

# impartiality matters:

perspectives on the importance  
of impartiality in the civil  
service in a "post truth" world

Edited by Steve Barwick



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Edited by Steve Barwick

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## Foreword

Dave Penman, General Secretary, FDA

Over the last century, the FDA has been at the forefront of defending the principles of an impartial, permanent civil service, believing that these are the key components that allow civil servants to speak truth unto power, providing continuity and stability for successive administrations.

It was hard-wired into our DNA in the founding principles of our union and we have defended those values with the same vigour that we defend the civil servants who uphold them. As we reflect on those 100 years and the many occasions when we have been called on to defend individuals or the service itself, it feels right to look again at those principles and, with the help of those who have lived with them each day delivering public services, examine whether they remain fit for purpose.

Are they now arcane principles unfit for the modern political landscape, or the cornerstones of effective government and a robust democracy that need defending like never before?

The current generation of civil servants may well believe that those values are facing an unprecedented challenge. The reality of, course, is that they have always been under pressure as the worlds of politics and government collide, where political careers are made or destroyed and the scale of the challenges that come from governing inevitably lead to failures and successes in equal measure.

As many of our contributors recognise, however, there has been a seismic shift in the nature of politics. Decades-old allegiances have been swept aside, and those that are leading the charge often have little experience - or even interest - in governing. The result has been an increasing willingness to throw accusations of bias at the civil service; to single out individual civil servants hoping to undermine their credibility; and for ministers to brief against individuals or the service as a whole, questioning both capability and motivations.

Brexit has undoubtedly been the lightning rod for many of these attacks, but they have also emerged from those on the left with little experience of governing and whose politics make them inherently suspicious of those who govern. Politicians and commentators immersed in increasingly polarised political posturing, often shaped by the echo chamber of social media, struggle to conceptualise how civil servants could serve a government of their avowed enemy and then equally support their own party in power.

Throughout all of this, the civil service is being asked to deliver ever more with ever less.

Greater transparency and accountability are demanded by the public and the accountability of ministers and civil servants, particularly when something goes wrong, has been an age-old dilemma. Government is complex but often the public, press or political opposition want simple answers and, increasingly, someone's head on a block.

Inevitably, all of the contributors believe that, as Lord McConnell ably put it, "our ambition should be to have the best quality civil and diplomatic service in the world". Hard to argue against, but difficult to deliver. If that is our ambition, then we should be concerned about the impact on the civil service of a decade of austerity, with suppression of pay rates, cuts in resources combined with ever increasing demands, and all of this at a time when the values of impartiality and integrity are under attack like never before.

Beyond pay, impartiality is the single biggest issue raised with us by our members. Many have chosen to commit a lifetime to public service when they had a choice to earn significantly more elsewhere, usually for appreciably less responsibility. It was a positive choice that inevitably comes with the cycles of feast and famine that characterise government spending on both services and their own staff. It is, however, the constant stream of unfounded attacks, both from within and outside government, that causes them to question whether they made the right choice.

All contributors - ministers, civil servants and academics - have recognised that an impartial, permanent and professional civil service is vital for effective and efficient government. They acknowledge that the civil service is far from perfect and, like any large bureaucracy, can be slow to embrace change or recognise its own failings. All have understood why civil servants, recruited solely on merit, help deliver better public services whilst serving successive governments.

Those values are not a set of arcane principles, clung to by an elite determined to avoid challenge or change. Those values ensure that civil servants, from benefits officers in local job centres to permanent secretaries in ministerial departments, can only be appointed on merit. A civil servant is employed for what they can do, not what they believe or who they know. That may sound obvious but it has a profound effect on ensuring that the service is free from nepotism, corruption or politicisation.

A permanent civil service ensures that those who serve government must do so regardless of their own political beliefs or as the Institute for Government's Jill Rutter opens with in her essay: "If you can't work on a policy you disagree with, don't join the civil service!" It also ensures that civil servants are free to speak truth unto power, to provide the best impartial policy advice or challenge the propriety of decisions, knowing their career or

employment is not beholden to an individual minister. All of this can be hugely frustrating for politicians and can often slow things down but, as recognised by former ministers in their contributions to this report, it makes for better government.

This report emerges as the UK is wrestling with its biggest political crisis for a generation. As a result, government will need to transform once again, as it has done many times before. Our devolved administrations are innovating and developing at pace with ever greater responsibilities and resources, and all face their own unique challenges.

I would like to thank all of the contributors who have willingly devoted their valuable time to this project, and the Smith Institute for helping to bring such a diverse range of contributors together. Our hope is that this report can be the focal point for debate across the political spectrum on the value of a permanent, impartial and professional civil service.



# Introduction

Steve Barwick, Deputy Director, the Smith Institute

## Introduction

Impartiality, integrity and professionalism are the *raison d'être* of the civil service. It's been that way since the FDA was founded a century ago. Our political system has of course changed dramatically since the coalition government in 1919, but the same core values continue to define the working relationship between the elected politicians and senior civil servants. Without them the civil service would struggle to maintain the highest standards of public administration.

Yet, in today's information age, where sentiment and opinion preoccupy both the mainstream and social media, public servants, and particularly senior civil servants, have become "easy targets" for some politicians and opinion formers. The Twitter-sphere all too often promulgates the notion that government officials are deliberately undermining the decisions of their political masters. The mythmaking also abounds in some quarters of the popular press, although there is little evidence to back it up. Indeed, parliament's Public Administration and Constitutional Affairs Committee inquiry into the effectiveness of the civil service in 2018 could find no evidence of "civil service obstructionism" or "Yes, Minister" backroom manipulation. Instead of bias and blocking, the Committee found that civil servants often go "the extra mile" to support their minister.

The diligence and impartiality of civil servants is respected by the vast majority of politicians. However, there is no doubting the pressure they are under to "think again" and hold back from "speaking power unto truth". The situation has arguably worsened since the EU Referendum in 2016 when it was claimed by Michael Gove MP on Sky News that "people in this country have had enough of experts from organisations with acronyms." To what degree such sentiment was aimed at senior civil servants is unclear, but it did capture a seemingly careless regard for expert knowledge and informed analysis. It certainly can have done little to lift the morale of the thousands of civil servants who are struggling with political machinations and a myriad of legal complexities surrounding Article 50 and the Brexit Withdrawal Agreement.

On some occasions frustrated ministers have blamed the senior civil servants and made them scapegoats. The civil servant is portrayed to the public as the conspiratorial "expert", with a hidden self-serving agenda. It's an easy subterfuge for the populists. How far such provocation actually undermines public trust in our civil service is debatable. What we do know is that national opinion polling continues to place public trust in civil servants considerably above that of journalists and elected politicians.

Impartiality is not just under attack from those who feel expertise is unnecessary to the political process, it is also attacked from those who believe it does not or cannot exist. In other words, those who think the senior civil service is in fact homogeneously partial; that senior civil servants have an agenda usually impugned, if from the right, for being too liberal and, if from the left, for being pro establishment. The senior civil service cannot be both uniformly right and left wing! The fact that these accusations are made from both sides of the political spectrum could be cited as sufficient evidence that indeed it is independent and impartial. But these attacks corrode the body politic and could, if unchecked, permanently undermine confidence in the civil service when, in an era of fake news, the need for independent expert advice has never been greater.

Fortunately, the vast majority of MPs do appreciate the enormous pressure the civil service is under. Sir Vince Cable, former Secretary of State at BEIS told the Smith Institute: "I have a high regard for the quality and impartiality of the civil service and seriously worry that these are being stretched to breaking point by the all-consuming administrative burdens of Brexit".

This collection of essays – with contributions from insiders (civil servants and politicians) and outsiders (academics and commentators) – add up to a compelling defence of the importance of impartiality, which has made the UK's civil service one of the best in the world but which finds itself increasingly under threat.

But what exactly does impartiality mean for civil servants? The Civil Service Code defines it this way: "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. You must not: act in a way that unjustifiably favours or discriminates against particular individuals or interests." Although the wording seems straightforward the reality is much more complex and nuanced.

Having given independent, undiscriminating advice to the best of their professional ability the civil servant is duty bound to serve the minister and government of the day, and abide by, and deliver, the choices and decisions that are made. Impartiality cannot therefore be equated simply with indifference or neutrality. Civil servants themselves are under no illusion that adherence to the way impartiality is defined in the Code will at times create tension and misunderstanding, but it is important to hold on to one basic truth: that objective information, analysis and advice does not undermine or frustrate government policy. It makes for better government.

However, not everyone sees it this way and many in the civil service feel their respect for the Code and how it translates into practice is constantly being questioned. Part of

the problem is the way in which the relationship between civil servants and ministers has had to alter to keep pace with the information age, where the urgency of decision making in Whitehall is now non-stop 24-7. Moreover, the roles of senior civil servants and their visibility has changed too with the advent of arms-length organisations and Select Committee scrutiny. Senior civil servants now have to account for themselves as well as promote government policies, and in many cases also act as the spokesperson for the minister.

Certainly, the anonymous bowler hatted civil servant of the inter-war years is no more but the invisible civil servant first brought to light in "Yes Minister" is also long gone. But to this mix must be added the following: the political appointment of special advisers working exclusively for senior ministers allowing for some partisanship at the highest levels; the fast moving "post truth" world, where everyone's opinions are "true" and evidence is undervalued; and "fake news". Despite all these challenges to a culture in which an impartial civil service can be appreciated, civil servants – now very much "in the thick of it" – work as best they can to honour the Code with a high level of openness and professionalism.

This collection of essays to mark the FDA's centenary seeks to help us all better understand what civil service impartiality means now as well as illuminate the strengths of an impartial civil service. They include real life examples which have made a tangible difference to the work of government. The essays also discuss how attitudes to impartiality have changed and how the civil service is responding. Are we doing enough to support an impartial civil service, and if not what needs to change?

Sir David Normington, former First Civil Service Commissioner, begins this monograph with a robust defence of the contribution speaking truth to power makes to effective government. At the same time he concludes that the "civil service has to prove that it is not a narrow elite out of touch with the needs of the country". Lord Bob Kerslake, former Head of the Civil Service, calls for much more openness and transparency in the way that government works, coupled with less centralisation and a public campaign to "recognise and celebrate the enormous importance of having an impartial civil service". Dan Corry, former Head of the Number 10 Policy Unit, provides an insight into the constructive tensions between impartial civil servants and political SPADs. He warns that in these populist times "impartiality of the machine will be ever more crucial".

Lord Heseltine reflects on more than twenty years' experience of working with the senior civil service in Whitehall. He reflects that the senior civil service have been "a privilege to work with," although says he is troubled by the changing role of political advisers. Lord

Wallace of Saltaire, writing with former Permanent Secretary, Martin Donnelly, argue that the British political and governmental system is now in an "existential crisis" and that there is an urgent need to restore the morale and reputation of the core civil service in order to rebuild trust in all aspects of British government.

Devolution and the civil service in Scotland and Wales are discussed by several of the authors. Lord Jack McConnell, former First Minister of Scotland, writes about his experience and sets out a range of concerns, claiming that "it is time to refresh and renew a battered civil service." Meanwhile Nicola Sturgeon, current First Minister, says her experience working with the civil service "have been overwhelmingly positive" and that impartiality has survived the strains of the independence referendum of 2014. Carwyn Jones, former First Minister of Wales, offers some personal insights into his long career in government and concludes: "the impartiality of the civil service is crucial and to my mind, untarnished." However, he adds that "one of the saddest consequences of Brexit has been the allegation that civil servants have been trying actively to stop the UK leaving the EU".

Jill Rutter, Programme Director at the Institute for Government, gives a thorough overview of the issues facing today's civil services. She also tackles concerns around Brexit, concluding that for "the reputation of the UK civil service not to be a casualty of Brexit, those in charge need to develop a well-thought out survival strategy".

