



Public Administration Select Committee

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

Tuesday 6 May 2014

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Members present: [Mr Bernard Jenkin](#) (Chair), [Alun Cairns](#), [Paul Flynn](#), [David Heyes](#), [Kelvin Hopkins](#) and [Lindsay Roy](#).

Questions 183-384

Witness[es]: **Sir Bob Kerslake**, Head of the Civil Service and Permanent Secretary, to the Department for Communities and Local Government, **Sir Peter Housden**, Permanent Secretary to the Scottish Government and Secretary to the Scottish Cabinet, **David Maddox**, Westminster Correspondent, *The Scotsman*, **Michael Settle**, UK Political Editor, *The Herald* and **Professor James Mitchell**, Professor of Public Policy and International Relations, University of Edinburgh, gave evidence.

Q183 Chair: May I welcome you both to this session on Civil Service impartiality and referendums? Could I ask each of you to identify yourself for the record please?

Sir Bob Kerslake: Sir Bob Kerslake, Head of the Civil Service and Permanent Secretary at the Department for Communities and Local Government.

Sir Peter Housden: Sir Peter Housden, Permanent Secretary of the Scottish Government. Good morning.

Q184 Chair: We will endeavour to keep our questions as crisp and as short as possible, but if you could also keep your answers brief that would assist us, and if you are going on a bit too long I may interrupt you. Can I just start by asking what we mean by impartiality and objectivity?

Sir Bob Kerslake: Shall I start, Chair? Then Peter might want to add.

Q185 Chair: Can I take it that you are answering for each other; that you are part of a unified Civil Service and therefore you will be giving the same answers?

Sir Bob Kerslake: I am happy to do that.

Chair: Okay, that is marvellous.

Sir Bob Kerslake: The best guide to those words comes from the Civil Service Code, which is this document. Impartiality is described as “acting solely according to the merits of the case and serving equally well Governments of different political persuasions”. Objectivity is “basing your advice and decisions on rigorous analysis of the evidence”.

Q186 Chair: Sir Peter, you would concur with that.

Sir Peter Housden: Yes, indeed. Chairman, my sense is that you are working within the law and the code to serve the Government of the day regardless of its political complexion and across the full weight of its responsibilities, as Bob indicated, whilst preserving the capacity to serve potential successor Governments.

Q187 Lindsay Roy: Morning, gentlemen. I understand that civil servants have been reminded that they have to be impartial and objective, but not neutral. Can you, for the record, just explain the difference?

Sir Bob Kerslake: Yes, I can, and it very much bears on the point that Peter made, that we are required and expected to serve the Government of the day. We are not neutral to Government policy; our role is to support the Government in the delivery of their policy. As we said in our submission of evidence, I would expect civil servants to be taking forward Government policy with enthusiasm and commitment. That is part and parcel of our responsibility.

Q188 Lindsay Roy: So it would be wrong to say, when John Swinney spoke about the Civil Service not being neutral, that he made a mistake there.

Sir Bob Kerslake: No, I think it is correct to say that we are not neutral. That is to say, we do not stand in a position where we are neutral about Government policy as opposed policy of the opposition parties. We are there to support the Government of the day in the delivery of their policy, so we are not neutral about Government policy. We are there to support the delivery of their policy.

Q189 Lindsay Roy: I understand that. John Swinney, the Cabinet Secretary, when hearing of Nick Macpherson’s comments, said he had crossed the line of neutrality. That would not be correct, then.

Sir Bob Kerslake: I do not think it is the case that Nick crossed the line of neutrality, because he is there to give advice to the Government of the day. The issue, which we will no doubt come on to in relation to Nick Macpherson, is the publication of that advice, which is a different point.

Lindsay Roy: We will, yes.

Q190 Chair: You are both from a local government background and learnt your trade, if I may put it that way, in local government. When you each came to Whitehall, what difference did you find in the attitude towards impartiality and objectivity?

Sir Peter Housden: I have worked in local government, Chairman, for a variety of administrations, led by Conservative, Labour and coalitions, and, when I came to work in central Government in 2001, many, many things were different. The one that felt very similar was the context of working in a politically directed organisation. Although the

terminology and its basis in statute and guidance might be different between local government and national Government, the basic principles and ethics were the same and operated in the same way, helpfully.

Sir Bob Kerslake: I would just add that my experience runs to working for a Conservative administration, for a Labour administration, for a Liberal Democrat administration, and, indeed, for two minority administrations for those two parties. I have worked in local government of all parties. The one distinctive difference that you would pick out—much is the same, I have to say, as Peter has described—is, in relation to local government, you are advising the council, which is all councillors, whereas, of course, in Government you are supporting the Government, and there is an Opposition, and that is an important distinction.

Q191 Chair: In local government, you are very much the chief executive. Historically, before cabinets in local government, the chief executive was very much more of a moving and shaking figure in the local authority than, say, a Permanent Secretary is or the Cabinet Secretary is in Government. The role is subtly different, isn't it? Can you explain what the subtle difference is?

Sir Bob Kerslake: For me, a lot of it is the same: the managerial leadership, the working to a set of members, in this case, rather than Ministers. The potential difference, as I touched on, is that, formally, decisions of local authorities are made by the full council, the full council being the executive. That is certainly the way it works, whereas clearly, of course, in the case of Government, the decisions are made by the Government of the day. In many respects, the job is the same: it is to lead and manage civil servants or local government staff in the support of the political administration.

Sir Peter Housden: Chairman, might I say that the aspect that does feel the same to me is in relation to propriety and ethics? There would be, in the ordinary course of the business of the council, matters that would arise for the controlling group on a range of those types of issues, on which, as chief executive, you would be called to offer advice. In all normal circumstances, you would offer that advice in private, so that has the same feel of the way in which civil servants work with the Government of the day.

Q192 Chair: So it would be wrong for anybody to suggest that there is a subtle change taking place in Whitehall as the result of senior figures coming in from local government.

Sir Bob Kerslake: I personally would not go along with that view. It is good to have people from local government coming into the Civil Service, but I do not think it changes the environment.

Q193 Chair: You would agree with that, Sir Peter.

Sir Peter Housden: Essentially, yes.

Q194 Chair: In the case of referendums, it is a bit different, isn't it? It is not as though—well, maybe you might finish up, Sir Peter, working for another administration in Scotland with a different view on whether the United Kingdom should remain together or not. How would you be able to do that objectively and impartially given the views that you have expressed as the senior civil servant in Scotland?

Sir Peter Housden: Chairman, I have not expressed any views on the question of the referendum outcomes, yes or no. This kind of issue, albeit in heightened form in Scotland, is the type that is presented to civil servants repeatedly as administrations change. In 2010, one day I was working one day for John Denham, and the following day was working for Eric Pickles. There are a whole series of processes in the run up to changes of government that help build those relationships in the ordinary way. The six-month convention in terms of support to minority parties is often a fruitful period to understand and to build those relationships.

Q195 Chair: In a referendum campaign, there must be particular pressures on civil servants to do things, to agree things, to produce things. What are those pressures?

Sir Peter Housden: I agree that the referendum situation is one of heightened sensitivity across the whole country, not only in relation to government. We have taken particular care, because you are absolutely right that the potential for civil servants to feel that they need guidance and support through a heightened period is significant. We have taken a lot of steps in terms of guidance, advice, discussion with civil servants in Scotland over an extended period, to help them guide and interpret. As a last point, just to underline something Bob said, the Civil Service Code has been very helpful for us in all of this: an extant document that has its basis in statute and has been able to guide us quite supplely through those issues, but discussion and advice, certainly.

Q196 Chair: Can you give an example of where you have been put under pressure to do something, produce something, agree to something, which you have had to refuse?

Sir Peter Housden: In the context of Scotland?

Chair: In the context of this referendum.

Sir Peter Housden: There have been none, Chairman.

Q197 Chair: So you have agreed to everything.

Sir Peter Housden: There has been nothing in the Scottish context that has made me conclude that I should—of course, I asked about Scotland or England, because—

Q198 Chair: So there is not a single Government press release that you have queried about the use of the language, or anything like that—nothing.

Sir Peter Housden: Sorry, that is a slightly different point. There are, of course, in the ordinary course of business of government, a number of situations where I and colleagues would offer advice about where the line should be drawn in relation to particular items of the kind that you discuss. My broader point was that, in extremis, of course, an accounting officer in the UK Government or in Scotland has recourse to accounting officer directions. If he or she is profoundly disturbed by the course that the Government is intending to take, there is an established procedure, which, interestingly, concludes with the Permanent Secretary's advice coming into the public domain. No such situation has arisen in Scotland.

Q199 Chair: There have been no letters of direction.

Sir Peter Housden: No, sir.

Chair: None whatsoever.

Sir Peter Housden: No.

Q200 Chair: When I was PPS at the Scottish Office, I remember the then-Secretary of State, Michael Forsyth, wanting to put out a Scottish Office press release attacking Labour's roof tax, and the Permanent Secretary said, "No, you cannot use that term in a Scottish Office press release". That sounds familiar to you; you would do a similar thing if the SNP was attacking referendum opponents. Can you give an example?

Sir Peter Housden: Well, it would not be appropriate to give an example, but simply to agree with you that, yes, myself and other civil servants in Scotland offer advice on where that line should be drawn, as to whether a comment should come from a ministerial source or a Scottish Government spokesman. That line is an important one, and we offer advice thereto.

Q201 Chair: To what extent do you feel there is a conflict of interest for civil servants? This is the eternal question for civil servants, isn't it? If they agree to what the Minister wants, it may be convenient for the regard the Minister will hold them in, but it may not be right. To what extent do you feel that the Scottish Civil Service is being confronted with conflicts of interest of this kind during this referendum?

Sir Peter Housden: Civil Servants in any Government, given the width and significance of Government responsibilities, are in the situation of needing to offer Ministers advice, as policy is formulated and implemented. You have evidence from Cabinet Secretary John Swinney about the advice that is given to him by the Scottish Government Civil Service. I draw your attention to what he says there, because it is a matter of professional honour for us to offer, in private, robust and objective advice, but, at the end of the day, policy is a matter for Ministers to determine and for the Government to shape, and we work for the Government of the day. Those are the fundamental parameters, and they work well.

Sir Bob Kerlake: That would be absolutely consistent with the UK Government: civil servants are there to give advice to Ministers. You would expect there to be an open and robust conversation, but, in the end, Ministers decide, and, unless, as Peter suggested, there is an accounting officer direction issue involved, it is our job to see those policies implemented.

Q202 Chair: In terms of your relationship to each other, what kind of relationship do you have, Sir Peter, with the Civil Service in London with regard to reserved matters?

Sir Peter Housden: The relationship is close, Chairman. I am very much part of the UK Civil Service and a member of the Civil Service Board, which Bob chairs. The devolution settlement really does require close working relationships between the two Governments, because, although the line is drawn in statute, if you take, for example, employment policy or energy policy—a variety of issues—then close collaboration is clearly in the best interests of both Governments. We work very hard from top to bottom to form the right sort of relationships to keep close, and to understand where Ministers of the different Governments want to get to.

