



Prime Minister

Mr. Mitchell's letter (flag) is highly political and Sir Robert's memorandum is merely the occasion for it. My own feeling is that Lord Gowrie should reply. Agree?

Ref. A085/1027

MR BUTLER

*attached*

You will remember the note of guidance which I issued, with the Prime Minister's agreement, on 26 February on the duties and responsibilities of civil servants in relation to Ministers.

*FORB*  
*3.4*  
*Yes*  
*mt*

2. I have had a strange letter from Mr Austin Mitchell MP about it. There seem to me to be things in that letter which ought not to go unanswered.

3. I attach a draft of a possible reply.

4. By ordinary standards it is "off-side" for a Member of Parliament to write to a civil servant direct, and for a civil servant to reply. Perhaps an exception should be made in this case, given that the Prime Minister has made it clear that I was issuing the note on my own responsibility (albeit with her agreement). But it could be very easily adapted to a reply from Lord Gowrie, as Minister for the Civil Service, if it was thought preferable that a Minister should reply.

5. I am sending a copy of this minute and of the draft reply to the Private Secretary to the Chancellor of the Duchy of Lancaster.

*REA*

ROBERT ARMSTRONG

2 April 1985

DRAFT LETTER FROM SIR ROBERT ARMSTRONG TO  
AUSTIN MITCHELL ESQ MP, HOUSE OF COMMONS

Thank you for your letter of 20 March. I am sorry if you found my note of guidance on the duties and responsibilities of civil servants in relation to Ministers confusing. That has to be set against a comment from the Office of Personnel Management in the United States to the effect that the note was "succinct, timely and compelling" and "a declaration of moral and constitutional principles that are as valid for American civil servants as they are for our British counterparts".

I hope that you will not read more into it than was intended. The note was not intended, for example, to echo, or indeed to express any view on, anything in the judge's charge to the jury in the case of Regina versus Ponting. I do not believe that it is necessary to equate the interests of the state with the interests of the Government of the day in order to disagree (as I do) with your view that Ponting acted properly in what he admitted to having

done. Nor was my note, which was essentially a restatement of long-established principles of the public service, intended to be a comprehensive guide to the application of those principles: that would have required a much longer document.

I agree, of course, that some civil servants have special responsibilities, like those of an Accounting Officer. With respect, however, I do not think that that invalidates any of the general principles set out in the note.

I am afraid that I can see no justification whatever for your insinuation that my note can be interpreted as urging on the British Civil Service a role akin to that of the German Civil Service under the Nazis. Indeed, I think that the note of guidance tended in the opposite direction to that.

Sir Peter Middleton's promotion to be Permanent Secretary to the Treasury was not a "double promotion", if by that is meant a promotion which skips a grade: he was a Deputy

Secretary at the time of his promotion. The Permanent Secretary to the Treasury is of course paid a somewhat higher salary than that of other Permanent Secretaries, and has three Second Permanent Secretaries working with him. But there are plenty of precedents for such a promotion, and there was nothing unconstitutional about it: indeed, there would have been nothing unconstitutional or without precedent about it if it had been a double promotion. Nor can I accept that he lacks the impartiality required of civil servants: I am sure that Mr Healey would tell you that Sir Peter Middleton served and advised him with the same skill, the same impartiality and the same loyalty that he brings to his present responsibilities. As with other civil servants appointed as Permanent Secretaries in recent years, he was chosen by virtue of his qualifications and experience in relation to the requirements of the post. The facts do not support your contention that the politicisation of the Civil Service has gone further than ever before, and I cannot accept it.



## CABINET OFFICE

*From the Chancellor of the  
Duchy of Lancaster*

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE

Great George Street  
London SW1P 3AL  
Telephone 01-233 8610

Austin Mitchell Esq MP  
House of Commons  
London SW1A 0AA

22 April 1985

*Dear Mr Mitchell,*

You wrote to Sir Robert Armstrong on 20 March about his recent note of guidance on the duties and responsibilities of civil servants in relation to Ministers. Since your letter raised some highly political questions, I am, with Sir Robert's agreement, replying to it myself.

