



Public Administration Select Committee

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

HC 111

Wednesday 11 June 2014

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Members present: [Mr Bernard Jenkin](#) (Chair), [Paul Flynn](#), [Rt Hon Cheryl Gillan](#), [Kelvin Hopkins](#), [Lindsay Roy](#)

Questions 474-575

Witnesses: Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, gave evidence.

Q474 Chair: I welcome the Minister of State for the Cabinet Office to our session this morning, to discuss primarily impartiality in the Civil Service, particularly in relation to referendums. Before moving on to that, there are two other topics we need to clear away—I am assured that we gave you prior warning of both, Minister. The first is the response to our report published in July 2012 on the Advisory Committee on Business Appointments and the need to replace the arrangements with a conflict of interest and ethics commissioner backed by statute. That response is now 21 months overdue. You have promised on a number of occasions to get us a response as soon as possible—before Easter, you said it would be with us before Easter—and we are very cross. Indeed, we have actually published a report to tell you how cross we are.

Mr Maude: I know, I noticed that. I am sorry that we haven't published a response. The reality is that what we should have done is publish a response that would not have been very substantive much more quickly, but actually the issues that the Committee raised were substantive ones and the report prompted us to do a much fuller review of the business appointment rules. There were some elements in the Committee's recommendations that I thought were important—well, a number were important—and that I wanted to pursue, and that have proved a little controversial. But we are now moving towards a full and substantive response with a revised set of business appointment rules. I hope to be able to show those to ACOBA and then give a full response to you.

Q475 Chair: Clearly there has been disagreement about this very complex and vexed issue, and yet the drumbeat of dissatisfaction with the present arrangements keeps turning up in the newspapers. What is the disagreement about?

Mr Maude: Well, I wouldn't be right to ventilate the disagreement, because it is an internal debate and discussion, but I think when you see the response you will see that we have considered what the Committee said.

Q476 Chair: But it is 21 months now—why?

Mr Maude: It should not have taken 21 months. I am the first to say that.

Q477 Chair: Because there is a sense that this has been put in the “too difficult” drawer too often, and parked.

Mr Maude: That is probably right. It should have been delivered much more quickly, and I apologise for that.

Chair: I am very grateful for that apology. I cannot be cross any more if you apologise so abjectly.

Paul Flynn: Can I come in?

Chair: Mr Flynn, I know this is an important subject to you.

Q478 Paul Flynn: It is. Do you accept that the paramount need for politicians—all of us—is to restore public trust in us as individuals? We have not done that, as the European election results proved: many people were putting two fingers up to the whole political system. One of the main areas for suspicion, quite rightly, is how Members, former civil servants, former Ministers, former admirals and so on have prostituted their experience or their contact pages in order to profit from jobs in retirement. It is also a possibility that while they are actually doing the job they might have had their judgment changed by the prospect of getting a retirement job and a hacienda in Spain from some company that they favour. It is a deeply corrupting situation. We have had 21 months with no answer and no reform. You are going out of office within 12 months, and we haven't moved an inch on reforming—

Mr Maude: There is certainly an election in 12 months.

Paul Flynn: Well, let's be realistic about it. You are entitled to your fantasy of continuation, but if the public's vote is based on your action on ACOBA and stopping the revolving door, you would richly deserve to be thrown out of office and so would your party.

Mr Maude: Is there a question?

Paul Flynn: Yes. The question is, why have you delayed so long—

Mr Maude: Well, I have explained that.

Paul Flynn: —and haven't you driven politics into further disrepute by your indolence?

Mr Maude: No. The main effect of these rules is not on politicians, it is on civil servants and lifetime public servants. I want to see a public service where people can come in from outside, to bring new perspectives and different experience into Government and the Civil Service, and then feel that they can go out again as well. Rules that were

excessively restrictive, to prevent what you rather derogatorily refer to as a revolving door, would put anyone who came into the Civil Service from outside into some sort of detoxification tank, in which they would have to remain indefinitely, and that would be very much against the public interest.

These are difficult things to get right, which is why we have taken time—too much time, I freely concede—but actually there is no evidence that the rules are working really badly at the moment. They need to be refined and to work better, and to have more clarity about them. That is what will emerge.

Q479 Chair: Finally, I have asked this question before, and I ask it in good faith: when will you produce a response?

Mr Maude: I hesitate to use the word “shortly”, but I can’t do better than that.

Q480 Chair: There was some informal indication that it would be out this week.

Mr Maude: I want to get it in front of ACOBA quickly. I think it is right to let that committee see the revised rules first. Then we will respond, very quickly.

Q481 Chair: We will take a really, really dim view if this delay continues. I don’t know what we can do, but—

Mr Maude: You have made your views very clear, and I respect them.

Chair: I think Mr Flynn’s point has some merit. We are trying to present a coherent face to the public about how we manage people in public life and uphold standards in public life, and we therefore need to attach importance and urgency to the questions we have raised. But I am gratified and encouraged that you think the issues we raised in our report are of such merit. That is encouraging.

Q482 Lindsay Roy: Is it your contention that the main fault for the delay lies within the Civil Service?

Mr Maude: No, I would not want to say that. I am not going to apportion blame. All of us should have moved more quickly on this, and I regret that we didn’t.

Q483 Lindsay Roy: So what key lessons have you learned from this?

Mr Maude: To do things more quickly.

Q484 Paul Flynn: Are you aware of the work of *The Sunday Times* on this, or the television company that interviewed people, including the chair of ACOBA, who actually sent his CV in to the scam that was being run? *The Sunday Times* claims that there are 3,500 former personnel who worked in either the Civil Service or Government Departments who are now working for the defence industry and using their insider knowledge for the commercial benefit of those companies. It is corruption, and you are doing nothing to stop it.

Mr Maude: I don’t think there is corruption—that is not the right word to use. There are rules for a purpose. The rules need to be refined. They are being refined and the Committee will see them as soon as possible.

