

MT

Access of the Comptroller and Auditor General to Cabinet Papers and Treasury Documents.

GOVERNMENT MACHINERY

November 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
5.11.87							
8.11.87							
16.2.88							
PREM 19/2/91							

*Prime Minister**Good news.**N.L.W**12.2*

Ref. A088/511

MR WICKS

NAO Access to Cabinet Documents

Sir Robert Armstrong kept you in touch with the protracted correspondence between him, Sir Peter Middleton and the Comptroller and Auditor General over the latter's attempt to assert a right of access to Cabinet papers and Treasury documents that he might reasonably require for the purpose of his examination. You recorded, most recently in your minute of 6 November last year, the Prime Minister's endorsement of the firm line taken by Sir Robert and Sir Peter despite the risks that this course might lead to a clash with the Public Accounts Committee.

2. The PAC considered earlier this week the memorandum eventually put to them on this issue by Sir Gordon Downey shortly before his retirement. While they were sympathetic to his views on clearer rights of access to Cabinet and Treasury papers, they in fact did no more than take note of his memorandum. They merely asked the Comptroller and Auditor General to let them know if he considers he has any further problems about access; only then may they take the issue up again. They do not propose to call for oral evidence from me or from Sir Peter Middleton, or to issue a report.

3. It is good news that the PAC have reacted in this low key way, and have decided for the time being at least to avoid a confrontation with the Government. I shall be considering whether there are any lessons to be learnt from this affair, and whether any additional guidance needs to be issued to Departments on the handling of Cabinet documents in relation to the Comptroller and Auditor General.

Rob Butler
11p ROBIN BUTLER12 February 1988



CONFIDENTIAL
NOT FOR NAO EYES



SIR ROBERT ARMSTRONG

NAO ACCESS TO TREASURY PAPERS

*Good job we consulted the A.G!
A revised draft is being telegraphed to RTA, which takes account of these points. I hope this matter never gets to Court.*

1. I have been asked to advise urgently on the soundness in law of the argument advanced to the Controller and Auditor General ("the CAG") in the draft letters from you and Sir Peter Middleton. These drafts refer to certain antecedent correspondence which I have not seen.

*W.L.W.
9.11*

2. I regret to say that in one important respect I consider they are unsound. They seem to contend (see paragraph 5 of your draft for example) that in no circumstances and for no purpose is the CAG given by the National Audit Act 1983 ("the Act") a right to obtain information about how policy objectives have been formulated.

3. The Act will be construed by Parliament, where to do so will be in its own interest, as it would be construed by a court, that is to say by reference to what its language means. Previous conventions, and understandings conceived at the time of legislating, cannot safely be relied on.

4. Section 6(1) gives the CAG power to 'carry out examinations into the economy, efficiency and effectiveness with which any department ... has used its resources in discharging its functions'. Section 6(2) is in effect a provision inserted 'for the avoidance of doubt': it declares that subsection (1) 'shall not be construed as entitling the CAG to question the merits of the policy objectives of any department ... in respect of which an examination is being carried out'.

5. It follows that the CAG is not excluded from access to a document by reason only of the fact that it bears upon the merits of a relevant policy, e.g. by comprising a discussion of points of policy before a final decision was arrived at. For, under the provisions of section 8(1), he 'shall have a right of access

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NOT FOR NAO EYES



to all such documents as he may reasonably require for carrying out any examination under section 6 ...'. Since your draft reply concedes that 'access to documents on departmental files concerning advice to Ministers about particular policy proposals (e.g. near final drafts of Ministerial papers for Cabinet) ... may well be helpful to NAO staff in their examination of the implementation of the resultant policy' (paragraph 5), it seems probable that any required access by the CAG to such a document would be reasonable. It is hard to see how requiring to see something that may be helpful to the CAG's lawful purpose could be unreasonable.

6. Accordingly if the concession in paragraph 5 stands, I do not think it would be possible to sustain the remainder of paragraph 8 of your draft, which argues that because such a document formed part of the policy making process the CAG had no right of access to it (your contention is that granting such access in the past has been within the discretion of Departments.) The key point is that the CAG can properly require access to the document for a purpose which is other than enabling him to 'question the merits of the policy objective of the department' - namely, the purpose (which he is here claiming) in respect of which he is empowered by section 6(1). It is only the questioning of the merits of a policy objective to which section 6(2) relates. The CAG will say he is not doing that.

