



House of Commons  
Public Administration  
Select Committee

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**Whitehall  
Confidential?  
The Publication of  
Political Memoirs**

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**Fifth Report of Session 2005–06**





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# Whitehall Confidential? The Publication of Political Memoirs

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**Fifth Report of Session 2005–06**

*Report and Annex, together with formal  
minutes*

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

### Committee staff

The current staff of the Committee are Eve Samson (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Phil Jones (Committee Assistant), Sue Holt (Secretary) and Louise Glen (Senior Office Clerk).

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## Summary

*At some point of time the secrets of one period must become  
the common learning of another...*

The Radcliffe Report, 1976<sup>1</sup>

As Lord Radcliffe recognised, memoirs and diaries tell us a great deal about the workings of government. They are a source of interest to the general reader, valuable for the citizen, and a resource for future historians. They may not prevent our repeating the mistakes of the past, but can put events into perspective. Their publication is to be encouraged.

On the other hand, government needs some areas of confidentiality if it is to be conducted effectively, and if all concerned are to be as candid with one another as they need to be. Ill-judged and instant memoirs can undermine that confidentiality, and erode the trust which is necessary for ministers, officials and advisers to work together.

If it comes to be unexceptionable for public servants to publish instant memoirs on retirement which contain personal details of politicians and observations on their policies, or if politicians come to criticise named civil servants and their advice, it is hard to see how traditional relationships between ministers and civil servants can be maintained. Ministers will not trust permanent officials if their confidences are broken, or if they are routinely denigrated. Able people will not go into public service if it offers the prospect of regular denigration, without the opportunity to answer back.

The current system for clearing memoirs recognises all this, and supposedly requires authors to consult and negotiate before they publish. Sometimes those negotiations succeed. We feel the government has sometimes been rather too cautious in its attitude to proposed memoirs. But if an author is unwilling to cooperate, unless national security is at stake, there is nothing effective the government can do to prevent publication. If it goes to court it simply gives the offending work additional publicity as “the book they tried to ban”. Legal precedents show the courts are rightly only prepared to grant an injunction *preventing* publication when it is clear that identifiable damage will be done. But the dangers do not come from the single shocking memoir, but from the steady erosion of confidence and trust.

We need to move to a new system, based on contractual confidentiality and the law of copyright, in which authors have freedom to decide what to publish, but face real disadvantages if they publish without agreement. We support the recent changes which emphasise the contractual obligation of confidentiality for Crown servants, and make it clear that copyright in material drawn from their professional life is assigned to the Crown. In such a system, if an author publishes without agreement, the Crown can take action to attach the profits. We would support the extension of this system to ministers.

<sup>1</sup> *Report of the Committee of Privy Counsellors on Ministerial Memoirs, January 1976, Cmnd. 6386, para 82.*

A change of this kind would mean that there could be no question of the government banning books. If an author felt strongly that publication was in the public interest, he or she would be free to publish and argue as much before the courts, which might agree. The government would be under pressure to negotiate and compromise, since it could only block books if it were confident that a court would not find a public interest in their publication.

Court proceedings should, however be a last resort. We propose that if initial negotiations do not succeed, and there remain outstanding disagreements, there should be an appeal mechanism to a small group of people with relevant experience, probably Privy Counsellors.

Recent cases have shown that the government has found difficulty in taking a firm and consistent line with prospective authors. During our inquiry it has attempted to improve the situation, but has introduced piecemeal changes, rather than the thorough overhaul of the system that is needed. The Cabinet Office and the Foreign and Commonwealth Office have even managed to introduce different regimes. The same system, though not the same rules, should apply to former ministers, officials and special advisers. The machinery should enable publication to take place, subject only to necessary restrictions. There needs to be a single clear statement of principles against which future works will be judged, and of the processes that should be followed for approval. This should ensure that there is no room for a future author to claim that he or she did not know what was required, and no ambiguity about whether or not a work has been cleared.

# 1 Introduction

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1. Recent years have seen the publication of a number of diaries and “instant memoirs” by former ministers, diplomats and special advisers describing their careers, and more are promised. In 2003 Robin Cook published memoirs of his time in Cabinet, and his resignation from Cabinet earlier that year.<sup>2</sup> In 2004 Clare Short, who had resigned as a minister in May 2003, followed his example.<sup>3</sup> In 2004 Derek Scott, who had been economic advisor to the Prime Minister between May 1997 and December 2003, published *Off Whitehall* which caused intense interest at the time, and was trailed as “the book that the Cabinet Office tried to suppress”.<sup>4</sup> In autumn 2005 two more former officials published tales from their time working in the Blair administration: special adviser Lance Price’s *A Spin Doctor’s Diary: Inside Number 10 with New Labour* and Sir Christopher Meyer’s *DC Confidential: The controversial memoirs of Britain’s Ambassador to the US at the time of 9/11 and the Iraq war*.<sup>5</sup> Former British Ambassador to the United Nations Sir Jeremy Greenstock’s *The Cost of War*, due for publication in autumn 2005, has not yet appeared, and Craig Murray, former Ambassador to Uzbekistan, has published a memoir, *Murder in Samarkand*.<sup>6</sup>

2. The controversy surrounding the publication of some of these books suggested that it would be timely to review the current arrangements in this area. It soon became clear that important issues needed to be explored:

- the principles which should govern the publication of memoirs and diaries by politicians, public servants and former advisers;
- the extent to which common principles could or should apply to these different groups;
- the effectiveness of the current system for clearing such works.

Our inquiry revealed that at present, guidance on the publication of memoirs is weak, processes for clearance are ill-defined, and there have been no effective legal sanctions against those who publish without agreement.

3. We have taken evidence from those who have published their memoirs and from those who have so far refrained, whether former politicians or public servants. We have heard from the current and former Cabinet Secretaries, and from journalists, academics and commentators. We also have explored the issues briefly with witnesses in some of our other inquiries. We are very grateful to all those who gave evidence and to Professor Patrick Birkinshaw of Hull University, our specialist adviser.

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2 Robin Cook, *The Point of Departure* (London, Simon & Schuster), 2003.

3 Clare Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power* (London, Free Press), 2004.

4 Derek Scott, *Off Whitehall* (New York, Ibtauris), 2004; see <http://www.amazon.co.uk>

5 Lance Price, *The Spin Doctor’s Diary: Inside Number 10 with New Labour* (London, Hodder & Stoughton Ltd), 2005; Sir Christopher Meyer, *DC Confidential: The controversial memoirs of Britain’s Ambassador to the UK at the time of 9/11 and the Iraq war* (London, Weidenfeld & Nicolson), 2005.

6 Craig Murray, *Murder in Samarkand* (London, Mainstream Publishing), 2006.

## Recent publications

4. It is interesting that Clare Short and Robin Cook, notable Cabinet dissidents, obeyed the established rules for clearing their memoirs and their texts appear to have been published with little difficulty.<sup>7</sup> Recently it has been the memoirs of those who were not politicians that have caused the greatest controversy.

5. When Lance Price submitted the text of his diary to the Cabinet Secretary, Sir Andrew, now Lord, Turnbull, the initial response from Sir Andrew was that “he found the whole premise of a book of this kind completely unacceptable”.<sup>8</sup> At this point, Mr Price’s publishers sought legal advice and he made changes to his text on the basis of this advice.<sup>9</sup> Once the changes had been made “the Cabinet Office indicated for the first time a willingness to discuss the contents of the proposed book and to consult with a view to proposing changes where necessary”.<sup>10</sup> Further changes were negotiated. But then the *Daily Mail*, which had bought the serialisation rights, published both the edited and unedited text side by side. Mr Price told us that he was unaware of the newspaper’s intention to do this, and that he had not given them a copy of the unedited text.<sup>11</sup> There is thus no evidence on the source of the leaked passages, but they clearly considerably increased the saleability of the serialisation. In 1991 *The Sunday Times* had similarly used the differences between original proofs and the version approved by the Cabinet Office as the basis for the story: ‘Downing Street censors Bernard Ingham memoirs’.<sup>12</sup> Derek Scott commented in *Off Whitehall* that the Cabinet Office’s attempts to censor him, and the Treasury’s criticisms of him, turned the book from “a work on the politics and economics of Europe into a publicist’s gift”.<sup>13</sup>

6. In 2004 Sir Jeremy Greenstock, who had been ambassador to the United Nations during the run up to the Iraq War and who had recently retired as Special Representative to Iraq, notified the Foreign and Commonwealth Office (FCO) that he intended to publish a book on his experiences. As he drafted the book, in accordance with the rules, he submitted drafts to the FCO, and officials suggested changes. However, in July 2005, Sir Jeremy was called in to see the then Foreign Secretary, Jack Straw, who made it clear that, in his view, the basic premise for such a book was objectionable, even though Sir Jeremy told us:

I was a bit puzzled he was saying it without having looked at my text, partly I think because what I was writing was, in my view, in net terms helpful to the Government’s case on Iraq rather than the opposite.<sup>14</sup>

Sir Jeremy submitted further drafts for clearance, until October 2005, but ultimately decided to postpone publication indefinitely.

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7 Q 72

8 Ev 85

9 Q 222

10 Ev 85

11 Q 235

12 ‘Downing Street censors Bernard Ingham memoirs’, *The Sunday Times*, 12 May 1991.

13 Derek Scott, *Off Whitehall* (New York, Ibtauris), 2004, p vii.

14 Q 296

7. While negotiations with Mr Price and Sir Jeremy continued, the FCO became aware, from an advertisement on Amazon in April 2005, that the recent former ambassador to Washington, Sir Christopher Meyer, proposed to publish a memoir. The FCO tried, with growing desperation, to persuade Sir Christopher to submit his manuscript for vetting in the normal way. A series of increasingly acerbic exchanges were unsuccessful in this, even though the Diplomatic Service Regulations clearly state that clearance should be sought before a manuscript is sent to a publisher.<sup>15</sup> Ultimately, Howell James, Permanent Secretary, Government Communications, used his influence with Sir Christopher, whom he knew, to get the book sent to the Cabinet Office. The manuscript was finally submitted on 7 October; less than five weeks before the proposed publication date of 10 November. Given the brush with Mr Price's lawyers, and the embarrassment that the juxtaposition of edited and unedited extracts had caused, and with publication pending, it is perhaps unsurprising that no changes to the text were requested, and no process of negotiation was entered into. The new Cabinet Secretary, Sir Gus O'Donnell, wrote to Sir Christopher's publisher that "the Government has no comments to make on the proposed book. However, I have to admit to being disappointed that a former diplomat should disclose confidences gained as a result of his employment".<sup>16</sup> Since the publication of *DC Confidential* the Government has been vocal in its criticism of Sir Christopher's publication, and has said that he betrayed trust.<sup>17</sup> Many distinguished former civil servants and diplomats have agreed with this assessment. It is certainly true that Sir Christopher's disobliging remarks about ministers contrast sharply with the limited amount of comment ministers have traditionally been allowed to make about civil servants.

8. Finally, even though the FCO refused clearance for Mr Murray's memoir, the work has now been serialised in the *Daily Mail* and published.<sup>18</sup> The Government did not take legal action to stop publication but have informed us that they will be looking closely at the text to see whether it does give any grounds for legal proceedings.

9. There have been widely differing assessments of the significance of current developments. Some of our witnesses reminded us that we had been here before, that both politicians and civil servants had published memoirs in the past and, on occasion, such memoirs had not been approved, or had aroused controversy.<sup>19</sup> For example, Lord Wilson of Dinton, a former Cabinet Secretary, reminded us that Sir Bernard Ingham, former Chief Press Secretary in Number 10, had published his memoirs almost immediately after leaving the service of government.<sup>20</sup> On the other hand, Professor Peter Hennessy of Queen Mary, University of London and Lord Owen, former Foreign Secretary, claimed that as trust between politicians and civil servants had been eroded, so those in the permanent service of the state have become readier to publish their side of the story.<sup>21</sup>

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15 The correspondence has been placed in the House of Commons Library.

16 Letter from Sir Gus O'Donnell to Weidenfeld and Nicholson, 4 November 2005.

17 HC Deb, 28 November 2005, col 165W

18 'Straw did nothing to stop torture says ex-diplomat', *The Mail on Sunday*, 21 May 2006.

19 Q 5, Ev 104

20 Q 5, Ev 87

21 Q 1

10. Whichever view is right, it is timely to look at these issues again. The rules governing publication of memoirs have been examined several times in the past, but the context in which such books appear has greatly changed since the work of Lord Radcliffe's committee in 1976 (following the publication of the Crossman diaries) and Lord Wakeham's committee in 1993 (following the publication of the Lawson memoirs). The Freedom of Information Act 2000 has given greater access to government information. The Hutton and Butler inquiries, which reported in January and July of 2004 respectively, published vast amounts of information about the way the Government conducts its business.<sup>22</sup> The Prime Minister holds monthly press conferences. This greater access to information has been matched by a new electronic information age where live news is available 24 hours a day, vast quantities of unregulated information is available on the internet, and anyone can be their own publisher.

11. We decided therefore to extend our examination of the current controversies into the first full review of the rules and procedures governing the publication of political memoirs for thirty years, and the only such review to be conducted in public.

12. Some of the issues raised in our evidence will be discussed in the concurrent inquiries we have been conducting into the relationship between politicians and civil servants and the regulation of the ethical conduct of government. In this report, we consider:

- the balance between a public interest in openness and a public interest in preserving free and frank discussion within government;
- the processes in place to ensure that memoirs and diaries, when published, are sensitive to this balance of interests; and
- the way in which such processes could be enforced.

