



# HOUSE OF LORDS

Unrevised transcript of evidence taken before

**The Select Committee on the Constitution**

**MEETING WITH LORD JAY OF EWELME, CHAIRMAN OF THE  
HOUSE OF LORDS APPOINTMENTS COMMISSION**

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*Questions 1 - 27*

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10.20 am

Witness: Lord Jay of Ewelme

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Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Lord Irvine of Lairg  
Lord Norton of Louth  
Lord Pannick  
Lord Rennard  
Lord Renton of Mount Harry  
Lord Rodgers of Quarry Bank  
Lord Shaw of Northstead

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**Examination of Witness**

**Lord Jay of Ewelme**, Chairman of the House of Lords Appointments Commission

**Q1 The Chairman:** Good morning, Lord Jay. Thank you very much for coming. As you know, we have now established this splendid convention of you making an appearance before the Committee once a year to help us with our overview of the various institutions that operate in our area of concerns. We have seen your annual report. Thank you very much. It has been useful in terms of formulating the things that we would like to discuss with you. Perhaps I may start by saying that Lord Hart of Chilton, who, as you know, is a Member of this Committee as well as a member of your Commission, has appropriately decided that it would not be right for him to take part in this discussion session with you. I just say that for the record. I should also say that we are recording this—it is being broadcast, although not televised—so if you would be kind enough to identify yourself for the record when you speak, that would be very helpful.

As I said, we have seen the annual report and have all re-read the comments that you made to us last year about the work of the Commission. I think it is worth starting by saying that in your previous remarks to us you were obviously indicating that you were hoping to make certain changes in the work of the Commission over the past year. Perhaps it would be

useful if you identified the most important of those as you see them, as well as the way in which they may have informed your work over this period.

**Lord Jay of Ewelme:** Thank you very much, Lord Chairman. I am Michael Jay, Lord Jay of Ewelme, Chair of the House of Lords Appointments Commission. I am very glad to be here. As I said in earlier appearances before you, the Commission thinks it important that it should be accountable to this House, as well as to the Public Administration Select Committee in the House of Commons, so I am glad to be here.

Yes, we have looked at our processes since I was last before you. Of course, this last year has been the first full year in which we have had the three new party-political members of the Commission—Lord Hart, Lord Howard and Baroness Scott. The Commission therefore took the opportunity to look at its arrangements both for appointing cross-bench Peers and for vetting party-political Peers, and we have made some adjustments—or clarifications, if I can put it that way—to the way in which we work. I would not say that we have changed the basis on which we go about our work but we looked at the way in which some of our processes had evolved and concluded that there were one or two things that needed to be changed.

As far as the nomination process is concerned, the changes are comparatively small. We are now asking for referees earlier than we did beforehand so that we have a chance to look at people's references before we get to the stage of deciding exactly whom we are going to invite for interview. We have also tried to encourage people to limit the number of references that they provide, because some of them were getting a little out of hand. The other thing that we have introduced, and which the Commission was very keen on, although we have not used it yet, is the possibility of inviting people back for a second interview if the Commission as a whole thinks that there are one or two points that they would like to look at in more detail.

We have made those clarifications. We have also clarified the vetting process—the process by which we vet party-political nominations. We vet people for propriety, not for suitability, which is a subtle but quite important distinction. We have changed our role in that we now say that an individual should be in good standing in the community in general and with the public regulatory authorities in particular and—the second bit is new—that the past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute. The reason for that change is that, when we had our last look at the party-political appointees, we judged that our earlier rubric was not particularly helpful. The earlier rubric was that the individual should be a credible nominee, and the main criterion in assessing that was whether the appointment would enhance rather than diminish the workings and reputation of the House itself and the appointments system generally. We found that that was not in fact terribly useful when we were going about our work. Therefore, we have adjusted it so that it is, we believe, more useful.

**Q2 The Chairman:** You mention that you have not yet put into operation the idea of having more than one interview. For example, there were two appointments in the autumn. Did you use any of the new arrangements to appoint the new people to the House or were they appointed under the other arrangements? I refer to Lord Curry and Lord Singh.

