The Osmotherly Rules through the Eyes of Civil Servants:
An Historical Interpretivist Approach

Dr Dennis Grube
School of Government and International Relations
Griffith University
Email: d.grube@griffith.edu.au

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In 1980, the Thatcher Government publicly released the rules that guide the behaviour of civil servants when they appear before parliamentary committees. The rules had been around in various formats since at least the 1960s but had been kept strictly internal. The public release of the rules did two things. Firstly, it immortalised the name of the civil servant – Edward Osmotherly – who was credited with being their principle author (see Hennessy 1989, 361-2). The rules have been known as the Osmotherly rules ever since, rather than by their much more cumbersome formal modern title of Guidance on Departmental Evidence and Response to Select Committees. Secondly, and much more importantly, it allowed MPs and the wider public an insight into the workings of the Civil Service. The Osmotherly rules did more than set out mundane procedures. They were an attempt by the executive government to formalise what MPs could appropriately ask of civil servants without contravening Westminster conventions on ministerial responsibility. The Osmotherly rules revealed the ways in which civil servants could legitimately avoid questions that ministers might not want them to answer.

The public release of the rules represented a significant shift in Westminster tradition towards transparency at the expense of the hitherto institutionalised secrecy pact between ministers and civil servants. As one civil servant was to note in interdepartmental correspondence in the late 1970s, making the guidance public ‘...would seem to savour of handing over to the prosecution defence counsel’s instructions.’¹ The release contributed to the ever-increasing cracks of public exposure that were beginning to permeate the once anonymous lives of civil servants. As we enter the twenty first century, the growing public profile of select committees is continuing to contribute to the growing public profile of the civil servants who appear before them. The Osmotherly rules continue to shape the format that these acts of public accountability can take, despite the promises of successive governments to review the rules and their operation.

The shift in the late 1970s towards the public release of guidelines in the form of the Osmotherly rules did not occur in a vacuum. Firstly, it was an era in which the idea of ‘open government’ was embraced by both sides of politics, indicating a wider move towards greater transparency across government. Secondly, the rules were publicly released at the same time as the Thatcher Government introduced fundamental reforms to the select committee system. The haphazard existing set of committees were replaced by a wider range of new committees that would each directly shadow the work of a government department to ensure a more systematic style of parliamentary oversight of public administration. The release of the Osmotherly rules therefore occurred at a time of some wider institutional change.
The turn towards ‘new institutionalisms’ in the political sciences provides many lenses through which to understand the operation of change in civil service institutions (see Hall and Taylor 1996; Ongaro 2013; Hope and Raudla 2012). Historical institutionalism suggests that change is slow and difficult (see Kickert and van der Meer 2011). Existing patterns of behaviour are ‘sticky’ precisely because they have themselves become institutionalised. Path dependency (Pierson 2000) – the more specific offspring of historical institutionalism – attests to the prohibitively high costs of seeking to change bureaucratic practice. Scholars and practitioners of public administration alike have long attested to the difficulties that come with trying to enforce change within a Westminster civil service. Tony Blair’s now infamous ‘scars on my back’ speech of 1999 encapsulates this line of critique.

The charge against institutionalist theories of this kind is that they struggle to explain why change does occur on some occasions (see Fleckenstein 2013). If institutionalised structures and behaviours are locked into a path dependent spiral, then when and why are ‘critical junctures’ able to shake up a system sufficiently to actually achieve change? The public release of the Osmotherly rules did not emerge from anything that could be characterised as a crisis. There was no huge scandal driving change. There were certainly some frustrated MPs sitting on select committees, and calls for change driven by the Procedure Committee report of the late 1970s into the operation of select committees. But such frustrations are the normal fare of daily public administration rather than a paradigm-shifting crisis.

To some extent, Bell’s (2011) developing theory of an ‘agency-centred historical institutionalism’ begins to create the room to theoretically explain institutional change by allowing room for the influence of individual actors. Under Bell’s conception, individual agency still counts, and whilst it might be shaped by its institutional setting, it is not completely constrained by it.

So how do scholars who want to understand how individual agency may have shaped decision-making in an institutional context like the Civil Service go about it? The interpretivist approach has shown over the last two decades that the best way to understand what actors think is to look at what they say and write and how they act. It is in studying the behaviour of actors themselves that their beliefs, ideas, governing narratives and motivations are revealed (See Bevir and Rhodes 2003; Hay 2011). As Rhodes’ (2011) recent work demonstrates, an ethnographic approach allows researchers to watch civil servants in operation to see what their behaviour reveals about the underlying beliefs, traditions and stories that shape how bureaucratic departments function. The same interpretivist tools can be applied to semi-structured interviews, government documents, speeches, diaries and media interviews to harvest ‘thick’ descriptions of how civil servants see their world. Through these interpretive methods, the layers of behaviour and belief in contemporary public administration are revealed and can be studied.
One of the great strengths of the interpretivist approach is that it is not limited only to contemporary events. The same tools that enable scholars to probe contemporary actors for descriptions of what ‘really happens’ can be applied to historical documents to reveal an equally rich picture of the motivations and difficulties of individual actors. Traditionally, political scientists have shied away from dusty archives as a source, preferring to leave them as the preserve of the political historian. Yet primary source research offers new potential for interpretivists to apply social science methods to historical documents. This is particularly so within the vast available resource of civil service paper files. Paper files allow for the study not just of a document’s face-value content, but also of the various scribblings and thoughts appended to the file by the many hands through which it passed. It allows for the study of the iterative nature of how change happens, and the degree to which changes are resisted or embraced by the ideas and beliefs of the agents whose job it is to carry out change.

