

Written evidence from the Better Government Initiative

Public Administration and Constitutional Affairs Committee (PACAC): Inquiry into Safeguards for Proper Government Decision- Making

1. The Better Government Initiative (BGI) is an informal body of people with practical experience in government at a very senior level who have no links to particular political parties (www.bettergovernmentinitiative.co.uk).

Executive Summary

2. Our main conclusions are:

a) The Chilcot report clearly implies that the Cabinet Secretary is deemed to have what has been termed a “guardianship role” in support of collective government and proper decision-making for which he or she can be held to account - and the same consideration might apply to other top officials. If so, the question arises of how this is to be discharged (paragraphs 3-6).

b) We have previously suggested one approach would be to extend the arrangements covering the duties of accounting officers to include seeking to ensure that decisions are taken under agreed procedures for collective government or receiving a direction if those procedures are set aside. As was made explicitly clear in our original proposal, an accounting officer direction on this ground would be about the process for reaching a decision not the government’s policy arising from that decision-making process (paragraphs 7-9).

c) Existing guidance for accounting officers already refers to governance and decision-making. The principle of collective responsibility and how it is to be discharged are set out in chapter 2 of the Ministerial Code and in more detail in chapter four of the Cabinet Manual (paragraphs 10-11).

d) As departmental permanent secretaries - as accounting officers - already have a personal responsibility for “Control” arrangements within their departments, we see no particular difficulty in more explicitly recognising their obligation to seek to ensure that decisions are taken within the framework and processes of collective government as required by government guidance. We recommend therefore that the revised power to seek a direction should apply both to principal accounting officers within departments and to the Cabinet Secretary, as principal accounting officer for the Cabinet Office (paragraph 14).

e) The responsibilities of the Cabinet Secretary would include to agree with the prime minister the decision-making processes to be adopted by the government and enshrined in the Ministerial Code and the Cabinet Manual; ensure these processes are followed in the work of the Cabinet Secretariat; and to promulgate these processes to permanent secretaries, including in a form that engages their responsibilities as accounting officers (paragraph 15).

f) Accounting officer arrangements bring the risk of friction between ministers and permanent secretaries in return for the benefit of stronger accountability. The benefit outweighs the frictional risk (paragraphs 16-18).

g) In New Zealand the Cabinet Manual guides the cabinet's procedure, and is endorsed at the first cabinet meeting of a new government, to provide for the orderly re-commencement of the business of government. A Cabinet Manual and supporting guidance both issued on New Zealand lines would provide a firm basis for consideration by ministers and officials of whether the way in which business is being conducted meets the requirements of proper decision-making. For clarity "Managing Public Money" would need to be amended to introduce a fifth basis for seeking a direction. If necessary, procedures for a direction could be introduced by limited changes to "Managing Public Money" without requiring a new edition of the Cabinet Manual - desirable though this is in itself (paragraphs 19-23).

h) The Cabinet Secretary and departmental permanent secretaries would have the right to ask for a direction. The right would apply to all government business and not just defence or national security. A direction in relation to decision-making would follow the same procedures as for other directions, with the additional involvement of PACAC. As now the existence of a direction would be published no later than in the next report and accounts of the department concerned, unless the matter must be kept confidential. As there would be no requirement immediately to publish the existence of a direction or its precise nature, essential confidentiality could be preserved in cases of national security and effective decision-making in emergencies (paragraph 24).

Background

3. The driver for the BGI's recommendations on improving decision-making was the Chilcot Report. This identified key ways in which decision-making was organised in the run up to the Iraq war, each of which was highly questionable but went wholly or largely unchallenged. Chilcot considered that there should have been collective discussion by

a cabinet committee or small group of ministers, on the basis of inter-departmental advice agreed at a senior level between officials, at a number of decision points that had a major impact on the development of UK policy before the invasion of Iraq. In addition to providing a mechanism to probe and challenge the implications of proposals before decisions were taken, a cabinet committee or a more structured process might have identified some of the wider implications and risks associated with the deployment of military forces to Iraq. It might also have offered the opportunity to remedy some of the deficiencies in planning.

4. Instead the inner circle of decision-making consisted of the prime minister, three special advisers, the head of the Secret Intelligence Service, the chairman of the Joint Intelligence Committee (JIC) and one senior diplomat. This inner circle engaged bilaterally or trilaterally with the Foreign and Defence Secretaries and on military matters with the Chief of the Defence Staff.

