ORAL SUBMISSION ON BEHALF OF THE DEMOCRATIC UNIONIST PARTY

Mr Chairman, members of the panel, I make this submission this morning on behalf of the Democratic Unionist Party and in particular those witnesses who by virtue of their position or involvement in the Scheme were given Enhanced Participatory Rights by the Inquiry that is Mrs Arlene Foster MLA, Dr Andrew Crawford, Mr Timothy Johnston, Mr John Robinson, and Mr Stephen Brimstone. The Inquiry has heard oral evidence from each of these witnesses and, by virtue of their Enhanced Participatory Rights status they have in turn usefully had access to a significant amount of relevant evidence for which they are grateful to the Inquiry. The witness statements and transcripts of these individuals and indeed the witness statements of other members of the Democratic Unionist Party have been entered into evidence for the Inquiry panel and, for the public, they are available to view on the Inquiry website.

The role of the Democratic Unionist Party collectively, and the various witnesses individually, has been the subject of much media and public interest, speculation, and criticism from the moment the aptly named BBC Spotlight programme shone a very public spotlight on the deficiencies in the Scheme that had been earlier identified by the Auditor General's June 2016 report. Despite it being both difficult and painful at times to have some of its dealings laid bare, the party has welcomed the Inquiry as a means of establishing the truth about what happened and it is hoped that the ensuing findings of the Inquiry will allow for lessons to be learned at every level of Government, the DUP certainly is committed to learning those lessons.

However, in this closing submission it is important that I take this opportunity on behalf of those DUP witnesses concerned, to highlight orally

matters, that have been set out in more detail within the written closing submissions and those are where there have been significant allegations made, but, where, it is submitted to the panel, the evidence adduced has not stood up to the conscientious scrutiny of the Inquiry.

The panel has amassed a vast quantity of evidence and has the benefit of written closing statements so this will not be an exhaustive rehearsal of the issues but rather an overview from my clients' perspective of some of the most pertinent issues affecting them.

First, I intend to deal with each phase of the Inquiry's work dealing briefly with topics such as the choice of Scheme, its funding, the lack of tiering and cost controls, the allegations surrounding the involvement of Special Advisers in Summer 2015, and the timing of the closure of the Scheme to new applicants in 2016.

I then intend to also deal with more general topics including:

(i) the treatment of Ms O'Hagan as someone who sought to draw attention to Scheme flaws;

(ii) record keeping;

(iii) the working relationship and division of responsibility and accountability as between Ministers and the Civil Service;
And
(iv) the role and appointment of Special Advisers.

Mr Aiken yesterday very helpfully provided the panel with a presentation about the work of Ofgem in relation to Stephen Brimstone's installation. As Mr Aiken pointed out both during Mr Brimstone's oral evidence session, and

yesterday, the Inquiry used this case as a test case to examine the efficacy of Ofgem's systems. I do not intend to go into this matter in any detail particularly as the inner workings of Ofgem are not something on which Mr Brimstone can usefully comment and there has been insufficient time to consider the content of Mr Aiken's presentation yesterday (albeit I do not anticipate that Mr Brimstone will be likely to add anything over and above what he has said in his oral evidence). The only point I do wish to reiterate is that following fulsome investigation, Mr Brimstone's installation has been determined to be compliant with the terms of the Scheme.

Finally, I will make some brief concluding remarks.

**Turning first to Phase 1**

As the panel will be very well aware, party leader Mrs Foster was DETI minister during the design, launch, and operation of the Non-Domestic RHI Scheme until May 2015 when she left DETI upon being appointed Minister of the Department of Finance and Personnel. She has expressed her profound regret over the Renewable Heat Incentive crisis, and has apologised for the mistakes that were made. It will be for the Inquiry to determine what she, and her Special Adviser knew or ought to have known about the Scheme and where responsibility for individual mistakes therefore lies. However, it is submitted, there are a number of key points at which, regrettably, the information presented to the Minister was not presented in a clear and straightforward manner, or where it was not raised as an issue for Ministerial consideration at all.

**Choice of Scheme**

The first such instance where communication between officials and the Minister is at issue, is in ascertaining how the choice between a long term

incentive Scheme similar to the GB Scheme already in existence, or a grant-type Scheme was made.

In 2008 and 2009 the Minister had been advised by officials that there was no evidence that joining in with the GB Scheme would be the best course for Northern Ireland, and that even were that course contemplated it would not have been possible due to the timeframe to get the required Legislative Consent Motion through the Northern Ireland Assembly to extend the GB Scheme to NI. What **was** clear was that steps needed to be taken in Northern Ireland to contribute to meeting the UK-wide EU Renewable Energy Directive target.

While now with the benefit of hindsight, we can look back ruefully at that decision and reflect on how differently this all may have turned out had we joined, as Scotland did, with the GB Scheme, at the time this advice is unlikely to have appeared unreasonable, and indeed it was accepted by the Minister.

It was therefore in the context that Northern Ireland was going it alone that Mrs Foster announced in a press release in September 2010 the intention to bring forward a Renewable Heat Incentive Scheme subject to the outworkings of an Economic appraisal.

CEPA were then engaged as external consultants, with the necessary expertise and experience, to perform the economic appraisal. Regrettably, unbeknownst to anyone at the time, it has been accepted that that process and the resulting report were not all they could and should have been, and crucially, as I will say more about in a moment, in particular the need for tiering for biomass and the fact that the tariff was therefore likely to be overly generous, and lead to a perverse incentive, was missed.

However, in June 2011, Energy Division, in receipt of a 'draft final report' from CEPA, prepared a submission to go to the Minister.

This submission was seeking sign off on the type of Scheme that should go out to consultation and on the face of it gave the Minister a choice of options. However, as the Inquiry has examined, the advice on plain reading of the submission was that if the funding was likely to continue post 2015, a NI RHI should be introduced (para 30) and explicitly stating at paragraph 24: "The NI RHI option is the preferred approach and offers the highest potential renewable heat at the best value." (WIT 00739) Notwithstanding this, and the claim that at a later meeting with the head of Energy Division that the Minister was taken through the CEPA report in detail, with the relative merits of a grant fund approach versus a long term incentive being discussed, but no preference being expressed, the Minister signed off the submission without indicating her selection.

It is of course for the panel to consider whether in the circumstances it is likely that the Minister could have understood the submission to give a clear and unbiased range of options, or whether it is more likely that a direction of travel had been set within the department, particularly when one remembers that, for example, work was already being done to draft the regulations for a NI RHI Scheme, and CEPA believed the Department wanted a NI RHI Scheme and a grant scheme was merely a stalking horse (TRA 01278 – Mr Cockburn lines 7-8).

A preference may have been understandable, particularly where there was a possibility of riding on GB's coattails but, where expert advice finds a different option to be significantly cheaper, any decision to deviate from that advice should be justified. It is Mrs Foster's evidence that she would not have signed off the submission in its then form if she was aware of the detail of the

CEPA report. Regrettably, there is no record of what took place at that meeting to assist the Inquiry – an issue I will return to later.

**The funding of the Scheme**

A second area where it appears communication was lacking was in relation to the funding of the Scheme. And in this respect the 8 June 2011 submission is again significant. In that submission, the Minister was told that there was £25m of AME funding available for the first four years of the Scheme. Notably there was no mention of possible caveats to the usual demand-led nature of AME or a potential impact on DEL. While decision-making may not have been affected in 2011, if this knowledge had been imparted to the Minister at this stage, it may have been less likely to have universally lost from the corporate memory, given that, as it transpired, Mrs Foster and Dr Crawford remained in DETI longer than any of the key officials dealing with the Scheme.

Indeed, as it was, during the entire period while Mrs Foster was DETI Minister, and in fact up until late 2015/early 2016, it is the evidence of both Mrs Foster and Dr Crawford, that they were never told whether verbally, or in writing, of the conditional nature of the funding.

It is important to highlight that in line with the evidence of a number of witnesses there is nothing inherently wrong in seeking to maximise the funding available to Northern Ireland. When offered a pot of money that can be brought in to the country that will provide a boost for the economy, it would have been viewed across the spectrum of parties in Government in Northern Ireland as remiss not to make use of that money. However, contrary to some of the suggestions made to the Inquiry, that is not to say that the Minister and her Special Adviser would have simply disregarded advice on Value for Money nor been content to introduce or keep open a Scheme that

was not fit for purpose or contained inherent risks or flaws – it was all taxpayers' money and needed to be spent judiciously. But, leaving aside the major flaws that are now apparent in the Scheme, but were not known at the time, as Timothy Cairns pithily pointed out in his oral evidence – better the money spent in Belfast than Bristol. (TRA 12791-2)

**I said I would return to the lack of tiering -**

The Inquiry has been particularly interested in is how it came to be that the tariff for medium biomass was higher than the cost of fuel but the need for tiering in that circumstance was missed. The Inquiry has heard from a series of witnesses whose role was to design and scrutinise the Scheme. This list includes:

(i) CEPA as External Consultants being paid to bring their particular expertise to the design of the Scheme;
(ii) Energy Division officials;
(iii) Departmental economists;
(iv) The Casework Committee;
(v) The Department of Finance Business case Approval officials;
(vi) Ofgem as administrators of the Scheme;
(vii) External lawyers Arthur Cox;
(viii) Internal lawyers the Departmental Solicitors' Office.

In addition, the scheme went through the EU State Aid approval mechanism.

While not seeking to detract from the fact that the Minister and Special Adviser have an important challenge function in relation to policy, the complex technical nature of the scheme and the fact that a series of people whose key role was to interrogate the Scheme, and who had better access to the relevant information and specialist expertise than either the Minister or

Special Adviser had failed to realise the flaws in the Scheme design, it is unsurprising that, for example, neither Mrs Foster nor Dr Crawford picked up that tiering for biomass ought to have been included. This is even less surprising when it is considered that the business case and associated documents were not provided to the Minister as they should have been.

**In terms of Other safeguards that ought to have protected the scheme from calamity,**

The Minister and Special Adviser also relied on advice that the Scheme was going to be monitored, there would be reviews 'built in' to the Scheme, that there would be regular, planned reviews of subsidy levels {DFE 31763), and that there would be a joint project board set up between DETI and Ofgem. The evidence of 'Team 1' officials who were involved in the design of scheme and understood it in detail is that these safeguards ought to have been sufficient, however, regrettably, these safeguards were not issues that were brought back before the Minister for update or decision but rather it appears, they simply fell away due to a loss of knowledge within the Department on the turnover of staff.

**Phase 2**

**Turning now to the issue of the lack of cost controls**

It is for the panel to consider the veracity of the claim that Minister Foster was made aware of the risks of proceeding without cost controls in June 2012 and made an express decision to proceed regardless. Mrs Foster has been clear that if she was made aware of the issue, the risks must have been significantly downplayed, because if these risks had been presented in clear and stark

terms, she would have sought a submission on the issue to allow her to properly consider the risks and have her decision-making recorded. She would also then have had knowledge of the need for cost controls to be introduced during the Scheme's operation.

However, after the Scheme was launched, although work commenced within the Department on a consultation on the domestic RHI Scheme which included a section on cost controls for the non-domestic scheme, in November 2013, an idea arose within the Department that the domestic scheme could be separated from making technical changes to the non-domestic Scheme. This was not the subject of advice to the Minister, and Mrs Foster was unaware it had occurred. As a result there was simply no reason for cost controls to be a live issue within her mind at that time, and they were also not a live issue within the Department, or the Assembly at the time. It is now clear, the fact that cost controls dropped out of the picture was a critical error that left the Scheme badly exposed.

**Turning now to Phase 3 of the Inquiry's work…**

This phase, in particular the events during the Summer of 2015 have perhaps been the subject of the most intense scrutiny following Jonathan Bell's televised interview of 15th December 2016. In that interview as the Inquiry will be well aware, Mr Bell alleged Special Advisers sought to delay the introduction of tiered tariffs.

One of the key claims is that Timothy Johnston directed Timothy Cairns, who was newly into post as DETI Special Adviser, that tariff controls would not be introduced, and to liaise with Dr Crawford about RHI. Thereafter, the broader allegation seems to be that there was an agreed party approach to push back or delay tariff changes, with Mr Cairns being directed from the

sidelines to thwart officials' attempts to alter the scheme. The background context, which the Inquiry has also examined, is the relationship between Timothy Cairns and Mr Bell and whether that had any impact on the timing of Ministerial decision-making during 2015.

**26 June meeting**

Timothy Cairns has claimed that Mr Johnston made these directions about RHI on 26 June 2015 at the end of the reconciliation meeting between Mr Bell and Mr Cairns following their row in London. This was the culmination of a series of 3 meetings involving, variously, the party leader and then First Minister Peter Robinson, Jonathan Bell, Timothy Johnston, and Timothy Cairns. It is apparent that certainly so far as Timothy Cairns was concerned this meeting was not a resounding success. Neverthless, he returned to work as Mr Bell's special adviser. While Mr Johnston has accepted that the reconciliation would have been better handled differently, and that some level of discord may have endured, this does not mean that it necessarily adversely affected the Scheme. As I will come to in a moment, Ministerial consideration of the 8 July 2015 submission could have taken place long before 24 August 2015 had there been a full awareness of the urgency required.

**Allegation against TJ and 17 Aug email**

Turning back for a moment to the allegation that Timothy Johnston directed Timothy Cairns to liaise with Dr Crawford regarding RHI, and that 'tariff controls would not be introduced', it is the clear evidence of Timothy Johnston that he had neither knowledge of, or interest in, RHI in June 2015 such that he could have made any such comment or direction. Indeed, Timothy Cairns also believes Timothy Johnston would not have been across the issues. It is also significant that Andrew Crawford for his part did not

believe **he** was engaging in any sort of formal process with Timothy Cairns at the direction of Timothy Johnston. And while Timothy Johnston was later sent an email on 17 August by Timothy Cairns making reference to RHI in terms that suggested he did have some prior knowledge, Mr Johnston is clear that that must be as a result of an inference on Mr Cairns' part that he had more understanding of the issues than he in fact did.

**AC and TC in Summer 2015**

In terms of the substance of the engagement between Dr Crawford and Timothy Cairns, Dr Crawford is clear that **he** did not seek any delay in the introduction of cost controls. In an email to Mr Cairns on 31 July, Dr Crawford told him that the scheme should close in line with officials' advice in the 8 July 2015 submission - that is on 1st October 2015. And indeed, Mr Cairns accepts that what **he** saw as a process of engagement with Andrew Crawford during that Summer concluded on 12th August with them being, in Timothy Cairns' words:

"at that time… in common cause. The process was at an end, it's Minister Bell needs to get back and you know the submission is the submission". (TRA 12856)

Thereafter Timothy Cairns, on his own evidence, decided of his own volition, and without further discussion with his colleagues, to ask officials at the issues meeting whether the date could be moved back, in full expectation that the request would be refused.

To his surprise, officials acceded to the request.

However, with the benefit of what we now know it is perhaps unsurprising that that request was acceded to. At that time officials within DETI were still

not fully aware of the serious financial implications of keeping the scheme open unfettered, the regulations had not yet been drafted, and there was not therefore the urgency that would have been necessary if changes were ever to be brought in on 1st October. As it was, the new deadline of 4 November proved impossible and ultimately the tariff control regulations were approved on 17 November. I respectfully submit that had there been a greater sense of urgency among officials and the necessary knowledge, the 8 July 2015 submission could undoubtedly have been signed off earlier. Mr Bell was conducting Ministerial business in the last week of July, and, if the issue had been pressed he could have been contacted during the first three weeks of August. Indeed, Timothy Cairns' evidence is that no matter what 'process' he felt he had been directed to engage in, if the Minister had decided to sign off the submission then so be it.

**AC passing on knowledge to TC**

The emails between Dr Crawford and Timothy Cairns during the Summer have also been closely examined for the other information they contained. Dr Crawford openly relayed in those emails the information he garnered from speaking to a biomass installer in mid-2015. That included a non-specific allegation of abuse of the scheme. While it is accepted by Dr Crawford that the information in his possession could have been escalated directly by him to senior officials, he fully expected that the information he was passing on to the Special Adviser in DETI would be acted on appropriately. In fact, it appears Timothy Cairns **did** pass on concerns about alleged abuse of the Scheme to the Deputy Permanent Secretary prompting him to check with Ofgem about its inspection regime.

Another aspect of the discussion between Dr Crawford and Timothy Cairns is the suggestion from Dr Crawford that the Department may wish to consider tiering at 3000 hours. While from this remove it may seem illogical, at the

time, Dr Crawford believed that applying tiering at this level would tackle what he perceived to be the mischief in the scheme i.e. potential abuse – his view, rightly or wrongly, was that there was no difficulty with continuing to incentivize legitimate use, not knowing at that stage the full budgetary picture.

**Phase 4**

As the Inquiry is aware, the funding problem only fully crystallised as a result of the engagement between DFP and HMT in December 2015. It became clear that it would be necessary to close the Scheme to new applicants – the main issue thereafter in January and February 2016 was the procedure to be used and the timing of that closure. The Inquiry has examined the events of that period in depth including the necessary involvement of OFMDFM as the matter was by then cross-cutting, and the detail of the fractious meeting or meetings between Mrs Foster and Jonathan Bell on 9 February leading to the scheme being extended for a further two weeks.

The idea put forward by Mrs Foster to Mr Bell of permitting some additional time was viewed across Government as necessary and reasonable to assist stakeholders who were at risk of losing money they had committed to boilers that there would be no time to install – the closure of the scheme was almost universally unpopular at the time.

**GENERAL ISSUES**

Treatment of Ms O'Hagan

In August 2013, Ms O'Hagan contacted Minister Foster to request a meeting. She wrote two emails on 26 August 2013 and a follow-up email on 3 September when she had not received a reply. In fact the invitation to meet

DETI officials only issued on 5 September. Regrettably, Mrs Foster did not pick up the fact that Ms O'Hagan had added a line in the 3 September 2013 email stating that the incentive was leading to misuse. Having referred the matter to her officials as was appropriate in the context at that time, it is submitted, given the volume of correspondence received by the Minister, that it would be unrealistic to expect Mrs Foster to have specifically followed up on the meeting rather than rely on her officials to raise issues to her if needed. This was not done.

Mrs Foster reiterated in her evidence that Ms O'Hagan is deserving of a sincere apology for the way her concerns were handled when she raised them and subsequently for her treatment when she became the focus of media attention in 2016.

NOTES AND MINUTES

My second more general point is about record keeping and minute taking, another area that the work of the Inquiry has highlighted surprising deficiency. Minister Foster and Dr Crawford both gave evidence that at every meeting they attended officials took notes. It was therefore a surprise that these notes were not placed on file to form a formal record of what had taken place. However, it was accepted there is a distinction between a note taken for personal use in a notebook, and a formal minute circulated for agreement by attendees. Mrs Foster did not experience the latter in any of her Ministerial roles, but, it's important to add, the lack of formal minute taking was certainly not at her direction or for that matter at the direction of the party generally but rather appears to have arisen as a result of the fact that good practice in terms of minuting had lapsed across the Northern Ireland Civil Service.

There also needs to be better systems for the reporting and recording of real and perceived conflicts of interest with better guidanace and more

circumspection among those in positions of power and influence of where real or perceived conflicts may arise.

MINISTERIAL ROLE AND LEADERSHIP

This brings me to a wider topic of interest to the Inquiry and the public more generally and that is the Ministerial role and leadership.

The panel has had occasion to make reference to the role that leadership, or lack thereof, has played in the mistakes that are now apparent in the way the Scheme was designed, and operated.

A Minister's key role is to set the policy direction for their Department in line with the Programme for Government and their party's electoral mandate and lead their department to ensure delivery. They have this role for the duration of their tenure as Minister no matter how long or short that tenure might be and they are accountable to the Assembly for the work of their Department throughout.

However, given the nature of the democratic process and process for selection of Ministers, an individual has little control over when their tenure might come to an end.

As such the continuity within Government departments is provided by the Permanent Civil Service, and the Permanent Secretary has overall responsibility for the management of his or her department, its operation and structure, and leading the day to day running to ensure policy delivery. This does not absolve the Minister of responsibility for the decisions he or she takes but does mean Ministers are reliant on their officials to bring relevant issues and information to their attention accurately. For example, as has been highlighted during the oral evidence sessions, Ministers and Special Advisers

do not have access to the TRIM Civil service database. They are also not permitted to see the advice given to previous Ministers. This makes it difficult, if not impossible, for Ministers to independently root around in policy issues and creates a culture where that is neither expected nor is it likely to be desirable. Therefore trust between a Minister and his or her officials is fundamental. The accepted dynamic, namely that a Minister should rely on his or her civil servants' advice, is pragmatic and necessary. Given the breadth of the Ministerial role and the complex and wide ranging issues arising in a Department such as DETI, a Minister, even with the help of his or her Special Adviser, simply cannot be across the detail of every policy on which 500 or so Departmental officials are working.

Therefore while the Minister of any Department is clearly looked to for leadership in terms of policy direction and Ministerial decision-making, a Minister has limited capacity to provide managerial leadership or implement long term cultural change – and this can be seen by the fact that the now Head of the Civil Service has assumed responsibility for, among other things, ensuring that procedures around minute taking are tightened up in future (TRA 06115). This is not to say that a Minister should turn a blind eye to issues of concern and indeed Mrs Foster did raise her concern about the resource within Energy Division to the Head of the Civil Service (DFE 430091 and 430219) and Permanent Secretary (TRA 08522).

SPECIAL ADVISERS

The Inquiry has understandably become interested in what is often perceived as the 'shadowy world' of Special Advisers. This perception is likely due in part to the adage that a Special Adviser "shouldn't be the story". However, in the story of RHI, the Special Advisers have very much "been the story". It will be for the Inquiry to determine whether, when the totality of the evidence

is analysed, particularly in relation to the events of Summer 2015, this has been justified.

But the Inquiry has also become interested in the role and function of Special Advisers more generally and in particular whether there was a hierarchy among DUP Special advisers with Timothy Johnston at the top. It has also had cause to examine the procedure by which Special Advisers are appointed.

In relation to whether there is a hierarchy among Spads, it is submitted that while the various witnesses have proffered differing views on this question, for the large part the differences lie in the distinction between a formal hierarchy and an informal one borne out of longevity in post and by virtue of the fact that Special Advisers to the party leader act with the authority of the most powerful person in the party and when the Executive is running, the person responsible for appointing and removing Ministers to whom other Special Advisers report.

This point about hierarchy is relevant to the Inquiry's work insofar as it may mean that the views or suggestions of Special Advisers to the party leader may be thought by others to be directions or instructions. In this respect a Special Adviser is not dissimilar to a lawyer acting on his client's behalf. There will be times when he is obviously conveying a direction or instruction on behalf of the client – his Minister, other times when if there is room for doubt it is necessary that he expressly states that the message is from his Minister, and further occasions where it is clear that he is speaking solely on his own behalf. When speaking purely on his own behalf, his view may still be given more weight if he is seen as more experienced or knowledgable in a certain area than another.

The appointment of Special Advisers has also been under the spotlight. It has been accepted that at times the mandatory code has been more honoured in

the breach than the observance. However, not in all cases. Simon Hamilton has given evidence that the choice of John Robinson as his to take, and the DUP was not alone in deviating from the code with Sinn Fein employing Special Advisers as de facto Spads who then act entirely outside the system of accountability.

Nevertheless, the rules governing the role and appointment of Special Advisers does need to be reconsidered so that there is more transparency and accountability surrounding their role. It is hoped that this will allow Special Advisers, who perform a vital role within Government, to stay out of the spotlight - that is in the shadows but no longer 'shadowy'.

CONCLUSION

As I said at the outset this was not intended to be an exhaustive run through of all the issues that the Inquiry has examined, but rather a bringing together of some of the key issues affecting the DUP witnesses with enhanced participatory rights.

It has been accepted by other participants that the checks and balances that were in place and ought to have prevented the significant flaws seen with the RHI Scheme, in many cases simply did not work. It seems that at virtually every stage of design, implementation, operation, alteration, and closure mistakes were made. There were also mistakes made in the heat of the politicial crisis in late 2016, early 2017. Where they were made by members of the party, it is hoped that the Inquiry recognise that they have been accepted fully and freely, even where it has been difficult and painful to do so, and that there is a clear intention within the party to learn from those mistakes. It is also hoped that the wider recommendations of the Inquiry will allow for an appraisal of the operation of the Northern Ireland Civil Service more

generally to in future ensure a more robust and transparent system of government in Northern Ireland so that where trust in our institutions has been lost, it can be restored.

**Clarification following questions from the panel in relation to the closing oral submission on behalf of the Democratic Unionist Party.**

The Inquiry panel sought clarification on the distinction made between the accountability and responsibility of Ministers.

The position of former First Minister Arlene Foster MLA, in particular in respect of her role as Minister for DETI and subsequently DFP, is that Ministers are accountable for the government's policies and their own actions or those carried out by civil servants on their specific instructions but not for actions by officials of which they are unaware.[1]

There is therefore a distinction between being accountable and being responsible, **in the sense of being personally responsible and blameworthy**. Former Head of the Civil Service, Sir Robin Butler, has made this point to:

> *"distinguish between the constitutional fact of Ministerial accountability for all that a Department does, and the limits to the direct personal responsibility (in the sense of personal involvement) of Ministers for all the actions of their departments and agencies, given the realities of delegation and dispersed responsibility for much business".*[2]

Mrs Foster MLA's remarks to the Assembly on 19 December 2016, comments made in oral evidence to the Inquiry and the closing submissions should be considered in the context of the above definition.

[1] See the analysis of the Treasury and Civil Service Committee as quoted at page 8, Research Paper 96/27, *"The Individual Responsibility of Ministers: An Outline of the Issues*", House of Commons Library, 21 February 1996, available at: https://beta.parliament.uk/search?q=RP96-27

[2] Sir Robin Butler's evidence to the Treasury Committee 1994, Appendix B to Research Paper 97/6, "The Accountability Debate: Ministerial Responsibility", House of Commons Library, 28 January 1997, available at: https://beta.parliament.uk/search?q=RP97-6

# The Individual Responsibility of Ministers: An Outline of the Issues

## Research Paper 96/27

## 21 February 1996

The individual responsibility of ministers is a vital aspect of accountable and democratic Parliamentary government, yet it is a 'convention' which is difficult to define with certainty and which, to a large degree, depends on the circumstances of each individual case. This Paper seeks to explore, in general terms, the subject as a whole and several interesting examples from the era of Crichel Down in 1954 onwards to illustrate the issue. It does *not* seek to provide a comprehensive analysis of ministerial responsibility (including collective responsibility) or Parliamentary accountability.

**Barry K Winetrobe**
**Home Affairs Section**

**Janet Seaton**
**Reference and Reader Services Section**

**House of Commons Library**

# Summary

Individual ministerial responsibility is an important if complex constitutional issue. It is often described as a constitutional convention, and this Paper examines its nature in that context, and in relation to *collective* responsibility and in the light of developments such as the growth of select committees, the development of Next Steps agencies and quangos, and the publication in 1992 of *Questions of procedure for Ministers.*

The nature of individual responsibility in action is described briefly, including aspects short of a ministerial resignation or dismissal. The interesting, if short, debate on ministerial responsibility on 12 February 1996 is considered.

A number of modern examples of situations where individual responsibility could be said to have arisen are examined, purely to illustrate various aspects of the 'convention'. It is *not* intended to be a comprehensive list. It covers significant episodes such as Crichel Down in 1954 (in which Sir David Maxwell Fyfe set out what is often regarded as the classic statement of the traditional doctrine), the Falklands (1982) and Westland (1986), and includes instances where resignation demands were successfully restricted such as Court Line (1975) and the Maze Prison escape (1983).

A list of 20th century ministerial resignations, for whatever reason, is provided in the Appendix, as collected and classified in the latest edition of *British political facts.*

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# I Individual Ministerial Responsibility

## A. The 'convention'

Ministerial responsibility is a concept crucial to the Westminster model of parliamentary government.[1] Probably the most famous example this century is the resignation of Neville Chamberlain as Prime Minister following the outcome of the Norway debate in May 1940, although the routine exercise of the concept, even where resignation is involved or demanded, is usually more prosaic. It is commonly thought of as having two strands, collective responsibility and individual responsibility. Although there is a strong link between the two concepts, the purpose of this Paper is to explore the latter, that of individual responsibility, and in particular that aspect of individual responsibility which focuses on the active exercise of the concept, including the ultimate sanction of departure from ministerial office, either by resignation or dismissal. Even within this narrowly defined field, this Paper concentrates on those instances relating to failings of policy or administration by ministers, directly or through their officials, and does not consider in detail departures caused by personal conduct (or 'scandals') or voluntary resignations because of opposition to government policy, although clear lines of demarcation are not always easy to draw.

There is a strong connection between the notions of *individual* and *collective* responsibility. Some causes of resignation or dismissal (or demands for resignation or dismissal) may arise because a minister disobeys or contradicts, or appears to contradict, government policy. (This happened with Eric Heffer in 1975 over EEC membership, notwithstanding the Wilson Government's 'agreement to differ'[2] or, perhaps, with Nicholas Ridley in 1990). This applies where a policy has changed but a minister continues to act upon the earlier policy, as with Sir Samuel Hoare's conclusion, as Foreign Secretary, of the 'Hoare-Laval Pact' over Abyssinia in 1935. Cases involving one department can rapidly spill over to affect the whole government more generally. Fellow ministers, including the Prime Minister, may actively and publicly support the minister under attack. Defence of a minister can be for political reasons to maintain confidence in the government or even, in extreme cases, to maintain the Government, or the Prime Minister, in office, especially in issues central to a government's policy, such as economic or financial policies, closely identified with the Prime Minister. Alternatively an apology by, or resignation of, a minister may be required to protect the Government. In this sense, a minister may be, or agree to be, 'sacrificed' so that much or all the blame is concentrated there and not on the Administration as a whole. As in the Falklands case in 1982 and Westland in 1986, a minister's resignation may be publicly

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1 See generally, S. E. Finer "The Individual responsibility of Ministers", (1956) 34 *Public Administration* 377-96 G Marshall (ed.), *Ministerial responsibility*, 1989 and D Woodhouse, *Ministers and Parliament*, 1994.

2 On which see A Silkin, "The 'agreement to differ' of 1975 and its effect on ministerial responsibility" (1977) 48 *Political Quarterly* 65-77. Similar agreements occurred in 1932 over tariff reform and in 1977 over direct elections to the European Parliament. When asked about collective responsibility in the latter instance, the Prime Minister, James Callaghan, said "I certainly think that the doctrine should apply, except in cases where I announce that it does not.": HC Deb vol 933 c552, 16.6.77.

explained as being necessary to maintain or restore confidence in the Government, generally or in relation to the issue at stake. In many cases the personalities of the ministers concerned, and their relationship with the Prime Minister, fellow ministers, their Parliamentary party and Parliament in general, will be factors in the equation.

Griffth and Ryle consider the practical political aspect of the concept as follows:[3]

> Ministerial responsibility remains a strong convention because where Ministers are seen to be evasive, their reputation and that of the Government suffer both in Parliament and outside. Unless some measure of culpability can be attached to the Minister, or a scapegoat is needed, he can however usually expect to be retained, or moved to another equivalent post, so long as he has the Prime Minister on his side. The reaction of Parliament, especially the House of Commons, is often crucial. In a departmental crisis, back-bench opinion may determine whether or not a Minister resigns. If the Minister seems to have lost the confidence of the House, he becomes a liability to the Government and not even a strong Prime Minister may be able to save him. Press opinion also plays a part. These external influences seem to have been decisive in the resignations of both Mr. Brittan and Lord Carrington.

