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## GIVING EVIDENCE BEFORE THE PAC

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### APPEARING BEFORE THE COMMITTEE

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#### Introduction

**4.1** An Accounting Officer may expect to be called upon to appear before the Committee from time to time to give evidence on the reports arising from NAO examinations; and to answer the questions of the Committee.

**4.2** An Accounting Officer will be expected to furnish the Committee with explanations of concerns and issues that have been brought to the Committee's attention through C&AG reports. An Accounting Officer will have delegated authority widely, but cannot disclaim responsibility. Nor, by convention, does the incumbent Accounting Officer decline to answer questions where the events took place before taking up appointment; although the Committee may be expected not to press the incumbent's personal responsibility in such circumstances.

**4.3** The Committee occasionally invites former Accounting Officers to appear in tandem with the serving Accounting Officer as a witness, where the Committee believes that the former Accounting Officer is better placed to provide a first hand account of events than others or where the Accounting Officer has moved on shortly before the hearing. The purpose in recalling former Accounting Officers is to clarify matters and not to apportion blame.

#### Accuracy of Evidence

**4.4** The Committee has emphasized the importance it attaches to accuracy of evidence, and the responsibility of witnesses to ensure this. The Accounting Officer should ensure that he or she is adequately and accurately briefed on matters that are likely to arise at the hearing. The Accounting Officer may ask the Committee for leave to supply information not within his or her immediate knowledge by means of a later note. This should normally be supplied within **10 days**. Should it be discovered subsequently that the evidence provided to the Committee has contained errors, these should be made known to the Committee at the earliest possible moment.

#### Disclosure of Advice to Ministers

**4.5** In general, the rules and conventions governing appearances of officials before Parliamentary Committees apply to their appearance before the Committee, including the general convention that civil servants do not disclose the advice given to Ministers. There are exceptions including:

- Ministerial Directions overruling the Accounting Officer's advice as to the regularity and propriety of expenditure – the disclosure of the details of Ministerial Directions is subject to procedures under the Code of Access to Government Information and from 1st January 2005, the Freedom of Information Act; and details can be given to the PAC; and
- Ministerial Directions overruling an Accounting Officer in a matter of prudent and economical administration, efficiency, or effectiveness of a particular course of action.

**4.6** In such cases, the C&AG will have made clear in the report to the Committee that the Accounting Officer was overruled. The Accounting Officer should, however, avoid disclosure of the terms of the advice given to the Minister, or dissociation from the Ministerial decision. Subject, where appropriate to the Minister's agreement the Accounting Officer should be ready to explain the reasons for such a decision and may be called on to satisfy the Committee that all relevant financial considerations were brought to the Minister's attention, before the decision was taken. It will then be for the Committee to pursue the matter further with the Minister if they so wish.

### **Treasury Officials and the Committee**

**4.7** The Treasury Officer of Accounts (TOA) or their Deputy attends each Committee hearing and may be asked to comment on the evidence. They then speak as representatives of the Executive and are subject to collective Ministerial authority.

**4.8** The Treasury comments from the standpoint of the department that has:

- the formal responsibility for presenting Estimates to Parliament;
- responsibility for prescribing the form of accounts and the rules of government accounting; and
- responsibility for promoting good financial management in departments.

**4.9** This goes with the Treasury's central responsibility for the operation of public expenditure control. Parliament has traditionally regarded the Treasury as an ally in controlling expenditure.

### **Giving Oral Evidence**

**4.10** Committee Members will have been briefed by the NAO, although they may also have other sources of information on the subject to be discussed. Not all Members attend every hearing. The Committee is not party political and their questions will range for the most part on the report in front of them. Members tend to press hard on particular issues and points and are particularly concerned about taxpayers' money that may have been wasted as well as issues of propriety.

**4.11** The Chairman begins by introducing the subject of the hearing, inviting the Accounting Officer to introduce other supporting staff, and then asks several questions about the NAO Report, usually referring to specific paragraphs. Each Member that attends the hearing is then given ten minutes to ask questions. At the end, the Chairman and other members may ask supplementary questions and will close the hearing. Hearings usually last for one and a half to two hours depending on the number of members that attend. There may be interruptions during the hearing if the division bell rings and members are required to return to the floor of the House to vote.