Chair: I think Mr Roy asked an interesting question. What are the lessons to learn from this delay that could be disseminated to Government Departments about how to respond quickly? Is it a ministerial responsibility to determine when a response is issued or not? If it is, what do Ministers need to do to bring things to a conclusion?

Q485 Lindsay Roy: My question really is: who prioritises? Is it the Civil Service, the Government or both together?

Mr Maude: I think that the blame should be shared in this case. I probably did not set strict enough timetables, and things did not go through the iterative process that many things go through swiftly enough. I am the one who is accountable to the Committee, and I apologise on behalf of my Department and the Government for our failure to deliver this more quickly.

Lindsay Roy: Thank you for your candour on that.

Q486 Chair: I do not want to harp on unreasonably, but if there was shared intent between Ministers and officials to produce something in a timely manner, it would be produced. The question that arises is: where was that shared intent to produce a timely response?

Mr Maude: Rather than go inordinately through the entire saga—which, as you rightly say, has been lengthy—can I just leave it that I know that this is not the right way for things to be done? As far as I am concerned, I will try to ensure that it does not—

Chair: But we are on to one of our pet themes: how we learn from failure, and review and improve as a result of what has gone wrong. We hope that you may be able to address that in your response as well.

Q487 Paul Flynn: Isn't the likely explanation for the delay that everyone involved—civil servants and politicians—has a vested interest in keeping a watchdog like ACOBA continuing in its futile way without teeth or claws and with no powers to impose its views? Isn't it that we have got the establishment deciding not to act, sitting on their hands for 21 months to protect their prospects for retirement jobs?

Mr Maude: No.

Q488 Chair: We will move on. We have all made our points, but I hope that there will be learning from this episode. Can we move on to the Chilcot inquiry, which we also gave you notice that we wanted to raise? You kindly wrote me a letter, which I have circulated to the Committee. Can you explain what factors have been delaying the Chilcot inquiry report?

Mr Maude: No, I can't, really. The inquiry does not report to Ministers, and certainly not to me. Sir John Chilcot is in charge of the inquiry. If I may say so, I think that your letter was helpful in bringing to a head the issues that need to be resolved. Sir John Chilcot, in his letter to the Cabinet Secretary, makes clear the kinds of issues which are very sensitive and important and need to be resolved satisfactorily. They have now been settled to the satisfaction of Sir John and his inquiry, who, as far as I am aware, are pursuing their task in an extremely robust and independent way.

Q489 Chair: The Chilcot inquiry was established very much as a result of this Committee in the previous Parliament, although the Committee concluded on the Iraq inquiry that its establishment actually gave less accountability and formal reporting to Parliament than the Committee and probably most in Parliament would have liked. In a way, by saying that you are not in a position to explain the delay and that you are not accountable for it, you have just confirmed that. Do you recognise that an unsatisfactory feature of the inquiry is that it does not have a degree of accountability that it needs?

Mr Maude: Well, no. Obviously I was not in government when it was set up. There is a protocol that originates from the time when the last Prime Minister established the inquiry, which sets out how documents and other written and electronic information—

Q490 Chair: But if we cannot ask you about these things, whom can we ask?

Mr Maude: Well, Sir John Chilcot, I imagine.

Q491 Chair: But he is not accountable to Parliament; his inquiry was established under the statute.

Mr Maude: Yes, and that gives him statutory independence.

Q492 Chair: But it is a disagreement between the Executive and the inquiry that seems to have led to the delay. There must be accountability to Parliament for the conduct of the Executive.

Mr Maude: And the way in which the inquiry was set out is that the office within the Executive that is responsible for resolving these issues with the inquiry is the Cabinet Secretary.

Q493 Chair: For as long as there is no substantive disagreement between Sir John Chilcot and the Cabinet Secretary—and there now appears not to be—I think that if we trust the inquiry, we have to trust his assurance that he is content that what he has is “sufficient” to explain his conclusions. However, if there is a disagreement between Sir John Chilcot and the Government about what he wants to publish, item by item, which is an ongoing feast, do you recognise that Parliament must have a locus in that discussion?

Mr Maude: Parliament will definitely have a view on it and can express that view.

Q494 Chair: Can I clarify one other thing? Sir John Major suggested that it was all in Tony Blair’s gift to decide whether to publish the correspondence between No. 10 and the White House—is that the Government’s position?

Mr Maude: I don’t think that that’s completely right. The confidentiality of high-level diplomatic exchanges is not just in the gift of one individual; there are wider concerns about the openness with which such exchanges would take place in future if there was a sense that one individual could take a unilateral decision to release sensitive material.

Q495 Chair: So in fact these are state papers and are not in the gift of Tony Blair to release.

Mr Maude: I think that is absolutely right.

Chair: So Sir John Major was wrong.

Mr Maude: I don't think he was exactly right on that.

Q496 Chair: And of course the protocol to which you refer, which is on the Government's website, was agreed in 2009 between the then Prime Minister, Gordon Brown, and the then Cabinet Secretary, Gus O'Donnell, and has not changed.

Mr Maude: No.

Q497 Paul Flynn: Above all the considerations of international protocols, there are three main reasons why every word—every syllable—of the correspondence between Tony Blair and Bush should be published. May I put them to you? The first is to give closure to the tormented loved ones of the 179 British soldiers who lost their lives in the Iraq war—they still do not know whether they died in vain.

Secondly, it is important for the military to have absolute confidence that when Parliament orders them to put their lives at risk, it is done in the best possible way, with the best information available, and not for the vanity of politicians or because of mistakes, errors or lies.

Thirdly, it is also important for Members of Parliament, because, since 2003, we take the decisions to go to war; it is not the Prime Minister exercising the royal prerogative, it is MPs who decide. On 29 August last year, the House decided not to follow the Prime Minister into a war in Syria; that was the first time that that had happened for centuries.