**Lord Jay of Ewelme:** Lord Curry and Lord Singh were appointed under the new arrangements in that we sought references in advance and so on, but the Commission did not think it necessary to have a second interview. However, when we are having our first interview and are talking about the next steps, I make it clear that there is the possibility of a further interview with a larger cross-section of the Commission, or indeed the full Commission, before a final decision is made on whom we will recommend.

**Q3 Lord Shaw of Northstead:** Nowhere in your functions are numbers in the House mentioned. You have appointed two but the number of applications is enormous. How do

you judge the applications? Do you say that we can afford to have two this year or three next year, or whatever it is?

**Lord Jay of Ewelme:** The decision on how many to appoint rests with the Prime Minister, to whom we are accountable. The decision that he has reached is to follow the precedent of his predecessors, which is that roughly four or five appointments per year to the cross-benches should be made through our Commission. I think that at the moment we are working on the basis of about four over the past year or so.

**Lord Shaw of Northstead:** If your recommendation is not accepted by the Prime Minister, do you make any comment about that?

**Lord Jay of Ewelme:** The Prime Minister has said, as did the previous two Prime Ministers, that, as far as our recommendations for cross-bench Peers are concerned, he will simply pass our recommendations to the Queen. So, in a sense, there is no process whereby there is a decision by the Prime Minister whether or not to accept the appointment, and Prime Ministers have always abided by that.

**Q4 Lord Crickhowell:** You say in your report that you vetted 115 individuals during the period. There was a reference somewhere in one of these reports to 4,700 nominations but I think that that is the number since the Commission was established and there is a backlog. How many nominations do you normally get in a year?

**Lord Jay of Ewelme:** I think it is worth distinguishing between the vetting of the 115, who were 115 people put to us by the Prime Minister as part of either party-political lists or his own list—

**Lord Crickhowell:** But how many nominations do you have?

**Lord Jay of Ewelme:** As far as nominations are concerned, at the moment they are running at about two a week, which is 100 or so a year.

**Lord Crickhowell:** And how many of those do you think worth seeing?

**Lord Jay of Ewelme:** We would normally interview about six or seven people and then make a decision about recommending one or two for appointment, so we interview quite a small proportion of the nominations that we get.

**Lord Crickhowell:** So out of 100 or 200 you interview only a relatively small number.

**Lord Jay of Ewelme:** Yes. We interview a relatively small number. If we are talking about 100 or so a year, we probably interview about 14 or 15 a year, and then we would appoint four a year. Those are roughly the proportions.

**Q5 The Chairman:** Do you think that that number will remain constant? There is obviously a concern at the moment about the fluid situation regarding membership of the House of Lords—both about House of Lords reform and the number of political Peers who have been appointed. As you said, you had to vet 115 for propriety last year. Have you noticed any difference in the number of people who come to you for nomination in that context?

**Lord Jay of Ewelme:** We have not. I thought that we might well find a difference in the number and quality as the reform process became more advanced, but we have not. It has remained at about the same number of applicants and I am glad to say that the quality of people who apply has remained very high. So we are in the business of turning down, as it were, or not being able to accept people who we think would make a very good contribution to the House, because the quality of applications that we get remains high.

**Q6 Lord Rodgers of Quarry Bank:** On the question of numbers, you mention—please correct me if I am wrong—that you are thinking in terms of four or five, with only four being appointed. My memory is that last year the number was five or six, and you might say that it is one either way. Again, please correct me if I am wrong but you said that you felt that that was more or less the right number. That is the way it was. There was no rationale; it just seemed right. Is that the feeling you have? I may have misunderstood what you said but you

are now saying that the Prime Minister indicated to you that four was about enough. One of the factors in your evidence to the Joint Committee on 21 November was that a number of cross-bench people were appointed, not necessarily by the Prime Minister of the day. Do you see yourself reducing the number to four or perhaps even fewer if the Prime Minister makes a larger number of cross-bench appointments on his own authority?