5. Decisions on the conduct of business rested with the prime minister and under him his chief of staff. The prime minister's foreign policy adviser, who was also head of the Defence and Overseas Policy secretariat, took his guidance on the conduct of business from the prime minister's Chief of Staff rather than the Cabinet Secretary. As requested by the prime minister, the Cabinet Secretary gave his priority to other areas of Cabinet Office business concerning delivery and reform. Chilcot states that: "The responsibility of the Cabinet Secretary to ensure that members of Cabinet are fully engaged in ways that allow them to accept collective responsibility and to meet their departmental obligations nevertheless remains."

6. The report therefore clearly implies that the Cabinet Secretary is deemed to have what has been termed a "guardianship role" in support of collective government and proper decision-making for which he or she can be held to account - and the same consideration might apply to other top officials. If so, the question arises of how this is to be discharged or at least to be attempted to be discharged, if this role did not find favour with the prime minister or other ministerial colleagues

7. In our comments on the Chilcot report we identified as a minimum test for officials that they provide active, regular and consistent advice in support of proper decision-making. Given the serious failures identified in Chilcot in relation to collective decision making processes, the BGI suggested that the present arrangements may not suffice in matters of the gravest consequences as arose in the Iraq war. We proposed that one option for the future would be extend the procedures underpinning the

responsibilities and accountability of accounting officers to place an explicit responsibility on the Cabinet Secretary and perhaps permanent heads of departments to ensure that the machinery of government is conducted in accordance with the principles set out the Cabinet Manual and supporting documents on, for example, the detailed handling of Cabinet and Cabinet Committee business. If the prime minister or the government wished to conduct business in another way they could transparently amend the published Cabinet Manual and address the case for change in Parliament. If, however, officials were asked in effect to ignore stated procedure for good government, they would be expected to seek a direction, which would be reported to Parliament.

8. As we have pointed out elsewhere, the government's response to PACAC's report on 'Lessons still to be learned from the Chilcot Inquiry' completely misrepresents the BGI's proposal as being in the government's words "for a formal Ministerial direction to be given, if Ministers decided to go ahead with a policy against the advice of officials". The BGI had not suggested that a direction be sought if ministers decided to go ahead with a policy against the advice of officials, nor would we advocate such an approach. Our proposal clearly related to instances of a total failure to conduct the process of government properly.

9. It has been argued that following the Iraq war new arrangements for decision-making have been introduced with the creation of the National Security Council (NSC), so lessons have been learned and safeguards provided. But broadly similar arrangements to those of the NSC for collective discussion and agreement on matters of foreign and defence policy existed at the time of the Iraq war through the machinery of the Defence and Overseas Policy Committee, which were simply put to one side.

Existing guidance

10. In considering the Committee's questions it is relevant to note that there is already guidance to heads of departments as accounting officers on decision-making. HM Treasury's guidance on "Managing Public Money" sets out (Box 3.10) standards expected of the accounting officer's organisation that relate amongst other things to governance and decision-making as well as financial and value for money considerations. It identifies areas where accounting officers should take personal responsibility (paragraph 3.3.3) which include: "*control*: the accounting officer should personally approve and confirm their agreement to all cabinet committee papers and major project or policy initiatives before they proceed". In other words an accounting

officer is already required personally to satisfy him/herself that proposals put forward for ministerial consideration, including collective ministerial consideration, meet the various tests set out in Managing Public Money.

11. We also note that:

- The principle of collective responsibility and how it is to be underpinned through the business of cabinet and ministerial committees are set out in chapter 2 of the Ministerial Code.
- The principles of collective cabinet government and how it is organised are set out in more detail in chapter four of the Cabinet Manual. Paragraph 4.51 states that: “The Cabinet Secretariat exists to support the Prime Minister and the chairs of Cabinet committees in ensuring that government business is conducted in an effective and timely way and that proper collective consideration takes place.” Paragraphs 4.53 and 4.54 refer to The Cabinet Secretary. Paragraph 4.53 sets out that the Cabinet Secretary is the head of the Cabinet Secretariat. Paragraph 4.54 refers to the Cabinet Secretary’s responsibility for the “smooth running of Cabinet meetings”, for preparing records, and for advising the prime minister on “all questions connected with the appointment and organisation of Cabinet committees, including membership and terms of reference.”

Evidence in relation to the inquiry’s terms of reference

12. Against this background we consider below each of the questions set out in the Committee’s request for evidence.

Question 1: would a formal direction provide an effective safeguard against the circumventing of proper collective agreement?