There has been much academic discussion of the so-called 'convention' of ministerial responsibility, both its nature and even if such a 'rule' exists.[4] A constitutional convention is a non-legal rule, habit or practice which is generally followed by all those in similar circumstances. As a non-legal rule, it is not comprehensively and authoritatively written down in any formal document (hence the regard paid to the Maxwell Fyfe formulation in the 1954 Crichel Down case); cannot be enforced by legal (as opposed to political) sanctions, and may be ignored, amended or reinterpreted by those involved. Because of the fluidity of conventions -- and it is by no means clear whether the concept of individual ministerial responsibility even merits that description -- there is danger in the academic habit of classifying, and seeking to derive patterns of consistent practice, in a random series of political events over a long period of years. Few senior politicians are likely in practice to base their decisions affecting their political careers solely, or even mainly, on some uncertain constitutional convention, the exact details of which they may not be fully aware of.

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[3] J Griffith and M Ryle, *Parliament: functions, practice and procedures*, 1989, p37

[4] See, in particular, S E Finer's influential 1956 article, cited above.

## B. Wider aspects of ministerial responsibility

There may be difficult issues of the proper relationship between ministers and civil servants in this context, especially given the traditional notion of civil service anonymity. Giving a full account and explaining his or her action may lead a minister, for a variety of reasons such as clarity, to reveal the actions and advice of officials and their dealings with ministers, with third parties and with each other. It is in such areas where officials may feel, rightly or wrongly, that they are at a disadvantage in public accountability terms, as they have relatively restricted opportunities to present their version of events publicly. This is but one of the Parliamentary and administrative developments since the era of Crichel Down which has shaped, and perhaps altered, the so-called traditional convention of individual ministerial responsibility. A full examination of this extremely important issue is beyond the scope of this Paper, but a few examples can be cited.[5]

The growth of select committees, especially since the 1979 reforms, has had a significant impact on accountability, not least because of the opportunities they afford for detailed and sustained Parliamentary scrutiny of ministerial and departmental policy, through direct and public questioning of ministers and, in particular, officials. This means that ministers and officials are required to explain their actions and their dealings with each other. Government has sought to regulate this activity through guidance in the so-called 'Osmotherly Rules'[6] Another important aspect has been the Government's reforms of the civil service and of traditional departments, especially by the creation of the 'Next Steps' executive agencies, which has given officials more direct responsibility for operational issues, and has led to some changes to traditional forms of Parliamentary accountability.[7] The Government's recent White Papers on the future of the civil service and the major investigation by the Treasury and Civil Service Committee are of direct relevance to this issue.[8] See also the following analysis by the Treasury and Civil Service Committee from a report prompted by a sequence of events such as the Ponting and Westland affairs and the publication of the original 'Armstrong Memorandum' in February 1985:[9]

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5 See generally, for example, C Turpin, "Ministerial responsibility", chap 5 of J Jowell and D Oliver, *The changing constitution*, 3rd ed, 1994

6 Recently updated as *Departmental evidence and response to select committees* , OPSS/Cabinet Office, Dec 1994, Dep/3 815. On select committees generally, in this context, see G Drewry (ed.), *The new select committees*, 2nd ed., 1989 and *Select committees*, Background Paper 298, 7.9.92.

7 See P Giddings (ed.), *Parliamentary accountability: a study of Parliament and executive agencies*, 1995, and *Next Steps executive agencies*, Background Paper 239, 4.1.90.

8 See *The civil service: continuity and change*, Cm 2627, and *The civil service: taking forward continuity and change* Cm 2748; *The role of the civil service*, 5th report of the Treasury and Civil Service Committee, HC 27 of 1993-94.

9 *Civil servants and ministers: duties and responsibilities*, 7th report of 1985-86, HC 92-I, May 1986

3.15. The issue of accountability is of crucial importance in considering the relationship between civil servants, Ministers and Parliament. The traditional view, exemplified in the famous Crichel Down case, is that Ministers are responsible and accountable to Parliament for all that occurs within their departments. It followed from this that if a significant mistake were made by the department, the Minister should resign.

3.16. Recent events would seem to confirm what may well have been true for some 30 years, namely that Ministers are accountable for the government's policies and their own actions or those carried out by civil servants on their specific instructions but not for actions by officials of which they are unaware. If this is correct, it raises most important questions which need to be carefully analysed and answered.

3.17. We start by reaffirming two basic propositions. First, that Ministers and not officials are responsible and accountable for policy, and secondly that officials' advice to Ministers is and should remain confidential. These principles form the background to recent events and neither would appear to be in question. The difficulty arises not with regard to Ministerial policy or official advice but with accountability for actions by civil servants. If Crichel Down is dead and Ministers are not accountable to Parliament for some actions of their officials, then who is? Not to put too fine a point on it, who ought to resign or to be penalised if mistakes are made? If it is not Ministers, it can only be officials.

## *Questions of procedure for ministers*

As is common in our constitution, there are few if any 'rules' of ministerial responsiblity which guide and bind ministers in their official capacity, beyond relevant provisions of the ordinary criminal and civil law and Parliamentary rules of conduct affecting Members generally. The one 'rule book' or, perhaps more accurately, guidance note for ministers is *Questions of procedure for ministers* ('*QPM')*, first made public in May 1992 although its (or its predecessors') existence was well known unofficially in the media, academic texts and in Parliament. It is not a book of legal rules, and its contents must be read in that light. Its introduction is as follows:

> 1. These notes detail the arrangements for the conduct of affairs by Ministers. They apply to all Members of the Government, but not Parliamentary Private Secretaries (who are covered separately in Section 3). They are intended to give guidance by listing the rules and the precedents which may apply. They must, however, be seen in the context of protecting the integrity of public life. It will be for individual Ministers to judge how best to act in order to uphold the highest standards. Ministers will want to see that no conflict arises nor appears to arise between their private interests and their public duties. They will wish to be as open as possible with Parliament and the public. These notes should be read against the background of these general obligations.

*QPM* was considered by the Treasury and Civil Service Committee in 1994 [HC 27-I of 1993-94, 5th report] and by the Nolan Committee, and this led to the amendment late last year concerning the obligation not to mislead Parliament:[10]

> "Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with established Parliamentary convention, the law, and any relevant Government Code of Practice".

In a letter in 1994 to the Labour MP, Giles Radice, who chaired the sub-committee of the Treasury and Civil Service Committee, John Major wrote that, as the first Prime Minister to publish *Questions of procedure for Ministers*, "I agree with its guidance", and continued "It is clearly of paramount importance that Ministers give accurate and truthful information to the House. If they knowingly fail to do this, then they should relinquish their positions except in the quite exceptional circumstances of which a devaluation or time of war or other danger to national security have been quoted as examples."[11]

While no resignations or dismissals may have been *expressly* on *QPM* grounds since 1992, the media and academics may from time to time make a connection between a resignation and *QPM* (although in many cases of resignation the exact ground or grounds may not always be clear). For example in Mr Mellor's case in September 1992, the *Independent* referred to provisions of *QPM* ("Whitehall's rule book") concerning the acceptance of gifts and the like.[12]

A clear breach of *collective* responsibility by a minister, ie a failure to support government policy in some way, as in the division lobbies, would be regarded as a resignation matter in most circumstances. The principle of collective responsibility is entrenched in *QPM* and to that extent one could possibly regard any resignation or dismissal for a failure to support government policy in a division, for inability to support it publicly or in order to oppose policy actively in public, as a breach (or application) of *QPM* principles. This happens more often with PPSs (whose obligation of collective responsibility is set out in para 47) than with Ministers.

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[10] First set out in Roger Freeman's speech, HC Deb vol 265 c 456, 2.11.95. He stated that the new version "becomes effective immediately": c457.

[11] Letter, 5.4.94, Unprinted Paper 6, Treasury and Civil Service Committee, 1993-94

[12] "Questions over holiday sealed Mellor's fate", 25.9.92, p 2. See also the comments of Diana Woodhouse, *op cit*:, pp 79-80, 85.

Again, it has been suggested that even resignations or dismissals on grounds of personal conduct may, in appropriate cases, fall within the overall philosophy of *QPM.* See the answer by the Leader of the House last March:[13]

> **Dr. Wright**: To ask the Prime Minister (1) if he will identify which forms of personal conduct are unacceptable for a Minister; and if he will amend "Questions of Procedures for Ministers" accordingly;
>
> (2) if any Minister who has, or who has had, an extra-marital affair will be expected to resign.
>
> **Mr. Newton:** I have been asked to reply.
>
> Paragraph 1 of "Questions of Procedure for Ministers" makes it clear that Ministers are expected to conduct themselves in such a way as to protect the integrity of public life. My right hon. Friend has no plans to amend it.

## C. Individual responsibility in action

There are a number of interconnected practical demonstrations of accountability which can give effect to the requirement of individual ministerial responsibility to Parliament (or its committees, as in the Westland affair in 1986 and the salmonella and eggs case in 1988-9) and to the public, usually by the minister concerned, in addition to any professional sanction or 'punishment' there may have been. Note the comment of the Defence Committee in the Westland affair: "A Minister does not discharge his accountability to Parliament merely by acknowledging a general responsibility and, if the circumstances warrant it, by resigning. Accountability involves *accounting* in detail for actions as a Minister."[14] This may result in support for the decisions or actions in question, perhaps even if contrary to the views of a departmental or independent inquiry into them, either from the Government benches or more generally. Griffith and Ryle comment:[15]

> The opportunity to hold Ministers accountable arises whenever Parliament is sitting for it is the essence of debate that Members and especially Opposition spokesmen will be enabled to respond to ministerial proposals or to initiate criticism of ministerial actions to which Ministers must reply. These opportunities are discussed at length in later chapters. Debate also provides opportunities for back-bench supporters of Ministers to reply to criticism. Some debates will end in

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[13] HC Deb vol 256 c 747W, 17.3.95. See also the series of PQs by Brian Wilson to the Prime Minister on 31 October 1994 [HC Deb vol 248 cc 913-4W].

[14] *Westland plc: the Government's decision-making,* 4th report of 1985-86, HC 519, para 235.

[15] *op cit,* p34

> a vote but the impact of criticism on Ministers, and so on the Government as a whole, is not nullified by the Government's almost inevitable victory in the divisions. Sometimes it will be apparent that although the Government has won the vote, it has lost the argument or at least that some part of the criticism has not been adequately answered. If so, the matter will be pursued on other occasions. And outside comment in the press and elsewhere may continue to reflect concern. In a real sense, the process of debate is continuous and a successful Opposition will be able to keep up the pressure. It is not unusual for Ministers to be forced from one position where they deny all blame to other positions where they admit some fault and possibly to a position where they are obliged to retract their earlier protestations of rectitude.

--- **Inform and explain**: The basic requirement of accountability is that Ministers explain their actions and policies to Parliament, and inform Parliament of events or developments within their sphere of responsibility. Thus ministers make statements (on their own initiative or through PNQs, for example) on all sorts of issues from transport accidents to proposed new policy initiatives, and make available detailed explanations through Parliamentary answers, consultation papers, white and green papers and so on.

--- **Apologise**: Ministers who admit an error, of whatever kind, either by them personally or on behalf of their officials, will usually be expected to apologise to Parliament, as part of a full explanation, whether or not a resignation or dismissal is involved. It is often said that the House of Commons is generous and forgiving to those Members and ministers who admit their mistakes and atone for them, especially where the mistakes are not regarded as sufficiently serious for resignation. In appropriate cases an Opposition may only seek an apology rather than a resignation, or the House may accept an apology even when resignation has been demanded originally.

--- **Take action**: A minister who is responsible for an unsatisfactory state of affairs (whether identified by themselves, by Parliament or by some form of inquiry) will be expected to take appropriate remedial steps to correct it and to ensure that it should not happen again. This applies whether or not any resignations or dismissals are involved, although in some cases the remedial action may be promised and carried out by a successor in cases where the responsible minister has left office.

--- **Resign**: This is the ultimate accountability action and sanction. It is also the most difficult to categorise and explain. While the other actions noted above are essentially, in constitutional terms, administrative, executive actions, of ministers carrying out their ministerial duties to account in a substantive way to Parliament, resignation cases -- including those where resignation was successfully resisted, at least for some time, and cases of 'sideways' or other reshuffle -- can develop into essentially political battles, often, but not always, of a partisan nature.

This Paper does not attempt to provide a systematic classification of episodes of ministerial resignation, or repelled demands for resignations. It is by no means easy to classify satisfactorily the reasons for a ministerial departure, even in cases where they have apparently been spelled out publicly by the relevant ministers or other ministers, including the Prime Minister. Some situations may, for example, not have normally been serious enough to warrant the ultimate sanction, but may have been the 'last straw' for fellow ministers or the Parliamentary party or the House in general. There may have been a combination of related causes, especially in an unfolding sequence of events as in the Westland episode of 1985-6. Even in the few cases where the traditional doctrine of individual responsibility has apparently operated, as in Crichel Down (1954) or the Falklands (1982), there remains much academic interpretation and discussion about their true meaning. Should ministers resign simply because 'something went wrong' in their departmental area or 'on their watch'? Or need they resign only when something went wrong because of something they, or their officials, *did* wrong? For example, did Lord Carrington and his two junior ministers resign because Argentina successfully took possession of the Falkland Islands in April 1982, *or* because Foreign Office policy failed to prevent it, *or* because Foreign Office policy failed to prevent it because it was flawed, *or* because they wished to restore or maintain confidence in the government in its difficult task of recovering the Islands, *or* because they wished to prevent the risk of the downfall of the Prime Minister or the government, *or* some combination of these reasons?

## D. The debate of 12 February 1996

The very recent debate by the Liberal Democrats, prompted by the Scott Report, provided a brief opportunity for Parliament to debate the issue of ministerial responsibility, not only in terms considered in this Paper, but also more generally.[16] Although phrased in general terms, Menzies Campbell's openiing speech clearly had in mind the events dealt with in the Scott Inquiry. He considered the nature of conventions in the unwritten constitution, claiming that the convention of ministerial responsibility is a matter ultimately for the Prime Minister, as the one who leads the government and selects its ministers:[17]

> The observance of some conventions is exclusively the responsibility of the Government; self-evidently, ministerial responsibility is one. Ultimately, enforcement of the convention of ministerial responsibility is a matter for the Prime Minister. He leads the Government; he selects his Ministers.

[16] HC Deb vol 271 cc674-707, 12.2.96. In addition to the Parliamentary proceedings discussed in the following section of this Paper see also, for example, Graham Allen's adjournment debate on 6 July 1987, HC Deb vol 119 cc 168-174, and Andrew Mackinlay's adjournment debate on 31 March 1994, HC Deb vol 240 cc1123-30.

[17] c674

> It follows that, when a breach of convention is tolerated, that breach is the Prime Minister's responsibility. He alone has the right to determine who should be in his Government and who should continue to be his Ministers. If, by a breach of the convention of ministerial responsibility, the reputation of Parliament is damaged, the Prime Minister is liable for that too.

Responding for the Government, the Chancellor of the Duchy of Lancaster, Roger Freeman, outlined his policies for the accountability of the public service, including agencies and quangos, and for the relationship between ministers and civil servants. He then dealt with the concept of individual responsibility:[18]

> I shall now deal with the issue of ministerial accountability to Parliament, which has been raised by the Liberal Democrats. In the previous sections of my speech, I have said where progress has been made during the past decade, especially in the past few years, in clarifying responsibility in other aspects of public life. The Minister in charge of a Department is the only person who may be said to be ultimately accountable for the work of his Department. Parliament has usually conferred powers on the Secretary of State or the Minister, and Parliament calls on Ministers to be accountable for the policy, actions and resources of their Departments in the use of those powers. However, while a Minister has full constitutional accountability to Parliament for everything that the Department does, it is manifestly impossible for him to take all decisions, or be personally involved in every action of his Department. It cannot, therefore, be sensibly suggested that a Minister is personally responsible for every action of his Department. It is worth stressing that distinction, because the terms "ministerial accountability" and "ministerial responsibility" have tended to be used interchangeably.
>
> The mistaken inference that is sometimes drawn is that a Minister must personally take the blame or the credit-for every action of his Department. It is equally mistaken to think, as some on the Opposition Benches do, that in clarifying that well-established distinction, the Government are attempting to redefine those things for which Ministers may properly be held both accountable and personally responsible.

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[18] c684

> For the benefit of the House, I should like to spell out briefly the Government's position. Ministers take personal responsibility for five fundamental areas: the policies of their Departments; the framework within which those policies are delivered; the resources allocated; such implementation decisions as the framework documents for agencies may require to be referred to them or agreed with them; and their response to major failures or expressions of parliamentary or public concern, in the sense of demonstrating what action they have taken to correct a mistake and prevent its recurrence.
>
> The Government's position is fully in accord with the classic statement on the subject made in the House more than 40 years ago in the debate on the Crichel Down affair by Sir David Maxwell-Fyfe. He said at the time:
>
> "The Minister is not bound to defend action of which he did not know, or of which he disapproves. But . . . he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship."- [*Official Report*, 20 July 1954; Vol. 530, c. 1286-87.]

He said that agencies fitted into this orthodoxy, and set out the Government's approach to ministerial accountability to Parliament:[19]

> The focus of what I have said so far has been on the accountability of Ministers to Parliament for their Departments. Ministers also have a responsibility to justify their conduct to Parliament. In that respect, too, the Government's position is perfectly clear. It is only a few months since we made it clear that we agreed with the Nolan committee that the principles of conduct which applied to Ministers could helpfully be set out in one place in clear and comprehensible form.
>
> On 2 November I told the House that the new first paragraph of "Questions of Procedure for Ministers" was taking immediate effect. I shall not detain the House by rehearsing all seven principles of ministerial conduct set out there in full, but it is worth reminding hon. Members of the opening sentence from which the others follow and which puts the matter in a nutshell. It states:

[19] c685. See also the brief winding up speech by his junior minister, David Willetts, cc703-5.

"Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties."

I also remind the House of the great care and wide consultation that we undertook before finalising the revision of "Questions of Procedure for Ministers" in the light of the first report from Lord Nolan's committee. The third principle, on not misleading Parliament, attracted particular interest in this place and beyond. Let me remind the House of the version approved by my right hon. Friend the Prime Minister, which I announced on 2 November. It says:

"Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with established Parliamentary convention, the law, and any relevant Government Code of Practice."

It is important to emphasise that the principle is deliberately in the public domain, having been carefully debated in the light of Lord Nolan's report. The opening up and clarification of "Questions of Procedure for Ministers" is an achievement of the Government. Until 1992, the document was not publicly available. There is no surer confirmation of the Government's willingness to be held to account and to be seen to be held to account.

Some have argued that the word "knowingly" provides some sort of escape clause for rendering account to Parliament. That is not so. Indeed, in retaining that word, we embodied a valuable and long-recognised distinction between intentionally and inadvertently misleading Parliament.

By releasing "Questions of Procedure for Ministers", by recasting it so that the opening paragraph brings together a code of ministerial conduct, by openly discussing the terms of the principles in that code, the Government have demonstrated their clear commitment to upholding the principle of ministerial accountability and responsibility to Parliament.

For the Opposition, Derek Foster attacked the Government's record and policies in this field, and criticised in particular the failure of ministers to resign over 'Black Wednesday' in 1992:[20]

> Let us think back to Black Wednesday. Once again, that was nothing to do with the Government. No one resigned, even though we are now told that at the time the Chancellor wanted to resign, but the Prime Minister pleaded with him not to do so. That is hardly surprising because the man who took the country into the exchange rate mechanism at the wrong rate, at the wrong time, for the wrong reasons was the previous Chancellor who then became the Prime Minister. Black Wednesday was nothing to do with the Government, yet they love to claim the credit for the half-competent economic strategy that they stumbled into when their policy was blown out of the water.

He then set out his approach to ministerial responsibility in the light of the Government's recent record:[21]

> The case for ministerial responsibility is constitutionally at the very heart of this debate about trust in the political process. I strongly agree with what the hon. and learned Member for Fife, North-East said.
>
> Ministerial responsibility is at the heart of our bringing the Executive to account. It has long been my view that the Executive is far too powerful in our system of government and that the House of Commons is ill-equipped to bring the Executive to account. The best development of recent years has been in the Select Committees, which have gone a long way in improving the way in which we can bring the Executive to account. But there is still a very long way to go.
>
> I would have thought that ministerial resignations would have given us some idea of how effective the House is in bringing Ministers to account. A long list of Ministers and parliamentary private secretaries have resigned since 1992. Although all kinds of reasons have been given for those resignations, which I shall not go into, as far as I can tell not one of them resigned because they admitted some deficiency in the

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[20] cc687-8
[21] cc688-9

policy, operations or activities of their Departments or any of the agencies for which they were responsible. Indeed, a former Minister felt that so deeply that he said:
"no one ever resigns for anything these days".

According to "Questions of Procedure for Ministers", Ministers are accountable to Parliament for the actions of their Departments and agencies. They must be as open as possible with Parliament and the public and must not knowingly mislead Parliament. If they do so, they should resign, according to a letter from the Prime Minister to my hon. Friend the Member for North Durham (Mr. Radice) that was dated 15 April 1994. So Ministers, and only Ministers, are accountable to Parliament, yet, according to the Government, Ministers are not responsible for all actions in the sense of being blameworthy.

The House would not want me to enter into a comprehensive analysis of the concepts of accountability and responsibility, suffice it to refer Members to paragraphs 118 to 138 of the Treasury and Civil Service Select Committee fifth report. I concurred with the Select Committee when it said in its report:

"We find the government's attempt to draw a sharp distinction between accountability, which cannot be delegated by Ministers, and responsibility which can, unconvincing."

The debate has become crucial with the fragmentation of the civil service under next steps agencies and privatisation. Ministers are able to claim the credit for all that is good in their Departments and agencies and delegate the blame to others. The Chancellor of the Duchy of Lancaster seemed to suggest that claiming credit for what was going on in the Department was as reprehensible as delegating blame. I just do not recognise that behaviour in the Government -or, indeed, in any other Government. Ministers are all too ready to claim the credit and delegate the blame to others. Indeed, next step agencies and privatisation have encouraged that.

# II Some Illustrative Examples

## A. Crichel Down: Sir Thomas Dugdale (1954)

This case has been regarded as the classic example of individual ministerial responsibility in action, although in the subsequent 40 years there has been a lively academic debate about its meaning in this context.[22] The case itself concerned a claim of unfair treatment by a landowner when the Ministry of Agriculture and the Crown Lands Commissioners refused to resell to him land belonging to his family which had been compulsorily purchased by the Air Ministry in 1937, apparently contrary to promises made concerning procedures for resale. Following backbench pressure, an inquiry was set up which made a number of criticisms of official procedures and practices in the handling of the matter. The Minister of Agriculture, Sir Thomas Dugdale's initial statement to the House on 15 June 1954 stated that he accepted full responsibility for his officials but that he did not take the same view as the inquiry report of their actions.[23] However in the full debate on 20 July, on an adjournment motion, Dugdale gave a full account of the case and the report's findings, and restated what he believed to be the constitutional position:[24]

> First, I should like to say a word about the conduct of the civil servants concerned. General issues of great constitutional importance arise in this regard. My right hon. and learned Friend the Secretary of State for the Home Department and Minister for Welsh Affairs will deal with them when he speaks later in this debate. I am quite clear that it would be deplorable if there were to be any departure from the recognised constitutional position. I, as Minister, must accept full responsibility to Parliament for any mistakes and inefficiency of officials in my Department, just as, when my officials bring off any successes on my behalf, I take full credit for them.
>
> Any departure from this long-established rule is bound to bring the Civil Service right into the political arena, and that we should all, on both sides of the House, deprecate most vigorously. I shall have something more to say about Ministerial responsibility before I sit down; I would only add, at this stage, that it should not be thought that this means that I am bound to endorse the actions of officials, whatever they may be, or that I or any other Minister must shield those who make errors against proper

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[22] See, for example, D. Woodhouse, *Ministers and Parliament*, 1994, pp96-106; K. C. Wheare "Crichel Down revisited" (1975) XXIII *Political Studies* 390-408, J. Griffith, "Crichel Down: the most famous farm in British constitutional history", *Contemporary Record*, Spring 1987, pp35-40, and "Crichel Down revisited" (1987) 65 *Public Administration* 339-47.

[23] HC Deb vol 528 cc1745-7, 15.6.54

[24] cc1185-6

consequences.

He announced at the end of his speech that he was resigning:[25]

> I have nearly finished. I have tried to accomplish my duty to the House, which was to give an accurate account of the history of the Crichel Down case. I have told the House of the action which has been taken, and which will be taken, in the design to make a recurrence of the present case impossible. I have announced changes which the Government intend to make in land transaction procedure. I have told the House of the offer of resale of the Crichel Down land under certain conditions. I have no regrets at having ordered a public inquiry, for I am certain that good will come out of it. I have been able to get well under way the action necessary following Sir Andrew Clark's Report.
>
> Having now had this opportunity of rendering account to Parliament of the actions which I thought fit to take, I have, as the Minister responsible during this period, tendered my resignation to the Prime Minister, who is submitting it to the Queen.

In his speech, the Home Secretary, Sir David Maxwell Fyfe set out his view of the convention of ministerial responsibility in terms which have immortalised the name of Crichel Down:[26]

> There has been criticism that the principle operates so as to oblige Ministers to extend total protection to their officials and to endorse their acts, and to cause the position that civil servants cannot be called to account and are effectively responsible to no one. That is a position which I believe is quite wrong, and I think it is the cardinal error that has crept into the appreciation of this situation. It is quite untrue that well-justified public criticism of the actions of civil servants cannot be made on a suitable occasion. The position of the civil servant is that he is wholly and directly responsible to his Minister. It is worth stating again that he holds his office "at pleasure" and can be dismissed at any time by the Minister; and that power is none the less real because it is seldom used. The only exception relates to a small number of senior posts, like permanent secretary, deputy secretary, and principal financial officer, where, since 1920, it has been necessary for the Minister to consult the Prime Minister, as he does on appointment.
>
> I would like to put the different categories where different considerations apply. I am in agreement with the right Hon. Gentleman who has just spoken, that in the case where there is an explicit order by a Minister, the Minister must protect the civil servant who has carried out his order. Equally, where the civil servant acts properly in accordance with the policy laid down by the Minister, the Minister must protect and defend him.
>
> I come to the third category, which is different. Again, as I understand the right Hon. Gentleman, he agrees with me on this. Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledges the mistake and he accepts the responsibility, although he is not personally involved. He states that he will take corrective action in the Department. I agree with the right

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[25] HC Deb vol 530 c1186, 20.7.54
[26] cc1285-7

Hon. Gentleman that he would not, in those circumstances, expose the official to public criticism. I think that is important, and I hope that the right Hon. Gentleman will agree with me that it should come from both sides of the House that we are agreed on this important aspect of public affairs.

But when one comes to the fourth category, where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to defend action of which he did not know, or of which he disapproves. But, of course, he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what had occurred and render an account of his stewardship.

The fact that a Minister has to do that does not affect his power to control and discipline his staff. One could sum it up by saying that it is part of a Minister's responsibility to Parliament to take necessary action to ensure efficiency and the proper discharge of the duties of his Department. On that, only the Minister can decide what it is right and just to do, and he alone can hear all sides, including the defence.

It has been suggested in this debate, and has been canvassed in the Press, that there is another aspect which adds to our difficulties, and that is that today the work and the tasks of Government permeate so many spheres of our national life that it is impossible for the Minister to keep track of all these matters.

I believe that that is a matter which can be dealt with by the instructions which the Minister gives in his Department. He can lay down standing instructions to see that his policy is carried out. He can lay down rules by which it is ensured that matters of importance, of difficulty or of political danger are brought to his attention. Thirdly, there is the control of this House, and it is one of the duties of this House to see that that control is always put into effect.

There is the other side of that on which I wish to spend a moment. The hon. Member for Edge Hill in the course of a very interesting and reasoned speech, used the phrase, " Heads should have fallen." As I have said, it is a matter for the Minister to decide when civil servants are guilty of shortcomings in their official conduct. Normally, the Civil Service has no procedure equivalent to a court-martial, or anything of that kind. There have in the past been a few inquiries to establish the facts and the degree of culpability of individuals, but the decision as to the disciplinary action to be taken has been left to the Minister.

## B. John Profumo (1963)

The facts of the Profumo episode are well-known. When the details of the complicated scandal began to leak out in Parliament and in the media, Profumo made a personal statement to the House on 22 March in which he said, *inter alia*, that "there was no impropriety whatsoever in my acquaintanceship with Miss Keeler" and concluded by warning that "I shall not hesitate to issue writs for libel and slander if scandalous allegations are made or repeated outside the House."[27]

[27] HC Deb vol 674 c810, 22.3.63.

However, in his 4 June letter to the Prime Minister, Profumo wrote that:[28]

> You will recollect that on March 22, following certain allegations made in Parliament, I made a personal statement.
>
> At that time rumour had charged me with assisting in the disappearance of a witness and with being involved in some possible breach of security.
>
> So serious were these charges that I allowed myself to think that my personal association with that witness, which had also been the subject of rumour, was, by comparison, of minor importance only.
>
> In my statement I said that there had been no impropriety in this association. To my very deep regret I have to admit that this was not true, and that I misled you, and my colleagues, and the House.
>
> I ask you to understand that I did this to protect, as I thought, my wife and family, who were equally misled, as were my professional advisers.
>
> I have come to realise that, by this deception, I have been guilty of a grave misdemeanour, and despite the fact that there is no truth whatever in the other charges, I cannot remain a member of your Administration, nor of the House of Commons.
>
> I cannot tell you of my deep remorse for the embarrassment I have caused to you, my colleagues in the Government, to my constituents, and to the party which I have served for the past 25 years.

The Opposition asked for an immediate debate when Parliament returned from the Whitsun recess. This took place on 17 June, in which the Opposition concentrated on the supposed security, rather than the personal, aspects of the former minister's conduct, in the words of Harold Wilson, "However much we condemn him -- and we must condemn him -- that is not the issue today."[29]

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[28] *Keesings*, 1963, p19475.

[29] HC Deb vol 679 cc34-176, 17.6.63.

## C. Devaluation: James Callaghan (1967)

This episode has obvious similarities with the ERM 'Black Wednesday' in 1992. The Labour Government had been strongly and publicly opposed to devaluation, but were forced to do so on 18 November 1967, a Saturday. The Chancellor, James Callaghan, made a statement to the House on the following Monday on the devaluation and the related fiscal and economic measures.[30] He sat down, according to *Hansard*, to cries of "Resign", and Iain Macleod, for the Opposition, quoting the Chancellor's recent anti-devaluation statements, continued:[31]

> The Chancellor of the Exchequer will know that I am using his own words. He has done all these things. He has broken faith. He has devalued his word. He is planning to bring down the standard of life of our own people. He is an honourable man. Will he resign?
>
> **Mr. Callaghan:** I am obliged to the right hon. Gentleman for putting the question so succinctly. I will give him an equally succinct answer. I recommended the Cabinet to devalue. It accepted my advice. It is my immediate responsibility to see that the operation is successful.

On the following two days there was a full scale debate, during which Macleod turned his attack on the Prime Minister himself[32]and Sir Keith Joseph said that "the responsibility must be pinned firmly on the Chancellor but, above all, on the Prime Minister."[33] This was echoed by the Leader of the Opposition, Edward Heath:[34]

> The Chancellor has made-and I am sure that he would not entirely deny it - many misjudgments from November, 1964, onwards and many miscalculations, but he fought manfully until last week to maintain the parity of the £. Throughout, he believed that he was right. I am certain that he was right and he must have full credit for it. He fought manfully and he fought in good faith.

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30 HC Deb vol 754 cc935-9, 20.11.67
31 c939
32 cc1161-2, 21.11.67.
33 c1254
34 c1329

> I wish that I could say the same thing of the Prime Minister. Whenever anything successful happens, the Prime Minister, of course, claims it for himself, for the success of his party and the Government. Whenever their policies end in catastrophe, then, of course, it is a national emergency on which the Government should be exempt from all criticism.