**Lord Jay of Ewelme:** On that last point, this Prime Minister follows the convention followed by the previous two Prime Ministers of allowing up to 10 distinguished public servants to be put forward as cross-benchers during each Parliament. Lord O'Donnell, who was appointed recently, was the last of those. I have no reason to believe that he will change that. There is a question as to whether that particular convention is appropriate in a reformed House, and it is a good question. That is the answer to the second question.

The answer to the first question is that the Prime Minister has indicated that four or five is the number he is expecting. We report to him and are working on that basis. I myself think that, with the uncertainty about the future of the House of Lords, with the large number of political appointees and the possibility of further political appointees, four is probably about right.

**Lord Rodgers of Quarry Bank:** You do not argue the matter with the Prime Minister.

**Lord Jay of Ewelme:** No. I have spoken to the Prime Minister informally about it. I said that that is what the Commission is proposing and he said that that entirely fits in with his own view. That is the basis on which we are operating at present.

**Lord Rodgers of Quarry Bank:** The Prime Minister, in making his decisions, is not concerned with diversity at all, is he? He is concerned with the ones he likes best.

**Lord Jay of Ewelme:** That is a question that you will have to put to him.

**Q7 The Chairman:** I know that Lord Irvine wants to come in, but I think that in the last session that we had with you, Lord Jay, you said in response to Lord Rennard that you were

going to look at more formal ways of monitoring the characteristics of those appointed by the Commission. We could not find any reference to more formalised monitoring in your new report.

**Lord Jay of Ewelme:** No. That is a good question. One of the lessons that I have learnt is that it is always better, when before a committee of this sort, not to say that you are evaluating something or are going to do it in more detail. But I think we still regard monitoring for diversity as one of the more important things that we do—monitoring for gender diversity and ethnicity in particular. As a Commission, clearly the main criterion that we use in appointing people is conspicuous merit, but we are also obliged by the remit given to us by the Prime Minister to ensure that we represent in our appointments the diversity of Britain as a whole. That means that, when we look back on the appointments that we have made, we need to make certain that diversity in a pretty broad sense is properly reflected. We try to follow procedures in the sense of making certain that there is a properly diverse shortlist for the Commission to consider so that we maximise the chances of fulfilling our remit and getting a properly diverse House.

**Q8 Lord Irvine of Lairg:** Could you help me, Lord Jay, and tell me whether I have the basic facts right? You get about 100 nominations a year.

**Lord Jay of Ewelme:** About that, yes.

**Lord Irvine of Lairg:** The figure is approximate. You interview about 14 or 15 of that 100 per annum.

**Lord Jay of Ewelme:** Yes, roughly. I do not want to be held precisely to these figures but that is roughly the proportion.

**Lord Irvine of Lairg:** I just want the general picture. You are satisfied that the quality of the nominees is generally high.

**Lord Jay of Ewelme:** The quality is indeed high.

**Lord Irvine of Lairg:** Therefore, in seeking to assess the nominees' chances at interview, the opportunity for interview is critical because their chances are nil if they are not interviewed.

**Lord Jay of Ewelme:** Yes.

**Lord Irvine of Lairg:** If that is right, then how you conduct a sift of the 100 nominees to get down to the 14 or 15 whom you choose to interview is critical to their chances.

**Lord Jay of Ewelme:** Yes.

**Lord Irvine of Lairg:** What are the criteria that you apply in the sifting?

**Lord Jay of Ewelme:** We apply the same criteria, which are conspicuous merit and our judgment as to whether the nominee would make an effective contribution to the House.

**Lord Irvine of Lairg:** But if it is the same test, in order to sift it must be very, very, very conspicuous merit before you interview people.

**Lord Jay of Ewelme:** It is conspicuous merit.

**Lord Irvine of Lairg:** How do you decide who among the nominees has sufficient conspicuous merit to justify an interview?