Those are three reasons why there is a collapse in trust in Government and Prime Ministers, and a grave doubt about whether we as a Parliament might send soldiers to die in vain. John Major says that unless the full truth is published, the suspicion will fester of a cover-up by those involved, both politicians and civil servants. Is this not a situation in which the Government must intervene and say, "We will publish all the information and let the public decide"?

Mr Maude: Whether I agree with you and Sir John Major on this is, frankly, immaterial, because I have no power to do anything about it. The arrangements were made by Gordon Brown when he was Prime Minister, and they are the conditions that bind the inquiry.

Q498 Paul Flynn: When Gordon Brown set up the inquiry as a result of a request from this Committee—as a result of campaigning and a seminar from this Committee—he set it up to be held in secret. This Committee met again and denounced that decision, and it was changed: the inquiry was largely held in public as the result of Gordon Brown's decision. The current situation is really not good enough. I challenge you to look into the faces of the relatives, the people who are worried about why their sons were sent to war and died. Reginald Keys is one of those people—say to him, "We can't do this because it is the fault of the previous Prime Minister." You are the Government; you can do almost anything. Of course you can publish the full details of Tony Blair's letters at least, even if there might be a problem with George Bush's. The reasons are so overriding in order to replace public trust.

Mr Maude: I hear what you say and I understand the arguments, but, as I have said, it is not in my gift to do that.

Paul Flynn: The person responsible—

Chair: Last question on this.

Q499 Paul Flynn: Jeremy Heywood and Gus O'Donnell are blamed for holding up publication. Jeremy Heywood was working as a close aide to Tony Blair at the time. Whether true or not, the suspicion is there that Jeremy Heywood is covering up his own reputation, his own actions then, and those of his boss, Tony Blair. The situation will not be resolved, the crisis will continue and the collapse of confidence will go on—we will never be able to take part in a war again. Parliament will not decide to go to war because it no longer believes the assurances that it has been given. Is that not something worth changing?

Mr Maude: Well, I hear what you say, but I think that the aspersion cast on Sir Jeremy Heywood is unfair.

Paul Flynn: But he is—

Chair: No, we are going to have to stop. In the end, I must say that what intelligence is released is less a matter for this Committee than for the Intelligence and Security Committee.

Paul Flynn: Who were cheerleaders for the war.

Chair: They weren't all cheerleaders for the war by any stretch.

Paul Flynn: No, but they have a vested interest in covering it up.

Chair: I think we must move on.

Paul Flynn: No, Chairman, you can't get away with that. I vividly remember 2003: the Intelligence and Security Committee, the Defence Committee and the Foreign Affairs Committee were all lined up in favour of the war and were promoting this fiction about weapons of mass destruction. We went into the war on the basis of a lie; 179 deaths are a hell of a price to pay for one man's vanity.

Q500 Chair: I think you have made your point, Mr Flynn. I am grateful for it, but we must move on.

We now move on to the main subject of today's sitting. I would like to start by asking what is meant by impartiality when we talk about the Civil Service, because the Civil Service Code states that “‘impartiality’ is acting solely according to the merits of the case”.

Mr Maude: No, that is not quite right.

Chair: Well, that is what the code says.

Mr Maude: No. Where does it say that?

Chair: It says that “‘impartiality’ is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.” Have I misquoted it?

Mr Maude: Where? I can’t see that in the code.

Chair: I am looking at the Civil Service Code itself.

Mr Maude: Okay, in the summary. What it then goes on to say is: “You must...take decisions on the merits of the case” and clearly provide information and advice objectively—but obviously in terms of acting it is the obligation of civil servants to implement the decisions of the Government, regardless of their view of the merits of the case.

Chair: I certainly accept that, and I do not think that anybody’s ever disputed that.

Mr Maude: So that summary is actually slightly misleading.

Q501 Chair: Where in the code are you talking about?

Mr Maude: I am looking at the bottom of the third column, under “Objectivity”, where it says, “take decisions on the merits of the case” where decisions are made by civil servants rather than by Ministers. Then, when you look at the detailed passage on impartiality, it says: “You must...carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.” Going on, under “Political Impartiality” it says: “You must...serve the Government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality...no matter what your own political beliefs are” and “act in a way which deserves and retains the confidence of Ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future Government”.

Q502 Chair: I don’t dispute any of that. The point we want to explore is this: you argue that impartiality means not cold indifference but a passionate commitment to achieving what the Government wants to achieve. In the implementation space, or in the project management space, that is obviously the case. Is it the same in terms of explaining or expanding the political views of the Ministers? Is that what we mean—that civil servants should be out there being cheerleaders for Ministers and championing their policies and political views as opposed to just implementing their decisions? There is a qualitative difference between the two, is there not?

Mr Maude: There is, and the way the Permanent Secretaries you had before you explained it was a good one. It is the obligation of senior civil servants to explain Government policy. When we talk about not being neutral to the Government of the day we are saying, in essence, that it is the job of civil servants to implement enthusiastically and expeditiously the decisions of the Government and the policies and programmes of the Government, having given candid advice, which should be objective and evidence based, in private beforehand.

Q503 Chair: Can you explain the difference between impartiality and neutrality?

Mr Maude: Yes, I think so. I will have a go.

Chair: It is quite tricky, isn't it?

Mr Maude: It is. I think it is really not so much about a definition as what it connotes. Neutrality connotes indifference. Impartiality connotes an ability to serve Governments of different political persuasions, and thus not being so identified with one approach that the level of trust of an incoming Government and incoming Ministers would be jeopardised.

Q504 Chair: So is there an injunction upon civil servants not to be so enthusiastic and passionate about a Government's policy as to lose the potential trust of a Minister of a different political persuasion?