### **Officials accompanying the Accounting Officer**

**4.12** The Committee prefers the number of officials and support staff accompanying the Accounting Officer to be kept to a minimum and expects that wherever possible:

- the Accounting Officer should personally respond to the Committee's questions; and
- accompanying officials should merely provide back-up information.

**4.13** Accounting Officers will wish to consider their representation at Committee hearings in the light of the Committee's views. There can be no hard and fast rules, but normally the Committee is unlikely to welcome more than two accompanying officials as witnesses. However, if two Accounting Officers appear together as witnesses, e.g. an Accounting Officer and an Agency or NDPB Accounting Officer, it is reasonable for each to be accompanied by one official.

**4.14** It is advisable for the Accounting Officer to take the lead in answering questions throughout the hearing, and to refer only exceptional questions to accompanying officials. The Committee is unlike other Select Committees because the Accounting Officer has a formal responsibility for all of the matters for which he or she is accountable.

**4.15** Sometimes the Committee summons non-official witnesses on its own initiative. They can be left out of account in determining the size of the Accounting Officer's team.

**4.16** The number of supporting officials immediately behind the witnesses could attract critical comment and should therefore be limited to the minimum necessary to provide key information. But conversely, if there is someone with particular knowledge or expertise on the subject in question, there can be criticism if he or she is not available.

**4.17** Support staff attending for other reasons (for example, because they have been involved in preparing for the hearing or may be involved in follow-up action) can sit elsewhere as members of the public. However, support staff should be kept to a minimum to leave room for members of the public. (They would have to leave if evidence was taken in private, but this is rare.)

### Private sector witnesses

**4.18** The Committee may also identify possible private sector witnesses and issue specific invitations to them to submit written or oral evidence. The House gives almost all Select Committees the power to send for "persons, papers and records". They therefore have powers to insist upon the attendance of witnesses and the production of papers and other material. These formal powers are rarely used.

**4.19** The Committee may call senior directors of private companies to give evidence on their own right or if it is investigating a private finance deal, or other private sector involvement in the delivery of a public service. In certain circumstances the Committee is seeking expert views on particular issues and the individual is there to provide independent expertise on the investigation. These witnesses will therefore be appearing to give their own personal or their employer's views and independent of any evidence the Accounting Officer may present. For example the Committee in June 2002 took evidence from Imperial Tobacco on the level of cooperation Customs received from the company in combating tobacco smuggling. Customs did not consider that the company had been as cooperative in tackling tobacco smuggling as they would have expected, or as the other major tobacco companies had been. The company subsequently resolved the issue, agreeing a Memorandum of Understanding with Customs in July 2003.

**4.20** Accounting Officers may, of their own volition, bring a director, specialist or other expert from a private sector firm who is working on a particular PFI project, or delivering a public service that is the subject to the Committee's investigation, to support him/her at the hearing. In these circumstances, the Accounting Officer will wish to set a clear framework as to what issues the expert may cover and the lines they will take. If the witnesses are likely to have different points of views on any issues likely to be raised at the hearing, it would normally be helpful to explore these jointly prior to the hearing to gain a better mutual understanding of the issues.

## Policy Issues

**4.21** The extent to which an Accounting Officer should respond to questions by the Committee on matters of policy was set out in Treasury guidance of 10 January 1992. This responded to Committee concerns that Accounting Officers were refusing to explain the reasons for policy decisions on the grounds that Ministers were responsible.

**4.22** The main point of the guidance is that the Accounting Officer should be prepared to say what he has done to fulfil his or her duties under the AO Memorandum. These duties are:

- to ensure that all relevant financial considerations are taken into account in the consideration of policy proposals and where necessary brought to Ministers' attention; and
- that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and as to all considerations of prudent and economical administration, efficiency and effectiveness.

**4.23** The Accounting Officer should be ready to inform the Committee about relevant factual information which the department has provided to the Minister in the context of a policy decision, including any background material and assumptions necessary for an understanding of the information. The amount of such information is a matter of judgment. For example, it may not be appropriate to disclose the options considered by Ministers and the Accounting Officer should not disclose the recommendations made by the department.