**Lord Jay of Ewelme:** Ultimately, this is a matter for the judgment of the Commission. The process is that every nomination is considered by a sub-committee of members of the Commission. No nominees of whatever sort are ruled out by the secretariat. I think it is right that the decision should always be taken by members of the Commission.

**Lord Irvine of Lairg:** That is reassuring.

**Lord Jay of Ewelme:** Therefore, what happens is that the sub-committees of the Commission meet at regular intervals and consider the nominations that we have. They recommend those who should be interviewed and there is then a discussion by the Commission about who should and should not be interviewed. So the Commission, as it were, ratifies the recommendations of the sub-committee. Then a sub-committee meets and

interviews. As I said to the Lord Chairman just now, we have introduced a new process whereby, when the Commission as a whole looks at the recommendations of the sub-committee and believes that there is something that it would like to look at before a recommendation is made, there is a further opportunity for the Commission to meet the individuals. However, ultimately it is a matter for the judgment of the members of the Commission.

**Lord Irvine of Lairg:** You do not feel that it is too subjective?

**Lord Jay of Ewelme:** I have been a member of many committees and commissions during my career and one is conscious that there is always an element of subjectivity in this. We try to make sure that there are objective criteria which we apply and a process which ensures that it is fair.

**Lord Irvine of Lairg:** Leaving aside resources for the moment, although it may come down to resources, if all your nominees are of conspicuous merit, why should all not be interviewed?

**Lord Jay of Ewelme:** Well, they are not all of conspicuous merit.

**Lord Irvine of Lairg:** What proportion is of conspicuous merit?

**Lord Jay of Ewelme:** I cannot answer that question directly.

**Lord Irvine of Lairg:** But you can answer it in general terms.

**Lord Jay of Ewelme:** We look at all the nominations we get and judge those we believe to be of conspicuous merit. If there are three or four people who are of conspicuous merit but are from the same walk of life or profession, we will not want to choose all of them, so that becomes a criterion as well.

**Lord Irvine of Lairg:** But, without interviews, how can you judge between the four?

**Lord Jay of Ewelme:** We often will interview. For example, quite a strong representation has been made to us that there needs to be another nurse in the House, and we will be

looking very hard at two or three nominations there. So we do indeed look at groups of nominations to try to ensure that we make the right decision. However, ultimately there is subjective judgment here: we are human beings and we make what judgments we can.

**The Chairman:** Several Members of the Committee want to come in here. This all has great resonance for the discussion that we have been having on judicial appointments and the question of merit. I know that both Lord Pannick and Lord Renton want to come in. May I take Lord Pannick first, as he caught my eye?

**Q9 Lord Pannick:** Given that conspicuous merit is displayed by so many of the applicants, do you keep file notes on the reasons why you have rejected particular applicants or indeed the reasons why you have selected particular nominees?

**Lord Jay of Ewelme:** We do not because, under the Data Protection Act, we are obliged to destroy the records of people once the process is completed. We do not keep detailed records. We make it clear to people when they apply that we will be destroying their records after the process is over.

**Lord Pannick:** I understand that you may have to destroy their records but do you not keep a file note of your reasons? If, for example, you were challenged in court for discriminating on prohibited grounds, you would have no material.

**Lord Jay of Ewelme:** Clearly we keep the records of all the meetings that we have held, which do indeed list the reasons why individuals were or were not advanced through the process.

**Q10 Lord Renton of Mount Harry:** Could I go back to where we were a minute ago? I was very interested when you said that someone might say to you, “We need another nurse in the House and it’s time you had one”. As you know, Lord Jay, we have been talking recently about how judges are appointed, and we came to the question of not only whether the word “merit” was used but, more bluntly, whether, if there were a shortage of women

judges, women would have a good chance. The same question applies to ethnic minorities. Are you now increasingly getting into the same position? If, for example, you saw a gap in the expertise of the House of Lords, would you be rather more ready to appoint a woman or someone from an ethnic minority to fill that gap?

