

MANAGEMENT - IN CONFIDENCE



HOUSE OF LORDS,
SW1A 0PW

NBAM

2 pp's

10 July 1986

Dear Richard:

Government Response to the Treasury and Civil Service Committee Report
on Civil Servants and Ministers, Duties and Responsibilities

Thank you for your letter of 7th July in which you invited my comments on the response to the Treasury and Civil Service Committee Report on the Duties and Responsibilities of Civil Servants and Ministers.

I think that the draft has successfully struck a commonsense balance between the Committee's recommendations and what is sensible and practical and I have no comments on matters of detail or principle.

I am copying this letter to the recipients of your own.

yrs:

Richard Luce, Esq., MP
Minister of State
Privy Council Office
Management and Personnel Office
Great George Street
London SW1P 3AL

CIVIL SERVICE
LONG TERM

PT 19



From: THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

10 July 1986

MSM
Dear Paul

This is to confirm that the Home Secretary has seen your Minister's letter of 7 July and is content with the terms of the proposed Government response except he thinks that it would end on a more suitable note if the final sentence of paragraph 48 were omitted.

Copies of this go to the Private Secretaries of the recipients of Mr Luce's letter.

Yours sincerely
W R Fittall

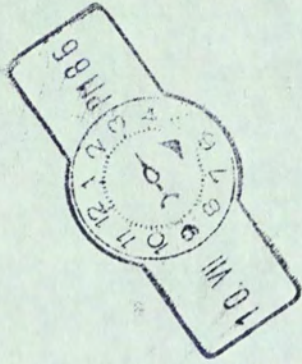
W R FITTALL

Paul Thomas, Esq

CIVIL SERVICE

LONG TERM

PT 19



MANAGEMENT IN CONFIDENCE



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10 DOWNING STREET

From the Principal Private Secretary

10 July 1986

GOVERNMENT'S RESPONSE TO SEVENTH REPORT FROM THE
TREASURY AND CIVIL SERVICE COMMITTEE: CIVIL SERVANTS AND
MINISTERS, DUTIES AND RESPONSIBILITIES.

I have shown the Prime Minister your letter of 8 July in which you comment on the amendments made in response to her comments to the draft of the Government's response to this TCSC report.

The Prime Minister is content with these amendments.

Please could you consult the Prime Minister about any changes to the draft made as a result of Ministers' comments.

N. L. WICKS

Paul Thomas, Esq.,
Office of the Minister for the Arts.

MANAGEMENT IN CONFIDENCE

K



10 DOWNING STREET

From the Principal Private Secretary

9 July 1986

*Dear Joan,***RESPONSE TO THE TCSC REPORT ON "CIVIL SERVANTS AND
MINISTERS: DUTIES AND RESPONSIBILITIES"**

Following consultation with your office, the Chief Whip and Sir Robert Armstrong this morning, I reported to the Prime Minister that the advice on the timing of the publication of the Response to the TCSC report and of the Defence Select Committee's Report on Westlands was as follows:-

any attempt to influence the timing of the publication of the Defence Committee's Report could well lead to Opposition accusations that the Government were trying to 'hide' it or otherwise frustrate the purposes of the Committee. This would create an undesirable story in itself and put the Government on the defensive. We should therefore make no attempt to influence the timing of the Defence Committee's Report. Present indications suggest that it will be published on Thursday 24 July.

Publication of the Defence Committee's Report on 24 July rendered it impracticable to publish the Government's Response to the TCSC Report thereafter since publication the day before the Recess was clearly inappropriate. There were no clear cut advantages in publishing the Report before the Defence Select Committee's Response. This suggested that the Response should be published on the same day as the Defence Committee's report, ie. Thursday 24 July.

The Prime Minister was initially somewhat reluctant for the Defence Committee's Report to be published on the same day as she is delivering her 'end of session' report to the 1922 Committee. It was unhelpful too to revive memories of the Westlands episode at the end of the session. Nevertheless, she accepted that there were risks in seeking to bring forward the publication of the Select Committee's Report. She therefore agreed that it should be published according to the Committee's own timetable. She agreed too

that the TCSC Response should be published on 24 July (though if it transpires that the Defence Committee's Report is to be published on another day we would obviously need to reconsider this).

I should be glad if Murdo Maclean in the Chief Whip's Office, to whom I am copying this letter, could keep me closely informed about the timing of the publication of the Defence Select Committee's Report.

I am sending a copy of this letter also to Michael Stark (Cabinet Office) and to Bernard Ingham.

Yours sincerely
Nigel Wicks

N L WICKS

Miss Joan MacNaughton,
Lord President's Office



Cabinet Office

MANAGEMENT AND PERSONNEL OFFICE

*Prime Minister
 RW hence has
 taken the points you
 made. NB X.*

From the Minister of State
 Privy Council Office
 Richard Luce MP

Great George Street
 London SW1P 3AL
 Telephone 01-233 8610

Nigel Wicks Esq
 Principal Private Secretary
 10 Downing Street

N. L. W

9.7

8 July 1986

ML

Dear Nigel -

My Minister was grateful for the Prime Minister's comments, contained in your letter of 7 July, on the draft response to the TCSC Report on Civil Servants and Ministers: Duties and Responsibilities.

On the amendments which she proposed to the draft:

- Mr Luce agrees that we should substitute "complete agreement" for "general agreement" in paragraph 2.
- The Chief Whip is, we know, anxious about publicising the steps which we are taking, with Sir Robin Ibbs, to familiarise newly appointed Ministers with the workings of Government Departments. Rather than spell these steps out, Mr Luce feels that it would be better to delete the sentence entirely.
- Mr Luce has amended the last sentence of paragraph 15, to read: "The implications of applying that principle can only be a matter of judgement in each case".
- The first part of the second sentence of paragraph 33, now reads: "The first is to assist the Minister in developing his departmental policies:".

X. As to the Prime Minister's question on Special Advisers, there are three each in the Treasury and the Department of the Environment, and two each in the Foreign and Commonwealth Office and the Departments of the Employment and Trade and Industry.

Now agreed.

We will consider the date of publication further in the light of your comments.

... I attach a copy of the draft response, with these amendments incorporated.

My Minister is simultaneously circulating it to members of the Cabinet, other Ministers in charge of Departments, the Chief Whip and the Attorney General, and will submit it to the Prime Minister again with any comments which they have proposed.

Always ever,

Edwin Curran

R

PAUL THOMAS
Private Secretary

Draft of 7 July 1986

CIVIL SERVANTS AND MINISTERS

DUTIES AND RESPONSIBILITIES

Government Response to Seventh Report from the
Treasury and Civil Service Committee

Session 1985-86

INTRODUCTION

The Government welcomes the Committee's Seventh Report, together with the memoranda and minutes of evidence taken by their Sub-Committee for the purpose of preparing the Report, as a contribution to the public discussion of a number of important and sensitive issues which lie at the heart of the exercise of government in a Parliamentary democracy and in a complex industrialised society.

2. This response is intended to be seen in the same light: as a contribution to a continuing discussion, not as the last word in an argument. For these issues are concerned not just with institutions, and relationships between institutions; they are very much concerned with relationships between people working together in a framework of political and administrative institutions, which themselves progress and develop, and in widely varying political contexts. They are not therefore issues on which there is likely to be complete agreement, or even finality: political circumstances change - indeed governments change - and solutions which may seem appropriate in one context may be inadequate or inappropriate in others. The

need is to discern and identify the principles which ought to guide the people concerned as they exercise their judgments in dealing with particular situations and problems, rather than to try to generalise from particular situations and problems that have occurred and to prescribe detailed solutions for dealing with them in future.

DUTIES AND RESPONSIBILITIES

The Civil Service

3. There is one other general point to be made at the outset. The Committee's Report is relevant mainly to civil servants working at the centre of Government, advising Ministers on the formulation and execution of policy, and much of this response follows the Committee's Report in that respect. But the Civil Service as a whole is a much larger body of public servants - nearly 600,000 in all - engaged in an extremely wide variety of functions. In thinking about the one-half of one per cent of civil servants with whom the Report is primarily concerned, it is important not to lose sight of the diverse functions of other members of the Civil Service.

4. The Government has noted, and warmly endorses, the appreciation expressed by many of those who gave evidence to the Committee of the loyalty, devotion and professionalism with which civil servants carry out the duties placed upon them.

5. The Government recognises the particular pressures which have been created by its commitments to :

- (1) reducing the role of the state and the extent of its intervention in the affairs of the citizens;

(2) making sure that the activities that continue to be carried out within government are managed with the greatest possible efficiency and effectiveness;

(3) as a counterpart and consequence of these processes, reducing the size of the Civil Service.

6. The Committee's Report does not touch on the programme of management reform which has been going forward in the public service since 1979. Manpower has been reduced by nearly 20 per cent. There have been changes to ensure greater personal responsibility for financial management on the part of individual line managers in the Civil Service, fuller initial assessment of the objectives and costs of services and policies and more reviews of their effectiveness. The changes in management have required substantial changes in the attitude of civil servants to their work. It is a great credit to the Service, not just that the necessity for these changes has been accepted, but that the process itself has been positively espoused and is bearing fruit.

