

**Written evidence from Professor Laurence Ferry<sup>1</sup>, Professor Aileen Murphie<sup>2</sup> and Dr Henry Midgley<sup>3</sup> (CLR02)**

**Public Administration and Constitutional Affairs Committee  
Civil Service Leadership and Reform inquiry**

We welcome this inquiry into the civil service leadership and reform. Our evidence is related to whether the current system of ministerial directions is effective and sufficient, although the issues we raise have a broader resonance outside the margins of that topic.

Summary

- It is crucial that the civil service remains impartial and is seen to remain impartial.
- Directions should exist and are a useful part of the constitution but only in areas where civil servants have clear obligations to act as part of their role; eg., value for money or legality.
- Directions should only exist where the decision about whether to obtain a direction has little ambiguity.
- Improvements to the current system of directions could be made. These could include ensuring that directions are used appropriately by civil servants and making sure that accounting officer assessments are published regularly and consistently and made useful to Parliament
- Directions should not be used to substitute for political decisions or as a veto power over bad policy.
- Better transparency over government policy through improved data and accounts could enable Parliament to play more of a role in correcting bad policy and holding ministers to account.

Introduction

In the following paper, we set out:

- Why civil service impartiality matters.
- Ministerial directions and Accounting Officer assessments.
- The future of ministerial directions.
- Transparency.

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## Civil Service impartiality

The Civil Service Code sets out that impartiality is one of the core values of the service: it defines impartiality as a set of obligations to:

- “serve the government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this code, no matter what your own political beliefs are.
- act in a way which deserves and retains the confidence of ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future government.
- comply with any restrictions that have been laid down on your political activities” (HM Government, 2015).

A number of commentators have supported the principle of civil service impartiality over the years. Sir David Normington<sup>4</sup> recently argued that a merit based, impartial civil service:

- provides effective government due to the merit-based appointment procedures.
- ensures continuity in administration, enabling a government to move quickly once in power (“This continuity is often contrasted with other countries, like the US, where a year can be spent replacing the senior officials of the outgoing administration with officials of a different political hue”).
- reduces the chance of groupthink: “the combination of politicians and civil servants working together – one providing political direction, the other bringing objective advice and evidence – came to be seen at its best as a powerful aid to good policy making”.
- Ensures the UK has “a fundamentally honest civil service” (Normington, 2019).

If civil service impartiality is vital, it has also faced strains as some politicians have accused the civil service of having its own agenda (Rutter, 2019). Impartiality therefore needs to be protected by the institutional structures that we put around the civil service, ensuring that the service does not play a role within politics and hence becomes vulnerable to perceptions of partiality, but instead supports the Government of the day in taking forward and implementing their policies.

## Ministerial directions and accounting officer assessments

Directions arise out of the nature of the role of the Accounting Officer. Since the 1950s, Accounting Officers (normally the Permanent Secretary) have long been accountable for “the regularity of all the payments which have been authorized by his Department and which are recorded in the Appropriation Account under examination” and for “securing economy in the widest sense in the administration of his department” (Treasury, 1951). The second responsibility was widened by the National Audit Act 1983 which made the Accounting Officer responsible for answering questions to the Public Accounts Committee

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<sup>4</sup> Sir David Normington was First Civil Service Commissioner and Commissioner for Public Appointments 2011 to 2016 and served as a Permanent Secretary from 2001 to 2016.

about economy, efficiency and effectiveness (value for money). In the 2010s, this concept of value for money was extended by the National Audit Office to include whether the services provided to the public were financed sustainably; ie, were funded adequately to perform the task ministers had allotted to them (C&AG, 2013).

Currently, the Accounting Officer is therefore responsible for:

- The regularity of spending.
- The propriety of spending.
- The value for money of spending.
- The feasibility of spending (Treasury, 2022).

All of these concepts are grounded in current constitutional practice and relate to what Parliament has deemed Accounting Officers to be accountable for. They are all backed up either by judgements of the House and legal advice (propriety and regularity) or by decades of reports from the National Audit Office and Public Accounts Committee (value for money and feasibility).