## 2 Background

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### Political memoirs in the early twentieth century

13. There is nothing new in the attempt to balance the desire to publish with the desire to keep certain administrative matters secret. After the First World War the Cabinet Secretary, Sir Maurice Hankey, fearing that official documents would come into the public domain as politicians and former members of the armed services penned their memoirs, drafted a set of strict instructions on the use of official papers. However, the Cabinet struck out the sections referring to Cabinet papers, and instead directed that former Cabinet ministers should have access at any time to the Cabinet records for the period when they were in office.

14. The current system for clearing political memoirs can be traced back to the precedent set by Winston Churchill when he finalised the third volume of *World Crisis* in 1926.<sup>23</sup>

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22 Lord Hutton, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.*, HC 247, 28 January 2004; Lord Butler, *Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors*, HC 898, 14 July 2004.

23 See David Reynolds, 'Official History: how Churchill and the cabinet office wrote *The Second World War*', *Historical Research*, Vol. 78, No. 201, August 2005.

Potentially sensitive chapters were sent to the relevant government departments, and the whole text was given to the Prime Minister, Stanley Baldwin. Churchill suggested that the Cabinet Secretary should provide the Prime Minister with advice on whether reasons of public interest precluded publication of any document. Stanley Baldwin, answering a Parliamentary Question in March 1926, set out this procedure as a requirement for other ex-ministers before using such Cabinet documents. He stated that:

Information of a confidential character should never be used improperly by any person, and in particular those who have held high office under the Crown are, in my opinion, under an obligation to consult the Government of the day or the heads of Department affected upon publication of any confidential matter of which they may have acquired official knowledge which may affect the public interest; and to obtain in any doubtful case formal permission.<sup>24</sup>

15. The issue came to a head again following the Second World War when the then Cabinet Secretary, Sir Edward Bridges, realised that a number of those who had held public office during the War would want to publish accounts of their experiences. Bridges had more success than Hankey in convincing politicians to restrict their freedom to publish. He wrote a memorandum to the Prime Minister, Clement Attlee, suggesting guiding principles in determining what use can “properly be made by former ministers in published writings of information obtained by them by virtue of their office”. It states:

...such books are usually written by former ministers to explain and justify the policy of the writer during his official life. This policy may have been the subject of public comment and its full defence may require reference to matters which at the time had to be regarded as secret. This suggests two general considerations:

(a) A minister of the Crown, who is responsible to Parliament and whose official actions are properly subject to public comment and criticism, stands in a different position in regard to writings of the kind referred to, from Crown Servants generally, who have not had a minister’s responsibilities.

(b) To the extent that questions (e.g., of defence) have to be treated at the time they arise with exceptional secrecy there is a case for permitting a correspondingly greater measure of relaxation with regard to them, when the considerations (e.g., of military security) which formerly kept them secret no longer apply.

The concern of the Government, on the other hand, is primarily with the effect of disclosures on future administrations. Here the essential point is to keep secret information of two kinds, disclosure of which would be detrimental to the public interest: -

(a) In the international sphere, information whose disclosure would be injurious to us in our relations with other nations, including information which would be of value to a potential enemy.

(b) In the domestic sphere, information the publication of which would be destructive of the confidential relationships on which our system of government is based and which may subsist between minister and minister, ministers and their advisers, and between either and outside bodies and persons.<sup>25</sup>

16. The Cabinet approved Bridges's proposals on 23 May 1946, and decided that former ministers, and others who had held office under the Crown, were under an obligation to consult the Government of the day, or the Heads of their former Departments, before they published any information obtained by virtue of their official positions. These principles were restated by Harold Macmillan as Prime Minister in 1960.<sup>26</sup> In the case of Sir Winston Churchill, it was not simply a matter of consultation, for the Cabinet Secretary actively collaborated on his war memoirs.<sup>27</sup>

### The Crossman diaries and the Radcliffe Report

17. In the 1970s Richard Crossman's Cabinet diaries were posthumously published. Unlike earlier memoirs, the diaries gave full accounts of Cabinet meetings. In the introduction to the first volume he explained his motives:

Memory is a terrible improver – even with a diary to check the tendency. And it is this which makes a politician's autobiography (even when he claims his rights and uses official Cabinet papers) so wildly unreliable... if I could publish a diary of my years as a minister without any editorial improvements, I would have done something towards lightening up the secret places of British politics and enabling any intelligent elector to have a picture of what went on behind the scenes between 1964 and 1970.<sup>28</sup>

18. In January 1975 the first extracts of the book were published in *The Sunday Times* without the consent of the Cabinet Secretary. The Attorney General sought an injunction to prevent the publication of the book or extracts from it on the grounds of the confidentiality of Cabinet proceedings. The court upheld the principle that there was an obligation of confidentiality imposed on a Cabinet minister in the public interest of collective responsibility.<sup>29</sup> However, it found that there was a time limit on this obligation. As ten years had passed between the events described and the Crossman diary's publication, it was held that the book would not undermine Cabinet confidentiality. No injunction was sought against the latter volumes of the text, even though they were published less than ten years after the events they described.

19. In the wake of the controversy surrounding the Crossman diaries, a Committee of Privy Counsellors was established, chaired by Lord Radcliffe, to review the processes and principles involved in the publication of ministerial memoirs. The Committee's report (the

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25 Memorandum from Sir Edward Bridges, circulated to the Cabinet on 10 May 1946, as quoted in the *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 13.

26 618 HC Deb 5s, 570-1

27 David Reynolds, 'Official History: how Churchill and the Cabinet Office wrote the Second World War' in *Historical Research*, vol. 78, no. 201, 2005, pp 400-422.

28 Richard Crossman, *The Diaries of a Cabinet Minister. Vol 1: Minister of Housing 1964-66* (London, Hamish Hamilton), p 12.

29 *Attorney-General v Jonathan Cape Ltd* [1976] QB 752; [1976] 3 All E R 484

Radcliffe Report) broadly endorsed the principles used in the Bridges memorandum. It stated that:

45. Within the limits of the general conception that the author is free to use his ministerial experience for the purpose of giving an account of his own work and not for the purpose of discussing or criticising the policies and opinions of other ministers who have been his colleagues, we identify certain separate categories of subject that call for restriction...

46. First, the author must not reveal anything that contravenes the requirements of national security operative at the time of his proposed publication...

47. The second category is... disclosures which would be injurious to this country's relations with other nations...

48. The third category has as its text the phrase "information the publication of which would be destructive of the confidential relationships... which may subsist between minister and minister, ministers and their advisers, and between either and outside bodies or private persons". The idea is very comprehensive, it involves the exercise of a much more subjective type of assessment than that required for the two preceding categories, and its application to any given set of circumstances calls for what is essentially editorial judgment. For this reason alone it does not break down easily into any set of more precise rules. It is a general principle and everything depends on its interpretation.

20. The Report justified restrictions on its third category of information as follows:

51. ...the argument in its favour is quite simple and does not gain by elaboration... Those who are to act together in pursuance of a policy agreed in common do require and expect the observance of confidence as to what they say to each other; and unless they can be assured of the maintenance of that confidence they will not speak easily or frankly among themselves. Opinions, perhaps unpopular, perhaps embarrassing, will be muted or suppressed if they are known to be liable to future disclosure at the whim of some retired colleague. Business which should be discussed by the whole body will tend to be settled by two or three in a corner.

21. The Report, whilst recognising that any time limit "must necessarily be arbitrary and general" recommended a time restriction of 15 years during which the author should be bound by the principles and procedures in the Report. Once 15 years had passed, authors would be free to publish as they wished, with one exception: an ex-minister should not reveal any advice given to him in confidence by those in the public service whose duty it had been to advise him. Identifying such advice and the adviser should not be done until that adviser's professional life within the Civil Service had ended.<sup>30</sup> The main recommendations of the Radcliffe Report were accepted by the Cabinet and remain the basis for the current system.

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30 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 86.

22. However, two of the Report's conclusions were not acted upon. There is no evidence that ministers have routinely been given a copy of the Report itself on their appointment, as was recommended. In addition, Radcliffe recommended that "each minister would be furnished at the start with a separate memorandum abstracting the substance of this Report and asked to sign a declaration similar to that which he signs with reference to the Official Secrets Act".<sup>31</sup> This met flat refusal. Lord Donoughue, the Prime Minister's adviser, told us that in the Wilson Cabinet Roy Jenkins, Barbara Castle and Michael Foot all refused to sign such a declaration:

... sitting around the table were Barbara Castle and Tony Benn, who periodically were scribbling the text for their future diaries, and of course a number of Cabinet ministers might well see that as a well-earned pension. It was a strong move from the centre of the machine to control diaries and memoirs, and it did not work because the Cabinet committee was not sympathetic, and a number of them simply refused to sign what they were supposed to sign....<sup>32</sup>

23. Although the Radcliffe Report dealt primarily with ministerial memoirs, it also considered publications by former members of the public services. The principles for publications by civil servants should be the same as for ministers but the procedures required to give effect to the Report's conclusions were considered a matter for individual government departments.

### 1993 Cabinet Office guidance note

24. In 1992 Lord Lawson published his memoir, *The View from Number 11: the memoirs of a Tory Radical*.<sup>33</sup> Although he had followed the processes laid out in the Radcliffe Report, Lord Lawson's memoir provoked concern within the Government because of its accounts of discussions between Cabinet members and its references to advice from named civil servants.<sup>34</sup> As a result, a Cabinet committee was set up chaired by Lord Wakeham, the then Lord Privy Seal. It produced a note of its conclusions, which did not move the discussion on from the Radcliffe Report. Like the Radcliffe Report it stressed that, as well as not revealing anything that contravened the requirements of national security or damaged relations with other countries, the author (whether a former minister or public servant) must:

...refrain from publishing information destructive of the confidential relationships of ministers with each other, and of ministers with officials. In particular, references to individuals and their view of particular circumstances may be permitted provided that their disclosure would not damage either ministers or officials—particularly those still in office—in their work....<sup>35</sup>

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31 *Ibid.*, para 71.

32 Oral evidence taken on *Governing the Future*, 26 January 2006, HC (2005-06) 756-ii, Q 206

33 Nigel Lawson, *The View from Number 11: Memoirs of a Tory radical*, (London, Bantam), 1992.

34 Oral evidence taken on *Politics and Administration*, 2 March 2006, HC (2005-06) 660-iii, Q 220

35 *Guidance Note on the Conclusions and Recommendations in the Report of the Radcliffe Committee on Ministerial Memoirs (Cmnd 6386, January 1976) and their Application*, 1993.

25. The Wakeham Committee's conclusions are reproduced in the Directory of Civil Service Guidance.<sup>36</sup> They are not, however, referred to by the Ministerial Code (which refers to the Radcliffe Report) or the Civil Service Management Code. The Wakeham Committee was mentioned by Sir Jeremy Greenstock in evidence to this Committee, but the Cabinet Office was unable to find any records relating to the Committee other than the final note which it produced.

### 3 Determining the public interest

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#### The issues

26. The issue at the heart of the current debate about memoirs is fundamentally the same as that which concerned Baldwin, Bridges, Radcliffe and Wakeham: the balance between a public interest in confidentiality and a public interest in openness. Some of our witnesses claimed that given the legal framework provided by the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the Freedom of Information Act 2000, it would be difficult for governments to justify keeping any information from the public, other than that covered by the Official Secrets Act.<sup>37</sup> However, the right to freedom of expression provided under article 10(1) of the Convention is not absolute; it is accompanied by duties and responsibilities, and may be limited by legal restrictions to protect reputation, or prevent disclosure of information received in confidence. In the same way, there are exemptions in the Freedom of Information Act for various types of information including:

- information which may do damage to national security;
- information which may damage international relations; and
- information which may prejudice the conduct of public affairs or relate to policy formulation.

The latter two exemptions are subject to a public interest test: that any harm which may come from releasing information covered by these exemptions must be balanced against the wider public interest in releasing the information. Special provision is made for national security by way of ministerial certificates and appeals therefrom.

27. It is striking that the exemptions used in the Freedom of Information Act repeat those used in the Radcliffe Report thirty years ago. National security, harm to the conduct of international relations and damage to the internal workings of government are to be protected in each case. There is also the common acceptance that requirements of privacy diminish over time. The question for our inquiry is how these principles should be applied now, and where the balance of public interest between confidentiality and openness in relation to memoirs of government is to be struck.

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<sup>36</sup> The Committee did not report in public, but the principles set out in the guidance note are reproduced in the Directory of Civil Service Guidance Volume 2 under the section entitled "Ministerial Memoirs: The 'Radcliffe Rules' and their Application".

<sup>37</sup> Q 175

28. There is much less argument about the need to maintain confidentiality in the interest of national security and conduct of international relations. Not only is it generally agreed that information which would prejudice national security should not be published, but there are sanctions in the Official Secrets Act to prevent such publication. The notion of harm to international relationships and the potential consequence of any such damage are relatively easy to comprehend, even though assessing what is likely to cause such harm in particular cases may still be a matter of judgement, as the difficulties over Mr Murray's memoir may show.

29. It is much more difficult to define the category which the Radcliffe Report terms as "information the disclosure of which would be destructive to confidential relationships" which exist between ministers and ministers and ministers and civil servants. As the Radcliffe Report goes on to explain "its application to any given set of circumstances calls for what is essentially editorial judgement"; it "does not break down easily to any set of precise rules".<sup>38</sup> We need to consider whether this category still needs protection and, if so, what criteria should guide the judgements.

### Confidential relations within government

30. Those who believe there is a public interest in favour of a protected sphere of private deliberation and debate in government argue that:

- i. free and frank discussion is valuable and can only take place within government if there is trust that confidences will be kept between ministers and civil servants and between minister and minister;
- ii. the principle of collective Cabinet responsibility requires all decisions to be those of the whole Cabinet, with the views of individual Cabinet ministers kept out of the public eye; and the principle of individual ministerial responsibility requires civil service advice to remain private;
- iii. there will be damaging consequences for government if there is no belief among participants that confidences will be kept, not least in confining government to an ever more closed circle.