I am sorry if you found Sir Robert's note of guidance on the duties and responsibilities of civil servants in relation to Ministers confusing. That has to be set against a comment from the Office of Personnel Management in the United States to the effect that the note was "succinct, timely and compelling" and "a declaration of moral and constitutional principles that are as valid for American civil servants as they are for our British counterparts".

I hope that you will not read more into it than was intended. The note was not intended, for example, to echo, or indeed to express any view on, anything in the judge's charge to the jury in the case of Regina versus Ponting. It is not necessary to equate the interests of the state with the interests of the Government of the day in order to disagree (as I do) with your view that Ponting acted properly in what he admitted to having done. Nor was Sir Robert's note, which was essentially a restatement of long-established principles of the public service, intended to be a comprehensive guide to the application of those principles: that would have required a much longer document.

I agree, of course, that some civil servants have special responsibilities, like those of an Accounting Officer. With respect, however, I do not think that that invalidates any of the general principles set out in the note.

cc PPS/10 Downing St  
PS/Sir Robert Armstrong  
NBPM CF PPS

I can see no justification whatever for your insulting insinuation that Sir Robert's note can be interpreted as urging on the British Civil Service a role akin to that of the German Civil Service under the Nazis. Indeed, I think that the note of guidance tended in the opposite direction to that.

Sir Peter Middleton's promotion to be Permanent Secretary to the Treasury was not a "double promotion", if by that is meant a promotion which skips a grade: he was a Deputy Secretary at the time of his promotion. The Permanent Secretary to the Treasury is of course paid a somewhat higher salary than that of other Permanent Secretaries, and has three Second Permanent Secretaries working with him. But there are plenty of precedents for such a promotion, and there was nothing unconstitutional about it: indeed, there would have been nothing unconstitutional or without precedent about it if it had been a double promotion. Nor can I accept that he lacks the impartiality required of civil servants: I am sure that Denis Healey would tell you that Sir Peter Middleton served and advised him with the same skill, the same impartiality and the same loyalty that he brings to his present responsibilities. As with other civil servants appointed as Permanent Secretaries in recent years, he was chosen by virtue of his qualifications and experience in relation to the requirements of the post. The facts do not support your contention that the politicisation of the Civil Service has gone further than ever before, and I do not accept it.

~~XXXX~~

There is a list of 2

articles where Sir [unclear] is

"participation" — [unclear]

Bennett's admirable book "The [unclear]

History" is [unclear] 54

GOWRIE

be done up.

[unclear]

[unclear]

CIVIL SERVICES : L-T.  
Pt 17



lite  
SJ

10 DOWNING STREET

*From the Principal Private Secretary*

SIR ROBERT ARMSTRONG

Thank you for your minute of 2 April (A085/1027) covering a draft reply to Mr Austin Mitchell MP.

The Prime Minister considers that Mr Mitchell's letter is a highly political one and that it takes advantage of the occasion of your memorandum on the duties and responsibilities of Civil Servants rather than being addressed to it. In the circumstances, therefore, her feeling is that Lord Gowrie should reply to Mr Mitchell's letter.

I am copying this minute to Mr Thomas (Chancellor of the Duchy of Lancaster's Office).

F.R.B.

4 April 1985

SJ



FROM AUSTIN MITCHELL M.P.



HOUSE OF COMMONS  
LONDON SW1A 0AA

CABINET OFFICE	
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22 MAR 1985	
FILING INSTRUCTIONS	
FILE No.	.....

Ref: AM/LD

20th March, 1985.

Sir Robert Armstrong, G.C.B., M.V.O.,  
Secretary to the Cabinet,  
70 Whitehall,  
LONDON.  
S.W.1.

Dear Sir Robert,

The Duties and Responsibilities of Civil  
Servants in Relation to Ministers

Your Note on this subject is a conundrum. You say with the full weight of your office that the Civil Service as such has no constitutional personality or responsibility separate from the duly elected Government of the day, but if so it is odd that you should be issuing such a Note rather than the Prime Minister as Minister for the Civil Service. Indeed, one wonders why we have a Head of the Home Civil Service at all. Moreover, if the position is really as stated in your Note, then what you are saying is no more and no less than the view of the Government of the day and what they would have us believe. In other words this takes us back to the Judge's opinion in the Ponting case and the Jury decisively rejected that.