7. The Government desires, for proper reasons, to maintain 'the longstanding convention that advice to Ministers and interdepartmental exchanges are not disclosed to Parliament or its Select Committees, only the decisions themselves, for which Ministers are then accountable': paragraph 8 of your draft reply. For my own part, however, I would think it far better for the Government to stand and fight on the contention that documents relating to the formulation of policy can never reasonably be required by the CAG for section 6(1) purposes, rather than ~~to~~ rely on paragraph 5 of the draft, which effectively gives away the pass.



8. I entirely agree that section 8(2) shuts out the CAG completely from access to any document not in the custody or control of the relevant department. It should however be noted that papers which are in the corporeal possession of a department (even though not on departmental files) can properly be required to be produced to the CAG provided that he reasonably requires to see them.

9. I am copying this minute to the Prime Minister, the Chancellor of the Exchequer and the Lord Privy Seal. ✓

P. M.

9 November 1987





NBP7

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

9 November 1987

Dear Trevor

NAO ACCESS TO CABINET PAPERS

The Lord Privy Seal has seen Sir Robert Armstrong's minute of 5 November to the Prime Minister, in which he sought her authority for the proposed response to the Comptroller and Auditor General approach about the National Audit Office's access to Cabinet papers. He has also seen Nigel Wicks' minute to Sir Robert of 6 November, reporting that the Prime Minister agreed, provided the other Ministers concerned were content.

The Lord Privy Seal has asked me to let you know that he, too, is content with the proposed response, subject to resolution of the objection raised on one point by the Attorney-General in his minute of today.

I am sending a copy of this letter to Nigel Wicks (10 Downing Street), Alex Allan (HM Treasury) and Michael Saunders (Law Officers' Department).

will request if required ?

Yours sincerely,
Steve Wood.

S N WOOD
Private Secretary

T Woolley Esq
PS/Sir Robert Armstrong
Cabinet Office

Parliament H/C Procedure

PT 9



file SM



10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I have shown the Prime Minister your minute of 5 November in which you seek her authority to send to the Comptroller and Auditor General a letter about the National Audit Office (NAO) access to Cabinet papers, a draft of which was attached to your minute.

The Prime Minister has no hesitation in agreeing that you, and Sir Peter Middleton, should send the Comptroller and Auditor General the letters which are attached to your minute provided, of course, the other ministers concerned are similarly content. She believes it particularly important to have the Attorney General's assurance that the approach in the letters is soundly based in law.

I am sending a copy of this minute to Mr. Allan (H. M. Treasury), Mr. Wood (Lord Privy Seal's Office) and Mr. Saunders (Law Officers' Department).

N. L. W.

N. L. WICKS

6 November 1987

SM

PRIME MINISTER

ACCESS OF THE COMPTROLLER AND AUDITOR GENERAL TO CABINET
PAPERS AND TREASURY DOCUMENTS

I am sorry to have to burden you with this. It is hardly satisfactory that you are asked to come to a decision on the papers below in time for a letter to be sent to the Comptroller and Auditor General (C&AG) on Monday 9 November. But I think that you will have no difficulty in doing so when you have read the documents.

This is a blatant attempt by the NAO to increase the scope of their enquiries from auditing the effectiveness of the expenditure of Government money to an audit of Government policy itself. This could lead to a significant extension of the power of Parliament over the Executive.

In the normal way, it would have been worth discussing the papers below with the Chancellor, the Lord Privy Seal and the Attorney since they raise important constitutional matters. But the C&AG is adamant that he wants a reply on Monday. If you wish, I could telephone him to ask for a little delay while you consider the matter. But I would not advise this.

So, I suggest that you agree that Sir Robert Armstrong and Sir Peter Middleton should send the C&AG the letters at Flag A, subject to the agreement of the other Ministers concerned. It will be particularly important to have the Attorney's assurance that the approach in the letters is soundly based in law. The letters look to be on exactly the right lines.