31. However, there is also a public interest in openness, on the grounds that:

- i. knowing as much as possible about what governments are doing is necessary so that there can be proper democratic accountability;
- ii. there is a wider historical and educative value in such knowledge, increasing understanding of how government works, the background to events, and lessons for the future; and
- iii. those involved in events have a right to publish accounts of their actions and experiences.

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38 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 49.

### *The public interest in publication*

32. There is therefore a strong public interest in favour of openness, and this includes ensuring that accounts of the workings of government are available. Indeed, successive governments have recognised this in their sponsorship of official histories. Distinguished academics have been given extremely wide access to official papers to help them provide an authoritative account of periods and events. **Official histories perform a valuable function; we applaud the financial support and access to papers which successive governments have made available for them and recommend that this practice continues.**

33. But there can be many perspectives on events. As Tony Benn said “[The] truth has many sides to it”.<sup>39</sup>

34. The introduction to Lord Lawson’s memoir, described as “almost a text book” by Lord Turnbull, explains that “Most books about how decisions are taken in government tend to be written by academics or journalists; ...indeed as a journalist many years ago, I co-wrote one myself. This book gives the view from the inside”.<sup>40</sup> This ‘process of government’ argument does not only apply to former politicians: Mr Price and Sir Christopher Meyer each felt that they were, as Mr Price put it “demystifying the process by which we are all governed”.<sup>41</sup>

35. This argument is particularly strong when it comes to insider views of important events. Sir Jeremy Greenstock explained that he had wished to write *The Cost of War* because:

I felt the subject itself, the whole saga of Iraq, was rapidly becoming, and indeed has become, the seminal foreign policy issue of the era, and I gradually moved into a state of wanting to explain as clearly as I could within the rules what happened, how things turned out as they did, in order to allow the public to have a more informed debate about it.<sup>42</sup>

He felt such a book would allow “the lessons to be learned from the true story rather than from assumed facts or distortions of facts...”.<sup>43</sup> Clare Short and Robin Cook also gave their views about the conflict in their memoirs. Jack Straw agreed that:

...above all, with issues of war it is crucial that there are records and that these records are in due course available for scrutiny by historians, by parliamentarians and the public. That has always been the case and that is absolutely fundamental because in war, more than anything else, ministers should be fully accountable, responsible and answerable for the decisions which they have advised Parliament of,

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39 Ev 92

40 Q 72; Nigel Lawson, *The View from Number 11: Memoirs of a Tory radical* (London, Bantam) 1992, p xxix.

41 Q 222

42 Q 284

43 Q 318

and they have put men and women in harm's way and some of them will have been killed and injured, which has been the case in respect of Iraq.<sup>44</sup>

36. Clare Short argued that both officials and politicians should be free to publish, so that the public was properly informed about what she viewed as important constitutional changes:

books are needed ... so people can discuss and decide what is happening to our constitutional arrangements, how decisions are being made, where the flaws are and what we can do about it.<sup>45</sup>

37. There is value in contemporary diaries as well as more considered recollections. Tony Benn provided the Committee with a copy of his unedited diary and the Cabinet Minute released under the thirty year rule of the Cabinet Meeting of 18 March 1975, in which the Cabinet "agreed to differ" over positions on the EEC Referendum. Mr Benn's diary gives us a much fuller flavour of the intensity of discussion between Cabinet members than the official record, and attributes direct quotes to his Cabinet colleagues. He also reflects that, "... the effect of a referendum and the Common Market discussion is to produce some very deep discussion about the meaning of government. I really wonder whether many of my colleagues have thought about it".<sup>46</sup>

38. The memoir can also function as self-justification, or as a means to expose what is seen as wrong doing. The first is most familiar from the work of former ministers, while someone like Mr Murray seems to be driven, at least to some extent, by a desire to expose what he sees as wrong.

**39. There is no doubt that there is a strong public interest in the publication of political memoirs and diaries. They provide insights into the processes of government and the nature of key events. The question is to what degree that public interest needs to be balanced against other public interest considerations, and how that balance is to be struck.**

### *The public interest in restraint*

40. If there is a public interest in publication, is there a countervailing interest in restraint? We believe there is. The relationships between minister and minister, and minister and adviser (whether civil servant, diplomat, or special adviser) are critical in ensuring effective government. Even though it has been argued that these relationships have changed in recent years, there still remains a strong public interest in maintaining a protected space for the confidential discussions and frank advice that good government needs.

41. The difficulty is that what is regarded as acceptable will shift over time. This shift may itself be a symptom of wider and more significant changes. Memoirs have aroused concern because they revealed too much, too soon, about views expressed in the Cabinet, or spoke too freely about named civil servants.

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44 Q 434

45 Q 356 [Short]

46 Ev 100

42. Peter Riddell of *The Times* reminded us:

The Alan Clark diaries named several civil servants, including his fantasies about one of his female private secretaries. These were published only just over a year after he ceased being a minister. Geoffrey Robinson also named civil servants in his memoirs, less than two years after he resigned. Both could be dismissed as unimportant since they were peripheral figures, never in the Cabinet, or ever likely to be there. But they breached the Radcliffe principles. On a lesser, and more innocuous level, Nigel Lawson named some Treasury civil servants in his memoirs, despite pleas from the Cabinet Secretary (Lord Butler of Brockwell) to remove the names.<sup>47</sup>

43. Both Lord Lawson and Lord Owen had lengthy negotiations about what they could and could not properly say. Lord Owen's correspondence with the Cabinet Secretary shows that he readily accepted that "I should not criticise in any way any identifiable civil servant", although he considered he would retain some general references to the official view—and "as to Cabinet ministers they are well able to look after themselves".<sup>48</sup>

44. The focus of anxiety most recently has been that memoir-writing public servants might refer to ministers inappropriately. Jack Straw told us "public administration would collapse if we had a permanent civil service which simply could not be trusted by ministers. It would not work".<sup>49</sup> Sir Michael Bichard, a former Permanent Secretary at the Department for Education, agreed:

The relationship between secretaries of state, ministers and civil servants is based upon trust and confidence, particularly when policy advice is being given. It is absolutely wrong for a former civil servant or an official at any time to be writing memoirs of this sort; it damages the relationship which others are trying to develop and sustain with their ministers.<sup>50</sup>

45. In a leaked memorandum, the Head of the Diplomatic Service, Sir Michael Jay, also warned diplomats that:

...we cannot service ministers effectively unless they trust and confide in us, which they will only do if we respect that confidence, not just when we are doing our jobs but afterwards too. If we don't have ministers' trust, they will not consult us, involve us, or take our advice – and we will all lose, ministers, the Diplomatic Service, and the conduct of foreign policy, under no matter what administration.<sup>51</sup>

46. Lord Turnbull told us that civil servants should be silent because:

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47 Ev 104

48 Ev 89-90

49 Q 457

50 Oral evidence taken on *Governing the Future*, 8 December 2005, HC (2005-06) 756-i, Q 2 [Bichard]

51 As quoted in *The Guardian*, 12 November 2005, p 39.

They have enjoyed, in some sense, the privilege of permanency. They are always on the winning side and they give their advice in confidence; they do not take the credit and they do not take the blame.<sup>52</sup>

47. Some of our witnesses felt that the relationship between ministers and civil servants had altered to such a degree that these conventions about the roles and responsibilities of the partners in what Professor Hennessy terms “the governing marriage” no longer held.<sup>53</sup> Sir Christopher Meyer told us that he did not damage the relationship between ministers and civil servants because that “classic relationship” does not exist any more.<sup>54</sup> Sir Christopher believed that “There should be the same rules for politicians and civil servants”.<sup>55</sup> His views were shared by Clare Short.<sup>56</sup>

48. Lord Owen told us he believed the publication of memoirs and diaries by former civil servants was a symptom of a wider problem:

It seems now, from the outside, that the undoubted mess we are in over political memoirs or diaries from politicians and civil servants is that the traditional separation between impartial administration and political decision making has become damagingly blurred. ...I have never known a time in the last 40 years when there has been so much disillusionment, bordering on contempt, for politicians by civil servants and diplomats and vice-versa.<sup>57</sup>

49. We are looking at the state of the “governing marriage” in our inquiry into politics and administration. We do not attempt to judge in this report how ministerial and civil service accountability should be related. We are not convinced that the relationship has broken down as badly as Professor Hennessy and Lord Owen suggest. Not one of the former Home Civil Service permanent secretaries who appeared before us in this or other inquiries contemplated publishing memoirs.<sup>58</sup> All agreed it was entirely inappropriate. The two groups who have published have been former special advisers, who have no security of tenure, and former diplomats who have increasingly been expected to speak in public for government.<sup>59</sup> Jack Straw noted that:

... diplomats are closer as a breed to politicians than are the normal run of domestic civil servants and when they are representing the government abroad they are Her Majesty’s Ambassadors or High Commissioners representing the government as a whole, having to speak publicly and with a public profile that no equivalent domestic

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52 Q 78

53 Q 1

54 Q 194

55 ‘A most diplomatic skewering of Blair’, *The Sunday Times*, 13 November 2005.

56 Q 358

57 Ev 87

58 Oral evidence taken on *Politics and Administration*, 9 March 2006, HC (2005-06) 660-iii, Q 221 [Butler], and Q 289 [Montagu, Omand, Young and Quinlan]

59 Q 320

civil servant has. In most cases, they are able to cope with that. Sometimes, I think they get rather attracted to the idea.<sup>60</sup>

50. Sir Christopher Meyer's memoirs caused such consternation precisely because it was feared that their publication would serve to undermine traditional relationships of trust and mutual confidence. This view was graphically expressed by Lord Turnbull:

When a minister goes abroad he has two choices: to stay in the residence or to stay in a hotel. I and my colleagues have always urged a minister to stay in the residence, where they can make full use of the ambassador's experience; it is better for them and better for the ambassador. What chance, you might ask, do we have of succeeding when ministers feel they are going to have their confidences betrayed or even sneered at?<sup>61</sup>

51. Lord Renwick, a former ambassador to the United States, also explained that:

Sir Christopher has published the book we all would have loved to write about bumbling ministers, feckless royals and mistakes which, in retrospect, should have clearly been avoided. The difficulty in actually doing so is that it is liable to worsen the tendency he deplores of prime ministers' relying increasingly on their personal staff and political appointees, rather than the mandarins who are supposed to advise them behind closed doors. "Put not your trust in princes", says Meyer. You had better not put them in ambassadors either, will be the response of many politicians.<sup>62</sup>

52. Any change to the relationship between ministerial and official accountability will affect the degree to which restraint after retirement is appropriate or likely. If civil servants are expected to be more directly accountable, some of the arguments for restraint may be eroded. **What is said in memoirs may not simply reflect change, but may itself bring it about. If it comes to be considered unexceptionable for recently retired public servants to publish memoirs which contain personal remarks about ministers and observations on their policies, or if politicians start to identify and criticise named civil servants in their memoirs, the terms of the "governing marriage" would have altered to such an extent that it is hard to see how traditional doctrines of ministerial and civil service accountability could continue.**

53. Able people will not go into public service if it offers the prospect of regular denigration, without the opportunity to justify their actions. Ministers will not trust permanent officials if their confidences are likely to be broken, or if they are routinely denigrated. If that trust is lost, governments will increasingly look outside the Civil Service for advice and support. There will be more political appointments as with the appointment of former ministers as High Commissioners to South Africa and Australia in 2005. A single indiscreet memoir can be shrugged off as an aberration, but if it becomes usual for officials to publish said books within a year or two of their retirement, ministers will have strong

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60 Q 504

61 Q 72

62 Lord Renwick, 'We must be able to trust our diplomats', *The Guardian*, 14 November 2005, p 39.

incentives for preferring to bring their own supporters into key posts. Then the terms of the governing marriage really will have changed.

### **Memoirs and money**

54. A major and inescapable factor is that the market is strongest for the most personal and immediate material. It can seem convenient that public interest arguments and prospects of private gain have a happy tendency to coincide. Lord Wilson thought there were three motivations at work when former ministers and civil servants published their diaries and memoirs: to set the record straight; to make money out of their experiences; and what he termed “vanity or pride”.<sup>63</sup>

55. The question of motive is sharpened as more money is involved. It is in the financial interest of memoir writers to get their accounts published as soon as possible, and to ensure that they are titillating. Not only do authors have a publishing contract to consider, but newspaper fees as well. These do much to encourage the “instant” and “juicy” memoir. Sir Simon Jenkins told us that he could:

remember very well a certain Chancellor of the Exchequer, who shall be nameless, inquiring as to what his memoirs might be worth and the answer was: ‘A quarter of a million tomorrow, £100,000 next week, £10,000 two months from now. How fast can you write them?’ It was as simple as that—because there were going to be no sales two months from then. It is show business.<sup>64</sup>

Mr Price is reported to have received £150,000 from his book’s serialisation and Sir Christopher Meyer reportedly received £250,000, although this was donated to charities (including one employing his wife).<sup>65</sup> Mr Price conceded that there was a marketing imperative to get his book published before Alastair Campbell, the former Director of Communications at Number 10, published his own account.<sup>66</sup> This attention to marketability is also evident in the introduction to *DC Confidential* in which Sir Christopher Meyer thanks the novelist Barbara Taylor Bradford “who took much trouble to help me make the transition from the clipped prose of the Civil Service to something which is, I hope, more entertaining to the reader”.<sup>67</sup> The pressure to amuse appears to have become harder to resist. Sir Simon Jenkins recounted that “We offered Whitelaw to help him with his memoirs on *The Sunday Times* and he said, ‘Why?’ They said, ‘We think we can make them a bit more interesting’ and he said, ‘Good God, no’”.<sup>68</sup>

56. Even Mr Benn, an enthusiast for memoir-writing by both former politicians and civil servants, concedes that “it is malice, not information, which damages the conduct of public business, malice which flourishes in gossip and the media”.<sup>69</sup> But the system puts a

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63 Q 55

64 Oral evidence taken on *Ethics and Standards*, 2 February 2006, HC (2005-06) 884-i, Q 55

65 ‘Prescott blasts ‘fop’ envoy over book earnings’, *The Observer*, 20 November 2005.