**4.24** An Accounting Officer should not be reluctant to explain the reasons for a decision merely because it has been taken by Ministers, but should do so, if asked, in terms that reflect the Minister's position. Where a decision has been announced, an Accounting Officer should be prepared to repeat any public justification of it. Where the decision has been implemented but not announced, the Accounting Officer should be prepared to explain it, having consulted the Minister beforehand in appropriate circumstances.

**4.25** In some cases, however, the reasons may not be clear, in which case the Accounting Officer is entitled to refuse to speculate about them. Also, if Ministers have decided that their disclosure would not be in the public interest, the Accounting Officer has no authority to speak on the matter except to say that Ministers have so decided. In order to protect the collective responsibility of Ministers the Accounting Officer should not give information about the machinery by which the decision was taken.

**4.26** An Accounting Officer should be prepared to explain the objectives of any expenditure programme for which he is accountable.

## Disciplinary Issues

**4.27** Committee hearings sometimes involve questions about the conduct of individuals, particularly where the hearing concerns regularity or propriety issues. The purpose behind the questions may not just be in the sense of establishing the facts about what occurred in making decisions or implementing Government policies, but with the implication of allocating individual criticism or blame. Paragraphs 70-74 of the **Osmotherly Rules** provide guidance on this issue in relation to Departmental Select Committees. Accounting Officers may find these rules will read-across to their appearance before the Committee. (The Osmotherly rules '**Departmental Evidence and Responses to Select Committees**' – are available from the Cabinet Office [www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/select\\_committees/index.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/select_committees/index.asp)).

**4.28** In such circumstances, and in accordance with the principles of Ministerial accountability, it is for the Minister to look into the matter and if necessary to institute a formal inquiry. Such an inquiry into the conduct and behaviour of individual officials and consideration of disciplinary action is properly carried out within the Department, according to established procedures designed and agreed for the purpose, and with appropriate safeguards for the individual. It is then the Minister's responsibility to inform the Committee of what has happened, and of what has been done to put the matter right and to prevent a recurrence. Evidence to a Committee on this should be given not by the official or officials concerned, but by the Minister or by a senior official designated by the Minister to give such evidence on the Minister's behalf.

**4.29** In this context, Accounting Officers should adhere to the principle that disciplinary and employment matters are a matter of confidence and trust (extending in law beyond the end of employment). In such circumstances, public disclosure may damage an individual's reputation without that individual having the same "natural justice" right of response which is recognized by other forms of tribunal or inquiry. Any public information should therefore be cast as far as possible in ways that do not reveal individual or identifiable details. Where the Committee may need such details to discharge their responsibilities, they should be offered in closed session and on an understanding of confidentiality.

**4.30** Evidence on such matters should normally be given on the basis that:

- information will not be given about Departmental disciplinary proceedings until the hearings are complete;
- when hearings have been completed, the Department will inform the Committee of their outcome in a form which protects the identity of the individual or individuals concerned except insofar as this is already public knowledge;
- where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding of its confidentiality;
- the Committee will thereafter be given an account of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in the Departmental arrangements.

**4.31** It is not the Committee's task to act as a disciplinary tribunal. Accordingly, if in the course of an inquiry the Committee were to discover evidence that called into question the conduct (in this sense) of individual named officials, the Committee should be asked not to pursue their own investigation into the conduct of the person concerned, but to take up the matter with the Minister.

**4.32** If it is foreseen that the Committee's line of enquiry may involve questions about the conduct of named officials, it should be suggested to the Committee that it would be appropriate for a Minister or a senior official designated by the Minister to give evidence, rather than the named officials in question. If an official giving evidence to a Committee is unexpectedly asked question which are directed at his or her individual conduct, or at the conduct of another named official, the official should indicate that he wishes to seek instructions from Ministers, and the Committee should be asked to allow time for this.

### Handling Sensitive Information

**4.33** It would clearly be inappropriate for evidence that a Department wished to be treated as confidential to be given at a public session of the Committee. If subjects to be discussed at a forthcoming public session are such that the witnesses would only be able to give substantive answers in confidence, the Department should write to the Chairman or the Clerk explaining why this is so. The Committee may then agree to take that part of the Department's evidence in closed session.