I suppose the high point for us in this was the Edinburgh Agreement, which was put together by the two Governments, and really underlines a success story. This Parliament,

the Scottish Parliament and both Governments should take great credit for the way in which a potentially very divisive issue has been channelled, in constitutional terms, into a referendum that will be safe, legal and decisive—much admired abroad. The context here is one in which, both in terms of the delivery across the reserved devolved boundary, and on these difficult constitutional questions, the relationship works well.

Q203 Chair: Is it a day-to-day relationship?

Sir Peter Housden: Very much so.

Q204 Chair: Is it a relationship that is conducted in writing, or is it informal?

Sir Bob Kerslake: It will be a mix of things in writing and things that are informal. It is very much our responsibility to ensure that the business of government continues, and continues well, notwithstanding the fact that there is a referendum where there are differing views. We have conversations regularly about issues that are involved on both sides, and what I would say is that we are doing it on the basis of very solid foundations, through the Edinburgh Agreement and the memorandum of understanding that exists. We have very solid foundations; that side of it works extremely well, in my view, but as Peter said, Peter is part of the Senior Civil Service and attends key governance bodies in relation to the Civil Service as well.

Q205 Chair: What constraints does the framework agreement apply to the relationship?

Sir Peter Housden: Between the two Governments?

Chair: Between the two bits of the Civil Service.

Sir Peter Housden: I am not sure I understand the reference to the framework.

Q206 Chair: There is a framework agreement for the conduct—a memorandum of understanding.

Sir Peter Housden: I beg your pardon, between the two Governments. Yes, that has been very helpful.

Q207 Chair: What constraints does it apply?

Sir Peter Housden: I suppose the principle is that we both work for our respective Governments, but, as civil servants, we have talked about the way in which we manage those relationships. That is the one defining characteristic.

Q208 Chair: So it does not provide any constraints.

Sir Peter Housden: Civil servants are used to working in this pattern, Chairman, in that framework, so not in a significant sense.

Sir Bob Kerslake: I am trying to search for what you mean by constraints here.

Q209 Chair: Presumably, it is meant to provide a framework for your interaction, but what you are basically telling me is that it does not.

Sir Bob Kerslake: No, I think it does.

Chair: It remains a free for all.

Sir Bob Kerslake: What I was touching on was: it provides an important part of the foundations of how we work together.

Q210 Chair: If it means anything, it should provide some kind of constraint on what each party does.

Sir Bob Kerslake: What I would prefer to say is that it provides very helpful guidance and processes.

Q211 Chair: What does it guide you to do and guide you not to do?

Sir Bob Kerslake: It guides us to try and resolve issues between the two Governments.

Sir Peter Housden: A good example here, Chairman, might be the question about the funding of the Olympic Games. Members here will recall that there was a dispute about how much of that should be passed to the Scottish Government under the Barnett arrangements. That was an issue where it had not been possible to reach an agreed position at official or ministerial level, and the Joint Ministerial Committee that sits across the devolved settlement had discussions around that, and a satisfactory solution was reached. The machinery works, but the basic issue is that you have two Governments, and it is a framework for them to work together effectively.

Q212 Chair: It seems to me that, whereas the legislation says the Civil Service is a reserved matter, the memorandum of understanding seems to create a framework in which you recognise the political reality of something that is completely the opposite.

Sir Bob Kerslake: It recognises the reality that there are two Governments here, served by a single Civil Service, and that there are going to be issues of difference between them.

Q213 Chair: A single Civil Service in name only.

Sir Bob Kerslake: I think more than that. As we have said earlier, the code is very much the same code that we work to.

Q214 Chair: They are slightly different codes and they are separately enforced; is that correct?

Sir Bob Kerslake: They are slightly different, but, in all the essential points, they are the same.

Q215 Chair: But they are separately enforced.

Sir Bob Kerslake: They are enforced in the same way as Departments enforce, on my behalf, through Permanent Secretaries.

Q216 Chair: Yes, but, ultimately, in the UK Civil Service, the Cabinet Secretary or the Head of the Civil Service will have a role in enforcing the code, except in Scotland, where it is left to Sir Peter.

Sir Bob Kerslake: Ultimately, I have a role in relation to the code, full stop, but the point here is that there are arrangements, as with Peter, for other Departments, where the

Permanent Secretary in the first instance deals with issues about the code and its enforcement.

Q217 Chair: He seems to have the last word on enforcement.

Sir Bob Kerlake: I think he would clearly deal with issues in relation to civil servants in Scotland, and that is absolutely right, as I would expect a Permanent Secretary to deal with issues in their Department.

Q218 Chair: I do not think it is quite the same, is it?

Sir Bob Kerlake: There is a huge amount of similarities, but obviously there are two distinct Governments, and ultimately Peter is accountable to the Scottish Government.

Q219 Chair: Can I just ask, finally, about what discussions you have had with Ministers in relation to purdah rules for the referendum? Will those rules be the same for the UK Government and the Scottish Government?

Sir Peter Housden: Essentially the same, Chairman.

Q220 Chair: If they are the same rules, how are they going to be enforced?

Sir Peter Housden: The Scottish Government, through the legislation that delivers the referendum, will be bound by a 28-day period, and the UK Government, who, of course, are not bound by the same piece of legislation, have indicated that they will voluntarily submit to the same principles. I think it is a framework that people north and south of the border will recognise, as neither Government does things in that 28-day period that could be held to be seeking to influence how people might vote in that referendum.

Q221 Chair: Sir Bob, if the Scottish Government breaches a purdah rule, and Sir Peter is happy with that breach, what is your role?

Sir Bob Kerlake: It is for the Scottish Government, who, after all, are operating these purdah rules, as Peter said, in the first instance, to deal with any issues of breach of the purdah rules.

Q222 Chair: What happens if they do not deal with them? It is a United Kingdom referendum.

Sir Bob Kerlake: It is for the Scottish Government to deal with those issues. I do not think it is for us to agree on those.

Q223 Chair: The Scottish Government has a view on this matter, as has the United Kingdom Government.

Sir Bob Kerlake: It has, but Peter has responsibilities, as accounting officer, as the responsible officer. So do I, and so do Ministers inside the UK Government. I would look to Peter, in a sense—this is, after all, legislation that went through the Scottish Parliament—to enforce the requirements of that legislation in the same way he would do for any other legislation that has gone through the Scottish Parliament.

Q224 Chair: If the Scottish Government breaches the purdah rules, and Sir Peter takes no action, is that it?

Sir Bob Kerslake: It is for the Scottish Government to take responsibility, and it is for the Scottish Parliament to—

Q225 Chair: This is the United Kingdom Civil Service we are talking about, and you are Head of the United Kingdom Civil Service.

Sir Bob Kerslake: Let me just go back again and pick up the point Peter made. The actual referendum legislation is legislation that went through the Scottish Parliament.

Q226 Chair: Delegated as a reserve matter from the United Kingdom Parliament.

Sir Bob Kerslake: Well, with approval by the UK Government through the Edinburgh Agreement. The point I am making is that this is legislation that their Parliament has passed, and it is right and proper that they take responsibility for the proper implementation of that legislation, and we, in the UK, have made a commitment we will follow the same rules and principles. The issue that arises, for me, is a different issue, which relates to the code.

Q227 Chair: Sir Peter, if the United Kingdom Government breaches the purdah rule, and the Head of the Civil Service in London appears unwilling to do anything about it, what would your role be?

Sir Peter Housden: That would be a matter, Chairman, for the UK Parliament, for the Westminster Parliament, because that is to whom Ministers here in the Government and Bob are ultimately accountable. To go back to your Scottish presumption there, that is exactly right, so it would be for the Scottish Parliament to consider any concerns about breaches of the regulated period.

Q228 Chair: Will UK Cabinet Ministers be able to make policy announcements during the purdah period, Sir Bob?

Sir Bob Kerslake: If they follow the same rules on purdah, if it relates to Scotland, clearly, they will hold back from making announcements that bear on the referendum. There may be policy announcements. As you know, the rules on purdah are, if there is a need to make an announcement in the normal course of business, it would have to be made, but they would clearly observe the normal rules on purdah on policy announcements, as it bore on the referendum.

Q229 Chair: So the advice of civil servants would be to prevent Ministers—

Sir Bob Kerslake: If it bore on the issue of the referendum, clearly, they would want to keep with their own agreed approach.

Q230 Chair: Suppose a Minister wanted to make a big announcement about social security, which is a reserved matter. In the end, if there is a “yes” vote, nothing is reserved, so every policy the Government announces—

Sir Bob Kerslake: A judgment will have to be made during that period of which policy announcements need to be made in the normal course of business, and which ones might

be regarded as having an impact on the referendum at the time, in exactly the same way as we do now in the purdah period.

Chair: I do not think this is very clear, but I will move on.

Q231 Lindsay Roy: Sir Peter, commendably, as I understand it, you have given additional advice and support to civil servants in relation to referendum issues. Can you tell us what that additional advice has been? Sir Bob, has that been replicated throughout the rest of the UK, your Civil Service team?

Sir Peter Housden: Thank you very much. The code is a well-established document; it has a Scottish edition, which is essentially the frame. The moment of the election of a new Government is always the time to renew these things, so from 2011 onwards we have been active in promulgating the code. Really, right from the moment that you come into a job in the Scottish Government, you would be familiarised with the code. Where there are particular moments—and, of course, the period since 2011 has generated a lot of them—we, the leadership of the Civil Service in Scotland, take particular care to make sure that people not only are aware of what the code says, Mr Roy, but also have the opportunity to ask questions about it and express concerns.

Q232 Lindsay Roy: That is the additionality.

Sir Peter Housden: Yes, I hope so, but you will appreciate better than anyone that the referendum generates significant issues, which impact on civil servants as they do on other citizens. We felt it important that they have the space and feel able to discuss those issues in that way. Lastly, we often—we are together every week at leadership level, the directors of the Scottish Government—will talk about issues in that sense, and share with each other where we think staff are, because I think we have a duty of care, a responsibility to them, to help get through this period with the integrity of the Civil Service intact, and that is what we intend to do.

Sir Bob Kerslake: Just to add to that, we obviously give a lot of guidance in relation to the code, which forms the foundation of this; we have given guidance out in relation to the referendum, and we will issue guidance in relation to the purdah period in the near future.

Q233 Lindsay Roy: Has it been of the same nature as Sir Peter has given?

Sir Bob Kerslake: Very much following similar principles and similar approaches, yes.

Sir Peter Housden: We do have some evidence—again, I think you have this from the Civil Service Commission—about awareness of the code being at a high level. This would be true in the UK Civil Service and in Scotland, and a good proportion of people, two-thirds or so, have confidence not about only how to raise a concern, but that it would be dealt with appropriately.

Sir Bob Kerslake: Awareness of the code is at near 90%.

Q234 Lindsay Roy: What recent evaluation has been made of adherence by civil servants to the code of practice and how has this been done?