66 Q 230

67 Sir Christopher Meyer, *DC Confidential: The controversial memoirs of Britain’s Ambassador to the UK at the time of 9/11 and the Iraq war* (London, Weidenfeld & Nicolson), 2005, p x.

68 Oral evidence taken on *Ethics and Standards*, 2 February 2006, HC (2005-06) 884-i Q 54

69 Ev 92

premium on tale telling. John Lloyd, of the *Financial Times*, explained the market that now exists for such revelatory books:

Politicians and politics and public figures have become much more the feed-stuff of entertainment in satire shows, comedy shows, so that politics or news about politics has to some extent migrated from the hard to the soft part ... and that has vastly increased the market for gossip, for revelation, above all, about character, and that is where Sir Christopher Meyer, with a clearly and finely tuned nose to the market, put his memoir ... the market for character stories is now vastly increased, because the soft news, entertainment news, about politicians, especially, obviously, leading politicians, prime ministers, cabinet secretaries and so on, has expanded hugely in the last 20 or 30 years.<sup>70</sup>

57. There is a limited market for stories of statesmen and public servants doing their best in a complex world, but a lively market for revelatory, controversial, personal and salacious material.

**58. The strength of the market for sensational or titillating material makes it even more important that there should be a clear understanding about the kind of discretion necessary to protect relationships inside government. We have no doubt that some discretion is necessary, on both sides. The dangers do not come from the single shocking memoir, but from the steady erosion of confidence and trust driven by the prospect of commercial gain.**

### Who and what needs to be protected?

59. Some witnesses proposed that there should be different rules for officials, ministers and special advisers, reflecting the fact that they had different roles and accountabilities. Lord Donoughue, who has been both a special adviser and a minister, told us that:

My view is that there are different categories of people. Career civil servants should have the strongest rules imposed on them and that should be a longer period of constraint, and for politicians and probably temporary civil servants it need not be as long. I think a career civil servant has obligations in terms of discretion, and so forth, that are stronger than for anyone else.<sup>71</sup>

### Ministers

60. The latitude allowed to ministers in publishing their memoirs is explained by the doctrine of accountability. Ministers naturally wish to describe and defend their conduct in office and, on occasion, their reasons for leaving government. This was recognised by Sir Edward Bridges in the 1920s:

such books are usually written by former ministers to explain and justify the policy of the writer during his official life. This policy may have been the subject of public

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70 Oral evidence taken on *Ethics and Standards*, 2 February 2006, HC (2005-06) 884-i, Q 3 [Lloyd]

71 Oral evidence taken on *Governing the Future*, 26 January 2006, HC (2005-06) 756-ii, Q 208

comment and its full defence may require reference to matters which at the time had to be regarded as secret.<sup>72</sup>

It was reiterated by Lord Turnbull:

I think a minister, in effect, has a right to publish memoirs: they are directly accountable and are entitled to give an account of their stewardship.<sup>73</sup>

and by Lord Lawson:

Ministers after they have retired from office should be able to say exactly what they were seeking to do, why they were seeking to do it, how it worked out and so on.<sup>74</sup>

### **Cabinet confidentiality**

61. However, there should nevertheless be some limitations on the freedom of former ministers to publish. The Ministerial Code states that “Collective responsibility requires that ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained”.<sup>75</sup> This obligation of confidentiality was confirmed by Lord Widgery in the 1975 Crossman case.<sup>76</sup>

62. Some commentators have questioned the extent to which the basis for collective responsibility still exists. The changing nature of the operation of Cabinet government has been described by Lord Butler in his Review of Intelligence on Weapons of Mass Destruction.<sup>77</sup> Clare Short has been extremely critical of collective decision making in government, claiming that the old constitutional system no longer functions, with too much authority held by Number 10.<sup>78</sup>

63. This alleged erosion of Cabinet government has been accompanied by off-the-record briefing of journalists by insiders, and the publication of ‘unofficial’ books about the Blair Government. Andrew Gamble has noted that through the briefing of journalists by ministers “personal and political conflicts within governments are exposed much earlier than they would otherwise be”.<sup>79</sup> Biographies can also be informed by inside cooperation, such as Paul Routledge’s 1998 biography of Gordon Brown or Stephen Pollard’s 2005

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72 Memorandum from Sir Edward Bridges’ circulated to the Cabinet, May 1946, as quoted in *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 40.

73 Q 78

74 Q 357 [Lawson]

75 The Ministerial Code, para 6.17.

76 *Attorney General v Jonathan Cape* [1976]

77 Lord Butler of Brockwell, *Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors*, HC 898, 14 July 2004, paras 606-611.

78 Clare Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power* (London, Free Press) 2004, p 71. See also Q 358, Q 376.

79 Andrew Gamble, ‘Political Memoirs’ in *British Journal of Political Science*, Vol. 4, No. 1, April 2002, pp 141-151.

biography of David Blunkett which famously included disobliging comments by Mr Blunkett on some of his then Cabinet colleagues.<sup>80</sup>

64. Yet there remains a world of difference between tactical leaks or indiscretions and instant exposure of all the debates and differences within government. It is notable that those who brief journalists do not generally leak Cabinet minutes. Mr Benn, a staunch defender of openness, told us that he could not have published his diaries when he was still in the Cabinet.<sup>81</sup> We believe there is an important difference between general ministerial briefing to journalists, or even careful steers to biographers, and memoirs or diaries which give detailed accounts of recent discussions which are expected to remain private.

**65. There has to be a degree of confidentiality within government even in the relationship between politicians. Cabinet government would not be improved if those around the table were aware that any one or more of them was intending to publish their own account of Cabinet the moment the meeting had ended. On the other hand, it has long been accepted that politicians will legitimately wish to give an account of their actions, and that this will involve giving an account of the internal workings of government, including—after an appropriate time—of Cabinet.**

### **Ministers and civil servants**

66. If there has traditionally been latitude in the approach taken to published accounts of politicians' relationships with one another (for example, Robin Cook and Clare Short were able to publish frank accounts of the disagreements with their colleagues very soon after leaving government), a different view has been taken of accounts of the professional relationships between politicians and civil servants.

67. Much effort has been directed at ensuring that ministerial memoirs do not identify the advice given by named civil servants. This was one of the main concerns of both the Radcliffe Report and Lord Wakeham's Review of 1993, and it remains a key concern today. Lord Turnbull explained that when making suggestions to former ministers about the content of their publications he would give "a lot of attention" to cases where:

...an official with no right of reply is unfairly treated. If you are simply describing an official's action, "Andrew Turnbull burst into the room with the news that ..." fine, but, if it is around the advice given or "I thought the advice given was hopeless" but, equally, on another occasion when it turned out that they gave good advice, you ignored it, and all went wrong, and you never give them the credit." The answer is that you should be revealing neither of these things.<sup>82</sup>

68. The concern to protect civil servants can be seen in the negotiations that Lord Lawson and Lord Owen described. We had first-hand experience of it when, during the preparation of the evidence volume of this report, we asked the Cabinet Office to indicate whether any material in the correspondence relating to Lord Owen's memoirs remained

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80 Paul Routledge, *Gordon Brown* (London, Simon & Schuster), 1998; Stephen Pollard, *David Blunkett* (London, Hodder and Stoughton), 2005.

81 Q 386

82 Q 101

sensitive. As we had expected, some deletions were deemed necessary to maintain constitutional proprieties. We had not expected that we would be asked to remove names of officials who had long since left the Service. We agreed to remove names from one passage, since it was clear that Lord Owen was critical of the individual concerned, but feel that the Cabinet Office's approach was over-protective. **Free and frank exchanges between politicians and civil servants depend on confidentiality and trust in government, and this implies a degree of subsequent reticence on both sides. As long as serving civil servants are not publicly accountable for their actions and do not publish accounts of their experiences, it would not be right for former ministers (or special advisers) to criticise named civil servants who have no right of reply.**

### **Civil servants and diplomats**

69. If ministerial accountability means that ministers should refrain from criticising named civil servants, then the need to retain ministerial trust in an impartial civil service (Home or Diplomatic) means that civil servants who publish memoirs should be as reticent in their personal observations on ministers, although the degree of reticence that is appropriate may change if the relationship between ministers and civil servants changes, and as events become history.

70. Some works are obviously not contentious. The former ambassador to Cuba, Andrew Palmer, wrote a book about his birdwatching experiences over his career.<sup>83</sup> Others are amusing, but this may not remove their difficulties. One difficulty is that the innocuous book may set a precedent for a more problematic one. For example, it was clear from our evidence that Dame Stella Rimington's work had to be heavily altered, but that it was impossible to resist its publication because memoirs by another former head of MI5 had already been published.<sup>84</sup>

71. The constraints are tested most acutely in relation to books where there is a genuine public interest in their publication. Sir Jeremy Greenstock's book is likely to be a very valuable account of the diplomatic background to one of the most important events of the decade. Its publication could influence thinking on Iraq, which is still a live political issue. There is clearly a strong public interest case on the side of publication. Both Jack Straw and Sir Jeremy indicated that the work was likely to give a more sympathetic account of the Government's actions than many other discussions of these events.<sup>85</sup> Nonetheless, the then Foreign Secretary opposed its publication as a matter of principle (without, it seems, having read it).<sup>86</sup> Later in this report we suggest changes to the system which might allow ministers more confidence that publication of serious works of this nature would not undermine traditional relationships between ministers and officials, and which would allow the competing public interest considerations to be properly evaluated.

**72. Civil service guidance and codes emphasise the confidential relationship between ministers and public servants. Public servants are only able to produce saleable**

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83 Andrew Palmer, *A Diplomat and His Birds* (Tiercel Publishing), 2005.

84 Qq 36-37

85 Q 296 and Q 434

86 Q 437

reminiscences as a consequence of their position in a non-political public service. Former ministers have largely kept their side of the bargain; public servants should be expected to keep theirs.

### *Special advisers*

73. Special advisers are categorised in the current administrative system as “temporary civil servants”. They are appointed by ministers, and their appointing minister is responsible for regulating their conduct. Several special advisers have published memoirs over the last two decades, including Baroness Hogg, Derek Scott and Peter Hyman. Most recently, Lance Price published his diary. He explained the position he was in as a special adviser:

I do think that special advisers are in a hybrid position. They are largely political and some special advisers, certainly in my case, play a very political role but they are also brought within the Civil Service for a short period of time, and our careers are as fickle as those of the ministers that we work for so we do not have all the benefits of guaranteed employment, pensions and so on that others perhaps do.<sup>87</sup>

74. In the United States, where large numbers of public officials are appointed on a political basis, memoirs and diaries by these appointees are much more common. For example, Paul Bremer, Presidential Envoy to Iraq in 2003–04, has recently published his memoir *My Year in Iraq*, whereas Sir Jeremy Greenstock, who was working alongside him, has been prevented from publishing *The Cost of War*.<sup>88</sup> The former Foreign Secretary considered that the conventions and rules which apply to politically appointed staff such as Paul Bremer were completely different from those which applied to career diplomats, even though he also considered that “special advisers are not accountable for their actions. Although they are political appointees, in terms of their accountability they are in a more similar position to civil servants than they are to ministers”.<sup>89</sup>

**75. Special advisers occupy a special position, and this brings special obligations of trust. They are closer in kind to ministers than civil servants since they are politically appointed, for a short time only. Unlike ministers, they are not politically accountable in their own right. These considerations affect how they should be treated in the matter of memoirs. An adviser who publishes a juicy memoir may embarrass the minister who appointed him, and betray the trust that was placed in him, but does not necessarily undermine the relationship between politicians and officials. Like ministers, though, they should not identify named officials and their advice.**

### *Diaries*

76. Some of our witnesses suggested that diaries were a particular problem, since the knowledge that someone within an administration is keeping a record of events for publication may itself have an effect on trust inside government. Dr Geoff Mulgan, former Head of the Prime Minister’s Strategy Unit, has declared that “there is nothing more

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87 Q 240

88 Paul Bremer, *My Year in Iraq: The Struggle to Build a Future of Hope* (London, Simon & Schuster Ltd), 2006.

89 Q 481

corrosive to the quality of decision-making than a climate or culture in which every participant is secretly writing their diary under the table”.<sup>90</sup> Dr Mulgan worked for the Prime Minister at a time when Alastair Campbell and his deputy Lance Price, were both keeping diaries.