N.L.W.

Subject to A.G.

Agreed

ms

NIGEL WICKS

5 November 1987

VC3ATF

CONFIDENTIAL: NOT FOR NAO EYES

Ref. A087/3179

MR WICKS
✓

The Comptroller and Auditor General has been trying for some months to assert a right of access to Cabinet papers (not minutes) and Treasury documents that he may reasonably require for the purpose of his examinations.

2. We are advised that we could not deny him the right of access to Cabinet documents or Treasury letters held on the files of the departments under examination (except in so far as they are addressed to "the merits of policy objectives", which the Comptroller and Auditor General is specifically excluded from examining, but that he has no right of access to any Cabinet documents or Treasury documents which are not in the custody or control of the departments under examination (ie are held in the Cabinet Office or the Treasury).

3. Sir Gordon Downey has now invited Sir Peter Middleton's and my comments on the draft of a note which he proposes to send to the Public Accounts Committee on this matter. I attach a copy of his draft note, and of the drafts of the letters of comment which Sir Peter Middleton and I propose to send in reply. These draft letters are being agreed with the Treasury Solicitor and are being shown to the Chancellor of the Exchequer.

4. I think that you, the Lord Privy Seal and the Attorney General should be aware of these drafts, since we are embarking upon a course which could lead to a clash with the Public Accounts Committee about the Comptroller and Auditor General's right of access to papers in the custody and control of the Cabinet Office and the Treasury.

5. Sir Gordon Downey is now pressing for our answers; I have promised that he shall have them on Monday 9 November.

6. I am sending copies of this minute and the attachments to the Private Secretaries to the Chancellor of the Exchequer and the Lord Privy Seal and to the Legal Secretary to the Law Officers.

RA

ROBERT ARMSTRONG

5 November 1987

DRAFT

ACCESS BY THE NATIONAL AUDIT OFFICE TO
CABINET OFFICE AND TREASURY DOCUMENTS FOR THE
PURPOSES OF ECONOMY, EFFICIENCY AND
EFFECTIVENESS EXAMINATIONS

Note by the Comptroller and Auditor General

Background

1. Before taking evidence on the EH101, the Committee should, perhaps, be aware of a long-standing difference of view between the NAO and the Treasury (and more recently the Cabinet Office) over the rights of access to documents. The position has never been properly resolved although it has normally been possible to make adequate ad hoc arrangements to enable the NAO to complete its enquiries satisfactorily. This is not so in the case of the EH101 investigation and the Committee may wish to consider whether they are content with this situation.

Statutory provisions

2. Sections 6 and 7 of the National Audit Act 1983 empower me to carry out examinations into the economy, efficiency and effectiveness with which audited bodies have used their resources in discharging their functions. Section 8 gives me a right of access to such documents as I may reasonably require for carrying out these examinations, limiting this to documents in the custody, or under the control, of the body to which the examination relates.

Access to Treasury Papers

3. The Treasury and the former MPO have accepted that I should have full access to their papers relating to the performance of their direct executive responsibilities as spending departments. They have also in the past allowed my staff access to papers concerned with executive co-ordinating functions, such as overall manpower control and the financial management initiative.

4. In carrying out investigations into other departments' activities, I would expect to see copies of correspondence with central departments, in particular the Treasury, on departmental files. I would not normally expect to examine the Treasury's internal papers concerning those activities, as my reports are generally focussed on departmental matters for which individual Accounting Officers are responsible. It could blur lines of accountability to make use of information not available to the Accounting Officer.

5. However there may be occasions when I do see a need to examine the direct executive responsibility exercised by the Treasury relating to the approval of major items of expenditure such as Defence or other capital projects; and also where the Treasury's role is to ensure that the financial consequences of expenditure proposals are fully brought out in departments' expenditure proposals put to Ministers for approval. It seems to me desirable that I should be in a position to examine the effectiveness with which the Treasury carries out its own approval function. And if examination of departmental papers leaves me in any doubt whether all relevant financial information has been fully disclosed to Ministers, there is also a case for access to Treasury papers to establish whether the Treasury has exercised this function properly. These considerations apply in the case of the EH101.