**Lord Jay of Ewelme:** No. The main criterion that we have is one of merit. Before I get on to diversity, perhaps I may say that we commissioned a study from University College London a couple of years ago to identify the range of expertise in the House, which it very helpfully did. From that it was also possible to deduce that there were one or two areas which were not as well covered as they should be. With the recent appointment of party-political Peers, we are updating that study so that we have a reasonable basis of knowledge of the areas of expertise. That is a factor that the Commission takes into account. If there are particular professions or areas that we feel are not sufficiently represented, or which Members of this House or others represent to us as not being sufficiently represented, then that is a factor—a factor, not the determining factor—in the process of nominations.

On diversity, the important thing is that, although the main criterion is merit, we are obliged by our terms of reference to ensure that the diversity of Britain as a whole is appropriately represented in the appointments that we make. That means that, during our processes, we make sure that we have shortlists that are sufficiently diverse so that we are able to ensure in our decisions that we have a reasonable balance of gender and ethnicity, and also, very importantly, of disability, which is another important element of diversity for us.

**Q11 The Chairman:** How does the Commission discuss this in terms of the overriding importance of merit?

**Lord Jay of Ewelme:** The final decisions are made on the basis of merit and a commitment to make an important contribution to the House. Also, when we are looking at the commitment to make an effective contribution to the House, increasingly we look at people

who are able to speak not just in one area but in two, three or four different areas, because often people's area of expertise will come up only comparatively rarely.

**Q12 Lord Renton of Mount Harry:** You mentioned the study from UCL. You mentioned that to us last year, when you did not have it. I have a note here that this updated study has not yet been published.

**Lord Jay of Ewelme:** No, it has not yet been published. We commissioned the study from UCL. We ourselves and the secretariat are working to bring it up to date, and we would certainly be happy to circulate the work when we have finished it.

**Q13 Lord Renton of Mount Harry:** That would be very helpful. Let me add one other thing. The word "merit" has recently come up constantly in our discussions about judges. If you were conscious that a particular profession was, say, unrepresented on the cross-benches but well represented among political appointees, would this weigh on your advice? Would you feel slightly pushed to make the next appointee of that profession a cross-bencher?

**Lord Jay of Ewelme:** No, I do not think that we would do that. I do not think that the question has ever been put to us and we never put the question to ourselves in quite that way. We look at the level of expertise in the House. We take the view that, on the whole, people use their expertise for the benefit of the House and not just for the party to which they belong. We can all think of lots of examples of people who are not members of the cross-benches who make a real contribution in their area of expertise to the House as a whole. So we would look at the House and not just at the cross-benches.

**Q14 Lord Rodgers of Quarry Bank:** On the ethnic point, as you have shown, over the past 10 years we have had 5.9 appointments every year. This year we have had four only. We then have the figure for ethnic groups, which is 22%, so we could not have had one ethnic appointment within those four. I have two questions. The first relates to the papers

which are finally destroyed. When you are thinking about your appointments for next year, can you refer back to the papers that you previously had so that, if you have not made an ethnic appointment this year, you can revive those papers and bring them forward? Secondly, with reference to your point about 22% of your appointments, what is the basis for that? Is it simply 22% of the new appointees? Is that figure relevant to the total diversity among cross-benchers?

**Lord Jay of Ewelme:** On your first point, what we do not do is to keep a long list of potential appointees on which we can draw if we need to. The Commission has decided that it is better to bring the procedure to a close and to tell people that they have or have not been appointed rather than to keep a long list of potential appointees going back several years. That would be quite difficult for the people concerned, who would not be certain whether or not they were going to be appointed. That is certainly the judgment that we made. It is, of course, open to people to apply again, and we say that. There have been one or two recent appointments where the people in question have applied for the second time. Certainly in one case, having been turned down once, the person achieved more in their career and life and was successful the second time. So, in a sense, that covers that point. I am sorry, but I have forgotten your last point, Lord Rodgers.