Sir Peter Housden: In a way, what I have just described is an ongoing process of evaluation. We are, all the time, testing for where civil servants feel they are on these sorts

of questions. We offer ready sources of advice, so, within the Scottish Government, there is a small team of civil servants who stand ready to offer advice on propriety and ethics issues. We do, of course, liaise with our colleagues within the Cabinet Office in London on particular questions, such as the Chairman's questions about purdah periods, and also the run-of-the-mill things: by-election purdah periods and all that sort of stuff. We would take advice and just test nuances around that.

Sir Bob Kerslake: It is an ongoing process, exactly as Peter described.

Q235 Lindsay Roy: Is it robust?

Sir Bob Kerslake: I think it is very robust. Any complaints, any issues, we look at very thoroughly, in the first instance, as I have said earlier to the Chair, through the Permanent Secretary. Ultimately, they might well come to me, but we have robust processes and they are subject to proper evaluation and investigation.

Q236 Lindsay Roy: Are you aware of any breaches of the code, and, if so, what kind of actions is taken?

Sir Bob Kerslake: I am not directly aware of any specific breaches. It is not to say there has not been any, over time, for civil servants, but I am not personally aware of individual breaches.

Q237 Lindsay Roy: Would that not be something that the Head of the Civil Service should know?

Sir Bob Kerslake: In my time, I am not aware of ones coming through. What I have not got is a record of investigations and potential breaches over what would be a long period, over the whole of the Civil Service. Bear in mind, as I said earlier, I would expect those issues of breaches to be investigated by Departments in the first instance.

Sir Peter Housden: It might be worth saying that we do try to take a preventative approach to this, so to offer advice and guidance ahead of risks. For example, our Ministers are active currently in explaining the basis of the White Paper, allowing it to be subjected to public scrutiny in a range of meetings around Scotland. Now, as in other things, the Civil Service is supporting Ministers in that work, but we make clear, and we make clear to the members of the public at those audiences, the role of civil servants in relation to those meetings: that these are Government meetings, here are Ministers, and so forth. That is designed to avoid situations where civil servants would be unclear about where the code pointed them.

Q238 Lindsay Roy: Again, you are not aware of any breaches of the Civil Service Code.

Sir Peter Housden: No.

Q239 Lindsay Roy: Can you just clarify what "support" means in terms of senior civil servants accompanying Ministers? It is not supporting the case, or not supporting actively the "yes" vote.

Sir Peter Housden: No. It is in terms of essentially just—

Lindsay Roy: Assistance and advice?

Sir Peter Housden: Yes—the administration and set up of those meetings, but they are conducted by Ministers.

Lindsay Roy: We need to be careful when we use the word “support”.

Q240 Paul Flynn: What action did you take, Mr Kerslake, when Nick Macpherson leaked to the press his advice to the Chancellor of the Exchequer?

Sir Bob Kerslake: I do not think it was a leak. He took a conscious decision to publish his advice.

Paul Flynn: That is what a leak is.

Sir Bob Kerslake: He published it openly and directly, having spoken to the Chancellor. It was his decision to publish that advice in the exceptional circumstances involved here.

Q241 Paul Flynn: Are you trying to say that you took no action?

Sir Bob Kerslake: I do not think there was an issue of action. He took a decision to publish, having spoken to the Chancellor.

Q242 Paul Flynn: You are the Head of the Civil Service, I believe.

Sir Bob Kerslake: I am, yes.

Q243 Paul Flynn: And you have no responsibility where someone acts in breach of the code, and in breach of a long tradition, where advice from senior civil servants to Ministers is confidential. It is protected from freedom of information; we are not allowed, as MPs, to know what the advice is, but in a very hot, very disputed area of political activity in this country, a civil servant takes a very partial, subjective opinion and then publishes it. Are there precedents for this?

Sir Bob Kerslake: There are certainly precedents for publication.

Paul Flynn: What are they?

Sir Bob Kerslake: I think Nick Macpherson referred to a number of those here: the Stern report, for example, on global warming and climate change was published. There have been a number of examples, but I would concur with your view that it is exceptional that we publish advice from officials. In this instance, the judgment was that such an exceptional circumstance prevailed.

Q244 Paul Flynn: There is an axis of opposition to Scottish independence from the English establishment and from the leaders of the three main parties. Is Nick Macpherson aligning himself with that axis of opposition?

Sir Bob Kerslake: Nick Macpherson did not align himself on the issue of the referendum. What he did was make known publicly his advice on the issue of currency, and he felt this was a sufficiently important issue to publish his advice.

Q245 Paul Flynn: He gave advice on an area for which there is no precedent: it is not a matter of fact; it is a matter very much of subjective opinion, but it comes down conveniently

on the anti-independence side. Is this not an example of somebody being in breach of the Civil Service Code for impartiality?

Sir Bob Kerslake: No, if you read what he said—and it is important to say that his advice was published alongside a much more extensive Scotland analysis paper—what he was commenting on was the issue of the currency, should independence occur. It does not change the issue about whether people should or should not vote for the referendum in favour of independence. He was simply commenting in relation to what options there were, and what options he would advise a Government taking in relation to the currency.

Q246 Paul Flynn: He said, “If you follow Treasury advice and this week rule out a currency union in the event of Scottish independence, you can expect the Scottish Government to threaten not to take on its share of the United Kingdom’s debt. I do not believe this is a credible threat.” That is a matter of opinion, of conjecture, not a matter of fact. Is it right that he should seek to publish that, as well as giving the advice to the Chancellor, which the Chancellor used to give a statement himself? Is it the role of the civil servant to multiply the publicity for what the politician is about to say?

Sir Bob Kerslake: I do not think it is a role of civil servants to multiply publicity in any sense. What he was seeking to do, just to repeat—and I think he made his own position very clear when he came to you—was to give his advice to the Chancellor on this very important issue. He felt it was sufficiently important, in order that we were clear about the issues, that this particular advice should be published. It was exceptional; it was his decision; and he did discuss it with the Chancellor.

Q247 Paul Flynn: The impression I get, and I was at the session where he gave evidence, is that he was saying, “I am a senior civil servant and I shall do what I like”. He seemed to be indifferent to the long code of restraint exercised by civil servants. He seemed to be kicking over the traces. Has he not opened a door for other civil servants to go along to the local press and pass on what advice they have given to Ministers?

Sir Bob Kerslake: No, he was very clear that he does not make a habit of publishing his advice; that he thought the circumstances in this instance were exceptional and justified publication. He did it after careful deliberation and after a conversation with the Chancellor. I do not think you can describe that as an open-door policy.

Q248 Paul Flynn: By your inactivity, by your inertia on this issue as Head of the Civil Service, you cannot censure any other civil servant who runs to the press with internal advice to Ministers.

Sir Bob Kerslake: No, I think we are clear that advice is confidential, that it should only be published in exceptional circumstances, and that we would not normally expect such advice to be published. We are clear on that position.

Q249 Paul Flynn: Well, it is not clear to me: if you are not taking action when somebody publishes advice, the special circumstances are not clear. Perhaps you could spell them out again. This is a matter of huge controversy. There is an argument in Scotland going on about what will happen with the fiscal position after independence. He has come out on one side with his own subjective views. Why on earth should other civil servants not do the same on things they feel strongly about?

Sir Bob Kerslake: I have rehearsed this before and I am not sure I am going to add a lot more, but I will go through the argument again. His advice was in relation to the issue of currency—

Chair: If it is the same answer, I will take it as read, if you do not mind.

Q250 Paul Flynn: Would you say that you are setting an example to your civil servants with the sycophantic tribute you paid to Mrs Thatcher, along with Jeremy Heywood?

Chair: We have done that.

Paul Flynn: I know we have, but it is a question of whether there is a new era of openness and a free-for-all among civil servants to say what they want. Here we have a highly political figure, who was not universally popular among the civil servants, and you chose to go to the press and write a sycophantic article in praise of her.

Chair: I think you answered that question before, haven't you?

Sir Bob Kerslake: I have, indeed.

Q251 Paul Flynn: If you did, it was not a very satisfactory answer.

Sir Bob Kerslake: Well, let me try again, then, if I did not do it justice last time.

Chair: Briefly.

Sir Bob Kerslake: Very briefly. I am very clear that we were not seeking to comment on the policies or actions of Government under Mrs Thatcher. I am quite aware there were issues of controversy; indeed, I worked for two organisations that the Government abolished, so it was not a comment on her policy. It was not even a comment. It was a bringing together of views of civil servants who had worked closely with her. That was all it was about, and we felt, given her importance, and given the extensive time she worked with civil servants, this was a reasonable thing to do.

Chair: Mr Cairns.

Paul Flynn: Can I carry on? We have only just started.

Chair: You have had quite a long run, Mr Flynn.

Paul Flynn: So did you, Chairman—a very long run, and a rather tedious one from where I am sitting.

Chair: Mr Cairns. Order, order.

Paul Flynn: No, I am not. I have got questions to ask.

Chair: Mr Cairns. Order, order.

Paul Flynn: I am going to protest. I will have to leave the Committee, because you are using this Committee as a stunt to try to embarrass the Scottish Parliament and the idea of devolution. This is not a serious attempt of using the Select Committee.

Chair: Order.

Paul Flynn: The way that you have silenced me again is proof of that.

Chair: Mr Cairns, would you like to ask your question?

Paul Flynn: You should conduct this as a Select Committee seeking evidence.

Q252 Alun Cairns: It goes back to the issue of purdah and the practicalities around it. It was raised by the Chairman and followed up by Mr Roy. Your answer said that, should purdah be breached, then it would be a matter for the respective Parliaments. What are the practicalities behind that, bearing in mind each Parliament will have its own agenda? I will go to Sir Peter, first.

Sir Peter Housden: In terms of practicalities, Mr Cairns, what are you interested in particularly there?

Q253 Alun Cairns: Well, I am trying to work out, if purdah was breached, if an announcement that was seeking to influence the electorate was made, and it was against the advice that you might give, what are the practicalities behind that? In your answer to both the Chairman and to Mr Roy, you said it would be up to Parliament to consider. Well, Parliament will have its agenda—the United Kingdom Parliament and the Scottish Parliament. What influence would that have? How, practically, would it work?

Sir Peter Housden: Good point. There are two things that would be in play here. Firstly, the purdah rules are pretty well understood, I think, not only amongst politically active citizens, and, no doubt, in the period concerned, would get more publicity. I think voters would be aware of the rules that were governing and would reach their own view about whether this was a breach, so, potentially, it could become an issue there. The backstop for all of this, of course, is parliamentary accountability, and Parliament would be able, through its Select Committees and other mechanisms, to hold the Government to account and to reach a view.

Alun Cairns: But you are within a 28-day period?

Q254 Chair: Parliament might not be sitting.

Sir Peter Housden: Indeed.

Q255 Chair: Can I just point out that, during the referendum on the north-east assembly, the then-Deputy Prime Minister, John Prescott, announced new powers for the assembly should there be a “yes” vote during the purdah period. Nothing happened. What should happen?

