enthusiastically. That is part of their job and their job description. How they present themselves publicly is the important question. They must be in a position to explain and defend the Government's policy. In relation to a politically controversial issue, they must not be seen as personally partisan about it. That requires a degree of skill.

Q8 Chair: How are you drawing a distinction between what is partisan and what is partial to a particular Government's priorities? You seem to be arguing that civil servants should be partial about the Ministers' priorities, but they should be party-politically impartial. Is that possible?

Professor Gallagher: Yes, I think it is. The evidence is that the Civil Service has managed many transitions from one Government to another, including Governments which have gone in radically different directions. I was working in the Civil Service in 1979, when Mrs Thatcher's administration arrived with a very radical change of direction; I was working at the Civil Service in 1997, when Mr Blair's administration arrived, also with a marked change of direction. I will not say that there was not a grinding of gears on each occasion, as the engine was reconnected and moved in the opposite direction. But, it is certainly possible for that to happen. It works.

Professor Keating: Jim has given some examples of radical changes of Government, particularly in 1979. We should recognise that it is the case that the world has changed, and that some civil servants may feel unhappy working for a subsequent Government. They may want to move on. I would expect more turnover in the Civil Service as a result of that.

Q9 Chair: We have a UK Civil Service, but not in respect of Northern Ireland. How well does that arrangement work?

Professor Gallagher: What we mean by "UK Civil Service" in this context is quite important to understand. The Irish background is not particularly helpful for understanding it, but we can talk about that if you wish. When we say we have a unified Civil Service—this was the issue when the devolution settlements were drawn up in the late 1990s—we are saying that that model of a Civil Service that is permanent and will serve sets of alternative Ministers is the model that operates in the devolved administrations in the same way as it operates in the Whitehall administration. There will be the same relationship between Ministers and civil servants.

In practice, as for different Government Departments, the operation, administration, and pay and rations of the Civil Service in the devolved administration are a matter of devolved responsibility. The only things that are required to be the same are the code and values, and the peer and grading structure of the most senior staff. The key principle is the one that we discussed at the beginning. In the devolved administration, civil servants have to be able to work for whoever the democratic process puts in charge of them, be it one party or, in the devolved cases, sometimes coalition Governments—and indeed here.

Professor Keating: I was always in favour of having a Scottish public service separate from the UK Civil Service, because I thought it would give greater flexibility for changing

the structure of the Civil Service in Scotland. That in fact has not been much of a problem, because the way that the Scottish Government is organised has been changed considerably, away from the Whitehall model. Within the present settlement there is flexibility. I also thought it would give greater clarity. Particularly, I thought it would have been healthy to have a single public service in Scotland, including local government, health service and the various agencies, and a circulation of people around that. That argument was being made a few years ago; it has been overtaken by the independence debate, because now it tends to be perceived as a nationalist argument. Originally, it was an argument about good government for Scotland. I still believe in that, but I do not think it has anything to do with the referendum debate. That is a separate question.

Q10 Lindsay Roy: Professor Gallagher, an informed insider has reported that a very senior civil servant in Scotland has advised Civil Service colleagues that their role is one of impartiality, but not neutrality. Does that advice match the criteria underpinning the Civil Service Code?

Professor Gallagher: I remember when we worked for Donald Dewar in 1999. One of my senior colleagues had to take the Secretary of State and then First Minister aside and say, “Yes, Minister, we are entirely impartial, but we are on your side”. Civil servants do work for Ministers. It is very important that Ministers understand and realise that the Civil Service is there to help and support them. In that sense, the Civil Service is not neutral, as between the Government and the Opposition. The Civil Service works for the Government. The challenge for the Civil Service is to make sure that it does that in such a way that it can reasonably be expected to work for an alternative Government.

Q11 Paul Flynn: Let me give you a practical example. I would like your comment on it. Recently, there was a meeting between the surgeon-general and the Welsh Assembly. The minutes were not signed off and it was not approved in any way. A freedom of information request was put in, asking for details of this meeting. Incredibly, they were published on the same day the freedom of information request was put in. I think this is unparalleled. What was produced was something that was critical of the conduct of the Welsh Government. Is there not a question here that there appears to be some collusion between a politician and civil servants, to inform them of what was possibly a piece of damning information? It has made the Welsh Assembly very angry about this system. They are suggesting that civil servants were involved in leaking what could be a damaging piece of information for the Welsh Government. Is this an example of the Civil Service being politicised and working in cahoots with MPs?

Professor Gallagher: I am sorry; I have absolutely no knowledge of the individual example, so it would be very unwise of me to comment on it.

Q12 Chair: Professor Keating, I think you studied the Welsh system.

Professor Keating: Yes, but I have no knowledge of that particular incident. I did want to make a more general point about this debate, which is that there is an asymmetry here between the UK Civil Service and the Scottish Civil Service as regards the referendum question. As Jim said, if the criterion is that you can serve a subsequent Minister, any subsequent UK Government is going to take the same position on independence as the present Government. Being for the union is not a controversial issue in Whitehall, because all the parties are agreed on that. It is very different in Scotland, because the present

Government and the Opposition parties have a very different position. It becomes much more sensitive in the Scottish case than it does in the Whitehall case. In principle, the civil servants should obey the same rules in both cases.

Q13 Paul Flynn: Another instance was that the Prime Minister sent his notes on the attack he was about to make as part of the war on Wales and the Welsh health service, which happens almost weekly here. He sent the details of what he was going to say, prepared by officials, and it was sent to officials in the Welsh Assembly, who read through it and realised the information was out-of-date, inaccurate or just plain wrong. Is it reasonable to ask the Civil Service in the Welsh Assembly to approve an attack that is about to be made on themselves? Is this an argument for the independence of the two Civil Services? This war on Wales is going on. We know attacking the Welsh health service is being used by the Government to defend what they are doing with privatisation of the health service here. This is a highly political issue, in which the Civil Service are asked to collaborate politically with the Government—both the Civil Service here in London, who wrote the letter, and the Civil Service in Cardiff, who are asked to respond to it.

Professor Keating: Again, I cannot comment on that issue, because it is the first time I have heard of that incident. I am sorry, but I cannot really help you with that one.

Q14 Chair: Do you have the same answer, Professor Gallagher?