77. The knowledge that diaries exist, and will be published at some point, may ultimately lead to more disclosure, through what Professor Hennessy calls “competitive memoiring” as others attempt to tell their side of the story. Professor Hennessy told us that the future publication of Alastair Campbell’s diary would be:

...the equivalent of an archduke being shot in Sarajevo in July 1914. It will be the opening salvo in the most ghastly mobilisation of the most wonderful exchanges in competitive memoiring. People will have touched the acid keyboard in anticipation of that. I have a slight suspicion... that in anticipation of that day, people have got defensive bits of paper of their own ready to put out.<sup>91</sup>

78. However, unlike Dr Mulgan, Mr Benn’s colleagues appeared relatively relaxed about his diary keeping. Lord Wilson told us that when he was working in the Department of Energy in the 1970s, when Mr Benn was a minister, he made no secret of the fact that he was writing a diary, and Lord Wilson did not think it had any effect on those around him at all.<sup>92</sup> Lord Owen told us he remembered “a great moment in Cabinet when Denis Healey was talking. Tony Benn was writing away and Denis slowed down and said, ‘Tony, am I going too fast for you?’”.<sup>93</sup> The fact that politicians seem to have felt comfortable knowing that their colleagues were keeping diaries, whereas there is some unease at the prospect of diary keeping by officials, may reflect the different nature of political and official responsibility. **The real issue is not that diaries are kept but when they are published, and what they can properly include. While current allocations of responsibility remain, it is appropriate that politicians should have greater freedom than officials in these respects.**

## The question of timing

79. A fundamental issue is when material is published, in terms of the distance between publication and the events and people described. As Lord Radcliffe put it “at some point of time the secrets of one period must become the common learning of another”.<sup>94</sup> Mr Price advanced a contemporary formulation of this “I think there does come a point at which the argument almost flips over at which point it is fair to say that there is a presumption that there is no reason why stuff should not be published unless it can be demonstrated that it will do harm”.<sup>95</sup>

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90 BBC Radio 4, *Look Back at Power*, 5 September 2005.

91 Q 2

92 Q 5

93 Q 357 [Lord Owen]

94 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 82.

95 Q 229

80. But at what point? Although it is easy to acknowledge that sensitivity diminishes over time, deciding when it is appropriate to publish (and in what detail) is less straightforward. Less than two years elapsed between Sir Christopher Meyer's retirement from the diplomatic service and the publication of his book. Sir Jeremy Greenstock also encountered considerable opposition on the grounds of enough time having passed when trying to publish his memoir, having set the original publication date for only eighteen months after retiring from the Diplomatic Service. Although Sir Nicholas Henderson, another former ambassador to the United States, published his diary, he waited 12 years between retirement and going to print.<sup>96</sup>

81. Professor Hennessy believed that there should be a five year restraint on publishing by both ministers and civil servants, less if there is a change of government during the five year period.<sup>97</sup> Others argued, as Radcliffe also had acknowledged, that any time limit would be arbitrary. Radcliffe had suggested that the rules and procedures he recommended should apply to an author publishing within 15 years of the events described in the memoir or diary. Lord Wilson was against an absolute time limit "because I can think of some things which I would not want people to write after five years and some things in less than five years which I would not object to".<sup>98</sup> Instead, he felt that "...you ought to wait until the main players are no longer active, as it were, until events have moved on, until the world has moved on".<sup>99</sup>

82. This seems to be widely agreed. Lord Lawson told us that "One of the considerations I felt I should attach and did attach some weight to was that the Prime Minister, who was the principal player if you like in the particular drama that I was writing about was no longer in office".<sup>100</sup> Mr Alastair Campbell told the Committee that:

I do intend to publish a series of books about my experiences in politics at some time, but I would consider it wrong to publish in a manner, or at a time, detrimental to the interests of the Government or the Party I served. With our media and politics as they are, I am in little doubt that publication would be used to try to damage the Government, the Labour Party, the Prime Minister and others. For that reason alone, I have decided against early publication.<sup>101</sup>

83. However, Mr Price argued that:

Two general elections have been and gone since I worked for Tony Blair and he has said that he will not be fighting another. Most of the men and women who appear in these pages have already moved on to other things or are about to do so. Some

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96 Nicholas Henderson, *Mandarin* (London, Weidenfeld and Nicholson), 1994.

97 Q 3

98 Q 22

99 Q 14

100 Q 364

101 Ev 104

people will say that it is still too soon to reveal anything that went on away from the distrustful eyes of the media and the public.<sup>102</sup>

84. Different time limits may be appropriate for different types of work. Diaries, by their very nature, contain raw information about events inside a government, and can both enthral and embarrass. Lord Donoughue felt it necessary to wait thirty years before he believed it appropriate to publish his diary account of the Wilson administration. A minister resigning from a government may want to publish his or her version of events immediately, and feel entitled to, as with Robin Cook and Clare Short. Similarly, it may be appropriate for more analytical or contextual works to appear relatively quickly, while confidences about those still in office, whether politicians or civil servants, should be delayed longer.

85. **As a general principle, the longer the memoir writer waits, the more they may possibly reveal. The exact trade-off will depend on the nature of the material, whether those who would be affected by publication are still in office, and the author's former position. A diary, as a more intimate account, is likely to need a longer wait before publication in full. Although broad guidelines may be helpful, a fixed time period before publication is unlikely to be applicable to the variety of cases and circumstances.**

## 4 From principle to practice

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### The principles governing publication

#### *Current guidance*

86. The current guidance on the publication of memoirs is scattered and inconsistent. Guidance for former ministers is contained within the Ministerial Code which states that:

The principle of collective responsibility and the need to safeguard national security, relations with other countries, and the confidential nature of discussions between ministers and their civil servants imposes certain obligations on former ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976.<sup>103</sup>

87. For civil servants, guidance appears in a number of places, and in a number of forms. The Directory of Civil Service Guidance reproduces the note of the 1993 Wakeham Committee on Ministerial Memoirs which states that:

Former members of the public service should be under the same obligation as former ministers to submit their manuscripts for scrutiny with regard to national security and international relations, and to defer to the judgement of those carrying the

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102 Lance Price, *The Spin Doctor's Diary: Inside Number 10 with New Labour* (London, Hodder & Stoughton Ltd), 2005, p xiv.

103 The Ministerial Code, para 6.18.

immediate responsibilities in these fields. In the matter of confidential relationships, the principles concerning publications by ex-ministers, the obligations which rest upon them, and the periods for which those obligations should be maintained, should all be reflected in the rules governing the publication of memoirs and other works relating to their official experience by former members of the public service.<sup>104</sup>

88. The Civil Service Code includes an obligation for civil servants not to misuse their official position or information acquired in the course of their official duties to further their private interests or those of others, and requires them to conduct themselves in a way as to deserve and retain the confidence of ministers, and not disclose official information without authority. This obligation continues after civil servants have left Crown employment.

89. The clearest guidance is in the Civil Service Management Code which states that:

Civil servants must not take part in any activities or make any public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information.

Civil servants must not publish or broadcast personal memoirs reflecting their experience in Government, or enter into commitments to do so, whilst in Crown employment. The permission of the Head of their Department and the Head of the Home Civil Service must be sought before entering into commitments to publish such memoirs after leaving the Service.<sup>105</sup>

A similar requirement is laid down for former special advisers in the Special Advisers Code.<sup>106</sup>

90. Guidance on the publication of memoirs by members of the Diplomatic Service is contained within the Diplomatic Service Regulations. These state that manuscripts or synopses of works which include official information or information which uses official experience, which may be liable to affect the Government's relations with other countries should not be submitted to publishers before receiving authorisation from the Department. Contributions to public debate should not:

- prejudice national security;
- harm international relations;
- create the possibility of embarrassment to the Government in the conduct of its policies; or
- bring into question the good name and impartiality of the Diplomatic Service.

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104 Directory of Civil Service Guidance, Volume 2: Collected Guidance, 2000, Ministerial Memoirs: The Radcliffe Rules and their Application, para 10.

105 Civil Service Management Code, para 4.2.4-5.

106 The Special Advisers Code, para 27.

91. The lack of a consistent set of criteria against which publications should be judged appeared to be a factor in the difficulties encountered in dealing with Sir Christopher Meyer. Unlike the Radcliffe Report, the Diplomatic Service Regulations made no reference to the need to protect confidential relations between ministers and civil servants. During the course of this inquiry, the regulations were revised to include this as an additional requirement, but this was too late to affect Meyer's publication. In a parliamentary answer, the Foreign Secretary told the House of Commons that Sir Christopher Meyer's manuscript was:

...reviewed against the standard criteria for clearing publications under the rules. The judgement, with which I agreed, was made on the particular facts of this case that no changes should be sought primarily because the book posed no national security risk; it contained nothing substantially new which we judged would harm relations with the US; and nothing was specifically identified that was considered so damaging as to require consideration of legal action.<sup>107</sup>

### ***Restatement of the principles***

92. Over the course of this inquiry the FCO made changes to the Diplomatic Service Regulations, adding the requirement to avoid writing anything that would damage the confidential relationships between ministers, or between ministers and officials. Other guidance remains unchanged. We believe it needs to be reshaped to express the fundamental principles more clearly and consistently. The current inconsistencies lead to confusion and disagreement over what it is, or is not, appropriate to publish.

**93. The basic principles governing the publication of memoirs should be stated in the same terms for ministers, civil servants and special advisers, although there will be differences in what it is appropriate for each group to publish. There should be no room for prospective authors to claim that they were unaware of the restrictions on their ability to publish, the criteria against which the acceptability of manuscripts would be judged, or the way in which those restrictions would be applied to politicians or to public officials. We recommend that guidance should be based on the following:**

**To ensure the good working of government, which involves the maintenance of trust between ministers, and between ministers and civil servants, there should be some restrictions on the publication of memoirs and diaries. In particular, authors should not include information which:**

- a) **may cause damage to international relations;**
- b) **may cause damage to national security;**
- c) **may cause damage to the confidential relationships between ministers, and between ministers and civil servants, or which would inhibit the free and frank exchange of views and advice within government.**

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107 HC Deb, 28 Nov 2005, c165W

Examples of matters which could cause damage to confidential relationships would include detailed accounts of Cabinet meetings of the government of the day, discussion of particular advice given to ministers by named civil servants, or disparaging references to public servants by ministers or vice versa. There is unlikely to be objection to discussion by former ministers of their ministerial colleagues, who can account for themselves.

## Approval processes

### *The current situation*

94. Current guidance is extremely vague about the process for clearing memoirs. Mr Price told us that he found the process for ‘clearing’ his diary difficult to negotiate “At the moment I think probably the system is kept deliberately opaque... The way in which the guidance I was given was phrased I did find confusing. All the way through I was feeling my way”, and that “Although I remain of the view that workable rules are desirable and necessary, those that now exist did not appear to work in my case”.<sup>108</sup> Sir Christopher Meyer considered that since many former colleagues were aware of his intention to write, he did not need to inform the Department more formally.<sup>109</sup>

95. It is apparent that even where the guidance is clear, it has not been enforced, or has proved unenforceable. There is no ambiguity about the requirement that texts should be cleared before they are sent to publishers. In practice, authors often seem to acquire publishers before gaining the approval of the Government or even having a text. Sir Christopher’s evidence suggested that the current rules took no account of the modern publication process, in that they assumed that authors would not have a publisher until they had a final text.<sup>110</sup> This is a sound point, but in his own case appears to be disingenuous. The Diplomatic Service Regulations may have been unworldly in specifying that agreement had to be secured before texts *or synopses* were sent to publishers, but the FCO only learnt of Sir Christopher’s intention to publish when advertisements appeared on Amazon trailing *DC Confidential*.<sup>111</sup> Informal contact with colleagues is not the same as proper notification, as he must have known.

### *Making the process clearer*

96. The Cabinet Office told us that it was making changes:

there would be merit in making it clearer and more explicit in the Civil Service Management Code that former civil servants must seek the permission of the Head of their former Department, and the Head of the Home Civil Service before entering into a contractual commitment with a publisher. The Code will also be amended to make it clearer and more explicit that former civil servants must submit in good time before any proposed publication, a copy of the proposed text they intend to publish

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108 Q 270 and Q 222

109 Q 215

110 Qq 155-159

111 HC Deb, 28 Nov 2005, c165W

and which draws, or appears to draw, on official information or experience. Civil servants will also be reminded of these obligations at regular intervals to ensure that the rules are not forgotten....<sup>112</sup>

97. The new Diplomatic Service Regulations, amended and sent out to senior diplomats on 6 March 2006, did not contain any further guidance on the way the process of clearance should operate. We find it surprising that the Cabinet Office and FCO have not consulted one another and produced a single, consistent, approach.

**98. It is unrealistic to expect authors (whether ministers, civil servants or advisers) to produce texts for clearance before they have secured any sort of agreement with a publisher. The rules should acknowledge that there may be discussion with prospective publishers before clearance is sought. But any contract between author and publisher should recognise that clearance will be needed, and no detailed drafts should be sent to publishers unless they have first been cleared. For its part, the Government must deal with texts properly and expeditiously. A few days after a work is submitted, prospective authors should be told how long clearance is likely to take. The length of time involved will, of course, depend on the nature of the work in question, but we believe that three months should be the longest period necessary and clearance should normally take a matter of weeks.** Authors should know what to expect when they enter into the process. When changes are proposed, the reason for them should be explained to the author. Even though the Government should deal with drafts as quickly as possible, if real negotiation is needed it may take time (although we still envisage months rather than years). We do not see this as a disadvantage. Publishers may want gossip fresh, but, as Lord Wilson said, “the interests of publishers do not override the interests of good government”.<sup>113</sup>

### **Who clears?**

99. Clearance has always been a matter of negotiation. Lord Owen’s correspondence with Sir Robin Butler, now Lord Butler of Brockwell, the then Head of the Home Civil Service, on some aspects of his autobiography, printed with this Report, shows the nature of such negotiation clearly: mostly in relation to references to named civil servants but also on Cabinet confidentiality and national security. This process of negotiation, also described to the Committee by Lord Wilson, is broadly in line with what was intended by Lord Radcliffe in his report.<sup>114</sup>

100. However, there has always been some ambiguity about whether politicians or civil servants should clear memoirs. The historical outline in Chapter 2 shows a succession of Cabinet Secretaries trying to impose rules upon publications of memoirs and diaries by ministers, and frequently being rebuffed by ministers who had a mind to their own future publications. Last year, the Foreign Secretary intervened when he became aware that Sir Jeremy Greenstock was intending to publish a memoir and expressed “strong objections” even though the author had already entered into a process of negotiation on the text with the FCO. Sir Jeremy told us that “I went in to see Mr Straw in early July and

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112 Ev 108

113 Q 10

114 Q 46

he confirmed his opposition to the book as a matter of principle. I said I would take account of what he had said, but would want to finish the clearance process”.<sup>115</sup> In the event, Sir Jeremy postponed publication describing the book as now “in the deep freeze”.<sup>116</sup> We believe there is a strong public interest case for its early publication.