**4.34** If, despite such an approach, a Committee questions an official witness in public session on confidential matters, or if such matters are raised unexpectedly, the official should inform the Committee that the questions could only be answered on a confidential basis. The Committee may then decide to go into closed session or request a confidential memorandum. It is not for the witness to suggest that the Committee should go into closed session, as this is wholly a matter for them to decide. Further guidance on the handling of sensitive information, and the publication of transcripts of evidence, is covered in paragraphs 82-85 of the Osmotherly rules.

## PROVIDING UP-TO-DATE INFORMATION

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### General Points

**4.35** The Committee has expressed concern from time to time about the need for departments to provide it with accurate and up to date information.

**4.36** Accounting Officers should come to Committee hearings as well briefed as is reasonably possible on issues arising from the C&AG report. But it is understood by the Committee that Accounting Officers may not always be able to answer at the hearing questions that do not arise directly from the C&AG report. Moreover, on any issue there will be a level of detail beyond which an Accounting Officer will be unable to respond without notice, for example where a precise knowledge of individual facts is not central to the main issues under examination.

**4.37** It may also be difficult for Accounting Officers to respond on matters raised in letters and other submissions to the Committee from outside organisations or members of the public when these have not been seen by the witnesses or are only received very shortly before a hearing. Accounting Officers could ensure that they are briefed to answer at the hearing any questions of which they were given appropriate advance notice. Although on some points it may be necessary for a written note to be submitted to the Committee after the hearing.

### Updated Information

**4.38** Where necessary, Accounting Officers should be ready to cooperate with the NAO in bringing up to date material arising from a NAO report in good time for Committee members to consider at the hearing. It is for NAO to agree with the department concerned what new data is required, and who is responsible for preparing it. The NAO should then submit the new data to the Committee after clearance with the department.

**4.39** Departments for their part will inform the NAO in any cases where substantial new information becomes available to them, which supersedes material in the NAO report. Departments may also suggest that particular pieces of information should be included in a further note to the Committee or submit such information themselves after consultation with the NAO. It is important to bear in mind that the NAO needs time to consider the new material and provide relevant briefing to the Committee in advance of the hearing. This will sometimes involve needing to be certain that the new information is correct which can require additional investigation by the NAO.

**4.40** Where the NAO provides the Committee with additional factual information that is not included in its original report, this information should be cleared with departments and they should be told what has been provided to the Committee in time for the Accounting Officer to brief him or herself accordingly.

### Processing late information

**4.41** When new information - including papers - of direct relevance to the Committee's inquiry becomes available **shortly before** the Committee's meeting, it should be sent both to the Clerk to the Committee and the Comptroller and Auditor General.

**4.42** When important additional information – that is information which could affect the line of questioning when the Committee takes evidence – becomes available only a few days before the Committee's meeting and needs to be brought to the Committee's attention, Members will always wish to receive advance copies. This is to counter the possibility that interested parties may occasionally seek to influence the course of a Committee hearing by offering divergent views to the department and/or individual Committee members at a late stage, without themselves informing the Committee as a body.

**4.43** If the department passes any such papers to the Committee at the same time as to the Comptroller and Auditor General along with an explanation of the timing, any criticism of the lateness of the submission would focus on the source of the information rather than the department. Of course the Committee may not have time to fully assess late information, and equally, the Accounting Officer may need to make clear to the Committee that he or she has not been able to brief him or herself fully.

## GOOD PRACTICE AND USEFUL TIPS

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### Preparation before the hearing

- Read the **NAO** report thoroughly and familiarise yourself well with the key findings, facts, and any trends.
- Identify your own key issues and other things that may give rise to criticism and make sure these are covered satisfactorily in the briefing you are provided.
- Agree the format of the briefing so that you are comfortable using it.
- Ensure that you are provided with briefing in good time so that you have sufficient time to absorb it and ask for any additional material.
- Annotate the **NAO** report, as necessary, so that it is easy to refer to during the hearing. Members usually refer to a specific paragraph, page, fact, weakness, recommendation or conclusion when asking questions.
- Take note of any previous **NAO** report or **PAC** recommendations on the subject and what progress has been made as the Committee often refers to previous reports, recommendations, and failings.
- If appearing for the first time, talk to someone who has recently given evidence or watch a video recording to get familiar with the process and place. Meet the **Treasury Officer of Accounts** a few days before the hearing.
- Be familiar with Committee members' names, background, special interest or skill, and any case studies in the report or related subjects that are based in or around their constituencies.
- Set aside some free time before the hearing to collect your thoughts and reflect on the briefing.