Mr Maude: No. Again, I don't think that is quite right. All of this is a matter of tone, really. One of the things you look for in a civil servant, regardless of what their political views actually are—and I make a point of never knowing—is an ability to promote by action as well as by words, where that is appropriate, the policy and programme of the Government of the day. I would much rather have a civil servant who has been diligent and effective in promoting the programme of my opponents in government than someone who has been so neutral and impartial as to be towards the—I am trying to think of the right word.

Q505 Chair: How do we establish at what point a passionate commitment to a particular Government's policy strays beyond what would be regarded as impartial?

Mr Maude: I think you can probably recognise it. It is really hard to define it, but you could probably recognise it.

Q506 Chair: I think that is what we are struggling with. We are in a more political age—

Mr Maude: I'm not sure that we are.

Chair: Well, we can't pretend that civil servants don't do certain things when they do, in the way that we used to. There used to be a shroud of secrecy over what civil servants did, but that no longer exists. We are therefore looking at how to establish a boundary.

Mr Maude: I don't think you can legislate for a perfect boundary. You can try to set it out, and intelligent people will recognise what is all right and what is not all right.

Q507 Chair: But if you can recognise it, you should be able to describe and define it, perhaps not in statutory terms but in terms that people will generally understand and that will guide their behaviour.

Mr Maude: Well, actually, that is not the way our legal system has worked over the centuries. It has worked by recognising what is appropriate and what is not appropriate and by establishing that through precedent.

Q508 Chair: Although the code is in statute, it is not statutorily enforceable, so we are not going to have courts making lengthy descriptions of where the boundary lies, but we are going to have to do that for ourselves. How should we do that?

Mr Maude: I was referring to the law by way of analogy. I am not suggesting that this is a legal matter, but a lot of these things do accrue through people deciding on the basis of particular cases.

Q509 Chair: How desirable would it be to try to create a bit more definition on where the boundary lies?

Mr Maude: I am not sure that would be very fruitful. You could end up trying to cover every eventuality, and then you end up with guidance that is several feet thick and that nobody ever reads.

Q510 Chair: What do you think are the challenges to maintaining Civil Service impartiality?

Mr Maude: I'm not sure there are particular challenges.

Q511 Chair: So you think it is all a breeze for civil servants? Is it easy for them to remain impartial?

Mr Maude: No, I think they make judgments all the time, and Ministers respect those judgments. That works pretty well.

Q512 Chair: Don't you think party politics challenges that impartiality almost every day?

Mr Maude: No.

Chair: You don't?

Mr Maude: I am trying to think of an example of being challenged in my life as a Minister, and I cannot think of anything.

Q513 Chair: But there is pressure on civil servants to do what their Ministers, and their Ministers' special advisers, want them to do.

Mr Maude: There is pressure on civil servants to do what their Ministers want them to do. That is what they are meant to do. It is not challenging their political impartiality; it is what the code requires them to do.

Q514 Chair: So you cannot think of any examples of where a Minister has tried to persuade an official to do something that would stray beyond the boundaries of impartiality?

Mr Maude: There probably have been examples of where a suggestion has been made—I cannot remember one in my own case—on which the civil servant politely says, “That goes beyond what I am permitted to do.” Those things work out in a pragmatic, sensible way.

Q515 Chair: If we want there to be trust between Ministers and officials, there needs to be a clear understanding of where that boundary lies. I imagine that, for a Minister, being rebuffed by an official might reduce your confidence in that official.

Mr Maude: It would increase my confidence in the official.

Q516 Chair: Finally, there has been surprise that, in your speech to Parliament before Easter in the debate on the Civil Service, you described the Northcote-Trevelyan settlement as a “bargain.” Can you describe in what sense it is a bargain?

Mr Maude: Northcote-Trevelyan set out that Ministers would no longer have the ability to make their own personal appointments to Civil Service roles and that in future Civil Service appointments would be made on the basis of fair and open competition based on merit. The other side of the settlement has to be that the Civil Service is capable of doing what Ministers want, otherwise Ministers will resist the constraint—the self-denying ordinance, if you like—that Northcote-Trevelyan makes against their making their own appointments. If the Civil Service is not capable of providing civil servants who can implement effectively what the Government needs and who can provide advice of sufficient quality, and then delivery of sufficient quality, Ministers will become restive.

Q517 Chair: If Ministers cannot achieve what they feel they legitimately should achieve, they will be unsatisfied with the system.

Mr Maude: Yes. That is exactly my point.

Q518 Chair: But is appointment on merit the obstruction to that, or are other things obstructing that effective relationship?

Mr Maude: It’s not about the relationship. It’s about capability.

Chair: But a bargain is a relationship.

Mr Maude: A permanent, impartial Civil Service has to be capable of delivering what any Government wishes to have done, because it is the Government that has democratic legitimacy; it is the Government that decides what is in the national interest. There will be robust political debate about that in this place and elsewhere, and that is fine but, at the end of it, the Civil Service has to be capable of delivering the Government’s programme.

Q519 Chair: So it would be a mistake for you to caricature your relationship with your official as a sort of transactional relationship, but you still envisage a relationship between Ministers and officials that is about building up trust and understanding, shared intent, common goals and collaboration to achieve agreed ends. Presumably, that is what good leadership is about.

Mr Maude: The ends don’t need to be agreed. Civil servants don’t need to agree with what Ministers decide. I want a Civil Service, which for the most part we have, where officials give very robust, objective, evidence-based advice on the merits of the case to Ministers on policy and on the implementation of policy. Ministers make decisions having absorbed that advice and then are entitled to expect the Civil Service to implement it.

Q520 Chair: I think most civil servants would agree with that.

Mr Maude: Yes. I don’t think anyone would not agree with that.

Q521 Chair: But I don’t see why it needs to be caricatured as a bargain.

Mr Maude: Because it doesn't work if one side of it is not effective. There have been too many times when Government Ministers, from all parts of the political spectrum, have felt that the capability of delivering what the Government has decided has not been sufficiently developed or powerful.