Professor Gallagher: In respect of the incident, yes, but it raises this interesting general question of how the civil servants operating for Governments that are of different political complexions should work together. Just as there is a reasonable expectation from the population that Governments should work together under the direction of their Ministers, so should civil servants under different Administrations. There is in the Civil Service Code, very properly, an expectation that the civil servants in different Administrations should work co-operatively with one another. I recollect that that was a recommendation of the Calman commission. Of course, that does not necessarily mean that they should be involved in political games. Political games of one sort or another happen all the time, but it is in the public interest that the different Administrations in the UK should co-operate. Therefore, it is in the public interest that there is an expectation that civil servants should work collaboratively with one another.

Q15 Paul Flynn: Is it an example of the deterioration in the impartiality of the Civil Service that the two Heads of the Civil Service, Bob Kerslake and Jeremy Heywood, wrote a tribute to Mrs Thatcher, which was not critical in any way. It was just a paying of praise to her virtues—one of the most political and controversial Prime Ministers we ever had. Would any Heads of the Civil Service in the past have written that way about a political figure?

Professor Gallagher: I have not read any of the obituaries of Winston Churchill, but I would not be at all surprised if those that worked with him had written something about working with him.

Q16 Paul Flynn: You think a serving civil servant might have written something praising Winston Churchill?

Professor Gallagher: It is possible. I have not looked; I had not actually been aware that—

Q17 Chair: Would you regard it as a breach of the impartiality principle?

Professor Gallagher: I have not read this particular piece of work, but if a serving civil servant wrote about a deceased politician that, “Her policies were just marvellous and I agree with all of them,” then of course that would be a breach of neutrality. If someone had written, “It was a very interesting challenge to work with so powerful a politician and she had many good qualities,” that is little more than courtesy.

Q18 Paul Flynn: She was never viewed as the saviour of the Civil Service in any way.

Professor Gallagher: No, that is certainly true.

Q19 Paul Flynn: These were the Heads of the Civil Service, presumably speaking for the organisation.

Professor Gallagher: They are obviously those who survived the process.

Q20 Paul Flynn: Are you not concerned about this? Would it have happened in the past? I do not think it would.

Professor Gallagher: I do not know.

Q21 Paul Flynn: Should they not be condemned for it? We had them before the Committee and they did not put up much of a defence. We are losing what is the great treasure of the integrity and impartiality of the Civil Service. It is being eroded. Is that not true?

Professor Gallagher: I do not think that is true, in general. I do not know Sir Bob Kerslake, but I know Jeremy Heywood well and I certainly do not think it is true of him—I know him personally. I do not think, however, that the approach and style of the 1950s would survive in the 2010s. The world has changed markedly. We can expect to apply the principles, but we cannot expect the same style and behaviour today as you could have expected 50 years ago, certainly not in the world of politics.

Q22 Chair: Professor Keating, can I take you back to something you said earlier: that it is understandable that the Civil Service in London should be pro-Union, because all the main political parties in England are pro-Union, but the Scottish Civil Service is in a different position? Does this approach not suggest that we are looking at impartiality purely through the lens of the different political parties and the party political system? Is impartiality not something that is above party politics?

Professor Keating: Yes, but, getting back to the point that civil servants serve Ministers, they have to be available to serve subsequent Ministers, so they stay out of politically controversial matters, and this impinges differently on Whitehall and on the Scottish Government. That is the fact. I make no moral judgment about that; that is the fact. That has meant that there are different tensions in the different places, for the civil servants on both sides.

Q23 Chair: I appreciate that. When we are asking about what the quality of impartiality is, it is surely not something that is purely regulated by the views of political parties.

Professor Keating: No, but the reason why this has become an issue is because some of the political parties have made it an issue. In the Scottish referendum campaign, there have

been accusations on the side of the Unionists that the Scottish Civil Service is too politicised, and on the part of the nationalists that the UK Civil Service is too politicised.

Q24 Chair: Supposing there was to be a referendum on the European Union, and all three main political parties were in favour of remaining in the European Union, would that excuse the Civil Service for taking sides in the referendum on the European Union?

Professor Keating: They would serve their Ministers, just as happens at the moment. I am not talking about what the role of the Civil Service should be, because my opinion is quite clear: the UK and Scottish civil servants should be subjected to the same rules. I am talking about the political reality and why this has become an issue in the campaign.

Q25 Chair: Can you answer my question then? How should the UK Civil Service respond in a situation where all three parties want to stay part of the European Union in a referendum campaign?

Professor Keating: It is nothing to do with the three parties. They would serve their Ministers; that would be their job.

Q26 Chair: So those civil servants would be entitled to champion the policy of the Government, which would be to remain in the European Union?

Professor Keating: Their job would be to present the policy of the Government, but not actively to campaign publicly for them.

Q27 Chair: Professor Gallagher, do you agree with that?

Professor Keating: When we had a referendum in 1975, the Government was actually divided. EU referendums typically divide the parties. The role of the Civil Service is to support the Ministers, not a political party.

Professor Gallagher: In general, I do agree with that. If there were a referendum and the Government of the day was in favour of remaining in the European Union, it would be the job of the Civil Service to work hard for the Government and to work enthusiastically for the Government, to develop and present its case. It would not be right for them to campaign publicly, or indeed privately, for EU membership. If there were a division between the parties—let's just imagine the alternative—they would have to be extremely careful in what they said and did, so that they were not perceived as being partisan on an issue that had become partisan. That is the analogy with the Scottish piece.

Q28 Chair: The Civil Service Code clearly enjoins civil servants to be impartial. How effective is the code in practice?

Professor Gallagher: The code is a bit like the contract in a contractual relationship between two parties. The day you take the code out of the drawer, it means that there is a problem. If you have to consult the code and ask yourself whether you are adhering to it, it is because an issue has arisen. My personal view is that the code is a bit of a baggy monster. It has got everything in it, and it is not a particularly well focused document. There are particular issues in respect of the devolved Administrations in general. In relation to the issue that concerns the Committee—the referendum—neither the code, nor indeed the legal framework surrounding the devolved Administrations, was designed for

this circumstance. The code has grown up over many years of Westminster administration, against the possibility of swapping Governments and a change of Administration. It was not designed for, and is not well drafted for, the situation we currently face, in which there is an existential question about what state we should all belong to. It is showing the strain of that.

Q29 Chair: In terms of the enforcement mechanism of the Civil Service Code, to what extent does the writ of the Head of the Civil Service in the UK actually run north of the border?

Professor Gallagher: The code itself has no enforcement mechanism. It is contractual; it forms part of the terms and conditions of individual civil servants. It is obviously binding in that sense, but there is no formal enforcement mechanism in it. The Head of the Civil Service, and indeed the Cabinet Secretary, would obviously be expected to help and guide the most senior civil servants in Scotland.