Sir Bob Kerslake: Let me add a bit to what Peter has said here. What we have said earlier is that, during the purdah period, there are clear grounds as to—

Q256 Chair: Nothing happened. What should have happened?

Sir Bob Kerslake: I am not going to comment on that particular situation.

Q257 Chair: Let us talk about a hypothetical case, Sir Bob. What should happen if there is a breach of purdah rules?

Sir Bob Kerslake: As I said earlier, we will issue guidance in relation to purdah.

Q258 Chair: I am not interested in the guidance. What should happen if a Minister breaches the purdah rules?

Sir Bob Kerslake: As I am trying to come on to, in answer to your question, if it was a civil servant who breached the guidance, then that would be a matter for us to pick up through the Civil Service Code and through disciplinary action. If it is a Minister, their Government has issued a set of guidance in relation to purdah; that would be a matter, again, for the Ministerial Code, wouldn't it? Ultimately Parliament would hold Government to account if it had not followed its own guidance.

Q259 Chair: So, basically, nothing happened during the north-east referendum, and nothing will happen during the Scottish referendum. That is what I conclude.

Sir Bob Kerslake: I do not think that is the right conclusion.

Q260 Chair: How can you convince me that there would be consequences when there were no consequences in that referendum?

Sir Bob Kerslake: I cannot comment on that particular instance. What I can say is that there are clearly established rules about how purdah operates. Those rules would apply here. If there were breaches, it would be a matter for the normal processes: Ministerial Code, Civil Service Code, and, ultimately, Parliament.

Q261 Chair: There is a problem, because a breach of purdah rules is, in fact, a breach of the law, but there are no penalties.

Sir Bob Kerslake: No, it is a breach of rules agreed by Government in relation to this. As I said earlier, the UK Government has agreed voluntarily to follow the purdah rules that Scotland intends to follow.

Q262 Alun Cairns: I am still trying to work out, practically, how it would work, because each of you have said it falls back to the respective Parliaments. Well, I think we can take for granted that there is a majority in favour of the Better Together campaign in the UK Parliament, and, in the Scottish Parliament, there is a majority in favour of an independent Scotland. Therefore, on that basis, you are asking people who have prejudicial views to comment or judge on the breach of a regulation and of a law.

Sir Peter Housden: I think I see the point you are going to, Mr Cairns, here, and the Chairman has properly indicated this, of course, would occur at a live political moment, in which Parliament would quite likely not be sitting. I think, as in all of these things, we rely on the court of public opinion. There is an educated electorate in Scotland who will be well aware, and will be reminded by a range of media, about what the rules are, and will be able to form their own judgment about whether a particular action was in breach of all of that.

Q263 Alun Cairns: Again, the media will potentially have a lot to gain or to lose depending on what the outcome is.

Sir Peter Housden: That is the world.

Alun Cairns: And they need to communicate it.

Sir Bob Kerslake: Perhaps we are not putting it across very well, and I apologise for that, but what we are saying is, if Governments establish rules, like the purdah rules, then, regardless of whether you happen to agree with the direction of travel of the Government's policy, if they breach their own rules, they are going to be held to account, and there are existing processes that do that.

Q264 Alun Cairns: I have one final question. Could you envisage a position whereby, in your respective roles, you would issue a statement saying that you have advised against this and this breaches the purdah rules?

Sir Bob Kerslake: I cannot describe the exact situations. Clearly, if rules were being quite deliberately flouted, we would give advice to Ministers.

Q265 Alun Cairns: Would that be public?

Sir Bob Kerslake: It would not normally be public in those situations, no.

Q266 Chair: There might be a case for asking for a letter of direction, if you are advising on a breach of purdah rules.

Sir Bob Kerslake: It is conceivable, just conceivable, depending on the nature of the breach, that we might seek a letter of direction. In the first instance, though, it would be private advice.

Q267 Lindsay Roy: Can you tell us what was exceptional about Sir Nick's case? What was so exceptional about the currency?

Sir Bob Kerslake: The exceptional circumstances were the ones he outlined to you previously, which were that this bore on the issue of the currency—a very big issue for any country, but for this country—and it bore on the credibility of the Government's position in relation to the currency should the referendum vote "yes". That is why he saw it as exceptional.

Q268 Lindsay Roy: The first duty of any state is to protect its citizens, its assets and its territory. Is that not another exceptional circumstance?

Sir Bob Kerslake: As a general thing, you are absolutely right, but what I am describing here is a particular exceptional circumstance that Nick Macpherson judged, and the reason why he took the decision he did.

Q269 Lindsay Roy: Do you not think, then, there can be unintended consequences from that publication?

Sir Bob Kerslake: Well, I do not think so. It is not likely to be a situation we face in that form again, at this point in time. He had to make a judgment on this very particular and exceptional issue. I do not think it necessarily follows there will be consequences.

Q270 Lindsay Roy: Sir Peter, can you think of something that the Scottish civil servants might want to publish in the same way that is so important, so vital?

Sir Peter Housden: I have not come across a situation, Mr Roy, where the publication of advice has seemed to me to be the right course of action.

Q271 Lindsay Roy: So this does not constitute a change in rules or a change in practice then. Is that what you are saying?

Sir Bob Kerslake: I am saying it does not constitute a change in rules or practice, and there have been precedents where Civil Service advice has been published in the past, but not very many.

Q272 Chair: Sir Peter, there is nothing that you have written for the First Minister in Scotland that you think he might like you to publish.

Sir Peter Housden: I would not deign to speak for him, but the convention, as Sir Bob has explained here, is very clear, and I have seen no grounds, nor have I come under any pressure, to publish any advice.

Q273 Lindsay Roy: What would be the test for an exceptional circumstance?

Sir Bob Kerslake: It is hard to define it exactly, because it is an exceptional, unusual situation. It would have to be a very significant issue, a quite unprecedented issue, in the way in which, clearly, the currency in relation to a referendum of independence could be described. I have given one example of the Stern report as a case where advice was published as well. You might argue that was an unprecedented situation we were facing then.

Q274 Chair: Is the test of this question why it was necessary for Sir Nicholas to put the advice out in his own name? Sir Nicholas could easily have advised the Chancellor of the Exchequer to make a speech along the following lines based on his advice; that would be the usual practice. What was the qualitative improvement in publishing the advice directly, rather than the Chancellor making an informed utterance of his own?

Sir Bob Kerslake: The strengthening of the arguments, in particular in relation to currency union, meant he felt justified putting his name to that advice.

Q275 Chair: Why is that?

Sir Bob Kerslake: Because he felt the issue was of sufficient importance.

Q276 Chair: What is special about Sir Nicholas saying it, as opposed to the Chancellor? Why does that make it more powerful?

Sir Bob Kerslake: Clearly, because he is a longstanding, experienced Permanent Secretary at the Treasury.

Q277 Chair: Is it because he is regarded as impartial?

Sir Bob Kerslake: He is regarded as an experienced and very credible Permanent Secretary whose advice would count.

Q278 Chair: How often do you think civil servants can do this and claim to be impartial?

Sir Bob Kerslake: As I said earlier, the issue is not about impartiality, because, clearly, he would give advice on these issues to a Minister. The issue is about publication. I have said earlier that publication should be exceptional.

Q279 Chair: Surely, the only reason Sir Nicholas gave this advice in public is because somehow it carries more weight from him than it would from a politician, and that is resting on the impartiality, the peculiar authority for objectivity, that we expect a Permanent Secretary to have. How often do you think Permanent Secretaries can use up their reputation for objectivity and impartiality in this way before they lose it?

Sir Bob Kerslake: The publication added to the authority—it was not an either/or situation with the Chancellor—and, as I have said earlier, it would be very exceptional circumstances. We would not make a habit of it.

Q280 Chair: You understand what I am saying, Sir Bob: that there would be no point in Sir Nicholas publishing that advice unless his persona, his position, added something that nobody else could add. Is that the reason it was published in that way?

Sir Bob Kerslake: Well, I said earlier his judgment was that there were questions being raised about the Government's intent in relation to currency. He felt it important to make it very clear what the arguments were on this issue from his position. In these particular circumstances, he judged the publication was right. As I have said on numerous occasions back to you today, this was a most exceptional circumstance.

Q281 Chair: Of course, by happy coincidence, Sir Nicholas's views and advice coincided with the interests of the Government he serves. What would happen if he wanted to publish information, guidance or advice that was not helpful politically to the political masters he served? Would the advice ever see the light of day?

Sir Bob Kerslake: Well, we have talked earlier about the accounting officer role, and the responsibility of the accounting officer. If they are particularly concerned about the value for money, probity or otherwise of a proposed action by a Government, they can seek a direction.

Q282 Chair: Yes, but that is not about publishing advice, is it?

Sir Bob Kerslake: Well, let me finish the point. They would seek a direction on that issue. The fact that a direction had been sought would be reported to the Comptroller and Auditor General, and the general convention is that that is then published.

Q283 Chair: So you can imagine that contrary advice to what the Chancellor wanted would find its way to the public domain.

Sir Bob Kerslake: If the view of the Permanent Secretary—and Peter has been in this position—is such that they require a direction, then I can envisage it being in the public domain. Indeed, I think it is fair to say, Peter, your seeking of a direction did become public.

Q284 Chair: So Sir Nicholas, supposing he disagreed with the Chancellor, would have sought a letter of direction not to publish his advice.

Sir Bob Kerslake: What I am saying is, if the Permanent Secretary, whether it is Nick, Peter or any other Permanent Secretary, fundamentally has concerns about the direction of travel of Government after giving advice, to the point where they think there is an issue of value for money or probity, then they would seek a direction.

Q285 Chair: This is not really about a letter of direction, is it?

Sir Bob Kerslake: It is, because you were posing a question about advice. I am not saying whether or not advice will be published, in a normal course of events, if there happened to be a disagreement. I am saying, if it is a very important issue in which a Permanent Secretary thinks there is an issue of value for money or probity, they can seek a direction, and that will ultimately become public.

Q286 Chair: What is the difference between advice and propaganda?

Sir Bob Kerslake: Advice is giving advice based on an analysis of the issues and the facts, and that is what Nick sought to do in his advice.

Q287 Chair: Should a civil servant be concerned if their advice, when published, is going to be used as political propaganda?

Sir Bob Kerslake: They should give advice without fear or favour, and they should do it on the basis of the evidence and their experience.

Q288 Chair: Is there not quite a strong argument, and how strong is the argument, for saying that, because this advice, if published, is likely to be used in a contentious and disputed political debate, it is improper for a civil servant to become embroiled in that kind of controversy? That used to be the case, didn't it?

Sir Bob Kerslake: We are very clear, and I have said it on a number of occasions, that the general rule is that we do not publish advice, and it is only in exceptional circumstances that it is published. In making his decision to publish, I am quite sure that Nick, being a very experienced Permanent Secretary, would have taken account of all the issues surrounding that decision.

Q289 Chair: Sir Peter, do you not feel it sets a precedent?

Sir Peter Housden: It does not, to my mind, Chairman, no.

Q290 Chair: So it will never happen again.