Q522 Chair: But it's a slightly one-sided arrangement if Ministers are the ones who decide that the other is failing in the bargain. We can both think of examples where Ministers have been the defective side of the bargain—maybe Ministers have not been capable of understanding the complexity of the problems they are grappling with and have failed to understand the advice they have been given. That is not unheard of in our system of politics.

Mr Maude: In which case they get held to account in this place and at the bar of public opinion, particularly at election time.

Q523 Lindsay Roy: Forgive me for going back a step. Given the sensitivities, is it not fundamental that we have a differentiation between what we mean by "impartiality" and "neutrality"? Can I maybe help you out? Apparently Peter Housden said to his team in Scotland that their duty was to be impartial and objective, but not neutral. Bob Kerslake said, in relation to Nick Macpherson, "I do not think it is the case that Nick crossed the line of neutrality" on his advice to Government.

Mr Maude: Who said that?

Lindsay Roy: Bob Kerslake said that about Nick Macpherson.

Mr Maude: Did he? I didn't see that in his evidence.

Q524 Chair: The point is that if you put these two statements side by side, the terms "neutrality" and "impartiality" are being used interchangeably.

Lindsay Roy: Are they synonymous?

Chair: They're not synonymous, are they?

Mr Maude: No, I don't think they are, but I'm not quite sure what the question is.

Chair: Each is using "impartiality" and "neutrality" in the opposite sense, so there is obviously no agreement about what "impartiality" and "neutrality" mean.

Q525 Lindsay Roy: The question is, is it not highly desirable in this sensitive time to distinguish between "impartiality" and "neutrality"?

Mr Maude: I'm not aware that there is a particular point of contention here. I didn't see any particular difference between what they were saying when I read through their respective evidence.

Q526 Lindsay Roy: Can I just say again that Peter Housden apparently said to his team that they were to be impartial and objective, but not neutral?

Mr Maude: Yes, I understand that. That's fine. I don't have a problem with that.

Q527 Lindsay Roy: So what is the difference?

Mr Maude: Between what?

Lindsay Roy: “Impartial” and “neutral”.

Mr Maude: Well, impartiality means that you could be as effective for another Government or Administration as you are for the one you are serving at the time. “Neutral” does not mean you sit there in stony indifference. You are not neutral. “Neutral” has a sense of inertia. Impartiality means that you are sufficiently balanced that you can serve another Government, but no Government wants its civil servants to be neutral to what the Government are doing. You want them to be energetically engaged in making what the Government has decided happen.

Q528 Lindsay Roy: Is there not a danger that, without that clarity, they are interchangeable? Sir Bob Kerslake commented about crossing the line of neutrality in advice to Government. That may be the wrong word to use.

Mr Maude: You would need to point me to where in his evidence he said that.

Q529 Chair: What Sir Bob Kerslake said was that Sir Nicholas Macpherson’s decision to publish his advice did not cross the line of neutrality. He is using neutrality in the opposite sense to that in which you have used it.

Mr Maude: I can’t immediately find that, so I would like to look at the context of what he said.

Q530 Chair: This isn’t designed to catch you out. It is a genuine enquiry and something that we need to explore and understand. If you like, I will put it in writing to you and you can think about it, because it is a really interesting question.

Mr Maude: My recollection is that Sir Bob Kerslake said—I have just found it here—in a response to Mr Roy, “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 to 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.” It feels like he was using the words in the same way as Sir Peter Housden.

Q531 Mrs Gillan: Good morning, Mr Maude. Perhaps it would be better if the word “neutrality” was substituted by the word “partisan”.

Mr Maude: Yes, I think so.

Q532 Mrs Gillan: That might capture what you do not want from civil servants.

The Ministerial Code says, at paragraph 5.1, that Ministers must uphold the political impartiality of the Civil Service, and you said, in an earlier response to a colleague, “I am not sure there is a problem about impartiality”. So if you do not believe there is a problem, or there could be a problem, how do you maintain that vigilance across what is supposed to be a

unified Civil Service that embraces the complexity of devolution? Does that guardianship reside with you and the Cabinet Office?

Mr Maude: No, it doesn't. I am not the guardian of the Civil Service Code. As far as there is a custodian, I think the Prime Minister signs it off. If there is an external custodian, it would be, I guess, the Civil Service Commission. If civil servants have concerns they can make a complaint to the Commission about breaches of the code. I understand the point about the complexity in the devolution world where, in this context, it is Sir Peter Housden who is the guardian of the Code.

Q533 Mrs Gillan: I want to pursue that a little if I may. Can you tell me quantitatively how many complaints have been made to the Civil Service Commission over the life of this Government, whether there is a pattern and what happened to those complaints? If you can't answer now—

Mr Maude: I can't.

Mrs Gillan: Then it would be helpful if you could write to the Committee.

There was huge controversy over the fact that civil servants had published “Scotland's Future: Your Guide to an Independent Scotland”, and there were a lot of reports in the press that civil servants were particularly unhappy about the way their work had been politicised. I think that is a problem, and consequently, because it is one Civil Service, that means it is a problem right across the board. To what extent do you think it was appropriate for those officials to produce that paper?

Mr Maude: I honestly don't think that is a question for me. It is absolutely a question for Sir Peter. You had him in front of the Committee and questioned him at length, and he gave an account of why he—as the accounting officer and the holder, as it were, of the need for compliance with the code—felt it was appropriate.

Q534 Mrs Gillan: But there was then equal controversy on the other side, which is as far as the UK side of the operation is concerned, when there were what some considered to be inappropriate tweets from the Scottish Office. Is that something you can comment on? What is your view about that? How do you feel that the greater exposure in a modern social media age and an age of rapid communication is disturbing the relationship you describe between officials and Ministers?