This kind of historical interpretivist approach is particularly useful in seeking to understand the historical functioning of the senior civil service. The traditional position is that ‘...all aspects of the executive work of British central government are largely shrouded in mystery’ (Chapman 1988, 225). Long renowned as an institution that wields its immense political and administrative power away from the public gaze, the civil service’s formal rules and institutionalised structures can act as barriers to effective study of how power at the top actually works. An interpretive approach allows for the study of how the individual perspectives of senior civil servants respond to systemic changes in the organisation as a whole. The contemporary focus on transparency and accountability, backed up by the voracious appetite of a 24/7 news media, has drawn modern mandarins more clearly into the public spotlight. To quote Rhodes, ‘...nowadays, senior civil servants speak in public almost as often as ministers’ (2011, 9). Through speeches, newspaper articles, media interviews, and social media, civil servants are playing an increasing role in the public communication of what government and the civil service is up to.

This emergence from anonymity has been a gradual process, and indeed has almost certainly not yet run its full course. But one of the measures that began this move towards a more public face was the increased exposure of civil servants in being called to give evidence before parliamentary select committees. Dating back to the 1960s and gathering pace in the 1970s, with MPs frustrated at their inability to effectively hold ministers to account through the parliament, select committees became useful avenues for interrogating the alleged bureaucratic failings of the Civil Service. Kellner and Crowther-Hunt, writing in the late 1970s, applauded the use of select committees to question civil servants.

One of the characteristics of select committees has been the increasing frequency with which civil servants have given evidence. This, indeed, has been regarded as one of the breakthroughs that the select committee system has made: civil servants defending in detail, against critical questioning, the policies and practices of their
department. While, in theory, the Secretary of State remains the person answerable to Parliament, often only civil servants are capable of handling the kind of detail that proper supervision of the executive requires. Hence the delegated authority to civil servants to speak to departmental policy. (1980, 245)

Not surprisingly, civil servants have long been aware of the dangers that select committees hold in their ability to embarrass both them and the government they serve. Under the Westminster system, a civil servant’s first loyalty must be to her or his minister. They are servants of the executive rather than the legislature. It is ministers who are accountable to the parliament and through it the wider community for the actions of their departments and the government (see Chapman 1988, 225-264). In being called before select committees, civil servants therefore find themselves in an inherently anomalous position. They are being asked to either accept some responsibility for administrative and policy errors or to join forces with committee MPs to turn the blame back onto ministers – to whom they constitutionally owe their loyalty.

What looks like an exercise in open accountability to Parliament can at times become a test of the resolve of civil servants to protect both themselves and their ministers from the slings and arrows of committee MPs. To help civil servants protect themselves in such an environment, the Civil Service Department (CSD), with central responsibility for looking after the interests of the service as a whole, had throughout the 1960s and 70s maintained internal guidelines to help civil servants cope with the rigours of select committee probing (Lowe 2011, 368-373). Titled at the time as the Memorandum of Guidance for Officials Appearing Before Select Committee – and often cited by its reference number of GEN 76/78 – the guidelines provided advice to civil servants on what they could and could not legitimately be asked by select committees. It was a defensive playbook designed to protect the secrets of executive government from the prying eyes of committee MPs.

Even today, the Osmotherly rules have no formal parliamentary standing. They were issued by the executive government and are not considered as able to bind the behaviour of the parliament. As the House of Lords Select Committee on the Constitution noted in 2012: ‘The Osmotherly rules are an executive document offering guidance to civil servants — and no more. They in no way have the effect of imposing restrictions on the activities of select committees’ (House of Lords 2012: para. 70). When civil servants appear, they do so ‘on behalf of their ministers and under their directions’ (House of Lords 2012: para. 74; Cabinet Office 2005: para. 40). Despite the lack of any binding authority, select committees have in practice seldom ignored the Osmotherly rules or refused to abide by them. Civil servants certainly still rely upon them when refusing to comment on matters of political controversy or when being pushed to reveal government thinking on internal policy debates.

Whilst the formal public release of the Osmotherly rules occurred in 1980, the internal debate that ultimately led to the public release began in 1977-8 when the
Procedure Committee of the House of Commons undertook an inquiry into the operation of the select committee system and how it could be improved. As part of the Procedure Committee’s investigation, it asked for a copy of any advice that was regularly provided to civil servants for how to behave in front of select committees. As the discussion below will highlight, this was a crucial request because there was a fear within the CSD that any documents provided to the Procedure Committee would be publicly released.

This article analyses the story of what became known as the Osmotherly rules, from the internal revision of the original guidance in 1971/2, to the arguments about whether they should be released to the Procedure Committee in 1977-1978, through to arguments over their final official release in May 1980 by the Thatcher Government. This decade of change is examined not as a chronologically framed narrative of political history, but as an exercise of interpretive political science, analysing the perspectives of the senior civil servants who dealt with the guidance document over that period. How did the mandarins react to requests to revise this document in 1971, then hand it over to the Procedure Committee in 1977/78, and then in 1980 to issue it for general public release? Did they give up this armour reluctantly or proactively? Were they guided by self-interest or by the political positions of the government of the day, and what does their response reveal about the nature of the workings of a Westminster bureaucracy?

In seeking answers to these questions, the paper argues that civil servants behaved cautiously in publicly releasing internal documents not because of a culture of self-interested secrecy, but because of the need to somehow balance the competing claims of the parliament and the executive on their loyalty. Having been placed by the unwritten constitution under the control of the executive branch of government, civil servants in the Westminster system too easily find themselves condemned as obstructing the desires of the democratically elected parliament. The debate over the public release of what would become known as the Osmotherly rules highlights the inbuilt tensions over who ‘controls’ the civil service in a Westminster system and to what degree it maintains an independent identity from the political actors of executive government.

Methodologically, the paper adopts an inductive approach, analysing the many relevant civil service files of the period to draw out from them a set of categories that encapsulate the range of responses and views of senior civil servants. The contents of the files were coded into one of the following five categories: The Open Government agenda; Protecting civil servants; Defending established Westminster conventions; Strategic and tactical thinking; and the power of informal communication. The sections that follow examine each category individually, before drawing some more general conclusions in the discussion section towards the end of the paper.