Sir Peter Housden: I do not think anybody could make a prediction about that, but it is worth illustrating that the protection of the publication of advice is there under the circumstances of a direction. It not only ends up in the public domain, but becomes a token of the way in which the legislature holds the Government to account. In the instance that I was involved in, in 2010, the actual advice that I had given Secretary of State John Denham at that moment was published and was debated in the Chamber, as Parliament reached its conclusion on the particular local government reorganisation in question.

There is that type of precedent in rare circumstances —and they are very rare—where that is appropriate, in the way that Bob described. That is where the line is drawn in relation to those matters.

Q291 Chair: The name “Macpherson” strikes me as a name of Scottish extraction. Maybe one day Sir Nicholas will be Permanent Secretary under the auspices of a Scottish Government and a Scottish First Minister. How would he be able to operate as an impartial civil servant, having published this advice?

Sir Bob Kerslake: He would have to operate in the same rules as any other senior civil servant does.

Q292 Chair: Do you think an SNP First Minister would have confidence in his impartiality?

Sir Bob Kerslake: It is a hypothetical question, Chairman, that I am not sure I can answer.

Q293 Chair: It is not. We will ask the SNP whether they have confidence in his impartiality, and I can tell you what they are likely to say.

Sir Bob Kerslake: It is a hypothetical question, because we do not know whether Nick is likely to want a job in a Scottish Government at any point, so I think it is a hypothetical question.

Chair: I think I have made my point. We move on to the White Paper.

Q294 David Heyes: To me, the core of this is in the statement that you made first, Sir Peter, that “we work for the Government of the day”. Later, Sir Bob said there are two distinct Governments. That is the core issue here, isn’t it? Is it not the case, in trying to defend this idea of a single UK Civil Service, that you are putting forward an incoherent argument? It has broken down. This test that it has been subject to, as a result of the referendum issue, has made the whole concept of a coherent single UK Civil Service not credible.

Sir Peter Housden: If I might start, it remains to be seen. There are a number of months to go before the referendum date, and no doubt, thereafter, there will be important considerations about how well the code has stood up. My point at the outset, Mr Heyes, was actually that, thus far, it has provided a good guide for us, and we in the Scottish Government have certainly benefited from being part of a unified Civil Service, in all the ways that I responded to the Chairman’s question in those terms. Thus far, so good.

Sir Bob Kerslake: I think it has stood up well. I went back and checked the number of actual complaints I have had, as opposed to comment in the media, and there is a total of four. In the circumstances of this highly contested issue, the code has stood up well, the memorandum of understanding has stood up well and the Edinburgh Agreement has stood up well to challenge.

Q295 David Heyes: Those views are not shared by civil servants themselves, are they? There are press reports, for example, that many of Scotland’s civil servants are deeply unhappy about the way their work has been politicised. The press has been rife with those sorts of leaked comments from civil servants. They do not agree with you; they think they have been politicised. By inference, that suggests a lack of leadership, a lack of clarity, from the top of the Civil Service, if your people are feeling like that.

Sir Bob Kerslake: I think not. Peter will speak for himself, but I think we have very clear procedures in place where a member of staff feels that there is an issue of breach of the

code, and there are similar procedures in both the UK Government and the Scottish Government.

Q296 David Heyes: I think you said you were not aware of any such breaches.

Sir Bob Kerslake: What I am saying is there are very clear procedures. The fact that we have had so few complaints—all the ones I referred to were not from inside the Civil Service, but outside—suggests to me that the level of concern is not as described. We also, of course, as you know, do an annual staff survey and, as Peter will tell you, engagement scores rose with the civil servants in Scotland. Contrary to what you are suggesting, we have very clear procedures. The fact that they have not been taken up tells me that the issues cannot be as strong as being suggested by some, and, on an anonymous test of the views of civil servants, the feedback is good.

Q297 Lindsay Roy: Could another explanation not be that the procedures are not robust enough and the evaluation is not strong enough?

Sir Bob Kerslake: It is possible. I cannot rule that out, but I think, if people were as concerned as some have suggested, we would have seen more cases of complaint come through.

Q298 Lindsay Roy: Is there not a concern that, if they raise a matter, then that will count against them?

Sir Bob Kerslake: We have very clear processes. For people who are concerned about raising it with their line manager, there are nominated officers, and we will protect the identity of the individuals involved through any investigation.

Sir Peter Housden: These are important questions. They absolutely go to the core of what it is to be a civil servant. The duty that we are under to provide objective advice to support the Government of the day within the framework of the code is our stock in trade. We stand or fall by how well we do that, and we are happy to be held to account for it. So my point here is that this is not an occasional conversation or something that sits on a piece of paper that nobody consults; it is a live issue for us, particularly in relation to this referendum. We certainly not only explain but seek repeatedly to create the right context in which, Mr Heyes, anyone who had a concern would be able to raise it in a safe way and have it heard, because it is critical to our integrity as a Civil Service.

Q299 David Heyes: That is not credible, is it? Presumably the lower echelons of the Civil Service do not know where their future leadership is going to come from: is it within Scotland exclusively or is it continuing as part of the UK? It would have to be a very brave civil servant who had little concern about their career prospects to raise those sorts of challenges at a sensitive time like this.

Sir Peter Housden: That is not the environment within the Scottish Government, and I am sure it is not among UK civil servants who work in Scotland. This is the basic lifeblood of how the Civil Service operates; it is a regular source of conversation, so we would want to be clear that people, without fear or favour, could come and express concerns and have them resolved.

Q300 David Heyes: Just one more specific question from me: did you raise any concerns with Scottish Ministers that the contents of “Scotland’s Future”—the White Paper— strayed into party-political territory? Is there anything on the record that you did that?

Sir Peter Housden: In terms of me, personally?

David Heyes: Either of you, really, I guess.

Sir Peter Housden: I was, as you would expect, closely involved in that process and it did not raise those concerns for me.

Sir Bob Kerslake: For me, this was a judgment for Peter to make as the accounting officer working for the Scottish Government. It was right that he made that decision based on advice that he received as the accounting officer.

Q301 David Heyes: It seems pretty clear, though, that it did stray into party-political territory. Did you not notice that?

Sir Peter Housden: It would be helpful to understand a little bit more, Mr Heyes, about how you would define party political in that circumstance.

David Heyes: That is the core of your job, isn’t it?

Q302 Lindsay Roy: Can I maybe just follow that up? How have you dealt with criticism that it is partly a White Paper and partly a manifesto? An example of the criticism being given is the policy on childcare.

Sir Peter Housden: Ministers were clear, Mr Roy, from the outset that they wanted to provide a White Paper that would be informative, would address the issues that people were concerned about and would be objective but accessible. It is interesting to reflect on some of the responses that the White Paper drew when it was published. It was described by the *Daily Mail* as “a litany of shameless political bribes and a blueprint for certain disaster”. But by *The Times* it was described as “a workmanlike and sober piece of work” to be welcomed. By *The Herald*, it was described as “a bold and valuable contribution that cannot fail to raise the quality of the debate”.

There have been a range of issues around all this, but, in terms of its specifics in policy, Ministers were clear that they wanted to say not only what powers they would value under independence but how they could be used, and to do that in a real and practical way. This was, as you will understand, carefully discussed and led to very careful caveating within the text of the White Paper that what we were talking about here were powers—in fact, there are two pages opposite each other of them—that would be available to an independent Scotland and how, were the SNP to form a Government in 2016 or beyond, they intended to exercise them. You could see the general and the particular. That care and clarity is the hallmark of the approach we took to the White Paper.

Q303 Lindsay Roy: So you would challenge anybody who alleges that there has been a misuse of Government funds, expertise and time.

Sir Peter Housden: Well, I would listen carefully to the specific concern that they might have, but, from my point of view, we have been very careful to make sure that there has not been.

Q304 Lindsay Roy: Because you have had some criticisms put to you to that effect, and you responded to them.

Sir Peter Housden: Yes, and I would be happy so to do in the future. We looked very carefully at all of this prior to publication because it was important. What Ministers wanted here was informative, objective and accessible. They did not want a row about propriety, and so we were very clear that this is how it needed to be done.

Q305 Lindsay Roy: Can you explain the role of civil servants, then, in the 13 road shows? I think 30 senior civil servants attended the road shows to launch the “Scotland’s Future” publication. Can you explain their role?

Sir Peter Housden: Yes, indeed. Ministers have been keen, as Ministers in administrations are, to have their policies understood and subject to scrutiny. As civil servants, we will have been involved with other administrations doing exactly the same thing—in Scotland and England. This is in that tradition of getting out there and sharing those issues with the people. Civil servants have undertaken the administration of those events to enable them to take place—all of the communications and logistics support that accompany that.

Q306 Lindsay Roy: Were they there to answer questions or to support the Minister?

Sir Peter Housden: The Ministers are there to be held to account for their White Paper and their policy. Civil servants are in their characteristic role at those types of functions. They were not standing up defending Government policy.

Q307 Chair: This is very odd, isn’t it? We do not send civil servants round to support Ministers during an election. This is rather like an election; a referendum is like an election. The public are voting and there are two sides to the argument. One would expect the Civil Service to be impartial as to which way the argument turns out, but they are being employed to make the case for one side of the argument.

Sir Peter Housden: The distinction you draw is a very important one, because this is a referendum; it is not an election. It is an issue about policies rather than about parties, and we are not in the period that you infer there.

Q308 Chair: As a politician, I would say that elections are about policy and that this referendum is about choosing a different form of Government rather than just a different Government, but it does seem odd that civil servants are being used in this way. Why can they not just give advice to Ministers and let the Ministers do the talking?

Sir Peter Housden: Well, they do.

Q309 Chair: Yes, but why are the civil servants doing the talking as well?

Sir Peter Housden: The context of these public meetings is one where Ministers are doing the talking and being held to account for the White Paper that they have produced. Civil servants are there to enable those conversations to take place. There will have been a whole raft, and others will have been involved in that type of activity. This is a perfectly normal way that Governments of different persuasions are active in their communities.

Q310 Chair: Can I ask a little bit more about the White Paper? There is a section that says, “Over the course of the first term of an independent Scottish Parliament, the Scottish

Government proposes”. This is a White Paper making promises on behalf of a future Government. Have you ever seen that in a White Paper before?

Sir Peter Housden: Yes.

Q311 Chair: Where?

Sir Peter Housden: Each time that Governments publish budget statements, for example, invariably those statements will contain policy proposals whose lifespan goes beyond the term of the present administration. In that sense, they represent promises that are being made by Governments. Indeed, even the Calman White Paper that preceded the Scotland Act talked about measures that were going to take place the other side of the 2010 election, so this is quite normal practice, Chairman.

Q312 Chair: So you did not require a letter of direction.

Sir Peter Housden: No.

Q313 Chair: How involved were special advisers in the drafting of this document?

Sir Peter Housden: Special advisers support their Ministers on the political aspects of their work. In terms of ministerial engagement with the text as it was emerging, special advisers will have been closely involved.

Q314 Chair: They were closely involved.