Finally, Colin Talbot, Professor of Government at Cambridge and Manchester Universities, examines the myths and realities surrounding impartiality and discusses why it matters in a modern democracy. He comments that impartiality has been a misunderstood, beleaguered and changing ideal over many years and that now is the time for a more open, informed and nuanced debate.

The Smith Institute would like to thank all those who have contributed to this collection of essays. We hope that it will inform and encourage a wider debate as to how our politicians and civil servants can together ensure that impartiality and the Civil Service Code remain relevant, respected and fully fit for purpose.



## Chapter 1

# Speaking truth to power

Sir David Normington, former First Civil Service Commissioner

## Speaking truth to power

When Sir Stafford Northcote and Sir Charles Trevelyan first proposed in 1854 that civil servants should be appointed on merit, the idea was almost universally ridiculed by those in power. It took another 155 years for government and parliament to find the time to give legislative force to their proposals. With a few notable exceptions (Gladstone principal among them) the impartiality of the civil service has never been high on the agenda of politicians.

Nevertheless - and despite the lack of legislative underpinning - the principle of a civil service, appointed on merit and committed to the values of impartiality, objectivity, integrity and honesty, took root. It came to be one of the defining features of the British way of government and was admired and copied around the world. In this essay, I look at the arguments for a meritocratic civil service, discuss the reality that lies behind the principle and consider whether, in the era of Brexit, a fundamental shift in political and public attitudes is taking place.

Why did the ideas of two Victorian grandees take root despite the opposition of Queen Victoria, parliament and the permanent secretaries of the day?

First, because appointing civil servants on merit worked by transforming the civil service into a functioning bureaucracy. Northcote and Trevelyan had despaired at the inefficiency and indolence of a 19th century civil service riddled with patronage and nepotism. The meritocratic civil service, which was eventually established in the 20th century, produced effective government and saw the country through, among many other things, two World Wars, the introduction of the welfare state and the delivery of effective public services.

Secondly, because political impartiality never became a block to implementing a government's political programme. The job of civil servants was not to be neutral; on the contrary, it was to support the elected government of the day with commitment and energy but to be ready to do the same for the next government and the next. Incoming governments have sometimes been pleasantly surprised to find that officials have studied their manifestos and already begun work on how to implement them. This continuity is often contrasted with other countries, like the US, where a year can be spent replacing the senior officials of the outgoing administration with officials of a different political hue.

Thirdly, because the combination of politicians and civil servants working together - one providing political direction, the other bringing objective advice and evidence - came to be seen at its best as a powerful aid to good policy making. The risk of policy being in the

hands of like-minded political friends and allies is that they engage in group think, ignore alternatives and underestimate the difficulties and risks of their favoured course of action.

Finally, because the reforms of the 19th century laid the foundation for what was – and is – a fundamentally honest civil service. We take that for granted now, but in a world where administrations are often corrupt and/or controlled by the Party apparatus, it is a precious asset.

Most mainstream politicians accept these arguments, particularly as they experience ministerial office. In my 37 years as a civil servant, despite some skirmishes, I never felt the principle of impartiality was under serious attack.

We need, however, to take a reality check. There will always be an inherent tension in the relationship between ministers and civil servants. Ministers who have spent all their lives in politics can find civil servants, who keep their political views to themselves, very curious. One of my Secretaries of State, with affection and frustration in equal measure, referred to his officials as "Martians", although which of us was from a different planet was a matter of dispute.

Most ministers have views about which civil servants they want to work with; and sometimes decide they would prefer to employ someone they know, whom, they are sure, is better than all the civil servants working for them. This can be particularly so when civil servants, as can happen, are inefficient or, worse, mess up the implementation of a flagship policy. There can then be a tussle about who is to be appointed to particular jobs and sometimes there are ingenious attempts to smuggle political friends into the civil service under the guise of them having some unique expertise.

At worst civil servants who question a course of action can be seen, not as paragons of impartial virtue, but as blockers of progress. There is always a risk that ministers favour those who give them the advice they like; and, conversely, civil servants who want to get on in their careers can be tempted to give the advice the minister wants to hear. Most good ministers recognise the danger of only hearing one side of the argument and know it may lead to bad decision-making. Some do not.

Relations between ministers and civil servants are very susceptible to the attitudes of individual ministers and Prime Ministers and to their perception as to whether a policy or programme is being implemented with sufficient skill or vigour. There will always be ups and downs. However, my perception is that over the 42 years I worked in Whitehall relations between civil servants and politicians have got less trusting and more fractious – and the tensions have intensified over the last ten.

Some of this is about the changing nature of politics. Finding time to listen to evidence and have a reasoned debate became more difficult with the advent of a 24 hour news cycle when the pressure was to respond immediately to whatever was thrown at you. Increasingly ministers – and Prime Ministers – have turned first to their political advisers, rather than their civil servants, for advice and support. In the worst cases of recent years special advisers have formed a protective shield around their minister, vetting the advice coming from civil servants and even a putting a black spot against the names of civil servants whose advice they do not like.

The convention that ministers do not blame civil servants publicly has been under pressure with a growth in unattributable briefings against the civil service in general and named individual civil servants in particular. In the Coalition Government of 2010 to 2015, the then Minister for the Cabinet Office was frequently at odds with, and publicly critical of, the senior civil service. Significantly he was not reined in by the then Prime Minister. This undermines trust and when trust is lost, no amount of legislation about impartiality or Codes of Practice on Civil Service values will make up for it.

In the period since the 2016 EU referendum the role of an impartial civil service has come under even more intense scrutiny. At one level the advantages of impartiality have been very much to the fore. As the political debate has grown more bitter and public attitudes have become more entrenched, civil servants have, as they must, put aside their own views and supported the Government: leading the negotiations with the EU, advising on the legislative and policy changes needed to implement Brexit and putting in place contingency measures, should the UK be forced to leave without a deal. It is complex, detailed and painstaking work. It is arguably the best demonstration there could be of the value of an impartial civil service; it is hard to see how that job could have been done better, or at all, if civil servants had been partisan and politicised.

However, by simply doing its job of supporting the elected Government, the civil service has got caught up in the divisive politics of Brexit. The most passionate supporters of Brexit are deeply suspicious that the civil service's commitment to painstaking detail and compromise in negotiations is just its own version of the truth designed to thwart the wishes of the British people. They have chosen to make no distinction between the Government and its civil service advisers. Some have taken to the airwaves to say as much and to attack individual senior civil servants who are leading the negotiations and advising the Government. Some sections of the public have followed their lead, attacking civil servants on social media.

The weakness and divided state of the Government has also posed unique challenges. There

have been some Brexiteers in ministerial ranks, even in the Cabinet, who have distrusted civil service advice because it did not accord with their own world view. As collective responsibility has broken down civil servants in different departments have served ministers with sometimes diametrically opposed views about what needs to be done. As the Government has lost control of parliament, the civil service has become irredeemably associated with a "deal" which is unloved on all sides and cannot command a majority.

Writing now in 2019, it is impossible to know whether this will pass or whether it will leave an indelible mark on the British way of Government. There seem to me to be four threats to the present civil service settlement.

First, Brexit has released a new level of populism and populist politicians are exerting a disproportionate influence on the political debate. They are not interested in the niceties of the British constitution and are intent in setting the people – or a section of them – against the "establishment". For this purpose they make no distinction between mainstream politicians and civil servants. Indeed, for some of them the civil service is indeed part of the establishment conspiracy. Traditionally such politicians have been well to the fringes of the political debate. That is currently no longer the case. It threatens to undermine public trust in the civil service.

Secondly, even in the mainstream parties there is now a brand of politician – on the left and the right – who has grown up with narrow political ideologies and has little interest in political debate outside a narrow circle. If you have spent all your political life in opposition mixing with a circle of like-minded political outsiders who reinforce your own political beliefs, then you are likely to have a high level of incomprehension about an impartial civil service and find highly suspect civil servants who look objectively at the evidence. It is a small step from here to want to put your political cronies into key civil service jobs.

Thirdly, the trend to criticise civil servants publicly is exacerbated by social media, where policy debate is often reduced to 280 characters and personal abuse is a way of life. A civil service, which is committed to reasoned debate, based on the evidence, and which cannot speak for itself, is at a serious disadvantage in this environment unless others speak up for it.

Finally, for the moment all the established norms of our political system have ceased to function. In a world where Governments don't resign when defeated several times in parliament, including by 230 votes on its principal policy programme; where collective Cabinet responsibility has all but broken down; where parliament is out of sympathy with the views of a large swathe of the electorate; where the UK itself is fracturing under the pressures of devolution and separatism; why should we think that the historic principle of

an impartial civil service can uniquely survive?

There are challenges here for civil servants and politicians. The civil service has to prove that it is not a narrow elite out of touch with the needs of the country and that it is ready and able to serve, as it has always done, a wide range of elected politicians. In turn politicians who believe in an impartial, meritocratic civil service can no longer take that for granted. In the end, the present system will only survive if parliament is ready to stand up for it – not because of inertia or lack of better, but because it genuinely offers the best guarantee of effective Government.

## Chapter 2

# "Yes Minister, we do need to celebrate impartiality"

Lord Bob Kerslake, former Head of the Civil Service

## **“Yes Minister, we do need to celebrate impartiality”**

One of the most common misunderstandings about our civil service is that it is independent. It is not. Its role is to serve the government of the day in implementing its policies and delivering public services. Civil servants are accountable to ministers who are in turn accountable to parliament.

In carrying out this role however, the civil service works to four clear values – integrity, putting public above personal interests; honesty, being truthful and open; objectivity, basing decisions and advice on evidence; impartiality, acting solely on the merits of the case and serving equally well governments of different persuasions. Civil servants should be appointed solely on merit through open and fair competition.

The importance of these principles and values, now enshrined in legislation through the Constitutional Reform and Governance Act 2010, have rarely been challenged. They are seen as essential to good government and to ensuring that the civil service retains the respect of ministers, parliament, and the public. Unfavourable comparisons are often made with other systems such as the American model, where there is considerable upheaval and delay before a new administration is actually formed (and a considerable lack of trust in it when it does happen). Political appointees or Special Advisors were added to the mix by Harold Wilson in 1964, and have grown considerably since then. But otherwise the core values that underpin the permanent civil service have remained pretty much uncontested.

Nor indeed has there been much questioning of whether the civil service adheres to these principles. Many political memoirs of ministers have referred to the “battles” to deliver their wishes in the face of “resistance” from the civil service. The massively successful political satire “Yes Minister” framed the minister/senior civil relationship as a perpetual war of wills between a politically savvy but bungling Jim Hacker and the suave but manipulative Sir Humphrey Appleby. Its humour though, came from an unending struggle on who ultimately, had the balance of power rather than any suggestion of bias or outright dishonesty. Some ministers joked to me that they wondered whether the civil service saw it as a comedy programme or a training manual. In reality, the reputation of the civil service might have been a bit dented but it was not fundamentally undermined.

A more robust challenge to the civil service has been in its capacity and capability to meet the requirements of the modern age. This was particularly the case during the debates on civil service reform during the Coalition Government. The huge strengths of the civil service were recognised, but legitimate questions were raised about its professional

capacity in areas such as project management, procurement and digital services, its openness to recruitment and promotion of people from diverse backgrounds, and its ability to deliver complex and demanding projects across government. This challenge came at a point when the civil service was itself being reduced by nearly a quarter as result of the austerity programme.

Much was done at the time and has been done subsequently to strengthen both the professional capacity and the diversity of the civil service. Professional leadership in particular has been strengthened in key areas such legal services, finance and project and contract management. A strong diversity action plan has also been put in place. This inevitably remains work in progress but there has been progress. There are still some embarrassing failures, for example the recent reversal of the outsourcing of the Probation Service. Arguably, though, the flaw here lay more in the original policy idea rather than its execution.