7. The Government notes with satisfaction that the Committee "have received no convincing evidence that the British Civil Service is being or has been politicised". This is entirely in line with the Government's conviction that the Civil Service has not been, is not being, and should not be allowed to become politicised. It reaffirms its belief in the importance, in the British system of parliamentary democracy, of maintaining a non-political professional Civil Service offering those who join it a career with the opportunity of rising to the highest levels. Only so, in the Government's view, will it be possible to maintain the standards of integrity, intelligence and skill which have characterised the British Civil Service and benefited the country for more than a hundred years.

8. The Committee have noted that they would find it helpful to have a clear definition of the Civil Service. As the Report notes, the Expenditure Committee made the same request in 1978 (HC (1976-77) 535-1). The Government's response (Cmnd 7117, paragraph 107) was as follows:

"There is in law no universally applicable definition of 'civil servant' or 'Civil Service'. The most important distinguishing characteristic is service on behalf of the Crown. The employees of bodies which do not in law have crown status (eg local authorities, nationalised industries) are not civil servants. Political, judicial and other Crown office holders whose terms and conditions of service are separately provided for are distinguished from civil servants, as are the Armed Forces and the Royal Household."

The Government cannot improve upon this definition, which (it will be noted) includes the Diplomatic Service and the Northern Ireland Civil Service, though these are separate from the Home Civil Service. It does not include employees of National Health Authorities, who are Crown servants but not civil servants.

9. The Government does not propose in this response to the Committee's Report to embark upon an elaborate disquisition on the constitutional significance of "the Crown". What Sir Robert Armstrong wrote in his note of guidance of 25 February 1985 ("the Armstrong memorandum"), the issue of which gave rise to the Committee's inquiry, was the subject of careful consideration, and the Government believes that it provides the right foundation on which to base the discussion of working relationships and their implications:

"Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day ... The Civil

Service as such has no constitutional personality or responsibility separate from the duly elected Government of the day."

Ministers

10. Ministers are also servants of the Crown: with the difference, as the Committee recognises, that it is they who bear political responsibility and accountability. The Government agrees with the view that good government depends as much upon the integrity of Ministers and their accountability to Parliament, as upon the integrity of civil servants and their accountability to Ministers.

11. The Government believes that Ministers are well aware of the principles that should govern their duties and responsibilities in relation to Parliament and in relation to civil servants. It goes without saying that these include the obligations of integrity. They include the duty to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament or the public. In relation to civil servants, they include the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; the duty to refrain from asking or instructing civil servants to do things which they should not do; the duty to ensure that influence over appointments is not abused for partisan purposes; and the duty to observe the obligations of a good employer with regard to terms and conditions of service and the treatment of those who serve them.

12. The Government does not believe that it is necessary to go further than this in defining the duties and responsibilities of Ministers - or indeed possible to do so without adding so many caveats, provisos, and saving clauses as greatly to limit the value of the exercise as a detailed guide to conduct.

Accountability

13. The Government endorses the Committee's two basic propositions on accountability: that Ministers and not officials are responsible and accountable for policy; and that officials' advice to Ministers is and should remain confidential. Constitutionally a Minister is responsible and accountable for all actions carried out by civil servants of his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him by Parliament. The delegation of authority to managers at all levels, which is an important part of the Government's drive for more efficient and economic use of resources in the Civil Service, involves internal accountability within Departments and does not conflict in any way with the external accountability of the Minister to Parliament. Any attempt to make civil servants directly accountable to Parliament, other than the strictly defined case of the Accounting Officer's responsibility, would be difficult to reconcile with the Minister's responsibility for his Department and the civil servant's duty to his Minister.

14. This has implications for the position of civil servants in relation to Select Committees. Select Committees were established to examine the expenditure, administration and policy of Departments. The relevant powers of the Committees and the conventions that are accepted as applying are set out comprehensively in the First Report from the House of Commons Select Committee on Procedure (session 1977/8) and the memorandum by the Clerk of the House. The Report and the memorandum recognise that civil servants who give evidence to

Select Committees do so on behalf of their Ministers, that there are certain matters on which they cannot answer questions (notably, as the Committee's own Report states, on policy matters - which are for Ministers - and on advice given to Ministers) that - as the Report stated -

"it would not be appropriate for the House to seek directly or through its Committees to enforce its rights to secure information from the Executive at a level below that of the Ministerial Head of Department concerned, since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House";

and as the memorandum by the Clerk of the House stated -

"it would certainly appear more in accordance with Ministerial accountability to the House that Ministers should accept responsibility for the conduct of their offices and that the House should proceed against Ministers".

It is not in accordance with the Government's view of those conventions or with the underlying principles of Ministerial accountability that Select Committees should criticise individual civil servants who are, for the reasons already explained, unable to speak freely in their own defence.

15. It is impossible, and would be unwise, to try to lay down detailed guidelines about the implications of Ministerial accountability for individual conduct in particular situations: the variety of situations that can arise is infinite, and there must be room for the exercise of discretion and judgment having regard to particular circumstances. It has never been the case that a Minister was required or expected to resign in respect of any and every mistake made by his Department, though he is clearly responsible to Parliament for ensuring that action is

taken to put matters right and prevent a recurrence. The principle is clear: the Minister is accountable to Parliament for the policies and actions of his Department. The implications of applying that principle can only be a matter of judgment in each case.

QUESTIONS OF PROCEDURE

The Armstrong Memorandum

16. As to the duties and responsibilities of civil servants in relation to Ministers, the Government reaffirms the principles set out in the Armstrong memorandum; indeed the Committee themselves accept the validity of those principles. The question that remains is whether, in the matter of procedures, the memorandum goes far enough and whether it is possible to define more specifically some of the situations that may arise and to prescribe for them.

17. The Government does not believe that the cases referred to by the Committee demonstrate that the procedures set out in the Armstrong memorandum are inadequate. In particular, in Mr Ponting's case, it is not just that the Armstrong memorandum had not been issued at the relevant time: the fact is that Mr Ponting did not follow those procedures and did not take his specific problem either to his Permanent Secretary or to the Head of the Home Civil Service. When questioned on this matter by the Committee, Mr Ponting indicated that he had decided that there was no point in approaching his Permanent Secretary formally because, he assumed, the Permanent Secretary was already aware of his views through previous discussions. Mr Ponting would have been better placed to reach a conclusion if he had approached his Permanent Secretary formally with his specific problem. Instead he chose to ventilate his grievances by means of anonymous letters while he continued to occupy a position of high trust.

18. The Government is not convinced that it is desirable or indeed practicable to specify situations and prescribe procedures in more detail than the Armstrong memorandum already does. Sir Robert Armstrong has however agreed, following a request from the Council of Civil Service Unions, to enter into discussions on this matter. Those discussions have been awaiting the Committee's Report.

An Appeals Mechanism

19. The Government agrees with the Committee in the view that an external appeals mechanism would not be desirable. In particular it is the view of the Government that the institution of a Parliamentary Commissioner or Inspector General for the Civil Service, of the kind suggested by the FDA or Sir Douglas Wass, could adversely affect the relationships between Ministers and civil servants. But the Government accepts in principle the Committee's recommendation that the Head of the Home Civil Service should be prepared personally to consider appeals from officials who have followed his procedures but whose crises of conscience remain unresolved. This right of appeal would be intended primarily to deal with "crisis of conscience" cases - where (for instance) a civil servant is asked or instructed to do something which for him or her raises a fundamental issue of conscience; it would not be intended to be available in disciplinary cases and other personnel management matters where the Permanent Secretary of the Department concerned will remain the final authority. There would also need to be some safeguard against the risk of merely frivolous or vexatious appeals to the Head of the Home Civil Service. The arrangements and procedures for this right of appeal will be one of the subjects for discussion in the course of Sir Robert Armstrong's consultations with the representatives of the Civil Service unions.

20. It will be for separate consideration whether there should be similar rights of appeal for members of the Diplomatic Service and for members of the Northern Ireland Civil Service to the respective Heads of their Services.

MINISTERS AND THE CIVIL SERVICE

Senior Appointments

21. The Committee make a number of points in the section of their Report headed "Ministers and the Civil Service". The first is that "Ministers should be able to play an active role in selecting the key officials who are going to work with them in planning and implementing their policies".

22. The Committee's words here leave room, perhaps intentionally, for a good deal of flexibility of interpretation. The Government believes that the Committee do not contemplate, any more than the Government would, a wholesale change of staff in the higher levels of the Civil Service upon a change of Government or Minister. Nonetheless, the Government believes that the wording of this recommendation carries a significant risk of increasing politicisation, which (like the Committee) the Government wishes to avoid. It therefore takes a somewhat different position.