101. The difficulties arise when agreement cannot be reached. The authors from whom we took evidence were not convinced that it was for those within government (ministers or civil servants) to be the final judge. Sir Jeremy recognised that his view of what was in the public interest was not the only view, and that it was not for him to make a final decision on this.<sup>117</sup> This contrasted with Sir Christopher Meyer’s assertion (in his correspondence with the FCO over the publication of his memoir) that “There is no intrinsic reason why a group of civil servants should be a better judge of [public interest] than one individual”.<sup>118</sup> However, in his evidence to the Committee, Sir Christopher seemed to have changed his mind. He suggested that:

... the machinery for reviewing political memoirs may need strengthening: for example, by a small committee, chaired by the Cabinet Secretary, comprising some permutation of publicly appointed lay members, special advisers and civil servants, who will read and rule on manuscripts. The Committee would decide both on content and on where the public interest lies as to the timing of publication....<sup>119</sup>

102. The Radcliffe Report hoped that flexibility and goodwill would prevail:

...it involves questions of identification and degree, how much or how little is to be said and how far specifically or only in general... Given goodwill and a readiness to make adjustments it may well be possible for both points of view to be reconciled, since a measure of flexibility is called for in this sort of debate. But it is not a range of subject upon which we feel justified in recommending that it should be the duty of the author in the last resort to give way to the view of the Cabinet Secretary or of the Prime Minister, if the issue reaches the latter... On all these matters the author must take upon his own shoulders the responsibility of deciding for himself what he is going to say and how he is going to express himself....<sup>120</sup>

103. Mr Murray has also been informed by senior FCO officials that the submission on whether or not to give him permission to publish was put to the Foreign Secretary. He told us that this seemed “to open questions on whether politicians should be permitted to ban information about their own conduct. The Committee may consider such decisions might be better taken by an independent body enforcing agreed rules”.<sup>121</sup>

104. Radcliffe himself raised the possibility of instituting a Committee of Privy Counsellors to consider whether publications were acceptable:

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115 Ev 87

116 Qq 341-342

117 Q 274

118 Letter from Sir Christopher Meyer to Sir Michael Jay, 7 August 2005, placed in the House of Commons Library.

119 Ev 85

120 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 80.

121 Ev 106

...Certainly, there are attractions in the idea. Such a reference could take a controversy out of the area of immediate confrontation; and it would bring to bear upon it the objective judgements of a number of persons with political or judicial experience of affairs. On the whole, however, we do not advocate a formal proceeding of this kind. If on any particular occasion the Prime Minister should wish to bring into consultation and take the advice of any one or more such persons, there is nothing to prevent him from doing so. But we think that it would be a mistake to institute any such regular practice.<sup>122</sup>

The Report left open the question whether more formal machinery might be needed in the future if attitudes and circumstances changed, and if the informal arrangements broke down.

105. The use of independent appointed bodies rather than ministers who are constitutionally accountable is not without difficulties. Nonetheless, the reality is that neither the author of a political memoir, nor those whom the author is writing about, will be trusted to judge what is in the public interest. The perception will always be that their own interests will influence judgements. An independent body to clear texts therefore has an obvious attractiveness, rather as the Advisory Committee on Business Appointments is used to clear subsequent private sector employment for former officials and ministers. The question is when such a body should be involved. Mr Murray clearly does not trust the Foreign Secretary to judge his work impartially. It would be equally unsatisfactory if clearance was solely in the hands of career officials. Ministerial trust in the civil service would be quickly eroded if ministers felt they could be criticised by former officials without any opportunity to have a say. As we have argued, one of the main dangers of unrestricted publication of memoirs is the potential to undermine the relationship between ministers and officials. Unconstrained publication by ministers could be as damaging to this relationship as unconstrained publication by civil servants. Removing the active partners from the negotiation, and handing it over to an independent body, does not in itself avoid this danger. Such a body could take a more restrictive view of publication than was really necessary, or it might allow such latitude that working relationships were undermined. **All guidance should make it clear that, in the first instance, approval for publication may have to be secured by negotiation. At the stage when a text is in negotiation, it seems to us appropriate that both ministers and public servants should have the right to comment on what is proposed, and see if agreement can be reached.**

106. **However, we believe it would be appropriate to have an appeal mechanism if agreement cannot be reached, on a proposal, or a text, or on timing. In such cases, a small committee of Privy Counsellors or other senior figures (to be known as the Advisory Committee on Memoirs) could be used. If such a group were to contain former experienced politicians from more than one political party, a former senior public servant and a member of the judiciary, it would be well placed to weigh the public interest considerations involved and to give authoritative judgements. Its membership should be agreed by the Leaders of the political parties.**

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122 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd 6386, para 81.

107. **There is no reason why the process should differ for civil servants, ministers, special advisers and diplomats. The new procedure should be included as an annex to the Ministerial Code, the Civil Service Management Code, the Special Advisers Code and the Diplomatic Service Regulations. This guidance should be provided to all holders of public office when they are appointed, and when they stand down.**

## Enforcement

108. It would be perfectly possible simply to restate the guiding principles, which are still those of the Radcliffe report, ensure the processes for securing agreement are clear, add a little new machinery, and leave the matter at that. This would avoid the issue of enforcement altogether. There is an argument that informal sanctions work perfectly adequately, relying on the so called “good chaps theory of government”.<sup>123</sup> In this model, politicians and officials are aware of their obligations and act accordingly. If they occasionally do not, the rules are re-asserted by those in a position of authority, those who offend against the rules suffer damage to their reputations and are universally agreed to be bad chaps, thus reinforcing the incentive to abide by the rules.

109. In the 1970s Lord Radcliffe argued that former ministers:

...should be able, surely to conduct themselves properly and recognise their obligations without the creation of statutory offences or statutory penalties. To be driven to suggest otherwise would be to acknowledge a sad decline in the prestige of modern government. We do not yet think that things have come to such a pass.<sup>124</sup>

110. The 1993 Wakeham Committee came to a similar conclusion, finding that “the established principles of law do not provide a system which can protect and enforce those rules of reticence that the Committee regard as called for when ex-ministers compose their memoirs of ministerial life” and that legislation did not offer a solution.<sup>125</sup> They concluded that:

There can be no guarantee that, if the burden of compliance is left to rest on the free acceptance of an obligation of honour, there will never be an occasional rebel or an occasional breach; but so long as there remains a general recognition of the practical necessity of some rules and the importance of observing them, the Committee do not think that such transgressions, even though made the subject of sensational publicity, should be taken as having shattered the fabric of a sensible system.<sup>126</sup>

The final decision about whether and what to publish has hitherto rested with the author.

111. The question is whether the recent contentious cases are still to be seen as occasional transgressions, or as evidence that the good chap model has now broken down. Lord Turnbull explained that most of those who had produced recent memoirs and diaries very

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123 Q 136

124 *Report of the Committee of Privy Counsellors on Ministerial Memoirs*, January 1976, Cmnd. 6386, para 69.

125 Guidance Note on the Conclusions and Recommendations in the Report of the Radcliffe Committee on Ministerial Memoirs (Cmnd 6386, January 1976) and their application, 1993, para 6.

126 *Ibid.*, para 8.

critical of the Government had behaved in accordance with the rules: Robin Cook, Clare Short and (“after some argy bargy”) Derek Scott all submitted their manuscripts.<sup>127</sup> Lord Wilson argued that “The fact that there have been people who break the rules does not mean that the whole process has come to an end. What you need to do is to reassert it and not to condone cases where people have not observed it”.<sup>128</sup>

112. Criticism of Sir Christopher Meyer in particular has been fierce. As Mr Benn commented “If someone leaves office and then writes a lot of malicious stuff about those with whom he previously worked, it will not do him a lot of good”.<sup>129</sup> Mr Straw told the Committee that Sir Christopher “has destroyed his reputation and actually the sanction which he suffered... is far greater than any sanction he is likely to have suffered in court... The guy has been completely ostracised... So the legacy of his publication and his betrayal is a very substantial one and a very poor one for him”.<sup>130</sup> He claimed “that what the Meyer book has done, I think, has been to re-enliven these conventions in the minds of officials. I think there will be very, very, few members of the Diplomatic Service doing a Meyer in the foreseeable future”.<sup>131</sup> However, we note that notoriety can also lead to a rise in saleability.

113. We certainly hope that the good chaps version of government is alive and well. If so, then recent cases will come to be seen as simply unfortunate, when ‘stuff happened’ to an unprecedented degree, to the delight of some and consternation of others. Future authors will be careful to ensure that their texts are properly cleared, and fully agreed. But if the climate has changed, in the direction of competitive and lucrative memoiring soon after events, with the result that the traditional conventions no longer work, then something more may be needed.

### **Remedies**

114. The traditional remedy has been the injunction to prevent publication. Despite the views of Lord Radcliffe, the courts have been reluctant to accept there is a wide public interest in restraining publication about matters internal to government, given the public interest in freedom of expression and transparency. Applications for such injunctions have consistently been rejected. In 1975 Lord Widgery found against the Attorney General when considering the publication of the Crossman diaries. The *Spycatcher (No. 2)* case in 1988 involving Peter Wright, a former member of MI5, also failed to prevent publication by permanent injunction of press reports about Mr Wright’s text even though an interim injunction had been upheld narrowly by the House of Lords a year earlier. Professor Birkinshaw noted that:

... courts are reluctant to award injunctions restraining the publication of memoirs of the type under discussion unless there is a continuing duty of confidence and a prospect of damage to the public interest. Where such damage is in prospect, the courts have restrained publications in the widest of terms but these have been in

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127 Q 72

128 Q 43

129 Q 425

130 Q 469

131 Q 496

cases involving security and intelligence officers who owe a life-long duty of confidence or secrecy to the Crown.<sup>132</sup>

115. There are good reasons for this approach by the courts. None of the works we examined has revealed information that is more than embarrassing. Attempting to ban their publication would be an extreme step and would be unlikely to succeed.

116. However, the lack of any intermediate remedy is profoundly unsatisfactory. It has left government reliant on negotiation, with legal remedies only available in the most extreme cases. Lawyers for Mr Murray's publishers are quoted as saying "Government departments are capricious and that is their nature".<sup>133</sup> Government should not be capricious, yet the record of the last year suggests that it can be, and includes:

- an attempt to prevent publication, followed by negotiation over the text (possibly influenced by the prospect of legal challenge) leading to embarrassing juxtapositions of "before and after" passages (Mr Price);
- a successful ministerial intervention to delay publication (Sir Jeremy Greenstock);
- a refusal to offer comment or authorisation followed by post-publication condemnation (Sir Christopher Meyer); and
- threats to take legal action in the event of publication (Mr Murray).

The FCO and Cabinet Office have been unable to take a firm and consistent line about what is or is not acceptable, or how the rules should be enforced.

**117. Clarifying the rules and the clearance process would improve matters. However, without some effective legal sanctions they will remain no more than advice, and even complying with the clearance process will be essentially voluntary.** The Government had to rely on social contacts even to obtain a copy of Sir Christopher's memoir. It is unsatisfactory that serious works by responsible authors can be blocked, while attempts to restrain publication of material which may be diverting, but which may also, contribute to the long-term erosion of trust within government, simply serve to increase their saleability.

118. It can be that publishers threaten litigation, to force the Government to change its mind. If the Government engages in detailed negotiations, it risks giving a disputed work publicity as 'the book they tried to ban', or providing newspapers with 'before and after' passages for serialisation. In effect, the Government is able to recommend delay in publication, or suggest changes to the text, only if it is confident of the good faith of the author involved. Where this is in doubt, it is safer to offer no comment. A process in which the Government has a positive disincentive to participate if it suspects that it is dealing with someone irresponsible is profoundly unsatisfactory. The current legal bias towards publication is welcome, but means that there is no pressure on the 'bad chaps' to negotiate. We do not believe in banning books. **We need a system which leaves the final decision on whether or not to publish in the hands of the author, as Radcliffe proposed. But there**

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132 Ev 111

133 Ev 106

**should be a real incentive for the author to take account of the Government and Advisory Committee's guidance.**

119. Professor Birkinshaw told us he believed that “Any action must avoid the appearance of oppression or victimisation. Guidance would have to make a convincing case that what is proposed is in the legitimate interests of efficient and responsive government and is not an unjustifiable attempt to muzzle freedom of speech”.<sup>134</sup> Such a system could be imposed by statute, if the Government considered it proportionate and could find time for legislation.