1971-1980: Five Categories/Lenses Through Which Senior Civil Servants Analysed Change
1. The Open Government Agenda

In 1971, the decision was taken to revise the internal guidance document for civil servants appearing before parliamentary committees in order to support a more open and responsive style. When the Parliamentary Secretary for the CSD – David Howell – was sent a draft of the proposed revised rules in 1971, he was concerned that it did not sufficiently align with the government’s public accountability objectives.

The Government’s purpose in setting up new Committees was to bring about both a wider and a sharper-focused confrontation between different parts of the Executive and Parliament. The Document should reflect this...The question of sensitive policy issues and which of them should be left to the Minister, remains, as it always has been – a matter for skilled judgement. But it should not and must not be used as an excuse for officials taking cover behind an over rigid interpretation of the doctrine of Ministerial accountability.³ (emphasis added)

This critical response was noted by officials, with one scrawling a further note to a colleague across the top of the minute: ‘...on re-reading it does all look a bit negative. Perhaps you can think up a sentence or two of amendment.’⁴ But a ‘sentence or two of amendment’ was as far as officials felt able to go, given the need to fit in with the wider position of the government.

I agree with Mr Stevens’ analysis above. The present draft, with the minor amendments he suggests, goes about as far as we can in the present state of Ministerial consensus. If the Parliamentary Secretary wants to fight, he must reopen it with his colleagues. Personally I share his approach, if I may respectfully say so; but we are between us in a minority!⁵

In a confidential minute, another official later noted: “This was the situation when we put the draft to the Parliamentary Secretary. He did not like it. His objections were that it was a very anti-open government document. I am bound to say that in MG we all agreed with him but had felt constrained by the existing rules.”⁶ What these exchanges suggest is that – far from a uniform desire to close ranks – some civil servants were strongly committed to change and would have supported their Parliamentary Secretary in delivering change if they could.

There was a clear awareness by officials that political pressure for greater openness was not something that could be ignored:

I note that there have been several instances recently where Select Committees have criticised the withholding of information...One wonders how far these are isolated occurrences or whether MPs are generally getting more restive about the provision (or lack of it) of information. Strictly this is for MP2, but we have a strong interest.⁷
Another official noted in response:

Thanks. I think it probably is for us (as ‘open government’) but I’m not sure we have enough yet for an initiative. What it is relevant to is the guidance to officials going before Select Cttees. We are due for a meeting with the LPS [Lord Privy Seal] on that.

The Lord Privy Seal subsequently wrote to Prime Minister Heath about the general relationship of the proposed guidance to a more open style of government.

I understand that the guidance embodied in the memorandum reflects what I might call the orthodox line which has evolved in the years since the Specialist Select Committees were first established. However, I believe that it would be right and consistent with our philosophy if officials were to adopt a more forthcoming approach in a number of respects. First, I believe that the encouragement we have given to senior civil servants accepting a greater personal responsibility for the execution of policies, which is inherent in the movement towards greater delegation and the concept of departmental agencies, requires us to allow a wider range of official witnesses...Secondly, I believe that we should move away from the rigid doctrine about the extent to which officials should discuss policy matters...

Prime Minister Edward Heath responded to the Lord Privy Seal’s minute on 25 April 1972, and was unpersuaded of the desirability of allowing civil servants a wider power to discuss policy with select committees. Within the CSD, the Prime Minister’s intervention was seen as having decided the matter.

We now have the Prime Minister’s reply to the Lord Privy Seal’s proposals of 24 March. It is distinctly unfavourable. In effect, we have been turned down on all three of the suggestions which the Lord Privy Seal made. The Prime Minister doesn’t even think that any more detailed instruction on the attendance of official witnesses is necessary, and wishes to be consulted before any change even to the existing guidelines is made. In the circumstances, I don’t see much point in seeking to contest this decision. The time is obviously not ripe for these changes yet (though I am convinced myself that they will come).

In the late 1970s, as the Procedure Committee’s request for a copy of the Guidance was being discussed, the same internal debate re-emerged between supporting ‘open government’ and the need to protect the position of civil servants in front of select committees. The outgoing Head of the Civil Service, Sir Douglas Allen, was largely comfortable about sharing the document, suggesting it was consistent with a commitment to open government.

I have shown Sir Douglas Allen your minute of 22 December. He has looked quickly through the relevant guidance GEN 76/78 and at a quick reading he finds it difficult
to see anything in this guidance which could not be given to the Select Committee. He is reinforced in this view by our present policy approach towards openness generally. He therefore considers that the right course would be to put to Ministers the proposal that we can see no objection to issuing the guidance in full, and to ask them whether they have any objection.\textsuperscript{12}

The general inclination of Sir Douglas Allen towards openness did not immediately sway the strong objections of other civil servants working on the matter, who determined to make the alternative case. In a minute dated 23 December 1977, one Cabinet Office official described his desire to change Sir Douglas Allen’s mind:

Mr Russell and I are considering how the general arguments against this course can be best presented to him, drawing attention also to a number of particular passages in the memorandum which it would seem especially inappropriate to have on the public record.\textsuperscript{13}

The matter was raised with the Cabinet Secretary, Sir John Hunt in January 1978. A Minute from Permanent Secretary to the Civil Service Department, also jointly the Head of the Home Civil Service, Sir Ian Bancroft, outlined the background to the request from the Procedure Committee, before asking for Hunt’s views.

In favour of complete disclosure is our general stance on openness following the line taken by the Prime Minister and Douglas Allen’s letter of July 1977 on disclosure of official information…On the other hand, there are arguments against disclosure of the document as it stands. It was not drafted with publication in mind, and therefore contains some infelicitous phrases, apart from generally being written in a tone which just might be regarded as provocative…\textsuperscript{14}

Bancroft was quite willing to make clear his own preferences having weighed up those arguments.