Sir Peter Housden: But working on behalf of Ministers.

Q315 Chair: How much did special advisers want this particular section in this document?

Sir Peter Housden: Sorry, which particular section?

Chair: The section about: “Over the course of the first term of an independent Scottish Parliament”. How keen were special advisers to make sure that the impression of what an independent SNP Government would be like was in this document?

Sir Peter Housden: I have no remit to speak for special advisers.

Q316 Chair: Hang on a minute; you are the responsible civil servant for those special advisers. They are civil servants.

Sir Peter Housden: Yes, indeed, but in relation to their role in a White Paper they are supporting Ministers, so it is the ministerial voice that counts. They were very clear that they wanted to make concrete and real—but carefully caveated—what they would do with the powers that come with independence.

Q317 Chair: You agree that special advisers had an influence over the drafting of this document.

Sir Peter Housden: Their work is to support Ministers, who were closely involved and determinant in this document.

Q318 Chair: To that extent, if it is politicised, it might be the special advisers who have helped put pressure on the system to accept a political document.

Sir Peter Housden: Chairman, I would not have accepted a document in that sense because there are powers open to an accounting officer, as we have talked about this morning. If I felt it had stepped over that line, I would have not hesitated to have offered that advice.

Q319 Chair: There are plenty of senior civil servants—present and retired—who would disagree that this is not a political document. What are we to make of that advice?

Sir Peter Housden: It is a Government document, and the Government is made up of a political party. In that sense, it is going to reflect the political aspirations of the current Government.

Q320 Chair: The question we are really at here is: to what extent are civil servants becoming vicars of Bray of their political masters because they are obliged to be cheerleaders rather than to be objective? We are seeing that both in the Scottish Administration and in the United Kingdom Administration.

Sir Peter Housden: It is not a state that I would recognise, Chairman. I certainly do not see that, nor have I conducted myself as a cheerleader—in this Government or in relation to others I have served.

Q321 Chair: You would not see Sir Nicholas Macpherson as a cheerleader of the Chancellor of the Exchequer's views on Scottish independence.

Sir Peter Housden: Again, I have no remit and he has given evidence to your Committee, so you have heard—

Q322 Chair: To what extent, as we progress down this path, is there a danger that civil servants will increasingly come to be seen as cheerleaders and supporters, rather than objective and impartial?

Sir Peter Housden: This is the dynamic of the Civil Service supporting the Government of the day under the code writ large. This has always been the type of dynamic that we work within.

Sir Bob Kerslake: To add to that, I do not think this is different in kind from any part of Government policy. As we said right at the beginning, Chair, our responsibility is to support the Government of the day in the delivery of their policy.

Q323 Lindsay Roy: Is there not a presumption in the text that the Chair read out that, in 2016, in the event of separation, there would be an SNP Government?

Sir Peter Housden: Yes. The White Paper talked particularly and made that distinction in saying: here is a description—a sample—of important powers that would be available for any Scottish Government, and were the SNP to be elected in 2016, this is how they would use them. That, Ministers felt, gave some reality and made more accessible what could otherwise be a dry and constitutional debate: if these powers were made available, this is what they would do with them, but the caveating was important and it is properly there.

Q324 Chair: How understandable does it become, if senior civil servants are providing overt political support for a given Government's objectives—whether it is a Scottish Government or a United Kingdom Government—that when a new Government comes in, they feel that they want to appoint new people, who are uncompromised by the published views and opinions of the incumbent civil servants?

Sir Bob Kerslake: I would make two points on that, Chair. First of all, it is not overt political support; it is support for agreed Government policies. There is a difference here. Secondly, parties understand that our job is to support the Government of the day and they would expect the same level of support for their policies as that which we give to the current Government. As Peter said earlier, that is part and parcel of how Government works.

Q325 Chair: You now support five-year fixed terms for permanent secretaries; correct?

Sir Bob Kerslake: We have supported the five-year fixed-term tenure, yes.

Q326 Chair: We now have five-year fixed-term parliaments.

Sir Bob Kerslake: We have been very clear that the two things do not—and should not, indeed—align. It is not intended, and nor should it be, to be about aligning the length of time for a permanent secretary with a Government.

Q327 Chair: Do you think that your political masters are going to be that clear?

Sir Bob Kerslake: They are clear about this point, and there is absolute clarity that the Northcote-Trevelyan principles still apply.

Q328 Chair: You mentioned Northcote and Trevelyan. How do you think that Northcote and Trevelyan would have responded to some of the issues that have been raised today: the publication of advice and the setting out of policies of a future as yet unelected Government under a future constitutional settlement that is still subject to a referendum? How do you think Northcote and Trevelyan would have responded? Have either of you read the Northcote-Trevelyan Report?

Sir Bob Kerslake: Yes, we have.

Sir Peter Housden: No.

Chair: Sir Peter, you have never read it.

Sir Peter Housden: No, I have not.

Q329 Chair: Have you read the Haldane memorandum?

Sir Peter Housden: No, I am not a student of these things.

Sir Bob Kerslake: I have read it, Chair.

Q330 Chair: I am sure you have, Sir Bob. It is startling that a permanent secretary has not read either of these two seminal documents that are at the heart of the philosophy of our modern Civil Service. Perhaps you believe in a different Civil Service, but we do not know because you have not read to them.

Sir Peter Housden: I shall attend to that following this meeting, Chairman. The context here is, yes, the referendum is an exceptional political issue—there is no question about all of that—but the context in which the Civil Service Code is operating is one that I think would be familiar to civil servants, certainly in the post-war period: that of sharply divided issues where the Civil Service, working within the code, is giving advice to the Government of the day. That is important and it is important to the Civil Service. It defines our professionalism and is important for us.

Sir Bob Kerslake: I cannot speak for what Northcote and Trevelyan would have said, obviously, because I have no idea. What I can say is that many observers outside this country see the way in which this referendum is being conducted as following the highest standards in the way in which it has been handled.

Q331 Chair: In this referendum there is, at least, a part of the Civil Service that is supporting independence and another part of the Civil Service that is supporting maintenance of the union. In a future referendum on the European Union, how will we ensure that there is such balance?

Sir Bob Kerslake: The key point is that we are supporting the Government of the day.

Q332 Chair: So there will not be any balance; the entire Civil Service, as we have already heard from Sir Nicolas Macpherson's Mile End speech, will be deployed to make a case. We do not know quite what that case is, but it will be making a case. The Treasury will be making a case and it will be unchallenged by any other Government Department; or will the different Government Departments have different policies?

Sir Bob Kerslake: In truth, this is speculation on something where there is not yet, as you know, a firm decision.

Q333 Chair: But what is the precedent being set here for a future European referendum?

Sir Bob Kerslake: The only precedent being set is the one we started with at the beginning of this session, which is that civil servants have to act properly within the code and support the Government of the day. In this instance—in this very particular instance—there are two Governments involved.

Q334 Chair: We can expect the entire Civil Service to be supporting what the Government of the day says in the referendum, regardless of all the other constraints on the other political factions in a referendum that may exist in electoral law.

Sir Bob Kerslake: They will have to act within the terms of the code, but they will support the Government of the day, yes.

Q335 Kelvin Hopkins: I agree absolutely that the civil servant's job is to support the Government of the day, not to become a political figure. Once they speak in public, they become political figures. If you say "supporting the Government of the day" and the Government changes, the policy changes. A civil servant might be in a position of having said one thing and then, six weeks later, having to say the opposite. Civil servants should be anonymous. They can write every word that Ministers write, but Ministers are the politicians, not the civil servants. That is a fundamental principle of our constitution, is it not?

Sir Bob Kerslake: It is entirely right, and most civil servants understand that the people who do the talking on issues of policy are Ministers. We are quite clear about that. It is only in the most exceptional circumstances that there is any departure from that.

Q336 Lindsay Roy: The role is advice, support and assistance to develop and carry through policy and not necessarily to personally support the policy.

Sir Bob Kerslake: It is nothing about personal opinions. That is quite clear in the code. We are not there, per se, to give our personal views on these issues. Our role is to give advice to Ministers on an issue based on the evidence and the facts as we see them and have a debate. They make the decision; we then implement.

Q337 Chair: You can give your personal views and opinions if the Minister agrees with them, but otherwise you have to keep them to yourself.

Sir Bob Kerslake: No. There will be many occasions where permanent secretaries and civil servants of all shapes and sizes have given robust advice on something where that may not have been welcome.

Q338 Chair: In private. You can only give it in public if the Minister agrees with it.

Sir Bob Kerslake: In private is the accepted norm but, as we said earlier, there are exceptional circumstances where a permanent secretary can seek a direction. In those circumstances, it becomes public.

Q339 Chair: Can I move on, finally, to the question of Ryan Coetzee, who is a special adviser reporting to the Deputy Prime Minister? The code says that special advisers “should avoid anything which might reasonably lead to the criticism that people paid from public funds are being used for party political purposes”. How satisfied are you that Mr Coetzee is abiding by that principle?

Sir Bob Kerslake: He has to abide by that principle. I have no reason to think that he is doing other than that. He has been appointed through the normal procedures. There has been a letter to the Cabinet Secretary and he will be responding on that issue.

Q340 Chair: What assurances have you received directly that that is the case?

Sir Bob Kerslake: The assurances come from the fact that Mr Coetzee has taken on the job with a clear understanding of the requirements that go with being a special adviser. It is as simple as that.

Q341 Chair: To your knowledge and belief, has Ryan Coetzee been briefing Liberal Democrat MPs on the position of the Liberal Democrat party and advising on Liberal Democrat election strategy?

Sir Bob Kerslake: I have no personal knowledge of that. Clearly, if there is any information that relates to Mr Coetzee or, indeed, any other special adviser that we should look into, then of course we will do so.

Q342 Chair: Are you aware of a slide reproduced on a blog that purports to have been presented to Liberal Democrats, with a Liberal Democrat logo on it describing what they call

“Clegg ratings”? It looks like a party-political briefing to me, and my understanding is that Ryan Coetzee gave this briefing.

Sir Bob Kerslake: I am not aware of that slide or the particular briefing you refer to. If there is an issue about the conduct of any special adviser, there are clear processes for raising those with the Cabinet Secretary or, indeed, with anybody else.

Q343 Chair: How is it appropriate for people to raise concerns about breaches of the code by a special adviser?

Sir Bob Kerslake: It is appropriate if they want to raise it. As I said earlier, those complaints would normally go into the Cabinet Secretary and he would follow up in the appropriate way.

Q344 Chair: So, if there is any other information that people have about the activities of Ryan Coetzee, you would be very interested to see that.

Sir Bob Kerslake: Or any special adviser where there is concern that they have not followed the code.

Q345 Chair: We look forward to seeing your reply to Sheila Gilmore’s letter.

Sir Bob Kerslake: It will come from Jeremy but, yes, she will get a reply.

Chair: Do you want to add anything before you finish?

Sir Peter Housden: No.

Chair: Thank you very much, indeed. It has been a very interesting and intriguing session. We are very grateful for your time.

