



House of Commons
Public Administration Select
Committee

**Special advisers in the
thick of it: Government
Response to the
Committee's Sixth
Report of Session
2012–13**

**Second Special Report of Session
2013–14**

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The Public Administration Select Committee (PASC)

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, 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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Second Special Report

The Public Administration Select Committee reported to the House on *Special advisers in the thick of it* in its Sixth Report of Session 2012-13, published on 14 October 2012 . The Government Response was received on 21 June 2013 and is published in this Report as Appendix 1.

Appendix 1: Government Response

GOVERNMENT RESPONSE TO THE PUBLIC ADMINISTRATION SELECT COMMITTEE'S REPORT ON SPECIAL ADVISERS

The Government is grateful to the Committee for its inquiry into the role of special advisers as well as for its broader interest in the reform of the Civil Service. It welcomes the Committee's recognition of the unique and valuable role played by special advisers in Government, as well as the difficulties inherent in such a role.

The numbers of special advisers are small, particularly in comparison to the permanent senior civil service. And despite their significance the Government is concerned that the question of special advisers should be considered in the round, alongside the operation of ministerial offices and the wider Civil Service. The work of special advisers is often the target of particular attention. This is, as the Committee acknowledges, doubtless inspired by their portrayal in television programmes like the *Thick Of It*. Despite their outlandish image, special advisers are at core temporary civil servants with license to operate politically. Their particular distinction is that - in a department of what is typically thousands of permanent civil servants - they are the only people whom the minister has the ability to appoint, manage and, where necessary, dismiss directly. Special advisers are the only civil servants, besides Permanent Secretaries, who are directly accountable to Ministers. They are exempt from Civil Service impartiality rules, yet much of their work will not be party political in nature.

As the Committee is aware, the Government is working to implement a programme of Civil Service Reform. To inform the next steps of reform, the Minister for the Cabinet Office commissioned the Institute for Public Policy Research, to examine the operation of Civil Services around the world. Their report includes recommendations about the operation of ministerial offices.

Since the publication of the Committee's report there have been various other reports touching on or addressing directly the question of special advisers. These include the work of the Institute for Government, and the think tank Reform. There have also been various statements regarding the reform of the Civil Service, and the role of special advisers, from former ministers, Permanent Secretaries and advisers.

The Government has responded below to the specific recommendations of the Committee. It will keep the Committee informed about its broader thinking on Civil Service Reform, and looks forward to engaging with the Committee further on these important issues.

RESPONSES TO RECOMMENDATIONS

Introduction

1. While Number 10 has the final say on the appointment of special advisers, and only the centre can ensure that special advisers get all the career development moves which they need, ministers have the right to insist on particular individuals that they consider

appropriate, and Number 10 would show little confidence in a Minister if he or she were forced to accept a particular adviser. (Paragraph 3)

The Government recognises that the appointments of special advisers are important personal decisions for Ministers. In making these appointments, Ministers typically seek a combination of personal trust and confidence, expertise and experience, and political and personal commitment. The special status of these personal appointments means that they are exempt from the normal Civil Service recruitment rules of appointment on merit including through fair and open competition. The Prime Minister must to approve all appointments of special advisers under the requirements of the Constitutional Reform and Governance Act, which reflects the special nature of these appointments.

Tasks and Responsibilities

2. We consider that special advisers have legitimate and valuable functions, including protecting the impartiality of the Civil Service, and providing an additional means to ensure that the Government's policy objectives are delivered. For special advisers to be effective, rather than potentially disruptive, ministers, special advisers and officials need to foster a high level of trust in their working relationships. Moreover, we are clear that a special adviser to a Minister must be just that: an adviser, and not an interposed layer of authority between the Minister and his or her civil servants. (Paragraph 22)

The Government welcomes the Committee's conclusion that special advisers play a legitimate and valuable function in Government, including protecting the impartiality of the Civil Service and providing an additional means of helping to ensure that the Government's policy objectives are delivered. The Government also agrees that for special advisers to be effective, Ministers, special advisers and officials need to foster a high level of trust in their working relationships. This is already set out in the *Code of Conduct for Special Advisers* which makes clear that in order to provide effective assistance to Ministers, special advisers should work closely with the ministerial team and with permanent civil servants and establish relationships of confidence and trust. The Code of Conduct also makes clear that special advisers must not suppress advice prepared for Ministers by permanent civil servants. However they may comment on the quality of such advice and provide their own advice.