Q30 Chair: Would it be an exercise in demonstrating their impotence if they tried to enforce it?

Professor Gallagher: They have no mechanism by which to enforce it. There is no procedure or process that they can use.

Q31 Chair: There is no command line between the Head of the Civil Service and the Civil Service in the Scottish Executive.

Professor Gallagher: That is correct.

Q32 Chair: A breach of the code is the responsibility of the Head of the UK Civil Service. Would you not expect the Head of the UK Civil Service to at least say there had been a breach if there had been a breach?

Professor Gallagher: There is no enforcement mechanism. If the Head of the Civil Service took the view that there had been a breach, it would be open to him or her to say so, though it would be a kind of pointless exercise. A better thing would be for him or her to talk to whoever was responsible for the breach, and help and guide them not to do it again.

Q33 Lindsay Roy: Professor Gallagher, can you clarify, in terms of monitoring and evaluating the implementation of the Civil Service Code, where responsibility lies? Who monitors and evaluates what is happening?

Professor Gallagher: Nobody has that formal responsibility. Therefore, one might say that everybody, or certainly every civil servant, is obliged to follow the code and ought to make sure that they are doing so. There is no formal mechanism, as it were. There is no audit process by which compliance with the code is signed off on an annual basis, or anything like that.

Q34 Lindsay Roy: So they have no idea whether it is self-delusion or self-evaluation?

Professor Gallagher: It is more likely to be self-evaluation, I would hope.

Q35 Chair: So, we have a Scottish Civil Service Code. It is the responsibility of the Head of the UK Civil Service to ensure it is observed, but we have no mechanism for enforcement. Do we think we then have a blind eye being turned to breaches of the code?

Professor Gallagher: I would certainly hope not.

Q36 Chair: How much do you think a blind eye is being turned?

Professor Gallagher: The challenge for the Scottish civil servants at the moment is the challenge that Michael has identified. Whatever the technical language one might use when looking at the code as if it were a legal document, the challenge is maintaining the confidence of alternative possible Ministers. I am sorry to say this, but it is undoubtedly the case that there is a problem there. That is at least in part caused by the fact that the referendum is an unprecedented event. It is a once-in-a-generation event. The issue that arises for all of us, in looking at life after the referendum, is how Scotland, if it remains inside the United Kingdom, will have to address itself to the question of how divided it has become as a result of the referendum. One of the areas that will require attention is securing once again the confidence of potential alternative Administrations in the permanent Civil Service.

Professor Keating: This is becoming very abstract and that is why I find it difficult to respond. The Civil Service Code is a very general code of practice that needs to be interpreted in specific circumstances. If the question is whether there is a breach of the Civil Service Code in Scotland in respect of what the civil servants are doing, I would say that no, there is not. As I say, I work with civil servants in both Governments; I am not allowed to say what those discussions are about, but I am allowed to say that we do have regular meetings, and I find them extremely professional. Maybe I am taking a slightly different view from Jim here, but I do not think there is going to be a problem with these civil servants working for a future Administration with a different view on the constitutional question.

Q37 Chair: How would the arrangements need to be changed, supposing Scotland votes to remain in the United Kingdom, in order to ensure that the code in Scotland is properly enforced and we do not find ourselves in the situation where civil servants may find it difficult maintaining the confidence of politicians who might be elected to supervise them?

Professor Gallagher: I would suggest that there are three things that need to be done. The first is that the code, as it applies in relation to Scotland, requires to be looked at again. I do not say this very critically, but it is largely a carry-across from the Whitehall code. For the Scottish Government, it requires a little more thought than that, because I do not think the code properly recognises the different nature and status of the devolved Government from the United Kingdom Government.

Q38 Chair: Whose responsibility would it be to review that code?

Professor Gallagher: That particular aspect of it should be done between the Scottish Government and the United Kingdom Government.

Q39 Chair: The Scottish Civil Service is a reserved matter, is it not?

Professor Gallagher: The Civil Service is indeed a reserved matter, which is why it should be done in co-operation between the two Administrations. The other things, however, are not about the code nor the enforcement of the code. I do not think enforcement is a particularly useful metaphor or device here. What we are interested in is the reality of behaviour and the perception of behaviour. A lot of effort will need to be put in to rebuilding bridges between the civil servants of the devolved Administration. Like Michael, I know and admire many of them. There is a problem with relationship and perception; some effort needs to be put into that. That might include things like reaching out to the Opposition parties and Parliament, possibly seconding junior staff for periods to work for them and efforts like that—forming relationships rather than writing rules.

Q40 Chair: You mentioned the word “enforcement”. How should the code be enforced in Scotland, in order that it would have confidence across all the political parties?

Professor Gallagher: Enforcement is not the answer to that question. The formation of relationships is the answer to that question. I do not think that punishing people will help.

Professor Keating: Politically, it would be extremely damaging for the Head of the UK Civil Service to intervene in the Civil Service in Scotland in that way. These things would have to be resolved within Scotland. In the long run, the unified Scottish public service is probably a good way to go, for the reasons I explained earlier on. It would then have its own code of conduct, which I would expect to be agreed amongst the political parties.

Q41 Chair: Professor Gallagher, you said three steps would need to be taken: Scottish Code reviewed, rebuilding of bridges—have I missed one of your points?

Professor Gallagher: My bridges fell into two parts, which I should have explained more fully. There has to be an explicit acknowledgement that there has been a problem; the problem may be one of reality or it may simply be one of perception. The second part is the acknowledgement of that, on both sides of the argument, from potential Ministers and the Civil Service. That would be the second part of it—I should have made that clearer.

Q42 Chair: I am moving on to the question of balancing the dual obligations of civil servants in Scotland to deliver the Government’s policies and also to remain impartial. We have slightly covered this already, but to what extent is it possible for civil servants to remain impartial in a referendum if the Ministers they serve have a view on that referendum?

Professor Gallagher: Individual civil servants will have their own personal views one way or another. They would not be human beings if that occasionally did not cause them to get excited in either direction. One should simply disregard that. As servants of the Minister, it is their job to help the Minister to develop, implement and explain his or her policies. I do not regard that in any sense as a breach of impartiality. The challenge is doing so in such a way that the perception is not created that you are politically partisan. This referendum is unusually difficult and divisive. The code, which was created for rather different circumstances in a different place, is not particularly apt. I do not think we should change the code between now and September, but we should recognise that a problem has been created. We should deal with that problem.

Q43 Chair: Professor Gallagher, how serious do you perceive infringements of impartiality to be in the Scottish Civil Service in the question of the referendum?

