

CONFIDENTIAL

NBPM



H. STEEL, CMG OBE
LEGAL SECRETARY

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

Your Ref: AO85/478

15 February, 1985

Dear Riles,

THE DUTIES AND RESPONSIBILITIES OF CIVIL SERVANTS

I have shown the Attorney-General the two successive drafts of Robert Armstrong's Note which were sent to us on 12 February, as well, of course, as his covering minute explaining its purpose and context. As I understood the position from the brief discussion which you and I had on the telephone, the Attorney-General's views are not being sought, at this stage at any rate, on the general shape or contents (or indeed the expediency) of the Note but you do want his advice on whether the Note is legally sound.

There are in fact two or three relatively minor respects in which as lawyers, we think that the Note does not describe the position with total accuracy or precision and we could, if that were helpful, suggest amendments. But the Attorney-General has a more fundamental reservation about the Note in its present form. Paragraph 11 deals with the right, indeed the duty, of a civil servant to refuse to comply with instructions which would or might involve him in breaking the law. (Paragraph 12 deals with the corresponding position as regards "maladministration".) There is also a reference - not central to our present problem - in paragraph 10 to the need to comply with the law on corruption. But the rest of the Note seems to proceed on the basis that there is no law, or no relevant law, about a civil servant's duty to keep the confidences entrusted to him. The whole discussion is couched in terms of the civil servant, who improperly reveals information, "forfeiting the trust placed on him when he accepts employment forfeiting the right to continue in the Service, and also undermining the confidence that ought to subsist between Ministers and other civil servants", etc. etc.

/No

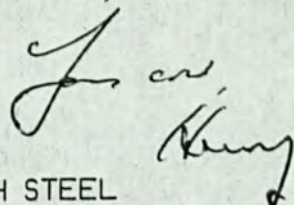
CONFIDENTIAL

-2-

Nowhere is there a reference to the fact that such improper disclosure is, or may be, also a breach of the criminal law and a civil wrong for which a remedy could be sought in civil proceedings. To give a small example, the proposition in paragraph 17 that a civil servant who resigns, "in order to take his personal opposition into a more public arena", is still bound to keep the confidences entrusted to him as a civil servant is incomplete (perhaps to the point of being misleading) if it does not mention that he also remains bound by the Official Secrets Acts.

This silence about the impact of the law of the land - as distinct from morality and professional ethics, etc. - upon the problem strikes the Attorney-General as uncomfortable and as something which, in the present climate, critics are likely to pick up. If we think that the Official Secrets Acts are relevant and important, they will say, why have we not mentioned it? If we do not think that they are relevant or important, what does that signify for our attitude to future cases like Pontings? It may be that, in present circumstances, there is nothing that we can say, without stirring up more controversy than is tolerable, about the relevance of the Official Secrets Acts and the civil law relating to breach of confidence. If so, that may in itself be a consideration against putting the Note out in present circumstances. The Attorney-General thinks that this is a point which ought to be considered.

I am copying this letter to Robin Butler and to the Private Secretaries to the Lord President, the Chancellor of the Exchequer, the Home Secretary, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster and the Secretary of State for Defence. You may think that the Foreign and Commonwealth Secretary (because of his responsibility for the Diplomatic Service and because it is very often his secrets that get leaked) also has an interest in the matter.

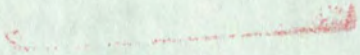
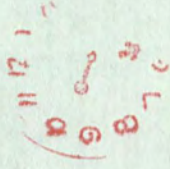


H STEEL

R P Hatfield Esq
Private Secretary
Cabinet Office
70 Whitehall
London SW1

CIVIL SERVICE: Long term policy: AIT...

15 SEP 1985



CONFIDENTIAL

da



10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

The Duties and Responsibilities of Civil Servants

The Prime Minister discussed with you this morning the question which she had raised about her position in relation to the proposed document submitted under your minute of 12 February, if it was decided that such a document should be issued. You suggested, and the Prime Minister agreed, that the Prime Minister would need to say that you had consulted her about the document and she agreed both with the decision to issue it and its contents. But it would be made clear that you had taken the initiative as Head of the Home Civil Service.

You said that you would be submitting a further version of the document to the Prime Minister after her return from the United States.