Despite the contrary arguments, my own feeling is that I would like to put to Ministers the proposal that we should issue the document as it stands. I accept there are some risks of embarrassment in this course but I do not think any of the embarrassments are great enough to justify going against our general “open government” stance.\textsuperscript{15}

Hunt replied on 16\textsuperscript{th} January, agreeing that “…in itself disclosure would be a disadvantage not a disaster, whereas refusal would be difficult to square with the Government’s general stance on open government and could provoke a confrontation."\textsuperscript{16} Hunt also indicated that it was possible the Procedure Committee might have already procured its own private copy of the guidance.
On 17 January 1978 the matter was elevated to ministerial level through a confidential minute from Sir Ian Bancroft to the Lord President and the Lord Privy Seal. The minute outlined the issue, and presented the competing arguments. Ministers on the whole were inclined towards full disclosure to the Procedure Committee. A reply of 19 January stated that: ‘The Minister of State has seen Sir Ian Bancroft’s note of 19 January to the Lord Privy Seal and commented that, having done so, he is confirmed in his view that the memorandum should be disclosed to the Procedure Committee.’ A minute from the Lord President, Michael Foot, to the Prime Minister on the 23rd January 1978 confirmed this conclusion, having first rehearsed the arguments for and against the release of the guidance. It concludes that:

Despite the difficulties, the meeting agreed that the risks of embarrassment in full disclosure would not be sufficient to justify going against our “open government” stance. More generally, now that the fuss about the BSC [British Steel Corporation] papers has largely died down I am keen to avoid providing the House with yet another ‘cause celebre’ at a sensitive stage in our legislative programme.

In summary, the files make clear that both civil servants and ministers were not only aware of the ‘open government’ agenda, but were willing to support it even where there was some risk of embarrassment to the government. Equally, individual civil servants voiced clear preferences for and against the document’s release, highlighting the degree to which individual agency played a key role in internal debates.

2. Protecting Civil Servants

As the Guidance was being revised in 1971 for internal distribution, various departments weighed in with their views on what should be included in order to best protect civil servants. For example, the Scottish Office wrote:

More generally, we think the memorandum as a whole would be more helpful if it were found possible to give more specific guidance on such matters as the kinds of evidence which should be refused even in closed session, what an official should do if the Committee is persistent and how in the last resort the matter is pursued if the Committee thinks refusal is unreasonable….there is a risk with a memorandum of guidance of this kind that it will end up by telling people what to do in relatively straightforward circumstances and fail to provide assistance on the very occasions when it is most wanted.

The CSD internally noted the Scottish Office’s ‘touching plea for more guidance on what to do if a committee presses an official for information which cannot be disclosed.’

Ultimately, the option of making the document more prescriptive in this way was not pursued.
These 1971 questions about the level of protection afforded by the rules were superseded in 1977 by questions on whether the rules were in fact suitable for external publication, when the Procedure Committee sought a copy of the guidance. An initial draft response to the Procedure Committee’s request was provided to the CSD’s Permanent Secretary, Sir Douglas Allen, for consideration. The accompanying minute emphasised the dilemmas that would be inherent in releasing the written guidance to the Procedure Committee.

The latter request takes us into very difficult territory indeed. It will be necessary to tread an exceedingly narrow path between demonstrating the readiness of the Civil Service to be as helpful as possible to House Committees, and making clear that there are a number of kinds of information that really cannot be disclosed, including the CSD guidance circular itself (GEN 76/78).\textsuperscript{21}

The CSD official who drafted the minute – Sandy Russell – penned a new minute listing in greater detail his concerns about the potential release of the memorandum. His concerns highlight the difficulties inherent in making civil servants accountable to two masters – the executive and the Parliament. It placed them in the awkward position of having to protect information that their ministers might not want released, and as a result face the opprobrium of MPs on committees who would see civil servants as obstructing the right of democratically elected representatives to know what the government was doing. Russell segmented these difficulties into specific points.

(a) It could well make life more difficult for departments when dealing with select committees. Committees would be given ammunition to challenge departments when they were exercising their discretion to refuse information, by placing a different interpretation on the relevant part of the guidance. The detail with which the document necessarily deals with each of the reasons for not disclosing information would provide plenty of toe-holes for committees to create additional difficulties for Civil Service witnesses.\textsuperscript{22}

Russell went on to point out that the reason the Guidance had been maintained as an internal government document up to this point was that it acted as a training manual for civil servants on how to avoid tactical missteps in front of a select committee.

(b) By its nature the document is partly a tactical guide for Civil Servants on how not to get “boxed in” so that they are required to supply more information than the Government would wish to expose. This is a perfectly legitimate exercise of internal government administration but could be badly misinterpreted if taken out of context. Paragraph 31 (i) is a good but far from isolated example – in effect the message there is what committees do not know exists, they cannot ask troublesome questions about.\textsuperscript{23}
In further internal correspondence in January 1978, officials discussed problems with specific paragraphs in the Guidance and what reaction they might draw if they were made public. Michael Townley in the Cabinet Office wrote:

... knowledge of the document would be likely to make the position of official witnesses more difficult by making public the limits to which they can be pushed. These limits, as stated, must inevitably be matters of opinion and judgement. At the moment, it is the witness’ private judgement, but if the criteria are publicly known, he seems bound to be pressed further.\textsuperscript{24}

Ultimately, ministers decided to release the document to the Procedure Committee. A formal reply was provided under the signature of the Lord Privy Seal (Lord Peart) and hand-delivered to Mr Proctor, Clerk of the Procedure Committee, on 27 January 1978 along with 20 copies of the Guidance Memorandum. The letter, addressed to the Committee Chairman, Sir Thomas Williams QC MP, described the Memorandum (GEN 76/78) as follows:

This is very much a working document designed to assist civil servants involved on behalf of their Ministers in giving evidence before or preparing memoranda for Select Committees. It provides information about the Select Committee system, about arrangements within Departments and inter-Departmentally for dealing with requests from Select Committees, and about issues on which civil servants should seek advice from Ministers.\textsuperscript{25}

The Procedure Committee went on to append a copy of the Guidance to their official report – effectively making the Guidance public. But in doing so, the Committee offered little critique of the rules, meaning the public release did not therefore attract wide media scrutiny.