23. The Government considers that the maintenance of the Civil Service as a career service is in the public interest. With a career service, the assumption must be that civil servants give unstinting and loyal service to the Government of the day and that an incoming Minister accepts and works with those whom he finds in the established Civil Service posts (special advisers and policy units are discussed later in this response). Any other assumption would inject an unacceptable degree of uncertainty into appointments in the higher Civil Service. In the rare event that a Minister finds that he cannot work

reasonably with a particular official in a key position, it is open to him to propose to the Permanent Secretary (or to the Prime Minister or the Head of the Home Civil Service, if the official concerned is the Permanent Secretary) that the official should be moved from that position. The subsequent discussion takes account of the various considerations involved, and it is usually possible to resolve the situation satisfactorily, given a degree of good will on all sides. The Government does not believe that it is possible to go further than this to provide in advance for a situation which arises only very seldom.

24. When a vacancy occurs in the ordinary course of business, as a result of a retirement or a posting, in a Grade 1 or Grade 2 post, the Minister in charge of the Department is always consulted and can expect to be able to have an active influence on the choice of the successor, though the appointment is ultimately made with the approval of the Prime Minister. Appointments at Grade 3 do not require the Prime Minister's approval, but the Permanent Secretary will consult the Minister concerned in the normal course of business before appointments are made to posts in this grade whose incumbents are regularly in contact with Ministers and to other key posts in this or other grades.

25. The Government believes that these arrangements enable departmental Ministers to play an appropriately active role in the selection and appointment of senior officials.

Appointments From Outside

26. The Committee's second point in this section is that "there should be regular infusions, temporary and permanent, of highly motivated people of proven ability into the higher Civil Service". The Committee commends the "more structured and yet

more flexible arrangements for movement in and out of the public service" which they understand to be a feature of the French system.

27. The arrangements in the French system are (as the Committee implicitly recognise) part and parcel of a different administrative system and a different set of relationships between the public service and the private sector from those which exist in this country; and it would be difficult to adopt one feature of the French system without others, for example in relation to business appointments for those leaving the public service. The Government notes in passing that some of the Committee's recommendations in its earlier Report on business appointments would make for less rather than more flexibility in these matters.

28. The Government believes that the objective should be that the Civil Service should be capable of furnishing people with all the qualifications and expertise likely to be required in the public service, and that recruitment to and training in the Civil Service should be so organised as to achieve this objective. This objective also served by the policy of encouraging increased interchange between the public and private sectors, which helps to increase experience and improve understanding between the two sectors and promote the development of outward-looking attitudes in the public service. An important element in this policy is an expanding programme of secondments in both directions between the Civil Service and industry, commerce and other outside bodies, amounting to a total of 900 secondments in and out in 1985, in addition to joint training arrangements, unpaid non-executive directorships and other arrangements for exchanging experience. The Government fully supports this programme as a further means of expanding the experience of the permanent Civil Service, and would like to see the number of such exchanges increase. But there will continue to be, as there have been in the past, cases

where the Civil Service cannot meet a particular requirement at a particular time, and in such cases it is necessary and appropriate to bring* somebody in from outside the Civil Service. Between 1979 and 1985, some 80 appointments were made from outside the Civil Service at Grade 3 and above. The arrangements for such appointments should be, and are designed to be, such as to ensure that they are made not on political considerations but strictly on the requirements of the appointment and the qualifications and expertise of the person to be appointed. The objective must be to make the best possible appointment in the circumstances, without regard to political considerations, in accordance with the Civil Service Commissioners' requirements.

Press and Information Officers

29. Dealing with press and information officers, the Committee propose that "Ministers who require their press officers to do more than present and describe their policies should make political appointments". In practice it is very difficult to draw a sharp line between "presenting and describing" and "justifying and defending" policies. The Government's view is that the correct distinction is between the policy of the Government as such and the party political dimensions of that policy; and that a Civil Service departmental press officer is in exactly the same position as any other civil servant: he may properly be called upon to present and describe the policies of the Minister, and to put forward the Minister's justification and defence of these. He may not properly be called upon to justify or defend those policies in party political terms, or expressly to advocate policies as those of a particular political party. A Minister who wishes to present his policies in a party political dimension has other means and channels available to him for doing so. A Civil Service departmental

press officer who is asked or instructed by his Minister to behave in a manner which oversteps this line should consult his Permanent Secretary.

Special Advisers and "Cabinets"

30. The Committee propose the institution of an expanded Ministerial Private Office, which they describe as a Minister's Policy Unit, which would consist of his Parliamentary Private Secretary, to keep the Minister in touch with backbenchers, a group of civil servants, to keep the Minister in touch with his Department and to give advice, and a number of Special Advisers, to keep him in touch with his party organisation and to give policy advice.

31. Under present arrangements a Minister in charge of a Department may have a Parliamentary Private Secretary, a Private Office, and one or two Special Advisers; the functions of the three are distinct and different, though there needs to be good co-ordination and co-operation between them. There would be no constitutional difficulty about an experiment in formalising and extending these arrangements on the lines envisaged by the Committee, provided that, as the Committee propose, numbers working in the unit were limited in the interests of efficiency and containing costs. It would also be necessary that such an arrangement should not insulate Ministers from the advice of their permanent civil servants or cut across the Permanent Secretary's overall accountability to the Minister for the effective implementation of the Minister's policies and management of the Department.

32. But the Government considers that in reading across from "cabinet" systems in other countries the Committee have taken too little account of the extent to which Ministers of State and Parliamentary Secretaries play a role in the British system of government. In nearly all Departments there are at least two

or three - in some cases as many as six or seven - Ministers besides the Minister in charge of the Department. These Ministers share the burden of Parliamentary and departmental work, and are an experienced and responsible source of political advice and support for the Minister in charge of the Department.

33. The policy advice role of Special Advisers covers two different functions. The first is to assist the Minister in developing his departmental policies: in this capacity the Special Adviser provides a complementary source of advice to that provided by the civil servants, with special reference to the party political dimensions of the policy. The second is to provide the Minister - and particularly the Cabinet Minister - with advice on matters which may be discussed in Cabinet or Cabinet Committee but in which his Department has no direct concern and no obvious capacity or qualification to provide advice. The first of these functions, with its specifically party political dimension, cannot readily be undertaken by a civil servant; the second can be, and often is, though (as the Committee recognises) this should be an episode in a civil servant's career from which he subsequently returns to normal departmental work.

34. The number of Special Advisers which is appropriate depends upon the size of the Department and the range of its responsibilities, as well as upon the Minister's assessment of what he can use to advantage. The Government believes that, in an ordinary Department, the number of such advisers should seldom exceed one, and that, as a general rule, only Cabinet Ministers (and in exceptional cases other Ministers in charge of Departments) should need a Special Adviser. To ensure a reasonable degree of consistency in practice, the Prime Minister's approval should continue to be required for the employment of Special Advisers. They are invariably from outside the Civil Service, and should therefore continue to be appointed for terms which expire with the end of the

administration under which they are appointed, when there is a General Election, or with the departure of the Minister by whom they are appointed. They should continue to be subject in general to Civil Service Conditions of Service.

35. The Government has found the present arrangement satisfactory, whereby the functions of the Private Office, Special Adviser and Parliamentary Private Secretary are organisationally separate (though with an appropriate degree of co-ordination and co-operation between them and with the key civil servants in the Department); and it recognises that some Ministers in charge of Departments may prefer to have no Special Adviser but to rely on the other Ministers in their Department and on their Parliamentary Private Secretaries for the specifically political input into the advice available to them. The "Policy Unit" proposed by the Committee suggests another possible way in which the support directly available to a Departmental Minister could be organised. The Government considers that more thought needs to be given to the functions of such a Unit and to its relationship to the rest of the system. For instance, if it is intended to have an independent input into policy formulation, its relationship, and that of the individuals comprising it, to the Permanent Secretary and the executive parts of the Department will need extremely careful definition. And, if it is intended as no more than an aid to the Minister in ensuring that Departmental policies are energetically pursued and followed up, it is not clear whether there is any great advantage in what would be little more than a formalisation of arrangements which already exist in many Departments. Indeed it is not clear how far its role is intended to, or should, differ from the existing structures. In fact, there may not be a substantial gap between the arrangements as they have evolved within many Ministers' offices and the thrust of the views expressed by the Committee. The Government does not propose to take a central initiative to launch an experiment on the lines suggested, but

does not rule out the possibility of further evolution of existing arrangements in the direction which the Committee may have in mind. There may be scope for the further development of existing arrangements by interested Ministers (subject to detailed discussion with their Permanent Secretaries and as necessary with the Prime Minister).

Managing the Civil Service

36. The Committee propose that there should be a single Minister for the Civil Service, with a Department for the Civil Service, whose Permanent Secretary should be the Head of the Home Civil Service.

37. The Government does not believe that that there is a uniquely and universally right way to organise the various functions that are carried out at the centre of Government - those now carried out by the Treasury and the Cabinet Office (including the Management and Personnel Office). What the organisation should be at any given time will depend on the policies and priorities of the Government of the day, and on the particular personalities involved. Until 1968 the Treasury undertook the responsibilities of central management of the Civil Service, and the Permanent Secretary to the Treasury (or the Joint Permanent Secretary responsible for that side of the Treasury) was the Head of the Home Civil Service. From 1962, however, the management side of the Treasury was largely separate from the rest, and by the time of the Fulton Report in 1968 the retention of responsibility for Civil Service management in the Treasury had come to be felt to be unsatisfactory. The Civil Service Department was therefore set up in 1968. It was essentially a new Department created out of the former Management side of the Treasury: it was responsible for all aspects of central management of the Civil Service, and its Permanent Secretary was the Head of the Home Civil Service. It is this arrangement which the Committee propose should be

recreated, though it was found not to be wholly satisfactory, particularly in respect of the divorce of responsibility for Civil Service pay and manpower from the Treasury's general responsibility for the central management of expenditure.