**Lord Rodgers of Quarry Bank:** It was really a rhetorical question. The 22% is clearly a percentage of appointees, but do you see this as significant or relevant to the total membership of the cross-benches? Do you take account of that as a whole? In that context, I understood you to say that you were looking for a nurse. How do you find a nurse? I thought that people had to come forward. Do you have a list of characteristics or a potential list of nurses? Do you look at a person from an ethnic minority on one side and a nurse on the other and see whether they fit together so as to get two for the price of one?

**Lord Jay of Ewelme:** The figure of 22% is the percentage of appointments that we have made to the cross-benches. That is a cross-bench figure, not a total House of Lords figure. When I talk about nurses, the study from UCL pointed to certain areas where there was not as great an expertise in the House as there might be. In addition, a number of people have said to us that they are worried that there is only one nurse in the House at the moment and that there is therefore a good case for appointing another one. As it happens, we have two or three applications from nurses, so, when we look at them, we are also conscious that there is a feeling that there is a good case for appointing a nurse. However, there has to be conspicuous merit. We do not say, "Right, it's time for a nurse". We say that we have a list of people whom we are looking at and there are a number of criteria, one of which is that there is a case for a nurse.

**Q15 Lord Crickhowell:** You have twice, in answer to previous questions, talked about a commitment to making an effective contribution to the House. During the last session, you said that the monitoring of attendance was a developing and evolving process. You are perhaps in a better position to look at this process than your predecessor was. How has the process changed since we last spoke?

**Lord Jay of Ewelme:** It has intensified. It is one of the main considerations that we look at when we interview people and when we make judgments about the people we have interviewed. If we come to the conclusion that someone is going to alter their lives in order to attend regularly, that weighs in their favour, as against someone whom we judge would quite like to be a Member of the House of Lords but we are not convinced that they will play a major part in it. Again, it is a matter of judgment and we have to make that judgment. Once the Commission has decided that it wants to recommend someone, I ring them up and say, "The Commission is minded to recommend you. You said during the interview that you would be able to commit enough time to make an effective contribution in the House. I am

just ringing up now”—and this part of the conversation will be recorded—“to check that that is indeed the case”, so we get a clear commitment that they will do so.

**Q16 The Chairman:** I have one very small supplementary question in the context of political appointments. Do you think that people have an understanding and an awareness of what a real commitment means?

**Lord Jay of Ewelme:** That will very often come up at interview and it will quite often come up in conversations that we have with people at this stage of the process. We are not, of course, talking about full-time membership of the Lords; we are talking about people who will spend enough time in debates, in membership of a select committee and in taking part in a bill which interests them, and who will spend, say, two days a week or thereabouts in the House of Lords. That is the sort of conversation that I have with people.

**Q17 Lord Crickhowell:** I am sure that you have that conversation but of course you may then be confronted by the situation where an individual has given all those undertakings but is practically never seen in the House. You have spoken to us previously about “moving along the curve” from “honour” to “job” in relation to appointments to the House. Should that movement that you referred to be supported by any form of sanctions for low or non-attendance, and should the Commission have a role if we go down that particular road?

**Lord Jay of Ewelme:** We are the Appointments Commission. Our job is to make sure that we are confident that those whom we appoint will make an effective contribution to the House of Lords. We may sometimes get that wrong. Also, sometimes someone whom we appoint is then appointed to an important job—it may be a public job or it may be as chairman of some sort of commission—in which case, inevitably, they will be in the House less often for a period of time. I think that that is understandable and, indeed, when they rejoin the House they will bring with them the expertise that they have gained from the work they have done. That is part of the way in which the system works.

**Lord Crickhowell:** I accept that entirely but perhaps I can put the question differently. In your experience, do you feel that the commitments that have been made to you have been honoured?

**Lord Jay of Ewelme:** I think that they have been since we tightened up. It is clear that some people who were appointed before that are not here as often as we would like.

I have not answered your question, Lord Crickhowell, about whether the Commission should have a role in sanctioning. The Commission does not think that it should. It thinks that that is an issue for the House—perhaps for the cross-benches or the political parties but not for us as an Appointments Commission. However—and this is certainly the impression that I get from talking to one or two who have been appointed—people feel that there is a sort of peer-group pressure on them to attend once they have made the commitment to do so.

