



House of Commons
Public Administration Select
Committee

**Whitehall Confidential:
The Publication of
Political Memoirs:
Government Response
to the Committee's
Fifth Report of Session
2005–06**

**Fourth Special Report of Session
2007–08**

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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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The following Members were also members of the Committee for part of this inquiry: Julia Goldsworthy MP (*Liberal Democrats, Falmouth and Cambourne*), and Grant Shapps MP (*Conservative, Welwyn Hatfield*)

Powers

The Committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

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 Steven Mark (Clerk), James Gerard (Second Clerk), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

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Fourth Special Report

The Public Administration Select Committee reported to the House on *Whitehall Confidential? The Publication of Political Memoirs* in its Fifth Report of Session 2005–06, published 25 July 2006 as HC 689. The Government Response was received on 14 November 2007 and is published below as an Appendix to this Report.

Appendix

The Government is grateful to the Committee for its comprehensive review of the rules relating to the publication of memoirs. In preparing its response, the Government has given careful consideration to the Committee's report, representing as it does the most thorough examination of the publication of political memoirs since the Radcliffe report in 1976. The Government's response to the Committee's conclusions and recommendations are set out below.

The public interest in publication

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)

The Government welcomes the Committee's endorsement of the Government's official history programme as performing a valuable function. The programme, which has always enjoyed cross party support, has been funded by successive Governments since it was first set up before World War I and has produced scholarly and well respected histories of major events in the contemporary history of the nation. The Government agrees that this practice should continue and the Histories, Openness and Records Unit of the Cabinet Office is currently taking forward plans for the next tranche of official histories.

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 Government agrees with the Committee that there is a strong public interest in the publication of political memoirs and diaries. These have been published for many years, and provide a valuable insight and understanding of how the Government and the Civil Service work. We agree that the issue is one of balance between the public interest in aiding awareness of the workings of Government, and the risk that such disclosures could undermine the relationship of trust between Ministers and civil servants, including special advisers.

The public interest in restraint

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)

The Government agrees with the Committee that the relationships between Minister and Minister, and Minister and official are critical in ensuring effective government. Like the Committee, the Government agrees that there still remains a strong public interest in maintaining a protected space for the confidential discussions and frank advice which is essential for good government. To maintain this relationship and the principles of ministerial and Civil Service accountability it is essential that both Ministers and civil servants uphold their respective parts of the agreement.

Memoirs and money

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)

The Government agrees with the Committee that 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. The Government's proposals on copyright (see paragraph 19 below) aim to remove the financial incentive to produce unauthorised memoirs.

Cabinet confidentiality

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)

The Government agrees with the Committee that there has to be a degree of confidentiality within government even in the relationship between politicians. The Ministerial Code clearly states that Ministers may not, while in office, write and publish a book on their Ministerial experience. In 2001, the Code was strengthened, in order to protect Cabinet government, to make clear that while in office, Ministers may not enter into any agreement to publish their memoirs on leaving their ministerial position.

Ministers and civil servants

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)

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)

The Government agrees that free and frank exchanges between politicians and civil servants depend on confidentiality and trust. If this relationship breaks down it will be to the detriment of our system of government. The Government therefore agrees that neither civil servants (including special advisers) nor Ministers should criticise named civil servants in their memoirs, and that memoirs by officials should respect the confidential relationship between Ministers and public servants. This will be clearly stated in the next version of the Cabinet Office publication Directory of Civil Service Guidance which is currently being updated.

Special advisers

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)

The Government agrees with the Committee that special advisers occupy a special position and that this brings special obligations of trust. However, they are civil servants, and the Government's view is that they should be subject to the rules in the same way as other civil servants.

Diaries

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)

Like the Committee, the Government agrees that the latitude allowed to Ministers in publishing their memoirs is explained by the doctrine of accountability and that Ministers will naturally wish to describe and defend their time in office.

The question of timing

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 Government shares the Committee's view that it would be difficult to apply a fixed time period before publication, and believes that this should be considered on a case by case basis.

The principles governing publication

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;**
- a) **may cause damage to national security;**
- b) **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)

The Government shares the Committee's view that the basic principles governing the publication of memoirs should be the same for ministers, civil servants and special advisers, although there will be differences in what it is appropriate for each group to publish. The Government agrees with the Committee's definition of information which should not be included in memoirs and diaries and this will be clearly stated in the next version of the Directory of Civil Service Guidance.

Approvals process

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)

The Government accepts that potential authors may have discussions with prospective publishers before clearance is sought. However, civil servants, including special advisers, 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, and this requirement will be made clearer in the Civil Service Management Code and the Directory of Civil Service Guidance.

The Government agrees with the Committee that it should deal with texts properly and expeditiously and that where possible it should provide prospective authors with an indication of how long clearance is expected to take. However, the exact timeline in respect of an individual case will depend, amongst other things, on the content and complexity of the book, on how much notice is given, on the availability of appropriate officials who need to be consulted, and on how much discussion is necessary.

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)

The Government agrees with this recommendation.

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)

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)

The Government believes that there should be an ongoing dialogue with prospective authors to reach agreement. The Government is not however attracted to the establishment of an Advisory Committee on Memoirs as it believes that ultimate responsibility for deciding on the balance of the public interest must rest with the Government of the day and that the establishment of an additional appeals mechanism

would only serve to dilute the lines of accountability and add an unnecessary additional layer to the approvals process.

Enforcement/Crown copyright and confidentiality clauses

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)

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)

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)

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)

The Government welcomes the Committee's endorsement for its proposals to clarify the contractual duties on the clearance of memoirs and the assignment of copyright. The Government agrees with the Committee that the same confidentiality clauses should apply to all civil servants, including diplomats and special advisers, in sensitive posts as determined by Permanent Secretaries and that potential authors should not be left in any doubt about the nature of the agreement into which they are entering. The Government will also ensure that civil servants are reminded of their obligations at regular intervals. Letters of appointment and on retirement/resignation will also include reminders of the rules.

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 of 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)

Ministers are already required to sign a document on appointment making clear that they understand the Radcliffe rules and will abide by them. They are also reminded of the rules when leaving office. The Ministerial Code also makes clear that former Ministers intending to publish their memoirs are required to submit the draft

manuscript in good time before publication to the Cabinet Secretary and to conform to the Radcliffe principles.

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)

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)

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)

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 successful negotiated outcomes. (Paragraph 240)

The Government shares the Committee's view that it should be prepared to take legal action where appropriate to protect confidentiality in government. However, it sees such action as a last resort and it hopes that the procedures it is putting in place will strengthen existing arrangements and that both government and prospective authors will have an incentive to negotiate properly.

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).

The Government shares the Committee's views on the publication of memoirs and diaries and believes that the proposals it has set out in response to this report will help to provide more certainty and clarity to the principles and procedures involved in the consideration of memoirs. The Government is grateful to the Committee for its excellent and thorough consideration of this sensitive issue.

November 2007

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 (<i>cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901

Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088, Session 2006–07</i>)
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690