Access to Cabinet Papers

6. In the past, I have not requested access to papers held by the Cabinet Office, since Departmental files have usually provided sufficient assurance that Ministers have been fully informed and that their approval has been obtained. I have taken the line that I do not need to have access to Cabinet Minutes since the NAO is not concerned with Ministerial differences of view and since I recognise the force of the arguments in favour of the confidentiality of Cabinet or Cabinet Committee discussions. In practice, my staff have often seen on departments' files copies of the departmental submissions to the Cabinet (or approved drafts) as well as the note recording the Cabinet's decision. But this was not the case with the EH101.

7. I still think it unnecessary to seek access to Cabinet Minutes. However, it seems to me that under the Act I do have a right of access to copies of departmental submissions to the Cabinet (or approved drafts) where these are retained on departmental files; and in those very rare circumstances when there is still doubt about the scope and accuracy of the information put before Ministers, as with the EH101, it would be reasonable for me to request access to those Cabinet papers, as such, containing Ministerial proposals even if they are not on departmental files. And I need, of course, to see satisfactory evidence of the terms of any Cabinet decision relating to the approval of substantial projects or programmes of expenditure.

EH101

8. Following our examination of MOD and DTI files, we concluded that there were certain relevant questions which could not be answered from those sources. In particular we could not be sure that Ministers were

fully informed in reaching their decisions. Any failure so to inform them would, of course, reflect on the efficiency and effectiveness with which Departments (including the Treasury) had used their resources in discharging their functions.

9. The information we required was as follows:

- (i) Whether MOD's assessment of the number of aircraft needed to meet the Naval Staff requirement had been fully disclosed to Ministers;
- (ii) Whether the Treasury, through their membership of an MOD Committee (and given their role of identifying the full financial consequences) had been aware of any doubts about the stated requirement;
- (iii) Whether MOD had fully disclosed to Ministers their reservations about Westlands' viability and technical competence.

Some of this information would clearly be available from Treasury documents but for the rest, the most authoritative source would seem to be the Cabinet and Cabinet Committee papers which had been presented to Ministers. The NAO therefore sought access to the relevant Treasury and Cabinet Office papers. This was refused.

Treasury and Cabinet Office response

10. Both the Treasury and the Cabinet Office explained to me that their refusal of access had regard to a long-standing convention under which they did not give the predecessor of the NAO, the Exchequer and Audit Department, access to their papers. They understood that the 1983 Act was intended not to change existing

practice in this respect but to underwrite that practice with proper legislative provision. They believed this to have been accepted at the time both by those who sponsored the Bill on which the Act was based and by those who spoke for the Government. The two Departments considered that the provision of the Act restricting my access to those documents "reasonably required" for carrying out value for money examinations needed to be interpreted against the background of existing and long-standing custom and practice.

11. The Treasury also argued:

- (i) that any access to their internal papers would tend to obscure the accountability of departments, who would not have access to the same information; and
- (ii) that they did not believe there was, in respect of this project, a Treasury function which could appropriately be the subject of an examination under section 6(1) which restricts my value for money examinations to the way Departments have used resources in discharging their functions. Accordingly, they did not consider that access to Treasury papers could reasonably be required under section 8.

12. In addition, the Cabinet Office stated that:

- (i) Cabinet and Cabinet Committee papers were concerned with formulating and deciding policy objectives and that it was important for discussions at this level to be protected so that the ability of Ministers to discuss policy issues freely was preserved.

- (ii) in their view the NAO's proper concern would be confined to matters of propriety and value for money in the execution of policies adopted by Government and that the appropriate and authoritative sources of information about those objectives were the relevant documents held by the Department concerned.
- (iii) also in their view NAO examination of information about how policy objectives had been formulated implied an examination of the merits of the objectives which, under section 6(2) of the Act, I was not entitled to question.

NAO's position

13. As I have acknowledged in paragraphs 4, 6 and 7, I accept the strength of the principles underlying these arguments. However, in my view, the arguments are not directly applicable in this case. My main objectives in asking to see the relevant Treasury documents and departmental submissions to the Cabinet (not the Minutes of Cabinet discussion) would be to ensure that Ministers have been fully informed and to examine the effectiveness with which the Treasury have exercised their function of approving major items of expenditure. (And the Treasury's argument that they do not have a direct executive responsibility in this area seems to conflict with their evidence of 22 June 1982 to the Select Committee on Procedure (Finance) - HC 24 of 1982-83.)