I am copying this minute to Miss Lewis-Jones (Lord President's Office), Mrs. Lomax (HM Treasury), Mr. Taylor (Home Office), Mr. Morris (Lord Privy Seal's Office), Mr. Thomas (Chancellor of the Duchy of Lancaster's Office), Mr. Mottram (Ministry of Defence) and Mr. Steel (Attorney General's Office).

15 February 1985

CONFIDENTIAL

sc



NBPM

Ref. A085/517

MR BUTLER

Duties and Responsibilities of Civil Servants

Thank you for your minute of 13 February.

2. I attach the latest revision of the draft note, an earlier draft of which I sent you on 12 February.

3. You will see that the latest draft omits from the first paragraph the words "in my own responsibility".

4. As you say, if such a note was issued, the Prime Minister would be likely to be questioned about it. I hope that she would be able to agree to say that it was a note issued by the official Head of the Home Civil Service but that she had been consulted before it was issued, that she agreed that it should be issued, and that she agreed with what it contained.

5. I think that it would greatly enhance the value of the operation if the Prime Minister felt able to go on and say something about the reciprocal responsibilities of Ministers in their relations with civil servants. If I may, I will give more thought to this, and come up with some ideas for the Prime Minister's consideration.

ROBERT ARMSTRONG

15 February 1985

DRAFT OF 15 FEBRUARY 1985

THE DUTIES AND RESPONSIBILITIES OF CIVIL SERVANTS

Note by the Head of the Home Civil Service

During the last few months a number of people have suggested to me that it would be timely to restate the general duties and responsibilities of civil servants in relation to Ministers. I have decided that the time has come when it would be right to respond to these suggestions. I am accordingly putting out the guidance in this note.

2. Civil servants hold office under the Crown, and are servants of the Crown.

3. In its capacity as the executive arm of the state, the Crown acts on the advice of The Queen's Government. For all practical purposes "the Crown" in this context means and is represented by the Government of the day. The civil service has no constitutional personality or responsibility

CONFIDENTIAL

separate from the duly elected Government of the day; it is not a separate estate of the realm. It is the main instrument available to the Government of the day for obtaining advice on the formulation of the policies of the Government, for giving effect to decisions of the Government, and for managing and delivering the services for which the Government is responsible. Some civil servants are also involved, as a proper part of their duties, in the processes of presentation of Government policies and decisions.

4. In an institutional sense, the civil service serves the Government of the day as a whole, that is to say Her Majesty's Ministers collectively, and the Prime Minister is the Minister for the Civil Service. The duty of the individual civil servant is first and foremost to the Minister of the Crown who is in charge of the Department in which he or she is serving*. It is the Minister who is

* There are special cases, such as the Boards of Inland Revenue and Customs and Excise, in which responsibility for a Department is vested in a body of commissioners who are themselves appointed by or on the advice of a Minister; but the principle still applies.

responsible, and answerable in Parliament, for the conduct of the Department's affairs and the management of its business. It is the duty of civil servants to serve their Minister with integrity and to the best of their ability.

5. The British civil service is a non-political career service. Civil servants are required to serve the duly elected Government of the day, of whatever political complexion. It is of the first importance that civil servants should so conduct themselves as to deserve and retain the confidence of those whom they serve as Ministers and of those whom they may be required to serve in some future administration. That confidence is the indispensable foundation of a good relationship between Ministers and civil servants. The conduct of civil servants should at all times be such that Ministers and potential future Ministers can be sure that that confidence can be freely given, and that civil servants will at all times conscientiously fulfil their duties and obligations to the duly elected Government of the day. Only if their conduct is of this character are they entitled to expect the trust and respect of Ministers.

6. The determination of policy is the responsibility of the Minister (within the convention of collective responsibility of the whole Government for the decisions and actions of every member of it). In the formulation of policy the civil servant has no constitutional responsibility or role, distinct from that of the Minister. It is the duty of the civil servant to make available to the Minister all the information and experience at his or her disposal which may have a bearing on the policy decisions to which the Minister is committed or which he is preparing to make. It is the duty of the civil servant to advise the Minister honestly and impartially, without fear or favour, and whether the advice accords with the Minister's initial view or not, on the options available, the implications of each of them and of the choices between them, and the manner in which and the means by which any decision may best be given effect. Civil servants are in breach of their duty to their Minister, and of their integrity as servants of the Crown, if they deliberately withhold relevant information from their Minister, or if they give their Minister other advice than the best they believe they can

give, or if they seek to obstruct or delay a decision simply because they do not agree with it. When, having been given all the relevant information and advice, the Minister has taken a decision, it is the duty of civil servants loyally to carry out that decision with precisely the same energy and good will, whether they agree with it or not.