Quasi-Judicial Processes

3. It is axiomatic that ministers or officials acting in a quasi-judicial capacity are expected to act impartially, apolitically, and on appropriate advice. The Government should clarify its recent guidance on quasi-judicial decisions to state explicitly that special advisers should not, under any circumstances, be directly involved in such processes. This prohibition should be also reinforced by an amendment to paragraph 7 of the Code of Conduct for Special Advisers, listing involvement in quasi-judicial decisions and processes as a type of work which a special adviser may not undertake, even at the request of his or her Minister. (Paragraph 31)

The Government disagrees. The recent guidance issued by the Cabinet Office, and referenced by the Committee, deals explicitly with the involvement of special advisers in quasi-judicial decisions, stating 'Decisions of this sort should not be made by reference to

political or presentational considerations. This applies regardless of the source of the advice, and that of special advisers is treated in the same way as advice from an official giving internal advice to Ministers. If a special adviser is approached by an interested party, he/she should refer the matter to the appropriate official. A special adviser so approached must not give the impression that any particular advice will be determinative when decisions are taken.' The Government continues to believe this is the right approach.

Central Strategic Capability

4. Special advisers should play an important role in helping to co-ordinate policy and delivery across Government, and they have a legitimate place (alongside permanent officials) in any central strategic or co-ordination unit. We find Sir Jeremy Heywood's reasons for insisting on staffing the Downing Street Policy Unit solely with civil servants unconvincing. In particular, special advisers are better placed than permanent civil servants to liaise with political parties and to ensure that the political concerns of ministers are appreciated in Downing Street. These are areas where it would often be undesirable or inappropriate for permanent officials to get involved. (Paragraph 38)

The Government agrees that special advisers play an important role in helping to co-ordinate policy and delivery across Government and that they have a legitimate place (alongside permanent officials) in any central strategic or co-ordination unit. This is reflected in the current composition of the Number 10 Policy Unit. Decisions on staffing the No10 Policy Unit are for the Prime Minister.

Training and Induction

5. The Government should ensure that all special advisers receive induction training within three months of taking up the role. Ministers who are appointing a special adviser for the first time should also be made properly aware by their officials of their special advisers', and their own, responsibilities and obligations. The induction training for special advisers should cover: the structure and work of the relevant department; the scope and meaning of the various Codes of Conduct to which special advisers are subject; the implications of their status as temporary civil servants (including the business appointment rules process, and their obligations under public records and access to information legislation); the nature of their accountability to ministers (and ministers' accountability to Parliament); the role of permanent secretaries in managing the work and reputation of the department as a whole; and where to seek advice and support on propriety issues. This would ensure that all special advisers and their ministers have a shared understanding of what is expected and appropriate behaviour for special advisers. (Paragraph 45)

The Government agrees.

Numbers

6. Permanent secretaries and ministers' private offices should be ready to accommodate ministers' wishes to have access to outside advice, but it is also self-evident that any person—whether paid or unpaid—who has access to Government papers and ministerial meetings should be properly vetted and regulated. Privileges such as access

to Government buildings, and to ministerial papers and meetings, must be balanced with clarity for all concerned over individual advisers' responsibilities and the terms and conditions on which that access is granted. (Paragraph 56)

The Government welcomes the Committee's acknowledgement that Permanent Secretaries and Ministers' private offices should be ready to accommodate Ministers' wishes to have access to outside advice.

As laid out in the Civil Service Reform Plan, Ministers should discuss regularly with their Permanent Secretary the business requirement and priorities of the Department, including whether there needs to be a change or strengthening of personnel. As is currently the case, where the expertise does not exist in the Department, and it is not practicable to run a full open competition, Ministers can ask their Permanent Secretaries to appoint senior officials for specified and time-limited roles.

Departments must ensure that when external advisers are appointed – whether paid or unpaid – there is clarity about an individual's responsibilities and the terms and conditions under which they are being granted access to buildings, papers and meetings.

Coalition Government

7. The crucial question is not simply the number of special advisers but whether the case can be made for the payment of each individual from the public purse, based on whether the Minister can justify that the tasks the special adviser is engaged to undertake are in the public interest; the need for those tasks to be undertaken by a personal appointee rather than a permanent civil servant; and the person's qualifications and ability to undertake them. (Paragraph 64)

The Government agrees that the crucial question is not simply about the numbers of special advisers. Indeed, the question of the cost of special advisers should be considered in conjunction with that of employing permanent civil servants or drawing on external advice. In many cases, special advisers are paid less than their Civil Service equivalents. It is for Ministers to justify the employment of their special advisers, and they should of course be mindful of the experience and expertise special advisers will bring to the work of the department for which their Minister is responsible.