This became apparent in 1979/80 as, despite the document’s effective public release by the Procedure Committee the year before, officials began a fresh internal dialogue of concerns and arguments about the proposed official public release of the Guidance by the Thatcher Government. Some departments were very keen to make changes to the Guidance, whilst the CSD was keen to minimise any change to the version released to the Procedure Committee in 1978. For example the Department of the Environment wanted the guidance to engage with concerns that ‘if an official is ordered by name to appear before the Committee and fails to do so he is liable to be proceeded against for contempt.’\textsuperscript{26} The CSD responded a few days later, clarifying that there was no authority for the proposition that officials could be liable ‘even in theory, to contempt proceedings if they withhold evidence.’\textsuperscript{27} The CSD view was that the ‘responsibility for the provision of information or the refusal of information lies with Ministers’, and that this in itself protected officials from any contempt proceedings.\textsuperscript{28}
The Department of Defence was also very awake to the dangers involved in the greater publicity that would flow to civil servants who appeared before select committees. They lobbied for new wording such as: ‘In giving evidence for broadcasting, witnesses should remember that a slip of the tongue, hesitation or use of a particular tone or emphasis may attract public comment where it otherwise might not.’ In reply, the CSD was willing to allow some statement of warning about avoiding slips of the tongue, but stated that: ‘I would myself expect witnesses to be only too well aware of the danger of conveying unintended nuances when proceedings are being recorded.’

3. Defending Established Westminster Conventions

In 1958, then Cabinet Secretary Norman Brook internally circulated a two page letter of advice on ‘Evidence by Official Witnesses at Committees of Enquiry.’ The two pages stated the fundamentals that were later to form the basis of the Osmotherly rules. He stressed that official witnesses ‘...should in particular avoid appearing to express personal opinions which conflict with a public Ministerial statement.’ Interestingly, given subsequent developments, Brook was firmly of the view that a more formal written guidance was undesirable.

In conclusion may I say that it does not seem to me to be practicable to formulate any precise code of rules to govern the giving of evidence by official witnesses at Committees of Enquiry. In this letter I have not attempted to do more than to set out some of the main considerations which should be borne in mind.

As has been noted, a written guidance was subsequently developed despite Brooks’ views on the undesirability of a more formal document. The 1971 version picked up on similar sentiments to the original two-page Brook letter, talking about the need to avoid ‘political controversy’.

If [sic] is for officials to answer questions of fact, to explain the administrative reasoning behind a policy, and to answer questions in the field between day-to-day administration and high policy which might be called “administrative policy”. But if they are asked questions in the field of political controversy, using the term in its widest sense, they should say that this is a matter for Ministers on which they cannot answer. (para 26)

Set out equally clearly was the need to preserve the conventions of collective ministerial responsibility.

Departmental witnesses, whether in closed or open session, should preserve the collective responsibility of Ministers and their departments by not revealing (except so far as this is implied in what is proposed in para 26 below) the level at which
decisions were taken...It should also be borne in mind that decisions taken by Ministers collectively are normally announced and defended by the minister responsible as his own decisions and it is important that no indication should be given of the manner in which a Minister has consulted his colleagues.\(^{(35)}\) (para 24)

Internally, officials debating the potential contents of the 1971 revised Guidance were determined that the document should reflect the flows of responsibility and accountability in the Westminster system.

As I said in my minute of 1 December, the confidentiality of the advice given to Ministers seems to me to be a fundamental feature of our system. This is not inconsistent with developments towards greater delegation and accountability...The Chief Executive of the Procurement Executive, for example, is accountable to the Secretary of State for Defence, whose policies he carries out. And in turn his line managers are accountable to him. But he is not accountable in this sense to Parliament or anyone else. The Secretary of State remains accountable to Parliament for the policies of the DPE and for the decisions taken. So the need to avoid revealing the level at which decisions are taken or the nature of the advice given to Ministers remains.\(^{(36)}\)

Concerns about protecting Westminster traditions were strongest within the Cabinet Office, where Cabinet Secretary Burke Trend penned a minute to the Prime Minister. Whilst he focussed his remarks on the undesirability of revealing to Select Committees the details of cabinet committees, he touched on the core arguments against a more open approach to appearances before select committees.

The reasons why successive Governments have always refused to disclose these details derive, basically, from the almost instinctive attitude of any Government that the Executive should present a single, unified front to the Legislature....the trust and confidence between colleagues, which are essential to the honest discussion of differences of view, could not be expected to survive intact if the means by which those differences are resolved were exposed to public examination.\(^{(37)}\)

Officials within the CSD were on the whole more inclined towards an ‘open government’ approach, although there was an awareness that an open government line should not be taken as support for some kind of carte blanche approach to committees.\(^{(38)}\)

The right of the executive government to protect its internal workings from parliamentary scrutiny remained a key theme when officials were discussing the potential release of the document to the Procedure Committee in 1977/8. One official reflected on the absolute central part that privacy of advice played in effective government.

Reflecting on the phone conversation we had on this, the argument that looms large in my mind is the point that if all central governmental directions to individual
members of the Civil Service are to be potentially liable to publication, it will become increasingly difficult for any effective instructions to be given in many areas of public administration...It may be argued that instructions to civil servants as to how to conduct themselves when confronted by a committee of Members of Parliament are a special case, but I do not think this is so.\textsuperscript{39}

4. Strategic and Tactical Thinking

There was an internal awareness that what Civil Servants said when appearing before select committees had to be considered in tactical terms. For example a ‘Note for the Record’ by one CSD official who had been approached by a department for advice on what they could reveal to a select committee stated: “On the other hand, there was clearly a tactical question for DOE here, on the extent to which revealing this information would lead to awkward questioning either of DOE officials or of those of the bodies concerned.”\textsuperscript{40}

Similar levels of strategic calculation were in evidence when the Procedure Committee approached the Government in 1977 to procure a copy of the Guidance. One CSD official, firmly against the idea of releasing the document to the committee, nevertheless could see strategic reasons why some response was required.