I would go along with the proposition that the Civil Service as such has no constitutional personality separate from the Government of the day, but it is quite clear that it has separate responsibilities. One of these is to withhold information concerning the policies of previous administrations. Another is to ensure that money is spent only for the purpose for which Supply was granted by Parliament. Nor is it sufficient to say that a Civil Servant should not be required to do anything that is in clear breach of the law; no Civil Servant should be required to do anything which offends against standards of propriety even the most exacting standards. There was even a time when Ministers were expected to write their own speeches, and rightly so. It is ludicrous to use the best brains in the country not to influence policy but to defend the policies developed by second raters.

....cont./



...2./

The Nazi tyranny might have been stopped early if the German Civil Service had not adopted the role which you are now urging on your own colleagues. The interests of the State go much wider than those of the Government of the day and in serving the interests of the State Clive Ponting quite properly approached a Member of Parliament about the conduct of the Ministers which he regarded as improper. No amount of obsequious verbiage can obscure that. Parliament exists to preserve our liberties and every day that passes warns us of the need for vigilance in that respect. Civil Servants are servants of the Crown and the Crown functions in Parliament and clearly has an interest higher than that of the Government of the day.

What is quite clear is that a change of Government will now require drastic changes at the top of the Civil Service. The way in which Mr. Samuel Brittan and others were campaigning in the Press for the appointment of the present Head of the Treasury indicates that the person concerned could lack the impartiality you say is required from Permanent Officials.

Under this Government the politicisation of the senior Civil Service looks from the nature of the appointments to have gone farther than ever before and certainly further than we would ever have dared, inhibited creatures that we are.

The double promotion of the Head of the Treasury is also odd. That was once thought to be unconstitutional. Mr. George Brown was indeed told that it could not be done in the case of Sir (as he is now) Ronald Macintosh. What was your advice?

Some of us lifted both eyebrows when we heard that Sir Terry Burns had been issued with a Certificate. All things are possible, it seems, to this Administration.

There is no doubt among members of Her Majesty's loyal Opposition that we are now getting a politicised Civil Service which will find it difficult to give advice to a Labour Government.

Yours sincerely,

AUSTIN MITCHELL.

THE DUTIES AND RESPONSIBILITIES OF CIVIL SERVANTS  
IN RELATION TO MINISTERS

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Note by the Head of the Home Civil Service

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During the last few months a number of my colleagues have suggested to me that it would be timely to restate the general duties and responsibilities of civil servants in relation to Ministers. Recent events, and the public discussion to which they have given rise, have led me to conclude that the time has come when it would be right for me, as Head of the Home Civil Service, to respond to these suggestions. I am accordingly putting out the guidance in this note. It is issued after consultation with Permanent Secretaries in charge of Departments, and with their agreement.

2. Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day. There are special cases in which certain functions are conferred by law upon particular members or groups of members of the public service; but in general the executive powers of the Crown are exercised by and on the advice of Her Majesty's Ministers, who are in turn answerable to Parliament. The civil service as such has no constitutional personality or responsibility separate from the duly elected Government of the day. It is there to provide the Government of the day with advice on the formulation of the policies of the Government, to assist in carrying out the decisions of the Government, and to manage and deliver the services for which the Government is responsible. Some civil

servants are also involved, as a proper part of their duties, in the processes of presentation of Government policies and decisions.

3. The civil service serves the Government of the day as a whole, that is to say Her Majesty's Ministers collectively, and the Prime Minister is the Minister for the Civil Service. The duty of the individual civil servant is first and foremost to the Minister of the Crown who is in charge of the Department in which he or she is serving. It is the Minister who is responsible, and answerable in Parliament, for the conduct of the Department's affairs and the management of its business. It is the duty of civil servants to serve their Ministers with integrity and to the best of their ability.

4. The British civil service is a non-political and disciplined career service. Civil servants are required to serve the duly elected Government of the day, of whatever political complexion. It is of the first importance that civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers, and as to be able to establish the same relationship with those whom they may be required to serve in some future Administration. That confidence is the indispensable foundation of a good relationship between Ministers and civil servants. The conduct of civil servants should at all times be such that Ministers and potential future Ministers can be sure that that confidence can be freely given, and that the civil service will at all times conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of, the duly elected Government of the day.