## At the Hearing

- Be aware of your body language as hearings are often broadcast live on television, stay focused at the members with good eye contact and do not let the cameras distract you.
- Take the hearing seriously and use suitable tone to demonstrate that.
- Listen carefully to the questions and don't hesitate to ask for any clarification.
- Give a considered and direct answer to the question put to you, don't try to fudge it or prolong the answer as each member is given a limited time for questioning.
- Do not try to pass questions put to you to your colleagues unless they have the specific expertise and knowledge to answer them.
- Do not argue about the findings of the report as these would have been discussed and agreed with you.
- Do not use the excuse that you were not in the post during the period covered by the report. Remember you are answerable, but not accountable, for what might have happened before you joined.
- Do not dig in to defend what is clearly indefensible; it is better to admit failings at the start and to be positive and forward looking and set out what has been done or planned to set things right.
- Remember NAO reports are not just about things going wrong but also about work done well and identifying good practice; be ready to draw attention to those that are in the report in order to present a balanced picture of the department's achievements.

## Bear in mind...

A quotation from the PAC Chairman on the quality of answers given at a hearing:

**“I have to say, you have been, in the last three hours, a master of obfuscation and there is no point in having a parliamentary inquiry if we are subjected to platitudes. It is only in the last couple of questions in that line of questioning that you actually told us something of interest as opposed to expressing general expressions of apple-pie and motherhood.. That is my opinion.”**

## RELEVANT GUIDANCE

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DAO(R)1/92 “The PAC and Matters of Policy”. On the Treasury’s website at:

- [www.hm-treasury.gov.uk/media//B17E3/daor0192.pdf](http://www.hm-treasury.gov.uk/media//B17E3/daor0192.pdf)

DAO(GEN)6/95 “Accuracy of Evidence to the PAC”. On the Treasury’s website at:

- [www.hm-treasury.gov.uk/media//14A61/dao0695.pdf](http://www.hm-treasury.gov.uk/media//14A61/dao0695.pdf)

DAO(R)1/95 “Provision of up-to-date Information the PAC”. On the Treasury’s website at:

- [www.hm-treasury.gov.uk/media//BA58B/daor0195.pdf](http://www.hm-treasury.gov.uk/media//BA58B/daor0195.pdf)

Treasury Office of Accounts letter to the Committee dated 11th November 1991 reproduced in DAO letter (R)3/91. On the Treasury’s website at:

- [www.hm-treasury.gov.uk/media/FE776/daor0391.pdf](http://www.hm-treasury.gov.uk/media/FE776/daor0391.pdf)

OsmotherlyRules: guidance to civil servants on giving evidence to Select Committees of Parliament and responding to Select Committee reports. On the Cabinet Office website at:

- [www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/select\\_committees/index.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/select_committees/index.asp)

DAO(R)1/92 “Letter from Lord President of the Council to Chairman of the Liaison Committee dated 5 June 1990” summarised in the Osmotherly Rules at paragraph 99. On the Cabinet Office’s website at:

- [www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/select\\_committees/responses.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/select_committees/responses.asp)

Paragraphs 14-18 of the Accounting Officer Memorandum, Annex 4.1 of Government Accounting – on circumstances surrounding the need for a Ministerial Direction. On the web at:

- [www.government-accounting.gov.uk/current/content/ga\\_04\\_4.htm](http://www.government-accounting.gov.uk/current/content/ga_04_4.htm)

Accounting Officer Memorandum for Non Departmental Public Bodies, Annex 8.2 of Government Accounting. On the web at:

- [www.government-accounting.gov.uk/current/content/ga\\_08\\_8.htm](http://www.government-accounting.gov.uk/current/content/ga_08_8.htm)