It seems to me that this request is couched in terms which require some sort of positive response. While I do not think that we could possibly make available GEN 76/78, I am sure that we have to summarise for the Committee the gist of the guidance which we do provide for officials. Otherwise, there will be a not unjustifiable “song and dance” about the matter and fuel will be added to the fire of those criticising the Civil Service for its “conspiratorial” efforts to deny Parliament the opportunity to scrutinise the Executive.\textsuperscript{41}

In the Cabinet Office, an official penned a response to the CSD minute above, praising the ‘general tone’ of the draft letter, and supporting the need for a tactical response to the Procedure Committee’s request:

It seems reasonable, however, to take a fairly bland and generalised line at this stage, reserving any necessary detailed defence of our position (eg the relevance of Crown privilege to Departmental documents) to a later stage if the Committee put forward recommendations for formal rights of access to files, etc.\textsuperscript{42}

The CSD official – Sandy Russell – whilst against releasing the Guidance, was also aware of the problems that would ensue from any attempt to sanitise the document before releasing it. ‘We think there would be a great danger that the reissue of a revised document would be seen by the Committee as a rather contrived way of shielding information from the Committee and could well lead to accusations of bad faith.’\textsuperscript{43} There was also the
danger that the CSD, as ‘keeper’ of the Guidance, might itself get drawn into battles between departments and select committees. Russell’s colleague, J.B. Pearce, noted: ‘[W]hether the document itself is released or not, we will need to be careful to avoid any suggestion that the CSD can be drawn into acting as an arbitrator between Select Committees and departments through its “guardianship of the doctrine”. There is obviously a risk of this.’

The internal debates around the potential release of the document reflected various levels of tactical and strategic awareness. One official saw no problem in theory with releasing the document, but was concerned about the practical impacts. ‘The reasons for not wanting full disclosure are of a kind which weigh with those in Government, but are commonly treated with derision and suspicion by those outside government.’ The official advocated strongly against releasing the guidance on wider strategic grounds.

My own initial view was that, notwithstanding the persuasive arguments against publication, Sir Douglas Allen and Sir Ian Bancroft were right in making a broader judgement that the disadvantages of disclosing this particular document were outweighed by more general considerations of openness. But this is when one looks at this specific request in isolation; and in my view that would be most imprudent. The voluntary disclosure of this document would break new ground, and there could hardly be a less opportune time for such a relaxation. The Select Committee on Procedure are concentrating on two aspects, the legislative process and the Select Committee system. They seem bound to recommend some development of the Select Committee system, which in turn would mean more, and more determined, requests from Select Committees for Government information and documents. The Government should surely stand firm on existing well-established practices, which have the effect of limiting the extent to which Select Committees can in practice demand information and documents, until the Committee’s recommendations have been received and considered.

What emerges clearly from the correspondence surrounding the release of information to select committees is the strategic awareness of the CSD that precedents have power. In other words, if information were released in one case, the argument for not releasing it in another case was immediately diminished. And the basis for their concerns was to prevent the Parliament from undermining the capacity of the executive to work in a trusting way with the Civil Service.

Soon after the arrival in office of the Thatcher Government and the establishment of the new Select Committee system in June 1979 – based on the recommendations of the Procedure Committee’s report of the previous year, officials noted the need to revise GEN 76/78 – the Memorandum of Guidance for Officials Appearing Before Committees. ‘It was agreed that as few changes as possible should be made and, so far as can be managed, the redraft should avoid raising new points of possible controversy with Parliament.’ But
areas that were raised for change included clarification ‘...in particular the emphasis on the fact that civil servants attend solely on behalf of Ministers....’

It was an approach that certainly found favour with the relevant officials in the Cabinet Office, especially given the newly ‘public’ nature of the document.

In general, however, I am, as you know, entirely in agreement with the proposed low-key approach to this revision since I suspect that it would be a major tactical error if Departments were to try and define at this stage the range of information, and the conditions for its disclosure, that they were prepared to make available to the expanded select committee system...In any event it may be better for agreements on disclosure to particular committees to be recorded on a private basis, rather than in what must now be regarded as a public memorandum.

There was an awareness that the document would be a public one, and therefore needed to be worded carefully. For example, a Cabinet Office official noted in relation to paragraph 15 of the draft rules: ‘The expression “the interests of good government” sounds a bit patronising, especially in a paper which we know is likely to be published.’ The Treasury expressed concern on a number of points, including that ‘...our right to withhold the provision of market sensitive financial information should be foolproof and fully protected.’

In general, there was also a strategic awareness by officials of what should and should not go to ministers, and how to actually get things done. For example, in an internal CSD minute one official notes that they may have to give in to some suggested changes by the Department of Industry rather than have the matter escalate. ‘We are trying to leave as little as possible – preferably nothing – for resolution by Ministers and it seems possible that, if we stand out against any change at all, this could be taken to Ministerial level.’ Similarly, the suggestion that the re-drafting team should consult with the new Liaison Committee for the Select Committees as a whole, was considered a poor strategic option.

I have spoken to Mr Townley about consultation with the Liaison Committee on the Memorandum. He would be inclined to advise Mr St John Stevas not to consult the Committee. He thinks that they would undoubtedly conceive it their duty to subject it to fundamental re-examination, and that they might come up with major proposals which reflected members’ individual viewpoints rather than according with the more carefully considered views of the Procedure Committee. If, on the other hand, the Memorandum was not volunteered but simply handed over if and when it was requested, with the comment that this was simply the previous Memorandum slightly revised to bring it up to date, he thought the Government could not fairly be criticised.
This tactical approach was fully endorsed by ministers when the argument was put to them. Tactics could extend even to such questions as whether to put a cover on the document when it was published. One official noted: “I would not myself favour putting a cover on the Memorandum. We want this to look as much as possible like the original Memorandum GEN 76/78, which was published by the Procedure Committee in their report.”