There were critical references to Callaghan's formulations when speaking in the House in the days before devaluation, of which the following is perhaps the most often quoted nowadays:[35]

> I have nothing to add to or to subtract from anything I have said on previous occasions on the subject of devaluation and, in any case, it does not arise from my original Answer.

In his memoirs, Callaghan records that, when the devaluation policy was being decided, "I had already intimated to the Prime Minister that it was my firm decision to resign once the devaluation operation was complete and I had accounted for myself to the House of Commons .... The Prime Minister urged me very strongly to remain at the Treasury for the time being, but I felt unable to do so in view of the undertakings I had given in good faith as lately as the previous September that sterling would not be devalued."[36] Wilson wrote in his record of his 1964-70 government:[37]

> There remained a problem for me. Despite the warm endorsement given to the Chancellor, both in an enthusiastic party meeting and in the House, he renewed his request to be allowed to resign. This I could not accept, as I had told him on one of those feverish nights before devaluation. He had been an international symbol of our determination to fight for sterling, but so had I. There could be no question of a symbolic sacrifice.
>
> Jim Callaghan evaded a challenge from Iain Macleod in Parliament on whether he should resign, saying that he had to see the immediate post-devaluation measures through. He continued to press his resignation. In three days of discussions, from 27th to 29th November, I persuaded him to consider an alternative: that he should become Home Secretary, a post in which he had always shown interest. In the event, he accepted and Roy Jenkins became Chancellor.
>
> It had, in fact, been unfair to Jim Callaghan that he had been kept on at the Treasury tread-mill so long and in such difficult conditions. Earlier in the year he had said he would like to move, and indeed his desire became known in the press. The problem simply was that had sterling's toughest defender moved, it would have been taken all over the world as a sign that we were considering a change in parity. That would undoubtedly have precipitated rumours and speculations on a scale capable of forcing devaluation.

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[35] c635, 16.11.67

[36] *Time and chance*, 1987, p221-2.

[37] *The Labour government 1964-70*, 1971, p467.

> Now that devaluation had taken place there was no such bar on his going to another department. Within a week he told me that he was really enjoying life at the Home Office as he had never enjoyed his period at the Treasury: his record for reform, his assertion of what he preferred to call 'freedom under the law'-in distinction to the Tory cry of 'law and order'-and, above all, his firm and fair handling of the Northern Ireland crisis in 1969-70 were of the utmost benefit to the Government and to the country.

## D. Poulson: Reginald Maudling (1972)

Reginald Maudling resigned as Home Secretary on 18 July 1972 because of the revelations of the business practices and acquaintances of the architect John Poulson. In his memoirs Maudling explained his reasons:[38]

> The Poulson affair became a public issue in 1972 as a result of his examination in bankruptcy. It then became apparent that he had been dispensing large sums of money in bribes to public officials of one kind or another. Clearly criminal offences on a large scale were involved, and the job of investigation into so serious a matter had to be undertaken by the Metropolitan Police. As Home Secretary I was officially Police Authority for the Metropolis, and was responsible for the Metropolitan Police. It seemed to me quite clear that I could not continue to hold that responsibility while the Met. were investigating, with a view to possible prosecution, the activities of a man with whom I had had a business association. I had no option but to resign, which I did, and I wrote a letter of resignation to the Prime Minister, asking him to read it out to the House of Commons, which he was good enough to do.

The 1976-77 report of Select Committee on the Conduct of Members carefully considered the position of Mr Maudling.[39] Much of the affair related to Mr Maudling's conduct when a private Member than as a minister, and in that regard the Committee was satisfied with his actions. It was however concerned that some of his actions took place when a 'shadow minister' "since a 'shadow' Minister is a potential future Minister." But it noted that "the House has never given any guidance on this matter: your Committee consider that this is a general problem that deserves the attention of the parties and of the House."[40]

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[38] *Memoirs*, 1978, p193.

[39] HC 490, paras 25-34, July 1977

[40] para 30.

It then turned to Maudling's resignation letter, and the Prime Minister's statement of 18 July 1972, in which Mr Heath set out, *inter alia*, the extracts of the letter:[41]

> In this connection there is one other matter of which I should inform the House. I have received a letter from my right hon. Friend the Home Secretary, who has asked me to read the following extract from it to the House:
>
> "We discussed the assertions made by Mr. Poulson during his bankruptcy hearing. Among them there was one referring to myself, to the effect that before I accepted his invitation to become Chairman of an export company, for which post I took no remuneration, he had made a covenant in favour of a charitable appeal which had my support. I do not regard this as matter either for criticism or for investigation. However, there are matters not relating to me that do require investigation, and I entirely agree that this should be carried out in the normal way on behalf of the Director of Public Prosecutions. The difficulty arises that the task must fall upon the Metropolitan Police, and in my particular office as Home Secretary I am Police Authority for the Metropolis. We agreed that it would not be appropriate for me to continue to hold this office while the investigations are being pursued, in view of the fact that my name has been mentioned at the Hearing."
>
> My right hon. Friend's letter continues:
>
> "You were good enough to suggest that I might for the time being hold some other office in your Government, but this I do not wish to accept. For more than twenty years now I have held office continuously, as a Minister, or a member of the Shadow Cabinet. I think I can reasonably claim a respite from the burdens of responsibility and from the glare of publicity which, inevitably, surrounds a Minister and, inexcusably, engulfs the private lives even of his family."
>
> I have replied to my right hon. Friend that, though I understand and respect the reasons for his decision to leave the Government, it is only with the greatest reluctance that I have accepted it.
>
> I believe that right hon. and hon. Members on both sides of the House will share not only my deep regret at my right hon. Friend's going now but also my hope that it will not be long before he is able to resume his position in the public life of this country.

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[41] See HC Deb vol 841 c403, 18.7.72.

When the House debated the report, Maudling defended his actions, and, in particular, his letter:[42]

I come to the second point - the accusations made by the Select Committee in paragraph 33 and only about my letter of resignation when I resigned as Home Secretary. I read paragraph 33 with astonishment. Earlier, in paragraph 4, the Committee had said that before reaching its conclusions it had

> "put to the Members concerned the matters that arose from the evidence they had examined"

and that

> "no new evidence or accusation emerged that was not fully described and put to the Members concerned during their evidence."

The fact is that while the *Hansard* extract from the Prime Minister's statement was in the bundle of documents before the Committee, it was not mentioned in the list of questions sent to me by the Committee which it asked me to answer. At no time throughout the two hours that I spent with the Committee did any member of it make any mention whatsoever of the statement to me.

The first intimation that I received that the Committee was concerned about my letter of resignation, let alone critical of it, was when I received a copy of its final Report about an hour before it was released to the Press. So I find it a little bewildering that a Select Committee reporting to this House can make a statement which, frankly, is not accurate. The Select Committee did not put to me the matter of my resignation letter. It did not describe to me its accusation. Not one word was said about it at any time by anyone while I was before the Committee.

The effect, of course, is simply this: although everyone has heard the charge that the Committee brings against me and although a number of people have not hesitated to condemn me, no one has yet listened to a single word of my side of the case. That is what I want to put now.

I would ask the House not to endorse this paragraph-this is what I concentrate on-for the simple reason that it just is not true. It is based on a complete misapprehension of the facts, which I shall now explain to the House and which I could have explained so easily to the Committee if only it had asked me to do so.

In paragraph 33 the Committee quotes as the fundamental basis of its accusation against me what purports to be a passage from my letter of resignation to the Prime Minister, which he read at my request to the House. It goes on to say:

> "It was in these terms, therefore, that Mr. Maudling chose to describe his relationship with Mr. Poulson to the House."

But that is not the case. In fact, it is nothing of the kind. Those are not the words that I used. They are just some of the words that I used, which is a very different matter. Nor was I seeking to describe, or purporting to describe, to the House my relationship with Mr. Poulson. I was describing the reasons for my resignation, which is a very different matter. To resign as Home Secretary-I think I can say I was effectively Deputy Leader of the Government at the time-is no small thing to have to do.

I am always apprehensive of partial quotations, of the leaving out of words from sentences and putting dots in their place. I cannot understand why the Committee in its report did not quote my letter in full but consigned it to Appendix 65, where the House will find it. What I said in fact to the Prime Minister was:

" We discussed the assertions made by Mr. Poulson during his bankruptcy hearing. Amongst them there was one referring to myself, to the effect that before I accepted his invitation to become Chairman of an export Company, for which post I took no remuneration, he had made a covenant in favour of a charitable appeal which had my support. I do not regard this as matter either for criticism or for investigation. However, there are matters not relating to me that do require investigation, and I entirely agree that this should be carried out in the normal way on behalf of the Director of Public Prosecutions. The difficulty arises that the task must fall upon the

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[42] HC Deb vol 936 cc335-9, 26.7.77.

Metropolitan Police, and in my particular office as Home Secretary I am Police Authority for the Metropolis. We agreed that it would not be appropriate for me to continue to hold this office while the investigations are being pursued, in view of the fact that my name has been mentioned at the Hearing."

I was referring specifically to only one of Mr. Poulson's assertions, as my words show. I was doing that for a very good reason, which I will explain in a moment. I was resigning as Home Secretary solely because of my connection with the Metropolitan Police. Had I been holding any other Office of State, I would not have resigned. The Prime Minister was good enough to recognise this by offering me an alternative post in his Government, which, as the House is aware, I declined for reasons of a personal character wholly unconnected with Mr. Poulson.

The general nature of my business relations with Mr. Poulson was not before the House in any way. It was before the courts. The Committee has described my business relations with Mr. Poulson. It has made it absolutely clear that there was nothing whatever about them that it had to criticise. I can find nothing in the Committee's description of my relationship that did not emerge in full in public during the course of those court hearings five years ago.

I was calling attention in my resignaion letter to one particular aspect of my relationship with Mr. Poulson, namely, his covenant in favour of the Adeline Genee Theatre. I single out this particular aspect for one very good parliamentary reason, namely, that it had already been singled out and put before the House in a formal motion in the name of the Liberal Party under the heading:

"Allegations of Financial Corruption in Public Life calling for investigation".

The motion of the Liberal Party said-

"That this House, gravely concerned with the allegations made by Mr. Poulson in the bankruptcy court proceedings that he had paid substantial sums of money to two Back Bench Members of Parliament and another substantial payment to a body at the request of a Privy Councillor, calls upon the Government to order an immediate inquiry."

As I told the then Leader of the Liberal Party, who was and still is a very good friend of mine, I objected to the wording of that motion because it did not say that the body concerned was a charitable body. It gave the clear impression that the money had been paid to me for my own benefit. This was under the heading "Financial Corruption". I made clear in my letter that this was not the case, that the money had gone, not to me, but to a charity and that, in my view, this was a matter neither "for investigation nor for criticism."

This point of view the Select Committee now in its Report has wholly endorsed.

These are the facts of the matter. They do not appear at all in the Report from the Select Committee. No doubt the Committee was not aware of them. There is no reason why the Committee should have been aware of these facts or why it should have remembered them. If it had asked me about them, I could have told the Committee at the time. That, for the first time, is my side of the case.

I understand that, by convention, I ought now to withdraw while the House discusses these issues. This will mean once again that there will be an opportunity for people to criticise me or even to contradict me while I have no opportunity to hear what they say. But on this occasion I am confident of the fairness of the House as a whole. I am confident that the House will accept that what I have said is the truth, the whole truth and nothing but the truth, and that now for the first time the House has before it the facts upon which to reach a judgment.

## E. Court Line: Tony Benn (1975)

This case, although relatively rarely cited in the literature nowadays, has much of interest in the context of this Paper. Court Line was a shipping and tourism company which experienced financial difficulties in the early 1970s, and the Department of Industry became involved, to the extent that the Industry Secretary, Tony Benn, made apparently reassuring statements in the House about the company, its employees and the holidays booked by holidaymakers. However the company had to cease trading shortly thereafter and went into liquidation. A Companies Act inquiry was set up under Department of Trade inspectors, and they reported in July 1975.[43] The report, *inter alia*, criticised the actions of Mr Benn and the Government, of which the following extracts provide a flavour:[44]

> We are of the opinion that individually and collectively all the references to holidays and holiday-makers are to be criticised for going too far by way of assurance to holidaymakers, without sounding any note of caution or reserve.
>
> The responsibility rests, we consider, not only with Mr. Wedgwood Benn but also with the Government, because the prepared statements followed from collective discussions and decisions by Ministers and were in line with conclusions reached, by them, whilst the other statements, though solely Mr. Wedgwood Benn's authorship, were in our view in the same vein and to the same effect.

> We want to make it quite clear that the Statements were made with the best of intentions and with genuine belief by Mr. Wedgwood Benn and the Government in everything they said and the way that they said it. There is no question of the Statements being in any way untrue or reckless.

> The Government are conscious of the weight their official pronouncements carry with the public - far more weight than those of any commercial undertaking however large and however reputable. They must therefore exercise a corresponding care. In our view the Statements here were not fair and reasonable in the circumstances: accidentally no doubt, but nevertheless so.

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43 Dep 6337

44 pp142-52 (extracts)

Before us Mr. Wedgwood Benn claimed sole personal responsibility for what he said. For the reasons we have given we consider that the responsibility is shared by the Government. That he and they acted with the best of intentions and with complete bona fides is beyond question.

Various points were made to us on behalf of Mr. Wedgwood Benn and the Government in defence of the Statements as worded. We have taken full account of these in the conclusions we have stated. The main contentions which we have considered but rejected are - (i) that it is putting it too strongly to say that there,was no qualification in the Statements, (ii) that the confidence the Company had in being able to continue was an important factor in the Government's view, (iii) that the general confidence, backed by experts, justified the Government in showing it and (iv) that the precise degree of confidence to be expressed (on the basis of an honest and careful assessment) is a matter of finely balanced judgment, involving a consideration of the actual words used and the impact they may have been expected to make on the public.

In support of the contention that there were qualifications in the Statements, emphasis was laid on the following words from the 26th June 1974 Statements as under lined - that the acquisition "should stabilise the situation, that holidaymakers "should have some reasonable security", that the agreement had the effect of "Safeguarding the holidaymakers" and that the main statement was "a holding statement designed mainly to reassure .... holidaymakers". It is open to anybody to form his/her own view of these words and phrases in context or in isolation. Our judgment is that they are clear, unqualified assurances.

As to the actual words used, we have considered them again and again, with the anxiety to be absolutely fair to everybody concerned. Our conclusion throughout has been, and remains, that they were too wide.

As to the likely impact of the words on the public, we are convinced that their likely impact, and their actual impact, was that the Government assured 1974 Summer holidaymakers that they would get their holidays.

The House debated the DoT report on an adjournment motion on 6 August.[45] Opening the debate, the Trade Secretary, Peter Shore, considered the Government's position:[46]

Further, in relation to their own conduct the Government have not brushed aside or dismissed the reports of the Parliamentary Commissioner or the inspectors. We recognise that these reports have been prepared with scrupulous care and we take very seriously the conclusions that they reach. It would have been easy for us to accept their conclusions without further ado and to offer an apology - as the right hon. Member for Penrith and The Border (Mr. Whitelaw) suggested last week.

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[45] HC Deb vol 897 cc532-88, 6.8.75.

[46] c533

> The House is always rightly indulgent in these circumstances, and if we had been seeking an easy way out that would have been the obvious course to take. But we have not done so, and when I say " we ", I mean, of course, the Government as a whole-not because we are stiff-necked, either collectively or individually, but because we have considered their findings with a care matching that of the authors of these reports, and because we have concluded, with reluctance and respect, that we simply cannot agree.

Emphasising that examination of the Government's actions and statements involved "matters of emphasis and nuances of expression" and 'fine points of judgment', he concluded:[47]

> The Government must come to a view - however provisional, and however much based on incomplete information about the longer-term effects of their decision on the company. Obviously that view must be as honestly and carefully justified as the circumstances, which may well involve acting very quickly, allow. The Government must expect to be questioned in this House about what that view is and give it. In these circumstances, great care is of course needed - as the Parliamentary Commissioner himself says, but it must always be a difficult exercise in judgment. I invite the House, however, to consider as a general problem whether in cases of this kind any statement can be made which does not run the risk that someone, somewhere, may possibly be misled in the light of subsequent and unforeseeable events.

He attacked the Opposition's approach to the Government's conduct, accusing Michael Heseltine and Eldon Griffiths of "rivalling each other in an ever-mounting crescendo of abuse" and of comparing it to Watergate "with all its associations of conspiracy and of criminal conduct, " and concluded that "to attack our judgment is one thing; to attack our good faith is another."[48]

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47 c537
48 c539-40

Michael Heseltine considered the Government's decisions to issue statements:[49]

> The Government decision must have been anguished, with all the holidaymakers spread across the world and the immense difficulties of the time scale within which they had to operate. Not to understand the problems facing the Government would be to deny the realities of ministerial life. We arrive at the point when the Government created confidence which the events did not entitle them to do. It is not right to say that the Government should have introduced the second statement as opposed to the first. What the Government thought the statement meant is not of critical importance. What the holidaymakers thought the statement meant is of critical importance.

Eric Heffer intervened to remind Mr Heseltine of the time when he, when Aerospace Minister in 1973, made a personal statement to the House concerning a charge by a select committee that he had made an untrue statement to it concerning the 'Hovertrain' project. Mr Heseltine responded:[50]

> I remember that incident. I made the statement which caused the question to be raised. I explained the matter and revealed the full facts to the Select Committee. It was suggested that the words I used were misleading. I did not like the idea that I had misled the House of Commons. Having discussed the matter with my Front Bench colleagues, I was persuaded that there was only one honourable course in the circumstances, which was to apologise. I did so at the earliest possible parliamentary opportunity. I believed that that was the only course to take.
>
> In these circumstances, in view of the interpretations placed by those inspectors on the speech which the Secretary of State for Industry made in the House, the apology course should be adopted.
>
> **Mr. Heffer:** You had to admit that.
>
> **Mr. Heseltine:** I did not have to admit anything. I found myself in a position in which an independent verdict gave one view. As that was the view of a Select Committee, I accepted it. In this case, two independent verdicts have given a similar unqualified judgment. In those circumstances, it would be in the interests of the Secretary of State for Industry and of the other parties concerned to accept those judgments. When he replies the Minister should say something along the lines of my remarks, which were made in similar circumstances.

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[49] c544
[50] cc546-7

Winding up for the Opposition, William Whitelaw emphasised that he categorised the Government's conduct as "errors of judgment", as he was "absolutely satisfied that the Government and the right hon. Gentleman [presumably Mr Benn] acted in good faith." He said that "there is no question of the statement being in any way untrue or reckless. That should be accepted."[51] He concluded:[52]

> I believe that an error of judgment has been made. There can be no great blame on a Minister who makes an error of judgment in a crisis situation. Indeed, if I were to say anything different I should certainly be throwing very heavy stones in a glasshouse, because I know the mistakes that I have made in crisis situations.
>
> **Mr. Russell Kerr** (Feltham and Heston): So do we.
>
> **Mr. Whitelaw:** Certainly. I have always been ready to admit them in this House, as the hon. Gentleman knows. It is usually wise to admit one's mistakes. I believe that it is particularly important that the Secretary of State, on behalf of the Government, should do so. If he does, lie will uphold the strong position of the Ombudsman and thereby strengthen our parliamentary democracy.
>
> Therefore, in the best interests of future government and of this House, I ask the right hon. Gentleman to get up and to say that, on mature reflection, the Government will now unequivocally accept the Ombudsman's report, backed as it is by the departmental investigation. If not, I hope that my right hon. and hon. Friends will register in the Division Lobby their dissent from what I believe would be an unwise and damaging Government decision which they will live to regret.

Mr Benn, by then Energy Secretary, began by stating that "I accept full personal responsibility for all the decisions taken by the Government last year, for the statements that I made in the House and for my relations with my civil servants."[53] He sought to put the criticisms by the PCA and the DoT inspectors of the Government's actions into context:[54]

> I say that these are policy matters. It was on their policy decision that the Conservative Government were criticised over the Rolls-Royce case, and it is as a policy matter that we should have been criticised, if criticism there has to be, over the handling of Court Line.
>
> It is not right to take a policy decision given with absolute integrity and relate it in some way to matters of maladministration - although that word is not mentioned in the Parliamentary Commissioner's findings. Nor is it right for inspectors, doing the best job they can as distinguished lawyers

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[51] c573
[52] cc574-5
[53] c575
[54] cc582-3

and accountants, to invent the concept of a colloquial guarantee as a precursor for criticism of a Minister who is accountable to the House of Commons.

This is a very important question. All Governments are concerned with the success of industry. All major firms in trouble are likely to turn to the Government for advice or assistance. Members of this House necessarily come to Ministers if important firms in their constituencies run into difficulty, and every Minister concerned with industry, if my experience is anything to go by, has a flood of letters, deputations, delegations and discussions when such crises appear.

The Government can do three things. First, they can let events take their course so that receivership may follow. Secondly, they can wheel I into play the formal, precise Government guarantee, embodied in a parliamentary statement or order under which everyone knows exactly what the position is. But the most common case falls into neither of these categories but into the third, in which the Government try to help without commitment and without guarantee. Some attempts will fail, as Rolls-Royce and Court Line failed. But many more succeed - many more than see the light of day, because no firm wishes to advertise itself as coming to the Government for help, because that of itself might undermine its confidence.

I have details here-it is an old list relating to firms which the Government for the first time helped to secure against some difficulty or other, and they include 64,237 jobs in 18 firms. Some have now recovered; others have run into difficulties. Alfred Herbert was one of the latter, and it has now been taken over and absorbed.

But I warn the House that there is a deeper danger. If in accepting the reports, or asking for an apology which would imply accepting them, we blur the difference between the cases where the Government try to help without commitment and those cases where the Government give a full-scale guarantee - if the crucial and clear difference between what is a guarantee and what is not a guarantee is blurred by the Court Line affair-the whole nature of the relations between the Government and industry will necessarily change. I believe that the House would not wish to make such a change, with all its farreaching consequences, without the most careful consideration of what would be involved, and certainly would not wish to make it by what the lawyers call a side-wind.

## F. Glasgow rape case: Sir Nicholas Fairbairn (1982)

The Solicitor-General for Scotland, Sir Nicholas Fairbairn, resigned on 21 January 1982 over the handling of a Glasgow rape case. On the morning of a day on which the Law Officers were due to speak in the House about the case, he responded to telephone questions from a newspaper reporter, and the publication of his comments apparently infuriated and confused those MPs interested in the case. He was reprimanded for this by the Prime Minister and he made a statement the following day[55] (the Lord Advocate, Lord Mackay of Clashfern, made a parallel statement in the Lords).

According to an account of the case, ministers had agreed that if the Opposition demanded

[55] HC Deb vol 16 cc423-34, 21.1.82

an apology to the House, the Leader of the House, Francis Pym, (already present for Business Questions) would do so, but Fairbairn was not informed of this.[56] When Michael Foot made such a demand,[57] Mr Pym apologised to the House as its Leader. This appeared to anger Fairbairn, whose statement became an increasingly difficult ordeal as the mood of the House turned against him, and as he resisted requests for an inquiry, perhaps by a select committee, into the case. Later that afternoon the Prime Minister's PPS, Ian Gow, suggested he should consider resignation. He agreed to do so saying, according to Harper & McWhinnie, "The department for which I am responsible has made a very serious mistake. I never said that publicly but it was an appalling blunder, quite contrary to anything I would have sanctioned and, as the person who has been criticised for it, I think that I should take the blame. I will resign."[1] In his resignation letter he said he was "entirely satisfied" that the handling of the case by officials was with "total propriety", but he admitted "errors of judgement" in his press dealings.

This case therefore appears to have aspects of personal ministerial fault as well as defence of the conduct of departmental officials. But the crucial cause appeared to be the affront to Parliament from the advance press revelations which poisoned the atmosphere during Fairbairn's statement to the House. Sir Nicholas had, in any case, to face resignation calls only the previous month over an alleged incident concerning a female friend. His resignation appears to be the sentence imposed on him for failing to convince the jury of his Parliamentary colleagues during his statement to forgive his breach of Parliamentary etiquette.

## G. Falklands: Lord Carrington, Richard Luce, Humphrey Atkins (1982)

Following the Argentine military attack on the Falkland Islands on 2 April 1982, the Foreign Secretary, Lord Carrington and two junior Foreign Office Ministers, Humphrey Atkins and Richard Luce, resigned. In his resignation letter to the Prime Minister, Lord Carrington wrote that there had been much press and Parliamentary criticism following the Argentine action: "In my view, much of the criticism is unfounded. But I have been responsible for the conduct of that policy and I think it right that I should resign. As you know I have given long and careful thought to this. I warmly appreciate the kindness and support which you showed me when we discussed this matter on Saturday. The fact remains that the invasion of the Falkland Islands has been a humiliating affront to this country ..... I have concluded with regret that [Parliamentary and public] support [for the Islanders] will more easily be maintained if the Foreign Office is entrusted to someone else."[58]

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[56] R Harper & A McWhinnie, *The Glasgow rape case*, 1983, p99

[57] In 1982 the Business Question was still asked by the Leader of the Opposition

[58] Letter, 5.4.82

In her memoirs, Margaret Thatcher claimed that she and William Whitelaw tried to convince Lord Carrington to stay "but there seems always to be a visceral desire that a disaster should be paid for by a scapegoat. There is no doubt that Peter's resignation ultimately made it easier to unite the Party and concentrate on recovering the Falklands: he understood this. Having seen Monday's press, in particular the *Times* leader, he decided that he must go." She quoted part of a personal letter he wrote to her on 6 April: "I think I was right to go. There would have been continual poison and such advice as I gave you would have been questioned. The Party will now unite behind you as it should have done last Saturday [ie during the emergency debate]"[59]

During the 7 April debate on the Falklands crisis, Richard Luce explained his resignation in terms of the humiliation and grave affront to the country caused by the Argentine action. "In these circumstances, at a time of great national difficulty, I felt that it was vital that the Government should have the full confidence and support of the country. To that end I thought that it was right for a new minister to take my place. My distinguished colleagues [Lord Carrington and Humphrey Atkins] took the same view. I hope that the House will feel that we acted in the national interest." He continued:[60]

> I wish to say a word about ministerial responsibility. Amidst all the welter of speculation of the past few days, one allegation needs to be firmly refuted. Serious things have been said about the Foreign and Commonwealth officials. In response-I believe that it is my duty-I must say two things. After three years of service in the Foreign Office as a Minister, I am convinced that the officials are dedicated to our country's interests and have a high sense of public duty. Secondly, it is an insult to Ministers of all Governments, of whatever colour or complexion, to suggest that officials carry responsibility for policy decisions. Ministers do so, and that strikes at the very heart of our parliamentary system.

In the Lords debate on 25 January 1983 on the Franks Report, Lord Carrington explained his and the Government's actions up to the Argentine action the previous April, and why he resigned at that time:[61]

> I have only three other very short things to say. One or two noble Lords have queried my resignation. Those of your Lordships who have longish memories may perhaps recollect an interview which I gave on the night I resigned. In the course of that interview I said that, given the information that we had at that time, I did not believe that the Government or I had mishandled the situation, or that we should have done differently. Nine months later, and with the benefit of the Franks Committee, I do not really honestly think that I can say that I would have done anything of substance differently. But there was an undeniable feeling in this country that Britain's

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[59] *The Downing Street Years*, 1993, pp185-6.

[60] HC Deb vol 21 c979, 7.4.82. See also Mr Atkins' speech on 8 July on the establishment of the Falkland Islands Review, HC Deb vol 27 cc488-90, 8.7.82.

[61] HL Deb vol 438 cc159-60.

honour and dignity had been affronted. The governor of a British territory had been forcibly removed. An alien flag had been raised over an occupied population. The wide sense of outrage and impotence was understandable, and I was at the head of the Foreign Office. It did not seem to me a time for self-justification and certainly not to cling to office. I think that the country is more important than oneself.

The second reason is linked to the first. Argentine actions had made war a strong possibility. One does not enter a war amid a welter of recrimination about who was responsible. As I said at the time, I did not accept the criticism levelled at the Foreign and Commonwealth Office and myself, but I did accept the responsibility of my position at the centre of a controversy which could have been damaging to this country at a time of national emergency.

There had been a highly charged debate in the House of Commons. The press was all but unanimous in calling for my resignation. Perhaps it would not be putting it too strongly to say that it was baying for blood. I make no complaint about that. When something of this nature happens it is human nature to turn round and blame the man in charge, although perhaps I might be allowed to say that the reputations of some of those instant critics would not have been significantly damaged if they had suspended sentence until they had learned the facts.

I believed then, as I believe now, that my resignation would put an end to those recriminations and that we could go forward united in our task. That was not a particularly easy decision for Mr. Atkins, Mr. Luce or myself, but I believe that our resignations did precisely have the effect we hoped for. Unfortunately, it did not stem the tidal wave of unjustified criticism directed at the Foreign Office. My Lords, if you were to ask me what I found most unpleasant about the whole of this affair, I would say it has been the way in which some Members of Parliament and some journalists have never ceased to vilify the Foreign Office. One allegation is that the Foreign Office is always seeking to act contrary to the wishes of the people of this country and to promote some sinister policy of its own. The Franks Committee disposes of that with regard to the Falkland Islands. I should like to put on record that in all the dealings I have had with officials on the two occasions that I have been in the Foreign Office, the issues, the alternatives and the options have always been presented to me with scrupulous fairness and objectivity. When decisions are taken they are the responsibility of Ministers, and it is Ministers who should be blamed, not those who are carrying out their decisions.

In the equivalent Commons debate, Douglas Jay intervened in the Prime Minister's opening speech to ask "If the Government made no mistakes, why did Lord Carrington resign?" Mrs Thatcher replied that "the reasons for Lord Carrington's resignation were set out in his letter which was published in full."[62] Richard Luce, in that debate, expanded on his resignation speech of the previous April. He made clear that "I accept my share of the responsibility for the decisions which I helped to make when I was Minister of State", and continued:[63]

I explain once again to the House the reasons for our resignation. I hardly need explain to the House that there was, in the first week of April, a grave crisis. It was essential for the country to unite behind the Prime Minister and the Government. The Foreign and Commonwealth Office was the lead Department in this

[62] HC Deb vol 35 c798, 25.1.83
[63] c934, 26.1.83

affair and the Ministers in that office were the target for a great deal of criticism. It was essential for the Prime Minister to lead the country with a team of Ministers at the Foreign Office who were not open to accusations about responsibility for the invasion or the inevitable recriminations that arose from that.

It was for that reason that the three of us decided that the honourable course was to resign. I believe that honour is not something to be despised. To this day I believe that that was the right decision to take, even though in Lord Carrington we lost one of our finest Foreign Secretaries in this century.

## H. Maze prison escape: James Prior (1983)

In September 1983 there was a mass escape from the Maze Prison in Northern Ireland, during which a prison officer was killed. The Northern Ireland Secretary, James Prior, set up an inquiry the following day headed by the Chief Inpector of Prisons, Sir James Hennessy. Woodhouse describes the immediate political fallout of the escape:[64]

Parliament was in recess, but Prior immediately faced criticism from Unionist Members of Parliament in Northern Ireland. They contended that the lax security at the Maze was the general responsibility of the Northern Ireland Office and the personal responsibility of the Under-Secretary of State, Nicholas Scott, whose responsibilities included prisons in the province. The focus upon Scott was a continuation of a campaign against him which had begun in the summer, not long after he had taken office, and which stemmed from his offer to meet Noraid, the New York based group of Republican fund-raisers. The meeting never took place, but Scott's resignation was sought by Ulster Unionists then, and it was sought again after the Maze break-out.