I would not want to underestimate the severity of the challenges to the civil service during my time as Head of the Civil Service. In particular, the "noises off", with almost daily unattributable briefings to the press talking about the civil service being "broken", were deeply damaging at a time when the Service was under great strain. It is a tribute to the resilience of civil servants that they kept going and remained committed to delivering the government's ambitions. At root though, the frustration of ministers with the civil service was fundamentally about capability and perhaps an undue caution, rather than intent. The core belief that we should have and indeed did have an impartial civil service remained intact.

In my view, events subsequent to the EU Referendum and the rise of nationalist populism in British politics have seriously eroded that core belief in impartiality in a way that could have long lasting consequences. The civil service has been caught up in a wider conspiracy theory of betrayal - that "the Establishment" has deliberately frustrated the democratic will of the people in not delivering the true Brexit that people have voted for. In particular, that they have not accepted the referendum result and are actively working to reverse the decision or deliver a Brexit that is in name only, effectively tying us in to the EU and its rules for the foreseeable future.

Given by common consent the Brexit process has not gone well, it is perhaps not surprising that those passionately advocating it are looking around for scapegoats. It is also true to say that the policy of remaining in the EU and seeking to change it from within has been the settled position of every British Government for over forty years. Changing from this position following the referendum result has been an enormous wrench for

every institution in this country including the civil service. Some, who had invested their working lives in working with Europe, saw this as a step too far and quietly left.

What is clear to me though is that the vast majority of civil servants recognised and accepted the May government's policy to leave the European Union following the referendum and did their level best to see it delivered. The difficulties of delivering Brexit have not come from any lack of will but from the intrinsic complexity of leaving and policy decisions (or often lack of them) taken along the way. For example, the decision to trigger Article 50 without a clear plan, the setting of red lines around issues such as staying in the Custom Union, the calling of a general election, the timing and scale of investment in no deal planning, were all political decisions made in Number 10 not Whitehall.

Particularly pernicious has been the singling out of senior civil servants such as Oly Robbins the Prime Minister's lead advisor, Jeremy Heywood the former Cabinet Secretary (and whose untimely death last year was such an enormous loss), and the current Cabinet Secretary, Sir Mark Sedwill. Oly has been especially singled out as the subject of anonymous briefings, including apparently by some current and former Cabinet Ministers. The clear suggestion is that they and other senior civil servants have worked to a secret "Remainer" agenda and have had an undue and negative influence on the Brexit process. To their credit, neither the Prime Minister nor Number 10 have been a party to the attacks. But they have been continuous and frequent and have undoubtedly made a significant contribution to the narrative of betrayal.

The "betrayal myth" of Brexit has in turn fed a populist and nationalist view of "the people" fighting against a corrupt and self-serving "elite". In this world view, all institutions - the media, the judiciary, and government - are seen as hostile to "the will of the people". Low levels of trust between the governing and the governed, coupled with the often malign impact of social media, open the way to often absurd but unchallenged conspiracy theories.

Some have argued that former senior civil servants now in the Lords (including myself) have contributed to the great Remainer conspiracy theory by expressing their forthright comments on Brexit. However, whilst they may have been forthright, they haven't necessarily been of the same opinion. Looked at another way, it would have been odd if we had remained silent on an issue of such major importance to the country.

In his brilliant second book, *Fall Out*, the journalist Tim Shipman records in some detail the critical remarks made about civil servants during the Brexit process. But he also says

in his concluding chapter that the former ambassador to the EU, Ivan Rogers, correctly predicted many of the subsequent difficulties that would flow from the government's approach. Yet his warnings were dismissed as being simply due to a negative attitude towards the Brexit.

How should the civil service respond to this threat? Well at one level, it needs to carry on doing what it has already been doing. Following its values, speaking truth unto power, even (perhaps especially) when it is not well received, and continuing to improve its diversity and professionalism. The current febrile climate may be short lived. We are still some way from the nativist populist parties that have surged ahead in Italy and France.

However, given the turbulent and fractured state of the country at the moment and the enormous challenges that we face in the future, I fear this may be too complacent. There needs to be much more openness and transparency in the way that government works. We need to become less centralised, with power and decision making being more widely shared. And we need a public campaign to recognise and celebrate the enormous importance of having an impartial civil service.



## Chapter 3

# Impartiality: a perspective from an ex-civil servant and special adviser

Dan Corry, former Head of the Number 10 Policy Unit

## **Impartiality: a perspective from an ex-civil servant and special adviser**

Unusually for a special adviser (SPAD), I began my career in the civil service, as an economist first in the Department of Employment and then the Treasury. Indeed, I even represented civil servants, being on the FDA National Executive for a couple of years in the later 1980s before I left at the beginning of 1989. Some of my political colleagues felt that this experience made me a bit soft on the civil service when I was a SPAD, but I felt it gave many a valuable insight into the strains and pressures they face, the incentives that really move them (not always what the politicians and their advisers think) and how what ministers did – or were perceived to have done – cascaded down the whole department to those whom the ministers would never even meet, and how that did really matter.

One of the things you have drummed into you as a civil servant is the need for neutrality. My personal politics were not of the government's that I worked for as a civil servant, but I was clear – somewhat to the horror of my friends – that my job was to help that full-on Thatcherite government try and achieve their goals, whatever I thought of them.

When you flip round to being on the political side which I did as a special adviser from 1997 through to 2010 (with a break back into think tank land 2002-4), and working for Secretaries of State (I did several departments and even more SOSs), a Chancellor and a Prime Minister, the civil service can at times drive you up the wall.

Some of this is because of the different priorities you have, the need for speed in politics in what are often slow and bureaucratic organisations, the slight "Yes Minister" obfuscation feel of the whole thing, and sometimes the way they try to present to ministers. For instance, I always disliked the way that senior officials and the Permanent Secretary in the bigger departments insisted on bringing a unified departmental view to the SoS even when there were in fact big divisions within the department that I felt ministers should be exposed to – and I often dug down into the machine to find out what was going on (trying not to land more junior officials in it for letting me know about the disagreements and the analysis that had not made it into the final submission).

But it is true that ministers can mistake all this for a lack of support. The infamous impartiality becomes to them a slowness in getting on with what they want, a lack of true enthusiasm, a blocking and so on. We end up with comments about "scars on my back" and the "forces of conservatism" (Tony Blair); the wilful pillorying of them and accusation that they are involved in a "deep state" conspiracy to run the country (Steve Hilton); and

off-the-record briefings against officials who become the scape goats for the inability to deliver impossible policies (Olly Robbins and Brexit).

Clearly civil servants – at least on the policy side – are primarily there to assess the facts, do the analysis and so help the politicians make the best decisions they can. Being impartial cannot mean claiming the evidence shows one thing when it shows another. It is then the politicians' business if they choose to ignore the results of all this work, but it can be easy to confuse this rational approach to policy making with being obstructive, especially if it does not point in the direction the politician wants to go in.

Of course, after the decision is made civil servants are expected to, and invariably do, swing in behind whatever it is, providing the best case and arguments for the decision, the best facts to back it up. This they usually do without too much feeling of uncomfortableness, although the public and commentators are often upset by the selective use of facts and evidence at that stage. One day perhaps we will have even more Freedom of Information so that there is less of this going on and if a politician decides to do something against the weight of the evidence, they will have to publish that fact more openly. But we are not there yet.

There are a few caveats to this approach though. In the first place and having moved around a few departments and seen things from the centre of government at the Treasury and No 10 as well, it is true that departments often have institutional positions and world views on particular issues that colour the kind of advice they give. As the Labour government tried to bring in the minimum wage after 1997, various departments reverted a lot to type. Our officials at the DTI were pretty quickly on board given it was a clear manifesto commitment (despite having answered pre-Election PQs only a few weeks earlier with answers that described massive job loss). However, the maintained view of the department was that regulating minimum pay must be problematic and its role was to defend business from it. Equally when a new DTI Secretary of State I worked for wanted to push consumer policy hard, the Department's instinct to defend business made for some interesting debates – not least on whether it was good to try and put downward pressure on the price of cars.

The Department of Education and Skills definitely had a bias towards schools and away from FE (and to be fair most Secretaries of State in Education did not fight that hard for FE as you never lost a job from an FE scandal but you can, and Estelle Morris did, from a schools' one) and so were a bit perplexed when my Secretary of State at the time pushed hard for more cash for FE. From a different angle, when at DTLR we had to renationalise Railtrack and create Network Rail, the department found the creativity needed to think of new options very hard as they were all about making privatisation work, not undoing it.

And differently again, the Treasury has a bias to things that don't cost too much - especially in the forecast period and on the balance sheet - rather than what might be best for the longer term.

In none of these cases did the civil service machine try to block what we wanted to do - and once the decisions were made, they swung in hard behind them. But it often felt that they were not very enthusiastic or were just not fully aware of the issue. In addition, the civil service found it hard to work out its role given that the key decisions were being made on the political net, something they did not fully understand or have access to, not purely on the substance of the issues.

Second, there is a big problem when there is a change of government after a long spell in power for the other party. Suspicion of bias from a civil service that had loyally served the other lot is understandable. In 1997, as a special adviser at the DTI, I remember strong intellectual pushback from officials in the Competitiveness Unit (until recently lauding it as Deputy PM Michael Heseltine's shock troops, and now back in the department) - when the Secretary of State wanted to produce a paper on manufacturing. Years of "the market knows best" were now under challenge at least to some degree. I recall trade officials, used to many years where labour and environmental standards concerns were seen as merely excuses for protectionism, lecturing me that it was all very well for Labour to want to be tough on child labour, but did I realise that many families in developing countries, depended on that income? And the whole re-regulation of the labour market and re-empowering of trade unions (despite the PM's rhetoric suggesting not much was happening), caused some anguish from officials who for 18 years had seen trade unions as a problem and had few personal contacts with them. But these felt like teething problems and as I had the chance to be at DTI for the whole of the first Labour term, I saw these problems fade away fairly swiftly over time. If ministers are clear what they want, civil servants quickly get the message.

Third, evidence and analysis are rarely completely decisive in helping your make policy decisions so that impartiality only gets you so far. And in any case many decisions are about political choices and trade-offs just as much as evidence and analysis and here expertise is not much help and the civil service can feel itself frozen out. Impartiality and good analysis are necessary but by no means sufficient.

While there was a lot of analysis going into the setting of the first national minimum wage in Britain, the last knockings especially around the youth rate and what age it came in at, were as much about political choices and power as full on analysis. The agreement that we wanted to bring in when I was at DTLR, to prevent outsourcing leading to a reduction

in terms and conditions through having lower terms for new hires (the so-called Two-Tier agreement) was something that ministers and SPADs had to negotiate with employers and trade unions, not something officials could do. Impartiality in this case was of negative use. The compromise in the Schools White Paper of 2005 between having more independent state schools and keeping the LEAs in the loop, was pretty pure politics, as was the decision to keep coal alive for a period in 1998 by going slow on consents for new gas fired power stations. Asking civil servants to do this stuff is wrong. Blaming them for not doing it is daft.

Things work rather differently in Downing Street. There is much closer working between officials and political appointees than in the departments. Things move too fast for people to stand on ceremony, or for officials to feel uncomfortable that politics is happening all the time. There are also more than the usual two SPADs, so there is as much tension between the political appointees as between them and the civil service. In some ways, I felt that all at No 10 were united in being "against" OGDs (other government departments) who never went fast enough, put up pointless excuses, and cared more about their departmental interests than of the government as a whole. This is all hard for civil servants in No 10, who need to keep their independence as well, advising the PM – and the powerful SPADs – of what the evidence says, and trying to keep as much as possible to the proper way of going about things, consulting the relevant departments and so on.