38. So a number of arrangements have been tried; and others would no doubt be possible. In the Government's view, however, the reasons which led to the creation of the present arrangements in 1981 remain valid. Moreover, these arrangements have been in existence for less than five years, and frequent institutional change is apt to produce more by way of disadvantage from the effects of disruption than by way of advantage in terms of improved policy formulation or execution.

39. The Government also continues to see a strong case for the Prime Minister, with her overall central responsibility for the co-ordination of Government policies and the management of Government, to be the Minister for the Civil Service - as successive Prime Ministers have always been, either as First Lord of the Treasury or more recently as Minister for the Civil Service - with whatever support for day-to-day Ministerial involvement is appropriate. At present this support is provided by the Minister of State, Privy Council Office, who is responsible under the Prime Minister for the organisation, management and overall efficiency of the Home Civil Service and for policy on recruitment, training and other personnel management matters; and by the Minister of State, Treasury, who is responsible under the Chancellor of the Exchequer for civil service pay and conditions.

40. As to the position of Head of the Home Civil Service, the Government notes the Committee's view that there is "very much a full-time need for one who will make his prime concern the restoration of morale " in the Civil Service. The maintenance of morale is not, however, a matter for one civil servant; and it would in the Government's view be mistaken to set up a system

which implied that it was. It is a matter for all Permanent Secretaries and indeed other senior management. It is necessary also to have regard to the fact that because of their relationship to Ministers neither the Head of the Home Civil Service nor other Permanent Secretaries can take up a public position in advocating the interests of the Civil Service, if to do so would appear to put them in conflict with the Government of the day. For this reason the Prime Minister, as Minister for the Civil Service, and all Ministers in charge of Departments share a responsibility for the maintenance of Civil Service morale. In short, it is a matter for the Government as a whole.

41. The current arrangement, under which the post of Head of the Home Civil Service is combined with the Secretaryship of the Cabinet, has clear benefits. The Secretary of the Cabinet, although not "the Prime Minister's Permanent Secretary", is of all the Permanent Secretaries the closest to the Prime Minister. As Permanent Secretary for the Cabinet Office (including the Management and Personnel Office), he is responsible to the Minister of State, Privy Council Office, and to the Prime Minister for the matters for which she has particular responsibility as Minister for the Civil Service. He also sees many of the senior staff in action and is therefore in a good position to advise the Prime Minister, as Minister for the Civil Service, on Grade 1 and 2 appointments. As to the matter of the load of work, the Government believes that, provided that the incumbent delegates sensibly, his burden is manageable.

42. Against this background the Government seeks no grounds for changing the existing organisation at the present time.

OPEN GOVERNMENT

43. In the last section of its report, the Committee make certain comments on freedom of information and on the Official Secrets Acts.

Freedom of Information

44. As to freedom of information, it remains the policy of the Government to make publicly available as much information as possible, consistent with the requirements of the preservation of national security, of the protection of international relations, of financially or economically sensitive information, and of commercial and personal information entrusted to it in confidence, and with the requirements of orderly Government. The establishment of Departmental Select Committees in 1979 has encouraged a climate in which far more information is being made available by Government Departments than ever before. The Government is not convinced that legislation giving individuals new statutory rights of access to Government information is needed, or that it would make for more effective Government. It agrees with the Committee that advice of civil servants to Ministers should remain confidential. Given that advice of civil servants to Ministers would be exempt from a statutory duty of access to information, the Government doubts whether freedom of information legislation would much affect relations between Ministers and their officials one way or the other.

Official Secrets

45. Section 2 of the Official Secrets Act 1911 prohibits the unauthorised disclosure by a Crown servant of information that he has obtained through his official position. A leak by a civil servant that is designed to frustrate the policies or actions of a Minister would be one form of unauthorised disclosure; and the Government agrees with the Select Committee that such a disclosure cannot be regarded as justified.

46. Responsibility for deciding whether or not to institute proceedings under the Act rests with the Attorney General in his capacity as a Law Officer (not as a member of the Government). He has made clear that he will continue to exercise his

discretion in this matter in accordance with the criteria applicable to all prosecutions that he has made public. The unauthorised disclosure of information is also a serious breach of the Civil Service Code of Conduct. A civil servant against whom criminal proceedings are not instituted could be subject to internal disciplinary procedures.

47. The Government introduced a Bill when it came to office in 1979 to reform Section 2 of the Official Secrets Act 1911. The Protection of Official Information Bill was broadly based on the recommendations of the Franks Committee, which reported in 1972. The Bill would have replaced Section 2 with new provisions designed to protect certain specified classes of official information from unauthorised disclosure. There was, however, insufficient agreement, mainly about precisely what categories of information should be protected by the criminal law, to enable the Government to carry the Bill through Parliament.

48. The Government has noted the views of the Treasury and Civil Service Select Committee, and will continue to listen to views expressed on this subject. But it does not believe that it is any more likely now than in 1979 that a measure could be devised defining the information which genuinely needs protection and specifying who has the right to apply the definition to particular information which would be broadly acceptable. Accordingly, the Government has no plans at present to introduce legislation on the protection of official information. Unless and until such legislation can be introduced with a sufficient degree of support, the Official Secrets Acts remain in place as the law of the land.

DRAFT

Written Question

To ask the Minister of State, Privy Council Office, when the Government expects to reply to the Seventh Report of the Treasury and Civil Service Committee on Civil Servants and Ministers: Duties and Responsibilities.

Answer

My rt. Hon. Friend the Prime Minister has today presented to the House the Government's response to this repor. . Copies of the response, which has been made as a Command Paper (No.), have been placed in the Library.

TREASURY AND CIVIL SERVICE COMMITTEE REPORT

CIVIL SERVANTS AND MINISTERS: DUTIES AND RESPONSIBILITIES

Main Recommendations

- (i) The Prime Minister should formulate and publish guidelines for Ministers on their duties to Parliament and responsibilities for the Civil Service (report 3.13).
- (ii) The Government should produce specific proposals on accountability (of civil servants to Ministers and of Ministers to Parliament (3.19).
- (iii) Sir Robert Armstrong should enter into discussions with the Civil Service unions with a view to producing an agreed text of a new note of guidance (4.11).
- (iv) There should not be an external appeals mechanism for civil servants faced with crises of conscience, but there should be a right to appeal to the Head of the Home Civil Service for officials whose dilemmas remain unresolved (4.16)
- (v) Ministers should be able to play an active role in selecting key officials (5.13)
- (vi) There should be regular infusions of highly motivated people of proven ability into the higher Civil Service (5.18)

Proposed Responses

The principles that should govern these matters are outlined in the response but it is not necessary or helpful to try to develop a detailed note of guidance (Paragraph 11).

Principles of accountability clearly restated; implications discussed; application in particular circumstances left for judgement at the time (13 to 15).

Sir Robert Armstrong has already agreed to enter into discussions with the unions (18).

Agreed in principle: for discussion with the unions (19).

Already adequately provided for (25)

Qualified agreement: much of this already in hand (25 and 28).

MANAGEMENT IN CONFIDENCE

Main Recommendations

(vii) Ministers who require their press officers to do more than present and describe their policies should make political appointments (5.20)

(viii) Experiments should be conducted with Ministerial Policy Units, consisting of a number of special advisers, a number of career civil servants and the Parliamentary Private Secretary, to strengthen the Minister, increasing his influence and control over his Department, and putting himself in a better position to participate in the collective decision-making of Cabinet (5.28-5.32).

(ix) There should be a single Minister for the Civil Service with his own Department responsible for the management of the Civil Service (5.38).)
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)
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(x) The posts of Secretary of the Cabinet and Head of the Home Civil Service should not be combined. The Head of the Home Civil Service should be a full Permanent Secretary, working to the proposed Minister for the Civil Service.)
)
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Proposed Responses

Disagree. Government press officers can properly justify and defend (as well as describe) Government policies, in departmental but not in party political terms (29).

No central initiative; gap between Committee's thinking and actual practice may not be great; do not rule out further evolution of these arrangements in Committee's direction by individual Ministers who so wish (paragraph 35)

Disagreed. No change in existing arrangements at present time (paragraph 42).

Long Term Management:

CIVIL SERVICE

Pt 19.



CF

70 WHITEHALL, LONDON SW1A 2AS

01-233 8319

From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

Ref. A086/1995

8 July 1986

Dear Joan,

Response to the TCSC Report on "Civil Servants and Ministers:
Duties and Responsibilities"

Nigel Wicks has sent me a copy of his letter of 7 July about the timing and publication of this response.