Professor Gallagher: What is serious for me is the issue of perception. I checked this before I came: if the Opposition parties in the Scottish Parliament perceive, rightly or wrongly, that the Civil Service or individual civil servants are partisan, then that is a serious problem. Even if the civil servants have been pure as the driven snow in these matters, that problem requires to be addressed.

Q44 Chair: Can you give an example of what you think the Opposition regard as partisan?

Professor Gallagher: I am not talking about anything that is not already in the public domain here. There were some remarks by the Permanent Secretary in an internal blogging system she uses, which became public and which caused the Opposition leaders to be distressed. The big question for me is the nature and substance of the Scottish Government's independence White Paper. It is a mixture of a traditional Government document and, essentially, a manifesto, both for independence and for a potential SNP Government in office after independence. Ministers must take responsibility for that—it is their White Paper. It has created the assumption that the entire Scottish Government machine is being used to pursue the objective not merely of independence but of particular party policies to be implemented after independence.

Professor Keating: This is to be seen as a controversial political issue. In principle, it is no different from other controversial political issues. It is particularly sensitive because it is an independence referendum, but the same rules apply. I would emphasise that the same rules must apply to the civil servants on both sides. I am not willing to talk about the Scottish Civil Service without looking at the Whitehall Civil Service at the same time. I know that there have been strains in the Civil Service; people are very conscious of the sensitivity of this. In my experience, they behave very professionally in relation to this.

It is always the case that Opposition parties will say that they have certain kinds of perceptions. My perception is that there is a professional attitude on both sides, but a strong awareness of the very fraught political environment. There have been accusations on both sides. On the side of the Unionists, there is the accusation that Jim has just raised: that the White Paper was a party document. On the nationalist side, there is a discussion of Sir Nicholas Macpherson's memo of 11 February, which was seen as being an abuse of Civil Service advice, because it quoted a named civil servant in support of a controversial political proposition. Those are the two most prominent issues that have been raised. There have been a number of minor issues. This surprised me, but, for the most part, this has actually been handled within the canons of the conventional Civil Service Code and the expectations about how civil servants will behave.

Q45 Chair: So do you not agree with Professor Gallagher that the impression created by the White Paper and these remarks are crossing a line?

Professor Keating: I do not think you can blame the Civil Service for impressions that Opposition parties may have claimed that they have formed.

Q46 Chair: We really are into a very relative world now, are we not? If I say black is white and the Opposition see it as black, then that is their fault. That is what you are saying.

Professor Keating: I am saying that, from my observation of this, and from working with both sides, the civil servants on both sides have behaved professionally. They are

extremely conscious of the political sensitivity of this, which reinforces their determination to work professionally.

Q47 Chair: What about the Scottish Executive website on the referendum? I looked at it this morning. It seems to me to be a Q&A supporting independence. Every question is answered as though it was given by the Yes campaign. It seems to me to be extremely partisan. I am against separation; I declare my interest. It does not seem to me to be impartial, by any stretch of the imagination.

Professor Keating: No, but neither is the analysis coming from the UK Government. That is what you would expect.

Q48 Chair: So that's all fair?

Professor Keating: I am saying that you have to treat these in the same way.

Q49 Chair: You are saying that in a referendum, impartiality goes out the window—that impartiality means that the civil servants have to serve the Government of the day, and therefore they have to be cheerleaders for the Government's policy.

Professor Gallagher: You have to distinguish, Chairman, between what Governments and Ministers say and do, and what civil servants say and do.

Q50 Chair: I agree, but a civil servant could very easily convey, in the manner in which they answer, whether they are enthusiastically supporting something or whether they are simply giving the line to take.

Professor Gallagher: To be fair, if a civil servant sitting in front of one of your Committees, talking about the policy of the Government for which he or she works, suggests that he or she is only doing so because that is the line to take, then they are not doing their job. There should not be selected enthusiasm applied to individual Government policies. Of course, civil servants are human; sometimes it leaks out that they think one policy is hopeless or that one is good. I do not think that is the issue.

Q51 Chair: Equally, how possible is it that a civil servant will betray a little bit too much enthusiasm for the policy that they are pursuing?

Professor Gallagher: That is a risk that they have to bear in mind. This, of course, is where perception does matter. What is too much enthusiasm?

Q52 Chair: How objective a portrayal of the Scottish Executive policy is the Q&A on their website?

Professor Gallagher: I would be very surprised if it suggested that there was the slightest downside of any sort to independence. That is the responsibility of the Ministers. I would not be at all surprised to learn that it had been heavily gone over by the Scottish Government's special advisers, who are of course under no obligation to be impartial. One cannot deduce from that that the civil servants involved are not being impartial. There is a quite different question about how much Government resource, and Scottish Government resource, can properly be applied to campaigning, and where the boundary lies between proper Government activity in the presentation of policy and the use of public resources in campaigning.

Q53 Chair: Why does the Government need to have a Q&A on the referendum on their own website when, presumably, the Yes campaign will have their own website and will be able to provide answers?

Professor Gallagher: This is a question of degree. It would be extraordinary in this referendum campaign if the Scottish Government, promoting independence, said, “Of course, we are entirely neutral in this matter as a Government”.

Q54 Chair: That is not the question. The question is about how much resource they devote to it. Why does the Scottish Executive need to have a website when it is quite obvious that the Yes campaign will have a website? They give the same answers that the Scottish Executive has put on their website.

Professor Gallagher: This is a question of degree. I am struggling to be fair to the side of the argument that I do not support here, but I do not think it is improper for the Scottish Government to set out on their website, or in their publications, arguments in support of their policy of independence, just as it is entirely reasonable for the UK Government to set out, in their analysis papers, arguments in support of maintaining the UK. It is, however, a question of degree, and the place where I think the degree has gone rather too far, and I think we should be reasonably flexible—

Chair: I am going to stop you there. We are coming to the White Paper.

Q55 Lindsay Roy: Recently I met with civil servants who felt that their work was being heavily politicised. What advice would you give to them as to how to broach that?

Professor Gallagher: Although there are no enforcement mechanisms in the Civil Service Code, there are certainly mechanisms for individuals who think they are being obliged to do something improper. They are set down in the code. They do involve talking to your line management. Ultimately, if people do not get satisfaction out of their line management, there is, as I recollect it, an ombudsman appointed for this purpose. If these were my friends and I was taking them out for a beer to talk about this, I would say, “That is the formal position, and if you really wanted to follow the formalities, that is what you should do”.