If you read much newspaper and social media comment these days, you might think that the independence of the civil service is being eroded, that only civil servants who "get it" are advancing and even then, politicians are impatient with them and trying to bypass them. Whether it is in fact getting worse or not is hard to tell from the outside. Certainly, one picks up talk that appointments that need to go through ministers get taken with more of political outlook than the best person for the job than they were in the past, but then it was always thus to some extent.

And how much does the impartiality of the civil service matter in any case? I think it does matter as it ensures political policy makers get the best advice they can and should have, not advice trying to second guess what they want anyway; makes transitions from minister to minister and party to party much easier; and forces ministers to at least confront information and advice that may not go with their prejudices. But in truth I find it hard to argue that there were key moments where this "impartiality" was crucial to the decision making I was involved in. It was most powerful where ministers or departments were arguing over something and an honest broker was helpful. This was true for instance in the fierce arguments around the case for making the planning regime for major infrastructure projects more streamlined, where Cabinet Office held the ring well. But maybe it is good

analysis and the weighing up of the options that is as important as impartiality per se. Interestingly, rational officials did not always want to head for the safe ground of pure impartiality either: sometimes they used to ask me where I thought the Secretary of State was heading as they did not want to waste hundreds of hours producing advice that was not wanted.

In a similar vein, outgoing NAO boss Amyas Morse, recently argued that the balance of power between ministers and their accounting officer (the Permanent Secretary) has gone wrong recently: fine to have ministers with ideas but they should then let the civil service feel able to argue as to why it won't work or is not cost-effective; and that this altered behaviour has led to more projects going wrong and costing us all a great deal. That has a feeling of truth although I remember similar arguments made in my early day as a civil servant and right throughout my government career. One could put this in the frame of impartiality but it is as much about relative power and mechanisms for Accounting Officers to put objections on the table – even publicly.

In the more populist times we seem to be heading into, both in the UK and elsewhere, one instinct is to feel that impartiality of the machine will be ever more crucial. But one could argue exactly the opposite if the population really have had enough of experts. It should be an interesting few years ahead.

## Chapter 4

# The privilege of working with the civil service

Lord Heseltine, former Deputy Prime Minister

## The privilege of working with the civil service

I have always regarded working with the civil service as a privilege. I found the officials I worked with to be conscientious and always anxious to provide a comprehensive set of policy options which were well researched and well-constructed.

In my experience when officials understand clearly what ministers want they will do their best to carry out those instructions. As a minister if you're going to get an effective relationship with the civil service you are well advised to listen very carefully to what they say to you and, in your instructions, you are advised to put a time scale on delivery.

Without clear commitment, instructions and timescales from ministers, delay can seep into the system as more and more hurdles are presented and difficulties become apparent. However, I could give you endless examples of where officials have carried out policies that I wanted to see delivered - not necessarily always with their initial support but with very considerable effectiveness on the ground afterwards.

I can also think of many examples where the civil service has been creative and instrumental in bringing ideas to the table. When I oversaw the creation of English Heritage, it was an official in my department who came up with the proposal to merge two quangos into one and I hadn't thought of that. It turned out to be excellent advice.

Of course, civil servants don't approach every issue with a completely open mind. They have opinions and they have experiences, many of them in the subject field of activity that you are discussing. Listening to what they say and asking questions about their advice is at the essence of a minister's responsibility.

In my career as a minister for more than twenty years, I can remember only two exceptional occasions where it was quite apparent to me that the civil servants were against what I was proposing, and their advice was seemingly flavoured by their own judgments. Officials in the Department of the Environment were very opposed to the creation of Development Corporations which they saw as an unwarranted intrusion into the powers of local government. But their advice was also reflected by my political colleagues, Geoffrey Howe and Keith Joseph. It was only the intervention of Mrs. Thatcher that secured for me the agreement to proceed as I wanted. Officials in the Ministry of Defence were very opposed to introducing competition into the procurement process. And I only resolved the matter by dictating the conclusions of the meeting in order to make sure I got what I wanted. In both cases, however, civil servants went on to effectively deliver the policies on the ground.

Much has changed over the course of my career. As a parliamentary secretary, I felt very unempowered, and, in the seventies, I even flirted with the idea of a French cabinet system, as it was definitely very easy for civil servants to bypass junior ministers in the old regime. I remember that things changed very dramatically when Peter Walker was Secretary of State for the Department of Environment. He introduced a daily meeting of his ministers without civil servants. It was a very effective way of empowering ministers, running a major department and keeping everyone in touch and decisions moving along.

I think that things have now changed considerably with the devolution within departments of specific responsibilities to ministers which is now commonplace. Anyway, as I rose through the ranks to become a Secretary of State, I lost interest in the cabinet system as I was increasingly aware of the high level of support from officials if they knew what you wanted and were able to articulate your instructions - something by the way not all ministers are capable of doing.

As a minister, I found that the civil service was more than capable at making a judgement about what crossed the line of impartiality and into party political activity. There were two occasions in which a civil servant said to me "I think Secretary of State that's more Central Office than it is for us", and they were quite right and I respected that. I cannot think of any example where any corrupt proposal crossed my desk. That is quite a statement given my history. I can think of only one occasion when anyone tried to draw my attention to a party-political interest which might be benefited by a decision I was going to take. I took the opposite decision.

The changing role of political advisers however does trouble me, I don't think that those people coming out of universities and moving straight into ministerial offices as political advisers have added anything to the conduct of affairs. In fact, I think they've subtracted quite a lot in terms of gossip and tribalism and very rapidly ministers deliver little cohorts of advisers who are politically motivated and compete with each other to build up the reputations of their boss, mostly by taking to journalists. I think that's done nothing but harm to the reputation of the system.

On the other hand, I strongly believe in bringing in special advisers, people with expertise in a specialist field to provide a degree of experience which by the nature of the civil servants is not always there because they move discipline every two years. Those who worked for me as special advisers, there were five or six of them, were not by any means all Conservatives and this was not important to me because as the minister I was always perfectly capable of making a judgment about the party politics involved with any decision.

In conclusion, I have found the senior civil service to be highly able, keen to serve and willing to deliver despite their personal reservations on some occasions. As I referenced at the outset, I've found them a privilege to work with.

## Chapter 5

# How impartial can the civil service be?

Lord Wallace of Saltaire and Sir Martin Donnelly, former Permanent Secretary

## How impartial can the civil service be?

In a society marked by popular distrust of elites and “the establishment”, the idea of a neutral and impartial civil service has fewer defenders today than at any time since its creation in Victorian times.

However, Whitehall “mandarins” have had a hard time in public since “Yes Minister” gave the world Sir Humphrey and his duels with Jim Hacker, presented as remote from real world concerns. Margaret Thatcher famously wanted reassurance that senior officials advising her were “one of us”, committed to her political agenda. Eighteen years later, many of Tony Blair’s ministers and advisers were suspicious in their turn of the officials they inherited, who had been loyally implementing free market policies. And the Conservatives in 2010 brought with them into office outside advisers filled with ideas from Washington and other overseas experiments, presented as innovations against “Whitehall orthodoxy”. The deep commitment of civil servants to use their expertise and experience to serve the government of the day and deliver its policies was not believed by incoming ministers until it had been experienced – and for some, hardly even then.

The influence of public choice economics has also contributed to current disillusion. If it is accepted that “legislators, officials and voters all use the political process to advance their private interests”, and that the idea of a “public interest” is a “will-o’-the-wisp” (Eamonn Butler, *Public Choice: a Primer*, pp.25, 27), then officials are to be understood not as impartial advisers and managers but as self-interested bureaucrats. It’s then better to rely on market-driven outsiders, delivering results in pursuit of their transparent economic interests: hence rising resort to private consultants for alternative policy advice, and to outside contractors for the delivery of public services.

We cannot and should not go back to the world of the 1950s, let alone to the imperial context in which the Northcote-Trevelyan Report was written in the 1850s. 24-hour news cycles, instant online commentary, freedom of information rules, the internet and social media have all transformed the context within which governments make and implement policies. The increased complexity of government, and the entanglement of domestic policy with international obligations, make for greater demands on public servants, both in terms of technical knowledge and skills and in terms of foreign languages and understanding of international negotiation.

The challenge therefore is to re-establish the case for a distinctive role for an impartial and “permanent” civil service, working together with changing governments and under the scrutiny of changing MPs in parliament, as a necessary and vital element in the good governance of the UK.

British politics was often sharply partisan in the past, but government was nevertheless constrained within a shared acceptance of underlying national interests and understandings of the problems to be addressed. That's not the case in our current political debate. The declaration in the Ministerial Code (5.2) that "Ministers have a duty to give fair consideration and due weight to impartial advice from civil servants...and should have regard to the Principles of Scientific Advice to Government" has been ignored by a number of ministers in recent governments.

The principle of objectivity, defined in the Civil Service Code as basing "advice and decisions on rigorous analysis of the evidence", has also been challenged both from the right and the left: belief, or ideological approach, trumps evidence and analysis. Populism denigrates impartial administration: bureaucrats are portrayed as part of the establishment that is betraying the people. Attacks on specific senior officials, and on the civil service in general, have become increasingly strident since the 2016 Referendum, blaming them for failing to deliver the simple exit from the EU that some had promised, rather than recognising the complexity of the challenges with which officials were struggling – without any clear political direction – to manage.

Yet the principles of continuity of state administration, and of officials who serve the long-term public interest under the political leadership of successive elected governments, remain essential to effective democratic government. The example of the US federal administration, where thousands of posts are emptied at each change of presidential administration, is not one to follow. The ideological assumptions of public choice economists and the libertarian followers of Ayn Rand, that self-interest is the only motivation that drives state actors as well as market actors, is destructive of the whole concept of a democratic state. Altruism is also a factor in human motivation; there is a public interest, and the servants of state and government strive – however imperfectly – to serve it.

Government is not simply another sort of business: it has to consider wider and longer-term perspectives than most private enterprises, and its stakeholders are the entire national community. Civil servants attempt to serve the interests of their stakeholder community, as they loyally follow the political leadership of successive governments; "to work here", as one Permanent Secretary used to say to his department, "you have to believe in democracy."

The first requirement is for ministers, other politicians and political commentators, to be willing to recognise more explicitly the values of public service which officials seek to practise, and the importance of a permanent service which embodies those values. Conservative

ministers in the coalition government of 2010-15 and since have too often preferred to turn to outside consultants and private businessmen rather than public officials for advice on the formulation and implementation of policy.

Suspicion of public officials spreads across both front benches in the House of Commons. Yet incoming governments depend on the expertise and collective memory of the officials who serve them, and who offer them advice in the period before each election. Ministers should resist the temptation to blame these officials when pledges made in opposition turn out to be difficult to implement in office.

The second task is to reaffirm that the business of government is different from the business of private enterprise. Recent examples, from dysfunctional rail franchises to failure in the privatised probation service to the collapse of outsourced service contracts and of the companies responsible for them, have demonstrated that private provision of public services is not intrinsically more efficient than public provision, and that the substitution of the profit motive for the public service ethos often leads to disastrous outcomes – as the fiasco of probation outsourcing has shown.

Public service delivery cannot, in any event, be entirely transferred outside the system of democratic accountability. There is room for further experiment in the delivery of public services by arms-length bodies, non-profit entities or private suppliers, but the argument that the private sector is intrinsically more efficient than the public sector in all cases is not sustainable.

The third is to rebuild the morale and professional quality of the core civil service. Sharp cuts in the numbers of civil servants after 2010 damaged the civil service's collective memory; attacks on the civil service since the 2016 Referendum have led to the departure of many talented officials. The unnecessary and short-sighted decision to close the National School of Government weakened the cohesion and training of the civil service. Alternative provision by universities and private suppliers cannot fully compensate for the loss of in-house training provided by experienced officials to newer entrants.