Consequently, if an Accounting Officer needs to disclaim his or her accountability for a spending decision, they ask their presiding minister for a direction. As the Government argued in 2017: the practice of directions is linked directly to the Accounting Officer status:

In this role [Accounting Officer], they are directly accountable to the Public Accounts Committee. The Ministerial notification and direction process is activated if a Minister is considering a transaction which the Accounting Officer believes would breach the requirements of propriety, regularity or value for money, and if the Minister decides to proceed against the written objections of the Accounting Officer. This process enables the Public Accounts Committee to see that the Accounting Officer does not bear personal responsibility for this action. It is not an instrument which is engaged purely because a Minister decides to act against the advice of an official, but when a Minister decides to spend public money in a way that contravenes the role of the Accounting Officer. (Cabinet Office, 2017)

### Accounting Officer Assessments

The practice of directions is also related to that of Accounting Officer assessments. These are described by the Treasury as a “method of analysis” of whether the four accounting officer principles- value for money, regularity, propriety and feasibility- have been met in a particular case (Treasury, 2017). The Treasury suggests that for major projects and programmes a summary assessment should be published (Treasury, 2017).

### The future of ministerial directions

There are two considerations for the future. Firstly, the use of the current system and secondly whether the system should be extended to cover other matters.

#### *The current system*

The current system could be improved in two ways.

- There could and should be consideration about whether the system is being used enough. There was widespread criticism for example of spending on the Towns Fund where the NAO concluded that “Ministers’ selections resulted in towns being selected with lower scores than some other towns that were not selected.” Civil servants suggested that this met the Accounting Officer tests as ministers “provided a rationale” for their selection (C&AG, 2020). However, the Public Accounts Committee said that the “justification offered by ministers for selecting individual towns are vague and based on sweeping assumptions” and suggested the episode “risked the Civil Service’s reputation for integrity and impartiality” (Public Accounts Committee, 2020).
- The NAO pointed out that Accounting Officer assessment summaries are often not published as the Treasury intended and that the summaries do not include sufficient detail to enable a reader to understand the decision taken by the Accounting Officer (C&AG, 2022). The Public Accounts Committee recommended improvements to the consistency and timely publication of assessments in 2022 (Public Accounts Committee, 2022).

### *Extending the system*

There have been arguments previously to extend the practice of giving directions. The Committee’s predecessor committee argued in the last Parliament for example that the Cabinet Secretary should be empowered to seek a direction when he or she felt that the Government of the day had acted without a proper procedure of authorisation from the cabinet (PACAC, 2017).

We believe that an extension to the concept of a ministerial direction should be based on two factors:

- Firstly, whether the cause of a direction is clear and obvious and not a matter of opinion.
- Secondly, whether the cause of a direction clearly relates to something within a civil servant’s competency to decide and does not infringe upon the powers of elected politicians.

The risk in increasing the scope of directions is that it puts the burden onto civil servants to make decisions which are outside their competency and should really be taken by Parliament. Ultimately, it is for Parliament to hold ministers to account for poor policy making and to refuse to pass poorly drafted laws, not for civil servants whose role is to be impartial servants of whoever is chosen by Parliament to hold power.

### Transparency

The Committee may also wish to consider as part of their inquiry how to enhance Parliament’s ability to scrutinise the administration of government. Ultimately, Parliament should act as the guarantor both of the constitutional status of the civil service and of broad questions of good administrative practice and proper democratic government. The civil

service exists to carry out the instructions of a government entrusted to run the country by Parliament. A system of ministerial directions ultimately relies upon parliamentary sanctions such as a functioning committee system and a majority willing to scrutinise the government.

It is important that Parliament remains informed about what the government is doing. It is vital therefore that the position of the NAO should not change as an enabler of parliamentary scrutiny (Ferry and Midgley, 2022). However, the principles of parliamentary accountability can and should be extended, in particular to the data that Parliament receives from government about government's activities. The Committee's predecessor made important progress in this area in its two reports on government accounting (PACAC, 2017a, 2018) (to which the Treasury has responded (Treasury, 2019)) and the current Committee has also made important moves in this area as well (PACAC, 2021, Ferry et al., 2023).