Examination of Witnesses

Witnesses: **David Maddox**, Westminster Correspondent, *The Scotsman*, **Michael Settle**, UK Political Editor, *The Herald* and **Professor James Mitchell**, Professor of Public Policy and International Relations, University of Edinburgh, gave evidence.

Q346 Chair: Can I welcome our second panel of witnesses for today’s session? I invite each of you to identify yourselves for the record.

Professor Mitchell: James Mitchell, chair in public policy, Academy of Government at the University of Edinburgh.

Michael Settle: Michael Settle, UK political editor of *The Herald*.

David Maddox: David Maddox, Westminster correspondent for *The Scotsman*.

Q347 Chair: Thank you very much for joining us. I understand that Professor Mitchell has to leave at 11.30 in order to catch an aeroplane; that might be one of the advantages of us going to Scotland for a future evidence session. Can I first ask each of you—I think you all heard the first session—whether there are any particular reactions you want to give us to what you heard?

Michael Settle: The points that you raised regarding Sir Nicholas Macpherson, his memo and the White Paper by the Scottish Government reflect the high stakes that we have in this referendum and the strain that is being put on the Civil Service Code and the civil servants who have to work under it. It is not a normal circumstance, this referendum. As a newspaper man, we are being very careful to be very even-handed on how we report each twist and turn in the referendum story.

David Maddox: I would agree with that. As you say, the issues of Sir Nicholas and the White Paper do highlight that this is very different. I have certainly not seen this sort of thing before from the Civil Service. I have never seen such public engagement from the Civil Service before. Whether it is appropriate or inappropriate is something for you to conclude on, but it is certainly very different. Likewise, *The Scotsman* is also trying to get a very balanced view of what is going on.

Professor Mitchell: The one observation I would make, which was maybe implicit in the last session but that needs to be made explicit, is that one of the main constraints on Civil Service neutrality and behaviour is not just the Civil Service Code. The code really only codifies past behaviour. I have been studying this subject and my doctoral thesis was on the consolidation of Scottish central administration historically. Many of the things that are in the code would have been recognised by the Civil Service in the past.

One of the key constraints is the assumption, the understanding, within the Civil Service that a change of Government can come along. Civil servants probably respond to that better than anything else. The knowledge that a new Government could come into office prevents politicisation of the office. However, in the context of devolution, we have an unusual situation that did not exist pre-devolution. That is that there is really no prospect, I suspect, of an SNP administration in London or of it even being part of the administration in London. So, to come back to the Treasury Permanent Secretary's intervention, I guess he was not constrained in that way.

I suspect—to pick up on the question you asked, Chair, with regard to the EU referendum—any civil servant operating at the time of the EU referendum will be very conscious that, at some stage in the future, they may well be serving a different political master. That, I suspect, will be an important constraint. I am not suggesting that the Civil Service Code is unimportant, but I do think one has to put that alongside other considerations.

Q348 Lindsay Roy: From the evidence you have heard today, to what extent are you clear about the test of exceptional circumstances?

David Maddox: I was not clear at all.

Lindsay Roy: Neither was I.

David Maddox: James has just highlighted the only exception is that, in Sir Nicholas's case, there was no prospect of an SNP Government down here, so he was not bound by those circumstances. But I was not clear at all, and I have not been clear since he published his advice.

Q349 Lindsay Roy: Can you foresee exceptional circumstances in relation to defence and security or other issues that might be raised?

Michael Settle: There may be exceptional circumstances, but we have not seen them yet. Sir Nicholas's publication of his memo shows just how worried the UK Government is about the prospect of the markets reacting before the referendum if the Scottish Government ups its threat about not taking the debt, because that could have an impact on borrowing costs for the UK. That was the exceptional circumstance I think he was implying.

Q350 Lindsay Roy: What challenges do you believe the Civil Service faces in maintaining its impartiality?

Professor Mitchell: In the context of the referendum, one of the key points about the referendum is that it is like an election except that it is lasting a very long time. The duration of the campaign is a factor. That said, I am not convinced that there is anything particularly novel in the current situation. If we look back over a long period of time, these tensions have always existed; I think they will always exist. I would be wary of making any strong recommendations on the basis of what may be a unique event. Hard cases do not always make good law. I am not saying that we should not. We need to investigate, as your Committee rightly is doing, this particular circumstance, but I would be nervous about jumping to conclusions on the basis of this one case. I am not convinced there is anything particularly novel about the current situation that would not be found in previous decades.

David Maddox: There is possibly an attempt to replace parties within an election scenario with Governments. This is characterised by some—whether accurately or not—as the UK Government against the Scottish Government. In that sense, they become the parties in an election, so the Civil Service quite possibly is under extra pressure as agents of those two parties within this referendum.

Q351 Lindsay Roy: You will be aware of allegations of breaches of the code of conduct. Which ones have been raised with you and what credibility has your press given them, Michael and David?

Michael Settle: I can only speak from personal experience of the civil servants I engage with. I have never felt, through my engagement with them, that they have crossed the line on a personal level. How would I recognise a civil servant being partial? Presumably it means that they either are overly enthusiastic—taking you to one side and saying things to you without the consent of their Ministers—or they are arguing against the Government line that they should be adopting. That has never happened thus far in my experience.

Q352 Lindsay Roy: The allegation in particular I was referring to was that it is not just a White Paper but, partly, a manifesto.

Michael Settle: The White Paper is a prospectus for independence. The Government of the day, if there is independence in March 2016, will on that day be an SNP Government for a few weeks until the election. Does it come as a surprise that the White Paper is not usual in terms of a White Paper and goes beyond, seeking to suggest what would happen beyond March 2016? I do not think it does, really.

Q353 Lindsay Roy: So it goes beyond what you would normally expect into party politics about the programmes.

Michael Settle: Given the context of where we are—we are talking about a fight for survival in terms of the UK—it does not strike me as particularly unusual.

David Maddox: In terms of the White Paper, one of the issues that has been raised is the language of the White Paper, which is very different from what we would normally expect.

Q354 Lindsay Roy: Pejorative language?

David Maddox: Certainly some would say it is such by describing this place as the “Westminster Parliament” and the “Westminster Government.” For some in that particular sphere of politics, “Westminster” has a very negative—deliberately negative—overtone to it, and it can be used as a disguise for criticism of anything south of the border. One has to be careful because we, as newspapers, use “Westminster” as a shorthand all the time. Within that context, describing this Parliament as the “Westminster Parliament” within a White Paper seemed to be a bit odd.

Q355 Lindsay Roy: Are there any other examples of language, Professor Mitchell?

Professor Mitchell: I think there can be too much sensitivity. This is the Westminster Parliament. I have never seen that as a pejorative term at all. One of the things I would comment on with White Papers is that they have changed over a long period of time. There was a day when they were literally White Papers—I remember that—and they were read by very few people. Now, of course, they are glossy documents and, over the course of time, they have become a very different type of document. The most significant thing about the White Paper is its length rather than its style. Its style of writing is not so terribly different.

I was listening to the earlier session and reflecting on some of the White Papers of the past which I recall. I remember “New Life for Urban Scotland”, which was published after the 1987 election. The issues in there were not included in the Conservatives’ manifesto, but they were very welcome. I am not sure that the childcare issue is such a significant change from the past. It may be to some extent, but I am struggling with that one, frankly. I do not think it is. There is also no doubt that most people who have read the document or are aware of it—very few have probably actually read it—probably see it as an SNP Government document, rather than a Civil Service document anyway. That is quite an important point.

Q356 Lindsay Roy: Is it fair to say that it is a wish list without a price list?

Professor Mitchell: That would be one way of expressing it. I would not want to take sides in how it should be expressed. That is obviously one way of expressing it; another might be that it is a set of aspirations. I will leave it for the debate between the two sides to determine how it should be expressed.

Q357 Lindsay Roy: How do the Scottish public view Civil Service impartiality, from your perspective?

David Maddox: I am not sure the Scottish public take much interest in it; I have to be honest. In a sense, they may do—well, some of them may do—when we put it in our newspapers. Other issues in the debate have caught the interest a lot more. Professor

Mitchell is right: how they view this is that they do not think of the civil servants doing this and that; they think of it as an SNP Scottish Government document or statement, or a coalition Government document or statement down here.

Q358 Lindsay Roy: So it has been the contribution of politicians from one side or another that has made the most impact.

Professor Mitchell: In terms of the public's perception of the Civil Service in Scotland, we have to remember that there are more than 40,000 civil servants in Scotland, most of whom are UK Whitehall Department civil servants. The public's engagement with them is not at the level that we are talking about here today. For many of the people who engage with civil servants that I work with in terms of everyday public policy matters, these high political issues are really not matters that concern them. Even most of the 5,000-plus core Scottish Government officials are not involved in these matters. I suspect the public—we have to be very careful here because the public consists of many different groups, as you are well aware—will perceive the Civil Service in multiple different ways. For the most part, it will be in terms of their everyday experiences, their lived experiences, although, in truth, the public's engagement with officialdom mostly is with local government, health boards and suchlike.

David Maddox: One issue that has been raised in various evidence sessions—at least, before other Committees here—is that of businesses. There has been some suggestion that businesses have felt threatened or intimidated. I have to say I have never seen any hard evidence of that, but it has been claimed down here. Whether that goes through the Civil Service or it is through politicians is a different matter.

Michael Settle: The public concentrates on the policies and the personalities, not the civil servants.

Q359 Kelvin Hopkins: Although the public may not be concerned about what might seem constitutional technicalities, they are still fundamentally important. Once a White Paper is published, it becomes the creature of the politician—the First Minister or whatever—and the civil servant is an anonymous character. He/she may sit next to the Minister, may have written every word of what has been read, but it is the Minister's statement, not the civil servant's. The civil servant should remain an anonymous servant of the Government. If a new Government gets in and the policy changes, they write another speech saying the opposite. That is their job; it is not to be a high-profile political figure. Is that not the case?

Michael Settle: Yes, I think it is. That is the normal case.

Q360 Kelvin Hopkins: Are we on a slippery slope towards a new world where civil servants become politicised and politicians, to an extent, hide behind them?

Professor Mitchell: I think that is right, although it is worth noting that understandings of leadership across the public and private sectors now have changed. There is an expectation that leaders—including Civil Service leaders—should have a more public profile. What we are now seeing—this is not just in the UK Civil Service; this is across the globe—are senior officials who are very anonymous, unknown, who write blogs and so on. In a sense, that may not necessarily be a bad thing if it involves greater accountability, for example. While anonymity has its place, the notion of neutrality is far more important.

Q361 Kelvin Hopkins: You seem to be relaxed about it, and I certainly am not relaxed about it because I see a fundamental change in our constitutional affairs. Politicians are elected and we can get rid of politicians; civil servants have a job. I spent 23 years of my life working in a political bureaucracy so I know how it works. I used to write speeches, but they were the President's speeches. They were not my speeches, and I knew my place. If the policy changed, I wrote a different speech. That is what civil servants should do. If we want to move to a different kind of constitution, come up and say that, but we cannot just let it drift and slide towards that kind of world.