Civil servants do not, and should not, be paid at the level of their private comparators; their motivations are different. But the imposition of a pay freeze on public service workers, junior and senior, while government allows outsourcing contractors to pay rapidly increasing salaries and bonuses, is unsupportable. One reason why people from the private sector often struggle to become effective in government is that, beyond the problems of accepting significantly lower remuneration, they find the business of government more complex and the measurement of success more subtle.

The fourth is to recognise that the British civil service has adapted to changing circumstances and demands, and continues to do so. On gender and ethnic diversity, it is ahead of most of the private sector, and working to promote role models at senior levels. Whitehall now has its first job share for women at director-general level, and is recruiting and promoting talented staff from ethnic minorities, and also from disadvantaged economic and social backgrounds. Whitehall's record on digital innovation and cyber security remains mixed, but bears complimentary comparison with the private sector. Outsourcing contracts to outside consultants has repeatedly proved to be more expensive and less effective than building equivalent expertise within government departments and agencies. Between 2016 and 2019 the civil service had to reverse previous cuts in personnel, create two new departments, and divert staff to a range of emergency preparation: tasks professionally undertaken within a short timescale under political direction.

The British political and governmental system is now in an existential crisis. The civil service cannot avoid being implicated in that crisis. Recovery from the current crisis may involve more frequent coalitions or minority governments, and a stronger parliament; it should also include more substantial devolution of government within England. A reassertion of parliamentary sovereignty against the executive, with committee scrutiny providing a counter-balance to discordant initiatives from rapidly-changing ministers, would make for great continuity in government and less easy dismissal of expertise and reasoned argument. Stronger parliamentary oversight would also limit political influence over appointments, both within the civil service and related bodies.

Devolution of detailed decision-making would also allow for a reduction in the ministerial payroll within the Commons, reinforcing a healthier balance between parliament and government. The frequency of ministerial churn is a weakness of the British system; smaller governments, resting on agreements between different parties, might usefully reduce the speed of turnover. There is a strong case for providing more systematic training for incoming ministers, and for opposition front benches in the run-up to general elections; a professional civil service would benefit from a more professional parliament and ministerial team.

Rebuilding trust in all aspects of British government is now an urgent priority for everyone committed to open democratic politics. Restoring the morale, and the reputation, of our core civil service is a vital part of that restoration of trust. To do that, politicians across the spectrum should celebrate the vital contribution that a permanent professional civil service makes to good government and effective service delivery.



## Chapter 6

# Time to refresh and renew a battered civil service

Lord Jack McConnell, former First Minister of Scotland

## Time to refresh and renew a battered civil service

Democratic and effective governance is in a state of crisis. Not just here in the UK, but all over the world. The people have had enough – rightly so, much of the time – of those in power seemingly existing in another world. As more transparency opened up public scrutiny and the values that drove good governance and principled politics were undermined, globalisation has accelerated a process of our own making. Votes are going to the “outsiders”, those who say they are shaking things up, and there will be more to come.

Three big challenges face the civil and diplomatic service in these times. When so many of our institutions, and democratic governance in general, are being questioned by so many, can we have a core civil and diplomatic service that understands globalisation, helping formulate and implement policy within that context? Can we have a civil and diplomatic service that understands the identity movements driving much of modern politics and can work with the results of emotion overcoming evidence on many occasions? And, can we recruit and retain the kind of people who can win back public confidence in democracy and public institutions through their conduct and the quality of their work?

Here, nothing less than radical transformation of structures and political culture will restore confidence in our democracy and system of government. Brexit – if it now happens – might yet provide that opportunity for some big picture thinking and leadership. It is surely time for abolition of the Lords, establishing a Senate of Nations and Regions; and for restructuring the UK Cabinet, alongside a new UK Council of Ministers for co-decision-making between the nations of the UK where powers are devolved but decisions would be better taken together. And the conduct of ministers and MPs has not improved enough since the scandals of ten years ago, so new rules that demand full transparency and tackle all conflicts of interest are required, including after leaving office.

I sincerely hope there will be a real debate about these big issues of 21st century democratic governance in the period ahead, and that those who finally lead us out of the Brexit treacle gloom don't try to gloss over this with speeches about “change”. The debate must be real, preferably cross party, and it must be rooted in honest dialogue with the public.

Whatever structures of democracy and governance are agreed, the politicians elected to lead them will need a core of creative, experienced and talented public servants to

implement their vision. Behind the scenes, the UK civil and diplomatic service has faced challenges: pressure on delivery, cutbacks on numbers and remuneration, Ministers and their advisers increasingly focussed on the short term and the high-speed news media cycle, creating policy in an era of both devolved power and economic globalisation, and sometimes some very personal public attacks, even from former ministers who should know better - on all sides.

The concept of a single generalist, multi-purpose, politically neutral UK civil service was an ideal. As in all walks of life the reality was mixed. Sometimes brilliant, but not always capable of changing at the same pace of the times that demanded new ways of working. And there were the diplomats, representing the UK all over the world and trying to make sense of the world at home, often outstanding but sometimes standing still. None of it was perfect, but we were closer than most.

Working with the civil and diplomatic services I experienced many highs and lows in my time in office and since. Around me I wanted smart, robust civil servants and advisers who would challenge and question but ultimately accept who was in charge - and accountable. Those who would ask - "yes, but what is the strategy here...where do we want to get to"; or those who would have discreetly checked the lie of the land with stakeholders in advance of a discussion and decision and then would prepare the ground for an announcement or implementation carefully. And I made sure no ministers or advisers blamed civil servants as an excuse. Ultimately, it was our responsibility to make the best of a situation or change it, and the blame game was never likely to end well.

As Minister for Finance, a new post in Scotland in 1999, I saw up close the commitment and effort of civil servants to delivering the transformation of power to the Scottish Parliament and the establishment of an effective devolved government in Edinburgh. But I was surprised to discover the lack of specialisation in key areas - economics, financial accounting, information technology, and human resource management. We were challenged not by internal resistance, but through lack of capacity. As Minister for Education I dealt with the best and the worst - those who could help develop policy, or deliver the policies I wanted in cooperation with all the stakeholders that were essential partners; and those who were less enthusiastic, holding back the important work that had to be done.

And as First Minister, I delighted in the way the Fresh Talent programme was designed and implemented, or the smoking ban was carefully thought through and marketed, or the coalition was managed. But I was also acutely aware that there were Ministers

sometimes struggling against resistance from those senior officials who thought they could outlive the politicians (as they did).

Moving on, as UK Special Representative on Peacebuilding, I discovered the diplomatic service had many of the same strengths and weaknesses. I loved those moments when a smart, value driven, thoughtful Ambassador could help me strategize or make the most from a visit, but there were also times when others couldn't see the big picture or seemed to lack the ambition to go the extra mile.

Over the years since though, and with the luxury of watching from a distance, I have become increasingly concerned on three fronts.

First, the financial restrictions on pay and grading have resulted in talented people going elsewhere. And the focus, under successive governments, on reduced numbers equalling greater efficiency, has affected performance and quality as much as quantity.

Second, the increasing number of former senior civil servants and diplomats taking early retirement and becoming paid advisers in areas where they developed inside knowledge - or speaking out on areas of political debate - will have serious long-term consequences for our democracy.

Third, the attacks on named public servants by Brexiteers, or general threats to senior civil servants by prominent Remainers, using the officials as punch bags when the politicians are responsible for the state we are in, is deeply disturbing and must make genuine, honest, capable individuals think twice about staying and working their way to the top jobs.

If we are to meet the challenges of governing the UK after Brexit - with all the complexity our internal and external relations will experience - we need the best possible public servants to help the governments of the day. We need a motivated service that is internationally aware, domestically sensitive, one that is diverse, smart, principled and honest; a service that retains acquired knowledge and wisdom while being open to expert advice and technical skills from elsewhere. And we need politicians who understand that need, and are willing to fight for and defend such a service. Our aspiration should be high and our determination must be as robust as we want those who advise us to be.

Two important threads should drive the re-assertion of quality in our civil service.

First, the independence of civil servants to serve the elected government of the day must be protected. It is not difficult to find examples of what will happen if we politicise our civil service. Governments serving the personal or political interests of national leaders rather than the ongoing national interest are dangerous. When power becomes centred like that, opponents end up marginalised or worse, media freedoms become wafer thin. Ultimately the most vulnerable suffer while the powerful prosper.

Expert and special political advisers have their role, although good governance is challenged when too many are solely focussed on media relations and advisers operate on behalf of their minister rather than the team as a whole. More specialists can be helpful in technical areas. But the core policy and administrative civil and diplomatic service needs to be independent of politics. This is a great strength of the UK system of government, and if more countries across the world had a similar service the world would be more democratic and more peaceful.

Independent civic servants allow for smooth transition between winners and losers, they help keep ministers within the law and agreed policy, and they bring experience and objectivity to the business of delivering change.

Civil service independence needs to be strengthened in the UK, not diminished. There are too many instances of covering up for ministers or colleagues, and in these times of identity politics, where nationalism and patriotism can become confused, too many stories arise of promotions based on political loyalties. And senior civil servants and diplomats speaking out after leaving the service blur the line between the politicians and the public servants.

We must embed the highest standards of conduct, and insist upon them in practice. We need trusted procedures for whistle-blowers, rules to stop those who leave the service damaging the perception of independence, and transparent selection for all jobs, especially those at the top.

Second, our ambition should be to have the best quality civil and diplomatic service in the world. Quality comes from good recruitment and retention, the culture of the service and individual departments, honesty and rigour in preparing advice, and training and exposure to other ideas, places and systems.

All of these should be integral to a refreshed ambitious plan for the future of the service. In recruitment, diversity of background and identity should be seen as the advantage it is. In retention, both young and experienced civil servants should be

incentivised to stay, although poor performance should be less tolerated. Honesty and rigour should be encouraged and supported. And performance must be measured - so that the best are not discouraged by tolerance of the worst.

Traditions can have pluses and minuses. Identifying talent and mentoring them through a varied and challenging career to be fit for "top jobs" someday can work very well, but patronage can also discriminate, embed mediocrity or, worse, cover up problems. So checks and balances are needed to nurture and promote the best.

Internally within the UK, respect for the autonomy of the devolved nations and the relationship between their ministers and civil servants leads to a lack of interchange now that is dividing the practical experience of different levels of government.

The UK government should reach an agreement with the devolved governments leading to regular secondments/interchange between UK departments and departments reporting to ministers in Edinburgh, Cardiff and Belfast. Top level civil servants in London, and in the devolved governments, should have spent some of their career working at the other level, understanding the internal systems and dynamics at play there, and understanding the relationships from both sides.

And externally, one of the many benefits of the EU was the way in which civil servants, out-with the FCO, gained international experience through working with UKREP or the institutions/delegations. There is a very real danger these opportunities might be lost in the need to use talented people to run things in the UK after we leave. But we should do the opposite - make promotion conditional on international experience. Short term secondments, second language fluency, and networking across national borders should be premium competencies. Global Britain will not be about statements and signatures, it will be in the culture and the way in which we "do", how our government relations genuinely connect.

As we move beyond this anniversary, we can refresh and renew - and it has rarely been more important to do so. It is a challenge for our times and I hope we are ready for it.

## Chapter 7

# Why an impartial civil service is a strength for all MSPs

Nicola Sturgeon MSP, First Minister of Scotland

## Why an impartial civil service is a strength for all MSPs

This year, the Scottish Parliament celebrates its 20th birthday. When the parliament first reconvened in 1999, the Queen presented it with a newly-commissioned silver mace.