Mr Maude: You raise a very good point on the role of social media. In a world where it is very easy to communicate very directly, we have not wanted to suppress any ability for civil servants to do that, particularly ones who do not work in a policy context, as most civil servants do not. They do things that are policy-neutral or politically neutral. To use your rather good definition, they are doing stuff that is non-partisan. If they express a view, it will be about something technical that is politically neutral. It is a matter of judgment; we are feeling our way, and it is the early years of social media. I think people will recognise what is and is not appropriate and should err on the side of caution, because this can potentially cause problems. I am not aware of the particular instance you referred to, of tweets from the Scottish Office.

Q535 Mrs Gillan: The Scotland Office tweet said, “First Minister has no plan on currency and no plan for how independence would work says @acarmichaelmp.”

Mr Maude: I think that is alright, because that is quoting a Minister. I do not see any problem with that. The rules on this are really straightforward: your press office or media team cannot put out stuff that is party political in the sense that it attacks another party. That would have to go out through another route. But they absolutely can put out a view which promotes the Government’s approach.

Q536 Mrs Gillan: A lot of these issues seem to relate to communications policy. Surely a tweet like that would be better coming from the Minister’s own Twitter feed, rather than the Scotland Office’s.

That leads me on to my final point about maintaining impartiality. I need to be reassured that someone somewhere in government is constantly looking at this, particularly with the nature of devolution and the complexity of the demands placed on civil servants. With the conflict of interests that I think they experience, they often almost serve two masters. It is one Civil Service, but of course their direct line of command is to whoever is the Permanent Secretary within the devolved Administration. Who is looking at that relationship? Who is reviewing it? Who is creating the corporate memory? This needs to be passed totally impartially, politically, from Government to Government. I do not know what your experience was, but mine was that there was very little to guide someone coming into this area and very little co-ordination, with very little ongoing monitoring from which we should be able to learn and strengthen the Civil Service.

Mr Maude: I think that is a really good question, and I am not sure I have a completely satisfactory answer. We are dealing with something unprecedented: a devolved Government are undertaking a referendum with massive constitutional implications, but the entirety of the UK political spectrum has a different view and the Government position is absolutely clear. There is no precedent for this. You are absolutely right that we should make sure the lessons from this are codified. We are not always as good as we should be at capturing that memory. That is a really good point. It will be the responsibility of the Cabinet Secretary, in particular, to capture and codify that.

Q537 Mrs Gillan: Could you ensure that point is made?

Mr Maude: I will.

Mrs Gillan: There will be some important consequences for Wales and Northern Ireland, whichever direction the referendum ultimately goes.

Mr Maude: That is a really helpful point, and I am grateful for it.

Q538 Chair: I am grateful for that. I have two points on corporate memory and the words “partisanship” and “non-partisanship”. I have just checked, and interestingly the Civil Service Code does not contain the words “neutral” or “neutrality”, and it does not deal with partisanship. Wouldn’t you agree that although the two sides of the referendum are not party political, they are still partisan? In that respect, the Scottish White Paper is a very partisan White Paper.

Mr Maude: Well, it promotes the view of the Scottish Government.

Chair: It promotes one side of a political argument in a referendum. There are rules—for example, purdah rules that prevent Ministers from making announcements during the purdah period of the referendum, to prevent the Government from being used as a partisan element in the referendum. However, clearly the SNP is using the whole Scottish Executive as a means of conducting a campaign.

Mr Maude: Well, you've got a rather unusual position. You've got a devolved Government who have a point of view, and a UK Government who have the opposite point of view.

Q539 Chair: But that would seem to be partisan, according to your own definition. We are making a distinction with party politics, but in a referendum the two parties are the yes campaign and the no campaign.

Mr Maude: It is an unusual situation. By and large, it has been navigated in a way that is okay, but it is absolutely right that we should codify it.

Q540 Mrs Gillan: Take the examples of the Calman commission and the Silk commission. To produce some objective lessons or ways forward on devolution, an independent set of commissions was set up. Surely when you have something as big as the independence vote, the advice to the whole of the United Kingdom, as well as the people in Scotland, should have come from independent people. It is so strongly a political message that it has to be wrong for civil servants to be used in that way. Perhaps I am expressing that very extremely, but it is certainly questionable that civil servants were used in that way.

Mr Maude: All I can say is that the very senior civil servants you have had in front of the Committee have been pressed on this issue. They are not pushovers, and they have expressed themselves content with the way in which the Civil Services serving the Scottish and UK Governments have been involved in this. But there will remain questions that can be debated.

Q541 Lindsay Roy: This question does not apply solely to the referendum. In fact, it is a much wider question. I note that you have no concrete information on the number of complaints about breaches of the Civil Service Code, and neither had the head of the Civil Service. Would it not be appropriate to have a proper monitoring system for the number of complaints, what action has been taken and what lessons have been learned?

Mr Maude: I will take that away and reflect on that, if I may. I will need to discuss that with the First Civil Service Commissioner.

Q542 Lindsay Roy: It would also be helpful if, in the response, we had not only the number of complaints, but what actions had been taken and lessons learned.

Mr Maude: Yes. That is a very fair question and I will reflect on that.

Chair: We will recommend it, then.

Q543 Paul Flynn: Were you aware of Nicholas Macpherson's intention to publish his advice to the Chancellor?

Mr Maude: No. Nor would I have expected to have been.

Q544 Paul Flynn: Is it entirely a matter for the civil servant?

Mr Maude: Well, with the agreement of his Minister, who is not me.

Q545 Paul Flynn: You, or the Government, do not have any role in this as such.

Mr Maude: Not in instructing a Permanent Secretary in another Department whether it is appropriate, no.

Q546 Paul Flynn: But you rightly said that the top civil servants and Government Ministers have closed ranks on this in defending themselves—

Mr Maude: That is not what I said, but—

Paul Flynn: It is a rare situation: you have to go back a long time to find a civil servant publishing advice that he has given to a Minister. Normally, the advice is given and the Minister has to put the policy forward. This sets an interesting precedent and presumably the floodgates are now open. If a civil servant took a piece of advice to Government that disagreed with what they were saying and agreed with the Opposition, would that civil servant be free to publish such advice that would undermine his Minister's policies?