As pressure grew for Scott's resignation, Prior indicated that, if his Under-Secretary were forced from office, he too would go. This was similar to the position adopted by Carrington - either both went or neither did. This seems to be the accepted constitutional position where departmental fault is concerned. The responsibility belongs to the Secretary of State and, whatever delegatory arrangements he might make with a junior minister, he cannot devolve ministerial responsibility. Prior himself later illustrated the position in relation to another junior minister within his department: 'In discharging his duties,

[64] D Woodhouse, *Ministers and Parliament*, 1994, p125.

my hon. Friend acts on my behalf.'

On the day the House returned from the summer recess, Mr Prior made a statement, during which the following exchange took place:[65]

**Mr. Robert Maclennan** (Caithness and Sutherland): Given that the events described by the Secretary of State this afternoon are grave and calamitous, and are far more serious than he described them when he said that they have set back law enforcement, will he accept that if the doctrine of ministerial responsibility is to have any meaning in this country his personal position cannot turn on the mere findings-

**Mr. Dennis Skinner** (Bolsover): The hon. Gentleman would not resign his seat to fight an election.

**Mr. Maclennan:** - of the Hennessy inquiry, when 38 of the most dangerous prisoners in his custody have escaped?

**Mr. Prior:** If I had felt that ministerial responsibility was such that in this case I should have resigned, I certainly should have done so. It would be a matter,for resignation if the report of the Hennessy inquiry showed that what happened was the result of some act of policy that was my responsibility, or that I failed to implement something that I had been asked to implement, or should have implemented. In that case, I should resign. The IRA may have had something of a success to relate about the escape, but it would be as nothing compared with the success that it would have to relate if it forced the resignation of the Secretary of State under such circumstances.

The report of the inquiry found that the management and physical security deficiencies at the prison "amounted to a major failure in security for which the governor must be held accountable."[66] Mr Prior made a statement on the publication of the report on 26 January 1984, in which he announced that the governor had resigned. In response to questions he said that "the report shows that no policy decisions contributed to the escape. For that reason, I believe that there are no grounds for ministerial resignation."[67] and:[68]

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[65] HC Deb vol 47 cc23-4, 24.10.83.
[66] HC 203, 1983-84, para 10.12, January 1984
[67] HC Deb vol 52 c1056, 26.1.84.
[68] c1059.

I have always made it plain that if anyone were to resign over this matter it would be me. I am primarily responsible. Of course, I have given the matter the most careful personal consideration and have decided that I do not believe that there was negligence in any policy decision by me or by my hon. Friend the Minister. For that reason, I see no need for my resignation on this occasion.

In the debate on the report, Mr Prior set out in detail his reasons for not resigning:[69]

There are those who, while they accept this policy, have nevertheless suggested that the circumstances of the escape demand ministerial resignation. I take that view seriously and have given it the most careful consideration. I share hon. Members' concern about the honour of public life and the maintenance of the highest standards. I said at the time of my statement to the House on 24 October, without any pre-knowledge of what Hennessy would find:

"It would be a matter for resignation if the report of the Hennessy inquiry showed that what happened was the result of some act of policy that was my responsibility, or that I failed to implement something that I had been asked to implement, or should have implemented. In that case, I should resign."*[Official Report,* 24 October 1983, Vol. 47, c. 23-24.]

In putting the emphasis that I did on the issue of "policy", I was not seeking to map out some new doctrine of ministerial responsibility. I was responding to the accusations made at that time that it was policy decisions, reached at the end of the hunger strike, that made the escape possible.

Since the report was published, the nature of the charges levelled at my hon. Friend and myself has changed. It is now argued in some quarters that Ministers are responsible for everything that happens in their Departments and should resign if anything goes wrong. My position has not changed, and I want to make it quite clear that if there were any evidence in the Hennessy report that Ministers were to blame for the escape, I would not hesitate to accept that blame and act accordingly, and so I know, would my hon. Friend. However, I do not accept -and I do not think it right for the House to accept that there is any constitutional or other principle that requires ministerial resignations in the face of failure, either by others to carry out orders or procedures or by their supervisors to ensure that staff carried out those orders. Let the House be clear: the Hennessy report finds that the escape would not have succeeded if orders and procedures had been properly carried out that Sunday afternoon.

Of course, I have looked carefully at the precedents. There are those who quote the Crichel Down case. I do not believe that it is a precedent or that it establishes a firm convention. It is the only case of its sort in the past 50 years, and constitutional lawyers have concluded that the resignation was not required by convention and was exceptional.

Whatever some may wish, there is no clear rule and no established convention. Rightly, it is a matter of judgment in the light of individual circumstances. I do not intend to review the judgments made by Ministers faced with the question whether to resign following failures in their Departments. Nor do I seek to justify my decision on the ground that there are many difficulties in Northern Ireland. There are, but that adds to rather than subtracts from the argument. The question that I have asked myself is whether on Sunday afternoon, 25 September, I was to blame for those prisoners escaping. The Hennessy report is quite explicit in its conclusion that, although there may have been weaknesses in the physical security of the prison and in the prisons department, the escape could not have taken place if the procedures laid down for the running of the prison had been followed.

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[69] HC Deb vol 53 c1042, 9.2.83

Perhaps the strongest counter-argument came from Enoch Powell:[70]

The Secretary of State, from the beginning of his speech, recognised the central issue in this debate, that of ministerial responsibility, without which the House scarcely has a real function or any real service that it can perform for the people whom it represents. We are concerned with the nature of the responsibility, the ministerial responsibility, for an event which, even in isolation from its actual context, was a major disaster.

I want to begin by eliminating from this consideration the Under-Secretary of State for Northern Ireland, the hon. Member for Chelsea (Mr. Scott), because references to him in this context have shown a gross misconception. There has been argument about how long the hon. Member has been in the branch of the Northern Ireland Office concerned with the prison service, as though that were in the least degree relevant. The fact is that the entire responsibility, whether or not it is delegated to a junior Minister, rests with the Secretary of State. The Secretary of State has confirmed this to me in the past 24 hours, in another context, when I drew his attention to the reports to the fact that the Minister in charge of the environment had himself taken the decision to re-name the district of Londonderry. The right hon. Gentleman quite correctly said:

"In discharging his duties, my hon. Friend acts on my behalf.- [*Official Report*, 8 February 1984; Vol. 53, *c. 623.*

There is a responsibility, of a different kind, obviously, on the part of every junior Minister towards his Ministry, but the responsibility for everything that he does or says or fails to do or say rests irrevocably with the Minister - the Secretary of State-and he alone is responsible to the House. It is, therefore, a total misconception to imagine that any of the responsibility can be devolved to a junior Minister. A junior Minister may choose, if his chief resigns, to resign in solidarity with him; he may choose himself to resign for a variety of reasons. But there is no constitutional significance in acceptance by him of a responsibility which is not his. The locus of the responsibility is beyond challenge. It lies with the Secretary of State and, through him, with the Government as a whole.

As the Secretary of State reminded us this afternoon, even before the publication of the report he drew a distinction, which I believe to be invalid, between responsibility for policy and responsibility for administration. I believe that this is a wholly fallacious view of the nature of ministerial responsibility. I shall argue presently that there is a policy element in the event that we are considering and that it cannot be understood fully except in its policy framework. But even if all considerations of policy could be eliminated, the responsibility for the administration of a Department remains irrevocably with the Minister in charge. It is impossible for him to say to the House or to the country, "The policy was excellent and that was mine, but the execution was defective or disastrous and that has nothing to do with me." If that were to be the accepted position, there would be no political source to which the public could complain about administration or from which it could seek redress for failings of administration.

What happened was an immense administrative disaster. It was not a disaster in a peripheral area of the responsibilities of the Northern Ireland Department. It was a disaster that occurred in an area which was quite clearly central to the Department's responsibilities. If the responsibility for administration so central to a Department can be abjured by a Minister, a great deal of our proceedings in the House is a beating of the air because we are talking to people who, in the last resort, disclaim the responsibility for the administration.

I would put the question in this way to the right hon. Gentleman. If he had known on 24 September what we all know now about the state of affairs in the Maze prison, would he or would he not have taken urgent and drastic steps to correct it? Of course he would. But can he say -ought the House to permit him to say-that he was unaware of what he and we now know and that, therefore, he cannot be held responsible for what Sir James calls the malaise arising from the state of affairs of considerable duration which existed in that prison and which alone can explain what happened on 25 September last year?

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[70] cc1059-60

It is interesting to note that in this case the Opposition did not wish a resignation, at least not that of the Secretary of State. Peter Archer said that "the purpose of this debate is not to ask for resignations. An easy way for a politician to attract press coverage is to react to every problem with demands for ministerial resignations"[71] and he continued:[72]

> We must consider whether Northern Ireland would benefit if a particular Minister resigned. I should not think it right to call for the resignation of the Secretary of State. First, I do not think that he could reasonably have been expected, personally, to read the minutes. I believe that he was badly served. Secondly, the right hon. Gentleman may be embarrassed at this; but I cannot envisage him being replaced from among members of the present Administration by anyone more compassionate or more politically sensitive. I am not calling for the right hon. Gentleman's resignation.
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> The hon. Member for Chelsea (Mr. Scott) - the Under-Secretary of State for Northern Ireland-had held responsibility for only three months prior to the breakout. We can see today what a difficult and complicated situation existed. There was a multiplicity of complications. I do not seek to convict him. Lord Gowrie is in a different position. In the absence of any explanations today, it is difficult to see how he could justify remaining a member of the Government. That may no longer be germane to the future of Northern Ireland, and I am mindful that he is not here to answer the charge. Perhaps the report will be debated in another place, where he will speak for himself. But it is difficult to see what answer there can be.

Robert Maclennan (SDP) disagreed with Mr Archer:[73]

> Criticism is made of the general responsibility of the security and operations division, and although the UnderSecretary, at the top, is exculpated personally, he is described as "overworked and under-resourced". If that is so, whose fault is it, if not that of the Secretary of State? I do not take pleasure in drawing attention to what I regard as a failure of the Secretary of State, not only at the time, but today, to appreciate where the charges lie.
>
> The right hon. and learned Member for Warley, West did not draw the natural conclusion from his argument when he said that Ministers must be judged by the standard of their involvement. I believe that the Secretary of State has largely forfeited the confidence of those living in the Province who depend on him for their security. Security is a key issue in the Province, for the lack of security is the background against which political decisions about its future must be taken.

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[71] c1055
[72] c1056
[73] cc1079-80

I agree with the right hon. and learned Member for Warley, West that the Government are not so rich in talent that it is easy to find someone who can fulfil the job effectively, but I do not believe that anyone who has the right hon. Gentleman's track record can be said to be suitable for the task which he has been carrying out. Others whose policies have failed have moved to other Departments. I recall particularly the right hon. Member for Cardiff, South and Penarth (Mr. Callaghan) in 1967 who, when the pound was devalued, was moved from responsibility for the affairs of the Exchequer to the Home Office. It is a precedent which the right hon. Gentleman might have in mind, because we cannot make the political progress that we need in Northern Ireland on the elimination of violence if the security of the Province is in the hands of one who manifestly failed on the occasion of, and who has so little grasp of what led to, the breakout in September.

I hope that the right hon. Gentleman will reflect on his position. I hope that his talents, which are undoubted, and his abilities, which few would wish to challenge, will be deployed in another sphere where his capacity for conciliation and his honourable attempts to edge policies forward might be more successful than he has been in the Province. That is a prerequisite to any political advance and any re-establishment of a sense of security in the Province.

Winding up the debate, the junior Northern Ireland minister, Nicholas Scott, responded to Mr Powell's attack:[74]

The right hon. Member for Down, South (Mr. Powell) did two things. First, he outlined a constitutional convention which he might wish existed, which perhaps once did exist, but which, frankly, has not existed in politics in this country for many years. The decisions made and attitudes struck about ministerial responsibility should reflect what, the modern position is and has been acknowledged to be since the end of the second world war.

I recognise that the right hon. Member for Down, South is right about my position. It was explained to me in succinct terms when I took up my post that I was a mere emanation of the Secretary of State and that of course he was the person who really bore responsibility for these matters. If I had felt that there was any policy decision, attitude about resources or support for the prison service in Northern Ireland that I had taken I should have offered my resignation.

Similar responsibility issues arose in the 1991 Brixton Prison escape, when Kenneth Baker

[74] cc1107-8

was Home Secretary.[75]

## I. Westland: Michael Heseltine, Leon Brittan (1986)

The Westland affair is, in many ways, the most complex and confusing recent episode of ministerial responsibility.[76] Neither of the two ministerial resignations can be easily classified in the standard categories, as there appeared to be a variety of causes, major and minor, which may have led to each of the departures in the unfolding crisis. Although the central issue of the rescue of Westland, a troubled helicopter company, may have seemed to many, inside and outside Parliament, as a relatively minor political issue, it did appear to encapsulate a number of more serious political themes, not least the question of Europe which was, directly or otherwise, the cause of the loss of a number of senior ministers from the Conservative government.

Mr Heseltine, a supporter of the European rather than American rescue option, abruptly announced his resignation when he walked out of a Cabinet meeting on 9 January 1986. His resignation, which he said was attributable to the Prime Minister's ruling that all ministerial statements on Westland be cleared in advance with the Cabinet office, and to a 'breakdown of constitutional government', is not directly relevant to this Paper except to the extent to which his actions were intimately involved in the events which led to Mr Brittan's resignation. Leon Brittan had upset the House over a meeting with Sir Raymond Lygo of British Aerospace, which was seen by some as putting ministerial pressure on the European faction. A letter of complaint was sent to the Prime Minister, and Mr Brittan was made aware of this just before he went to speak to the House, but appeared to conceal his knowledge when asked about the matter. He was forced to return to the House to apologise for misleading the House, which he explained as being due to his concern for the apparent confidential nature of the letter.[77] He was also involved, to some degree, in the leaking of a letter from the then Solicitor-General apparently damaging to Mr Heseltine's case. The Defence Committee pointed out that "Mr Brittan, a Queen's Counsel, would have been aware of the special confidentiality of Law Officers' advice."[78] The episode appeared to some to contrast with the minister's concerns for the confidentiality of the earlier letter. When Mr Brittan resigned on 24 January he explained his reasons in his resignation letter: "It has become clear to me that I no longer command the full confidence of my colleagues. In the circumstances, my continued membership of your government would be a source of weakness rather than strength." During the full debate on Westland on 27 January he said:[79]

> My right hon. Friend the Prime Minister has set out the facts relating to what has been called the "Westland saga",

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[75] See Woodhouse, *op cit*, pp153-61

[76] See the Defence Committee's 1986 report, HC 519 of 1985-86, cited above, and Woodhouse, *op cit*, pp106-20.

[77] HC Deb vol 89 c870-2, 13.1.86

[78] *op cit*, para 172

[79] HC Deb vol 90 c671, 27.1.86.

and particularly the circumstances relating to the disclosure of information contained in a letter of my hon and learned Friend the Solicitor-General. She has done so in great detail. Some of the facts only she can know about whereas in other events I myself was closely involved. I can and do confirm that with regard to the facts within my knowledge, the account of my right hon. Friend the Prime Minister is correct.

As my right hon. Friend said in her statement to the House last Thursday, I made it clear to my officials at the Department of Trade and Industry that - subject to the agreement of No. 10 - I was giving authority for the disclosure of the Solicitor-General's letter to be made. I therefore accept full responsibility for the fact and the form of that disclosure.

The House knows of the extraordinary, perhaps unprecedented, circumstances in which we were working - the circumstances of the persistent campaigning of my right hon. Friend the former Secretary of State for Defence and the urgency of the need to ensure that the contents of the Solicitor-General's letter should become known. But for all that, and in retrospect, I must make it clear to the House that I accept that the disclosure of that information - urgent and important as it was - should not have taken place in that way, and I profoundly regret that it happened.

I must also make it clear that at all times the Department of Trade and Industry officials acted in accordance with my wishes and instructions. What they did was with my full authority. They are not to be blamed. Indeed, they gave me good and loyal service throughout my time as Secretary of State for Trade and Industry.

Some suggested that the resignation was designed in part to protect other ministers, including the Prime Minister, from political danger.[80]

## J. Salmonella and eggs: Edwina Currie (1988)

In a TV interview on 3 December 1988 the junior Health minister, Edwina Currie, made a comment on the impact of salmonella on egg production which led to a collapse in egg consumption by the public who appeared to interpret her comments as meaning that most eggs were infected. She took no public steps to rectify the public misunderstanding, on instruction from senior Ministers, and, after a brief period during which criticism mounted on both sides of the House, including loss of the support of the executive of the 1922

[80] See, for example, Woodhouse, *op cit*, p120.

Committee, she resigned on 16 December. That day the Minister of Agriculture, John MacGregor, made a statement on financial assistance for egg producers.

This appears to be a case of a resignation forced by the weight and breadth of opposition, both within and outwith Parliament. Following the failure of the support of her own and other senior ministers to overcome the opposition to her remaining in office over the two weeks in December 1988, it would appear that Mrs Currie's resignation was seen as necessary, or at least very helpful, if relations with the egg industry, including supportive ministerial statements on the health risk and the provision of emergency aid, were to be restored. It is also interesting in that Mrs Currie strongly resisted appearing before the Agriculture Committee which investigated the episode shortly thereafter.

## K. ERM 'Black Wednesday': Norman Lamont (1992)

At first sight there is an obvious parallel between the events of September 1992 and the devaluation crisis of November 1967, discussed above. For two years since October 1990, membership of the Exchange Rate Mechanism had been a centrepiece of the Government's economic and financial policy, and, as such, withdrawal from it, or even adjustment of sterling's value within it, had been consistently rejected publicly by ministers. When sterling was forced to leave the ERM on 16 September 1992, so-called 'Black Wednesday', Parliament was recalled for an emergency debate on what was, in effect, a confidence motion.[81] Opening the debate, the Prime Minister said that "following the developments in the foreign exchange markets over the past weeks, I thought it right to recall Parliament to debate the present position."[82] The Leader of the Opposition, John Smith, raised the accountability aspect of the situation:[83]

> The British people deserve to be told what went wrong. The Prime Minister had the responsibility to tell Parliament and the public today. We heard what he had to say-a few desultory remarks about economic policy, and a long rambling piece of nonsense about the future of the European Community.

[81] HC Deb vol 212 cc2-116, 24.9.92.
[82] c2
[83] c16

Gordon Brown demanded an apology to the people from the Chancellor[84] and considered Mr Lamont's political position:[85]

> What is the Chancellor's position this evening? The Conservatives have a traditional way of managing situations such as that in which the Chancellor finds himself. First, they will cut down his appearances in the media: sightings of him will become rarer and briefer as the Trade Secretary and the Home Secretary begin to take over. Then, the Prime Minister will repeat that the Chancellor is wonderful, marvellous, brilliant and courageous. The Prime Minister will say that the Chancellor is an air raid shelter. I understand that that is the Prime Minister's way of suggesting that the Chancellor is unassailable. Given the problems of repossessions in this crisis, it is just as well that the Prime Minister is not saying that the Chancellor is as safe as houses.
>
> Next, the Chancellor will go to the Conservative party conference and, despite all the efforts-perhaps an interest rate cut to make the Chancellor's speech more acceptable -the ovation will be shorter. Some people will not even stand; some will crouch and some will even remain sitting. Next, another meeting of the 1922 Committee will be called-of course, just to take stock. Everyone knows what happened to Sir Leon Brittan and perhaps to one other person as a result of such a meeting.
>
> Finally, newspapers will be told that the Chancellor has become semi-detached. The Downing street press office will ask newspapers to focus less on the Chancellor's successes, and more on his eccentricities and excesses such as singing in the bath on the road to an announcement that he is about to spend more time with his family. The procedure is well known in the Conservative party. It is not a question now of "whether" but "when".
>
> There is no point in the Chancellor setting monetary targets other than in negotiations with the publishers of his memoirs. There is no point in him worrying about the money supply except if he is negotiating a salary for the City board that he is about to join. There is no point in him thinking about foreign exchange rates unless he is asking about the surcharge on next year's package holiday to Italy. His diary secretary may be planning his appearance in November at the Lord Mayor's banquet, but probably at table 94. All that is left to be done in the changing of the guard is to book the day for the removal vans from number 11 and to hand in the keys of his country house at Chevening.

The Chancellor did not directly consider the issue of responsibility, at least in terms of resignation or dismissal in his winding up speech but in his resignation statement the following year, Mr Lamont said that the Prime Minister had offered him another post but that he had replied that if he wished to have a new Chancellor "it was surely right that I should leave the Cabinet."[86] He explained his misgivings about membership of the ERM during his period at the Treasury, and his unsuccessful attempts to convince the Prime Minister of his proposed remedies. He then considered his resignation:[87]

> When my resignation was announced 10 days ago, the reaction of many was that it was a delayed resignation, a resignation that should have happened on 16 September. On that day, and during the subsequent days, I did of course consider my position carefully with friends and colleagues. I was anxious to do what was right for the country and for the Government. Sir Stafford Cripps, who is rightly regarded as an honourable man, did not resign after devaluing the pound. On the other hand, Lord Callaghan, also an honourable man, did.
>
> There are three principal reasons why I decided

---

[84] c94
[85] c98
[86] HC Deb vol 226 c279, 9.6.93.
[87] c282

to stay in office. First, the events of last September were very different from those of 1967. They affected not just this country, but most of Europe. The Finance Ministers of no fewer than nine countries were forced to eat their words and either devalue or float. Five floated; four devalued; one both devalued and floated. In none did the Finance Minister resign or, to the best of my knowledge, come under any pressure to resign. Indeed, in one country the governor of the central bank was actually promoted: he became Prime Minister.

Secondly, membership of the exchange rate mechanism was the policy of the whole Government; and as the Prime Minister said, I was implementing Government policy. Our entry was not a decision in which I myself played any part. It was, however, a decision made after a whole decade of fierce public and private argument-a decision made by the previous Prime Minister, the present Prime Minister and the present Foreign Secretary.

Thirdly, I did not resign because that was not what the Prime Minister wanted. When the Prime Minister reappointed me after the general election, I told him two things: first, that I did not wish to remain Chancellor for very long; and, secondly, that he did not owe me any debt or any obligation. On 16 September he made it clear to me in writing that he had no intention of resigning himself, and that I should not do so either.

Of course, I discussed the question further with the Prime Minister subsequently. In all those discussions he emphasised that he regarded the attacks on me as coded attacks on himself, so I decided that my duty and loyalty was to the Prime Minister and that I should remain in office.

In a situation of continuing political or national crisis, a Prime Minister may refuse an immediate offer of resignation, although this may mean that resignation may be expected or accepted at some later date when the situation has been resolved. The 1967 Callaghan/devaluation episode has already been noted. In the 1982 Falklands crisis the Defence Secretary, John Nott, was persuaded by the Prime Minister not to resign along with the three Foreign Office ministers (as discussed above). As Margaret Thatcher put it in her memoirs, "I told him straight that when the fleet had put to sea he had a bounden duty to stay and see the whole thing through. He therefore withdrew his letter on the understanding that it was made public that his offer to resign had been rejected. Whatever issues might have to be faced later as a result of the full enquiry [ie the Franks Review], now was the time to concentrate on one thing only -- victory."[88]

[88] M Thatcher, *op cit,* p186.

# Appendix: 20th Century ministerial resignations

The following list was collected and classified by David and Gareth Butler in *British political facts 1900-1994*, and has been updated by the authors of this Paper in the same format. Note that it lists resignations for whatever reason, not simply those of individual responsibilities considered in this Paper:[89]

### Ministerial Resignations

Resignations from ministerial office are not easy to classify. A retirement on the ground of ill-health may always conceal a protest or a dismissal. However, there are some cases where ministers have unquestionably left office because they were not willing to continue to accept collective responsibility for some part of Government policy and some cases where the individual actions of ministers have been thought impolitic or unworthy. The following list does not include resignations made necessary because of private scandals, except when the resignation became the subject of public comment. Nor does it include even the most publicised 'refusals to serve' (e.g. I. Macleod and E. Powell in 1963).

MINISTERIAL RESIGNATIONS

| | | |
|---|---|---|
| 16 Sep | 03 | J Chamberlain (Imperial preference) |
| 4-15 Sep | 03 | C. Ritchie, Ld Balfour of Burleigh, Ld G. Hamilton, D of Devonshire, A. Elliot (FreeTrade) |
| 6 Mar | 05 | G. Wyndham (Ireland) |
| 30 Mar | 14 | J. Seely (Curragh Mutiny) |
| 2 Aug | 14 | Vt Morley, J. Burns (entry into war) |
| 5 Aug | 14 | C. Trevelyan (entry into war) |
| 19 Oct | 15 | Sir E. Carson (conduct of war in the Balkans) |
| 31 Dec | 15 | Sir J. Simon (Compulsory National Service) |
| 3 May | 16 | A. Birrell (Irish Rebellion) |
| 25 Jun | 16 | E of Selborne (Irish policy) |
| 12 Jul | 17 | A. Chamberlain (Campaign in Mesopotamia) |
| 8 Aug | 17 | N. Chamberlain (Ministry of National Service) |
| 17 Nov | 17 | Ld Cowdray (Conduct of the Air Ministry) |
| 21 Jan | 18 | Sir E. Carson (Ireland) |
| 25 Apr | 18 | Ld Rothermere (Air Force) |
| 22 Nov | 18 | Ld R. Cecil (Welsh disestablishment) |
| 12 Nov | 19 | J. Seely (role of Air Ministry) |
| 14 Jul | 21 | C. Addison (Housing) |
| 9 Mar | 22 | E. Montagu (Turkey) |
| 18 Nov | 23 | A. Buckley (abandonment of Free Trade) |
| 28 Aug | 27 | Vt Cecil (Disarmament) |
| 19 May | 30 | Sir 0. Mosley (unemployment) |
| 2 Mar | 31 | Sir C. Trevelyan (Education) |
| 6 Mar | 31 | Ld Arnold (Free Trade) |
| 9 Oct | 31 | G. Lloyd-George, G. Owen (Calling of election) |

[89] D & G Butler *British political facts 1900-1994*, 7th ed., 1994, pp68-70, as updated

| | | |
|---|---|---|
| 28 Sep | 32 | Sir H. Samuel, Sir A. Sinclair, Vt Snowden, M of Lothian, I. Foot. Sir R. Hamilton, G. White, W. Rea, Vt Allendale (Free Trade) |
| 18 Dec | 35 | Sir S. Hoare (Laval Pact) |
| 22 May | 36 | J. Thomas (Budget leak) |
| 20 Feb | 38 | A. Eden, Vt Cranborne (negotiations with Mussolini) |
| 12-16 May | 38 | Earl Winterton, Vt Swinton (Air Force strength) |
| 16 May | 38 | Ld Harlech (partition of Palestine) |
| 1 Oct | 38 | A. Duff Cooper (Munich) |
| 21 Jan | 41 | R. Boothby (Blocked Czechoslovakian assets) |
| 1 Mar | 45 | H. Strauss (treatment of Poles by Yalta Conference) |
| 26 May | 46 | Sir B. Smith (overwork and criticism) |
| 13 Nov | 47 | H. Dalton (Budget leak) |
| 13 Dec | 48 | J. Belcher (Lynskey Tribunal) |
| 16 Apr | 50 | S. Evans (agricultural subsidies) |
| 23 Apr | 51 | A. Bevan, H. Wilson, J. Freeman (Budget proposals) |
| 20 Jul | 54 | Sir T. Dugdale (Crichel Down) |
| 31 Oct | 56 | A. Nutting (Suez) |
| 5 Nov | 56 | Sir E. Boyle (Suez) |
| 29 Mar | 57 | M of Salisbury (release of Archbishop Makarios) |
| 6 Jan | 58 | P. Thorneycroft, E. Powell, N. Birch (econ. policy) |
| 24 Nov | 58 | I. Harvey (private scandal) |
| 8 Nov | 62 | T. Galbraith (Security) *(exonerated and given new office 5 May 63)* |
| 5 Jun | 63 | J Profumo (lying to the House of Commons) |
| 23 Oct | 63 | D. Freeth (private scandal) |
| 19 Feb | 66 | C. Mayhew (Defence estimates) |
| 3 Jul | 66 | F. Cousins (incomes policy) |
| 26 Jul | 67 | Miss M. Herbison (Social Services policy) |
| 16 Jan | 68 | E of Longford (delay in of raising school age) |
| 5 Feb | 68 | W. Howie (Enforcement of Party discipline) |
| 16 Mar | 68 | G. Brown (conduct of Government business) |
| 1 Jul | 68 | R. Gunter (general dissatisfaction) |
| 24 Sep | 69 | J. Bray (permission to publish) |
| 28 Jul | 71 | E. Taylor (entry into the E.E.C.) |
| 17 Oct | 71 | J. More (entry into the E.E.C.) |
| 18 Jul | 72 | R. Maudling (Poulson Inquiry) |
| 22 May | 73 | Ld Lambton (private scandal) |
| 23 May | 73 | Earl Jellicoe (private scandal) |
| 25 Sep | 74 | Ld Brayley (former business interests) |

| | | |
|---|---|---|
| 17 Oct | 74 | N. Buchan (Agricultural policy) |
| 9 Apr | 75 | E. Heffer (opposing E.E.C. membership in Commons) |
| 10 Jun | 75 | Dame J. Hart (dissatisfaction with P.M.) |
| 21 Jul | 75 | R. Hughes (incomes policy) |
| 21 Feb | 76 | Miss J. Lestor (Education cuts) |
| 21 Dec | 76 | R. Prentice (disenchantment with Government) |
| 9 Nov | 77 | J. Ashton (Governments handling of power dispute) |
| 20 Nov | 78 | R. Cryer (failure to support Kirkby Coop.) |
| 17 Jan | 79 | A. Stallard (Extra Seats for Northern Ireland) |
| 18 May | 81 | K. Speed (Defence estimates) |
| 21 Jan | 82 | N. Fairbairn (handling of a Scottish prosecution) |
| 5 Apr | 82 | Ld Carrington, H Atkins, R. Luce (Falklands) |
| 8 May | 82 | N. Budgen (Northern Ireland policy) |
| 11 Oct | 83 | C. Parkinson (private scandal) |
| 16 Nov | 85 | I. Gow (Anglo-Irish Accord) |
| 7 Jan | 86 | M. Heseltine(Westland affair) |
| 22 Jan | 86 | L Brittan (Westland affair) |
| 16 Dec | 88 | Mrs E. Currie (remarks on salmonella scare) |
| 29 Oct | 89 | N. Lawson (P.M.'s economic advice) |
| 13 Jul | 90 | N. Ridley (remarks about Germany) |
| 1 Nov | 90 | Sir G. Howe (P.M.'s attitude to Europe) |
| 22 Sep | 92 | D. Mellor (private scandal) |
| 24 Jun | 93 | M. Mates (links with Asil Nadir) |
| 7 Jan | 94 | T.Yeo (private scandal) |
| 11 Jan | 94 | E of Caithness (private scandal) |
| 7 May | 94 | M. Brown (private scandal) |
| 20 Oct | 94 | T. Smith (alleged payment for PQs) |
| 25 Oct | 94 | N. Hamilton (alleged failure to register interests) |
| 7 Feb | 95 | A. Stewart (confrontation with motorway protestors) |
| 13 Feb | 95 | C. Wardle (Government policy on EU border controls) |
| 6 Mar | 95 | R. G. Hughes (private scandal) |
| 26 Jun | 95 | J. Redwood (candidate for Party leadership) |
| 17 Oct | 95 | N. Baker (ill-health) |

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1. p108.

# The Accountability Debate: Ministerial Responsibility

## Research Paper 97/6

## 28 January 1997

The political debate on Parliamentary accountability and ministerial responsibility continues. This Paper seeks to update Members on that debate by presenting (in roughly chronological fashion) the various issues, such as the duty of ministers not to mislead Parliament, as set out in a number of debates and reports in recent years. It should be read with (i) Research Paper 96/27, 21 February 1996, which considered the general principles behind the constitutional concepts of individual ministerial responsibility and, in this context, Parliamentary accountability, and examined some notable case-studies, and (ii) the companion *The Accountability Debate* Research Papers, nos. 97/4, *Next Step Agencies* and 97/5, *Codes of guidance and Questions of Procedure for Ministers*, January 1997.