**Lord Crickhowell:** Do you feel that the process has been tightened up in that way—that the question is asked more clearly and strongly than perhaps was the case in the past?

**Lord Jay of Ewelme:** Yes, I do think so. I ring people up and make it quite clear that I am asking this question because there is a strong sense in the House of Lords that people, when appointed, should attend.

**The Chairman:** Can we go back to the question of numbers and the balance of numbers?

**Q18 Lord Pannick:** Has the Commission considered whether it ought to have any role in expressing a view as to whether more party-political nominees should be appointed to the House of Lords?

**Lord Jay of Ewelme:** The only formal position that we have taken is that, when I gave my advice on the Commission's behalf to the Prime Minister, I included in the letter our view that the addition of a large number of new Peers may give rise to adverse comment. To that extent, we made our position clear.

**Lord Pannick:** Do you think that perhaps the Commission ought to express a rather stronger view, if it has a stronger view, given that, as you know, there is a strong feeling both within and outside the House that there are enough Peers? You are the Appointments Commission. You are independent. You have a range of expertise and you represent a range of political parties. Surely you, the Commission, are the right people to express a view on this important subject.

**Lord Jay of Ewelme:** Well, we did express a view. I think that if there is to be a further list and we are asked to vet for propriety further party-political appointees and nominations, then the Commission—and I cannot speak for what it would say—will clearly need to consider what we said about that in the letter to the Prime Minister.

We are not a statutory body. I have argued that it would be better if we were a statutory body. If we were a statutory body reporting formally to the House, then, in a sense, we could make these points to the House. However, we are not; we are an advisory committee and we report to the Prime Minister. I think that that slightly affects the way in which we offer advice.

**Lord Pannick:** Yes, but you do not only report to the Prime Minister; you publish, very helpfully, an annual report. The fact that you are non-statutory does not inhibit you in any way from expressing views on matters that are relevant to the function that you perform. Indeed, it might be said that the fact that you are non-statutory does not confine you by rigid terms of reference.

**Lord Jay of Ewelme:** I think that that is right. It is why we made the comment that we did on the last list. As I say, this is certainly something that the Commission would need to consider—although it would need to be a decision by the Commission—if there is to be another party-political list that we are asked to look at.

**Lord Pannick:** So if the Prime Minister were to put before you a list of a large number of further political nominations, the Commission would consider whether it was appropriate to express publicly a view on the desirability of such appointments.

**Lord Jay of Ewelme:** First of all, the Commission's duty would be to vet that list for propriety. I do not think that the Commission would be in a position to say, "We don't think we should do this, so we're not going to do it". We would be obliged to do it because of our terms of reference. Having done that, it would then be for the Commission to consider what comment it might make on the fact that it had been asked to approve or vet for propriety such a list.

**The Chairman:** Did you want to add anything, Lord Pannick or Lord Irvine?

**Q19 Lord Irvine of Lairg:** I just wanted to put this to you. To say to the Prime Minister that X number of new appointments may give rise to adverse public comment is a mile away from expressing a positive view by the Commission. Do you agree?

**Lord Jay of Ewelme:** That was the view that the Commission took on the last occasion that this issue came up.

**Lord Irvine of Lairg:** Did you have a positive view on the merits of the overall number of appointments under consideration? Just to warn a Prime Minister that something he is minded to do may result in adverse public comment is a mile away from expressing a positive view yourselves, qua the Commission, on the merits of what is being proposed.

**Lord Jay of Ewelme:** All I can say is that that is the view that the Commission took. I shall certainly make sure that the record of this discussion is made available to the Commission when it has its discussion the next time around.

**The Chairman:** These matters may not be as hypothetical as we think. Perhaps we could now turn to another non-hypothetical point, which is the whole question of reform of the House of Lords. I know that Lord Rennard wanted to take this up.