120. Lord Wilson observed:

I am sure we could all put together a Bill which set up a tribunal to oversee the system, which laid down a process and which had penalties and criminal sanctions or civil sanctions, I do not know, for people failing to observe the process. I think that would be very heavy handed and I would want to try and keep out of that if I possibly could.<sup>135</sup>

**121. We agree that statute law is not an appropriate means for restraining publication. Not only is it unlikely that any government would find time for such legislation, it is far from clear that statutory provisions could be drafted which would satisfactorily deal with complex considerations about confidentiality and public interest without being too rigid and oppressive. However, we believe there are nevertheless some legal means available to encourage more consultation and negotiation over the publication of memoirs.**

### ***Crown Copyright and confidentiality clauses***

122. If it is no longer sufficient to rely on good faith, then it is proper to consider whether some legal recourse would help. In the private sector, contracts routinely include confidentiality clauses. The dual use of confidentiality clauses and Crown Copyright could provide a solution. Professor Birkinshaw explained to us how this system could work:

An agreement signed by the relevant parties would state that it was a legally binding undertaking not to publish any material or information possessed/acquired/used or relating to [a minister's/civil servant's etc...] time in Crown service in book/media or other form unless the material has been approved by responsible authorities. The minister/civil servant/adviser/diplomatic member would agree that until such approval is given, the copyright in any such material will be owned by [assigned to] the Crown and the material would be regarded as confidential. Where the material is approved, copyright will revert to the author and any confidentiality will come to an end. Where publication takes place without authorisation, the Crown will pursue any available remedies by way of an account of profits or damages—standard remedies for breach of copyright—as well as other remedies.<sup>136</sup>

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134 Ev 116

135 Q 56

136 Ev 113

123. In other words, publication would not usually be banned (although an injunction might be used to prevent a breach of copyright), but courts could be asked to ensure that authors did not profit from unauthorised work, unless they felt the Government had withheld consent unreasonably.

124. Any use of copyright and confidentiality clauses would have to take into account Article 10(1) of the European Convention on Human Rights which states that “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”. However, this right under Article 10(1) is not absolute. It is qualified by Article 10(2) which “expressly refers to accompanying duties and responsibilities and the right may be subject to formalities and restrictions ‘prescribed by law’ (a binding agreement would satisfy that requirement) and which are *necessary* to protect the reputations of others (defamation) or to prevent disclosure of information received in confidence”.

125. As Professor Birkinshaw said:

“Necessary” is a very demanding test.<sup>137</sup> The pressing social need would be to protect the integrity of advice given and received in office, to ensure that those still in service are confident that they can advise candidly and honestly. This would not arguably include gossip, matters of taste or opinion. The restraint agreed to would have to be proportionate.<sup>138</sup> Sometimes gossip or opinion may be damaging to continuing relationships.<sup>139</sup>

126. If the Crown owned the copyright there would be no public interest in salacious gossip which would override that copyright. But an informed commentary could be of real public interest. We accept that there is a legitimate need to ensure the ability of those in office to put trust and confidence in one another. If it became normal for public servants to fund their retirements through rapidly produced memoirs, revealing damaging gossip or political differences within government, that confidence would be fatally undermined. For that reason, we believe some system for restraining publication is justified.

127. But that restraint must be proportionate. There must be a balance between the right to publish and the need to maintain proper confidentiality. The agreement discussed in paragraph 122 above should stipulate that consent to publish will not be withheld unreasonably nor for an unreasonable period of time. There would be maximum encouragement for negotiation on details. This might help concentrate the minds of authors and publishers on the balance of interests involved in political memoirs.

128. Mr Murray has argued that the use of Crown Copyright to remove proceeds was “an unjustified limitation of freedom of speech”. He told us that:

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137 See Sedley LJ in *Interbrew* [2002] EWCA Civ 274 para 47; Lord Bingham in *Shayler* above para [22] at para 23; Lord Woolf CJ in *MGN* [2002] 4 All ER 193 paras 61-62.

138 See Lord Steyn in *R (Daly) v Secretary of State for the Home Department* [2001] 3 All ER 433 (HL).

139 Ev 116

...the laws of defamation and libel, the Official Secrets Act, the Data Protection Act and the Freedom of Information Act provide proper and secure boundaries of law within which an employee ought to have the right to air his grievance. For the employer to simply ban the book by refusal to clear it, and the threat of arguing in court that the area of dispute is subject to Crown Copyright, cannot be fair.<sup>140</sup>

129. Mr Murray claims that the threat of legal action over Crown Copyright would amount to a ban, as it would act as an “effective deterrent to any publisher, whose purpose is to run a business publishing books, not to conduct extremely expensive litigation”.<sup>141</sup> He also makes the point that whistleblowers should be treated differently from those who retire after a full career.

130. We have some sympathy with the general proposition that those who leave public service so that they can speak out are in a different position from those who ensure they have an adequate pension before doing so, although we are not in a position to judge individual cases. Nevertheless, there would be more equality of arms under such a system than Mr Murray supposes. As Professor Birkinshaw explained “...the prospective author may by-pass any proposed procedure agreed to by the undertaking without the consent of the employer, forcing the Crown side to seek reparation through the courts for breach of the undertaking. The author would wish to invoke a public interest in overriding the undertaking”.<sup>142</sup> It would be for the courts to decide what penalties were appropriate, and how costs should be allocated. If it was judged that unauthorised publications were genuinely in the public interest, the position of the author and publisher would have to be regarded by the courts.

### The Cabinet Office and Foreign and Commonwealth Office proposals

131. Recent changes to the rules on publication issued by the Cabinet Office and the FCO suggest that the Government is considering something close to the enforcing of confidentiality and copyright. But, here again, the Cabinet Office and the FCO have taken differing approaches. Such differences can only make the rules and procedures both easier to evade and harder to enforce by complicating and confusing the operation of the system.

132. The Cabinet Office have informed us that, in future, “staff in sensitive areas will be asked to sign an undertaking that they have read and understood the rules relating to the disclosure of official information and the publication of memoirs and other publications and that they will abide by the rules”.<sup>143</sup> Sir Gus O’Donnell has informed the Committee that he has signed such a declaration.<sup>144</sup> The FCO, when sending out the new Diplomatic Service Regulations on 2 March 2006, required the recipients to click on a “read and agree” button attached to the email message to confirm the following statement:

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140 Ev 106

141 *Ibid.*

142 Ev 113

143 Ev 108

144 Oral evidence taken on *Ethics and Standards*, 16 May 2006, HC (2005-06) 884-v, Q 249

I have read and understood either the Diplomatic Service or Home Civil Service Regulations, as appropriate, and agree to be bound by them. My particular attention has been drawn to DSR5 and HSR4 which deal with the use of official information or experience, publications, contacts with the media, lectures, speeches and conferences.<sup>145</sup>

133. The Cabinet Office also proposes that “individuals will be asked to assign copyright to the Government of future works (including newspaper serialisations) thereby targeting action at those with most access to sensitive information”.<sup>146</sup> However, the new Diplomatic Service Regulations do not include such a provision. Paragraph 10 of the new Diplomatic Service Regulations does make a reference to Crown Copyright, but Professor Birkinshaw points out that it refers to the provisions of the 1956 Copyright Act which has been repealed and is now superseded by the 1988 Copyright Act. Professor Birkinshaw finds the reference to a repealed piece of legislation “perplexing”, as do we.<sup>147</sup>

134. We believe that a legally binding statement would provide an effective mechanism to check unacceptable publication. But it is not clear why home civil servants should need to sign such a declaration, whereas members of the diplomatic service can simply respond to an email. It is also not clear whether there will be any requirement for ministers to abide by the same set of principles and processes as civil servants and diplomats, and whether special advisers will also be required to agree to these requirements.

**135. We support the Cabinet Office’s action in clarifying the contractual duty to clear any memoirs before publication, and in requiring officials with access to sensitive information to assign copyright in future works to the government, allowing government to seek profits from unauthorised publication. The same confidentiality clause should apply to civil servants, diplomats, and special advisers. Potential authors must not be left in any doubt about the nature of the agreement they are entering into.**

**136. Ministers are not in a contractual relationship with government, and have in the past resisted all attempts to make them formally subscribe to rules on publication. We consider that Radcliffe’s recommendation that ministers taking office should sign a document making clear they understand the restrictions on publication had great merit. The duty to sign a formal commitment to consult before publication should be placed clearly and explicitly in the Ministerial Code.**

**137. If the new system is treated seriously, it will affect both authors and government. Both will have an incentive to negotiate properly, and to take account of the views of an appeal body. If the government cannot approve a work and it is nonetheless published, it must go to court to assert copyright and pursue profits. The government will have both a weapon and an incentive to negotiate as, apart from cost, court cases can increase the publicity given to the work in question.**

**138. Similarly, authors will know that if they publish without agreement, they will face legal consequences and may forgo their profits. If government delays unnecessarily, or**

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145 Letter from David Warren to all members of the SMS and all Heads of Post, 2 March 2006.

146 Ev 108

147 Ev 117

refuses clearance against the advice of the Advisory Committee, authors will have a choice. They can explore a legal challenge to the government, or simply take the risk of publishing without agreement. Their position would have been strengthened if the government had been unreasonable. This new system will not prevent any author publishing anything he or she wishes, but it will reduce the incentive to spice up memoirs with gratuitous material.

139. It will be important that negotiations take place in an atmosphere where the bias is towards publication with an opportunity for appeal to a body of the kind outlined in this report. Equally, the government should be prepared to take legal action, in those cases where it is appropriate to protect confidentiality in government. It would then be for the courts to decide whether the public interest in publication was so great that it overrode other obligations, and award remedies and costs accordingly. Much will depend on the context, merits and details of particular cases and how the balance between openness and confidentiality is drawn. Future negotiations will be informed by such judgements.

140. The rules for publication need clarification and bringing up to date. The Cabinet Office and FCO have begun to do this, but in an incoherent and haphazard way. The events of the last year have shown that without proper clarity, decisions can be driven by expediency, and assessment of the personalities of those involved, rather than by clear principle. The legal remedies we propose, for both author and government, only come into play if authors publish without consent, or consent is unreasonably withheld, after appeal procedures are exhausted. They contain safeguards for both sides. We hope that recourse to law would occur rarely, if at all, and that agreed guidelines with fair procedures to implement them would ensure successfully negotiated outcomes.

141. Nothing in this report will constrict the opportunity to publish memoirs. There should always be a bias in favour of publication, for the public interest reasons we have identified. However, this has to be balanced against another public interest, which is the need for there to be a private space for frank discussion within government, and for this to enjoy some kind of protection. We have sought in this report to strike this balance sensibly. Above all, our proposals are designed to bring more certainty and clarity to the principles and procedures involved in the consideration of memoirs. This should in turn bring more confidence into the system, on all sides, and help to avoid the sort of recent difficulties that have prompted this inquiry.

## Conclusions and recommendations

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### The public interest in publication

1. Official histories perform a valuable function; we applaud the financial support and access to papers which successive governments have made available for them and recommend that this practice continues. (Paragraph 32)
2. There is no doubt that there is a strong public interest in the publication of political memoirs and diaries. They provide insights into the processes of government and the nature of key events. The question is to what degree that public interest needs to be

balanced against other public interest considerations, and how that balance is to be struck. (Paragraph 39)

### The public interest in restraint

3. What is said in memoirs may not simply reflect change, but may itself bring it about. If it comes to be considered unexceptionable for recently retired public servants to publish memoirs which contain personal remarks about ministers and observations on their policies, or if politicians start to identify and criticise named civil servants in their memoirs, the terms of the “governing marriage” would have altered to such an extent that it is hard to see how traditional doctrines of ministerial and civil service accountability could continue. (Paragraph 52)

### Memoirs and money

4. The strength of the market for sensational or titillating material makes it even more important that there should be a clear understanding about the kind of discretion necessary to protect relationships inside government. We have no doubt that some discretion is necessary, on both sides. The dangers do not come from the single shocking memoir, but from the steady erosion of confidence and trust driven by the prospect of commercial gain. (Paragraph 58)

### Cabinet confidentiality

5. There has to be a degree of confidentiality within government even in the relationship between politicians. Cabinet government would not be improved if those around the table were aware that any one or more of them was intending to publish their own account of Cabinet the moment the meeting had ended. On the other hand, it has long been accepted that politicians will legitimately wish to give an account of their actions, and that this will involve giving an account of the internal workings of government, including—after an appropriate time—of Cabinet. (Paragraph 65)

### Ministers and civil servants

6. Free and frank exchanges between politicians and civil servants depend on confidentiality and trust in government, and this implies a degree of subsequent reticence on both sides. As long as serving civil servants are not publicly accountable for their actions and do not publish accounts of their experiences, it would not be right for former ministers (or special advisers) to criticise named civil servants who have no right of reply. (Paragraph 68)
7. Civil service guidance and codes emphasise the confidential relationship between ministers and public servants. Public servants are only able to produce saleable reminiscences as a consequence of their position in a non-political public service. Former ministers have largely kept their side of the bargain; public servants should be expected to keep theirs. (Paragraph 72)

## Special advisers

8. Special advisers occupy a special position, and this brings special obligations of trust. They are closer in kind to ministers than civil servants since they are politically appointed, for a short time only. Unlike ministers, they are not politically accountable in their own right. These considerations affect how they should be treated in the matter of memoirs. An adviser who publishes a juicy memoir may embarrass the minister who appointed him, and betray the trust that was placed in him, but does not necessarily undermine the relationship between politicians and officials. Like ministers, though, they should not identify named officials and their advice. (Paragraph 75)

## Diaries

9. The real issue is not that diaries are kept but when they are published, and what they can properly include. While current allocations of responsibility remain, it is appropriate that politicians should have greater freedom than officials in these respects. (Paragraph 78)

## The question of timing

10. As a general principle, the longer the memoir writer waits, the more they may possibly reveal. The exact trade-off will depend on the nature of the material, whether those who would be affected by publication are still in office, and the author's former position. A diary, as a more intimate account, is likely to need a longer wait before publication in full. Although broad guidelines may be helpful, a fixed time period before publication is unlikely to be applicable to the variety of cases and circumstances. (Paragraph 85)

## The principles governing publication

11. The basic principles governing the publication of memoirs should be stated in the same terms for ministers, civil servants and special advisers, although there will be differences in what it is appropriate for each group to publish. There should be no room for prospective authors to claim that they were unaware of the restrictions on their ability to publish, the criteria against which the acceptability of manuscripts would be judged, or the way in which those restrictions would be applied to politicians or to public officials. We recommend that guidance should be based on the following:

To ensure the good working of government, which involves the maintenance of trust between ministers, and between ministers and civil servants, there should be some restrictions on the publication of memoirs and diaries.