**Barry K Winetrobe**
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# Summary

The constitutional concept of individual ministerial responsibility is a central notion in the 'Westminster model' of Parliamentary democracy. Yet, because of the unwritten (or uncodified) nature of our constitution, it remains an ill-defined and flexible doctrine, open to interpretation at each particular case when it may be said to be relevant. Research Paper 96/27, 21.2.96, *The Individual Responsibility of Ministers: An Outline of the Issues*, examined the general principles and practice of the concept, and summarised a number of the major relevant 'case studies' since Crichel Down in 1954.

This Paper seeks to trace the recent development of the doctrine by reference to a series of reports/debates, in Parliament and from other bodies such as the Nolan Committee and the Scott Inquiry. This has been driven by at least two major factors:

(a) the changes in the structure and operation of the Civil Service, including the creation of *executive agencies* under the Next Steps Initiative (on which see the companion Research Paper 97/4, *The Accountability Debate: Next Steps Agencies*, Jan 1997).

(b) a number of political controversies giving rise to calls, for example, for ministerial resignations, of which the 'arms-for-Iraq' affair investigated by the Scott Inquiry is the most recent and, perhaps, most significant.

Issues which are considered as part of this mainly chronological survey include the obligation of Ministers to account fully to Parliament and not to mislead it; the powers of select committees to enforce their scrutiny function (see generally, Background Paper 298, *Select Committees*, Sept 1992); the situations where the sanction of ministerial resignation is appropriate, etc.. The Revision of existing documents, especially *Questions of Procedure for Ministers* (hereafter "*QPM*"), and the production of other relevant codes/guidance, is also examined. Other than structural developments such as agencies, the present debate has echoes of long-running arguments about the nature of accountability, which was the subject of intense debate between Parliamentary select committees and the Government at the time of the Westland affair in the mid-1980s.

The Government recently summarised its initiatives on accountability in Roger Freeman's 22 January Written Answer on its response to the Scott Inquiry:

> The Government provided a Memorandum to the Public Service Committee on 29 March (HC 313-III, setting out the Government's understanding of the requirements of Ministerial Accountability and the provision of information to Parliament, as part of the Committee's consideration of Ministerial Accountability and Responsibility. Following receipt of the Committee's report, the Government published its response on 7 November [WA 594] reaffirming its commitments to arrangements under which it will remain open and fully accountable. Annexed to the response [HC 67] was "New Guidance to Officials on Drafting Answers to Parliamentary Questions" which makes clear that when information is refused in response to Parliamentary Questions reasons should be given relating to the exemptions laid down in the "Code Of Practice on Access to Government Information".[1]

This Paper should be read in conjunction with the companion *The accountability debate* Papers, Research Papers 97/4 and 97/5.

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[1] HC Deb Vol 288 c601, 22.01.97, extract

# CONTENTS

# Introduction

This paper analyses the recent debate on ministerial responsibility and accountability by reference, in general in chronological order, to recent reports, debates, speeches and statements.

# IThe July 1993-94 TCSC Interim Report, *The Role of the Civil Service*[2]

The report contained the following section on responsibility and accountability:

24.During the last Parliament the Government told the then Committee that the management reforms in recent years, and the Next Steps programme in particular, left the traditional doctrine of Ministerial accountability unaffected. This position was reaffirmed by Mr Mottram and Sir Robin Butler, who told us that the principle of accountability through Ministers to Parliament remained valid despite the management changes in the Civil Service. There have been changes in practice: Agency Chief Executives now answer many Parliamentary questions and their replies are published in Hansard. Some witnesses to the Sub-Committee expressed scepticism about whether the principle of accountability through Ministers was in fact being applied satisfactorily in practice. Such concerns have also been voiced in the House of Commons.

25.The Chancellor of the Duchy of Lancaster has argued that, as a result of the Next Steps initiative and other public service reforms, there is now a clearer distinction between "responsibility", which can be delegated, and "accountability", which remains firmly with the Minister". However, it has been suggested to the Sub-Committee that the Next Steps programme has not, in reality, led to a clear division of responsibilities between Chief Executives and Ministers. This raises the question of whether the quasi-contractual relationship between Agencies and their Ministers should be replaced by a more formal contractual relationship.

26.It was argued in evidence to the Sub-Committee that the problems of accountability and responsibility in the executive field are magnified in the area of policy advice. Several witnesses saw a need for a clarification of the precise division of responsibilities between Ministers and Civil Servants in this field, which, it was argued, had become more uncertain in recent years.' One proposed solution was a formal contract or other document stating the responsibilities of named Civil Servants for giving policy advice, against which their performance could be measured or at least judged.

27.Following the establishment of departmental Select Committees in 1979, there is now more direct contact between Civil Servants and Parliament. The implications of this for accountability have been considered on previous occasions by our predecessors and by the Liaison Committee, which examined how far Civil Servants could be said to be accountable to Parliament and its Committees for their actions and conduct. It was suggested to the

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[2] 6th report of the Treasury and Civil Service Committee, 1992-93, HC 390, July 1993. In this Paper, all footnotes are deleted from reproduced extracts, unless stated otherwise.

Sub-Committee that the guidance for Civil Servants on appearing before Select Committees-known as the Osmotherly Rules - unnecessarily constrained Parliamentary oversight of the Civil Service and the executive more generally, although others, including Mr Waldegrave, argued that the rules represented an expression of the doctrine of Ministerial accountability. It was also suggested to the Sub-Committee that attempts by Parliament to participate in revision of the Osmotherly Rules would not be in Parliament's interest, since it would be an acceptance of limits on the right of Select Committees to ask questions on certain matters and would therefore restrict their exercise of the rights and privileges of the House of Commons.

28. In evidence so far received by the Sub-Committee, the possible value of an extension of avenues of accountability beyond Parliament has also been mooted. In the area of service provision, it has been suggested that direct forms of redress and statements of entitlement properly enforceable through the courts might have important roles to play in providing accountability for Civil Service functions, although some witnesses pointed to drawbacks which might arise from an excessive stress on such an approach.

## II The November 1994 TCSC Report, *The Role of the Civil Service*[3]

The Treasury Committee considered the nature of accountability in some detail "because its precise meaning and application gave rise to greater uncertainty in the course of the inquiry than any other principle." It sought "to disentangle some of the confusion surrounding this concept and set down what we see as the basic principles of accountability." (para. 118). It tackled the Government's formulation in terms of a distinction between *accountability* and *responsibility*, as expounded by the Head of the Civil Service, Sir Robin Butler, and others (para. 120):

According to the Government, Ministerial accountability to Parliament is a Minister's ultimate duty to account to Parliament for the work of his Department: "the Minister in charge of a Department is the only person who may be said to be ultimately accountable for the work of his department". In the Government's view, it means that "in the last resort ... Ministers can be challenged about any action of the Civil Service". The Government contends that since civil servants act on behalf of Ministers-except in specified cases where statutes confer powers or responsibilities directly upon civil servants-Ministers alone are accountable to Parliament. In the view of the Government, civil servants are accountable to Ministers, and when they give evidence to Select Committees, they do so "on behalf of Ministers". According to the Armstrong Memorandum, even the appearance of Accounting Officers before the Committee of Public Accounts is "without prejudice to the Minister's responsibility and accountability to Parliament in respect of the policies, actions and conduct of his Department". Responsibility, according to the Government, has a separate meaning in this context which "implies direct personal involvement in an action or decision, in a sense which implies personal credit or blame for that action or decision". In the view of the Government, a Minister is *accountable* for all the actions and activities of his Department, but is not *responsible* for all the actions in the sense of being blameworthy; a civil servant is not directly accountable to Parliament for his actions, but is responsible for certain actions and can be delegated clearly defined responsibilities.

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[3] 5th report of the Treasury and Civil Service Committee, 1993-94, HC 27, November 1994

The Committee noted that the Government believed that its approach was consistent with practice, including the extreme sanction of ministerial resignations, throughout this century. Ministers are not expected to resign over every departmental mistake though they are responsible to Parliament for relevant corrective action, and the resignation in the 1954 Crichel Down case was the exception that proves the rule, (as classically set out by Sir David Maxwell Fyfe in the debate on that case).[4] This view was open to two main objections:

*(a) "it is more novel than its advocates are prepared to admit, that it does not have sufficient authority and acceptance to be said to represent a 'constitutional convention.'"* There appeared to be a belief that at one time it was accepted that ministers were responsible for all the actions of their officials, but that, because of the growth and complexity of the public service, there had been a change of doctrine. (para. 122)

*(b) "even if the Government's description of the doctrine were correct, it is a fundamentally Victorian conception which is no longer appropriate to modern circumstances."* In the past select committees have suggested that this could be dealt with by extending the principle of direct accountability of officials. (para. 123)

The Treasury Committee declared that "it is clear that any effective application of the doctrine [of ministerial accountability] depends to a considerable extent upon two elements: the honesty and integrity of Ministers and civil servants in accounting to Parliament and the public for their decisions and actions; the powers and effectiveness of Parliament, and of the Select Committees of the House of Commons in particular, in holding the Executive to account." (para. 123) On *honesty and integrity* the report considered the requirement in *QPM* for ministers to inform Parliament fully and not to mislead it, especially in the light of the 'arms-for-Iraq' affair and the evidence to the Committee of William Waldegrave (then Public Service Minister) on misleading Parliament. Mr Waldegrave had cited, as an example of this, remarks to the House by the then Chancellor of the Exchequer, James Callaghan, before devaluation in November 1967.[5] On *Parliamentary accountability*, the report examined the power of select committees to scrutinise the Executive, in particular, to question effectively officials in the context of the 'Osmotherly rules'[6], Government guidance on how they should act when before committees. The Committee's conclusions on Parliamentary accountability were as follows:

> 132. An effective system of Parliamentary accountability of the Executive is an essential component of a Parliamentary democracy. We believe that an effective system depends upon two vital elements: clarity about who can be held to account and held responsible when things go wrong; confidence that Parliament is able to gain the accurate information required to hold the Executive to account and to ascertain where responsibility lies. We are not convinced that the explanation of the doctrine of Ministerial accountability and its implications as presently adumbrated by the Government fully conforms to these

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4 The relevant section of Sir David Maxwell Fyfe's speech is reproduced as Appendix A to this Paper. On Crichel Down see section IIA of Research Paper 96/27

5 See paras 125-7, and Research Paper 96/27, pp 22-3

6 On which see Research Paper 97/5 '*The Accountability Debate - Codes of guidance and Questions of Procedure for Ministers*'

requirements. **We find the Government's attempts to draw a sharp distinction between accountability, which cannot be delegated by Ministers, and responsibility, which can, unconvincing**. The implication of this distinction is that Ministers retain ultimate responsibility for controlling the system through which information about the allocation of responsibility on a particular matter is made available to Parliament. We believe that it is both possible and desirable to move towards a system in which responsibility and accountability are more closely aligned in clearly defined circumstances. We make particular proposals towards this end below.

133. Lord Callaghan attached importance to clarifying the circumstances in which a Minister should resign, although he noted that the influence of the Prime Minister of the day and the feelings of the Minister himself would always be important factors. Mr Waldegrave believed that such circumstances were difficult to categorise and that Ministerial resignations would continue to be decided on a case by case basis. Sir Robin Butler was critical of the "rather foolish game of pursuing resignations", which was "counter-productive" and debased the currency. Ministerial preparedness to resign when Ministerial responsibility for failure has been established lies at the very heart of an effective system of Parliamentary accountability and, as Mr Waldegrave acknowledged, Select Committees have an important role in determining the allocation of responsibility. In seeking to perform this function and their wider role, Select Committees might well require more information than might readily be made available in accordance with the Executive's own interpretation of the doctrine of Ministerial accountability. The recent Report by the Foreign Affairs Committee on the Pergau Hydro-Electric Project demonstrates the range of information which can be made available by the Government to a determined Select Committee. It would not be appropriate for Select Committees to seek to negotiate new rules to replace the Osmotherly Rules, because they are only to be regarded as the Government's opening negotiating position in its dealings with Select Committees. The precise implications of the doctrine of Ministerial accountability for the conduct of civil servants in relation to Select Committees is unlikely to be agreed between the Government and Select Committees. It should be borne in mind that an attempt to determine the precise level of Ministerial responsibility may sometimes involve an assessment of the extent of the responsibility of others. We note that the structure of the Civil Service and of the Executive more generally has changed considerably since the Procedure Committee last conducted a review of the departmental Select Committees. We recommend elsewhere in this Report measures which should be taken by the Government to enhance the accountability of the Executive to Parliament. We believe that it might also be appropriate for the Procedure Committee to undertake an inquiry to consider what commensurate actions should be taken by the House of Commons in response to the changing structure of Government.

134. Effective accountability depends in considerable measure upon adherence by Ministers and civil servants to the duty set out in *Questions of Procedure for Ministers* "to give Parliament, including its Select Committees, and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament and the public". We are aware of considerable public cynicism about the honesty of politicians generally and in this context concern about the honesty and integrity of Ministerial statements to and answers in Parliament might seem misplaced. However, the knowledge that Ministers and civil servants may evade questions and put the best gloss on the facts but will not lie or knowingly mislead the House of Commons is one of the most powerful tools Members of Parliament have in holding the Executive to account. Not only is the requirement laid down clearly in Government guidance to Ministers, it is a requirement which the House of Commons itself expects from all its Members, departure from which standard can be treated as a contempt. We accept that the line between non-disclosure and a misleading answer is often a fine one, not least because the avoidance of misleading answers

requires not only strict accuracy but also an awareness of the interpretations which could reasonably be placed upon an answer by others, but Ministers should be strengthened in their determination to remain the right side of that line by certainty about the consequences of a failure to do so. **Any Minister who has been found to have knowingly misled Parliament should resign.**

In the context of its analysis of accountability, the Committee also examined forms of non-Parliamentary accountability, such as judicial review, and the Parliamentary Ombudsman, and the issue of open government. (see paras 135-41).

## III The January 1995 Government response: *Taking forward continuity and change*[7]

The Government's response to the TCSC report was published in January 1995, much of which dealt with internal civil service issues and the relationship between ministers and officials.[8] On recommendations on accountability, the Government responded (pp27-9):

**16. We find the Government's attempts to draw a sharp distinction between accountability, which cannot be delegated by Ministers, and responsibility, which can, unconvincing (paragraph 132).**

There is much in the Committees's analysis of accountability with which the Government can agree. The accountability of the Civil Service through Ministers to Parliament and the constant pressure for improvement arising from Parliamentary scrutiny of the executive are important facts of life for all civil servants.

It may be that some of the difficulty the Committee finds with the Government's analysis is that the words 'accountability' and 'responsibility' have been used ambiguously and interchangeably in many authoritative constitutional texts, as earlier evidence pointed out. In the Government's view, a Minister is 'accountable' to Parliament for everything which goes on within his Department, in the sense that Parliament can call the Minister to account for it. The Minister is responsible for the policies of the Department, for the framework through which those policies are delivered, for the resources allocated, for such implementation decisions as the Framework Document may require to be referred or agreed with him, and for his response to major failures or expressions of Parliamentary or public concern. But a Minister cannot sensibly be held responsible for everything which goes on in his Department in the sense of having personal knowledge and control of every action taken and being personally blameworthy when delegated tasks are carried out incompetently, or when mistakes or errors of judgement are made at operational level. It is not possible for Ministers to handle everything personally, and if Ministers were to be held personally responsible for every action of the Department, delegation and efficiency would be much inhibited. It was for this reason that evidence suggested the use of the word 'accountable' for the first of these two meanings of the word responsible, to distinguish it from the second.

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7 Cm 2748

8 These issues are considered in detail in Research Paper 97/4, *The Accountability Debate: Next Steps Agencies*

This is not a new doctrine. As the Committee notes, Sir David Maxwell-Fyfe said in the Crichel Down debate in 1954 that 'a Minister is not bound to defend action of which he did not know, or of which he disapproves.' In the Government's view this remains the position. The Minister's accountability in such situations is to investigate and give an account of what has occurred. to see that disciplinary action is taken as appropriate, and to take action to avoid a recurrence. (It is not clear that Sir Thomas Dugdale's resignation was in fact on account of action taken by officials without his knowledge or outside a policy framework set by Ministers, and the analyses of commentators who have studied the documents of the time bring into question whether this resignation was indeed "an exception that proved the rule' or bears the construction put on it in paragraph 3.13 of the Committee's 1985-86 report, quoted in paragraph 122.)

The Government's view remains that Ministers are accountable to Parliament for the policy, administration and resources of their departments, including operational action, successes and mishaps, whatever the extent of delegation and whether they were personally involved or not. This is not incompatible with the extensive role of civil servants in giving evidence to Select Committees-but such evidence giving does not and should not exclude Ministers from ultimate accountability to Parliament for the whole range of a department's business. Nor does it entail that Ministers must be expected to be personally responsible, in the sense of being creditworthy or blameworthy, for every action of their department.

While it is open to MPs and Committees to establish the facts, to find credit or fault and to criticise, it is not in the end for them to give instructions to officials as to how policies should be determined or departments should be run, or to discipline officials. The line of accountability of officials runs through Ministers to Parliament. If Parliament is not satisfied with the account given, the ultimate sanctions are the motion of no-confidence or the withholding of supply

The Government has issued a new edition of the 'Osmotherly Rules', now entitled 'Departmental Evidence and Response to Select Committees.' The Government notes the analysis of the Committee in paragraph 128-131 of its report. Parliamentary endorsement of these rules is not claimed or expected. The Government hopes nevertheless that the relationship between departments and the Select Committees will continue to be a generally constructive one, and is determined for its part to contribute to the success of the Select Committee system.

**17. We consider that any Minister who has been found to have knowingly misled Parliament should resign (paragraph 134).**

As the Prime Minister made clear in his letter to the Chairman of the Sub-Committee of 5 April 1994:

> "It is clearly of paramount importance that Ministers give accurate and truthful information to the House. If they knowingly fail to do this, then they should relinquish their positions except in the quite exceptional circumstances of which a devaluation or time of war or other danger to national security have been quoted as examples."

# IV The May 1995 Nolan Report[9]

[9] Cm 2850

While the main subject matter of the first report of the Nolan Committee -- standards in public life -- may appear to be directly relevant to the issues discussed in this Paper, the inquiry and report did consider accountability issues. 'Accountability' (though expressed in terms of the public rather than Parliament) was one of its *seven principles of public life,* and others such as 'openness', in the way they are defined, are clearly relevant also.

A key conclusion of the report was that "there is a need for greater clarity about the standards of conduct expected from Ministers. The Prime Minister should draw up specific guidance on this subject, based on the principles set out in this report." (p.46) The report examined *QPM,* and recommended that a code of guidance for ministers be produced, either as part of *QPM* or as a separate document. The code would require ministers to abide by certain "essential principles" of ministerial conduct, including (p.49):

*(ii) Ministers must not mislead Parliament. They must be as open as possible with Parliament and the public;*
*(iii) Ministers are accountable to Parliament for the policies and operations of their departments and agencies.*

The Committee considered the value of such a code (p.50):

17. Setting out these principles for Ministers might seem unnecessary or obvious. We do not share that view. The Government has accepted the proposition that there should be a code of conduct for civil servants. It is difficult to see why the same approach should not apply to Ministers. The advantages of a code can be seen by considering the number of Ministers who have had to resign since the war because of avoidable errors of judgement. We do not, though, believe that express sanctions need to be set out to prevent Ministers from doing wrong. Public and media scrutiny of ministerial conduct in the light of the principles we have listed above is likely to be far more effective. Ministers themselves will be able to judge possible courses of action against these principles, supported by the useful rules-of-thumb recommended to us by Lord Howe: 'Would you ... feel happy to see all the relevant facts of any transaction or relationship fully and fairly reported on the front page of your favourite newspaper', and 'If in doubt, cut it out'.

# V The February 1996 Scott Report and the Parliamentary debates[10]

Ministerial accountability and responsibility was at the heart of Sir Richard Scott's long-running inquiry into the 'arms-for-Iraq' affair. He returned to the issue in his Blackstone lecture at Oxford in May 1996.[11] In his report he tested ministers' actions in relation to Parliament by reference to the guidance contained in paragraph 27 of *QPM,* the duty to provide as full information as possible to, and not to deceive or mislead, Parliament or the

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[10] HC 115, 1995-96, section K8 (vol IV, pp 1799-1806), February 1996; HC Deb vol 272 cc 589-694 HL Deb vol 569 cc 228-1358, 26.2.96. As with the rest of this Paper, only accountability to Parliament, rather than directly to the public, is considered here

[11] See Sir R Scott, "Ministerial accountability", 1996 *Public Law* 410-26

public. "The obligation of Ministers to give information about the activities of their departments and to give information and explanations for the actions and omissions of their civil servants, lies at the heart of Ministerial accountability."[12] Thus if ministers withhold information, "it is not a full account and the obligation of Ministerial accountability has, *prima facie*, not been discharged. Without the provision of full information it is not possible for Parliament ... to assess what consequences, in the form of attribution of responsibility or blame, ought to follow ..... A failure by Ministers to meet the obligations of Ministerial accountability by providing information about the activities of their departments undermines, in my opinion, the democratic process." (para K8.3)

He also examined the Government's practice on the provision of information to Parliament on arms sales, and recommended that this should be reviewed,[13] and, in conclusion, considered Sir Robin Butler's distinction (given in evidence to his Inquiry, and to the 1994 Treasury Committee inquiry[14]) between 'accountability' and 'responsibility'(K8.15-16):

> Ministerial "accountability" is a constitutional burden that rests on the shoulders of Ministers and cannot be set aside. It does not necessarily, however, require blame to be accepted by a Minister in whose department some blameworthy error or failure has occurred. A Minister should not be held to blame or required to accept personal criticism unless he has some personal responsibility for or some personal involvement in what has occurred. The kernel of Sir Robin's point, I think, is that the conduct of government has become so complex and the need for Ministerial delegation of responsibilities to and reliance on the advice of officials has become so inevitable as to render unreal the attaching of blame to a Minister simply because something has gone wrong in the department of which he is in charge. For my part, I find it difficult to disagree.
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> **K8.16** Sir Robin's distinction between "accountability" and "responsibility" has important constitutional implications and does not have approval from all quarters. His point, however, that a Minister cannot reasonably be held to blame for things done or omitted within his department of which he knew nothing at the time and could not have been expected to have foreseen or prevented, seems to me to have an important bearing on the obligation of Ministers to provide information to Parliament. If Ministers are to be excused blame and personal criticism on the basis of the absence of personal knowledge or involvement, the corollary ought to be an acceptance of the obligation to be forthcoming with information about the incident in question. Otherwise Parliament (and the public) will not be in a position to judge whether the absence of personal knowledge and involvement is fairly claimed or to judge on whom responsibility for what has occurred ought to be placed. Any re-examination of the practices and conventions relied on by Government in declining to answer, or to answer fully, certain Parliamentary Questions should, in my opinion, take account of the implications of the distinction drawn by Sir Robin between Ministerial "accountability" and Ministerial "responsibility" and of the consequent enhancement of the need for Ministers to provide, or to cooperate in the provision of, full and accurate information to Parliament.

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[12] Report, para. K8.2

[13] See now *Ministerial accountability the release of information on defence related exports: a background note*, February 1996

[14] See Evidence, 9.2.94; and section II, 'The November 1994 TCSC Report, *The Role of the Civil Service*,' and Appendix B of this Paper

In his Blackstone lecture, Sir Richard said that he had come to understand that too much attention had been concentrated on the 'resignation' aspects to the detriment of consideration of less dramatic, but important aspects, analysing this by reference to Sir David Maxwell Fyfe's 1954 Crichel Down speech,[15] especially its last two categories. Where an official has not made a serious error, Sir David had said that a minister should accept responsibility although not personally involved. Sir Richard assumed that this "would require the minister to bear the brunt of any criticism without seeking to deflect the criticism on to his civil servants and to accept an obligation to remedy, so far as might be practicable, what had gone wrong. It is a feature of this category of case that a personally blameless minister would be apparently required to take the blame", although blame would often be minimal and not harm the minister's reputation or career, or require resignation.[16]

He then considered the fourth Maxwell Fyfe category, where a civil servant has acted reprehensibly despite the minister's lack of knowledge or disapproval. In such cases Sir David had said that a minister had no obligation to endorse or defend such action, but would remain "constitutionally responsible to Parliament for the fact that something had gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship." Sir Richard questioned the nature of such 'constitutional responsibility', and the belief in recent times, such as by Enoch Powell in the Maze Prison escape episode,[17] that resignation is still required: (pp412-3)

> The assertion that constitutional accountability remains with the Minister in charge is clearly right, but the conclusion that a personally blameless minister must resign if a serious error is committed within his department seems to me to be something of a non-sequitur. The conclusion is certainly not self-evident. Even in the *Crichel Down* case it was not clear that Sir Thomas Dugdale's resignation was brought about by his constitutional responsibility for the acts of the civil servants in his department rather that by the political misfortune that he disagreed with the Government's approach to the affair and that he had been the object of severe criticism by the 1922 Committee. His resignation does not, in my opinion, assist in elucidating the nature of the "constitutional responsibility" that Sir David Maxwell Fyfe regarded as attaching to a blameless minister.

Sir Richard examined Sir Robin Butler's famous distinction between 'accountability' and 'responsibility', as presented in his evidence to the 'arms-for-Iraq' Inquiry, and Sir Robin's belief that even Lord Carrington's Falklands resignation was (whatever the political requirements may be) constitutionally unnecessary.[18] In Sir Richard's view, Sir Robin's opinion "does appear to correspond to post-war practice. It is notable that, in modern times at least, ministerial resignations, save and except that 'scapegoat' type of case, are attributable to political and personal pressures rather than to the dictates of any constitutional principle." (p.414) Resignations (or demands for such) due to events in ministers' private lives had nothing whatever to do with the constitutional doctrine of responsibility, neither had

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[15] see Appendix A of this Paper

[16] "Ministerial accountability", *op cit,* p.411

[17] On which see section IIH of Research Paper 96/27

[18] On which see section IIG of Research Paper 96/27

resignations due to the doctrine of *collective* responsibility,[19] and concluded that "indeed apart from the case of Lord Carrington, and, perhaps, the case of Mr Leon Brittan, it is difficult to identify a single minister who in the post-war period has resigned on account of departmental errors committed within the department for which he or she was responsible. That is not to say that departmental errors have not been committed under every administration, nor that some of them have not been serious ones. But resignations have not followed. It is political pressures, which may build up without any such error having occurred, that have impelled resignations. In the absence of sufficient political pressures resignations are not brought about by departmental errors." (p.415)

He noted the concern about this expressed by some, including Parliamentary committees,[20] that is, that "the causal divorce between departmental error and ministerial resignation has been portrayed as a damaging weakness of the constitutional doctrine of ministerial accountability." In particular he disagreed with the Treasury Committee's view that 'ministerial preparedness to resign when Ministerial responsibility for failure has been established lies at the very heart of an effective system of parliamentary accountability': "It is not, I suggest, the willingness of ministers to resign that lies at the heart of ministerial accountability but, rather, the obligation of ministers to give, or to facilitate the giving, of information about the activities of their departments and about the actions and omissions of their civil servants."[21] This was not, in his view, a "novel perception", citing the Crichel Down formulation in support. He agreed with the Treasury Committee's 1994 view that the constitutional doctrine depended, *inter alia*, on Parliament's access to information: "the key to ministerial accountability must surely be the obligation to give information .... Indeed the point is, in my opinion, almost self-evident. If, and to the extent that, the account given by a minister to Parliament, whether in answering parliamentary questions, or in a debate or to a select committee, withholds information on the matter under review, the account given is not a full account and the obligation to account for what has happened has, prima facie, not been discharged." He went on to concede that everyone did accept that there were circumstances in which full, or even any information could not be given:[22]

> But the necessity, which will sometimes arise, of withholding in the public interest information from Parliament and from the public does not alter the fact that to do so involves a dilution, *pro tanto,* of the obligations imposed by ministerial accountability. It follows that the withholding of information by an accountable minister should never be by rote, should never be based on reasons of convenience or for the avoidance of political embarrassment, and should always require special and clear justification.

Other than these rare cases "the proposition that it is acceptable for a minister to give an answer that is deliberately incomplete is one which, in my opinion, is inconsistent with the

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[19] He cited as examples, those of George Brown in 1968 and Michael Heseltine in 1986. See generally Research Paper 96/55, 30.4.96

[20] He cited the Treasury Committees reports in 1986 and 1994, as examples.

[21] See its 5th report of 1993-94, HC 27, para. 132 (on the report, see section II above 'The November 1994 TCSC Report, *The Role of the Civil Service*')

[22] *op cit,* p.416. On these issues, see the analysis of the Public Service Committee in its July 1996 report, summarised in section VII of this Paper 'The July 1996 Public Service Committee Report'

requirements of the constitutional principle of ministerial accountability. Half the picture can be true, as one witness said. But the audience does not know that it is seeing only half the picture. If it did know, it would protest. If there were a reason for the withholding of a full answer, it would ask to be told what it was. The reason might, of course, be a good and sufficient one. But to supply information which is known to be less than complete to an audience that does not know it is less than complete involves, in my opinion, a failure to comply with the requirements of ministerial accountability." (p.422). Turning to the provision of information to select committees, Sir Richard said (p.422):

> Problems of accountability arise, also, in connection with inquiries conducted by Parliamentary Select Committees. Sometimes, perhaps often, first-hand information about factual matters inquired into can be given by officials or ex-officials but not by the minister himself. In such a case it would naturally be supposed that the minister would co-operate with attempts by the select committee to take evidence from the individuals with the first hand knowledge. This supposition is not necessarily correct..... How can it be regarded as compatible with a minister's obligation of accountability to Parliament for a minister to reserve the right to instruct officials with knowledge of the matter being inquired into to decline to answer factual questions from the committee or to instruct officials what answers to give to factual questions?

He concluded from his survey, based on his experiences during the 'arms-for-Iraq' inquiry, that there was a need for a "comprehensive review" by both Parliament and the Government "first, of the list of subjects on which government's refusal to answer questions is still justifiable and, secondly, of the conventions governing the obligation of ministers to provide or facilitate the provision of information to select committees." (p.424) Government would need to review how it can abide by its own guidance in paragraph 27 of *QPM*, and ensure that its obligations are met by reference to public and clear guidelines, such as published codes of practice and not, for example, to unclear general statements such as 'established Parliamentary conventions'.

Sir Richard claimed that "the consequence of a failure by ministers to discharge their obligations of accountability will be damage to the democratic character of our political institutions." But democracy was not an absolute: institutions and concepts evolve, and not always in a way supportive of democracy. The present system of answerability to the public once every 4-5 years through a general election, means that at that stage "the public is expected and entitled to make a judgment on the record of the administration in the preceding period. How is the public to do so, except on the basis of full information? .. A failure by ministers to meet the obligations of ministerial accountability by providing information about the activities of their departments engenders cynicism about government and undermines, in my opinion, the democratic process." (p.425)

He also thought there was a need to review the machinery which enforced or monitored government's accountability obligations. Ministers must accept the need to be as forthcoming as possible with relevant information, and when they do not supply 'full information' they should explain why, and not rely on general reasons such as the 'public interest'. "Consideration should be given to the appointment of a senior officer of Parliament tasked

to inquire into the adequacy of refusals on public interest grounds to supply information. Such an officer could report to Parliament at regular intervals, say twice a year, and would need to be given free access to all government documents. I believe the existence of such an officer, an officer of Parliament not of the executive, would play an important role in limiting the use of the 'public interest' reason for a refusal to give information." (p.426)

Secondly, "select committees of Parliament should be given and be prepared to use teeth to enforce the provision of relevant information to them." Parliament's powers to do so, which were similar to the courts', had fallen into disuse. Use or threat of Parliament's contempt powers could have produced a more positive outcome in some recent cases, such as Leon Brittan's examination by the Defence Committee over the leak of the Solicitor-General's letter in the Westland affair.[23] A final reform could be the transformation of the constitutional conventions into statutory form, thus giving the final word on particular cases to the courts rather than Parliament: "the constitutional obligation, at present non-justiciable, would have become justiciable. Rights would have been created that it would be the duty of the court to enforce." He recognised that this reform was debatable: "But it must be recognised that if the obligations of accountability are not accepted by ministers, both in principle and in practice, as binding, and are not, where necessary, enforced by Parliament, the remedy can only lie in reducing at least that part of our unwritten constitution into statutory form." (p.426).