5. The determination of policy is the responsibility of the Minister (within the convention of collective responsibility of the whole Government for the decisions and actions of every member of it). In the determination of policy the civil servant

has no constitutional responsibility or role, distinct from that of the Minister. Subject to the conventions limiting the access of Ministers to papers of previous administrations, it is the duty of the civil servant to make available to the Minister all the information and experience at his or her disposal which may have a bearing on the policy decisions to which the Minister is committed or which he is preparing to make, and to give to the Minister honest and impartial advice, without fear or favour, and whether the advice accords with the Minister's view or not. Civil servants are in breach of their duty, and damage their integrity as servants of the Crown, if they deliberately withhold relevant information from their Minister, or if they give their Minister other advice than the best they believe they can give, or if they seek to obstruct or delay a decision simply because they do not agree with it. When, having been given all the relevant information and advice, the Minister has taken a decision, it is the duty of civil servants loyally to carry out that decision with precisely the same energy and good will, whether they agree with it or not.

6. Civil servants are under an obligation to keep the confidences to which they become privy in the course of their official duties; not only the maintenance of trust between Ministers and civil servants but also the efficiency of government depend on their doing so. There is and must be a general duty upon every civil servant, serving or retired, not to disclose, in breach of that obligation, any document or information or detail about the course of business, which has come his or her way in the course of duty as a civil servant. Whether such disclosure is done from political or personal motives, or for pecuniary gain, and quite apart from liability to prosecution under the Official Secrets Acts, the civil servant concerned forfeits the trust that is put in him or her as a servant of the Crown, and may well forfeit the right to continue in the service. He or she also undermines the

confidence that ought to subsist between Ministers and civil servants and thus damages colleagues and the Service as well as him or herself.

7. The previous paragraphs have set out the basic principles which govern civil servants' relations with Ministers. The rest of this note deals with particular aspects of conduct which derive from them, where it may be felt that more detailed guidance would be helpful.

8. A civil servant should not be required to do anything unlawful. In the very unlikely event of a civil servant being asked to do something which he or she believes would put him or her in clear breach of the law, the matter should be reported to a superior officer or to the Principal Establishment Officer, who should if necessary seek the advice of the Legal Adviser to the department. If legal advice confirms that the action would be likely to be held to be unlawful, the matter should be reported in writing to the Permanent Head of the department.

9. Civil servants often find themselves in situations where they are required or expected to give information to a Parliamentary Select Committee, to the media, or to individuals. In doing so they should be guided by the general policy of the Government on evidence to Select Committees and on the disclosure of information, by any specifically departmental policies in relation to departmental information, and by the requirements of security and confidentiality. In this respect, however, as in other respects, the civil servant's first duty is to his or her Minister. Ultimately the responsibility lies with Ministers, and not with civil servants, to decide what information should be made available, and how and when it should be released, whether it is to Parliament, to Select Committees, to the media or to individuals. It is not acceptable for a serving or former civil servant to seek to frustrate policies or

decisions of Ministers by the disclosure outside the Government, in breach of confidence, of information to which he or she has had access as a civil servant.

10. It is Ministers and not civil servants who bear political responsibility. Civil servants should not decline to take, or abstain from taking, an action merely because to do so would conflict with their personal opinions on matters of political choice or judgment between alternative or competing objectives and benefits; they should consider the possibility of declining only if taking or abstaining from the action in question is felt to be directly contrary to deeply held personal conviction on a fundamental issue of conscience.

11. A civil servant who feels that to act or to abstain from acting in a particular way, or to acquiesce in a particular decision or course of action, would raise for him or her a fundamental issue of conscience, or is so profoundly opposed to a policy as to feel unable conscientiously to administer it in accordance with the standards described in this note, should consult a superior officer, or in the last resort the Permanent Head of the department, who can and should if necessary consult the Head of the Home Civil Service. If that does not enable the matter to be resolved on a basis which the civil servant concerned is able to accept, he or she must either carry out his or her instructions or resign from the public service - though even after resignation he or she will still be bound to keep the confidences to which he or she has become privy as a civil servant.

ROBERT ARMSTRONG

Cabinet Office

25 February 1985