14. On the matter of the provisions of the National Audit Act, our legal advice is that the definition of "reasonable" access to documents must be determined according to the wording of the Statute (paragraph 2) and not by any restrictions based on past practice presumed to be in the minds of its original sponsors.

But even if this more restrictive interpretation were true, it would not be correct to say that the Exchequer and Audit Department or NAO staff had not previously sought or obtained access to Treasury or Cabinet documents.

Consequences

15. The response from Treasury and Cabinet Office seems to impose constraints not envisaged by legislation or established by past precedent. It does not enable me to provide Parliament with full assurances on the questions arising on the EH101. And the lack of clarity as to what constitutes a direct executive responsibility on the part of the Treasury may underline Government's recent rejection of PAC's proposal that the PESC System should be subject to my review. In that case, too, it seems to me that there is a legitimate distinction between the operation of the system so that it provides Ministers with clear and reliable information (which is an executive responsibility) and the consideration by Ministers of that information (which is not).

16. In the circumstances I have described I consider it reasonable for me to see Treasury and Cabinet papers in order that my Reports to Parliament may be fully informed. But the issues involved are not clear-cut, and I would be grateful for the Committee's views.

DRAFT LETTER FROM SIR ROBERT ARMSTRONG TO

Sir Gordon Downey KCB
Comptroller and Auditor General
National Audit Office
Buckingham Palace Road
SW1W 9SP

NAO Access to Cabinet Papers

David Myland wrote to me on 16 September,
enclosing the draft of a note which you are
proposing to put to the PAC.

2. I have seen Peter Middleton's reply to you,
and I fully endorse all his general comments on the
draft note. In particular, I do not accept that
the issues covered by your note arise out of the
EH101 case, or that that case is to be regarded in
this context as in some sense exceptional. Nor do
I accept that the refusal to grant access has made
the NAO unable to complete successfully any
appropriate inquiries.

*below in
draft.*

3. My specific comments are largely concerned with the arguments relating to Cabinet papers. Like Peter Middleton, I regret to say that I do not consider that my arguments are fairly presented. My particular concerns are with paragraphs 6, 7, 8, 9, 12, 14 and 15 of the draft note.

Paragraphs 6 and 7

4. These paragraphs state that "my staff have often seen on Departments' files copies of the departmental submissions to the Cabinet (or approved drafts)" and "under the Act I do have a right of access to copies of departmental submissions to the Cabinet (or approved drafts) where these are retained on departmental files".

5. Subject to my comments below on paragraph 14 of your draft, I would regard any access to documents on departmental files concerning advice to Ministers about particular policy proposals (eg near final drafts of Ministerial papers for Cabinet) as being at the discretion of the Departments concerned, in recognition of the fact that sight of these documents may well be helpful to NAO staff in their examination of the

implementation of the resultant policy. But access could not have been given on the basis that this information - part of the policy making process - is itself subject to examination. As I said in my letter to you of 18 February 1987, I do not accept that you have a right to obtain information about how policy objectives have been formulated.

6. I am glad that you do not seek access to Cabinet or Cabinet Committee minutes. I have to say that I do not think that you have any right of access, or can reasonably require access, to departmental memoranda to the Cabinet or Cabinet Committees held in the Cabinet Office or the Treasury, or indeed in any other department than that which is the subject of a particular examination.

7. Finally, your note refers to the need "to see satisfactory evidence of the terms of any Cabinet decision"; I think this should be recast to reflect your statements that you do not need to have access to Cabinet minutes.

Paragraph 8

8. The presentation of the relevant financial information is the responsibility of the Departmental Accounting Officer and can be checked from the Department's files. I do not accept that any other advice given to Ministers in reaching decisions is a proper matter for NAO audit. As I have said, again in my letter of 18 February, this implies an examination of the merits of policy objectives which are excluded from examination by Section 6.2 of the 1983 Act; and it is a matter of long-standing convention that advice to Ministers and interdepartmental exchanges are not disclosed to Parliament or its Select Committees, only the decisions themselves, for which Ministers are then accountable. And the Accounting Officer in a Department is accountable for what the Department has done in carrying out Ministers' policy decisions but not for explaining the considerations Ministers had in mind in reaching those decisions.