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## References

Cabinet Office, 2017 Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016-17, available at [Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016-17 - Public Administration and Constitutional Affairs Committee - House of Commons \(parliament.uk\)](#)

C&AG, 2013 The Financial Sustainability of Local Authorities [NAO Report \(HC 888 2012-2013\): Financial sustainability of local authorities](#)

C&AG, 2020 Review of the Town Deals selection process [Review of the Towns Deals selection process \(nao.org.uk\)](#)

C&AG, 2022 Accounting officer assessments: improving decision-making and transparency over government's major programmes [Accounting officer assessments: improving decision-making and transparency over government's major programmes \(nao.org.uk\)](#)

Ferry, L. and Midgley, H. (2022) Democracy, accountability and audit: the creation of the UK NAO as a defence of liberty, *Accounting, Auditing & Accountability Journal*, Vol. 35, Issue 2.

Ferry, L., Green, S. and Midgley, H. (2023) Accountability, emergency and liberty during COVID-19 in the UK 2020-22, *Accounting, Auditing & Accountability Journal*, <https://doi.org/10.1108/AAAJ-07-2022-5931>

HM Government, 2015, The Civil Service Code [The Civil Service code - GOV.UK \(www.gov.uk\)](#)

Normington, Sir David, 2019 “Speaking truth to power” in S. Barwick ed. impartiality matters: perspectives on the importance of impartiality in the civil service in a “post truth” world, Smith Institute. [Impartiality matters: perspectives on the importance of impartiality in the civil service in a “post truth” world | Smith Institute \(smith-institute.org.uk\)](https://www.smith-institute.org.uk/publications/impartiality-matters-perspectives-on-the-importance-of-impartiality-in-the-civil-service-in-a-post-truth-world)

Public Accounts Committee (2020), Selecting towns for the towns fund [Selecting towns for the Towns Fund \(parliament.uk\)](https://www.parliament.uk/publications/2020/11/11-selecting-towns-for-the-towns-fund)

Public Accounts Committee (2022), Improving the accounting officer assessment process [Improving the Accounting Officer Assessment process \(parliament.uk\)](https://www.parliament.uk/publications/2022/02/02-improving-the-accounting-officer-assessment-process)

Public Administration and Constitutional Affairs Committee (2017) Lessons still to be learnt from the Chilcot Inquiry [Lessons still to be learned from the Chilcot Inquiry \(parliament.uk\)](https://www.parliament.uk/publications/2017/06/06-lessons-still-to-be-learned-from-the-chilcot-inquiry)

Public Administration and Constitutional Affairs Committee (2017a) Accounting for democracy: making sure Parliament, the people and ministers know how and why money is spent [95.pdf \(parliament.uk\)](https://www.parliament.uk/publications/2017/06/06-accounting-for-democracy)

Public Administration and Constitutional Affairs Committee (2018) Accounting for democracy revisited: the Government’s response and proposed review [Accounting for Democracy Revisited: The Government Response and Proposed Review \(parliament.uk\)](https://www.parliament.uk/publications/2018/06/06-accounting-for-democracy-revisited)

Public Administration and Constitutional Affairs Committee (2021) Government transparency and accountability during covid: the data underpinning decisions [Data Transparency and Accountability: Covid 19 \(parliament.uk\)](https://www.parliament.uk/publications/2021/06/06-government-transparency-and-accountability-during-covid)

Rutter, J. (2019) Will civil service impartiality be a casualty of Brexit available at <https://www.fda.org.uk/home/Newsandmedia/Features/jill-rutter-institute-for-government-civil-service-impartiality.aspx>

Treasury (1951) Memorandum by the Treasury on the responsibilities of Accounting Officers and the scope of Departmental and Treasury responsibility, in Public Accounts Committee Epitome of the reports from the Committees of Public Accounts 1938-1969

Treasury (2017) Accounting Officer Assessments: guidance [AOA guidance December 2021 final.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644211/aoa-guidance-december-2021-final.pdf)

Treasury (2019) The Government financial reporting review [The government financial reporting review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644211/the-government-financial-reporting-review.pdf)

Treasury (2022) Managing Public Money [MPM Spring 21 without annexes 040322 1 .pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040322/MPM_Spring_21_without_annexes_040322_1.pdf)