



House of Commons
Public Administration Select
Committee

**Mandarins Unpeeled:
Memoirs and
Commentary by
Former Ministers and
Civil Servants:
Government Response
to the Committee's
Fourteenth Report of
Session 2007–08**

**Second Special Report of Session
2008–09**

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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 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 *Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants* in its Fourteenth Report of Session 2007-08, published 5 August 2008 as HC 664. The Government Response was received on 2 April 2009 and is published below as an appendix to this Report.

Government response

Government Response to the Public Administration Select Committee's Fourteenth Report of Session 2007-08, *Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants* (HC 664)

1. Where there is a dispute between an author of memoirs and the Government, it does not seem right that the Government should be the arbiter of that dispute as well as a party to it. (Paragraph 6)

2. We do not accept that the government of the day is best placed to judge whether it is in the public interest for particular information to be published. This does not seem consistent with the principle of freedom of information. We are disappointed, therefore, that the Government did not concede the logic of some form of appeal of its decisions, along the lines of an Advisory Committee for Memoirs. The application of our suggestions on confidentiality clauses and copyright without a commensurate appeals process shifts too much power from putative memoirists to Government. (Paragraph 10)

3. The approach taken to judging public interest in publication of memoirs should be consistent with the approach taken to judging public interest in disclosure of information under the Freedom of Information Act. By passing that Act, the Government has accepted the principle that it cannot be the Government which is the ultimate arbiter of whether it is in the public interest for a particular piece of information to be published. It is indefensible to deny that principle in the specific circumstances of political memoirs. Indeed, we are not sure that the courts would uphold any bid by the Government to pursue remedy for breach of copyright when the decision to prohibit publication of certain information had not been tested independently of government. (Paragraph 12)

4. We continue to believe that a new Advisory Committee on Memoirs would make for expert and specialised arbitration of issues around the publication of public service memoirs. However, although this argument was not put to us by the Government, we can see that one argument against such an Advisory Committee would be that it would involve the creation of yet another new regulatory body, with all the expense and bureaucracy that entails. Given the rarity of disputes over the

content of memoirs, it may well be disproportionate to create a new body. However, there is another possible solution readily to hand. If we accept the principle that an independent body should judge the public interest in publication of particular information in memoirs, then there is already an independent body which specialises in applying public interest tests to disclosure of information which Government does not want to reveal. That body is the Office of the Information Commissioner. (Paragraph 13)

5. An alternative to an Advisory Committee on Memoirs is that the Information Commissioner could arbitrate where there are disputes in the negotiation of the content of memoirs. The Commissioner is experienced at balancing competing public interests in openness and necessary confidentiality. In applying the Freedom of Information Act, the Commissioner is accustomed too to the entirely appropriate bias towards publication. Although the Commissioner would not necessarily have the nuanced understanding of issues around memoirs which an Advisory Committee could provide, allocating this role to the Commissioner would be simple, consistent and cost-effective. Whatever model is preferred, we call on the Government to make one final reform to complete a fair, practical system for approving memoirs. (Paragraph 14)

The Government welcomes the Committee's further report on the issue of the publication of memoirs. It is grateful to the Committee for its considered views on this issue. There is much common ground on this issue between the Committee and Government. The only difference of opinion is on the issue of who should have the final say on publication of memoirs.

For Ministers, since the Radcliffe rules were introduced, former Ministers have, by and large, observed the guidance that they should submit material for publication to the Cabinet Secretary for scrutiny. The role of the Cabinet Secretary is to have the manuscript examined in respect of national security and to safeguard our relations with overseas countries. He also has a role to offer views on the treatment of confidential relationships. This is the process set out in the Radcliffe rules.

The process operates whereby senior officials pass comments to the author pointing out where such damage to good Government would occur. Where an author wishes to challenge the views of the Cabinet Secretary, there is a right of reference to the Prime Minister. Should the Government wish to challenge any such publication, it could do either through injunction, for example in relation to national security, or in other areas, through assertion of copyright. In either case, it would be for the courts, independently of Government to decide.

Therefore, the Government does not believe it is the ultimate arbiter of publication. However, the Government has an entirely legitimate right to assert both copyright to its information, and to advise former public servants of the very real damage disclosure might cause in certain situations. We would of course wish to pursue the route of candid discussion and voluntary amendments by those wishing to publish memoirs. But we

must realise that this will not always be possible and reserve the right to protect the public interest.

The Government believes that it is in the public interest to widen access to official information and is committed to opening up government. The introduction of the Freedom of Information Act has been a critical element in achieving this. The Government is currently considering a substantial reduction to the 30 year rule for release of public records.

Requiring officials to assign copyright to the Crown is unconnected to the Freedom of Information Act. It simply seeks to recognise that in certain types of memoir, the information being disclosed may not primarily be the property of the author and therefore the author should not necessarily profit from it. This point is also unrelated to the Government's position in relation to security sensitive disclosures, where regardless of copyright assignment we may need to act to protect the public interest.

6. The revised version of Diplomatic Service Regulation 5 is another example of the Government replacing a regime that may be too liberal with one that may be too restrictive. It is too stringent to expect people to seek clearance for anything they say that draws on any experiences they had in their entire careers. Were the rules to be applied literally, they would (among other things) prevent any live TV or radio commentary from former diplomats for the rest of their lives. They would thus substantially diminish informed discussion of major world events. The contribution of former diplomats to our understanding of what is going on in Zimbabwe, or Kenya or Pakistan, should not be underestimated. Nor should it be curtailed. (Paragraph 23)

7. We cannot judge the intent behind the new rules, but the results do indeed appear to be excessively wide-ranging and oppressive. Their only saving grace is that they seem to be unworkable. In practice, the Foreign Office continues to rely on the good sense of its former staff. It should say so. There is no sense in maintaining a rule that is both wrong in principle and manifestly unworkable in practice. (Paragraph 24)

8. Both in respect of memoirs and in respect of public commentary by former diplomats, a pendulum has swung since our inquiry in 2006. Government was understandably concerned that a too liberal regime was having deleterious effects on trust and frankness between politicians and officials; but in tackling this problem, it has created new ones. In this report we have drawn out two important respects in which, having once been too liberal, the Government has now set up a regime which may instead be unduly restrictive. (Paragraph 25)

The Government agrees with the Committee that memoirs and contributions to broadcasts and articles play an important part in aiding people's understanding of world events. The rules brought in by the Diplomatic Service were never intended to stifle appropriate discussion and insight, and the Government has therefore introduced for the Diplomatic Service similar rules to those for the Home Civil Service.