The mace was inscribed with the words "wisdom", "justice", "integrity" and "compassion". Those words are intended to serve as a reminder and an inspiration to elected representatives of the enduring values that the new institution was expected to exemplify. The words on the mace also summarise qualities that characterise the civil service at its best. However, for civil servants, a fifth watchword, "impartiality", is also central to their duties.

Throughout the 20 years of devolution I have had the privilege of serving as an MSP, and for the last 12 I have had the honour of serving in government – initially as Deputy First Minister, and now of course as First Minister. My experience throughout that time has reinforced my view that the impartiality of the civil service is an important asset. It should be preserved, protected and valued.

Impartiality is not the same as neutrality. The civil service supports the government of the day – it actively helps us to deliver our policies and priorities. However, the current SNP administration knows – as all political parties at Holyrood know – that any elected government, regardless of party, would receive exactly the same level of commitment and support.

The crucial benefit of this approach is that it allows governments to inherit, and benefit from, experience and expertise which officials have earned during previous administrations. I saw this at first hand in 2007, when the SNP formed its first government. At that time, devolution was eight years old. Both previous administrations in Scotland had been coalitions between Labour and the Liberal Democrats. The civil service had no experience, in a devolved context, of serving any other parties.

It was immediately obvious, however, that the civil service was as committed to supporting the aims and policies of an SNP minority administration, as it had been to supporting the previous coalition.

In the first few months of our administration – alongside a whole range of other work, such as abolishing bridge tolls and establishing an independent Council of Economic Advisers – ministers and civil servants jointly developed a new national purpose to unite the work of all public sector organisations in Scotland. This was supported by a national performance framework, underpinned by outcomes.

Since those initial months, that joint work has continued. The civil service has been essential to the delivery of every significant achievement of the Scottish government – including passage of the Climate Change Act in 2009, the successful implementation of minimum unit pricing for alcohol, the restoration of free university tuition and the delivery of major infrastructure projects such as the Queensferry Crossing.

An obvious – and very difficult – test for the civil service was the independence referendum of 2014. In my view, the civil service in Scotland did a testing job very well. It provided full support in developing policies and providing advice for the creation of an independent Scotland. However, when, in the run-up to the 2016 Scottish parliamentary election, it held discussions with other parties about their plans for government, it was obvious to them that – as always – the civil service would provide full support for whichever government was elected.

Almost inevitably, I've placed an emphasis here on high profile projects and events – however that does not cover the other significant work of the civil service. For many important areas, the success of the civil service can be assessed by the fact that they are not being widely noticed! Simply by helping ministers to respond to correspondence and questions, civil servants improve the transparency and accountability of government

None of this means that our relationship with the civil service is always tension-free. I still occasionally get frustrated at the quality of briefing I receive. Officials could perhaps sometimes do better at placing themselves in ministers' shoes, and considering what information we really need for particular meetings or engagement – it won't always be a series of lines to take. However, I am sure that ministers are sometimes a source of frustration for civil servants too!

But on the whole, my experiences of working with the civil service have been overwhelmingly positive. It is maybe also worth noting that – despite the inevitable tensions that sometimes arise – the civil service in Scotland has often worked well with the wider UK civil service. I still see the Edinburgh Agreement between the UK and Scottish governments – which paved the way for the 2014 referendum on independence – as being a model of its kind. It reflected well on the professionalism of the UK civil service as a whole.

Our experiences here have been mixed, however. The Scottish government has also had to work with the UK government on the aftermath of the 2016 referendum on leaving the EU. The UK government has routinely deprived Scottish government civil servants of important information (for example on preparations for a “no-deal Brexit”) which I

would expect to be made available. This is perhaps a reminder that – regardless of the professionalism and goodwill of civil servants – clear leadership from ministers is still absolutely essential if government is to function effectively.

Looking ahead, the coming years will see the implementation of new powers for the Scottish Parliament, and I hope another opportunity for the people of Scotland to consider independence. All of this will mean new tests for the civil service. The development of the Scottish Social Security Agency is a good example of an entirely new challenge.

It requires a strong focus both on project management and on values. In fact, the values underpinning the new agency – a respect for human rights and human dignity – are essential to its project management. They provide the sense of shared purpose that can unite people who are delivering a complex operational project.

That is why, when we revised the national performance framework last year, we included a statement of values. They made it clear that government and public services must treat all people with kindness, dignity and compassion. We believe that those values should underpin our public services, and indeed we hope they will characterise Scottish society as a whole.

The new national performance framework – like the parliament's mace – reflect the fact that enduring values are crucial, even as we establish new institutions and meet new challenges. For the civil service – which has been so central to the success of devolution so far – those values will continue to include impartiality.

It is a source of strength, for MSPs of all parties, that the civil service exists to serve the public as a whole, rather than being affiliated to a specific party. For that reason, there is a broad consensus in Scotland about the benefits of an impartial civil service. I hope, and believe, that that consensus will continue for many years to come.

## Chapter 8

# A First Minister's reflections

Carwyn Jones AM, former First Minister of Wales

## A First Minister's reflections

On a warm night in July 2000, my wife and I were enjoying a glass of wine. Pre-children, we could relax and enjoy the summer weather. At 10.30 however I received a phone call that would change my life and begin nearly nineteen years of service with government and interaction with the civil service, as a minister from 2000 to 2009 and First Minister from 2009 to 2018.

At the end of the line was the then First Minister, Rhodri Morgan. He simply said, "I want you to take over as Agriculture Secretary on Monday ok." I thanked him and that was pretty much the end of the conversation. It's fair to say that great ceremony was not Rhodri's style.

The following Monday was however no ordinary day. I was thrust into the first day of the Royal Welsh Show as the new minister in charge of the farming industry. It's fair to say that I was thrown into a very deep end indeed. I was fortunate to find myself surrounded by a team of bewildered civil servants from what was then the National Assembly who had expected to be spending the day with my predecessor and they proceeded to spend much of the day briefing me, often on the hop.

Two things struck me about them; their ability to switch seamlessly from working for one minister to another and their depth of knowledge. I was lucky because agriculture was one of those areas where there had been scope for variation between the different countries of the UK and it had attracted some of the best people in the civil service.

Devolution had been a difficult process in those early days. The political troubles have been well documented but a great deal of adaptation was also needed from those working for the new devolved assembly. The Welsh Office had been a backwater for much of its existence. It had good people but they were not really encouraged to think originally. In its later years the Welsh Office showed a modicum of autonomy but in the main, it just administered Wales in a similar if not identical way to England. Secondary legislation was often duplicated.

If we compare Scotland with Wales at this time then it's correct to say that the Scottish Office looked like the headquarters of a government without an existing executive. It had responsibility for very major areas such as justice and was responsible for drafting primary legislation. The Welsh Office looked more like the branch of a London headquarters, lacking as it did any significant variation in law and policy and without those primary powers.

Then came May 1999 and for the first time those same civil servants were asked to work for an administration whose ministers didn't just turn up for half a day a week, as some had done, but were around for most of the week. The assembly wasn't overloaded with powers at that time; in general, it allocated money that came in its entirety from a block grant from Westminster and it tried to use secondary legislation to be creative, from introducing a comprehensive bus pass scheme to removing prescription charges. This wasn't welcomed by all it must be said, and there was resistance from some to the more proactive model being built. Fortunately for me, they were largely absent in my department. It was as well, because a huge challenge was about to engulf us.

### **The Early Challenge**

In 2001, foot and mouth disease came to the UK and before long it had spread extensively in the Welsh countryside, particularly in the sheep flock which numbered more than ten million. For months, the disease had a head start on us which was only resolved when a central point on the Epynt Mountain was used to burn carcasses, a far from popular decision. The devolution settlement made the problem worse because bizarrely, animal health was devolved but not foot and mouth disease. The government vets worked for DEFRA not for the Welsh government and Wales didn't have a Chief Veterinary Officer.

There were further complications in that the only staff DEFRA had in Wales were those vets, so even though they had the legal responsibility for combatting the disease, they had had few staff in Wales to carry it out. The problem was resolved through an inter-governmental agreement where our staff were made available to DEFRA and the civil servants from both administrations simply got on with the job that politicians had made more difficult in 1999 through the creation of such an incoherent devolution settlement.

It was during that period that I had an insight into how much time and effort my officials were willing to put into fighting the disease. A control centre was set up in Cardiff and many individuals were literally working day and night. One of my senior officials lost a great deal of weight under the pressure, and as he said himself, it was a great diet regime but not one he'd recommend! At one point, many plans started to go awry and inevitably they would have to inform me of what had gone wrong. They actually bought a tin hat to wear when they had to make those phone calls. Needless to say, they had to deal with a relatively young minister (I was thirty-four) who was exasperated at what was happening while at the same time dealing with a disease that threatened to overwhelm the rural economy. Again, such was their expertise and professionalism that they did it.

### **A Changing Settlement; 2007-2011**

So, have things changed? Very significantly, starting in 2007 when we saw the split between

the assembly and Welsh government, formalising a de facto situation that had existed since 2000. In 2007, we saw a kind of devolution of primary powers, but in a convoluted way. If the assembly wished to legislate in an area where primary legislation was required it had to support a request for a Legislative Competence Order. That request then went to parliament where a multi-stage process was used to decide whether a particular power should be devolved, but not how it might be used. The power was then devolved and the assembly could then proceed with passing a Measure, which to all intents and purposes looked like an Act. Apart from being a cumbersome process, this inevitably led to a situation where, instead of devolving primary powers in entire policy areas, like health, small parts were carved out and devolved; a lawyers' nightmare. There was one advantage though because it gave the Welsh government and assembly time to build up capacity to draft primary legislation, which had previously not existed in Wales.

### **Since 2011**

In March 2011 there was another referendum, this time on primary powers. The referendum question was not, it must be said, the clearest ever devised, running as it did to three paragraphs and including references to Schedules in the Government of Wales Act 2006. I had become First Minister by this time and I managed to condense the question down to one sentence; "Do you agree that all laws that only affect Wales should be made in Wales?" The answer was a resounding "yes" as voters backed the change by a margin of nearly two to one.

Since 2011 the government and assembly have been drafting Bills, thirty-five of which have become Acts of the assembly after obtaining Royal Assent. We have bill teams and a scrutiny structure that is similar to that at Westminster, a far cry from the largely administrative body that existed in 1999. Over the last year, the assembly has gained partial powers over income tax and other, smaller taxes such as stamp duty (now Land Transaction Tax in Wales). The Welsh Revenue Authority has been created and officials now have responsibility for predicting tax take, something never before attempted at Welsh devolved level.

None of these changes could have been achieved if the Welsh civil service hadn't been up to the task. Without them, politicians would not have been able to deliver and the people of Wales wouldn't have been willing to take the devolution journey that they have. The slightly sleepy organisation of 1999 has developed into a fully functioning government civil service. Those who were in the Welsh Office now have more room for innovation. We now get young and bright people who now want to work for the Welsh government and who see a dynamic and interesting career for themselves in Wales. Expertise is much more broadly, if thinly, spread. This has been achieved despite the loss of more than 15% in staffing numbers over the last three years.

Roughly five thousand civil servants work for the Welsh government. Most of them are in Cardiff but around a third are spread around Wales, reflecting the Welsh government's commitment to move jobs away from Cardiff and provide opportunities around Wales. These numbers show that it's not a large organisation and resources have to be managed carefully.

Although the expertise is there in government, there is very little depth to it. If one or two people are ill then the organisation will start to creak. This is inevitable in a small civil service and has been exacerbated by UK government cuts to Welsh funding. The problem can be particularly acute in highly specialised areas. If we take drafting lawyers for example, there are very few people in the world who can draft legislation simultaneously in both Welsh and English and a very small number of people carry the burden that supports the government's legislative programme. This has been brought into sharp focus by the sheer amount of Brexit legislation that has had to be drafted. I took the decision that where there was no policy divergence and where there was no advantage to us in drafting our own legislation then we would give the UK government permission to legislate on our behalf. Frankly, trying to do it all ourselves would have overwhelmed our lawyers and stalled work on other legislation.