I understand from Sir Humphrey Atkins that the Defence Select Committee's Report on Westland will not be ready for publication until the week beginning 21 July. The Committee want to publish it before the House rises for the Recess. Monday 21 July would be inconvenient for various reasons. Wednesday 23 July would clash with the Royal Wedding. Friday 25 July would be too late. So the choice is between Tuesday 22 July and Thursday 24 July. Sir Humphrey Atkins told me that, if the Government wished privately to express a preference about the date of publication, for instance through the Chief Whip, he would do his best to arrange publication accordingly.

I am myself inclined to think that the response to the TCSC Report should not be published before the Defence Committee's Report on Westland: in that event there would be a danger that the Defence Committee's Report might be seen as in some sense a counterblast to the Government response to the TCSC Report. So I think that it is a choice between publishing the two Reports on the same day (say, 22 July) and publishing the Defence Committee's Report on 22 July and the Government response to the TCSC Report on 24 July.

One factor to be borne in mind is that, if the response to the TCSC was published on 22 July, the TCSC could well have advance copies in its hands at its last meeting before

/the

Miss Joan MacNaughton

the Recess, which is due to be held on 21 July. That could provoke members of the TCSC into unhelpful public comments on the Government's response.

On the other hand to publish the response to the TCSC on 24 July would look as if that day had been deliberately chosen because it was the last full working day for the House of Commons.

On balance I think I should favour persuading the Defence Select Committee to publish on 22 July and the Government publishing the response to the TCSC on 24 July. But I think that the choice is finely balanced; and after a few days the result might be very much the same whichever we do.

I am sending copies of this letter to Nigel Wicks and Murdo MacLean.

*Yours as
Robert*



Ref. A086/1991

NBPN

MINISTER OF STATE, PRIVY COUNCIL OFFICE

Response to the TCSC Report on "Civil Servants and Ministers:
Duties and Responsibilities"

This minute offers comments on the points in Mr Wicks's letter of 7 July to Mr Thomas.

2. The amendment to paragraph 2 of the draft response is clearly acceptable.
3. Given the Chief Whip's reservations, it would clearly be difficult to spell out the steps which are being taken to familiarise newly appointed Ministers with the workings of Government Departments. I suggest that that sentence should be deleted.
4. I suggest that the last sentence of paragraph 15 should be amended to read:

"The implications of applying that principle can only be a matter of judgment in each case."
5. I suggest that the first part of the second sentence in paragraph 33 should be amended to read: "The first is to assist the Minister in developing his departmental policies:" the words "as a departmental Minister" should then be deleted.
6. The number of Special Advisers exceeds one in five Departments. There are three each in the Treasury and the Department of the Environment, and two each in the Foreign and Commonwealth Office and the Departments of Employment and Trade and Industry.

7. As to the date of publication. I agree that it would be inadvisable to have the Government's response to the TCSC Report published on the same day as the Defence Select Committee's Report on Westland. If it is to be published after the Westland Report, but before the House rises for the Recess, it has to be published on Thursday 24 July: it can hardly be published on Wednesday 23 July because it would be entirely swamped by the Royal Wedding.

8. But there would be something to be said, if time permits, for bringing the date of publication forward to Friday 18 July. We will consider whether that is possible - I think that it may --- make the printing schedule impossibly tight. I attach a draft minute to the Prime Minister.

9. I am sending a copy of this minute to Mr Wicks.

On reflection, I think that it would be tactically preferable for his response to come out after the Defence Committee's Report on Westland; otherwise the Defence Committee's Report will be seen as "hanging" an response. So I favour 24 July.

RA

ROBERT ARMSTRONG

7 July 1986

MANAGEMENT IN CONFIDENCE

DRAFT MINUTE FROM THE MINISTER OF STATE, PRIVY
COUNCIL OFFICE TO THE PRIME MINISTER

Thank you for your comments, contained in Mr Wicks's letter of 7 July, on the draft response to the TCSC Report on Civil Servants and Ministers: Duties and Responsibilities.

On the amendments which you proposed to the draft:

- I agree that we should substitute "complete agreement" for "general agreement" in paragraph 2.

- The Chief Whip is, I know, anxious about publicising the steps which we are taking, with Sir Robin Ibbs, to familiarise newly appointed Ministers with the workings of Government Departments. Rather than spell these steps out, I think that it would be better to delete the sentence entirely.

MANAGEMENT IN CONFIDENCE

- I propose to amend the last sentence of paragraph 15, to read: "The implications of applying that principle can only be a matter of judgment in each case".

- I propose to amend the first part of the second sentence of paragraph 33, so that it reads: "The first is to assist the Minister in developing his departmental policies:".

2. As to the Prime Minister's question on Special Advisers, there are three each in the Treasury and the Department of the Environment, and two each in the Foreign and Commonwealth Office and the Departments of the Employment and Trade and Industry.

3. We will consider the date of publication in the light of your comments. Sir Robert Armstrong and I agree that it would be better not to have the response to the TCSC Report published on the same day as the Defence Select Committee's Report on Westland. If we are to publish the Government's response to the TCSC Report before the Recess, I think that that means 24 July: not ideal, as it is

MANAGEMENT IN CONFIDENCE

the last full working day before the House rises, but no doubt we could live with that. The alternative is to publish it on Friday 18 July; but that would be before the Westland Report, and I am not sure that we could now compress the printing schedule in time to make that date.

--- 4. I attach a copy of the draft response, with these amendments incorporated.

5. I am simultaneously circulating it to members of the Cabinet, other Ministers in charge of Departments, the Chief Whip and the Attorney General, and I will submit it to you again with any comments which they have proposed.

Draft of 7 July 1986

CIVIL SERVANTS AND MINISTERS

DUTIES AND RESPONSIBILITIES

Government Response to Seventh Report from the
Treasury and Civil Service Committee

Session 1985-86

INTRODUCTION

The Government welcomes the Committee's Seventh Report, together with the memoranda and minutes of evidence taken by their Sub-Committee for the purpose of preparing the Report, as a contribution to the public discussion of a number of important and sensitive issues which lie at the heart of the exercise of government in a Parliamentary democracy and in a complex industrialised society.

2. This response is intended to be seen in the same light: as a contribution to a continuing discussion, not as the last word in an argument. For these issues are concerned not just with institutions, and relationships between institutions; they are very much concerned with relationships between people working together in a framework of political and administrative institutions, which themselves progress and develop, and in widely varying political contexts. They are not therefore issues on which there is likely to be complete agreement, or even finality: political circumstances change - indeed governments change - and solutions which may seem appropriate in one context may be inadequate or inappropriate in others. The

need is to discern and identify the principles which ought to guide the people concerned as they exercise their judgments in dealing with particular situations and problems, rather than to try to generalise from particular situations and problems that have occurred and to prescribe detailed solutions for dealing with them in future.

DUTIES AND RESPONSIBILITIES

The Civil Service

3. There is one other general point to be made at the outset. The Committee's Report is relevant mainly to civil servants working at the centre of Government, advising Ministers on the formulation and execution of policy, and much of this response follows the Committee's Report in that respect. But the Civil Service as a whole is a much larger body of public servants - nearly 600,000 in all - engaged in an extremely wide variety of functions. In thinking about the one-half of one per cent of civil servants with whom the Report is primarily concerned, it is important not to lose sight of the diverse functions of other members of the Civil Service.

4. The Government has noted, and warmly endorses, the appreciation expressed by many of those who gave evidence to the Committee of the loyalty, devotion and professionalism with which civil servants carry out the duties placed upon them.

5. The Government recognises the particular pressures which have been created by its commitments to :

- (1) reducing the role of the state and the extent of its intervention in the affairs of the citizens;

(2) making sure that the activities that continue to be carried out within government are managed with the greatest possible efficiency and effectiveness;

(3) as a counterpart and consequence of these processes, reducing the size of the Civil Service.

6. The Committee's Report does not touch on the programme of management reform which has been going forward in the public service since 1979. Manpower has been reduced by nearly 20 per cent. There have been changes to ensure greater personal responsibility for financial management on the part of individual line managers in the Civil Service, fuller initial assessment of the objectives and costs of services and policies and more reviews of their effectiveness. The changes in management have required substantial changes in the attitude of civil servants to their work. It is a great credit to the Service, not just that the necessity for these changes has been accepted, but that the process itself has been positively espoused and is bearing fruit.

7. The Government notes with satisfaction that the Committee "have received no convincing evidence that the British Civil Service is being or has been politicised". This is entirely in line with the Government's conviction that the Civil Service has not been, is not being, and should not be allowed to become politicised. It reaffirms its belief in the importance, in the British system of parliamentary democracy, of maintaining a non-political professional Civil Service offering those who join it a career with the opportunity of rising to the highest levels. Only so, in the Government's view, will it be possible to maintain the standards of integrity, intelligence and skill which have characterised the British Civil Service and benefited the country for more than a hundred years.

8. The Committee have noted that they would find it helpful to have a clear definition of the Civil Service. As the Report notes, the Expenditure Committee made the same request in 1978 (HC (1976-77) 535-1). The Government's response (Cmnd 7117, paragraph 107) was as follows:

"There is in law no universally applicable definition of 'civil servant' or 'Civil Service'. The most important distinguishing characteristic is service on behalf of the Crown. The employees of bodies which do not in law have crown status (eg local authorities, nationalised industries) are not civil servants. Political, judicial and other Crown office holders whose terms and conditions of service are separately provided for are distinguished from civil servants, as are the Armed Forces and the Royal Household."