13. The fundamental safeguard in support of proper collective agreement is the commitment of the prime minister and other ministers to effective decision making on a collective basis by upholding the principles and processes set out in the Ministerial Code and the Cabinet Manual. Ultimately the effectiveness of collective government and of decision-making more broadly depends upon the attitudes and actions of the prime minister and other senior cabinet ministers and how they see their roles and

respective powers. But, as we pointed out in paragraph 10 above, permanent heads of departments as accounting officers are already required to ensure that departments are effectively and efficiently organised and that the requirements of good government cannot be overridden without an explicit process involving a direction and parliamentary scrutiny. We believe these arrangements reinforce the sense of personal responsibility of permanent secretaries for the effective governance of departments and act as a brake on arbitrary or capricious decision-making. They do not prevent ministers taking decisions which an accounting officer does not consider meet the tests of value for money or feasibility, for example, but they force proper discussion of these issues before decisions are made. We see an extension of this approach into the need for effective collective decision-making as having a similar effect. As with other directions, the deterrent effect of this extended power might prove to be of more relevance than its use, which we expect would be infrequent.

Question 2: Implications for relationships

14. Departmental permanent secretaries as accounting officers already are accountable to Parliament for a number of important aspects of “the quality of decisions made” (to quote from the wording of the Committee’s terms of reference for this inquiry). They exercise this accountability within the framework of the respective responsibilities of ministers and officials set out in, for example, the “Corporate Governance Code” and “Managing Public Money.” As departmental permanent secretaries - as accounting officers - already have a personal responsibility for “Control” arrangements within their departments, we see no particular difficulty in more explicitly recognising their obligation to seek to ensure that decisions are taken within the framework and processes of collective government as required by government guidance. The relevant principles and processes could be incorporated in Managing Public Money or that document could cross-refer to the Cabinet Manual. We therefore recommend this revised power to seek a direction should apply both to principal accounting officers within departments and to the Cabinet Secretary. As with existing directions, the requirement to seek a direction would be the direct personal responsibility of the accounting officer. We recognise that for this procedure to work the Cabinet Secretary will need to be the principal accounting officer for the Cabinet Office, which would not, of course, preclude another official or officials being additional accounting officers for aspects of the Cabinet Office’s work, recognising the breadth and weight of the Cabinet Secretary’s cross-government responsibilities.

15. The responsibilities of the Cabinet Secretary would include to:

- Agree with the prime minister the decision-making processes to be adopted by the government and enshrined in the Ministerial Code and the Cabinet Manual.
- Ensure these processes are followed in the work of the Cabinet Secretariat.
- Promulgate these processes to permanent secretaries, including in a form that engages their responsibilities as accounting officers.

16. Obviously the most sensitive aspect of these arrangements from the perspective of the Cabinet Secretary would be a case, such as that which prompted the BGI's original recommendation, where the prime minister puts aside the principles and processes of proper collective government. In such circumstances a Cabinet Secretary, like a departmental permanent secretary, would seek to resolve the matter in private. But the ultimate power to seek a direction would help ensure that there was appropriate focus on proper decision making in accordance with agreed processes and a conscious and documented procedure if agreed procedures are to be put to one side. As with directions for other matters we would expect such cases to be rare. The Cabinet Secretary would seek a direction under the same procedures as other permanent secretaries either from the prime minister or a Cabinet Office Minister acting on the prime minister's behalf.

17. We recognise that a dispute over decision-making between the Cabinet Secretary and the prime minister leading to a direction may pose a risk for their working relationship. In the case of departmental permanent secretaries there are, of course, sometimes tensions between a permanent secretary and the ministerial head of her/his department over whether a proposed ministerial action meets the tests in Managing Public Money and, more generally, Ministers can find irritating the responsibilities of accounting officers and the requirement to issue a direction and notify parliament about it. But the risk of friction that needs to be managed has not been seen as a justification for changing the current arrangements. Indeed the concern of commentators has rightly been the opposite one of seeking to ensure that these arrangements remain robust, in a context where ministers have increasing influence over permanent secretary appointments.

18. It would be for government to issue guidance on decision-making principles and processes as now, subject to scrutiny by Parliament including the PAC and PACAC. The effectiveness of these arrangements, including the widening of the scope of directions, would depend as now on how far they were a focus for parliamentary scrutiny and the holding of ministers and officials to account.