Job Descriptions: Clarity and Transparency

8. To aid transparency and accountability, information about ministers' special advisers should appear on departmental websites, including advisers' names and a description of the policy areas in which they work and the types of tasks they undertake, alongside the equivalent information about ministerial portfolios and the responsibilities of members of the Departmental Management Board. This would make it much easier to tell if a special adviser were acting outside his or her agreed role, and would help Parliament to hold ministers to account for the work of their special advisers. (Paragraph 75)

This Government has already significantly increased the transparency around all special advisers. The names and salary paybands of all special advisers are now published on a

quarterly basis. In addition, the Government regularly publishes a register of gifts and hospitality received by special advisers and details meetings with senior media figures. The work a special adviser may undertake is set out in the *Code of Conduct for Special Advisers*. It is for the appointing Minister to decide on what he or she wants special advisers to focus. This will typically be relatively fluid but should be assumed to match the Minister's own responsibilities and priorities. Given the small number of special advisers working for Ministers, the Government is not persuaded of the need to publish the areas of responsibilities of individual advisers.

Pre-Appointment Hearings

9. It does not take much imagination to perceive that some special advisers who have subsequently been forced to resign would have been hard pressed to justify their initial appointment in front of a select committee pre-appointment hearing. However, we accept that the current model of pre-appointment hearings would not be appropriate for special advisers. Not only do special advisers lack the executive authority which defines the roles which are usually subject to such hearings, we share the Institute for Government's anxiety that such pre-appointment hearings could undermine the nature of special advisers as personal appointees of the Minister, distancing them from accountability to the Minister and implying a degree of autonomy on the part of the adviser, reflected in separate accountability to Parliament. (Paragraph 82)

10. We do, however, believe that greater transparency and scrutiny of appointments which are paid from the public purse but are exempt from the requirement for recruitment on merit is justified and appropriate. We recommend that ministers should therefore notify the relevant departmental select committee whom they have appointed as a new special adviser, as soon as they have decided on the appointment or, in a new Parliament, as soon as the relevant select committee is established. They should include in the notification to the committee a proposed "job description", setting out the policy areas and types of tasks the special adviser will be expected to carry out, and the special adviser's relevant qualifications for appointment, including why they believe him or her to be of suitable "standing and experience". This would enable select committees better to hold ministers to account for the quality and conduct of their special advisers, and would deter ministers from promoting less suitable candidates. (Paragraph 83)

11. Special advisers can of course be called to give oral evidence to select committees, but in the case of their appointment this should not be necessary other than in the most exceptional cases, such as where there are evident and legitimate concerns about his or her character or record. The political views or previous statements of a special adviser are not a legitimate concern of a select committee. (Paragraph 84)

The Government welcomes the Committee's acknowledgment that pre-appointment hearings would not be appropriate for special advisers. The Government already publishes a quarterly statement setting out the numbers, names and paybands of special advisers, including actual salary where this is greater than £58,200. This is an unprecedented level of transparency and, for reasons set out in response to recommendation 8, there are no plans to extend the current transparency publication.

The Role of Ministers

12. Ministers are responsible for directing the work that their special advisers undertake, and for deciding whether their special advisers are performing those tasks satisfactorily. Ministers are "responsible"—not simply "accountable"—for their special adviser's management and conduct. This responsibility is the price of having a special adviser. Ministers who wish to have special advisers must therefore exercise this responsibility actively, ensuring that they are fully aware of what their advisers are doing in their name. They should also ensure that their advisers understand the role they are expected to undertake; the limits on their discretion to act; and the standards of performance that are expected of them. (Paragraph 90)

13. We remain concerned, however, that this responsibility has proved to be more theoretical than actual. We cannot recall any minister ever resigning over the conduct of a special adviser, despite some astonishing cases. On the contrary, special advisers have on occasion seemed to be made accountable themselves for the lack of supervision and guidance they should be entitled to expect. To cynics, it might seem that special advisers have sometimes been an insurance policy, available to be cashed in to save ministerial careers. To make ministers accountable for their explicit responsibility under the Code, we reiterate the recommendation made in a previous Report that the Prime Minister's Adviser on Ministers' Interests should be empowered to instigate his own investigations of potential breaches of the Ministerial Code (so that the Prime Minister is not able to protect his ministers from appropriate investigation of the conduct of their advisers) and should himself be independently appointed and subject to a pre-appointment hearing. (Paragraph 91)

The Government refers the Committee to its response on the Independent Adviser on Ministers' Interests published by the Committee on 15 February.