Q56 Sheila Gilmore: The issue about the White Paper, it seems to me, is that very often there does not seem to be a real evaluation of some of the issues. For example, the one I would draw attention to is about universities and university funding, which is quite a difficult issue, particularly in relation to students coming from England. At the moment, although Scottish students do not pay tuition fees, Scottish universities can and do charge students coming from England at much the same cost as they would pay in England. Of course, the current position means they cannot charge students from the EU, so a student coming from France, Holland or the Republic of Ireland gets free tuition in Scotland as part of the normal arrangements within the EU.

The section on this in effect says that it will all be okay, and that after independence, Scottish universities will be able to go on charging English students. There is almost no mention of the fact that that is problematic. This section does not discuss the potential of an independent Scotland within the EU not being able to charge those fees, which has serious knock-on

consequences for Government expenditure and the finance of universities. Is it not the job of the Civil Service to outline that there are problems with that?

Professor Keating: I agree that there are problems with it. I am not totally convinced about the answer of the Scottish Government on that, but that is their position. They further elaborate it elsewhere. I cannot give you the reference, but their argument is that they could get a derogation because of various circumstances. You can say that is a good argument or a bad argument, but the argument is out there.

This is very much the same as the UK Government saying, “We are going to renegotiate our relationship with the European Union”, about which I am also very sceptical. However, that is their position and they are entitled to do this. Civil servants have a duty to articulate that, and Opposition parties have the job of criticising it.

Q57 Sheila Gilmore: This is a Government document and it is not supposed to be a campaigning document. This is a Government document and has the status of a Government document. If I am a citizen and I read a document coming from the Yes campaign or the No campaign, I will immediately form some sort of view as to where they are coming from. Reading this—that part of it, for example—I may assume that this has been looked at already. I know there is an argument about derogation, but there are just as many people who say there has never been a derogation anywhere in the EU, so there is no particular reason to think there could be one.

Professor Keating: I would have to agree with you about the substance of that particular case, and about the propriety of the Scottish Government making that argument. It is legitimate to say, “This is our interpretation”. There are many other sources of information where you can go to get a very different interpretation of that particular thing.

Professor Gallagher: Ministers are entitled to make rotten arguments; they often do. The White Paper is full of them, and that is one of them. I do not think you can blame the civil servants for that. Who knows what the civil servants suggested to the Ministers that they might say? That is not an issue of Civil Service impartiality. Ministers must take responsibility for the quality of the arguments they make. For all I know, there is a bruised civil servant sitting somewhere at St Andrew’s House saying, “I told them they would not get a derogation, but they insisted on saying that”. It is his job to shut up; those are the rules of the game.

The issue with the White Paper is not what it tells us about the Civil Service, because we have no knowledge of the discussions that went on between Ministers and civil servants about what the words should be. The issue about the White Paper, in my view, is that, although in the present circumstances a wide degree of latitude should be allowed, because this is an exceptional case, it goes beyond even that wide degree of latitude and confuses the status of a Government paper and a campaigning document. It would have been better, both for the public interest and, actually, for the interests and arguments of the SNP, for them to have had a very boring White Paper that was written probably in the language of the Civil Service, and then they could have said anything they liked in a campaigning document.

As it is, that document regularly confuses the present Scottish devolved Government, a potential future independent Scottish Government and the Scottish Government of a potentially independent Scotland made up of the SNP. I do not myself think it was appropriate for it to include manifesto promises for a political party after a referendum and after the first elections of a Scottish Parliament. No matter how one stretches it, that one was beyond the envelope.

Q58 Lindsay Roy: To what extent, then, do you believe this is a party political manifesto in terms of the quantum of information that is in this document?

Professor Gallagher: I have not made a measurement of it. There is a lot of stuff in there that is very straightforward.

Q59 Lindsay Roy: Could you highlight things that are party political?

Professor Gallagher: If you were to go to the beginning of the document, you will see two pages opposite one another. I am sure Ms Gilmore may well have them in front of her by the time I finish this sentence. One of these says “benefits from independence”, which one can argue about one way or another, and “benefits of independence if we are the Government of an independent Scotland”. There is a page of each of them. The second page lists a series of manifesto promises, which the Scottish National Party say they would deliver if they were the Government of an independent Scotland. They may be good promises; they may be bad promises. They are perfectly entitled to make promises, but it was not appropriate to make them in a Government White Paper.

Q60 Lindsay Roy: That would include things like renationalisation of the Royal Mail.

Professor Gallagher: I think that was one of them, yes.

Q61 Lindsay Roy: And childcare policy.

Professor Gallagher: Yes, certainly childcare policy.

Q62 Lindsay Roy: Are there any others that spring to mind, just for the record?

Professor Gallagher: There were promises about reducing Scottish corporation tax, a power which Scottish Ministers presently do not have. There were two promises in relation to corporation tax and air passenger duty.

Q63 Lindsay Roy: Do you believe that civil servants have been asked to cross that line?

Professor Gallagher: I have no idea what went on between civil servants and Ministers. In the end, Ministers must take responsibility for what is in their White Paper.

Professor Keating: Mr Chairman, I do not agree with that. This did not go beyond what could be expected of a Government document. The Government was presenting an argument for its policy, which includes independence and which includes doing things with independence and demonstrating what they claim independence would achieve. They would certainly be criticised if they said, “We will become independent and then we will decide afterwards what we are going to do with it; we have no idea what the consequences

would be”. It is an unusual issue, but that does not step beyond the bounds of what civil servants can be asked to do in support of the policies of Ministers.

Q64 Lindsay Roy: Would one not have a policy statement that is not a wish list without a price list?

Professor Gallagher: Mr Roy, that is a different question. One can say that the SNP’s policies are rotten and they do not add up. That is good-quality political argument.

Q65 Lindsay Roy: Would one not expect in a White Paper a costing to go with any policy promise?

Professor Gallagher: If I was writing a White Paper for Ministers, I would expect to make it one that added up, yes.

Q66 Lindsay Roy: And that is not the case here.

Professor Gallagher: There are certainly uncostered promises in it; that is true.

Q67 Greg Mulholland: With respect, we are not really getting to the nub of this issue. If you look at the very title of this document, it is very clear what it is. It is not a White Paper in any shape or form, nor is it actually a genuine guide to the constitutional actuality of an independent Scotland, which is something the people of Scotland certainly need and deserve, aside from whether it would be a good thing or a bad thing, because in the end—let us face it—the reality is that none of us know that. None of us can actually be sure about the outcome of that.