Question 3: The Cabinet Manual

19. The Committee invites evidence on whether the Cabinet Manual provides a sufficient basis for judging if a direction is required. Paragraph 4.1 of the Manual states “Cabinet and its committees are established by convention but it is a matter for the incumbent government to determine the specific arrangements for collective decision-making”. Paragraph 4.17 says: “No definitive criteria can be given for issues which engage collective responsibility and the Cabinet Secretariat can advise where departments are unsure”. It then goes on to list some issues which “at present’ will require consideration by a Cabinet Committee. Because the Manual was issued in October 2011, and does not appear to have been reissued since then, the first criterion reads: “The proposal takes forward or impacts on a Coalition agreement.” The Cabinet Office has issued more detailed guidance for civil servants on the collective agreement process that gives more detail on matters requiring collective decision but its status is unclear and the version readily accessible is dated March 2013.

20. The Ministerial Code is rightly reissued when there is a change of government or prime minister. If as quoted above “it is a matter for the incumbent government to determine the specific arrangements for collective decision-making”, then the incumbent government should be expected to publish in a timely, transparent and readily accessible way what these arrangements are. The New Zealand government provided the model for the Cabinet Manual. In New Zealand as the introduction to the latest version of its Manual explains: “The Cabinet Manual guides Cabinet’s procedure, and is endorsed at the first Cabinet meeting of a new government, to provide for the orderly re-commencement of the business of government.” There is a compelling case for a similar procedure in this country which would provide a firm basis for government processes, a transparent means of gauging the incoming administration’s commitment to collective government, and an aid to Parliament in holding the government to account for the way it reaches decisions. The prime minister could amend the Manual at any stage by publicly reissuing it and be held to account for changes made and their

rationale. PACAC could also hold the Cabinet Secretary to account to explain the basis for the government's changes.

21. We further note that the New Zealand Cabinet Manual includes clear lists of matters that do and do not require collective consideration (at paragraphs 5.12 and 5.13). Supporting processes are also clearly set out in an up-to date web-based *CabGuide*. Echoing these arrangements would significantly strengthen the basis for decision-making in the UK and for holding ministers and officials to account.

22. A Cabinet Manual and supporting guidance on these lines would provide a firm basis for consideration by ministers and officials of whether the way in which business is being conducted in a particular issue or set of issues of major significance meet the requirements of proper decision making and whether in exceptional cases the accounting officer should seek a direction on the grounds that the requisite standards are not being met. For clarity "Managing Public Money" would need to be amended to introduce a fifth basis for seeking a direction, with appropriate supporting text and a descriptor which we suggest might be along the lines of: "Decision process - if a proposal is to be determined outside the government's agreed decision-making processes".

23. As the Cabinet Manual is clearly out of date in a number of respects and yet it has not been amended there must be a question mark over the government's commitment to maintaining and improving it, building on the First Edition. We are also acutely conscious of other pressures on both ministers and officials in handling the UK's departure from the European Union, which inevitably must have higher priority. We would therefore point out that, if necessary, procedures for a direction could be introduced by limited changes to "Managing Public Money" without requiring a new edition of the Cabinet Manual - desirable though this is in itself.

Question 4: How should the process of seeking a direction work in practice?

24. Building on the points set out above, our evidence in respect of the Committee's specific process questions is as follows:

a) The Cabinet Secretary and departmental permanent secretaries would have the right to ask for a direction.

b) The right to seek a direction would apply to all government business and not just defence or national security. It would apply to matters of major importance that clearly engage the collective interest of government.

c) A direction in relation to decision making would follow the same procedures as for other directions, that is that the relevant papers would be copied to the Comptroller and Auditor General (C&AG) and the Treasury Officer of Accounts promptly. As now the C&AG would draw it to the attention of the Public Accounts Committee and would additionally draw such a direction to the attention of PACAC. Directions on decision-making issued to departmental permanent secretaries would in addition be copied to the Cabinet Secretary. A departmental permanent secretary would be expected to consult the Cabinet Secretary before seeking a direction on decision-making grounds but ultimately he or she would have to decide whether to seek the direction, as the accountability is personal. As now the existence of a direction would be published no later than in the next report and accounts of the department concerned, unless the matter must be kept confidential.

d) As there would be no requirement immediately to publish the existence of a direction or its precise nature, essential confidentiality could be preserved in cases of national security and effective decision-making in emergencies. It would be for the C&AG to determine how a direction of a sensitive kind was handled. One option would be initially to inform only the chairs of the PAC and PACAC on a confidential basis.

[4/04/18]