In particular, authors should not include information which:

- a) may cause damage to international relations;
- b) may cause damage to national security;

- c) may cause damage to the confidential relationships between ministers, and between ministers and civil servants, or which would inhibit the free and frank exchange of views and advice within government.

Examples of matters which could cause damage to confidential relationships would include detailed accounts of Cabinet meetings of the government of the day, discussion of particular advice given to ministers by named civil servants, or disparaging references to public servants by ministers or vice versa. There is unlikely to be objection to discussion by former ministers of their ministerial colleagues, who can account for themselves. (Paragraph 93)

### Approvals process

12. It is unrealistic to expect authors (whether ministers, civil servants or advisers) to produce texts for clearance before they have secured any sort of agreement with a publisher. The rules should acknowledge that there may be discussion with prospective publishers before clearance is sought. But any contract between author and publisher should recognise that clearance will be needed, and no detailed drafts should be sent to publishers unless they have first been cleared. For its part, the Government must deal with texts properly and expeditiously. A few days after a work is submitted, prospective authors should be told how long clearance is likely to take. The length of time involved will, of course, depend on the nature of the work in question, but we believe that three months should be the longest period necessary and clearance should normally take a matter of weeks. (Paragraph 98)
13. All guidance should make it clear that, in the first instance, approval for publication may have to be secured by negotiation. At the stage when a text is in negotiation, it seems to us appropriate that both ministers and public servants should have the right to comment on what is proposed, and see if agreement can be reached. (Paragraph 105)
14. However, we believe it would be appropriate to have an appeal mechanism if agreement cannot be reached, on a proposal, or a text, or on timing. In such cases, a small committee of Privy Counsellors or other senior figures (to be known as the Advisory Committee on Memoirs) could be used. If such a group were to contain former experienced politicians from more than one political party, a former senior public servant and a member of the judiciary, it would be well placed to weigh the public interest considerations involved and to give authoritative judgements. Its membership should be agreed by the Leaders of the political parties. (Paragraph 106)
15. There is no reason why the process should differ for civil servants, ministers, special advisers and diplomats. The new procedure should be included as an annex to the Ministerial Code, the Civil Service Management Code, the Special Advisers Code and the Diplomatic Service Regulations. This guidance should be provided to all holders of public office when they are appointed, and when they stand down. (Paragraph 107)

## Enforcement

16. Clarifying the rules and the clearance process would improve matters. However, without some effective legal sanctions they will remain no more than advice, and even complying with the clearance process will be essentially voluntary. (Paragraph 117)
17. We need a system which leaves the final decision on whether or not to publish in the hands of the author, as Radcliffe proposed. But there should be a real incentive for the author to take account of the Government and Advisory Committee's guidance. (Paragraph 118)
18. We agree that statute law is not an appropriate means for restraining publication. Not only is it unlikely that any government would find time for such legislation, it is far from clear that statutory provisions could be drafted which would satisfactorily deal with complex considerations about confidentiality and public interest without being too rigid and oppressive. However, we believe there are nevertheless some legal means available to encourage more consultation and negotiation over the publication of memoirs. (Paragraph 121)

## Crown copyright and confidentiality clauses

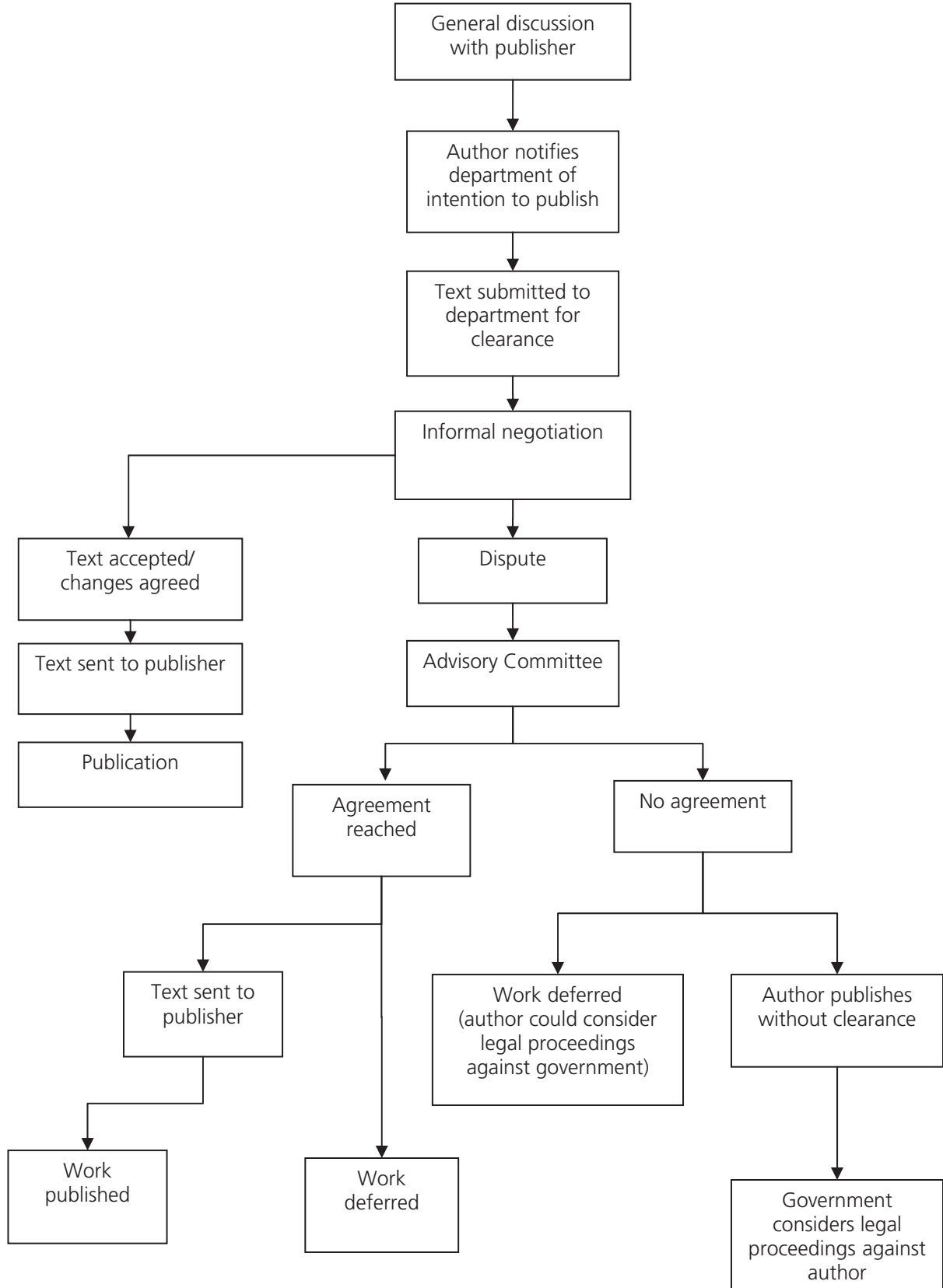
19. We support the Cabinet Office's action in clarifying the contractual duty to clear any memoirs before publication, and in requiring officials with access to sensitive information to assign copyright in future works to the government, allowing government to seek profits from unauthorised publication. The same confidentiality clause should apply to civil servants, diplomats, and special advisers. Potential authors must not be left in any doubt about the nature of the agreement they are entering into. (Paragraph 135)
20. Ministers are not in a contractual relationship with government, and have in the past resisted all attempts to make them formally subscribe to rules on publication. We consider that Radcliffe's recommendation that ministers taking office should sign a document making clear they understand the restrictions on publication had great merit. The duty to sign a formal commitment to consult before publication should be placed clearly and explicitly in the Ministerial Code. (Paragraph 136)
21. If the new system is treated seriously, it will affect both authors and government. Both will have an incentive to negotiate properly, and to take account of the views of an appeal body. If the government cannot approve a work and it is nonetheless published, it must go to court to assert copyright and pursue profits. The government will have both a weapon and an incentive to negotiate as, apart from cost, court cases can increase the publicity given to the work in question. (Paragraph 137)
22. Similarly, authors will know that if they publish without agreement, they will face legal consequences and may forgo their profits. If government delays unnecessarily, or refuses clearance against the advice of the Advisory Committee, authors will have a choice. They can explore a legal challenge to the government, or simply take the risk of publishing without agreement. Their position would have been strengthened

if the government had been unreasonable. This new system will not prevent any author publishing anything he or she wishes, but it will reduce the incentive to spice up memoirs with gratuitous material. (Paragraph 138)

23. It will be important that negotiations take place in an atmosphere where the bias is towards publication with an opportunity for appeal to a body of the kind outlined in this report. Equally, the government should be prepared to take legal action, in those cases where it is appropriate to protect confidentiality in government. It would then be for the courts to decide whether the public interest in publication was so great that it overrode other obligations, and award remedies and costs accordingly. Much will depend on the context, merits and details of particular cases and how the balance between openness and confidentiality is drawn. Future negotiations will be informed by such judgements. (Paragraph 139)
24. The rules for publication need clarification and bringing up to date. The Cabinet Office and FCO have begun to do this, but in an incoherent and haphazard way. The events of the last year have shown that without proper clarity, decisions can be driven by expediency, and assessment of the personalities of those involved, rather than by clear principle. The legal remedies we propose, for both author and government, only come into play if authors publish without consent, or consent is unreasonably withheld, after appeal procedures are exhausted. They contain safeguards for both sides. We hope that recourse to law would occur rarely, if at all, and that agreed guidelines with fair procedures to implement them would ensure successfully negotiated outcomes. (Paragraph 140)
25. Nothing in this report will constrict the opportunity to publish memoirs. There should always be a bias in favour of publication, for the public interest reasons we have identified. However, this has to be balanced against another public interest, which is the need for there to be a private space for frank discussion within government, and for this to enjoy some kind of protection. We have sought in this report to strike this balance sensibly. Above all, our proposals are designed to bring more certainty and clarity to the principles and procedures involved in the consideration of memoirs. This should in turn bring more confidence into the system, on all sides, and help to avoid the sort of recent difficulties that have prompted this inquiry. (Paragraph 141)

## Annex: Procedure for Clearing Memoirs

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# Formal Minutes

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**Tuesday 18 July 2006**

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
David Heyes  
Kelvin Hopkins

Mr Ian Liddell-Grainger  
Mr Gordon Prentice  
Jenny Willott

Draft Report [*The Publication of Political Memoirs*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs entitled 'Summary' read and postponed.

Paragraphs 1 to 141 read and agreed to.

Postponed paragraphs entitled 'Summary' read again and agreed to.

Annex agreed to.

*Resolved*, That the Report be the Fifth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Appendices to the Report be reported to the House.

[Adjourned till Thursday 20 July at 10.00 a.m.]

## Witnesses

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### Thursday 17 November 2005 (HC 689-i)

**Lord Wilson of Dinton GCB** and **Professor Peter Hennessy FBA**, Queen Mary, University of London Ev 1

### Thursday 15 December 2005 (HC 689-ii)

**Lord Turnbull KCB CVO**, **Sir Christopher Meyer KCMG** and **Mr Lance Price** Ev 16

### Thursday 19 January 2006 (HC 689-iii)

**Sir Jeremy Greenstock GCMG**, **Rt Hon Lord Lawson of Blaby**, **Rt Hon Lord Owen CH** and **Rt Hon Clare Short MP** Ev 44

### Thursday 16 March 2006 (HC 689-iv)

**Rt Hon Tony Benn** Ev 53

### Wednesday 29 March 2006 (HC 689-v)

**Rt Hon Jack Straw MP**, Secretary of State for Foreign and Commonwealth Affairs Ev 70

## List of written evidence

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### *Written evidence submitted by witnesses who also gave oral evidence:*

1	Lord Turnbull KCB CVO (supplementary)	Ev 83
2	Sir Christopher Meyer KCMG (supplementary)	Ev 83
3	Mr Lance Price	Ev 85
4	Sir Jeremy Greenstock GCMG	Ev 86
5	Rt Hon Lord Owen CH	Ev 87
6	Rt Hon Tony Benn	Ev 92

### *Other written evidence:*

1	Letter from Mr Alastair Campbell	Ev 104
2	Mr Peter Riddell	Ev 104
3	Mr Craig Murray	Ev 105
4	Letter from Heather Yasamee, FCO	Ev 107
5	Cabinet Office	Ev 108
6	Letter from the Cabinet Office	Ev 109
7	Professor Patrick Birkinshaw	Ev 110

## List of unprinted written evidence

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The following document has been reported to the House, but it has not been printed and a copy has been placed in the House of Commons Library, where it may be inspected by Members. Another copy is in the Record Office, House of Lords, and is available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (telephone 020 7219 3074). Hours of inspection are from 9.30 a.m. to 5.00 p.m. on Monday to Fridays.

Memorandum by the National Archives

## Reports from the Public Administration Select Committee

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The following reports have been produced during the current session.

### Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577
Third Report	Legislative and Regulatory Reform Bill	HC 1033
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020
Fourth Special Report	Tax Credits: putting things right: Government Response to the Committee's Second Report	HC 1076