### **What Next?**

The impartiality of the civil service is crucial and to my mind, untarnished. One of the saddest consequences of Brexit has been the allegation that civil servants have been trying actively to stop the UK leaving the EU, an accusation that takes us down the very dangerous road of developing a civil service that is seen as political and so starts to follow the US model of a revolving door when a new President is elected. That's a retrograde step. Politicians need to be told what they need to hear not what they want to hear. It would be disastrous for the impartiality of the civil service if it was thought that providing challenge or even unwelcome news to a minister would have a negative effect on the career of an individual.

There are also questions for the future about the Great Britain-wide nature of the civil service. The senior civil service is not devolved and so from a Welsh and Scottish perspective it looks like a peculiarly colonial structure where senior civil servants are theoretically loyal to the UK government not to their own. Some of these problems have been handled through pragmatism on both sides but it is still possible for the UK government to impose its own permanent secretary on the Welsh government without any input from Wales. The fact that this hasn't happened has been down to the willingness of individuals to co-operate, but the system cannot rely on goodwill alone. At some point the civil service will have to reflect the fact that there are three governments in Great Britain and to have one controlling the senior civil service of the other two is not a sustainable structure for the future.

For now though, from a government minister of nearly nineteen years' experience including head of government for nine, the civil service has delivered for me on most occasions. There have been difficulties and there have been examples of under-performance. On the whole, however, I've been grateful for the advice and commitment that I've received. Those principles of impartiality, challenge and accountability are sound, but there will be a need for structural change to reflect devolution.

## Chapter 9

# Will civil service impartiality be a casualty of Brexit?

Jill Rutter, Programme Director, Institute for Government

## Will civil service impartiality be a casualty of Brexit?

If you can't work on a policy you disagree with, don't join the civil service! That is the founding principle of our politically impartial bureaucracy. Ministers (mostly) went to the bother to get elected and they did not. That gives them the right to choose what gets done in government – and to be held to account for that in parliament. That is not untrammelled, and accounting officers have a separate duty to ensure that public money is spent properly. But the basic message holds – if you can't work on a policy you didn't vote for, then lots of other careers are available.

In my early days, we all knew that the lead official on the Conservative's privatisation programme was a committed socialist. The head of the Treasury FDA had to step down from that role when there were civil service strikes, as he was also the Assistant Secretary in charge of developing the pay policy the FDA were striking against. The Treasury made sure that any new fast streamer who joined with left-leaning credentials from their past life had an early tour of duty in "SS" – the Treasury's social security division. When I asked my flatmate, who had joined the Treasury after a stint as a researcher to a Labour MP (and now is one herself), how she reconciled championing benefit cuts in her new job with her conscience, she said it was like football – you had to cheer for your team.

It's no surprise that politicians who haven't been civil servants find the ability to differentiate between your own views and the policies you are working on hard to understand. And civil servants themselves can compound their confusion. Former Cabinet Secretary Gus O'Donnell championed his "Four Ps", but while a civil servant could be professional, proud and pacy and stay impartial, it seemed that "passion" was a different sort of ask and one which fitted oddly with an apolitical civil service.

### **Incoming government's suspicion of civil service loyalties**

Changes of government have always been difficult for the civil service. At one level, they are very exciting: the chance to work with new ministers on new policies. But they are also fraught with risk. Many civil servants have unconsciously adopted the thought processes and language of the outgoing government. Some will feel personally invested in policies they have spent time and effort developing and, in some cases, publicly defending. Some will have developed close working relationships. Ministers, especially those who have not held office before, will naturally feel more comfortable with the advisers they have come to know well in opposition than a raft of strangers who inevitably take some time to get on their wavelength. That problem has been compounded by the long gaps between government changes – 18 years of Conservative government followed by 13 years of Labour government – which meant that few incoming ministers will have prior ministerial experience.

The real danger in these transitions is that the civil service overcompensates and suspends its critical faculties in an attempt to prove that it can work with its new masters. That "can-doism" means insufficient objections are raised to problematic policies like Andrew Lansley's health reforms or the introduction of Universal Credit. But over time, the kaleidoscope settles and normal working relationships are re-established.

### **The principles of civil service impartiality: Thatcherism, New Labour and a Coalition government**

The first two saw some real tensions emerge between ministers and civil servants. In the Treasury, Permanent Secretary Sir Douglas Wass was an early casualty of Margaret Thatcher's premiership, with his inconvenient advice on the Chancellor's proposed first budget leading to his side-lining. But the centre of gravity moved to a new generation of civil servants – including his two successors: Peter Middleton (who had served as press secretary to Denis Healey) and the externally recruited chief economic adviser, Terry Burns.

Terry did not long survive the advent of Gordon Brown at the Treasury – raising too many difficult questions about the fall-out of the Chancellor's instant decision to grant independence to the Bank of England. But, again, a new generation of officials became Brown stalwarts – Gus O'Donnell, Nick Macpherson, Jon Cunliffe and Tom Scholar. Three out of four ended up as Treasury Permanent Secretaries – and the other as chief Europe adviser to David Cameron before being poached by the Bank of England, again proving the adaptability of the top of the civil service to changed political leadership.

### **Referendums and the civil service**

Referendums are a different sort of challenge to civil service impartiality. The Scottish independence referendum saw the UK government's civil servants helping the government in London make the case for No. This pitted them against the Scottish civil service, which was working for the SNP government. Sir Nick Macpherson, the Treasury Permanent Secretary, gratuitously entered the debate by writing a personal minute to the Chancellor warning of the economic consequences of Scottish independence.

The EU referendum was more complicated. David Cameron relaxed collective responsibility but there were accusations that the five Cabinet Ministers who opted to support Leave were being denied access to government papers. The Leave campaign repeatedly complained that civil servants – and taxpayers' money – were being used in the pre-official campaign period to churn out Remain propaganda. Macpherson also allowed Chancellor George Osborne to use the Treasury not just to produce a quite mainstream Treasury analysis of the long-term impacts of leaving the Single Market and Customs Union as a spuriously precise loss per household by 2030 – losing all the subtleties of the work in the process – and also

publish analysis of the short-term impact of a vote to Leave, which predicted an immediate recession and which has since been dubbed Project Fear. The fact that the Treasury was not involved in the so-called "Emergency Budget" produced by the Remain campaign was not fully understood at the time and the department's reputation has still not fully recovered, at least among some politicians.

While all these activities can be justified as "serving the government of the day", they put the civil service onto the back foot when the government failed to secure its preferred outcome for the Referendum. That was compounded by the refusal of David Cameron to allow the Cabinet Secretary to do formal contingency planning for a Leave win.

**"Do you believe that leaving the EU is a good thing? You personally, in your heart, are you right behind us in every single sense of that?"**

Of course, Olly Robbins, the Prime Minister's chief Brexit negotiator, batted away this question from Richard Drax MP at the Exiting the EU Committee on 5 September 2018. But it was just the apogee of the extent of distrust of the civil service by those who believe in Brexit.

That distrust has taken many forms: the accusations of obstruction by Permanent Secretaries, who former Brexit secretary David Davis MP, asserted contain no Brexit sympathisers: "If you added up all the Permanent Secretaries who voted to leave the European Union I suspect the answer would be zero". Dominic Raab, former Brexit Secretary, also cast aspersions on government forecasts: "There is an economic credibility gap with all these Treasury-led forecasts, based on their track record of failure, the questionable assumptions they rely on, and the inherent challenge of making reliable long-term forecasts. Politically, it looks like a rehash of Project Fear."

Suspicion of pro-EU or anti-Brexit sympathies in the civil service took concrete form in the early decision to staff the Department for Exiting the EU largely from the set of "best civil servants who have barely worked on European issues" and the speedy demise of Sir Ivan Rogers who resigned in January 2017 with an admonition to those he left behind in the UK's permanent representation in Brussels to continue "speaking truth to power". But they reached the apotheosis in the casting of the PM's chief Europe adviser, Olly Robbins, as the PM's puppet master and nemesis of Brexiteers. Hence Richard Drax's question.

So why – almost three years after the Referendum – do ministers and parliamentarians still believe that the civil service has a hidden agenda to frustrate Brexit? At the most superficial level, former senior civil servants have very publicly and almost universally been firm advocates of the folly of Brexit and the need to reconsider. While serving civil servants

do not express their views, the demographic of the policy-making class – London, graduates (and in the case of key departments, very young) – would make it a safe bet that there is a distinct Remain majority among them.

At a second level, senior civil servants have to see through the implementation of Brexit – and that means delivering uncomfortable messages in private and public about the smoothness of preparations. The atmosphere around Brexit means raising practical objections is interpreted as hostility to the entire project.

Some Brexit supporters such as Michael Gove, have clearly accepted their officials' advice on the risks of a no deal Brexit; others think officials are just scaremongering. And it's not just Brexit supporters who are critical of the civil service: former minister, Lord Adonis has called out what he sees as civil service facilitation of Brexit and proposed a purge of all who worked on Brexit if he were ever returned to office.

At a third level, there is a breakdown over the way in which the UK should negotiate with the EU. Most civil servants would agree with Ivan Rogers that the UK always had a weak hand and would find it hard to get a good deal out of the EU, particularly without a clear negotiating strategy. That view ran up against the widely articulated belief from Brexit supporters that the UK "held all the cards" and that this country's insatiable appetite for EU imports would make a good deal inevitable.

But there are two final reasons why Brexit has called the impartiality of the civil service into question as never before. The first is down to the decision-making paralysis across Whitehall which has been created by the Cabinet's chasm-like fissure over the right sort of Brexit. That fissure caused problems: with the Cabinet split down the middle, what does working for "the government of the day" really mean? And the lack of clear direction, compounded by the PM's own secretive style, has inevitably led to speculation that the civil service has expanded to fill the vacuum.

The second reason is the nature of the debate on Brexit. While there has been much focus on a perceived clash between the will of the people and the role of parliament in a representative democracy, that is not the only schism. Brexit could be framed as a debate about values – the values of sovereignty and autonomy versus the values of collaboration – or as a debate on the cost/benefit of a trading and security alliance with the EU versus a trading and security relationship with the rest of the world. Those are very different debates, and the civil service would know to stand back on the first and to deploy its full armoury in the second.

That goes to the essence of the Drax-Robbins exchange. For many Brexit supporters, Brexit is an article of faith that people believe in "in their heart". Ideas like sovereignty and autonomy are not amenable to the usual civil service approach of solving problems by looking at the costs and benefits. In a less contested area, it is why the civil service advised against holding the Olympics in London and left it to the politicians to say it was worth the cost and the risk. However, in the heated debate on Brexit simply asking the questions is seen as evidence that the civil service is not impartial on the project. If the reputation of the UK civil service is not to be a casualty of Brexit, those in charge need to develop a well-thought out survival strategy.

## Chapter 10

# An impartial civil service – myth and reality

Colin Talbot, Professor of Government, Universities of Cambridge and Manchester

## An impartial civil service – myth and reality

The idea that the UK possesses an "impartial" civil service is one that is deeply ingrained in UK political culture. It has sometimes been contested, but more often than not from an ideological standpoint – e.g. it is too conservative, or pro-Europe, or self-serving. I intend in this short paper to ask some questions about what exactly we mean by "impartiality" in the context of "the civil service" and expose some of the rather more complicated and nuanced issues.