Mr Maude: Two points. First, you suggest that this has never happened before. I think that Sir Nick Macpherson was able to quote some precedents, but he made the point that—

Paul Flynn: It is pretty rare—

Mr Maude: Yes, and he said that it should be rare. So I do not think that there is any point of contention here. The second part of your question was: could a civil servant unilaterally decide to publish advice against the wishes of his Minister? The answer plainly is no.

Q547 Paul Flynn: But why not? The Government has a partial campaign on the Scottish referendum. Is it the Government's strength of feeling to maintain the status quo that allows the civil servant to behave in this very unusual way?

Mr Maude: I think Sir Nick described, very lucidly, the approach he took that led him to conclude that, if the Chancellor agreed, he should publish the advice.

Paul Flynn: He did not convince all of us, I can assure you.

Mr Maude: The chances of me convincing you, if he couldn't, are probably slight.

Q548 Paul Flynn: Well, his defence was that he was an important, senior civil servant and that the matter was of some importance for the strength of the pound and our fiscal position. Even if so, it still remains the Minister's job to put that case, not the civil servant's. What was

unusual? He did not seem to establish that this situation was so unusual and rare that he should act in this way.

Mr Maude: I don't think I can improve on the way in which Sir Nick made the case. He did so lucidly and articulately and, I thought, persuasively.

Q549 Paul Flynn: His advice was a headline in one of the Scottish Sunday papers this weekend. He gave the advice in February, but it is being treated as a piece of hot political propaganda for those who want to maintain the status quo in Scotland. Is it appropriate for a Minister to be involved in raw political controversies in this way?

Mr Maude: I don't think I can improve on what Sir Nicholas said at the Committee when these matters were explored very fully.

Q550 Paul Flynn: It was suggested that this was an exceptional circumstance. How was it exceptional, and how would you define such a circumstance?

Mr Maude: I don't think I can improve on what Sir Nicholas said. It was his judgment that it was appropriate. He is an extremely experienced, senior, well regarded civil servant, and I think he made a very powerful case.

Q551 Paul Flynn: But isn't this again a case of how, over and over again, when people are in trouble, they do one of a number of things? They usually blame the last Government, or the EU, or sack the SpAd or whatever. And here we have the establishment of civil servants and Government Ministers closing ranks to defend some action, which is a dangerous precedent for the future.

Mr Maude: I don't believe there is a precedent. I think there were already precedents, but what everyone has made clear is that we expect this to continue to be rare.

Q552 Paul Flynn: We are going to have another referendum of even more significance on Europe. Whichever Government is elected, it is likely to happen anyway. Is this a model for what should happen in the European referendum? The last time we had one, the parties were arguing on both sides. Harold Wilson gave advice and Tony Benn gave different advice as the campaign went on. Do you think civil servants for or against continuing in the EU should be free to join in the political fray and have their names in the headlines of the papers?

Mr Maude: I think we have the advantage in that context of there being a precedent, because 40 years ago there was a referendum on membership of the European Union, and no doubt these matters were fully explored; I don't know. I am sure they were following Mrs Gillan's excellent suggestion, and that it was codified at the time. So we at least have a precedent for that.

Q553 Paul Flynn: Do you have a precedent for last weekend's situation in which a civil servant spoke not impartially or in a neutral way, but came down fiercely on one side in a very hot political issue? What a civil servant said was the main headline on the front page of a Sunday newspaper last week. It carried some weight, because he is not a politician. Is this an appropriate use of a civil servant's role?

Mr Maude: Is this a reference to Sir Nick Macpherson's advice?

Paul Flynn: Here is the headline: “It’s boom or bust. Treasury chief’s sensational verdict on independence.” That was last Sunday. He said it in February, but it takes a while for the news to get out.

Mr Maude: They are slowing catching on. He said it some time ago.

Paul Flynn: But are you happy for a civil servant’s role to be altered in this fundamental way?

Mr Maude: I am sorry to be slow on the uptake. Is that a reference to Sir Nicholas’s advice that was published two or three months ago?

Paul Flynn: Yes.

Mr Maude: So he has not said anything new.

Chair: Actually, I want to correct Paul. It was a subsequent comment that Sir Nicholas Macpherson is alleged to have made.

Paul Flynn: It is even worse if he is getting more deeply embroiled in this political row. This is not what civil servants do. To find themselves right in the middle of such an argument is contrary to the whole tradition of civil servants. Is this a signal—when the European debate comes up, will civil servants’ views be all over the place? Will they send press releases to the Sunday papers and appear on “Newsnight”?

Q554 Chair: I think what this demonstrates is that once a civil servant has put themselves in the public domain on one side of an argument, they are then hunted for what they might subsequently say, and this is a case in point.

Mr Maude: And those are very good reasons why this should be a rare occurrence.

Q555 Paul Flynn: How rare? What are the circumstances that would permit it?

Mr Maude: I thought Nick Macpherson made a really good case.

Q556 Chair: Isn’t there, again, a case for trying to define or codify the circumstances in which this exceptional step should be taken?

Mr Maude: Perhaps.

Q557 Lindsay Roy: On that point, the first priority of any state is to protect its people, its assets and its territory. If there is a major issue about that, could that be an exceptional circumstance?

Mr Maude: I can’t particularly think of any circumstances. Trying to define all these things to cover every eventuality in advance is a mistake. The approach that has been taken in the past is that it should be a very rare occurrence for civil servants’ advice to become public. It should certainly never happen without the consent of the Minister concerned. This ability should be used sparingly, which I think is exactly the way Nick Macpherson put it.

Q558 Lindsay Roy: But it is not impossible that we could get similar advice in future in other areas like defence.

Mr Maude: I would not want to say that it could never happen, but I would simply say what I have already said, which is that this is something that should happen rarely.