5. Informal Communication Channels

The final category that emerges from the files is the degree to which informal and ‘unofficial’ channels of communication across the civil service could influence both individual and communal action. For example, in 1971, the Government Chief Whip (Frederick Warren) suggested that the draft memorandum be shown to one of the Clerk’s of the House – Richard Barlas – for his comment. Such was the level of internal control of the document that one civil servant – R.S. Allison – expressed hesitancy about “a Clerk seeing paras. 11-14 and 18-20, & possibly 24. On balance I doubt if it’s worth it.” Allison’s correspondent agreed.

Mr Allison

I share these doubts. Tell Warren so. But Barlas is a sensible chap, & if Warren presses the point, I’d let him pass on a copy for personal comment as a respected expert, stressing that while the substance of the document is no contempt of the House – it’s all well established doctrine – the tone is obviously different from what would be in a published document.

The belief that a Clerk was a ‘sensible chap’ could clearly influence decisions on whether or not they were to be trusted with an internal document like the Memorandum of Guidance. In this case, the CSD had judged their man correctly as the Clerk in question – Barlas – certainly felt sympathy for the difficult position of civil servants. Barlas, writing to W.C. Beckett, the Legal Secretary in the Law Officers’ Department, confided: ‘Privately, may I say that my sympathies lie with Civil Servants who are frequently put in an impossible position when appearing before Select Committees.’ There was a similar exchange within CSD on whether a clerk of the House of Lords (J. M. Davies) should be shown a copy of the draft Memorandum for comment, given the fact that he was not a civil servant. The correspondence noted that ‘I regard Davies as ‘one of us’ for this purpose (I think he’s on secondment). Send it to him, explain this, & ask him to keep it to himself...”

Some departments were keen to have ‘informal’ channels of advice acknowledged in the Guidance document, to act as a kind of help sheet for civil servants. For example, the Home Office wrote:
On the other hand, we have always had friendly and co-operative dealings with the Clerk to the Select Committee on Race Relations and Immigration and, if our experience in this is thought to be typical, we think it might be worth putting something on the subject into the draft between paragraphs 33 and 34. We suggest something on the following lines:—

“The clerks to the specialist committees will usually be glad to talk informally to Departments about their committees’ work and to co-operate by, for example, providing the Departments most concerned with the confidential proofs of evidence taken by the committee.”

Ministers too could try and utilise such informal lines of communication. When, in 1978, a version of the Guidance was released to the Procedure Committee, the files show that ministers tried informally to ask the committee not to make it public with its report. A confidential memo to the Prime Minister’s office from the Lord Privy Seal’s Office on 27 January 1978 noted:

You will wish to know that Lord Peart spoke to Sir Thomas Williams by telephone this afternoon. Sir Thomas said that his request for the memorandum had been imposed on him by his Committee (one or two of whom wanted to instigate a trial of strength), that he was very grateful to have the memorandum made available and that he would do all in his power to keep it totally confidential.

A meeting between the Lord Privy Seal and the Procedure Committee Chairman, Sir Thomas Williams, took place on 21 June, with Williams conceding that he had been unable to dissuade the Committee from its desire to publish the Guidance in its report. According to the minute describing the meeting, Sir Thomas felt the government should shoulder a measure of the blame itself.

Sir Thomas Williams added that his attempts to prevent publication of the entire document had been less successful than they might have been because Lord Peart’s original letter had not expressed strong concern at the possibility of publication; this had been taken by some members of the Committee to indicate that the Government did not really feel that publication should be avoided.

The minute goes on to indicate that the Committee itself had perhaps not expected at first that it would follow this route, with the secretary of the Procedure Committee informally acknowledging to the Lord Privy Seal’s private secretary that: ‘[h]is personal estimate was that the Committee had surprised themselves with their own boldness in agreeing to publish the memorandum and, although they had formally to review their Report as a whole, they would now be unlikely to reverse their decision.”

The ability to maintain good informal relations with committees was still front of mind for some departments when they were consulted in 1979 about the upcoming official
release of the Osmotherly rules. For example, the Department of Industry and Trade emphasised that some informal good relations with committees might be endangered by a guidance that was too specifically heavy-handed in its approach.

Paragraphs 43 and 46 of the draft, concerning disclosure of confidential information, need some reconsideration in the light of actual practice. The rigid instruction in paragraph 43 is that such information should not be made available until the Committee have agreed to treat it accordingly. It may be right to insist on an advance undertaking in respect of highly classified or particularly sensitive material, but in our areas such insistence would usually be unnecessary and tactless. For written evidence it is often sufficient to make the confidentiality clear in the covering letter to the Clerk, or at most to obtain an informal advance assurance from the Clerk by telephone. For oral evidence we are usually content with an assurance that the Committee are prepared to be reasonable about later requests for sideling.

The View from the Civil Service

The internal debates within the Civil Service about the guidance document for civil servants appearing before parliamentary committees reveal some important things about the skills and views of senior civil servants in the 1970s, and the institutional context in which they operated. Firstly, the departmental files show a very high level of political and strategic awareness amongst the senior civil servants involved. It re-confirms that senior civil servants did not equate being impartial with being unaware of the potential political consequences of their actions. For example, in 1978 civil servants had the strategic awareness to suggest that a summarised copy of the document might be less damaging if released to the Procedure Committee, but also had the political awareness to realise that this could be seen as ‘doctoring’ the document for public consumption. Civil servants saw themselves as having a legitimate role to play in helping the government to avoid political as well as administrative pitfalls.

Secondly, there was a commitment to collegial debate and decision-making, with the correspondence reflecting very frank and open discussion between senior civil servants. Both in its internal revision in 1971, and in its proposed public release in the late 1970’s, the guidance was not considered in isolation by one part of the bureaucracy or one individual, and was viewed through the lens of its potential whole-of-government implications. This extended in the latter stages to collecting from all departments examples of disputes they may have had with select committees in the past, to prepare the Civil Service and the government for any future requests for controversial documents by select committees.