Lord Bridges in his famous Rede Lecture of 1950 on the civil service – "Portrait of Profession" – commenced by stating that what he was going to talk about was "the higher staff of Whitehall, the headquarters' staffs of government, who handle the broader questions of administration and policy." He had "no time to include in [his] picture the large and important professional and technical staffs .... nor the far larger numbers engaged in the executive work of government up and down the country." (Bridges 1950)

This is important not just because Bridges' lecture was highly influential within the civil service (Hennessy 1990) but because it exemplifies a common weakness in discussions about civil service impartiality – a focus purely on the "headquarters' staffs of government". This is important because it limits and often distorts discussion and analysis of the role of all public servants in a modern, developed, democracy such as the UK.

### Who are "civil servants"?

Public servants – including the civil service – today number just over 5 million people in the UK. Of these just over 3 million are counted (in official ONS statistics) as being employed by central government. Of these 3 million central government employees, only 430,000 (14%), are designated as civil servants. Of these, only around 20,000 (less than 5% of civil servants and 0.7% of central government employees) are designated in official statistics as working in "policy".

By way of contrast, within the civil service the really large numbers are in primarily 'service delivery' areas such as defence (37,000 non-military), revenue and customs (65,000), the Home Office (30,000), justice (49,000 – mainly prisons) – and work and pensions (83,000). Between them they have over a quarter of a million staff (or around 60% of all civil servants).

This matters because if we broaden our vision to just the whole of the civil service, never mind the rest of the public service, what might be meant by 'impartiality' takes on many important differences and complexities – and crucially things that matter to citizens and voters, to trust in government and democracy, and many other issues.

### **Impartiality or impartial obedience to government?**

Lord Bridges concentrated on "the higher staff of Whitehall" and this is, of course, an important piece of the impartiality puzzle. One view of the 'impartiality' of the "higher staff of Whitehall" is reflected in a tradition enunciated by Lord Armstrong (then Sir Robert, Head of the Civil Service) in a memorandum circulated in 1985 after the Clive Ponting Affair that he stated that the: "Civil service as such has no constitutional personality or responsibility separate from the duly elected government of the day" (page 346) (Hennessy 1990).

In other words, the civil service must be impartial as to who forms the government, and they must ultimately be obedient to the wishes of that government, whoever it might be.<sup>1</sup> Some have described this as the civil service being "serial monogamists" rather than being strictly, or rather simply, "impartial". They are "partial" to "the government of the day". This principle is extended through the so-called "Osmotherly rules" which restricted (in theory) civil servants appearing before parliamentary select committees, from doing or saying anything (or even appearing) unless authorised to do so by their minister.

This particular rule-book came under considerable strain in the 1990s and 2000s. First, the growth of "executive agencies" with chief executives who were also "accounting officers" in terms of parliament opened up a whole new set of possibilities for Select Committees to question them. And in at least some important cases the Osmotherly rules went out the window as agency chiefs told parliamentary committees what they thought rather than what ministers instructed (Talbot 2004).

The rules are re-enforced through the Civil Service Code, which since the Constitutional Reform and Governance Act (2010) is required to be published by the government (before it was merely an executive tradition). The Act (section 7.4) states that the Civil Service Code:

- "must require civil servants to carry out their duties—
- (a) with integrity and honesty, and
- (b) with objectivity and impartiality."

We will return later to how this, somewhat extreme, form of accountability to government and only through ministers to parliament differs in other jurisdictions.

The idea that the civil service should be both politically neutral and completely tied to "the government of the day" raises possible areas of conflict. A government is made up of a political party, or in rarer cases a coalition of parties, and its actions can often be ambiguous as to what is "government" and what is "party political". In defending a government policy, civil servants will always run the risk of appearing to be politically partial.

**Impartiality and the growth of the political appointee (SPADs and tsars)<sup>2</sup>**

Recent years have seen the growth in two new denizens of the "Whitehall Village" that are worth noting. The first is "Special Advisers" or SPADs as they are more frequently known. These are political appointees (by ministers) to act as additional policy-advisers unencumbered by the need for "political impartiality" imposed on traditional civil servants. SPADs tend to come and go with ministers and are often members of, or sympathetic to, the minister's party. In 2010-11 there were 68 SPADs across Whitehall, 22 of them in No. 10 Downing St.

The second new group are "tsars" – a nickname given to political appointees tasked usually with addressing a particular problem, often because of some outside expertise. The term "tsar" stems from the (often misguided) view that they have special powers to act to "cut through red tape" or "knock heads together" to "get things moving".

Many of these tsars are not "political", in the sense that SPADs are – they are not necessarily supporters of the parties in power. But they are very much an alternative source of policy advice to the traditional civil service. Nor are tsar appointments subject to the same procedures – or accountability mechanisms – applied to SPADs, which are now much more institutionalised and regulated. Although figures for numbers of tsars in post by year are not available, a rough estimate would put the number – certainly since the mid-2000s – at above fifty at any one time.

There are probably on average well over 130 SPADs and Tsars at any one time engaged in policy-advice roles in British central government – with ministers this more than doubles the number of political appointees at the top. They represent a significant shift in the way in which the policy-advice function operates in central government and one that does not fit easily with the traditional "impartial" civil service mode?

**Impartiality and "speaking truth to power"**

Part of the duty of civil servants (and others) is often said to be to "speak truth to power"<sup>3</sup> – in other words to give objective, impartial and honest advice, evidence and analysis to political leaders even when they do not want to hear it.

The need to "speak truth to power" is often given, in the UK context, as additional reason for the symbiotic and secretive relationship between ministers and their "higher staffs". Without the trust and secrecy involved in this relationship, it is argued, civil servants could not give impartial and honest advice. It is also used as justification for things like the Osmotherly Rules because allowing civil servants to disclose policy-advice in evidence to parliament would undermine this relationship.

Whilst this argument has surface plausibility it ignores the fact that alternative models of "impartiality" do exist and do not appear to be any worse (or better) than the UK Westminster model. We will return to this at the end of the paper.

### **Impartiality and structures of government**

Problems with a simplistic view of impartiality are compounded by various structural features of Government. Firstly, because the UK has a system of cabinet and ministerial government civil servants in any particular department are meant to impartially serve both their current minister(s) and the government as a whole. Which is largely manageable when, and if, cabinet government and "collective responsibility" is working as it should. It can, however, come under severe strain when it is not. It can also produce additional problems associated with successive ministers within the same administration adopting radically different policies - see for example the discussion of this in the Home Office under first Ken Clarke and then Michael Howard (Lewis 1997).

Secondly, the advent of the devolved administrations in Scotland and Wales<sup>4</sup> have produced a situation where "the government" means different things for civil servants depending on which "government" they are serving. Thirdly, as accounts of the 2010-2015 coalition government between the Conservatives and the Liberal Democrats suggest, this whole approach was based on the notion of single-party government. Even within such a government it can produce problems, but when there is a formal coalition between parties these are amplified.

### **Impartiality – a wider view**

As already suggested, at the start of this paper, taking a wider view of the civil service, government and indeed public service is important in coming to a better understanding of why "impartiality" matters in a modern democracy.

There is a very old discussion in democratic theory about the dangers of the "tyranny of the majority". Recent political scholarship has also referred to this as the problem of "losers' consent" (Anderson, Blais et al. 2005). It is essentially the problem of how a democratic government and state simultaneously seeks to govern in the interests of all and of the people who voted for it.

This relates back to Bridges "far larger numbers (of civil servants) engaged in the executive work of government up and down the country". Impartiality for civil and public servants engaged in delivering services, enforcing laws and rules, and dispensing benefits is far wider than simple political impartiality. It also involves avoiding discrimination, corruption, nepotism, arbitrary decisions, and many other possible illegitimate forms of partiality. This

is why in most modern democratic states various "checks and balances" are put in place to prevent this sort of behaviour – including checks on the roles of democratically elected politicians.

### **Impartiality in delivery functions**

An example of this in the UK is the organization of taxes and customs collection. It was no accident that the old Inland Revenue and Customs and Excise emerged as "non-ministerial departments" with a permanent Crown (Civil) Servant at their head and a Board of permanent officials to run them.

Although in both cases they remained accountable to ministers (the Chancellor) they were not directly run by a minister and, unlike most other government departments, they had an explicit statutory basis which meant government needed the consent of parliament for any major changes. Also, within both agencies the actual administration of assessment and collection of liabilities remained highly-decentralised. Finally, both systems included various forms of appeal mechanisms for taxpayers (Crombie 1962, Johnston 1965). This was all done to assure the impartial administration of tax rules and collection of revenues – both free from political interference and to be as professional as possible.

The delivery of services, enforcement of rules and distribution of benefits obviously goes far beyond the civil service. The vast majority of civil and public servants are engaged in such activities and are required to act impartially. The Committee on Standards in Public Life sets "Seven Principles of Public Life", of which the third, "Objectivity" is that:

"Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias."

### **Impartiality in regulation**

The old IR and C&E, and their successor HMRC, carry out both regulatory and as well executive (enforcement) functions – in other words they have delegated powers to make rules to impartially implement government policy. There are many other civil service organizations that also carry out regulatory functions. In one analysis 21 out of 127 "executive agencies" within the civil service were categorised as primarily "regulatory" bodies (Alexander and Agency Policy Review Team 2002). In addition many of the hundreds of "non-departmental public bodies" – NDPBs or quangos – carry out regulatory functions. These are usually not staffed by civil servants and have a statutory-basis, both unlike the Executive Agencies mentioned above.

The principles underlying why some regulatory functions are carried out by ministerially directed departments, others by "non-ministerial" departments, Executive Agencies or NDPBs are, to say the least, unclear. But it is clear that the need for impartiality, and the need to be seen to be impartial, forms at least part of the thinking behind these differences.

### **Impartiality and the separation of powers?**

We have briefly explored the fact that "impartiality" means different things in different parts of the Civil and Public Service system in a modern democracy. Impartiality with regard to Party politics, policies, and the execution of regulation and services are dealt with slightly differently both within the civil service and across the wider public sector. We have seen that additional safeguards, some structural, are often required to ensure impartiality in these functions.

At the level of the "higher staff of Whitehall" the relationship between permanent officials and elected politicians lies at one end of a spectrum of such relationships in democratic states. Or rather one end of several dimensions to such relationships. Westminster and Whitehall is at one end of the spectrum of "political appointees to senior civil service positions". Other countries, like the USA,<sup>5</sup> Israel, and quite a few other European states, appoint far more "political" public servants with a change of government.

On the other-hand the UK is also somewhat "extreme" in the way it makes the civil service solely accountable to the "executive branch" of government and relatively unaccountable to the legislative branch. In US federal government, for example, there is far greater accountability for appointments and scrutiny of senior civil servants. In New Zealand policy advice to ministers is far more transparent.

Even within the UK there are multiple and diverse models. In English local government permanent officials remain much more accountable and available to the whole council and not just the ruling group or executive. Both the Scottish and Welsh governments operate systems that are substantially different to the Westminster model.

The UK central government could do with a more open, informed and nuanced discussion about what "impartiality" means for a modern, democratic, Civil and Public Service?

## Endnotes

1 This now applies, under the Constitutional Reform and Governance Act (2010) to the administrations (governments) of the UK, Scotland and Wales.

2 This section is adapted from Talbot, C. R. (2013). "The British Administrative Elite – The Art of Change without Changing?" *Revue Française d'Administration Publique*.

3 In policy-advice this phrase comes from a famous book by Aaron Wildavsky, "Speaking Truth To Power" Wildavsky, A. (1987). *Speaking Truth to Power: Art and Craft of Policy Analysis*, Transaction.

4 The situation in Northern Ireland is even more complex because of the existence of two civil services – the NI civil service (a remnant of the Irish civil service) as well as NI office (UK) and the current collapsed state of the NI executive.

5 The position in the US federal government is often a bit exaggerated because quite a few Presidential (and therefore seemingly "political") appointments are often based on merit rather than political affiliation.

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