The Government cannot improve upon this definition, which (it will be noted) includes the Diplomatic Service and the Northern Ireland Civil Service, though these are separate from the Home Civil Service. It does not include employees of National Health Authorities, who are Crown servants but not civil servants.

9. The Government does not propose in this response to the Committee's Report to embark upon an elaborate disquisition on the constitutional significance of "the Crown". What Sir Robert Armstrong wrote in his note of guidance of 25 February 1985 ("the Armstrong memorandum"), the issue of which gave rise to the Committee's inquiry, was the subject of careful consideration, and the Government believes that it provides the right foundation on which to base the discussion of working relationships and their implications:

"Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day ... The Civil

Service as such has no constitutional personality or responsibility separate from the duly elected Government of the day."

Ministers

10. Ministers are also servants of the Crown: with the difference, as the Committee recognises, that it is they who bear political responsibility and accountability. The Government agrees with the view that good government depends as much upon the integrity of Ministers and their accountability to Parliament, as upon the integrity of civil servants and their accountability to Ministers.

11. The Government believes that Ministers are well aware of the principles that should govern their duties and responsibilities in relation to Parliament and in relation to civil servants. It goes without saying that these include the obligations of integrity. They include the duty to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament or the public. In relation to civil servants, they include the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; the duty to refrain from asking or instructing civil servants to do things which they should not do; the duty to ensure that influence over appointments is not abused for partisan purposes; and the duty to observe the obligations of a good employer with regard to terms and conditions of service and the treatment of those who serve them.

12. The Government does not believe that it is necessary to go further than this in defining the duties and responsibilities of Ministers - or indeed possible to do so without adding so many caveats, provisos, and saving clauses as greatly to limit the value of the exercise as a detailed guide to conduct.

Accountability

13. The Government endorses the Committee's two basic propositions on accountability: that Ministers and not officials are responsible and accountable for policy; and that officials' advice to Ministers is and should remain confidential. Constitutionally a Minister is responsible and accountable for all actions carried out by civil servants of his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him by Parliament. The delegation of authority to managers at all levels, which is an important part of the Government's drive for more efficient and economic use of resources in the Civil Service, involves internal accountability within Departments and does not conflict in any way with the external accountability of the Minister to Parliament. Any attempt to make civil servants directly accountable to Parliament, other than the strictly defined case of the Accounting Officer's responsibility, would be difficult to reconcile with the Minister's responsibility for his Department and the civil servant's duty to his Minister.

14. This has implications for the position of civil servants in relation to Select Committees. Select Committees were established to examine the expenditure, administration and policy of Departments. The relevant powers of the Committees and the conventions that are accepted as applying are set out comprehensively in the First Report from the House of Commons Select Committee on Procedure (session 1977/8) and the memorandum by the Clerk of the House. The Report and the memorandum recognise that civil servants who give evidence to

Select Committees do so on behalf of their Ministers, that there are certain matters on which they cannot answer questions (notably, as the Committee's own Report states, on policy matters - which are for Ministers - and on advice given to Ministers) that - as the Report stated -

"it would not be appropriate for the House to seek directly or through its Committees to enforce its rights to secure information from the Executive at a level below that of the Ministerial Head of Department concerned, since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House";

and as the memorandum by the Clerk of the House stated -

"it would certainly appear more in accordance with Ministerial accountability to the House that Ministers should accept responsibility for the conduct of their offices and that the House should proceed against Ministers".

It is not in accordance with the Government's view of those conventions or with the underlying principles of Ministerial accountability that Select Committees should criticise individual civil servants who are, for the reasons already explained, unable to speak freely in their own defence.

15. It is impossible, and would be unwise, to try to lay down detailed guidelines about the implications of Ministerial accountability for individual conduct in particular situations: the variety of situations that can arise is infinite, and there must be room for the exercise of discretion and judgment having regard to particular circumstances. It has never been the case that a Minister was required or expected to resign in respect of any and every mistake made by his Department, though he is clearly responsible to Parliament for ensuring that action is

taken to put matters right and prevent a recurrence. The principle is clear: the Minister is accountable to Parliament for the policies and actions of his Department. The implications of applying that principle can only be a matter of judgment in each case.

QUESTIONS OF PROCEDURE

The Armstrong Memorandum

16. As to the duties and responsibilities of civil servants in relation to Ministers, the Government reaffirms the principles set out in the Armstrong memorandum; indeed the Committee themselves accept the validity of those principles. The question that remains is whether, in the matter of procedures, the memorandum goes far enough and whether it is possible to define more specifically some of the situations that may arise and to prescribe for them.

17. The Government does not believe that the cases referred to by the Committee demonstrate that the procedures set out in the Armstrong memorandum are inadequate. In particular, in Mr Ponting's case, it is not just that the Armstrong memorandum had not been issued at the relevant time: the fact is that Mr Ponting did not follow those procedures and did not take his specific problem either to his Permanent Secretary or to the Head of the Home Civil Service. When questioned on this matter by the Committee, Mr Ponting indicated that he had decided that there was no point in approaching his Permanent Secretary formally because, he assumed, the Permanent Secretary was already aware of his views through previous discussions. Mr Ponting would have been better placed to reach a conclusion if he had approached his Permanent Secretary formally with his specific problem. Instead he chose to ventilate his grievances by means of anonymous letters while he continued to occupy a position of high trust.

18. The Government is not convinced that it is desirable or indeed practicable to specify situations and prescribe procedures in more detail than the Armstrong memorandum already does. Sir Robert Armstrong has however agreed, following a request from the Council of Civil Service Unions, to enter into discussions on this matter. Those discussions have been awaiting the Committee's Report.

An Appeals Mechanism

19. The Government agrees with the Committee in the view that an external appeals mechanism would not be desirable. In particular it is the view of the Government that the institution of a Parliamentary Commissioner or Inspector General for the Civil Service, of the kind suggested by the FDA or Sir Douglas Wass, could adversely affect the relationships between Ministers and civil servants. But the Government accepts in principle the Committee's recommendation that the Head of the Home Civil Service should be prepared personally to consider appeals from officials who have followed his procedures but whose crises of conscience remain unresolved. This right of appeal would be intended primarily to deal with "crisis of conscience" cases - where (for instance) a civil servant is asked or instructed to do something which for him or her raises a fundamental issue of conscience; it would not be intended to be available in disciplinary cases and other personnel management matters where the Permanent Secretary of the Department concerned will remain the final authority. There would also need to be some safeguard against the risk of merely frivolous or vexatious appeals to the Head of the Home Civil Service. The arrangements and procedures for this right of appeal will be one of the subjects for discussion in the course of Sir Robert Armstrong's consultations with the representatives of the Civil Service unions.

20. It will be for separate consideration whether there should be similar rights of appeal for members of the Diplomatic Service and for members of the Northern Ireland Civil Service to the respective Heads of their Services.

MINISTERS AND THE CIVIL SERVICE

Senior Appointments

21. The Committee make a number of points in the section of their Report headed "Ministers and the Civil Service". The first is that "Ministers should be able to play an active role in selecting the key officials who are going to work with them in planning and implementing their policies".

22. The Committee's words here leave room, perhaps intentionally, for a good deal of flexibility of interpretation. The Government believes that the Committee do not contemplate, any more than the Government would, a wholesale change of staff in the higher levels of the Civil Service upon a change of Government or Minister. Nonetheless, the Government believes that the wording of this recommendation carries a significant risk of increasing politicisation, which (like the Committee) the Government wishes to avoid. It therefore takes a somewhat different position.

23. The Government considers that the maintenance of the Civil Service as a career service is in the public interest. With a career service, the assumption must be that civil servants give unstinting and loyal service to the Government of the day and that an incoming Minister accepts and works with those whom he finds in the established Civil Service posts (special advisers and policy units are discussed later in this response). Any other assumption would inject an unacceptable degree of uncertainty into appointments in the higher Civil Service. In the rare event that a Minister finds that he cannot work

reasonably with a particular official in a key position, it is open to him to propose to the Permanent Secretary (or to the Prime Minister or the Head of the Home Civil Service, if the official concerned is the Permanent Secretary) that the official should be moved from that position. The subsequent discussion takes account of the various considerations involved, and it is usually possible to resolve the situation satisfactorily, given a degree of good will on all sides. The Government does not believe that it is possible to go further than this to provide in advance for a situation which arises only very seldom.

24. When a vacancy occurs in the ordinary course of business, as a result of a retirement or a posting, in a Grade 1 or Grade 2 post, the Minister in charge of the Department is always consulted and can expect to be able to have an active influence on the choice of the successor, though the appointment is ultimately made with the approval of the Prime Minister. Appointments at Grade 3 do not require the Prime Minister's approval, but the Permanent Secretary will consult the Minister concerned in the normal course of business before appointments are made to posts in this grade whose incumbents are regularly in contact with Ministers and to other key posts in this or other grades.