Thirdly, there was a strong protective instinct amongst some of the officials involved in both the CSD and the Cabinet Office about the rights of civil servants to have some
protective guidance with which to resist the questioning of MPs. Officials showed an awareness of the underlying tension between displaying their constitutional loyalty due to the government of the day and being seen to unduly obstruct the democratic workings of the Parliament. Even in this pre-24/7 media age, officials were aware that MPs had the ability to raise a ‘song and dance’ against the Civil Service for being seen to stifle the legitimate requests of democratically elected representatives. Nevertheless, officials were well aware that the underlying purpose of the internal document was to make sure that civil servants did not become the ‘fall guy’ for questions that should more legitimately have been directed at ministers. But importantly, civil servants did not see themselves as engaging in blocking tactics against the government of the day. Rather, their views reflected their own belief that their role was to work with ministers to protect against the ‘unwestminsterly’ incursions of parliamentary committees into the business of executive government.

Fourth, the files show quite clearly that wider government policy settings did weigh heavily on senior civil servants in both 1971 (when revising the internal document), and in 1977-80 (when contemplating the public release of the document). The Government’s wider commitment to ‘open government’ was acknowledged and given due weight as officials decided on the best course of action. In 1977/78 in particular, it was considered both in terms of whether withholding the document would breach the wider policy setting, and what the political and administrative consequences of such a breach might be.

Fifth, the files indicate just how quickly ‘whispers’ can become firm facts within the upper echelons of Whitehall. For example, there was considerable discussion in the 1977/78 correspondence of the likelihood that the Procedure Committee might already have informally seen or received a copy of the guidance, meaning there was little point now in withholding its publication. This was later revealed to have been speculation based on a ‘chance remark’ from the Clerk of Committees to a cabinet minister’s private secretary. Further investigation in fact then showed it to be very unlikely that the Procedure Committee had received an earlier copy. Nevertheless, the speculation was sufficiently strong that it was mentioned in the correspondence – including by the Cabinet Secretary – as a factor that needed to be taken into account.

Finally, it re-iterates how important and influential the views and opinions of individual civil servants can be, even when operating in a highly institutionalised and structured civil service setting. The judgement of each one of the chain of officials involved was crucial to determining what should be included in the revised guidance in 1971. The same level of judgement was central to understanding the dangers inherent in meeting the Procedure Committee’s request in 1977/78, and whether those dangers were outweighed by the risks of adverse publicity if the document were withheld.

This study demonstrates that views attributed to the Civil Service as an institution are not necessarily matched by the views of the individual actors within that institution. Through a close study of these historical files through an interpretivist lens, bureaucracy
comes to life not simply as a coherent institutional machine, but as a collection of actors with differing views on what the Westminster system means, and with different views on what the demands of ‘open government’ require. These differing views were openly exchanged and debated in a trusting internal environment, with due deference paid to the ultimately hierarchical nature of definitive decision-making once all arguments had been considered.

The correspondence examined here certainly suggests an awareness by senior officials that the public release of the guidance in the late 1970s would be embarrassing because it might be seen as evidence that the Civil Service was working to conceal things from select committees. But in concealing things from the ‘sovereign parliament’, civil servants believed that they were preserving their core loyalty to the wishes of the government of the day. The internal debates about the public release of the guidance lays bare the difficulties for civil servants in having to operate as agents of two competing principals – the parliament and the executive. Finding it impossible to please both masters all of the time, it is perhaps little to be wondered at that officials should have reacted with caution to the public exposure of what have come to be known as the Osmotherly rules.
References

Primary Sources:

The footnotes refer to ‘TNA’ files, denoting “The National Archives”, with references by file number and date of correspondence. Files cited include:

- TNA: BA 17/595
- TNA: BA 17/596
- TNA: BA 17/1143
- TNA: BA 17/1147
- TNA: BA 17/1194
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1 TNA: BA 17/1196. Minute from Michael Townley to Mr Gordon-Brown, 12 January 1978.
2 TNA: BA 17/1196. Letter from W.A. Proctor (Clerk to the Procedure Committee) to Sir Douglas Allen (Permanent Secretary CSD and Head of the Home Civil Service), 14 December 1977.
3 TNA: BA 17/595. Minute from R A J Meyer to P. Mountfield, 29 November 1971, quoting the views of the parliamentary secretary.
5 TNA: BA 17/595. Minute from C.D. Stevens to P. Mountfield, 1 December 1971 – handwritten annotation by Mountfield, dated 2 December.
6 TNA: BA 17/596. Minute from T H Caulcott to Mr Gilmore, 10 February 1972.
7 TNA: BA 17/596. Minute from C D Stevens to Mr Caulcott, 29 February 1972.
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9 TNA: BA 17/596. Minute to the Prime Minister from Lord Jellicoe, 24 March 1972.
10 TNA: BA 17/596. Minute from Prime Minister to Lord Privy Seal, 25 April 1972.
12 TNA: BA 17/1196. Minute from J. Hobson (PS to Sir Douglas Allen) to Sandy Russell (CSD), 22 December 1977.
14 TNA: BA 17/1196. Minute from Ian Bancroft (Permanent Secretary CSD) to Sir John Hunt (Cabinet Secretary), 5 January 1978. The Attorney General was later to advise that it would be better not to refer to the “infelicitous turns of phrase” when sending the Memorandum to the Procedure Committee (TNA: PREM 16/1788, Minute from W.C. Beckett to J.K. Moore, 26 January 1978).
15 TNA: BA 17/1196. Minute from Sir Ian Bancroft (Permanent Secretary CSD) to Sir John Hunt (Cabinet Secretary), 5 January 1978.
16 TNA: BA 17/1196. Minute from Sir John Hunt (Cabinet Secretary) to Sir Ian Bancroft (Permanent Secretary CSD), 16 January 1978.
18 TNA: BA 17/1196. Minute to the Prime Minister from Michael Foot, 23 January 1978.
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27 TNA: BA 17/1143. Minute from Brian Pearce (CSD) to John Dole (Director of Senior Staff Management, Department of the Environment and Department of Transport), 9 October 1979.