The Role Of Permanent Secretaries

14. The imposition of ever more restrictions and rules do not promote high self-esteem, creativity and trust, and would have a negative effect on working relationships. There is no reason to impose further rules, or to change the role of permanent secretaries who are already charged with the responsibility for ensuring that departmental business is conducted with propriety and in accordance with the relevant Codes of Practice and legislation. Positive induction and support for special advisers and ministers should obviate the need for negative intervention later and will promote trust. However, recent events have demonstrated that it is imperative for permanent secretaries to be ready to give advice and support on matters of propriety to special advisers and ministers, particularly at the start of a new administration. It should be made explicit that permanent secretaries are responsible for ensuring that any potential problems are addressed without delay. They must take this responsibility seriously, be vigilant and proactive, and ensure that they are aware what the special advisers are doing in the name of their Minister and the department. They should refer any continuing concerns which the Minister fails to address to the Cabinet Secretary. All of the above applies equally to any non-departmental or outside advisers who have regular access to ministers. (Paragraph 99)

The Government agrees that Permanent Secretaries have an important role to play in providing support and advice to both Ministers and their special advisers. Whilst Ministers are responsible for the conduct of special advisers, Permanent Secretaries can and do provide an important additional source of support and advice not just to special advisers but to other external advisers.

Accountability To Number 10

15. Special advisers have an entirely legitimate role in helping to co-ordinate policy across Government and to resolve political differences between departments in order to deliver the objectives of the Government as a whole. However, the lines of accountability must remain clear: ministers are responsible for the management and conduct of their special advisers, who act in their name. It would not be appropriate for Number 10 or the Cabinet Office to have an explicit role in directing or appraising special advisers appointed by ministers of other departments. In particular, ministers should expect to confide in their special advisers without fearing that every conversation will be reported back to Number 10. (Paragraph 107)

The Government agrees that Ministers are accountable for the management and conduct of their special advisers. However, the Prime Minister approves all special adviser appointments and it is therefore entirely appropriate for appraisals to be conducted on his behalf, and for Downing Street to take an active interest in the conduct of special advisers and to direct them. The Prime Minister's and Deputy Prime Minister's Chiefs of Staff will have a central role in special advisers' appraisals.

The Government agrees that the working relationship between a Minister and their adviser should be one of trust and confidence. A Minister rightly expects to be able to confide in his or her private office, without fearing that every conversation will be reported back to the Permanent Secretary, despite the fact that those permanent civil servants are ultimately managed by the Permanent Secretary. Similarly a Minister should have the same confidence in their special advisers, despite their links to Number 10 and the role of the Prime Minister's and Deputy Prime Minister's Chiefs of Staff in their appraisals.

Conclusion

16. Effective working relationships can only be achieved where there are high levels of trust and mutual respect, so that all are addressing the same challenges, sharing difficulties and concerns, and all are seeking the same positive outcomes. This is crucial for the effective leadership of Government. Mistrust between ministers, officials and advisers is a failure of leadership. It destroys openness, confidence and creativity, undermines mutual respect and divides leadership. In turn this fosters a climate of mistrust, lack of respect and low morale throughout the organisation they are seeking to lead. If such mistrust develops, ministers, permanent secretaries and advisers must work together to rebuild trust, though in the final analysis it is for the ministers responsible to determine whatever action is necessary to rebuild trust. (Paragraph 113)

The Government agrees that trust and mutual respect between Ministers, officials and special advisers is vital for the effective functioning of Government. Where mistrust is attributable to the actions of special advisers, it is indeed for ministers to address. There is

equally an obligation for officials to implement ministerial decisions with energy and pace, and to provide full and accurate advice. If this is not the case, mistrust can build up and the Permanent Secretary must address the shortcomings. Strengthening the accountability of the Civil Service to Ministers and Parliament – a central aim of the Civil Service Reform Programme – will do much to rebuild trust.