7. Civil servants are under an obligation to keep the confidences of their Minister; and the maintenance of trust between Ministers and civil servants depends on their doing so. There is and must be a general duty upon every civil servant not to breach that trust by passing on, to someone not authorised or entitled to receive it, any document or information or detail about the course of business, which has come his or her way in the course of duty as a civil servant. Whether unauthorised disclosure is done from political or personal motives, or for pecuniary gain, the civil servant concerned forfeits the trust placed on him when he accepts employment, may well forfeit the right to continue in the service, and also undermines the confidence that ought to subsist between Ministers and their civil servants, and

thus damages his colleagues, the Service, and the national interest in the retention of the sort of Service we have, as well as him or herself.

8. The previous paragraphs have set out the basic principles which govern civil servants' relations with Ministers. The rest of this note deals with particular aspects of conduct which derive from them, where it may be felt that more detailed guidance would be helpful.

9. A civil servant cannot be required to do anything, the doing of which would put him or her, or his or her department, in breach of the law. In the very unlikely event of a civil servant being asked to do something which he or she has reason to believe would or might be in breach of the law, he or she should report the matter to a superior officer or to the Principal Establishment Officer, who should if necessary seek the advice of the Legal Adviser to the department. If legal advice confirms that the action would be, or would be liable to be judged to be, in breach of the law, the civil servant concerned should refuse to take the action, and the matter should be reported in writing to the Permanent Head of the department.

CONFIDENTIAL

10. It is for Ministers, who bear political responsibility, and not for civil servants, to take political decisions. Civil servants should not normally decline to do something which they are asked to do merely because it conflicts with their personal views, where questions of conscience are not at issue. A civil servant cannot be obliged to do anything, the doing of which he or she cannot reconcile with his or her moral conscience. But "moral conscience" in this context must relate to actions which are felt to be directly contrary to individual moral obligation, and not merely to differences of opinion, however deeply felt, on matters of political choice or judgment between alternative or competing objectives and benefits.

11. A civil servant who is so seriously opposed to a policy which he or she is asked to administer that he or she feels unable to do so in accordance with the standards of service described in paragraph 7 of this note, or who feels in conscience unable to do something which he or she is asked to do, or bound to do something which he or she is asked not to do, should consult a superior officer, or in the last resort the Permanent Head of the department, who can and

should if necessary consult the Head of the Home Civil Service. If that does not enable the matter to be resolved on a basis which the civil servant concerned is able to accept, and he or she feels obliged to pursue the issue if necessary in a more public arena, he or she should resign from the public service in order to do so - though he or she will still be bound to keep the confidences entrusted to him or her as a civil servant. It is not acceptable for a serving civil servant to seek to frustrate Government policies by covert means, such as the unauthorised disclosure outside the Government of information to which he or she has access as a civil servant.

12. Civil servants often find themselves in situations where they are asked or required to give information to a Parliamentary Select Committee, to the media, or to individuals. In doing so they should be guided by the general policy of the Government on the disclosure of information, by any specifically departmental policies in relation to departmental information, by the requirements of security and confidentiality. The disclosure of information can, however, be of political significance. In this, as in other respects, the

CONFIDENTIAL

civil servant's firm duty is to his or her Minister, and ultimately the responsibility lies with Ministers and not with civil servants to decide what information should be made available, and how and when it should be released, whether it is to Parliament, to Select Committees, to the media or to individuals. A civil servant who considers as a matter of moral duty or deep professional or personal conviction that information which a Minister proposes to publish should not be published, or that information which a Minister proposes not to publish should be published, should consult a superior officer, or in the last resort the Permanent Head of the department.

CIVIL SERVICE : Long Term Policy : Pt 17.