Paragraph 9

9. In addition to the points made by Peter Middleton on this paragraph, I should point out

that the content of any interdepartmental Ministerial consideration is not subject to NAO audit under the conventions designed to preserve the doctrine of collective responsibility. As I have made clear above, I also completely reject the leap you are making from access to documents in the custody and control of the Department under examination to access to documents of a wholly separate Department, in this case the Cabinet Office. This totally sidesteps the principle of audit of a Department on the basis of its own papers.

Paragraph 10

10. I entirely agree with Peter Middleton that, if a note anything like this goes forward, this paragraph will need to be redrafted as suggested by him.

Paragraph 12

11. As this paragraph is intended to state my views, I should like to offer the following redraft which sticks more closely to the texts of the various letters I have sent you:

"In addition, the Cabinet Office stated that:

i. The National Audit Office is concerned with questions of propriety and value for money in the expenditure of public money on the execution of policies agreed and adopted by Governments, but is not concerned with the merits of the policy objectives or the considerations which are taken into account in their formulation.

ii. Cabinet and Cabinet Committees are concerned with formulating and deciding policy objectives. It is important that the discussions which take place in Cabinet and Cabinet Committees should be protected, in order to preserve the ability of Ministers to discuss policy issues freely.

iii. The appropriate and authoritative source for the National Audit Office of information about the policy objectives formulated for Departments ... is the relevant documents held in the Department concerned to which I am entitled to have access.

iv. They do not accept that I have a right to obtain information about how policy objectives have been formulated; this implies examination of the merits of policy objectives which are excluded from NAO examination by Section 6(2) of the 1983 Act, and of confidential exchanges between Ministers during the formulation of policy."

Paragraph 14

12. I have already corresponded with you about the statement that NAO staff have previously sought and obtained access to Cabinet documents (my letters of 20 March and 2 April and yours of 3 April). I repeat my statement in the letter of 2 April that the provision of access to Cabinet documents would be contrary to the Ministry of Defence's internal guidance to their staff, and I would add that there are central standing instructions that Cabinet documents themselves may not be placed on departmental files where NAO staff might come across them. If NAO staff have in fact come across or been shown drafts of such papers on the

discretionary basis to which I have referred in comment above in paragraph 5, I do not consider that any precedent has been set.

Paragraph 15

13. My comments on the previous paragraphs demonstrate that I am not seeking to impose constraints not envisaged by legislation or established by past precedent.

14. I am sending copies of this letter to Peter Middleton and Peter Levene.

DRAFT LETTER TO: Sir Gordon Downey KCB
National Audit Office

COPIES TO: Sir Robert Armstrong GCB CVO
Cabinet Office

P K Levene Esq
Chief of Defence Procurement
Ministry of Defence

NAO ACCESS TO TREASURY PAPERS

David Myland wrote to me on 16 September enclosing a draft note which you are proposing to put to the PAC.

It will not surprise you, following my letter of 3 April, to learn that I do not accept that the issues covered by your note arise out of the EH101 case. Nor do I think that the arguments are fairly presented. My comments below relate to the paragraphs in the draft note.

Paragraph 1

I do not agree that there has been a "long-standing difference of view" between the NAO and the Treasury. The long-established convention has been that the NAO has not had access to Treasury papers of the kind at issue. It is only recently that the NAO has sought to change this.

I definitely do not agree that in the EH101 case NAO were unable to complete satisfactorily any appropriate enquiries.

Paragraph 2

This paragraph should include a reference to the fact that Sections 6 and 7 specifically do not entitle the C&AG to question the merits of policy objectives.