That being the case—and that is the case—how do we deal with the issue of civil servants potentially being cajoled to write things that are not appropriate? Do we need a system of whistleblowing? I am not talking about this specific example. There are different views on that—I accept that. What do we do when, in any situation, civil servants are being cajoled to write things that they themselves do not feel appropriate? Actually, that is not acceptable, and it is an abuse of the Civil Service.

Professor Gallagher: One must distinguish very carefully here between the quality of the White Paper and the arguments in it—I will put my cards on the table: I think it is a rotten White Paper and it has rotten arguments, but, then, I am against independence—and what civil servants have been required to do by Ministers.

Ministers must take responsibility for the rottenness of the White Paper. I do not know what dialogue went on between Ministers and civil servants about the individual words, but, if the Minister wants to write, “After independence, the tooth fairy will provide additional public expenditure”, the Minister is entitled to write that. The civil servant might say, “I do not think that is true, Minister”, but the Minister is responsible for what is written. One must distinguish very carefully between the quality of the argument in the White Paper and the role of the Civil Service in producing it.

Q68 Chair: In summary, you have a situation where we have a code that requires impartiality, but there is no mechanism of enforcement. A civil servant who might feel they

are being bullied into providing supporting material or even distorting material has nowhere to turn, because the code is not enforceable.

Professor Gallagher: That is not quite right, if I may say so. There is a difference between enforcement, meaning requiring someone to do something, and whistleblowing arrangements, which are provided for in the code.

Q69 Chair: The whistleblowing arrangements are provided for?

Professor Gallagher: Yes.

Q70 Chair: Are you surprised that nobody has blown the whistle?

Professor Gallagher: To be honest, no. I am not surprised. It would be a very exceptional event.

Q71 Chair: Why would it be so exceptional?

Professor Gallagher: It is almost by definition exceptional. I am not sure it has ever actually been used.

Q72 Chair: That suggests it is a suicidal thing to do, to blow the whistle on something as political as this.

Professor Gallagher: It would not be a career-enhancing thing to do.

Q73 Chair: What role do you think SpAds play in this?

Professor Gallagher: Leaving aside whether any individual SpAd is any good or not and what their views are, the advantage of them is that it is much easier for them to do things that permanent civil servants cannot do. They do not have the obligations of political impartiality. The language that Mr Mulholland might take exception to was probably provided by a special adviser. I have no objection to that, in propriety terms. That is what special advisors do.

Q74 Chair: Special advisers are meant to advise Ministers on political aspects of their work and carry out liaison with political parties. They might, in this case, be carrying out liaison with the Yes campaign. They are not meant to be writing White Papers and giving instructions to civil servants about what goes in a White Paper.

Professor Gallagher: You are absolutely right. Historically, only two special advisers have had the power to give instructions to civil servants, but there is absolutely nothing wrong with special advisers writing text for Ministers and saying, “Minister, I think you should say this in your White Paper”. It is a different point to Mr Mulholland’s point that what they say is not very good, but that is a matter of political argument.

Q75 Chair: Professor Keating, do you have anything to add?

Professor Keating: No, except to say that technically this is not a White Paper, because we do not have White Papers or Command Papers in Scotland. That is maybe something that should be looked at in the Scottish Government.

Chair: What is it called?

Professor Keating: It is colloquially called a White Paper, but it is not to be compared with the Command Papers issued by Westminster Governments.

Q76 Chair: It is very important that you explain this to us. A White Paper in Westminster has an objectivity that we expect of it. Does this White Paper not? Are we wrong to expect that kind of objectivity from this White Paper?

Professor Keating: White Papers are not objective. I have read many of them. I have been involved in them. They are stating Government policy. This is stating Government policy in a particularly contentious area and has to cover a whole range of issues. It serves as a discussion paper; it serves as a manual for people asking what the Scottish Government's position is on this. It is extremely broad-ranging, which perhaps explains some of the lacunae. You would have to dig into the website to find out what the position is on fees.

However, I am just pointing to the fact that, under devolution, we had never established this hierarchy of different papers that are trying to do different types of things. That is perhaps where some of the criticism arises. This is maybe trying to do different things, but none of them are illegitimate. They are all part of the legitimate work of a Government explaining what it is proposing.

Q77 Chair: I have a problem here. Given that we have an Electoral Commission, which applies spending limits in order to try to create a level playing-field between the two different sides of a referendum, you both seem to be giving the Scottish Government a bit of a blank cheque in Scotland to do what they want.

Professor Keating: Both Governments.

Q78 Chair: In this case, what is the point in having spending limits and control of referendum campaigns if Government is simply outside that framework?

Professor Gallagher: Government is not outside that framework. Who knows exactly where the boundary between presentation of policy and campaigning lies? If Governments spend money on campaigning during the regulated period, that will be caught by the Electoral Commission rules.

It is an interesting question: does producing 675 pages and sending it on demand to every household in Scotland constitute campaigning? My concern about the White Paper—I do not want to repeat myself—is that it does go beyond the boundaries of what a Government should do. I do not agree with Michael that, simply because the Scottish system has not established the formality of having Command Papers, there is not a distinction between a paper that is green in the sense that it suggests what Government policy might be after consultation and a paper that sets out the Government policy, which this one does, and is presented to the Scottish Parliament, as I believe this one was.

Q79 Sheila Gilmore: I can see that part of this may have arisen from the lack of clarity about papers. Generally, however, something like a White Paper or even a consultation paper might have a preface signed by a Minister, so anybody reading it is going to think, “That is the Ministerial view”. The rest may back that up, but perhaps the most contentious words or the most partisan words are going to be in that. We have a page that purports to be a kind of preface. It is not signed by anybody. It is quite tendentious in a lot of the words that are used.

Are there any other circumstances where civil servants would normally be expected to take part in something of this sort—so controversial and so strong in its wording—within six months of an election? It is within six months and they are putting forward such strongly voiced views as, “If we vote yes, we will take the next steps in Scotland’s journey. We will move forward with confidence. If we vote no, Scotland stands still”. That is tendentious; it is a point of view. It is a very strongly expressed point of view. That is a problem with the language throughout. In a normal election situation, would that be regarded as normal practice?

Professor Gallagher: Ministers must take responsibility for that, not civil servants. These are not the words of civil servants; these are the words of Ministers. I myself do not believe these words. They are tendentious words and are clearly words that are intended to be persuasive rather than explanatory. This is the language of Ministers.