In the Commons debate on the Scott Report, Ministers adopted the argument that they had put forward in the initial statement on the publication of the Report earlier in February, that it had 'acquitted' ministers of the 'charges' that they had secretly plotted to arm Iraq and had attempted to suppress documents which could have led to a miscarriage of justice.[24] The President of the Board of Trade, Ian Lang, admitted that mistakes had been made and lessons would be learnt. He defended the Government's record on 'open government', including the establishment of the departmental select committee system in 1979, and the publication of *QPM* in 1992, and said that existing practices would be reviewed especially on arms sales information (although the Government was still opposed to a general Freedom of Information Act). Showing that "the Government are also willing to consider positively Sir Richard Scott's wider views about ministerial accountability and responsibility," he also invited the Public Service Committee to extend its existing investigation of accountability in relation to agencies to more general issues, on which the Government would submit evidence.[25]

For the Opposition, the Shadow Foreign Secretary, Robin Cook, agreed with the need for a review of ministerial accountability, but was surprised that, 18 days after he first saw the report, Mr Lang "could still produce no proposal as to what might be done to strengthen ministerial accountability," other than offer to give evidence to a select committee. (c.604) He claimed that the Scott Report had found the Government 'guilty' of the 'charges' the Opposition had made over the past 3 years, and attacked ministers' approach of disagreeing

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[23] on which see section II.I of Research Paper 96/27

[24] HC Deb vol 272 cc 589-694, 26.2.96

[25] c593. On the Committee's report and the Government's response, see below

with Sir Richard's findings (on matters such as misleading Parliament on the guidelines, and on PII certificates) where he had criticised their actions. He concluded (c.617):

> The first function of Parliament is to hold the Government to account. The first duty of hon. Members is to defend the rights of Parliament against any Government who threaten those rights. That is why Parliament cannot allow the current Government to ignore the findings of the Scott report: hon. Members were designedly misled, and Ministers consistently failed in their duty of accountability to the House.
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> Of course the hon. Members on the other side of the Chamber were elected as Conservative Members, but that does not lessen their obligation to defend the rights of Parliament. On the contrary, there was a time when insisting on individual responsibility and upholding the sovereignty of Parliament would have been seen as conservative values.
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> Tonight Parliament has the opportunity to insist that Ministers must accept responsibility for their conduct in office and to assert that the health of our democracy depends on the honesty of Government to Parliament. That is what we shall vote for tonight. Of course Conservative Members have enough votes to defeat us. If they vote to reject those principles, however, they will demonstrate not only that the two Ministers who have been mostcriticised in the Scott report should leave office, they will convince the public that this is an arrogant Government who have been in power too long to remember that they are accountable to the people, and that the time has come when the people must turn them all out of office.

Tony Benn, who had opposed the establishment of the Scott Inquiry as an abdication of responsibility by Parliament, asked what would have been achieved if the two Ministers under attack had resigned, in terms of Parliamentary control of the arms trade. For the Liberal Democrats, Menzies Campbell attacked "a Government who refuse to accept any responsibility ... Neither the Ministers involved nor the Prime Minister, who carries ultimate responsibility, will acknowledge any fault, " and concluded that "by convention, they had to abide by the constitutional principle of ministerial responsibility. It was not the absence of rules or principles that allowed Ministers to behave as they did; it was a flagrant disregard for those rules and principles."[1] Senior Conservative ex-ministers supported the Government's approach on issues such as the status of the guidelines and the need or otherwise for any alleged revisions to be revealed to Parliament. However Richard Shepherd said that the affair showed the need for a Freedom of Information Act and more powerful select committees, and

Quentin Davies said that, as ministers had misled Parliament, Mr Waldegrave "must take responsibility for that mistake. Whatever happens tonight, it must be made clear that someone is taking responsibility and that the principle has been restored that Ministers remain fully accountable to the House of Commons."[2]

Winding up for the Opposition, Margaret Beckett said (c.683):

> Whether we like it or not, I believe that Sir Richard Scott has put Parliament itself on trial. He has flung down a gauntlet to the House. In his judgment, he tells us, after three years of careful study, that Parliament was misled. In his judgment, Ministers failed, and failed repeatedly and deliberately, in their duty of accountability to the House, to all those whom we are elected to serve, and hence, in his words, to our democracy itself. Yet Ministers, by their argument and rhetoric, are asking us not just to accept but to applaud the way in which they have acted in our name.

For the Government, the Chancellor of the Duchy of Lancaster, Roger Freeman, urged all parties to assist Parliament (through the Public Service Committee, for example) and the Government in a review of existing practices on the provision of information by Government to Parliament, and defended his colleagues against charges, especially by Quentin Davies, that they had misled Parliament over the arms sales guidelines. He claimed that the Scott Report had "completely vindicated" Mr Waldegrave and Sir Nicholas Lyell: "It said that they acted in good faith, and the Government contend that [Mr Waldegrave] did not mislead." (c.688)

In the parallel Lords debate, Ministers put forward arguments similar to those already described. For the Opposition, Lord Richard analysed the Report on the issue of the misleading of Parliament, and also said that the Attorney-General had to "bear some of the responsibility" for the events surrounding the Matrix Churchill prosecution. He concluded: "Ministers lied to Parliament and apparently no one is responsible. Defendants were placed in jeopardy and apparently no one is responsible. Someone is responsible and they should accept that responsibility and face up to it".[3]

Lord Jenkins of Hillhead, for the Liberal Democrats, thought that the affair involved more than ministerial resignations (c.1241):

> But it is not just a question of individual Ministers - one reason why I have never thought that the rolling of a few heads would settle the matter. It is much more a question of the whole ethos of the Government. There has never in my experience or to my knowledge been a government who have set a lower premium on honour and a higher one on clinging to office at all costs.

Lord Howe of Aberavon reminded the House that "the entire process of government cannot be conducted in a goldfish bowl. Publication to Parliament is publication to a world that is often hostile to this country. So Parliament has on some occasions to be content with a picture that is less than complete and less than completely up-to-date. That is rightly and inevitably so. That is the fundamentally legitimate argument that is not really grappled with or fairly evaluated in this report, nor in certain circumstances accepted as it should have been." (cc 1270-1) The former Cabinet Secretary, Lord Armstrong of Ilminster, considered the case for a Freedom of Information Act, and made the following suggestion (c.1288):

Of course Ministers are, and must be, accountable to Parliament. I favour greater openness in the sense that I should like to see fuller public exposition of the facts and considerations taken into account in making a decision when that decision is announced. It is not possible to give a full statement if that announcement is being made in the form of a Statement in this House or in another place because time considerations do not make that possible. Therefore, such a Statement should be accompanied by a parliamentary paper or some such other document which would give a much fuller account. In my view, that would make for both better government and better public understanding of public issues and policies. But an attempt to apply freedom of information legislation to papers relating to decision-making while the process of making a decision was taking place would for many reasons merely drive the process into channels which a freedom of information Act could not reach. That would be conducive neither to good government nor to public knowledge and understanding of public issues and policies.

# VI Roger Freeman's July 1996 Civil Service College speech[26]

The Public Service minister's speech on 17 July 1996 ranged across a number of issues. On accountability he asked "Is there a strong enough line of democratic accountability running from the executive to Parliament and to the public?", and welcomed the current debate. He wanted to argue against the current criticism of "our conventional approach to Ministerial accountability....I believe that the constitutional convention of Ministerial accountability to Parliament is alive and well." He continued:

There is a clear democratic line of accountability which runs from the electorate through MPs to the Government which commands the confidence of a majority of those MPs in Parliament. The duly constituted Government - whatever its political complexion - is assisted by the civil service which is permanent and politically impartial. Hence, Ministers are accountable to Parliament; civil servants are accountable to Ministers.
That is the system we have in this country. Foreign experience shows that there are other ways of ordering things. However, critics of the British way must address the constitutional consequences for our system of their arguments.

He examined four particular criticisms:

- The first is that a distinction has recently been drawn between the constitutional accountability of Ministers and their direct personal responsibility, producing a so called responsibility gap.
- From that follows the second complaint that Parliament should, through its Select Committees, be able to close that gap by calling named civil servants directly to account.
- Third, it is argued that a direct line of accountability should apply to a particular class of civil servants: the Chief Executives of Next Steps Agencies.

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[26] OPS PN 97/96, 17.7.96, and Annex A of the Government's response to the Public Service Committee's recent report, HC 67, 1996-97, November 1996. The extracts reproduced are taken from the latter document (paragraph numbers are omitted)

- Last, and the one which causes me most concern, there is the general criticism that our constitutional doctrine of accountability does not work - the executive is not being effectively held to account by the legislature.

He cited Sir David Maxwell Fyfe's 1954 Crichel Down speech as a recognition over 40 years ago of a distinction between accountability and responsibility:

> The distinction is between the **constitutional** fact of **Ministerial accountability** for all that a Department does and the limits to the **direct personal responsibility** (in the sense of personal involvement) of Ministers for all of the actions of their Departments. As in 1954, so now, this is a straightforward practical recognition of the realities of delegation and dispersed responsibility for much Departmental business. Sir Richard Scott in his report had no difficulty acknowledging the validity of this distinction.

Mr Freeman could not understand those critics who concluded from the distinction that "Ministers are responsible for nothing. Ministers are in fact responsible for a great deal, the "central element's of a Department's business," including departmental policies, resource allocation, and "responding to major failures or expressions of parliamentary or public concern." However:

> What they cannot sensibly be held responsible for is absolutely everything which goes on in the Department in the sense of having personal knowledge and control of every action taken. Now - as in 1954 - it is not possible for Ministers to handle everything personally. If they were to be held personally responsible for every action of the Department, this would be a great inhibition on sensible modern management methods.
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> However, even here there is a safety net which, I think, closes the alleged "responsibility gap". Where things go wrong, the Minister is responsible for putting them right and for telling Parliament how he has done so. In particular instances, this could involve the Minister exercising his personal responsibilities in the list I have just quoted in relation to resources and the policy delivery framework. Be that as it may, he would render a constitutional account to Parliament. If Parliament is not satisfied with the account given, the ultimate constitutional sanctions are the motion of no confidence or the withholding of supply. In the House as I know it, the more likely course is the application of political sanctions.....

He rejected the idea of direct accountability of officials to Parliament, and its select committees: "The current position is that civil servants are under standing instructions from the Government to be as helpful as possible to Select Committees **on behalf** of Ministers":

> Were civil servants able to account directly to Parliament and to express their own views on the policy advice given to Ministers, the clear logical line of democratic accountability would be broken. Civil servants would be serving two masters, Parliament and Ministers. Once civil servants cease to report to Parliament on behalf of Ministers and begin to speak for themselves, giving their own views when asked about policy options and the advice offered to Ministers, we would - in my view be giving unelected officials the political influence that can only be earned in a Parliamentary democracy through election. Elected Ministers would be eliminated from the accountability loop. I believe that the inevitable outcome would be the politicisation of the civil service. Is this the destination which the critics of our system of accountability want us to reach?

He had "no difficulty in accepting Sir Richard Scott's conclusion that this willingness to supply information is the corollary of our constitutional doctrine of accountability. Ministers will, therefore, continue to expect civil servants appearing before Select Committees on their behalf to be as helpful as possible. Sometimes, they will not be able to give the information sought: it will then be for the Committee to call the Minister to explain why this should be."

However the Government did not believe that Select Committees were "suitable instruments for enquiring into or passing judgment upon the actions or conduct of an individual civil servant," because of officials' employee rights of due process in such circumstances. He also rejected the contention that agency chief executives should be directly accountable to select committees, because of the "very important distinction between managerial and constitutional responsibility." Finally he considered the effectiveness of the doctrine of accountability itself, and the criticism that "it does not actually hold people to account." He personally felt the practical effect of the doctrine: "Rendering account and being held to account are a major part of my daily round.":

> All of this has an effect. In accounting for the policies and actions of their Departments, Ministers must be able to hold their own and win the political argument if they are to retain the confidence of their Parliamentary colleagues and ultimately that of the Prime Minister. Some people talk as if the Party system has killed off accountability to Parliament. This ignores the central part which Parties now play as the medium for democratic argument and debate: in answering to Parliament, a Minister must simultaneously win and hold the confidence of his Party colleagues. Failure to do so ultimately leads to his or her departure from the Government.

He believed that "the important thing is not the allocation of blame, the determination of who is personally culpable, the specific resignation. These things are important. Ministers at fault should resign. Civil servants at fault should be subject to Departmental disciplinary proceedings." But (quoting Peter Shore's evidence to the Public Service Committee):[27]

> *'the ability of Parliament to correct things as they go wrong seems to me to be, in the long term, in the wider picture, much more important, frankly than in being able to pin-point blame upon a particular Minister."*

He concluded:

> Historians have exploded the myth of a golden age in which Ministers took direct personal responsibility for everything done (or left undone) by their Departments, resigning in the event of Departmental failure. Professor S E Finer, in an important research paper on "the Individual Responsibility of Ministers", tested this convention over the period 1855 to 1955 and found resignation on this basis "exceedingly rare".
>
> Then, as now, the proper test of whether our doctrine of accountability is working is the extent to which Parliament is effective in getting policies and systems that are not working changed

[27] Emphasis in original

for the better. Of course, opinions on this will tend to diverge according to political viewpoint. But in terms of the general democratic process, I believe that the Government as a whole and individual Ministers are held to account by Parliament. Government, no less than Parliament, should be on the look out for improvements. It is in this spirit that I have invited the Public Service Select Committee to comment on some draft guidance which could be issued to all civil servants responsible for drafting answers to Parliamentary questions. Our purpose is to underline our commitment to providing Parliament with full and accurate information, the corollary of our doctrine of accountability highlighted in Sir Richard Scott's report.

## VII The July 1996 Public Service Committee Report[28]

This report is the most recent and comprehensive official analysis of the subject, and, as such, deserves to be examined in some detail. It began by setting out the general issue: "Ministerial responsibility is a central principle of the British constitution. It defines and prescribes both the relationship between Ministers and officials and also the relationship between Ministers and Parliament" (para 1). It then immediately considered the difficulties surrounding the concept (paras 2-4):

There have always been elements of ambiguity and confusion in the convention of Ministerial responsibility. The first of these involves its status. There is no comprehensive or authoritative statement of it which has binding force, and it cannot be enforced by legal (as opposed to political) sanctions. As a result, the way in which it is used tends to be variable and inconsistent, and it has often been as useful politically to obscure in practice the convention as to clarify it. Second, that inconsistency has helped to ensure that it has never been very clear what precisely individual Ministerial responsibility *means:* what a Minister has to do in order to discharge his responsibility through Parliament. Third, it has never been entirely clear, either, how far a Minister's formal responsibility for the actions of officials subordinate to him extends.

3. Since it was first articulated, these difficulties with the convention have been exacerbated by changes in government and in Parliament. Government has vastly expanded in its size and in its functions and it has become impossible to maintain that Ministers can be regarded as personally responsible for all of the activities of their departments. The dominance of party organisation and government's increased control over time in the House of Commons mean that it is more difficult now than it was in the mid nineteenth century to hold Ministers effectively to account.

4. The ambiguities which surround the convention have ensured that there have been regular disputes over the extent to which individual Ministers can be regarded as responsible for failings within their departments; such arguments are scattered over the political history of the last century and a half. But changes to the way in which government is organised and public services are delivered are now throwing the problems with the convention into high relief; many now question whether it needs some radical rethinking if government is to remain properly accountable.

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[28] *Ministerial accountability and responsibility*, 2nd report of 1995-96, HC 313, July 1996

It examined the **theory of ministerial responsibility**, which was "based on an assumption of close involvement by Ministers in the work of their departments", perhaps appropriate to the 19th century, but certainly not to the public service in the welfare state era: "modern government is so complex and a Minister's functions so various, that Ministers must delegate most of them. Much of the work of each department is done with little reference to the Minister. Mistakes will naturally occur in that work .. and they may excite political interest and involvement. In such cases, in what sense can Ministers be regarded a 'responsible' for the conduct of their officials?" (para 11). It cited Sir David Maxwell Fyfe's 1954 Crichel Down speech,[29] commenting that, though it has attained authoritative status as an interpretation of the concept, "it is nonetheless confusing and ambiguous, particularly so on the extent to which a Minister's responsibility for the conduct of his officials extends to the general oversight of the work of the department" (para 13).

Some of the difficulty arose because of "the vagueness and ambiguity of what is meant by the word 'responsible'", giving rise to the government distinction between *responsibility* and *accountability*. The committee was not convinced that official explanations of this distinction (such as given in response to the Defence Committee's Westland inquiry[30] and embodied in the 1987 'Armstrong Memorandum'), were as clear as ministers believed. Recent developments such as the creation of *Next Steps* agencies and the Scott Inquiry had seen further attempts at clarification: "these have largely been directed towards applying the word 'accountability' to a Minister's duty as the representative in Parliament of part of the executive, while limiting 'responsibility' to actions taken personally by the Minister" (para 15). It cited the Government's 1995 White Paper *Taking forward continuity and change* as the most recent and elaborate official interpretation,[31] describing it as "undoubtedly clearer" than the explanation in the Armstrong Memorandum, "yet the distinction remains somewhat confusing because it makes use of common words in different ways" because such words, including 'answerability' are often used to mean roughly the same thing. Nevertheless the Committee recognised that the Government's distinction had received support from, for example, Professor Brazier and Lord Howe of Aberavon. They commented:

> 18. We are less certain that the distinction between "accountability" and "responsibility" is always a useful one. For the substance of it is a distinction between those matters on which a Ministers have merely to provide an explanation to the House, and those matters on which failures may be regarded as their own fault and which may justifiably lead to the Minister's resignation. In many, probably most, cases that distinction is easily made. A Minister is obviously responsible for deciding on what policy to follow, or the resources allocated to

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[29] Relevant extracts of which are reproduced in Appendix A of this Paper

[30] Cmnd 9916, October 1986, esp para. 40:
40. The basic principles on this matter are clear:
- Each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister.
- A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his department.
- Civil servants are responsible to their Ministers for their actions and conduct.

[31] Cm 2748, January 1995, pp 27-8 (reproduced above)

particular budgets, for example. But in other cases, the distinction is hard to draw. The most difficult area is the one with which Maxwell-Fyfe grappled: to what extent can Ministers be said to be responsible (in the sense that it may be regarded proper that they lose their job if something goes wrong) for essentially *administrative* failures within a department?

The report said that "Ministers must accept in some degree that they are personally responsible for the overall way in which their Department is administered. They cannot, indeed, be blamed for individual failures at operational level; but they might be blamed for a broader pattern of incompetence .... Ministers cannot be blamed for each failure connected with the work of the department; but if such a failure were great enough, many feel it proper that the Minister resign" (para 19). It continued:

20. What Ministers must never do is to put the blame onto civil servants for the effects of unworkable policies and their setting of unrealistic targets. If, when things go wrong, it is held that Ministers are not to blame because they did not (knowingly) mislead Parliament, and civil servants are not to blame because they acted as servants of Ministers, then the unsatisfactory outcome is that nobody is to blame. There is clearly something unsatisfactory about a doctrine of Ministerial Responsibility that can issue in such a conclusion.

21. If the point of drawing a distinction between "accountability' and "responsibility" is to limit the extent to which blame might be attached to Ministers for failings in their departments, then it is unsuccessful. To the extent that it protects Ministers from being seen as personally to blame for minor failings (an incorrect social security payment, for example) it is no more than a statement of the obvious: few would seriously advance the proposition that a Minister should resign in such circumstances. To the extent that it implies that it is possible to draw in practice a clear line between minor failings at operational level and a more systemic failure, experience suggests that it is, at best, hopeful. **It is not possible absolutely to distinguish an area in which a Minister is personally responsible, and liable to take blame, from one in which he is constitutionally accountable. Ministerial responsibility is not composed of two elements with a clear break between the two. Ministers have an obligation to Parliament which consists in ensuring that government explains its actions. Ministers also have an obligation to respond to criticism made in Parliament in a way that seems likely to satisfy it - which may include, if necessary, resignation.**

It then moved on to the politically sensitive issue of **ministerial resignations**:

22. Ministerial responsibility and resignation is not a formal matter, in which certain particular actions or omissions will result inevitably in a Minister's departure from government. A Minister's survival in his job depends primarily on the satisfaction of his Ministerial colleagues - particularly the Prime Minister - and of his fellow Members of Parliament. Parliament has no formal ability to remove a Minister; and Members can only place pressure on him, and the rest of the Government, to ensure his resignation or removal. Many in the House may regard a Minister as personally culpable in one way or another for some mistake or mishap. But so long as his Ministerial and party colleagues are prepared to defend him, the chances of obtaining his removal are minimal. If he loses their support, however, his fall is inevitable. As Professor S.E. Finer put it, "if the Minister is yielding, his Prime Minister unbending and his party out for blood - no matter how serious or trivial the reason - the Minister will find himself without Parliamentary support. This is a statement of fact, not a code. What is more, as a statement of fact it comes very close to being a truism: that a Minister entrusted by his Prime Minister with certain duties must needs resign if he loses the support of his majority.

It noted that "the history of British politics in the twentieth century confirms that there may be no necessary connection between Ministerial culpability and Ministerial resignation. Most recent Ministerial resignations have not, in fact, been as a result of perceived failures in policy, but as a result of private actions, rather than public ones" (para 25):

> 26. Ultimately, the question of whether a Minister should or should not resign for a failing that has happened within a department cannot, as a matter of course, be treated as one capable of a clear answer. An opposition may find it expedient to accuse a Minister of fault, even when culpability for the matter at issue appears to be complex and difficult to gauge. To do so is an important device in its political armoury. Equally, while Ministers must not be allowed to evade justified blame, whether or not they resign must always be a question in the hands of those on whose confidence they rely. Apportioning political blame to Ministers is a political activity, not a legal one, and we believe that it should be dealt with in a political manner. Sir Richard Scott commented on the debate in both Houses which followed the publication of his Report: "it was a serious debate. 'It was of course overladen by the politics of the situation, but that is to be expected. Parliament is a political place". Mr Shore also took a pragmatic view of this situation: he told us (using the Government's definitions) "we undervalue accountability to Parliament and put far too high a premium on responsibility, personal responsibility, of Ministers"; "the ability of Parliament to correct things as they go wrong seem to me to be, in the long term, in the wider picture, much more important, frankly, than being able to pin-point blame upon a particular Minister". We agree. **Proper and rigorous scrutiny and accountability may be more important to Parliament's ability to correct error than forcing resignations.**

But the Committee warned that "this does not mean, however, that Ministers should be allowed to set the terms of the debate. Unless it is able to establish the facts, the question of the extent to which Ministers should be blamed will remain obscure" (para 27). They were clear that the consequences of a Minister knowingly misleading Parliament should be resignation, because "misleading Parliament, or the public, about the activities of the Government in response to a reasonable request, is something for which a Minister must remain personally responsible" (para 28). When ministers inadvertently mislead the House "it is conventional, and essential, for them to correct the error at the earliest possible opportunity, and to apologise to the House for it" (para 29).[32] "There will always, however, be plenty of room for argument about whether or not Parliament has been misled," as in the events examined in the Scott Inquiry (para 30). The Committee then turned to the heart of the issue as they perceived it:

> 31. The pursuit of Ministerial resignations is important as part of a process of enforcing political accountability, but too great a concentration on it obscures the wider importance of the day-to-day business of holding the executive to account in Parliament, to ensure that it is kept under proper democratic control. Dr Philip Giddings of the Department of Politics, University of Reading, argues that Parliamentary accountability has "a variety of objectives". At one level, its purpose is simply to secure information about and explanations of what has or has not occurred. But it may also be regarded as a way of exerting pressure for change, or a means of attributing blame or praise for government actions. It is seen as a means of influencing. the decision-makers who are being held to account, so that they will act in a way which is responsive to the wishes of those who are holding them to account. Ministers, in

[32] Presumably a similar convention would be expected to apply in the Upper House

short, have to give information; but they also have to ensure that they are sufficiently responsive to the concerns of Members of Parliament in order to maintain their confidence. Sir Richard Scott said "I do not regard the debate - and I do not want to underestimate it - between accountability, responsibility, blame, as being the key and most important feature of Ministerial accountability. I think willingness on the part of Ministers to inform Parliament and through Parliament, the public, or perhaps sometimes the public directly, of the matters in respect of which they are accountable is critical".

32. The theory of Ministerial responsibility should keep pace with the contemporary reality, if it is to retain its credibility. It would give greater clarity if the Government were less coy in its definition of what Ministerial responsibility means. As we have said, we believe that Ministers have a general responsibility to Parliament for the work of their departments which cannot be neatly divided into spheres of 'personal responsibility' and 'constitutional accountability'. There are, it is time to say, two sides to the obligation of Ministers for those matters which come within their responsibility - even if they cannot be simply distinguished. They may be referred to as the obligation to *give an account;* and the liability to *be held to account.* **We believe that the following represents a working definition of "Ministerial responsibility"**.

> **Ministers owe a fundamental duty to account to Parliament. This has, essentially, two meanings. First, that the executive is obliged to give an account - to provide full information about and explain its actions in Parliament so that they are subject to proper democratic scrutiny. This obligation is central to the proper functioning of Parliament, and therefore any Minister who has been found to have knowingly misled Parliament should resign. While it is through Ministers that the Government is properly accountable to Parliament, the obligation to provide full information and to explain the actions of government to Parliament means that Ministers should allow civil servants to give an account to Parliament through Select Committees when appropriate - particularly where Ministers have formally delegated functions to them, for example in the case of Chief Executives of Executive Agencies.**
>
> **Second, a Minister's duty to account to Parliament means that the executive is liable to be held to account: it must respond to concerns and criticism raised in Parliament about its actions because Members of Parliament are democratically-elected representatives of the people. A Minister's effective performance of his functions depends on his having the confidence of the House of Commons (or the House of Lords, for those Ministers who sit in the upper House). A Minister has to conduct himself, and direct the work of his department in a manner likely to ensure that he retains the confidence both of his own party and of the House. It is for the Prime Minister to decide whom he chooses as Ministers; but the Prime Minister is unlikely to keep in office a Minister who does not retain the confidence of his Parliamentary colleagues.**

33. As we have argued, the attempt to ensure Ministers are accountable by seeking their resignation may be an informal and highly political affair. It cannot be reduced to firm rules and conventions. Nevertheless, as our definition of responsibility implies, it remains an essential component of the control of government. It is, in effect, the final stage in a process of accountability. But while it may attract more attention, the pursuit of Ministerial resignations is only one part, and a very small part, of the day-to-day business of accountability. It is with this that, in the remainder of this Report, we will be concerned. The

system of Ministerial responsibility and accountability is intended to ensure that Parliament can exercise proper and effective oversight of the executive. Is it doing so?

The report examined **ministerial accountability in terms of *QPM***, a document it described as "the only guidance issued on how a Minister should discharge his duty of accountability", and noted that its obligation on ministers not to mislead is unqualified: "while there are claims that it has been justifiably breached, and the breach accepted by the House, whether or not this was in defiance of the requirement is disputed" (para 34). Ministerial practice on the answering (or non-answering) of PQs was then considered, including ministers' (especially in *QPM*) praying in aid of 'established Parliamentary conventions': "there is no longer anything that can be called a 'Parliamentary convention' which determines which Questions ministers may answer; there are only Ministerial conventions", and such references in *QPM* should be removed (para 39). Similar examination of references to 'Government codes of practice' (ie that on access to government information)[33] led to the view that "we do not believe, however, that the Code of Practice should be used to restrict the obligation on Ministers to give a full account of their actions, decisions and policies to Parliament; Ministers should always consider carefully the balance of the public interest against the possible harm arising out of disclosure" (para 40).

After examining complexities such as the veracity of incomplete Parliamentary answers and the like, especially in the light of the Scott report, the Committee commented that "if one accepts that answers should not normally be refused, but also that in certain circumstances there are things that it would be better not to say in public, the answering of Parliamentary Questions will always be a complicated exercise in determining the limits of disclosure" (para 47). It recognised the difficult balancing act in weighing the public interests in disclosure and in confidentiality, as in foreign and defence policy matters:

49. In some cases such reasons undoubtedly will outweigh the public interest in disclosure: but the public interest in disclosure is a powerful one, and should not be lightly overriden. As Sir Richard has said, balancing the public interest in disclosure with the public interest in confidentiality is a duty which must often be difficult to discharge. The decision is, at present, always entrusted to Ministers, who are advised by civil servants. Ministers' decisions on what might be disclosed and what should not be are open to audit by the Parliamentary Commissioner for Administration through the Code of Practice on Access to Government Information. We discuss this further below (para. 145). In time, the Code may provide some clarity about how the public interest might be interpreted, particularly as the decisions of the Ombudsman on individual cases create a body of case law. Until then, however, it is Ministers who must use their own judgement in weighing considerations of "harm" against considerations of "the public interest". As Mr Freeman said, Ministers may be constantly reviewing the balance between disclosure and non-disclosure, and that balance may change over time". Ministers are, we believe, keenly aware of their obligation to be fully accountable to Parliament. Yet they are also aware of many other considerations, some of them proper and others less so, which may induce them to be cautious in disclosing information. Naturally, therefore, it will be difficult to avoid at least the suspicion that considerations of political or administrative convenience will often influence the decision. On many, perhaps most of these difficult questions, the motives involved in the decision whether

[33] See now the 2nd ed, January 1997, Deposited Paper 4374

or not to reveal information may be mixed, including international considerations as well as domestic embarrassments.

50. Ministers who approve the answers to Parliamentary Questions, and civil servants who draft them, should be prepared to be more open and clear in their answers than they have hitherto been prepared to be. The Government has accepted, in evidence to us, that it would be helpful to provide clear and open practical guidance on how the conventions on providing information to Parliament should be applied by civil servants who have to draft answers to the large number of Parliamentary Questions tabled each session. They sent us a first draft of their proposed guidance for comment. The draft is printed as an Annex in this Report (Annex 3). They also sent us copies of such guidance as is already issued by individual departments. Most of this concerns the mechanics of answering Parliamentary Questions. We were somewhat surprised that "clear and open practical guidance" on applying the conventions, such as they are, did not already exist. The proposed guidance is clearly influenced by comments in the Scott Report, particularly on the nature of "answers which are literally true but likely to give rise to misleading inferences". We are most concerned with the implication that information can be omitted "in line with established Parliamentary convention". We have already commented on the meaninglessness of this phrase (para. 39): what is meant is the practice of Ministers in answering previous Parliamentary Questions. As with *Questions of Procedure for Ministers*, the only points of reference required are to the law and the Code of Practice on Access to Government Information. The statement that information should not be omitted "merely" because disclosure "could lead to political embarrassment or administrative inconvenience" might imply that it could be a consideration in deciding whether to refuse information. Mr Freeman assured us that the point was intended to ensure that civil servants knew that "in terms of political expediency, party political embarrassment, that is just not an issue". "Where", the draft guidance notes, there is a "particularly fine balance between openness and non-disclosure, and where the draft answer takes the latter course, this should be explicitly drawn to the Minister's attention" as should be done if it is proposed "to reveal information of a sort which is not normally disclosed".