25. The Government believes that these arrangements enable departmental Ministers to play an appropriately active role in the selection and appointment of senior officials.

Appointments From Outside

26. The Committee's second point in this section is that "there should be regular infusions, temporary and permanent, of highly motivated people of proven ability into the higher Civil Service". The Committee commends the "more structured and yet

more flexible arrangements for movement in and out of the public service" which they understand to be a feature of the French system.

27. The arrangements in the French system are (as the Committee implicitly recognise) part and parcel of a different administrative system and a different set of relationships between the public service and the private sector from those which exist in this country; and it would be difficult to adopt one feature of the French system without others, for example in relation to business appointments for those leaving the public service. The Government notes in passing that some of the Committee's recommendations in its earlier Report on business appointments would make for less rather than more flexibility in these matters.

28. The Government believes that the objective should be that the Civil Service should be capable of furnishing people with all the qualifications and expertise likely to be required in the public service, and that recruitment to and training in the Civil Service should be so organised as to achieve this objective. This objective also served by the policy of encouraging increased interchange between the public and private sectors, which helps to increase experience and improve understanding between the two sectors and promote the development of outward-looking attitudes in the public service. An important element in this policy is an expanding programme of secondments in both directions between the Civil Service and industry, commerce and other outside bodies, amounting to a total of 900 secondments in and out in 1985, in addition to joint training arrangements, unpaid non-executive directorships and other arrangements for exchanging experience. The Government fully supports this programme as a further means of expanding the experience of the permanent Civil Service, and would like to see the number of such exchanges increase. But there will continue to be, as there have been in the past, cases

where the Civil Service cannot meet a particular requirement at a particular time, and in such cases it is necessary and appropriate to bring somebody in from outside the Civil Service. Between 1979 and 1985, some 80 appointments were made from outside the Civil Service at Grade 3 and above. The arrangements for such appointments should be, and are designed to be, such as to ensure that they are made not on political considerations but strictly on the requirements of the appointment and the qualifications and expertise of the person to be appointed. The objective must be to make the best possible appointment in the circumstances, without regard to political considerations, in accordance with the Civil Service Commissioners' requirements.

Press and Information Officers

29. Dealing with press and information officers, the Committee propose that "Ministers who require their press officers to do more than present and describe their policies should make political appointments". In practice it is very difficult to draw a sharp line between "presenting and describing" and "justifying and defending" policies. The Government's view is that the correct distinction is between the policy of the Government as such and the party political dimensions of that policy; and that a Civil Service departmental press officer is in exactly the same position as any other civil servant: he may properly be called upon to present and describe the policies of the Minister, and to put forward the Minister's justification and defence of these. He may not properly be called upon to justify or defend those policies in party political terms, or expressly to advocate policies as those of a particular political party. A Minister who wishes to present his policies in a party political dimension has other means and channels available to him for doing so. A Civil Service departmental

press officer who is asked or instructed by his Minister to behave in a manner which oversteps this line should consult his Permanent Secretary.

Special Advisers and "Cabinets"

30. The Committee propose the institution of an expanded Ministerial Private Office, which they describe as a Minister's Policy Unit, which would consist of his Parliamentary Private Secretary, to keep the Minister in touch with backbenchers, a group of civil servants, to keep the Minister in touch with his Department and to give advice, and a number of Special Advisers, to keep him in touch with his party organisation and to give policy advice.

31. Under present arrangements a Minister in charge of a Department may have a Parliamentary Private Secretary, a Private Office, and one or two Special Advisers; the functions of the three are distinct and different, though there needs to be good co-ordination and co-operation between them. There would be no constitutional difficulty about an experiment in formalising and extending these arrangements on the lines envisaged by the Committee, provided that, as the Committee propose, numbers working in the unit were limited in the interests of efficiency and containing costs. It would also be necessary that such an arrangement should not insulate Ministers from the advice of their permanent civil servants or cut across the Permanent Secretary's overall accountability to the Minister for the effective implementation of the Minister's policies and management of the Department.

32. But the Government considers that in reading across from "cabinet" systems in other countries the Committee have taken too little account of the extent to which Ministers of State and Parliamentary Secretaries play a role in the British system of government. In nearly all Departments there are at least two

or three - in some cases as many as six or seven - Ministers besides the Minister in charge of the Department. These Ministers share the burden of Parliamentary and departmental work, and are an experienced and responsible source of political advice and support for the Minister in charge of the Department.

33. The policy advice role of Special Advisers covers two different functions. The first is to assist the Minister in developing his departmental policies: in this capacity the Special Adviser provides a complementary source of advice to that provided by the civil servants, with special reference to the party political dimensions of the policy. The second is to provide the Minister - and particularly the Cabinet Minister - with advice on matters which may be discussed in Cabinet or Cabinet Committee but in which his Department has no direct concern and no obvious capacity or qualification to provide advice. The first of these functions, with its specifically party political dimension, cannot readily be undertaken by a civil servant; the second can be, and often is, though (as the Committee recognises) this should be an episode in a civil servant's career from which he subsequently returns to normal departmental work.

34. The number of Special Advisers which is appropriate depends upon the size of the Department and the range of its responsibilities, as well as upon the Minister's assessment of what he can use to advantage. The Government believes that, in an ordinary Department, the number of such advisers should seldom exceed one, and that, as a general rule, only Cabinet Ministers (and in exceptional cases other Ministers in charge of Departments) should need a Special Adviser. To ensure a reasonable degree of consistency in practice, the Prime Minister's approval should continue to be required for the employment of Special Advisers. They are invariably from outside the Civil Service, and should therefore continue to be appointed for terms which expire with the end of the

administration under which they are appointed, when there is a General Election, or with the departure of the Minister by whom they are appointed. They should continue to be subject in general to Civil Service Conditions of Service.

35. The Government has found the present arrangement satisfactory, whereby the functions of the Private Office, Special Adviser and Parliamentary Private Secretary are organisationally separate (though with an appropriate degree of co-ordination and co-operation between them and with the key civil servants in the Department); and it recognises that some Ministers in charge of Departments may prefer to have no Special Adviser but to rely on the other Ministers in their Department and on their Parliamentary Private Secretaries for the specifically political input into the advice available to them. The "Policy Unit" proposed by the Committee suggests another possible way in which the support directly available to a Departmental Minister could be organised. The Government considers that more thought needs to be given to the functions of such a Unit and to its relationship to the rest of the system. For instance, if it is intended to have an independent input into policy formulation, its relationship, and that of the individuals comprising it, to the Permanent Secretary and the executive parts of the Department will need extremely careful definition. And, if it is intended as no more than an aid to the Minister in ensuring that Departmental policies are energetically pursued and followed up, it is not clear whether there is any great advantage in what would be little more than a formalisation of arrangements which already exist in many Departments. Indeed it is not clear how far its role is intended to, or should, differ from the existing structures. In fact, there may not be a substantial gap between the arrangements as they have evolved within many Ministers' offices and the thrust of the views expressed by the Committee. The Government does not propose to take a central initiative to launch an experiment on the lines suggested, but

does not rule out the possibility of further evolution of existing arrangements in the direction which the Committee may have in mind. There may be scope for the further development of existing arrangements by interested Ministers (subject to detailed discussion with their Permanent Secretaries and as necessary with the Prime Minister).

Managing the Civil Service

36. The Committee propose that there should be a single Minister for the Civil Service, with a Department for the Civil Service, whose Permanent Secretary should be the Head of the Home Civil Service.

37. The Government does not believe that that there is a uniquely and universally right way to organise the various functions that are carried out at the centre of Government - those now carried out by the Treasury and the Cabinet Office (including the Management and Personnel Office). What the organisation should be at any given time will depend on the policies and priorities of the Government of the day, and on the particular personalities involved. Until 1968 the Treasury undertook the responsibilities of central management of the Civil Service, and the Permanent Secretary to the Treasury (or the Joint Permanent Secretary responsible for that side of the Treasury) was the Head of the Home Civil Service. From 1962, however, the management side of the Treasury was largely separate from the rest, and by the time of the Fulton Report in 1968 the retention of responsibility for Civil Service management in the Treasury had come to be felt to be unsatisfactory. The Civil Service Department was therefore set up in 1968. It was essentially a new Department created out of the former Management side of the Treasury: it was responsible for all aspects of central management of the Civil Service, and its Permanent Secretary was the Head of the Home Civil Service. It is this arrangement which the Committee propose should be

recreated, though it was found not to be wholly satisfactory, particularly in respect of the divorce of responsibility for Civil Service pay and manpower from the Treasury's general responsibility for the central management of expenditure.

38. So a number of arrangements have been tried; and others would no doubt be possible. In the Government's view, however, the reasons which led to the creation of the present arrangements in 1981 remain valid. Moreover, these arrangements have been in existence for less than five years, and frequent institutional change is apt to produce more by way of disadvantage from the effects of disruption than by way of advantage in terms of improved policy formulation or execution.