The comparison one might draw would be with the White Paper that preceded the last referendum in Scotland in 1997, which the Committee might want to look at for comparative purposes. It is very much short-term. It says nothing whatsoever about what the party of Government—then the Labour Party—would do if elected in the Scottish Parliament. It sets out arguments for a Parliament, which you might think are good arguments or bad arguments, and the foreword by the Prime Minister says that he will be campaigning—he did go on, of course, to campaign. The contrast between these two White Papers is marked, not least because this one is about 20 times thicker than that one. It looks much more like a traditional White Paper, however, and it does not talk about the policies that would be followed by an Administration after an election.

This is an unprecedented situation. We are stretching rules and boundaries, because they were designed for other circumstances. We should allow a wide margin both in relation to what Governments can do and how civil servants should support them in this once-in-a-generation event. However, my personal view is that, even given those margins, this particular White Paper does stray beyond them.

Professor Keating: Again, I would say you should look at that, but also look at what the UK Government is publishing as well and judge it on the same basis.

Q80 Kelvin Hopkins: Fairly recently, there was an extraordinary event when Sir Nicholas Macpherson, Permanent Secretary to the Treasury, published a letter he had written to the Chancellor. I am not quite sure if it was leaked or who decided to publish it, but nevertheless it was leaked, and it was an astonishing letter. Had the same words been used by the Chancellor, it would not have been controversial. However, the fact that the Permanent Secretary said this seems, as *The Financial Times* said, to have “opened up a can of worms”, because freedom of information laws do not apply to Civil Service advice—quite rightly so. What do you think the longer-term consequences of this event will be?

Professor Keating: It is very unusual that Ministers should now rely on the advice of a named civil servant as an argument, rather than taking Civil Service advice and then making their own argument on the basis of it. It seems to me a precedent. I am not sure it is necessarily a bad precedent, because, in general, I would like Civil Service advice to be much more widely available and published, and the present regime is highly restrictive.

However, it is certainly very unusual, in my experience, for that to happen on such a sensitive issue, and for a Civil Service letter to become the centre of a political argument that has been running for several weeks now.

Q81 Kelvin Hopkins: I take a profoundly different view. Effectively, this is politicising the Civil Service. If the Chancellor had said exactly the same words, it would not have been controversial in that sense. I would challenge almost every sentence of the letter, personally, but that is neither here nor there; that is legitimate, because it is a political letter. However, it clearly shows a Permanent Secretary becoming a politician in the referendum debate on Scotland. Giving advice to Ministers and writing speeches—writing every word they use—is one thing; speaking themselves in public is something quite different, is it not?

Professor Gallagher: I agree. This is an exceptional event. I went along to listen to the Chancellor give that speech on the same day that this was published. I had obviously been aware that the Permanent Secretary's letter was going to be published at the same time—I think, simply, by the Government. I do not actually know that, but I do not think this was leaked by accident. That was exceptional.

As I said before, it seems to me that this referendum event is such an unusual one that the normal conventions should be stretched, and that is certainly stretching them. The issue was, of course, that in the aforementioned White Paper the Scottish Government were saying quite cheerfully, “Do not believe a blind word that UK Ministers are saying; they are just bluffing and telling lies about the issue”. This was Ministers attempting to say, “We are not just making this up. We actually have advice to that effect.”

Q82 Kelvin Hopkins: The letter goes on way beyond Scotland and talks about Europe and makes the suggestion that a currency union between Scotland and England after Scottish independence would be “running counter to the direction of travel in the eurozone”. A little later on he says, “Imagine what would have happened to Greece two years ago if they had said they were contemplating reverting to the Drachma”. That is a very good idea, in my view, but this is astonishing stuff, and it has been commented on by everybody, from *The Financial Times* to radio and television commentators, business editors at the BBC and so on. This is unprecedented.

Professor Gallagher: To be fair to Nick Macpherson, who will no doubt defend himself—I gather he is coming to see you tomorrow—the interesting policy question here is in what circumstances currency unions work. The previous month, perhaps a few weeks before the issue of this letter, the Governor of the Bank of England had set out a very careful analysis of what makes currency unions work or not work. The point he made in that debate, which was a new point, was that a substantial degree of fiscal sharing is required for a currency union to be stable. The analogy that is drawn, therefore, between a putative sterling currency union and the existing eurozone is that, of course, there is not a degree of fiscal sharing that the Governor of the Bank of England thinks is needed to make a currency union stable. Drawing an analogy between a currency union that is experiencing difficulties—the eurozone—and a putative currency union seems to me to be fair policy game, actually.

Q83 Kelvin Hopkins: Are you saying it is a fair comment? If it came from a special advisor, an academic professor advising the Chancellor or a journalist, all of that would be legitimate.

However, it came from the Permanent Secretary to the Treasury, which is quite a different matter.

Professor Gallagher: I do not know what the internal Treasury processes were, but it is clear that the Treasury advice to Ministers is that a currency union with an independent Scotland is a bad idea.

Q84 Kelvin Hopkins: I share your view about wanting to keep the Union, but I am concerned about a really dramatic change in our constitutional arrangements. For example, when you were a civil servant, did you ever consider publishing advice to Ministers?

Professor Gallagher: No, I must admit I did not. It was not the Permanent Secretary who published the advice, though. Once again, it was the Minister who published the advice. If the Minister receives advice, it is exceptional for the Minister to decide to publish it. However, if the Minister wishes to do so, actually, the Minister can do so.

Q85 Chair: This has gone further than that, has it not? Sir Nicholas Macpherson subsequently said, “Just as the Treasury has played a leading role in setting out the implications of Scotland leaving the free trade area that is the United Kingdom”—actually, it is not a free-trade area; it is a customs union—“so would I expect it to play a critical role in setting out the economic implications of the options of staying in or leaving the EU, should there be a referendum on our membership in the next Parliament”. What he is talking about is that the Civil Service has a locus of its own to advise the public to set out these views.

Professor Gallagher: I am sure the Treasury and the Treasury’s Ministers are at one on this.

Q86 Chair: This is slightly different from what you were describing as just publishing advice to Ministers, is it not? The implication is certainly different.

Professor Gallagher: That is an implication you are drawing for a different debate.

Q87 Chair: The point is that he says the Treasury has “played a leading role” in setting out the implications. He sees the Treasury as an institution with a locus of its own, does he not?

Professor Gallagher: Nick will speak for himself, but I imagine when he talks to the Treasury he thinks the Ministers are part of it.

Q88 Chair: How impartial was Sir Nicholas’s advice?