Q559 Chair: We have already touched on the question of the coherence of the unified Civil Service that we have in Britain. We already have a separate Civil Service in Northern Ireland, which is actually a reflection of what existed in the whole of Ireland before partition. To what extent do you think there is already a de facto separate Civil Service in Scotland?

Mr Maude: It is obviously more separate than it was, because it is serving a separate Government, who for some time have had a different political orientation from the UK Government. It is possible to overstate the extent to which we have a single, unified Civil Service anyway, quite apart from the Northern Ireland accident of history. The diplomatic service is not part of the Civil Service as such, and Crown servants who work for the intelligence agencies are not technically civil servants, so we can overstate the degree of unity, as it were, in the Civil Service. All the UK parties have said that, in the event of a no vote in the referendum, they are contemplating—or I think committed to—further devolution. While I cannot say that I have studied in detail what the various proposals are, it is certainly conceivable that this topic could feature in the debate.

Q560 Chair: Can you ever imagine circumstances in which the head of the UK Civil Service actually takes action against the Permanent Secretary in the Scottish Executive for a breach of the Civil Service Code when the First Minister does not think that there is a problem?

Mr Maude: I think that one would struggle to imagine that.

Q561 Chair: So to what degree is there a political reality of a separate Civil Service already upon us?

Mr Maude: Whichever direction this goes in the future, there are huge benefits for us all in there continuing to be a lot of movement between different parts of the Civil Service—civil servants in UK or England-only Departments, or England and Wales Departments, moving to other parts—and that happens already with the Northern Ireland Civil Service. The Civil Service is not hermetically sealed from any movements. You would definitely want, in all circumstances, to retain those benefits that provide for good cross-fertilisation of ideas and experience, but is this locked in its current form for all time? Has it evolved? Yes, clearly, because this is a different set of circumstances.

Q562 Chair: Why did you exclude the Scottish Civil Service from the Civil Service reform plan?

Mr Maude: Because the accountability of the head of the Scottish Executive, Sir Peter Housden, is to the First Minister in Scotland, so it is kind of different. I would not see our writ running in the same way as it would in the UK.

Q563 Chair: So the formal role of the head of the Civil Service in London to oversee the implementation of the Civil Service Code in Scotland—how does that work?

Mr Maude: Well, I think it would be, “Here is what we’re doing, and to the extent that you wish to pick up and participate”—

Q564 Chair: So, basically, the head of the Civil Service in London is not accountable for this?

Mr Maude: It’s plainly a different relationship.

Q565 Chair: The point I am making is that there is a political reality that is not actually reflected in the letter of the law.

Mr Maude: Inevitably, it has evolved in a pragmatic way that more or less works. But is it locked in this format for a long time?

Q566 Chair: How well are the concordats between Government Departments in Whitehall and their respective counterparts in the Scottish Executive operating?

Mr Maude: Reasonably well, as far as I am aware. I am not aware of any massive problems. I think there was one issue where, in the early stages of the coalition Government, I was called on to—I do not know whether “adjudicate” is the right word or “mediate”. I think there was a kind of mediation process, but it was ages ago—it was probably in the first year—and I cannot remember much about it. I am not aware of there being particular problems.

Q567 Chair: If whatever relationship was expected is not delivered, and nobody complains about it, there will be no problems.

Mr Maude: Yes, true.

Q568 Chair: And one suspects that the political relationship between the Scottish Executive and Whitehall during a referendum of such fundamental importance will be a very sensitive area. So they are not working. How can they work?

Mr Maude: I don’t think I particularly follow that.

Q569 Chair: These concordats—they are basically in suspension. The only thing that matters is the outcome of the referendum, presumably.

Mr Maude: I don’t think I recognise your description of them being in suspension.

Q570 Mrs Gillan: To what extent do you think that, by allowing this evolution just to occur, rather than gripping the issue, we are sleepwalking into a federal United Kingdom led by the divisions between the Civil Service in the UK and in the devolved Administrations?

Mr Maude: I wouldn’t attach enormous constitutional significance to whether the Civil Service serving the Scottish Government becomes technically separate, in the same way the Northern Ireland Civil Service is technically separate. I do not think much else hangs on it. I do not think the status of the Civil Service is a key factor.

Q571 Mrs Gillan: But would you agree that that separation of the Civil Service—the reduction in the unification of the Civil Service across the board—is a contributory factor for those people who would rather have a federal United Kingdom?

Mr Maude: Not particularly. Essentially, my point is that this is more than technical, but not massively more.

Q572 Mrs Gillan: Could you explain how, inter-departmentally, the UK Government co-ordinate their policies on Scotland, Wales and Northern Ireland? Do the civil servants in all the Departments get together and co-ordinate with the civil servants in Scotland, or is that now a void space?

Mr Maude: I don't know, to be honest. You probably know more about how this is meant to work than I do. I think the Deputy Prime Minister has some sort of co-ordinating role in this field.

Q573 Mrs Gillan: There was an inter-departmental co-ordinating committee of junior Ministers from each Department, surrounded by a ring of civil servants, but it seems to have been allowed to go away, because it was too much like a co-ordinated approach to devolution, rather than allowing this separate development of a separate Civil Service. The Cabinet Office interspersed itself, so I thought that you would have some knowledge of that.

Mr Maude: No. It is not something that I have been particularly involved with, but I will happily look at it.

Q574 Chair: We think it is all an interesting conundrum, and it may be of more than technical significance that the political reality has simply overtaken the constitutional fiction.

Mr Maude: Yes, I think there is something in that.

Q575 Chair: It would perhaps be more honest to recognise this legally and constitutionally, and we might get a more stable relationship out of it as a consequence.

Mr Maude: I understand the argument.

Chair: I think we are done. Thank you very much. It has actually been a very interesting discussion, and I hope that we will in due course be able to produce something of interest to the Government and the Department.

Mr Maude: Very good. Thank you very much.