Paragraph 5

I do not accept that the C&AG can, as part of an investigation into the activities of another department in relation to an individual project, consider the role of the Treasury in approving expenditure on that project. Viewed in this context, Treasury approval is part of the Government's procedure for coming to a decision on the policy represented by the expenditure proposal. I can see no justification whatsoever for confusing the investigation of the way in which the spending department has carried out its functions for the sake of obtaining further information about the formulation of policy objectives. The merits of these objectives are of course, as I have noted under paragraph 2, a matter which the C&AG cannot investigate.

As far as the presentation of all relevant financial information is concerned, this is the responsibility of the departmental Accounting Officer. Any contribution which the Treasury may make is not an appropriate subject for NAO audit in an individual case.

Paragraph 8

Here again I would not accept that what information the Treasury did or did not present to Ministers is a matter for NAO audit in the context of an investigation of an individual project within the responsibility of a departmental Accounting Officer.

Paragraph 9

As will be clear, I do not agree that the information described in (i), (ii) and (iii) is relevant to the NAO audit. In any event, it seems to me that all the relevant information has been made available to NAO on MOD files and the correspondence with NAO on the EH101 report. In particular, sub-paragraph (ii) seems to take no account of my letter of 10 April. (Incidentally, as I pointed out in that letter, the Treasury does not have "membership" of the MOD Committee).

Paragraph 10

This paragraph will need re-drafting if a note in anything like this form goes forward. For example, it is not appropriate to say merely that the Treasury (and Cabinet Office) "understood" that the 1983 Act was intended not to change things or that the departments "believed" this to have been accepted at the time. As you well know, this was the basis on which agreement was reached with the Bill's sponsors and the insertion of the word "reasonably" was intended to reflect this. Reference would need to be made to the Chief Secretary's statement in Standing Committee C on 30 March 1983 that the relevant new clause did not seek to embody any change in the present practice and that the sponsor of the Bill was so satisfied. I should also wish to see a quotation from your letter of 29 December 1983, where you said that you did not expect the Act to have any significant effect on working relationships between NAO staff and audited departments and that you did not envisage any change in the scope or nature of the NAO's VFM work.

Paragraph 13

I have already indicated that I do not agree that Treasury documents are relevant to an enquiry into whether Ministers were properly furnished with information in an individual case within a departmental Accounting Officer's responsibility; or that in such a case the process of Treasury approval is a proper subject for NAO audit. I hope I have also already made clear that there is no conflict in my view between what is properly subject to C&AG audit and the Treasury evidence of 22 June 1982 to the Select Committee on Procedure (Finance).

Paragraph 14

The point needs to be injected here that, since this is a Parliamentary issue, the intentions of Parliament in 1983 are highly relevant, notwithstanding any legal advice which the NAO may have received about the definition of "reasonable" access.

I am not aware of any cases relevant to the present debate in which E&AD or NAO staff have sought and obtained access to Treasury papers. Before I can comment on this assertion I need to have details of the cases which you have in mind.

Paragraph 15

As is clear from the above, it is factually incorrect to say that the Treasury response imposes constraints not envisaged by legislation or established by past precedent. Nor, as I have said, do I agree that NAO were inhibited in any way in carrying out their responsibilities to Parliament on the EH101. Nor is there any lack of clarity as to the Treasury's responsibilities. The explanation I have given you on this is wholly consistent with the rejection of the proposal that the PES system should be subject to NAO review. In both cases the Treasury's role is essentially concerned with the formulation of policy and not with its implementation.

General

I would like to repeat two things. First, the accountability issue raised by the EH101 case, so far as the Treasury is concerned, is that MOD's Accounting Officer should be answerable to the PAC only on the basis of information available within his own department. It is only because you have sought to depart from that fundamental principle that the other matters raised in your note with which I take issue arise. Second, I am not of course seeking to deny the NAO access to the Treasury, simply to confine that access to long established practice. There are, as both you and the PAC know, numerous examples of NAO investigations into the discharge of our responsibilities and the use of our resources which do not infringe these conventions.

I am copying this letter to Robert Armstrong and Peter Levene.

[PEM]



Grey Scale #13



A 1 2 3 4 5 6 **M** 8 9 10 11 12 13 14 15 **B** 17 18 19



Inches 1 2 3

Centimetres 1 2 3 4 5 6 7 8

Colour Chart #13

Blue

Cyan

Green

Yellow