It was, according to the committee, for the **Prime Minister** "to ensure that the Members of his Government conform to the highest standards of democratic accountability". The Government had said, in its response to the Nolan Committee, that an explicit statement that it was for the Prime Minister to determine whether ministers had breached the *QPM* obligation went too far, as it made the PM's relationship with ministerial colleagues as one of invigilator and judge and (as Mr Freeman told the Public Service Committee) implied a break in the 'twin responsibility' of a minister to Prime Minister and Cabinet and to the Commons.[34] The Committee concluded that "the Prime Minister has to take responsibility to ensure that ministers live up to the standards required of them, and to decide on whether their performance is good enough although, in judging them, he will have to take into account the extent to which Ministers retain the confidence of the House of Commons" (para 52).[35]

The Committee thought it "extraordinary .. that the only explicit statement of how Ministers are expected to discharge their obligations to Parliament appears not in a Parliamentary document, but in a document issued by the Prime Minister ... Not only does this ensure that

[34] See Q1141, HC 313-II, 1995-96. The revised text of the relevant section of *QPM* states that "And they [ie ministers] can only remain in office for as long as they retain the Prime Minister's confidence."

[35] The report does not appear to examine how such principles should apply in relation to Lords ministers or, indeed, to a Prime Minister directly

***Questions of procedure for ministers*** is rarely read as a statement of the principles that Ministers ought to follow; it also contributes to an illusion that the obligations on Ministers in relation to Parliament are derived from the instructions of the Prime Minister, and not from Parliament itself" (para 53). The convention that Ministers should not mislead Parliament "is in fact derived ultimately from the concept of a 'contempt' of Parliament (para 54),[36] and they recommended "that the House underlines the obligations on Ministers to be open with the House, and not to mislead it, by passing a Resolution which would state the obligation, how it is derived, and how far it extends" (para 55). They recognised that such a resolution directed at ministers could undermine the general obligations, enforced by Parliament's contempt jurisdiction, on all Members, whether ministers or not, but believed that a resolution could be framed so as to be sensitive to these concerns.

The report contains a draft of such a **Commons resolution**, the text of which recognised that it could only apply to its own proceedings, and could not, in the absence of legislation, seek to regulate conduct of people, including Members, outside Parliament (paras 58-60):

> Therefore, it may lay down rules concerning Ministerial conduct in Parliament, but not concerning the broader obligations of Ministers towards the Prime Minister, the Government, their party or, indeed, the public. The House could also set down rules governing the provision of evidence in Parliament by civil servants, or other witnesses.
>
> 59. We have preferred a general statement of principle to detailed regulation of all the circumstances under which Ministers (or those speaking on their behalf) give information in the House of Commons. The latter would, we believe, be inappropriate for a Resolution of the House, although it might be for the Committee of Standards and Privileges to give further guidance on the interpretation of the Resolution. A more difficult question is the extent to which the Resolution should define the ability of Ministers to withhold information from the House. It is plainly not possible to define in advance all of the circumstances in which it might be necessary and legitimate to withhold information; even were such an enterprise possible, it would be inappropriate in a Resolution. A different solution, which we have adopted, is to make clear what reasons for withholding information will be regarded as not proper reasons. We consider further below, in our discussion of Freedom of Information, the extent to which information may be disclosed (paras. 153-165).
>
> 60. **We recommend that the Resolution on accountability be in the following terms:-**
>
> > **All Members of this House and all witnesses who come before it are obliged not to obstruct or impede it in the performance of its functions nor to obstruct or impede Members or Officers of the House in the discharge of their duty.**
> >
> > **This applies to Ministers, and to civil servants giving evidence in Parliament, just as it applies to any other person; and because Ministers have a duty to account to Parliament for the policies, decisions and actions of their**

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[36] The use of the word 'convention' here by the Committee is perhaps slightly unfortunate, as it appears to be used, contrary to its usual meaning in constitutional law, as an enforceable (however theoretically) obligation subject to sanctions. On contempt generally, see chapter 9 of *Erskine May*. On constitutional conventions generally, see Research Paper 96/82, 18.7.96, *The constitution: principles and development*, section IV.A

> **departments and agencies, the House will regard breaches by them of the obligation described above as particularly serious.**
>
> **Ministers must take special care, therefore, to provide information that is full and accurate to Parliament, and must, in their dealings with Parliament, conduct themselves frankly and with candour. The House recognises that Ministers may need, upon occasions, to withhold information, but believes they should do so only exceptionally. They must not knowingly mislead Parliament and they should correct any inadvertent errors at the earliest opportunity. The House will expect Ministers who do knowingly mislead it to resign. Both Ministers and civil servants should be as cooperative as possible with Parliament and its Committees, and ensure that Committees and individual Members of Parliament receive the information and help they require from their departments.**

The committee believed that "a resolution on accountability will .. be a powerful means of reminding Ministers of the rights of the House and their own responsibilities" especially in relation to the provision of information in reply to PQs. However they recognised that the full contempt power is rarely applied, and that this could make formal enforcement of the proposed resolution problematic, especially in relation to ministers, where political considerations (especially in the context of party discipline in the House) may well be more important than quasi-judicial ones. Therefore the report contains a consideration of a possible **new procedure** which could enforce the resolution (paras 63-8), by allowing Members (and only Members) to complain to the Parliamentary Ombudsman "directly concerning the withholding of information by a government department, without having to act through another Member."[37] However giving the PCA power to investigate statements made in Parliament "is a separate and more complex question", for administrative and functional reasons, although this could be overcome by the appointment of a separate Commissioner. Such 'external' adjudication could be said to an essentially political rather than quasi-judicial function, and might diminish the responsibility of Parliament and its committees.[38] A system geared more to monitoring rather than enforcement, with the publication "of an Annual Report on the reasons used to justify refusals to provide answers to parliamentary Questions seems a modest and eminently sensible one ... This might bring to the attention of Members the conventions that Ministers are using in their refusals to provide information, and show up occasions on which decided not to abide by those conventions for whatever reasons." Therefore it proposed that the Table Office provide each session a memorandum to a select committee listing such answers to PQs (para 68),[39] and recommended that the Government make it a standard practice to explain the grounds for withholding information when it does so in parliamentary answers (para 70).

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[37] para. 65. This would require an amendment to the *Parliamentary Commissioner Act 1967*. The PCA has statutory powers to demand official papers, and also has a key role in adjudicating on the operation of the 'open government' code of practice

[38] And, in the absence of legislation, potentially be a breach of article 9 of the *Bill of Rights 1689*, protecting Parliament's privilege of free speech? On this, see Research Paper 96/61, 16.5.96

[39] The report also considered alternative schemes, such as use of the Intelligence and Security Committee, a proposal it rejected on democratic accountability grounds as the ISC, although composed of parliamentarians, was a statutory, not a Parliamentary, body (para. 69)

The report then turned to the **accountability of civil servants** in theory and practice: "civil servants exercise many of the powers entrusted to Ministers under statute, but they do so because the Minister has delegated those powers to them. The power remains the Minister's. As the people who in theory exercise the powers, as well as the only people easily able to represent their department in Parliament, Ministers are held to be the sole conduits for discharging the executive's responsibility to Parliament. The Government has keenly sought to uphold this principle and Parliament, or its Committees, have often felt it important to preserve a clear focus for accountability.[40]

The 'rules' by which the **provision of information is given to Parliamentary Committees by officials (the 'Osmotherly Rules')**, were examined.[41] The Committee noted that "the convention is used to restrict Select Committees' access to civil servants and to limit what civil servants may say when giving evidence" (para. 72), and that it has been claimed that this prevents effective scrutiny by Parliament, as in the Westland affair of 1985-86. The rules mean "that officials are bound to present government policy on behalf of their departments and not to undermine it" and to explain rather than discuss the merits of policy especially in politically contentious areas. This can afford particular difficulties for specialist officials giving evidence on professional or technical aspects of policy (para. 74).

Another significant consequence of the rules and the general doctrine of responsibilities is "the resistance of government to agree to a request from a Select Committee that a particular, named, civil servant gave it evidence in cases where the Committee is seeking to inquire into some alleged misdeed by the department". The rules state that it is 'customary' for Ministers to decide which officials should appear and to offer alternative witnesses as appropriate, and recognise the risk of an "unprecedented" impasse between a Committee insisting on a witness (perhaps enforced by an order of the House) and the official remaining 'subject to ministerial instruction on how to answer questions and on what information to disclose'. The Committee commented that "this interpretation of the doctrine has caused difficulties for Select Committees in the past, although it is fair to say that conflicts between government and a Committee have been rare" (para. 75). It also examined the issue of evidence from retired officials (para. 76). The report noted that "the relationship between Select Committees and officials is not, however, always quite as restrictive in practice as theory might make it appear",[42] and that "civil servants over recent years have become more visible and more often personally identifiable", partly due to the "increasing access to civil servants by Select Committees" and the naming of officials by the PCA and others (para. 79).

The rules had been regularly revised, often in response to comments by Parliamentary committees: "they now do contain a statement of the overall duty of officials to be as helpful as possible to Parliament..." (para. 80). Many select committees "said that they enjoyed a good relationship with departments, and that departments had generally been forthcoming and

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[40] para. 71. The report notes the exception to the rules of the direct relationship of Accounting Officers to the PAC

[41] For a discussion of this matter see Background Paper 298, September 1992, *Select Committees*, and see now Research Paper 97/4 '*The Accountability Debate: Next Steps Agencies*'. The latest version of the 'rules' is the January 1997 edition, Deposited Paper 4375.

[42] Para. 77. It cited the special case of the Accounting Officer's direct accountability (paras. 77-8)

cooperative" (para. 81). The Committee believed that "a wholesale review of the Osmotherly Rules, is, indeed, probably unnecessary" but, on the point of the provenance of the 'rules' it argued that "making clear in a separate Parliamentary Code the extent of the duty of officials to provide information seems to us to be the most effective means of making the point that Parliament has not in any way formally consented to a restriction on the amount of information it may receive". Therefore they recommended that officials "should be brought within the ambit of our proposed Resolution for Ministers. This is to underline the fact that as witnesses before a Committee, civil servants are themselves bound by the obligation not to obstruct or impede Members or Officers of the House in the performance of their duty" (para. 82).

More generally, the Committee noted that "in theory, at least, the powers of Select Committees to obtain Persons, Papers and Records are of wide extent, and the executive should not seek to block them by political means. We recommend that there should be a presumption that Ministers accept requests by Committees that individual named civil servants give evidence to them" (para. 83).

If then considered the **role and operation of select committees** more closely.[43] Even if the favourable views of the 1990 Procedure Committee review of the select committee system were accepted "many remain concerned that Select Committees are not as effective in carrying out their tasks of scrutiny as they might be; and there is a doubt.... that the Select Committees can keep pace with an increasingly sophisticated and increasingly professional executive" (para. 125). In particular, they considered issues such as committees' ability to obtain documents from government departments (paras. 126-130), proposing acceptance of the 1978 Procedure Committee's recommendation for a procedure which would "restore to select committees, in certain specified circumstances, the right, which formerly belonged to any backbencher, to move for an Address or an Order for a Return of Papers' (para. 130). The Committee also examined the case for '**Parliamentary commissions**' to investigate "evidence of some large-scale policy failure by the Government" (para. 131). This is particularly relevant in the context of recent high-profile arms sales inquiries, and the use by ministers of an *ad hoc* non-statutory inquiry under Sir Richard Scott to examine the 'arms-for-Iraq' affair.[44] The Trade and Industry Committee, in its BMARC report, had suggested a form of 'Parliamentary commission' separate from the departmental select committees.[45]

> We agree with the Trade and Industry Committee that the problem is not simply one of resources, but is one of the ability of Members to commit sufficient time to the task of a full-scale investigatory inquiry, particularly without endangering the more long-term process of a dialogue with its department on expenditure, administration and policy. Such inquiries require the detailed and effective examination of witnesses, which can only be done by Members who have a good command of the evidence before them. Is there a better way for Parliament to investigate the failings of government?

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[43] Section V of the report, on agencies, is covered in Research Paper 97/4

[44] on this, see Research Paper 96/22, 9.2.96 *Forms of investigatory inquiry and the Scott Inquiry*

[45] para. 132. The T & I Committee Report is HC 87, 1995-96

The Public Service Committee supported this proposal for "inquiries set up at the instigation of Parliament to establish factual information on complex subjects which would otherwise occupy too much of Select Committee's time," and looked forward to an examination of the proposal by the Procedure Committee (para. 133).

They also examined the general issue of **select committee resources**, as "the bread-and-butter work of Select Committees... is in many ways much more important than the sort of high-profile investigatory work for which powers to order the production of documents are relevant. The scrutiny of the work of a department, consideration of the value and the implementation of its policies, provide for the sort of dialogue between Parliament and government that ensures proper accountability in practice".[46] The Committee recognised that select committees themselves had not argued for "a great expansion on the resources available to them", and this accorded with the view of the 1990 Procedure Committee review,[47] but "there is, we believe, concern about the extent to which Select Committees, with the resources at their disposal, can be effective in asking the right questions of government, and maintaining a constructive dialogue with their departments.... One of the things that has struck us most about the current inquiry is the sheer volume of paper generated by modern government. Before the days of open government, Committees did not need extra staff because much of this paper was not available to it. Now, however, the main difficulty for Committees is one of distinguishing the wood from trees" (para. 142). They continued:

> Committees would be helped by a better ability to scrutinise the performance of their departments, a greater ability to understand its administration, and its expenditure than they have at present, and we believe that a modest expansion in the staff resources available would give them that. The Chairman of the Environment Committee raised a related, but rather wider problem. The wide range of the Environment Committee's remit meant that "however hard the Committee works, it is simply not possible to monitor in depth the full range of responsibilities of the Department of the Environment and its agencies, which means that some parts of the Department inevitably escape scrutiny for perhaps several years at a time". **We recommend that the Liaison Committee study ways of improving the Parliamentary Scrutiny of agencies especially where a single department has a large number of agencies.**

More generally, the Committee recommended that "the Liaison Committee inquire into the operation of Select Committees...[including] the effectiveness of Select Committees and how this might be improved, including whether Select Committees require an expansion in the resources available to them" (para. 143).

# VIII The November 1996 Government Response[48]

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[46] para. 134. The report went on to examine greater cooperation between the NAO/PAC and departmental committees: paras. 136-140. (on which see Background Paper 298, 7.9.92, section B(vi))

[47] On which see Background Paper 298, Section B(vii)

[48] 1st special report of the Public Service Committee, 1996-97, HC 67, 1996-97, appendix

The Government welcomed the Public Service Committee's report as a "constructive contribution to a subject of continuing fundamental importance to a Parliamentary democracy;" and shared the Committee's premise that "the country must have arrangements under which the Government remains properly accountable" (para. 1), and continued:

> 2. In preparing its response, the Government has considered the Committee's Report with great care, representing as it does the most thorough examination of Ministerial accountability and responsibility by Parliament in recent years. The Government notes that the Committee has not sought to re-define the basic principles of Ministerial accountability in theoretical terms, but has instead followed what it describes as a pragmatic approach in setting out a "working definition" of the subject, which is subsequently reflected in a proposed Resolution of the House.
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> 3. The Government agrees with many of the principles underlying the working definition, and shares the Committee's view that there could be value in the House making explicit how it expects Ministers to discharge their responsibilities to Parliament. The Government will initiate further discussion on a cross-party basis to this end with a view to bringing forward an appropriate motion in due course.

It "welcomed the common ground which exists between the Committee's recommendations and its own position on Ministerial accountability" as set out in recent statements (para 4):

> 5. In particular, the Government welcomes the Committee's acknowledgment that effective scrutiny and accountability are secured by the giving of a full account through a rigorous policy on openness rather than an insistence on the ability of Parliament to apportion blame and impose sanctions, because without such an account there can be no clearly understood basis for determining whether such actions would be appropriate.

The Government also welcomed the Committee's support for the *Code of Practice on Access to Government Information*, "and will now take steps... to ensure that throughout Government the Code is followed as the clear, recognised minimum standard for providing information to Parliament, and in setting out the reasons for withholding information, on those occasions when this is necessary" (para. 6). The Government had reviewed the various Codes and other guidance; had revised *QPM,* and produced the new *Guidance on answering Parliamentary Questions.*[49]

However, there was one clear difference between the Government and the Committee:

> 7. The response addresses clearly the one significant difference between the Government and the Committee's proposed Resolution - the relationship between Parliament and the Civil Service. Here, the Government believes that the implications of the Report, and in particular the recommendation that civil servants should be brought within the ambit of the proposed Resolution for Ministers, would be to create a shared line of direct accountability to Parliament between Ministers and civil servants. The Government does not accept the Committee's apparent assumption that this aspect of accountability could be changed in this way whilst still maintaining the central principle of Ministerial responsibility in the form recognised by both

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[49] Annexes B and C, reproduced as appendices C and D of this Paper. See Research Paper 97/5. The latest version of the Open Government code of practice is the January 1997 edition, Deposited Paper 4374.

the Committee and the Government. Specifically, the Government believes that such a development would lead to civil servants becoming (as the Deputy Prime Minister said in evidence to the Committee) "effectively another political force". The Government could not view such a development as compatible with its commitment to a permanent, non-political civil service.

Another point of distinction was over the Committee's belief that there was an 'accountability gap' or 'lacuna' in respect of officials:

8. There is, in addition, one other aspect of responsibility and accountability raised in the Report on which the Government wishes to comment. This is the suggestion (paragraphs 20 and 73) that a gap or "lacuna" exists regarding the accountability of officials in cases where Ministers cannot themselves be held to be directly responsible. The Government is strongly of the view that the nature of the conventional principle of accountability - that Ministers are accountable to Parliament and civil servants are in turn accountable to Ministers - ensures that no such "lacuna" exists.

9. If failures occur or errors are made, it is for Parliament to consider whether the Minister is personally responsible and, if so, what constitutes an appropriate sanction. Where, however, Parliament decides that the Minister is not personally responsible, it will rightly expect an account from the Minister of what steps have been taken to correct the error and prevent recurrence, including reporting (which may be on a confidential basis) on any disciplinary action.

10. By contrast, the assumption of a responsibility gap implies that it is for Parliament to "catch" whomever it can - whether Ministers or officials. This would undermine the fundamental principle that civil servants are servants of the Crown, accountable to the duly constituted Government of the day, and not servants of the House, and could risk making decisions about the responsibility of individual civil servants directly dependent on Party politics. It could thus jeopardise the well-established relationship between Parliament, Ministers of the Crown and the Civil Service. This is in contrast to Non-Ministerial Government Departments and Non-Departmental Public Bodies (NDPBs), which are generally set up by statute and whose staff are accountable to the statutory office-holder or boards, who in turn are responsible to Parliament for discharging the statutory duties of the body. The Government's view on this important issue is further spelled out in its responses to Recommendations 26 and 29 of the Committee's Report.

The detailed response to the Committee's recommendations was as follows:[50]

*1. Distinction between accountability and responsibility*:

The Government agrees that it is not always possible to make an absolute distinction between constitutional accountability and personal responsibility. Nonetheless, highlighting those matters for which a Minister bears a direct responsibility from amongst all the matters for which he remains obliged to give an account describes modern practice and so provides Parliament and the public with a broad, practical framework against which to judge Government's continuing endeavours to remain properly accountable. Like the Committee, the

[50] The list is taken from chapter X of the Committee's report, HC 313, 1995-96, pp lxxx-lxxxiii, to which the paragraph numbers correspond; the headings summarise the relevant issue. Issues such as agencies, and 'open government' are not examined here (on which see Research Papers 97/4 and 97/5).

Government sees this as a matter of the highest democratic importance and will continue to ensure that Ministers fully discharge their obligations to account to Parliament for their and their Departments' policies, decisions and actions and to respond to criticism made in Parliament. It is for Parliament to determine whether it is satisfied with the account it receives and what sanctions, if any, should follow.

### *2. Parliamentary scrutiny/accountability and forcing ministerial resignations:*

The Government agrees with the Committee that the ability of Parliament to put things right when they have gone wrong may be more important than apportioning blame and forcing resignation. Where a failure has occurred it is important for the Government to demonstrate to Parliament that the appropriate action has been taken to put right what went wrong, and to prevent any recurrence. This is why one of the areas for which a Minister takes direct personal responsibility is responding to major failure or expressions of Parliamentary or public concern.

### *3. Working definition of 'ministerial responsibility'*:[51]

The Government notes this suggested working definition based upon making a distinction between giving an account and being held to account. It acknowledges the Committee's definition of how the Executive should be held to account as a fair and accurate statement of the current position. It also agrees with many of the principles which underlie the statement about the Executive giving an account. In particular, it agrees with the Committee that Ministers - and Ministers alone - owe a fundamental duty to account to Parliament. *Questions of Procedure for Ministers* makes clear that Ministers are accountable to Parliament for the policies, decisions and actions of their Departments and Agencies; and that Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. A Minister who did knowingly mislead the House should resign except in quite exceptional circumstances of which a devaluation or time of war or other danger to national security have been quoted as examples.

With respect to the final sentence of the first paragraph of the proposed definition, the Government, of course, accepts that civil servants have a duty to be as helpful and forthcoming as possible to Select Committees and so to give an account to Parliament, in the sense of providing as full evidence as possible on questions of fact and explanation relating to Government policy and actions. The Government is not, however, prepared to breach the longstanding basic principle that civil servants, including the Chief Executives of Next Steps Agencies, give an account to Parliament on behalf of the Ministers whom they serve. Were civil servants to be required to go beyond this, they would inevitably be drawn into matters on which, as the Committee itself acknowledges (paragraph 114), they must refer Select Committees to the Minister. The Government's commitment to a permanent, non-political civil service means there can be no question of apportioning between the Minister and his civil servants part or parallel shares in a single line of accountability to Parliament.

### *4. There is no longer a 'Parliamentary convention' on the answering of PQs*:

The Government accepts the Committee's argument that "Parliamentary convention" does not determine which questions Ministers may answer. *Questions of Procedure for Ministers* will be amended accordingly (see Annex B) when the next version is issued.

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[51] A footnote relating to the special position of Accounting Officers is not reproduced (see HC 67, p vii)

### *5. QPM should be revised to define what may be withheld, but the Code of Practice should not be used restrictively by Ministers*

The Government made clear in its response to Recommendation 19 of the PCA Select Committee's Second Report on Open Government that there has never been any intention that the Government should be any less open with Parliament than with members of the public under the Code of Practice on Access to Government Information and it agreed to amend "Departmental Evidence and Response to Select Committees" to make this point absolutely clear. The exemptions contained in the Code of Practice are discretionary and allow for the possibility that, in judging whether information should be exempted under the Code, a Minister may on occasion (and within the constraints imposed by statutory bars on disclosure) decide that his duty to give information to Parliament should outweigh other considerations. The Government accepts that the criterion against which decisions on withholding information are made should be standardised to conform with the obligation in the *Code of Practice* on *Access to Government Information* to preserve confidentiality where disclosure would not be in the public interest as defined in Part 11 of the Code. This approach will be incorporated in the next version of *Questions of Procedure for Ministers* (see Annex B) and is reflected in *Guidance on Answering Parliamentary Questions* reproduced at Annex C.

### *6. The responsibility of the Prime Minister for Ministerial accountability:*

The Government notes this conclusion but continues to believe that the current wording of *Questions of Procedure for Ministers* provides a balanced statement of the proper relationship between a Prime Minister and his Ministerial colleagues.

### *7,8,12. Parliamentary resolution on the accountability of Ministers and officials:*[52]

The Government attaches the highest importance to the duty of Ministers and civil servants to provide as full and accurate information as possible to Parliament. This point is stressed already in *Questions of Procedure for Ministers* and the *Civil Service Code* which govern the actions of Ministers and their civil servants in discharging their duties, not least their duties in respect to this House and also to the House of Lords.

The Government shares the Committee's view that there could be value in the House's making explicit how it expect Ministers to discharge their responsibilities to Parliament. It believes however that, to have full authority, such a Resolution would need to be adopted with cross-party consensus, and in parallel with the Upper House. For the reasons given below, the Government would not wish to follow in its entirety the wording recommended by the Committee.

The wording recommended in paragraph 60 is unacceptable to the Government because it has the effect of weakening the line of accountability from civil servants to Ministers and from Ministers to Parliament.

When civil servants give evidence to Select Committees they are doing so, not in a personal capacity, but as representatives of their Ministers. This does not mean, of course, that officials may not be called upon to give a full account of government policies, or the justification,

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[52] Roger Freeman reported to the Committee on 22 January with a revised draft which has been discussed at 'cross-party' talks: see Appendix F of this Paper.

objectives and effects of those policies, but their purpose in doing so is to contribute to the central process of Ministerial accountability, not to offer personal views or judgements on matters that may be of political controversy. To ask civil servants to do so would undermine their professional political impartiality.

With that caveat, the standing instruction to all civil servants *(in Departmental Evidence and Response to Select Committees)* remains that they should be as helpful as possible to Select Committees in providing accurate information. In line with the Committee's Recommendation 5, these instructions are being amended to make more explicit that the *Code of Practice on Access to Government Information* should be the reference point for decisions on providing information to Select Committees, as it is for providing information to Parliament more generally.

### *9. Role of the Parliamentary Ombudsman*:

The Government acknowledges the case made by the Committee for amending the Parliamentary Commissioner Act 1967 in order to enable the Ombudsman to consider such complaints made directly to him by MPs. However, as the Ombudsman was created explicitly as a channel for investigating complaints against the Executive by private citizens, the proposal would constitute a major departure from the basic principles of the 1967 Act and could involve a diversion of the Ombudsman's limited resources from his original customers. The Government would therefore welcome the views of the PCA Select Committee before giving a substantive response to this recommendation.

### *10. Table Office sessional report on 'withheld' PQs*:

The Government notes this Recommendation which is principally a matter for the House authorities. The Government would have no objection to such a Procedure.

### *11. Explanations for information withheld*:

The Government accepts this recommendation and the *Guidance on Answering Parliamentary Questions* at Annex C reflects the fact that, in future, when Ministers refuse to provide information, they will explain the grounds for their decision. The point is considered further in the response to Recommendation 30.

### *13. Presumption that Ministers allow named officials to give evidence to committees*:

The Government agrees that, where a Select Committee has indicated that it wishes to hear evidence from named civil servants, Ministers should normally accept such a request, subject to two qualifications fundamental to the role of Select Committees and the constitutional position of Ministers and civil servants in respect of them.

(i) Civil servants appear before Select Committees on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee. It therefore remains the right of a Minister to suggest an alternative civil servant to that named by the Committee if he feels that the former is better able to represent him; and, while the Committee is under no obligation to accept the Minister's proposal, it is open to the Minister to appear personally before the Committee in the unlikely event

of there being no agreement about which official should most appropriately give evidence.

(ii) Select Committees have agreed that it is not their task to act as disciplinary tribunals. A Minister will wish to consider carefully a Committee's request to hear evidence from named officials, where this is likely to expose the individuals concerned to questioning about their personal responsibility or the allocation of blame as between them and others. This will be particularly so where the person concerned has been subject to an internal departmental inquiry or disciplinary proceedings. The Minister may, in such circumstances, wish to suggest either that the individual give evidence personally to the Committee, or that a designated senior official do so on his behalf.

Select Committees have on occasion invited retired officials to give evidence on Government matters. The Government accepts, of course, that Select Committees have power to call whom they wish to give evidence. However, retired officials cannot be said to represent the Minister and hence contribute directly to his accountability to the House. It is primarily for this reason, as well as for obvious practical points of having access to up to date information and thinking, that Ministers would expect evidence on Government matters to be given by themselves or by serving officials who report to them.

### *14. Clarification of policy on PQ-answering by agency chief executives*:

When a Parliamentary Question is about a matter assigned to an agency under the terms of its Framework Document, the Government's policy is that the Minister will normally ask the Chief Executive to provide the substantive response to the MP. The aim of this policy is to provide a fuller and more directly informed response and to relieve Ministers of the need to involve themselves in the detail of matters for which Chief Executives have day-to-day management responsibility. As the Treasury and Civil Service Committee recognised (Fifth Report 1994) MPs retain the option to seek a Ministerial response if they are dissatisfied with a Chief Executive's reply, thereby preserving Ministerial accountability. However, a Chief Executive may conclude that a particular issue requires discussion with the Minister, or a Ministerial answer; and it is open to Ministers to arrange to be consulted on a more regular or routine basis if they consider it necessary.

### *25. 1978 Procedure Committee's proposed right of Members to move for Papers*:

The Government welcomes the Committee's conclusion that "Government Departments have, in fact, been generally co-operative with Select Committees in supplying information" (paragraph 129). It believes that undertakings, to which the Committee refers (paragraph 128), to find time for a debate if a failure to provide information to a Select Committee became a matter of general concern to the House are of greater practical value than any formal powers. The Government notes that when the Procedure Committee considered Select Committees' powers to send for persons, papers and records in the course of its review of the working of the Select Committee system in 1990, it did not consider that new or additional powers were necessary or would be workable (Second Report, Session 1989-90, paragraph 162).

### *26. 'Parliamentary commissions'*:

The Government has no objection to Select Committees, or other Parliamentary bodies, investigating the work of government departments in depth, and is ready to assist them in this.

It would, however, wish to reiterate what it had understood to be common ground, that such in-depth examination should not extend to Select Committees becoming disciplinary tribunals for individual civil servants.

The reasons for this relate to the constitutional relationships between Parliament, Ministers and the Civil Service and were set out in the Government's memorandum to the Committee of 29 March 1996, in particular the final paragraph. That memorandum acknowledged that there was a genuine tension to be resolved between:

the legitimate interest that Select Committees have in satisfying themselves that discipline within the public service is being applied with sufficient rigour to protect the public interest; and

the employer's legal obligation to maintain a relationship of confidence and trust with the employee in individual cases.

The Government proposes to reconcile these two in the following way which it hopes Select Committees will find fair and acceptable.

Departments will continue to be guided by the principle that disciplinary and employment matters are a matter of confidence and trust (extending in law beyond the end of employment). In such circumstances, public disclosure may damage an individual's reputation without that individual having the same "natural justice" right of response which is recognised by other forms of tribunal or inquiry. Any published information should therefore be cast as far as possible in ways which do not reveal individual or identifiable details. Where Committees need such details to discharge their responsibilities, they will be offered in closed session and on an understanding of confidentiality. Evidence on such matters will therefore generally be given on the basis that:

(a) the Government will not give information about Departmental disciplinary proceedings until the hearings are complete;
(b) when hearings have been completed, the Government will inform the Committee of their outcome in a form which protects the identity of the individual or individuals concerned except insofar as this is already public knowledge;
(c) where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding as to confidentiality;
(d) the Government will thereafter give an account to the Committee of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in Departmental arrangements.

The Government would, of course, be ready to offer its further views to the Procedure Committee on these and related issues if invited.

## *27. Re-examination by Liaison Committee of relationship between PAC, NAO and departmental select committees*:

It is essentially a matter for Parliament to decide upon the form of the relationship between the Public Accounts Committee, the National Audit Office (NAO) and the departmentally related Select Committees. The Government would welcome the Liaison Committee considering the options recommended by the Public Service Committee and would have no objection to moves to allow the departmentally related Select Committees to make more use of the work of the NAO. However, this would be on the understanding that the nature and

scope of the NAO's work (as set out in the National Audit Act 1983), and its relationship with the Government, remain unchanged.

*29. Review by Liaison Committee of operation of select committees, especially as to the adequacy of their resources*:

The Government would, of course, be very ready to offer evidence and views to such an inquiry which, it assumes, would want to take as its starting point the Procedure Committee's 1989-90 Report on "The Workings of the Select Committee System" and the Government's response.