39. The Government also continues to see a strong case for the Prime Minister, with her overall central responsibility for the co-ordination of Government policies and the management of Government, to be the Minister for the Civil Service - as successive Prime Ministers have always been, either as First Lord of the Treasury or more recently as Minister for the Civil Service - with whatever support for day-to-day Ministerial involvement is appropriate. At present this support is provided by the Minister of State, Privy Council Office, who is responsible under the Prime Minister for the organisation, management and overall efficiency of the Home Civil Service and for policy on recruitment, training and other personnel management matters; and by the Minister of State, Treasury, who is responsible under the Chancellor of the Exchequer for civil service pay and conditions.

40. As to the position of Head of the Home Civil Service, the Government notes the Committee's view that there is "very much a full-time need for one who will make his prime concern the restoration of morale " in the Civil Service. The maintenance of morale is not, however, a matter for one civil servant; and it would in the Government's view be mistaken to set up a system

which implied that it was. It is a matter for all Permanent Secretaries and indeed other senior management. It is necessary also to have regard to the fact that because of their relationship to Ministers neither the Head of the Home Civil Service nor other Permanent Secretaries can take up a public position in advocating the interests of the Civil Service, if to do so would appear to put them in conflict with the Government of the day. For this reason the Prime Minister, as Minister for the Civil Service, and all Ministers in charge of Departments share a responsibility for the maintenance of Civil Service morale. In short, it is a matter for the Government as a whole.

41. The current arrangement, under which the post of Head of the Home Civil Service is combined with the Secretaryship of the Cabinet, has clear benefits. The Secretary of the Cabinet, although not "the Prime Minister's Permanent Secretary", is of all the Permanent Secretaries the closest to the Prime Minister. As Permanent Secretary for the Cabinet Office (including the Management and Personnel Office), he is responsible to the Minister of State, Privy Council Office, and to the Prime Minister for the matters for which she has particular responsibility as Minister for the Civil Service. He also sees many of the senior staff in action and is therefore in a good position to advise the Prime Minister, as Minister for the Civil Service, on Grade 1 and 2 appointments. As to the matter of the load of work, the Government believes that, provided that the incumbent delegates sensibly, his burden is manageable.

42. Against this background the Government seeks no grounds for changing the existing organisation at the present time.

OPEN GOVERNMENT

43. In the last section of its report, the Committee make certain comments on freedom of information and on the Official Secrets Acts.

Freedom of Information

44. As to freedom of information, it remains the policy of the Government to make publicly available as much information as possible, consistent with the requirements of the preservation of national security, of the protection of international relations, of financially or economically sensitive information, and of commercial and personal information entrusted to it in confidence, and with the requirements of orderly Government. The establishment of Departmental Select Committees in 1979 has encouraged a climate in which far more information is being made available by Government Departments than ever before. The Government is not convinced that legislation giving individuals new statutory rights of access to Government information is needed, or that it would make for more effective Government. It agrees with the Committee that advice of civil servants to Ministers should remain confidential. Given that advice of civil servants to Ministers would be exempt from a statutory duty of access to information, the Government doubts whether freedom of information legislation would much affect relations between Ministers and their officials one way or the other.

Official Secrets

45. Section 2 of the Official Secrets Act 1911 prohibits the unauthorised disclosure by a Crown servant of information that he has obtained through his official position. A leak by a civil servant that is designed to frustrate the policies or actions of a Minister would be one form of unauthorised disclosure; and the Government agrees with the Select Committee that such a disclosure cannot be regarded as justified.

46. Responsibility for deciding whether or not to institute proceedings under the Act rests with the Attorney General in his capacity as a Law Officer (not as a member of the Government). He has made clear that he will continue to exercise his

discretion in this matter in accordance with the criteria applicable to all prosecutions that he has made public. The unauthorised disclosure of information is also a serious breach of the Civil Service Code of Conduct. A civil servant against whom criminal proceedings are not instituted could be subject to internal disciplinary procedures.

47. The Government introduced a Bill when it came to office in 1979 to reform Section 2 of the Official Secrets Act 1911. The Protection of Official Information Bill was broadly based on the recommendations of the Franks Committee, which reported in 1972. The Bill would have replaced Section 2 with new provisions designed to protect certain specified classes of official information from unauthorised disclosure. There was, however, insufficient agreement, mainly about precisely what categories of information should be protected by the criminal law, to enable the Government to carry the Bill through Parliament.

48. The Government has noted the views of the Treasury and Civil Service Select Committee, and will continue to listen to views expressed on this subject. But it does not believe that it is any more likely now than in 1979 that a measure could be devised defining the information which genuinely needs protection and specifying who has the right to apply the definition to particular information which would be broadly acceptable. Accordingly, the Government has no plans at present to introduce legislation on the protection of official information. Unless and until such legislation can be introduced with a sufficient degree of support, the Official Secrets Acts remain in place as the law of the land.

File
MANAGEMENT IN CONFIDENCE



10 DOWNING STREET

From the Principal Private Secretary

7 July 1986

Deu Joan,

**RESPONSE TO THE TCSC REPORT ON "CIVIL SERVANTS AND
MINISTERS: DUTIES AND RESPONSIBILITIES"**

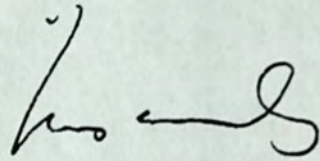
The Minister of State, Privy Council Office has recently consulted the Prime Minister about the Government's response to the Seventh Report of the Treasury and Civil Service Committee, on Civil Servants and Ministers: Duties and Responsibilities. The Minister of State will shortly be circulating Ministers generally on the substance of the Government's response, which will be published as a Command Paper, and your Minister will no doubt be letting him have any comments on substance. This letter concerns the timing of the publication of the Report.

The Minister of State is planning to publish the Government's response, in the form of a White Paper, on or about 22 July. The Prime Minister understands that that day may also see the publication of the Defence Select Committee's Report on Westlands. This Report may well cover some of the same ground as the TCSC Report and the Government's response; e.g. responsibilities of Government Press Officers, relations of Ministers to Civil Servants etc.

The Prime Minister would be glad to have the advice of the Lord President and the Chief Whip (to whose office I am copying this letter) on the advisability of publishing the response to the TCSC Report on the same day as the likely publication of the Defence Select Committee's Report. The arguments point either way. On the one hand the Defence Select Committee might feel provoked if the Government's response to the TCSC Report effectively cut the ground from under the recommendations in their Report (though we do not know whether it would in fact do that). On the other hand, it could be helpful to have on the record on 22 July a firm traditional statement of the responsibilities of Ministers and civil servants.

MANAGEMENT IN CONFIDENCE

I am sending a copy of this letter, together with a copy of the latest draft of the Government's response to the TCSC Report, to Murdo Maclean and of the letter only to Sir Robert Armstrong (for information).


Nigel Wicks

(N.L. WICKS)

Miss Joan MacNaughton,
Lord President's Office.



file 4/6
LOSTA 20

10 DOWNING STREET

From the Principal Private Secretary

7 July 1986

RESPONSE TO THE TCSC REPORT ON "CIVIL SERVANTS AND
MINISTERS: DUTIES AND RESPONSIBILITIES"

The Prime Minister has considered your Minister's minute of 4 July about the Government's response to the 7th Report of the Treasury and Civil Service Committee, on Civil Servants and Ministers: Duties and Responsibilities. The Prime Minister has the following comments on the draft attached to your Minister's draft:

Paragraph 2, 3rd sentence: for "general agreement" substitute "complete agreement";

Paragraph 12, last sentence: this sentence refers to the steps which are being taken to familiarise newly appointed Ministers with the working of Government Departments. The Prime Minister has asked what these steps are. Your Minister may like to consider spelling them out in the text;

Paragraph 15, last sentence: the Prime Minister does not understand the last part of the sentence beginning, "..... including political judgement", and she thinks it should be deleted.

A handwritten mark or signature in the bottom right corner of the page.

Paragraph 33, second sentence: the Prime Minister is a little unhappy with the phrase "..... determining his policies" in this sentence. She wonders whether the sense might be better expressed;

Paragraph 34, second sentence: she would like to know in how many Departments the number of Special Advisers exceeds one.

Your Minister suggests that the response should be published on 22 July. The Prime Minister understands that that day may also see the publication of the Defence Select Committee's Report on Westland. This Report may well cover some of the same ground as the TCSC Report and the Government response to it. The Prime Minister would like your Minister and Sir Robert Armstrong to consider whether it is advisable to have these two documents published on the same day. She will consult the Chief Whip and the Lord President herself. At this stage her inclination is, I think, for the Government's response to the TCSC Report to be published on a different day to the Defence Select Committee's Report on Westland, some time later in July.

I suggest that the Government's draft response is now amended to reflect the Prime Minister's comment, and then circulated to Cabinet Ministers in charge of Departments, and I think all other Cabinet Ministers as well, and the Chief Whip, and the Attorney General. Could you please then arrange for the Government's draft response to be re-submitted to the Prime Minister indicating the changes made from the version which she has just seen. By then, the position on the timing of the Government's response should be clearer.

I am sending a copy of this letter to Michael Stark
(Cabinet Office).

N. L. WICKS

Paul Thomas, Esq.,
Office of the Minister for the Arts.