Professor Gallagher: The advice met the standards of the Civil Service Code. It was based on evidence; it was objective. It might be right; it might be wrong. That is a different question. I do not regard the advice as anything other than perfectly reasonable advice.

Q89 Chair: You did not use the word “impartial”. How impartial is the advice?

Professor Gallagher: It is entirely in accordance with the requirement of political impartiality in the Civil Service Code.

Professor Keating: I think it is; that is not the problem with it. The problem is the publication of this and the use of a named civil servant by politicians. That is problematic.

The nature of the argument is you can disagree with it or agree with it. That is fair enough. Similarly, the Scottish Government has got information about a currency union, but has got it from academics who have advised them. They have published their advice, but they are academics, not civil servants.

Q90 Chair: What implications does the publication of this advice have?

Professor Keating: It has implications for the future. You have been hinting that this might come up again in a future EU referendum. People will be asking those sorts of questions of an EU referendum. It may now be difficult now for the Treasury not to give its advice, because the precedent has been set.

Professor Gallagher: There is of course a previous precedent. It is not quite a direct analogy, but I know you, Chairman, will recollect the Treasury's five tests in relation to the Euro membership.

Q91 Chair: That was about a policy decision, however.

Professor Gallagher: This is about a policy decision too.

Q92 Chair: It is about a policy decision not being made by the British Government; it is a policy decision being made by the Scottish people or, in the case of a referendum on the EU, by the British people. The five tests were about a policy decision to be made by Ministers.

Professor Gallagher: Yes. That is all the more reason, therefore, that, if the British or Scottish people are making a decision, they should have the benefit of full information.

Q93 Kelvin Hopkins: Can I talk about an example? If we go back even further to the ERM decision or, better than that, the 1967 devaluation decision, clearly, Ministers were being advised, "Minister, you can do this or you can do that. These are the implications of both". That is legitimate. If they had said, "Devaluation is absolutely unthinkable, Minister, and I am going to publish a letter to say so", that would be very different. Indeed, of course, after the devaluation decision they got proper advice from civil servants. There no doubt was a debate even between the civil servants within the Treasury—the Keynesians versus the sound-money or currency-flexibility people. That was legitimate.

If the Permanent Secretary, however, had come out and said, "Devaluation is unthinkable", it would have put him in a political position for a start. His position becomes untenable after that.

Professor Gallagher: If, on the other hand, the Chancellor of the day had received a memorandum from the Permanent Secretary to the Treasury saying, "Whatever you do, do not devalue, because the following bad consequences will follow", and he had taken the decision to publish that memorandum, that would have been exactly analogous to the current situation. If you remember, at the time, of course, up until the point of devaluation, Ministers were saying, "Devaluation is impossible and unthinkable".

Q94 Kelvin Hopkins: As I understand it, there was a D-day arrangement when civil servants had made a decision to devalue a long time before the Chancellor was told. I understand this from one of my former lecturers, who was a former Treasury official. They

decided to tell the Chancellor about 28 days before D-day. D-day was about 40 days before it actually happened.

Professor Gallagher: It is always reassuring to know that the Treasury do tell Chancellors things.

Q95 Chair: This is a general question. How desirable is it for named senior officials to be drawn into public political debate?

Professor Gallagher: In general and in the abstract, named senior officials are often, one way or another, drawn into public debate. It is not always undesirable. To take a wholly different issue, the question of how the National Health Service is organised is somewhere between a management, policy and political question. I do not know where that debate is in England today, but I would be astonished if the views of the Chief Executive of the NHS were not discussed and canvassed in that debate. In the generality, senior public officials' views and opinions are often either on the record, by agreement with their political chiefs, or discussed. It is unusual but not wholly exceptional, in that sense.

Q96 Kelvin Hopkins: One can see a weak Minister in the future coming to the House, saying, "I know I was unsure about it, but the civil servants say this, so this is what we are going to do". That is not the way forward. The Minister has to be accountable and has to take responsibility as part of our democracy. He or she comes to the House; if they get it wrong, they are to blame. They do not turn round and lean on their civil servants and say, "The civil servants said this; I am just passing on what they say".

Professor Gallagher: That is an objection to the line of argument that Michael runs, which is a defensible line, which is that we should operate a different system, in which there is lots and lots of public Civil Service advice and Ministers can pick and choose between it and any other advice they fancy and then deploy.

Q97 Chair: That is a matter for Ministers, to use your own words.

Professor Gallagher: It is, absolutely. That is a way of doing it.

Professor Keating: Indeed, where they have this system, in New Zealand, Ministers are even more responsible, because we know what advice they have been given. If they have overridden what turns out to be good advice, they have to answer for it. That is a big constitutional change, however. The case we are talking about at the moment—the Permanent Secretary of the Treasury, a very senior civil servant, pronouncing on an issue of this importance—would be an extreme example.

Q98 Chair: Coming back to the beginning of our conversation, if senior officials are drawn into partisan disputes about major issues in policy—this is presumably what Scottish civil servants are doing as well; you now advert this as a problem—how do those civil servants remain permanent and impartial civil servants who are able to support any Government? What is sauce for the goose is sauce for the gander.

Professor Gallagher: Michael and I may slightly disagree on this, but this takes me back to my rather circular definition of impartiality: that you must be able to maintain the confidence of any potential alternative Administration.

Q99 Chair: Suppose Sir Nicholas Macpherson was drawn into publishing advice about the consequences of leaving the European Union and then the UK voted to leave the European Union. Where would his credibility stand then?

Professor Gallagher: That takes me back to the need for civil servants to be absolutely clear that, in relation to a matter that is potentially controversial between their potential alternative bosses, they should be seen to be squeaky clean.

There is therefore an asymmetry, going back to the case of the Scottish referendum, between civil servants in Whitehall and civil servants in St Andrew's House, because the idea that the Union is a good thing is not controversial between the political parties here in Westminster. It might be that EU membership is controversial between the political parties here in Westminster; it might not be that. However, it is certainly the case that Scottish membership of the United Kingdom is controversial between the political parties in Scotland.

A wise civil servant in Scotland will make sure he or she does not get themselves identified on one side or another of that argument

Professor Keating: I agree. In principle, that should therefore apply to Whitehall as well. The Union may not be controversial in England, but Whitehall civil servants are paid for by Scottish taxpayers. They pay to support the United Kingdom as a whole. They should be sensitive about issues that are politically difficult anywhere within the UK.

Chair: You have given us much food for thought. We are extremely grateful to you. Thank you very much indeed. No doubt you will be watching our session tomorrow with Sir Nicholas Macpherson with great interest. Thank you.