In this context, it is notable that, in its discussion of these matters, the present Committee's report concentrates almost exclusively on the *post hoc* investigative role of Select Committees and addresses hardly at all the part that Committees can play in giving Parliament a more active, forward-looking role in the policy process. For example, the Government's plans to expand its practice of publishing legislation in draft give departmental Select Committees considerable opportunity to comment on and help shape legislation at a formative stage. The Government would welcome expert contributions from Select Committees in this wider consultative process.

Finally, the Government responded to the Committee's proposals for the Government to publish a White Paper on the legislative process (and especially to respond to the 1993 Hansard Society Commission report, *Making the law*), and for the Procedure Committee to undertake an inquiry into the legislative process (nos. 33 & 34):

The Government's views on the legislative process (including several of the issues raised by the Report of the Hansard Society Commission) have been set out in Parliament by the Lord Privy Seal on 14 December 1994, by the present Paymaster-General on 13 December 1995, by the Lord President on 11 July this year, and by the Prime Minister in his speech on constitutional matters to the Centre for Policy Studies on 26 June. The Government will look for further opportunities to stimulate discussion of these issues.

If the Procedure Committee decided to conduct such an inquiry, the Government would of course be ready to contribute its views.

# Appendix A

## *Crichel Down: Sir David Maxwell Fyfe's speech*[53]

There has been criticism that the principle operates so as to oblige Ministers to extend total protection to their officials and to endorse their acts, and to cause the position that civil servants cannot be called to account and are effectively responsible to no one. That is a position which I believe is quite wrong, and I think it is the cardinal error that has crept into the appreciation of this situation. It is quite untrue that well-justified public criticism of the actions of civil servants cannot be made on a suitable occasion. The position of the civil servant is that he is wholly and directly responsible to his Minister. It is worth stating again that he holds his office "at pleasure" and can be dismissed at any time by the Minister; and that power is none the less real because it is seldom used. The only exception relates to a small number of senior posts, like permanent secretary, deputy secretary, and principal financial officer, where, since 1920, it has been necessary for the Minister to consult the Prime Minister, as he does on appointment.

I would like to put the different categories where different considerations apply. I am in agreement with the right Hon. Gentleman who has just spoken, that in the case where there is an explicit order by a Minister, the Minister must protect the civil servant who has carried out his order. Equally, where the civil servant acts properly in accordance with the policy laid down by the Minister, the Minister must protect and defend him.

I come to the third category, which is different. Again, as I understand the right Hon. Gentleman, he agrees with me on this. Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledges the mistake and he accepts the responsibility, although he is not personally involved. He states that he will take corrective action in the Department. I agree with the right Hon. Gentleman that he would not, in those circumstances, expose the official to public criticism. I think that is important, and I hope that the right Hon. Gentleman will agree with me that it should come from both sides of the House that we are agreed on this important aspect of public affairs.

But when one comes to the fourth category, where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to defend action of which he did not know, or of which he disapproves. But, of course, he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what had occurred and render an account of his stewardship.

The fact that a Minister has to do that does not affect his power to control and discipline his staff. One could sum it up by saying that it is part of a Minister's responsibility to Parliament to take necessary action to ensure efficiency and the proper discharge of the duties of his Department. On that, only the Minister can decide what it is right and just to do, and he alone can hear all sides, including the defence.

It has been suggested in this debate, and has been canvassed in the Press, that there is another aspect which adds to our difficulties, and that is that today the work and the tasks of Government permeate so many spheres of our national life that it is impossible for the Minister to keep track of all these matters.

I believe that that is a matter which can be dealt with by the instructions which the Minister gives in his Department. He can lay down standing instructions to see that his policy is carried out. He can lay down rules by which it is ensured that matters of importance, of difficulty or of political danger are brought to his attention. Thirdly, there is the control of this House, and it is one of the duties of this House to see that that control is always put into effect.

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[53] HC Deb vol 530 cc1285-7, 20.7.54

There is the other side of that on which I wish to spend a moment. The hon. Member for Edge Hill in the course of a very interesting and reasoned speech, used the phrase, " Heads should have fallen." As I have said, it is a matter for the Minister to decide when civil servants are guilty of shortcomings in their official conduct.

Normally, the Civil Service has no procedure equivalent to a court-martial, or anything of that kind. There have in the past been a few inquiries to establish the facts and the degree of culpability of individuals, but the decision as to the disciplinary action to be taken has been left to the Minister.

# Appendix B

## *Sir Robin Butler on 'accountability' and 'responsibility'*

### *1. Written Evidence to the Treasury Committee, 1994*[54]

MINISTERIAL ACCOUNTABILITY AND RESPONSIBILITY

3. The Government has not distinguished consistently between the use of the terms "accountable" and "responsible," nor can it determine the use of these words by others. They can and often have been used interchangeably, even in the most authoritative texts. However, they have been used to refer to two different circumstances between which it is useful to distinguish, as explained in paragraphs 9 and 10 below.

4. The Minister in charge of a Department is the only person who may be said to be ultimately accountable for the work of his department. It is usually on the Secretary of State or Minister that Parliament has conferred powers, and Parliament calls on Ministers to be accountable for the policy, actions and resources of their departments and the use of those powers. While Ministers may delegate much of the day to day work of their departments, often now to agencies, they remain ultimately accountable to Parliament for all that is done under their power. Civil servants, except in those particular cases where statute confers powers on them directly, cannot take decisions or actions except in so far as they act on behalf of Ministers. Civil servants are accountable to Ministers, Ministers are accountable to Parliament. Accountability to Parliament involves a two-way relationship-the Minister can continue in office only for so long as the Administration of which he is a part retains the confidence of Parliament and, at elections, of the electorate.

5. "Ministerial responsibility" has often been used to describe much the same concepts. Indeed the classic statement by Sir David Maxwell-Fyfe in the Crichel Down debate in July 1954, and the analysis by Sir Edward Bridges on which that statement drew, used the term "Ministerial responsibility" in this wide constitutional sense of Ministers' duty to respond to Parliament across the whole range of business of their departments, including in exceptional cases any action which may have been taken by a civil servant "of which the Minister disapproves and has no prior knowledge."

6. The Armstrong Memorandum on *The Duties and Responsibilities of Civil Servants* says in paragraph 4, following wording in the Government's response to the Defence Committee's fourth report of 1985-86 (Cmnd 9916):

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[54] Memorandum by Cabinet Office, 5th report of 1993-94, *The role of the civil service*, HC 27-II, pp188-190, extracts

"- Each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in the pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister.
- A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his Department.
- Civil servants are responsible to Ministers for their actions and conduct."

7. There have of course been many exchanges between the Government and the Treasury and Civil Service Committee on the nature of accountability since the Committee's extensive evidence-taking on the Armstrong Memorandum, including its report in 1985-86 on *Civil Servants and Ministers: Duties and Responsibilities,* and the Government's response; and in the Committee's first report Session 1986-87 on *Ministers and Civil Servants,* which quoted at length from Sir David Maxwell-Fyfe's speech in the Crichel Down debate of 20 July 1954, and proposed a useful distinction between the "actions" and "conduct" of civil servants, to which the Government responded in February 1987 (Cm 78). The Committee's reports on the Next Steps programme have also commented on the implications of the programme for Ministerial accountability. Neither the Government nor the Committee has advocated that the programme abandons that principle: in the words of the Committee:

> "We certainly do not advocate abandoning the principle of Ministerial accountability, but modifying it so that the Chief Executive who has actually taken the decisions can explain them, in the first instance. In the last resort the Minister will bear the responsibility if things go badly wrong, and Parliament will expect him or her to put things right, but the process of Parliamentary accountability should allow issues to be settled at lower levels wherever possible."

8. The Minister's full constitutional accountability to Parliament for all that his Department does, does not, therefore, mean that the Minister is personally involved in every action of his Department. Another and more everyday sense of the term "responsibility" implies direct personal involvement in an action or decision, in a sense which implies personal credit or blame for that action or decision.

9. A distinction between being accountable and being responsible, in the sense of being personally responsible and blameworthy, is one that Sir Robin Butler has made on several occasions to distinguish between the constitutional fact of Ministerial accountability for all that a Department does, and the limits to the direct personal responsibility (in the sense of personal involvement) of Ministers for all the actions of their departments and agencies, given the realities of delegation and dispersed responsibility for much business.

10. The distinction becomes of more than academic importance when it is argued that trends in modern administration have opened an "accountability gap" in which Ministers have distanced themselves from their traditional full accountability for their departments, without a growth in alternative mechanisms by which it could be ensured that some other person is accountable for matters which the Minister has delegated. The Government does not accept such an analysis because it does not accept that delegation diminishes Ministerial accountability to Parliament, or that it creates a new form of direct accountability to Parliament for civil servants. Delegation helps to make clear, however, the limits to Ministers' personal involvement in the actions of their Departments.

11. Ministerial accountability does not mean that only Ministers can give an account of departmental policies, actions and resources to Parliament. The fact that official evidence to

departmental select committees, including evidence from agency chief executives, is commonplace, supports that view. It does mean that if a Select Committee or Member of Parliament is not satisfied with the account given by a civil servant, they can pursue the matter with the Minister.

12. Nor is the fact of Ministerial accountability incompatible with giving civil servants clearly defined responsibilities. The programme of management reforms, notably through the Financial Management Initiative and the Next Steps programme for the creation of agencies, has emphasised delegation and clarity of responsibility as part of improved management structures. The Citizen's Charter principles of identifiable civil servants delivering explicit, published and monitored standards of service, with full information about how services are run, what they cost, the level of performance and who is in charge have taken transparency further forward. In guidance on market testing, the Government has emphasised that the accountability of Ministers to Parliament following a market test remains unchanged irrespective of whether an activity is carried out by civil servants or a by a private contractor- the activity still comes within the scope of public scrutiny. In the Government's view these developments are consistent with and have not undermined the doctrine of Ministers' ultimate accountability to Parliament for all aspects of Departmental performance. Indeed the Government takes the view that the increased transparency arising from these reforms supports that accountability.

## *2. Oral evidence to the Treasury Committee, 1994*[55]

**Sir Thomas Arnold**

2092. Sir Robin, Mr Forman mentioned Sir Kenneth Stowe and I would like to put some questions to you about accountability and responsibility and begin in a fairly light-hearted, maybe even nostalgic, way by telling you of a remark that Sir Brian Cubbon made to me. Sir Brian has also given evidence to us. He said that when he joined the Home Office just after the War, Ernie Bevin said to him, "You chaps should understand that Ministers are here to tell you what the public won't stand for."[1] What is your reaction to that remark now in the light of contemporary events and experience?

*(Sir Robin Butler)* I think that Ministers and civil servants each have their contribution to make to the process of government, and Ministers, because they are Members of Parliament, because they represent their constituencies, because they go back to their constituents, do have a very strong sense of what public opinion is. They have a much stronger sense than the Civil Service has. They also have democratic authenticity, because they have been elected, and they have the right to decide. Civil Servants may have greater expertise, greater experience, which they can bring to Ministers, but anybody is likely to take the view that the way in which things have been done is the best way in which they ought to be done. So I think in my experience that both sides bring these arguments to bear on policy and there is a resolution of the two contributions.

2093. Do you have in front of you the memorandum by the Cabinet Office on ministerial accountability and responsibility?
*(Sir Robin Butler)* Yes, I do.

2094. Could you turn to the notes on pages 4 and 5 and could I draw your attention on page 5 to your item 4. If you run your eye down the page to the third paragraph, the Chancellor of the Duchy of Lancaster is quoted as saying:

[1] Note by Sir Thomas Arnold: It was in fact a junior minister in the Labour Government, not Mr Bevin

[55] ibid, pp 212-4

"The essence is to clarify the distinction between responsibility for the provision of services, which can and often should-be devolved, and accountability for policy"-which you yourself have just referred to-"which remains firmly with the Minister." Now could I quote you briefly what Sir Brian Cubbon said to us in his memorandum about this. He said: "Ministers are concerned with far more than policy. Ministers deal with a seamless robe of decisions and matters which cannot be dignified with the word 'policy': the details of legislation, individual cases and incidents, appointments, influencing other people's decisions, EU matters, etc." and then later: "This seamless robe now covers an increasingly corpulent frame. The Ministerial workload is determined, not by statute or convention or long-term Government strategies, but by the shifting spotlight of public attention. In the name of accountability, a Minister can be asked about practically anything, and at all times of the day and night. Ministers say, reasonably, that if they are going to be held accountable for virtually everything, they are going to control virtually everything," and he went on to say to me that when Sir Leon Brittan was Home Secretary, Sir Leon had said to him, "If I am going to be accountable, I am going to be in charge." So my question to you, Sir Robin, is this: if the Secretary of State is in charge, is he not therefore responsible and is not the distinction which you sought to draw between accountability and responsibility largely semantic?

*(Sir Robin Butler)* The Minister is in charge but in a complex department no Minister can be in charge of everything. Just to take as it were an example absurdly, when Sir Leon Brittan was Home Secretary he may have been in charge. He could not have been responsible for the quality of lunch every day in Brixton Prison; he could not have been having reports on what was on the menu that day or on the cleanliness of the kitchens because that is simply not humanly practicable. But somebody ought to be responsible for that and the person who ought to be responsible for it ought to be the Governor and that ought to be made clear. So the distinction I have tried to draw between accountability and responsibility, and that the Chancellor of the Duchy takes up in his speech, is that Sir Leon Brittan, as Sir Brian Cubbon said, is accountable for everything. He can be asked in the House of Commons, he can be asked by the press, about the quality of food at Brixton Prison and could be required to give an answer, but to say that he can be day-to-day responsible for that is false and it is damagingly false. It is, therefore, important to make clear which official is responsible. The Home Secretary 4 is always accountable but somebody else has to be responsible and responsible to the Home Secretary.

*(Sir Robin Butler)* No, nor can I claim that it is original. Indeed, I would say that it is in Sir David Maxwell-Fyfe's statement after Crichel Down, where he draws the distinction between what Minister may know of and have to take direct responsibility for and those things which he does not have to take direct responsibility for because his civil servants did them without any knowledge or instruction on his part. Professor Finer in a famous article in 1956 drew a distinction between the two types of responsibility. All I have done, in order to try to make these concepts distinct, is to try to make a practice of attaching the name "accountability" to one and "responsibility" to the other.

2097. Then let us look at the text of your lecture. You quote from it in the notes, item 3. If you run your eye down the page, what you actually say in the lecture, if you go down four paragraphs, is: "That is, of course a different thing." Did you say that?

*(Sir Robin Butler)* Yes, I did.

2098. You conclude that paragraph by saying, "They cannot, and should not, take the blame for the decisions of which they know nothing, or could be expected to know nothing."
*(Sir Robin Butler)* Yes.

2099. This is the doctrine you have again enunciated this morning. You then go to say, however, " ... but they should be responsible, if a wrong is brought to their attention, for taking action to provide redress to ensure that mistakes do not recur."

*(Sir Robin Butler)* Yes.

2100. To what extent do you think that the doctrine of constructive knowledge applies? In other words, if a Minister learns of information on a subject formerly dealt with by Civil Servants, is

he put on inquiry to find out more if something sounds wrong somewhere?

*(Sir Robin Butler)* Yes. In my view, if a Minister does learn of something where it would have been reasonable for him to make further inquiry; that there was *prima facie* evidence that a reasonable person would say, "It looks as if there is something wrong here," it would not be acceptable for a Minister simply to pass over that in silence.

2101. That being the case, in respect of this argument about responsibility and accountability, turning to your evidence in front of Scott, once Mr Heseltine expressed his hesitation, why did not you and other Civil Servants invite Ministers to read the documents?

*(Sir Robin Butler)* Again, I do not want to go into matters which are being considered by Scott and, in any case, I was not, myself, personally involved in that episode with Mr Heseltine, so I do not want to answer for other people and I cannot answer for myself.

2102. But you are quite clear in your own mind that the argument about responsibility and accountability really does go to the heart of the Scott Inquiry?

*(Sir Robin Butler)* It is clearly a very important part of it because what Lord Justice Scott is having to decide is where he considers that something has gone wrong, whom he should criticise; who, therefore, is blameworthy and responsible. Now, the point I was seeking to make to Lord Justice Scott is that because a Minister is accountable for everything that goes on in his Department, it is not fair to blame the Minister for everything that goes wrong in his Department if he neither knew of-nor had any reason to know-that this thing was going on.

**Mr Forman**

2103. Leaving aside the Scott Inquiry, Sir Robin, (1 understand your reasons for not wanting to dig that up again at this stage) referring back to the Cabinet Office memorandum which has been submitted to the Committee today, in paragraph 10 of that memorandum-and you probably have it in front of you-an important point is made that many people believe that among the trends in modern administration is an accountability gap, which has allegedly grown up without a growth of alternative mechanisms really to fill that gap. You correctly point out that the Government does not accept that analysis, but the impression is that there are others who do accept that analysis, or give it some credence. Would you care to share your views on the problem of the accountability gap and how it might be addressed?

*(Sir Robin Butler)* I think there is a misunderstanding, particularly about Next Steps Agencies. People often refer to them as quasi-autonomous. They are not. They are part of the Civil Service. The Chief Executive of a Next Steps Agency is a Civil Servant like anybody else, responsible to the Minister, and the Ministers accountable for him. That is not often widely understood and that is part of the reason, part of the misunderstanding, why people have talked about an accountability gap. I say there is no accountability gap because a Minister is accountable, in the sense that he can be called to account for everything that goes on in his Department; every exercise of the powers that Parliament has given to him.

**Chairman**

2104. It might be a responsibility gap.

*(Sir Robin Butler)* There might be a responsibility gap, but that is what we have sought to close in the Next Steps arrangement by defining the responsibility of Chief Executives and Civil Servants down the line. So my whole argument about Next Steps is that it is an improvement in accountability because we have both retained the fact that Parliament can always ask a Minister bout anything under his control, but can recognise that some powers have, in a complex society, to be delegated.

**Mr Forman**

2105. I have great sympathy for what you say Sir Robin, because I happen to have been Minister myself, but I still think that in the eyes of the general public accountability really means willingness and, indeed, demonstrated evidence, to resign when somebody is held to account because things have gone massively wrong-or it appear that things have gone massively wrong. Would you not say that is really the critical definition and one of the difficulties here in the whole area of accountability is that resignations are far and few between?

*(Sir Robin Butler)* That is a obviously a matter for the conscience of the Minister concerned. There have been occasions when Ministers have resigned when something has gone wrong in their Departments, even though the world recognises that they could not properly be held responsible for them. There have been many occasions when they have not. I think the point I would make about this is-and this distinction was recognised at the time of Crichel Down - that contrary to what is supposed, the practice has not actually changed a great deal over a hundred or more years. I referred briefly to the article by Professor Finer where he surveyed ministerial resignations over the previous hundred years, and where he established that the number of occasions on which Ministers had resigned because something had gone wrong in their Departments was very much fewer than the number of occasions when such things had gone wrong.

2106. That was the article published in 1958.
*(Sir Robin Butler)* 1956

2107. That is a long time ago now. Some people in the audience were not born then. Coming right up-to-date, I am sure one would hear criticism from the man on the Carshalton omnibus (if it is still running) that there are not enough resignations in modern circumstances, although politicians-for the reasons Sir Thomas mentioned-feel it necessary to take on themselves a degree of control and responsibility for virtually everything that happens, largely because the media impute that responsibility to them.

*(Sir Robin Butler)* Yes. I think there are two things about this. There is (if I may put it this way) a rather foolish game of pursuing resignations. There is a kind of scalp-hunting. I think that is counter-productive. It debases the currency. If people are called to resign the whole time they are less inclined to do so.

3. ***Oral evidence to the Scott Inquiry 1994***[56]

But I would also say that during the time I have been in government I think the number of occasions on which Ministers have resigned is no less than it was in the early years of this century; indeed, a great deal more frequently.

2108. Could you give us just one example of what I would call an exemplary resignation, in your time? That is to say, a resignation which fulfils the highest traditional standards that one would expect in public life.

*(Sir Robin Butler)* I do not think they are traditional-in the sense that standards have varied over the years-but I believe the prime example of a Minister who resigned (even though it was generally regarded that he was not personally culpable) was Lord Carrington over the Falklands and, of course, his colleagues.

**Chairman**

2109. Of course, we do know that the Prime Minister has set it on record when he says that Ministers should give accurate and truthful information to the House and if they knowingly fail to do this they should relinquish their posts, except in quite exceptional circumstances. We do know that is a case for resignation, do we not?

*(Sir Robin Butler)* I think that has always been accepted.

[56] Transcript, Day 62, 9.2.94 pp 14-48, not reproduced here

# Appendix C

### *Revised Paragraph 1 of QPM*[57]

Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. In particular they must observe the following principles of Ministerial conduct:

(i) Ministers must uphold the principle of collective responsibility;

(ii) Ministers are accountable to Parliament for the policies, decisions and actions of their departments and agencies;

(iii) Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the *Government's Code of Practice on Access to Government Information;*

(iv) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

(v) Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

(vi) Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

(vii) Ministers must not use public resources for party political purposes. They must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code.

These notes detail the arrangements for the conduct of affairs by Ministers. They are intended to give guidance by listing the principles and the precedents which may apply. They apply to all Members of the Government (the position of Parliamentary Private Secretaries is described separately in Section 3). The notes should be read against the background of the general obligations listed above, and in the context of protecting the integrity of public life. It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can only remain in office for so long as they retain the Prime Minister's confidence.

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[57] annex B of the Government response to the Public Service Committee, HC67, 1996-97 November 1996

# Appendix D

### *Guidance to officials on drafting answers to Parliamentary questions*[58]

1. Never forget Ministers' obligations to Parliament which are set out in *'Questions of Procedure for Ministers ":*

   "Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the *Government's Code of Practice on Access to Government Information."*

   "Ministers .... have a 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 and the public. "

2. It is a civil servant's responsibility to Ministers to help them fulfil those obligations. It is the Minister's right and responsibility to decide how to do so. Ministers want to explain and present Government policy and actions in a positive light. They will rightly expect a draft answer that does full justice to the Government's position.

3. Approach every question predisposed to give relevant information fully, as concisely as possible and in accordance with guidance on disproportionate cost. If there appears to be a conflict between the requirement to be as open as possible and the requirement to protect information whose disclosure would not be in the public interest, you should check to see whether it should be omitted in accordance with statute (which takes precedence) or the *Code of Practice on Access to Government Information*, about which you should consult your departmental openness liaison officer if necessary.

4. Do not omit information sought merely because disclosure could lead to political embarrassment or administrative inconvenience.

*5.* Where there is a particularly fine balance between openness and non-disclosure, and when the draft answer takes the latter course, this should be explicitly drawn to the Minister's attention. Similarly, if it is proposed to reveal information of a sort which is not normally disclosed, this should be explicitly drawn to Ministers' attention.

6. If you conclude that material information must be withheld and the PQ cannot be fully answered as a result, draft an answer which makes this clear and which explains the reasons in equivalent terms to those in the Code of Practice, or because of disproportionate cost or the information not being available. Take care to avoid draft answers which are literally true but likely to give rise to misleading inferences.

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[58] annex C of the Government response to the Public Service Committee, HC 67, 1996-97, November 1996

# Appendix E

## *OPS Memorandum on Ministerial accountability to Public Service Committee, 1996*[59]

MINISTERIAL ACCOUNTABILITY

2. A comprehensive statement of Ministerial accountability was drawn up by Sir Edward Bridges (then Permanent Secretary to the Treasury) in 1954, at the time of Crichel Down. As it summarises what may be called the classical doctrine, it is worth quoting the central principle.

> "Under our constitutional practice, executive powers are conferred by Parliament on Ministers of the Crown. Both in regard to these powers and to others which derive from the prerogative and not from statute, it has long been the established constitutional practice that the appropriate Minister of the Crown is responsible (CA) to Parliament for every action in pursuance of them.
>
> All this, of course, is fundamental to our whole system of democratic government. It is upon Ministers, and not upon Civil Servants that the powers of Government have been conferred: and it is Ministers who are Members of one or other House of Parliament, whose dismissal from office Parliament can bring about if it so chooses-who are answerable (CA) to Parliament for the exercise of those powers. Save in special cases, not relevant in this context, Civil Servants have no powers of their own. They can take no decisions or do anything, except insofar as they act on behalf of Ministers, and subject to the directions and control of Ministers.

It may be noted that no other system would be workable so long as Ministers are served by permanent officials who serve all governments alike and are debarred from overt party affiliation, and from party controversy: and that any change in the system would have far-reaching effects on basic features of our constitution. '

> It follows that a civil servant, having no power conferred on him by Parliament, has no direct responsibility (CA) to Parliament and cannot be called to account by Parliament. His acts, indeed, are not his own. All that he does is done on behalf of the Minister, with the Minister's authority express or implied: the Civil Servant's responsibility (CA) is solely to the Minister for what he may do as the Minister's servant.
>
> ". . . The fact that Ministers alone exercise the ultimate powers of executive government and that they can be and are called to account (CA) both for their own acts (PR) and for those done on their behalf (CA) is our best safeguard against the abuse of those powers."

3. Drawing upon this principle, Sir David Maxwell-Fyfe (then Home Secretary) distinguished in the Crichel Down debate between four categories of action in order to demonstrate the working of the principle of Ministerial accountability. His fourth category is germane.

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[59] *Ministerial accountability and responsibility*, 2nd report of the Public Service Committee, HC 313-III, 1995-96, extracts, pp 188-90. In this memorandum, 'CA' means 'constitutionally accountable' and 'PR' means 'personally responsible', as identified by OPS (see fn 1 to this memorandum, p188).

> "where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to defend action of which he did not know, or of which he disapproves. *(ie., he is not PR).* But of course, he remains constitutionally responsible (CA) to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship.(CA)"'

4. These 1954 statements are fully consistent with the distinction drawn forty years later in the April 1994 Cabinet Office Memorandum to the Treasury and Civil Service Committee between:

> " . . . *the constitutional* fact of Ministerial *accountability* for all that a Department does, and the limits to the *direct personal responsibility* (in the sense of personal involvement) of Ministers for all the actions of their departments and agencies, given the realities of delegation and dispersed responsibility for much business."

5. Hence the distinction, far from being novel, has long been part of the classical doctrine of Ministerial accountability, the most recent Government statement of which was given in "The Civil Service: Taking Forward Continuity and Change":

> "In the Government's view, a Minister is *"accountable"* to Parliament for everything which goes on within his department, in the sense that Parliament can call the Minister to account for it. *The Minister is responsible* for the policies of the department, for the framework through which those policies are delivered, for the resources allocated, for such implementation decision as the Framework Document may require to be referred or agreed with him, and for his response to major failures or expressions of Parliamentary or public concern. But *a Minister cannot sensibly be held responsible* for everything which goes on his department in the sense of having a personal knowledge and control of every action taken and being personally blameworthy when delegated tasks are carried out incompetently, or when mistakes or errors of judgment are made at operational level. It is not possible for Ministers to handle everything personally, and if Ministers were to be held personally responsible for every action of the department, delegation and efficiency would be much inhibited."
>
> "The *line of accountability* of officials runs through Ministers to Parliament. If Parliament is not satisfied with the account given, the ultimate sanctions are the motion of no-confidence or the withholding of supply.

6. The doctrine evolved during the latter past [*sic*] of the 19th Century in parallel with the development of the constitutional distinction between Ministers of the Government and a politically impartial Civil Service. The fact that civil servants are accountable to Ministers, who in their turn are accountable to Parliament, determines how politically sensitive business flows in a department: up to and down from the Minister. So long as Ministers are deemed to be accountable for officials' actions, they retain the ultimate authority over all that happens in their department. Were civil servants able to account directly to Parliament and to express their own views on policy advice preferred to Ministers that would give unelected officials more power than is warranted in a Parliamentary democracy, and lead inexorably to the end of the permanent, non-political civil service.

7. The doctrine therefore defines the constitutional position of the Civil Service. Civil servants' authority is clearly derived from Ministers, and powers are clearly exercised on their behalf and subject to their ultimate control. Certainly, if it were Parliament's intention that civil servants should exercise powers in their own right, it would seem more appropriate for Parliament to vest those powers in civil servants directly.

8. As Sir Edward Bridges noted in 1954, any change in this clear line of accountability would entail radical constitutional reform and this no doubt explains the durability of the doctrine.

THE SCOTT REPORT

9. Sir Richard Scott said that he found it "difficult to disagree" with the "distinction between Ministerial "accountability" and Ministerial "responsibility". He said:

> "Ministerial 'accountability' is a constitutional burden that rests on the shoulders of Ministers and cannot be set aside. It does not necessarily, however, require blame to be accepted by a Minister in whose department some blameworthy error or failure has occurred. A Minister should not be held to blame or required to accept personal criticism unless he has some personal responsibility for or some personal involvement in what has occurred. The kernel of Sir Robin's point, I think, is that the conduct of government has become so complex and the need for Ministerial delegation of responsibilities to and reliance on the advice of officials has become so inevitable as to render unreal the attaching of blame to a Minister simply because something has gone wrong in the department of which he is in charge. For my part, I find it difficult to disagree.
>
> "Sir Robin's distinction between 'accountability' and 'responsibility' has important constitutional implications and does not have approval from all quarters. His point, however, that a Minister cannot reasonably be held to blame for things done or omitted within his department of which he knew nothing at the time and could not have been expected to have foreseen or prevented, seems to me to have an important bearing on the obligation of Ministers to provide information to Parliament. If Ministers are to be excused blame and personal criticism on the basis of the absence of personal knowledge or involvement, the corollary ought to be an acceptance of the obligation to be forthcoming with information about the incident in question. Otherwise Parliament (and the public) will not be in a position to judge whether the absence of personal knowledge and involvement is fairly claimed or to judge on whom responsibility for what has occurred ought to be placed. Any re-examination of the practices and conventions relied on by government in declining to answer, or to answer fully, certain Parliamentary Questions should, in my opinion, take account of the implications of the distinction drawn by Sir Robin between Ministerial "accountability" and Ministerial "responsibility" and of the consequent enhancement of the need for Ministers to provide, or to co-operate in the provision of, full and accurate information to Parliament.

CONVENTIONS GOVERNING THE PROVISION OF INFORMATION BY GOVERNMENT TO PARLIAMENT

10. The Government last year expanded the first paragraph of *"Questions of Procedure for Ministers"* into a seven point code of Ministerial conduct. The second and third points

constitute the current summary formulation by the Government of the principal obligations which Ministers, as members of the executive, owe to Parliament.

"(ii) Ministers are accountable to Parliament for the policies, decisions and actions of their departments and agencies;

(iii) Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, should be decided in accordance with established Parliamentary convention, the law, and any relevant government Code of Practice".

# Appendix F

**Latest Government draft of a proposed Parliamentary Resolution on ministerial accountability:**[60]

"That, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to this House:

(1) Ministers have a duty to the House and its Committees to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps Agencies.

(2) It is of paramount importance that Ministers give accurate and truthful information to this House and its Committees. Any inadvertent error should be corrected at the earliest opportunity. If Ministers knowingly mislead the House, the House will expect them to offer their resignation to the Prime Minister.

(3) Ministers should be as open as possible with this House and its Committees, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's *Code of Practice on Access to Government Information*.

(4) Similarly, ministers should require civil servants who give evidence before Select Committees on their behalf and under their directions to be as helpful as possible in providing full and accurate information in accordance with the duties and responsibilities of civil servants as set out in the *Civil Service Code*."

[60] Prepared as a basis for cross-party discussions, 21.1.97

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| 96/55 | The Collective Responsibility of Ministers: An Outline of the Issues | 30.04.96 |
| 96/27 | The Individual Responsibility of Ministers: An Outline of the Issues | 21.02.96 |

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1. cc 625, 631 respectively

3. HL Deb vol 569 cc 1228-1358, at c.1240, 26.02.96