Professor Mitchell: Can I rephrase or take back anything I said that gave the impression that I was in favour of a politicised Civil Service? I would very much be on your side in that respect. I would not want to see civil servants standing up there making speeches. That is for sure.

Q362 Chair: That is what Scottish civil servants are more or less doing at some of these public meetings.

Professor Mitchell: I have not attended any of these meetings, but I am not aware of them making the case for independence.

Q363 Chair: They are answering questions.

Professor Mitchell: You would have to put it to them, not me. I have not attended these meetings.

Q364 Chair: How much do you recognise a danger that we are sliding towards a more politicised Civil Service, which will bring in its wake the desire of politicians to have the civil servants that they want rather the ones they inherit?

Professor Mitchell: We have been moving for some time in that direction. There is something in that. A case can be made for that and, if we are going to make the case, we need to hear it fully and properly and hear a robust defence of that approach. I read the IPPR report that came out last summer, which I think made a very interesting case for it. I was not entirely convinced, I have to say, but let us hear it. There is a difference, however, I want to stress between greater accountability, which involves greater visibility, and the abandonment of neutrality. I would be very worried if greater visibility damaged that neutrality, and I could hear a case that that might happen. That is something I would want to see investigated.

Chair: I would like to come back to the neutrality issue in a moment, but Mr Roy first.

Q365 Lindsay Roy: The Scottish press, as you know, is dominated by referendum issues. How challenging is it to get a balance, particularly from the readers' point of view and the comments that come in about the Paper and its production?

Michael Settle: It is very challenging. I do not think I have ever been in a time where the sensitivities have been so intense. You are being watched every step of the way to be balanced and fair. We bend over backwards to try and be that. You are not going to please all of the people all of the time because it is a very divisive issue. You only have to read the comments online after a piece that you have written to see just how strong and divisive

people's views are. This is pretty much a black and white issue, and people are very passionate about it, so you have to be really careful and tread a very fine line.

Q366 Chair: Can I ask about the neutrality of the conduct of the machinery of government itself? It is quite surprising, some would say, how quiet many in the business community have been in Scotland—that they are reluctant to speak out because of the way they feel under pressure. Have you any evidence of how pressure is applied to businesses to keep them quiet? I remind you that you are speaking under privilege here. You can say anything without fear or favour; indeed, you have an obligation to tell us the truth.

David Maddox: The only evidence I have come across are statements that have been made here by people like Admiral Lord West, for example, and various claims that have been made. No businesses have actually come forward and said to us that this is happening to them: that they cannot speak because they are being directly intimidated or they are being told that they will not get a contract. There is a lot of suggestion that it is happening, but I am not seeing any actual evidence of it happening. If it were happening, there probably would not be a paper trail anyway.

Q367 Chair: So it may be happening.

David Maddox: It may be. Certainly, it has been mentioned enough to suggest that it might be happening, but there is no evidence to support it.

Q368 Chair: Nobody has come forward, even off the record.

David Maddox: No.

Michael Settle: Politicians have mentioned this from time to time, particularly those on the pro-UK side. They are very frustrated that businesses have not spoken out. They say things to them privately, so they say, but publicly they will not speak out. Like David, I have never come across any business suggesting that this is the case. It is just what people are claiming.

Chair: Professor Mitchell.

Professor Mitchell: I have nothing to add. I have certainly not seen any evidence. I hear the claim that is frequently made that there is pressure; whether there is or not, I am not sure. I do not know, but I have certainly not seen any evidence.

Q369 Chair: How confident are you that it is not happening?

David Maddox: I could not say one way or the other. In the recent controversy over CBI Scotland declaring for the “no” camp, one of the reasons suggested for that was it was acting as a public face for many of the businesses who felt too intimidated—I think that was the word used to me—to come forward. But, again, there has not been any actual hard evidence to suggest it is true or not.

Q370 Chair: Mr Settle, how confident are you that it is not happening?

Michael Settle: I honestly do not know. All we have are claims and counterclaims.

Professor Mitchell: One observation I would make is that, if one looks at the powers of the respective Parliament's Governments north-south of the border, it would seem odd to think that the Scottish Government would be in a position to put much pressure on business. Equally, the UK Government would be very unlikely to do so as well. I wonder, frankly, if this is just part of the froth of the referendum.

Q371 Chair: Understood. What impact has the publication of Sir Nicholas Macpherson's advice had on the debate in Scotland?

Michael Settle: The currency union issue, the issue of the pound sterling, has been the dominant issue thus far. There is no question about it. I go back to what I said in the beginning: it is reflective of how high the stakes are.

Q372 Chair: What impact has the publication of that particular advice had on the debate?

David Maddox: The publication of that advice plus the three Chancellors and Shadow Chancellors coming out certainly saw a widening again in the opinion polls in favour of the "no" side. Then there was a narrowing, again, when there was that off-the-record briefing of the Minister to *The Guardian*. On the evidence of polls, there did seem to be some impact.

Q373 Chair: How essential do you think it has been for this advice to be published in terms of the conduct of an objective debate?

Professor Mitchell: There was much media coverage of the advice and the BBC majored on this and the fact it was the permanent secretary. Now, I suspect very few members of the public remember that particular detail. People are aware of the issue. As Michael rightly said, it has been a very important issue, but, in terms of the impact of the Permanent Secretary, I am afraid the public do not engage in that way in politics.

Q374 Chair: So how helpful was it?

Professor Mitchell: It may have helped among the opponents of independence to sustain the case, and no doubt they were making this point—repeating this point—in their speeches, but I am not convinced it has had a huge impact. The evidence suggests that it has not had a huge impact at all in the polls.

Q375 Chair: I am going to go back to Professor Mitchell before he rushes out to catch his aeroplane. What precedent do you think it sets? Obviously, the two senior civil servants before us earlier were very keen to suggest that it had not really set any kind of precedent, it was all part of the same continuum and there has been no change. Do you see it as setting a precedent?

Professor Mitchell: Potentially, it could be a precedent in terms of the behaviour of civil servants in relation to the Scottish question. I do not think of it as a major precedent in terms of the EU referendum for the reasons I gave at the outset. I think Sir Nicholas and other senior officials would be wary of engaging in this way in a referendum or any other matter, knowing that there might be a Government taking a different view coming into office at some stage in the future. I would be wary of making many assumptions about it as a precedent.

Chair: Are there any other questions for Professor Mitchell?

Q376 David Heyes: I was really attracted to your view, if I have understood it correctly, that the Civil Service Code is based on the idea that we do things this way because we have always done things this way. It seems to me that this has served to expose the flimsiness of the Civil Service Code. I wondered if you would expand a little on that.

Professor Mitchell: It was a codification of past practice, frankly. I look at it and I think back to civil servants I have known over many, many long years and I am not convinced it has fundamentally altered the behaviour of the Civil Service. That said, it may be flimsy, but trying to find an alternative is extremely difficult. It may not be perfect, but I would be wary of suggesting an alternative. It should be called a code because it codifies past practice.

Q377 Lindsay Roy: Professor Mitchell, to what extent are you surprised that neither the Head of the Civil Service in the UK nor in Scotland were aware of any breaches of the Civil Service Code, given the number of people employed in the Civil Service?

Professor Mitchell: That is an interesting question. By breaches, I think they would probably have interpreted that as major breaches that were highly sensitive and suchlike. I guess there probably have not been very many, if any. If there were, we would be aware of it. Frankly, the role played by yourselves and these gentlemen has a huge part in ensuring there are not breaches. The slight worry would be that there is an assumption that all is well in garden and we should not worry about it.

Q378 Lindsay Roy: It is complacency.

Professor Mitchell: I would not want to go as far as to suggest that, but we would always want to guard against the dangers that you rightly identify.

Q379 Kelvin Hopkins: I have to say, Professor Mitchell, that I think you have been blurring together two issues: what has been said and who said it. Had the Macpherson letter been spoken in exactly the same terms by the Chancellor of the Exchequer, it would have been legitimate. The fact that such a political statement was made, including references to the European Union, by the Permanent Secretary to the Treasury was the significant political point. Blurring those two together is not helpful.

Professor Mitchell: No, I agree with that. Sir Nicholas's intervention was highly unusual. It did go beyond that which should have happened. I do not doubt that, but I do think that it is an exception. What I have set out to do is to try and explain why I believe it happened and why I believe it is unlikely to happen in the future, but I do think he overstepped the mark on that, yes.

Q380 Chair: Were you surprised that Sir Peter had never read the Northcote-Trevelyan report or the Haldane report?

Professor Mitchell: No, I was glad to see that he was honest about it. In a sense, it does not worry me either. As someone who has read it many years ago, I am very much aware of the evolution of thinking and, in a sense, I would suggest that the Civil Service Code can be traced all the way back to that. Of course, Northcote-Trevelyan were concerned more with issues of patronage than the kind of issues that you are talking about today. No,

I would not be at all concerned about that. I would be much more worried if he was unaware of the current concerns than unaware of Northcote-Trevelyan. I do not think we are likely to go back to the patronage problems.

Q381 Chair: Is there not a danger—or how great is the danger—that if politicians increasingly want civil servants to say in public what they want, they are going to feel increasingly entitled to have a say over who those senior officials are and how they are appointed.

Professor Mitchell: Yes. Again, to come back to the point I made earlier, a case can certainly be made for that. The IPPR report, which is an extremely good report, although I am not convinced, makes that case. There is something to be said for that. It comes down to some very tricky decisions. It is not a black and white issue; there are a lot of grey areas. Acknowledging that there are grey areas is a very important first step. If one tries to create a black and white area around these issues, it will lead to all sorts of difficulties.

Q382 Chair: I must let you go, but, finally, on the argument that we still have a unified Civil Service in the United Kingdom excluding Northern Ireland, what did you make of the defence of that position that we heard earlier?

Professor Mitchell: The first observation is that, in a sense, we have never had a unified Civil Service. If you go back to the pre-devolution period, the Scottish Office was almost a law unto itself. Indeed, different parts of Whitehall have been baronies; Hecks and Wildavsky, two American political scientists who wrote on Whitehall many years ago, commented on this. We can overstate the extent to which devolution has affected things. That said, yes, I think things have progressed further and, informally, there is a distinct Scottish Civil Service. There always has been, but it is more distinct now than it was in the past.

Q383 Chair: Is it any surprise to you that the Civil Service in London is unable or unwilling to attempt to regulate the code in Scotland?

Professor Mitchell: That is a pragmatic decision and probably a sensible pragmatic decision.

Q384 Chair: Which reflects a political reality, if not a legal reality?

Professor Mitchell: Yes. One of the things we did not do when we established devolution was to pay sufficient attention to issues of governance, including issues of the Civil Service. I am not saying here that we should have an independent Civil Service. I can understand why that was not wanted at the time, but we may have to revisit that issue at some stage in the future.

Chair: With that thought, I am most grateful to you. Thank you very much for joining us. I hope you have enjoyed the morning. It has certainly been interesting from our point of view and we are very grateful for your contributions.