**Q20 Lord Rennard:** We have come to this a little already but I wonder how you think the work that you do over the next year will be affected by the fact that much of next year in Parliament will be taken up debating Lords reform. Do you anticipate that many more people will want to come in, and how will they be affected by the uncertainty over whether they will have any role after 2015, 2020 or 2025? Are people who are applying at the moment asking questions about how this might work?

**Lord Jay of Ewelme:** Yes, they are asking that. I do not know the answer to whether we will get fewer applications as the reform process gathers pace, if it does. So far, we have not seen any falling off of applications. When we talk to people who have applied, and particularly at the beginning of the interview if we are interviewing them, I make the point that this is an uncertain period and we cannot be sure that the process which is starting now will end in the way that it has done up until now. I do not know whether the shutters will come down at some stage, so I do not know what effect it will have. At the moment, it is not having an effect on the number and quality of people who are applying to join us.

**Q21 The Chairman:** Lord Norton was unavoidably delayed in being with us. Lord Norton, given your particular interest in House of Lords reform, do you want to pursue this matter with Lord Jay? You may not wish to.

**Lord Norton of Louth:** Not unless Lord Jay has anything to offer in terms of how he sees the future.

**The Chairman:** In the context of what you said in reaction to one of the previous points about the nature of the body as it now stands and how it would change if it were a statutory body, that seems to be, as it were, almost inevitable in any proposal on House of Lords reform.

**Lord Jay of Ewelme:** I myself have argued that it should be statutory anyway, but I think that it should certainly be statutory if there is to be reform of the kind put forward in the

Bill. One of the first questions for such a statutory commission to address would be how it would ensure that it was in a position to make the requisite number of cross-bench nominations after an election. I do not think that it is going to be possible for it to meet constantly for two weeks after an election. My own view is that there would have to be a kind of rolling process by which the commission was constantly bringing up to date the sorts of people who would be appropriate appointees after an election took place. I cannot see any other way in which it would work.

**Q22 Lord Norton of Louth:** If you move to a statutory basis, the question is how statutory—how many of the provisions would need to be enshrined and the extent to which you would still require a degree of flexibility, whether in terms of criteria or numbers.

**Lord Jay of Ewelme:** Yes. There would have to be a degree of flexibility because circumstances change. If you were frozen into the way in which you operated, you would soon find that you needed to go back and ask for a little bit more flexibility. So I think that there would need to be a degree of flexibility within a fairly clear overall framework. That flexibility would have to include the way in which you got yourself into a position to put the appropriate number of high-quality nominations forward after an election.

**Lord Norton of Louth:** If you like a degree of certainty in how your organisation operates, one of the arguments for making it statutory would be to protect, if you like, the independence of the Commission. You have volunteered that there is a principled case for that, but do you think that it is a practical matter or that the independence is sufficiently enshrined anyway?

**Lord Jay of Ewelme:** I think that independence is enshrined anyway but I have always thought that a commission whose role is to nominate people as members of one of the Houses of Parliament should be accountable to that House of Parliament for doing so. That has always seemed to me the right way forward, but that is not where we are.

**Lord Norton of Louth:** There is also the argument of perception. If your independence is enshrined in statute, the public perception is then that you have that independence.

**Lord Jay of Ewelme:** Yes.

**Q23 Lord Crickhowell:** Arising out of your last comment, say that the new House was substantially elected, would you feel that it was important for the commission to have a substantial cross-bench membership, rather than being dominated by the political parties that had been elected?

**Lord Jay of Ewelme:** I was answering Lord Norton's question on the assumption that 20% would be elected. We were talking about how we would ensure—

**The Chairman:** Twenty per cent appointed.

**Lord Jay of Ewelme:** Sorry, 20% appointed.

**Lord Crickhowell:** We are talking about the constitution of the commission, if it is to consist of Members of the House. If you had a wholly—except for the cross-benches—elected House, it would perhaps be undesirable for the overwhelming majority of the independent commission to be political nominees. Therefore, would it not be important for a considerable proportion—perhaps a majority—of the commission to be cross-bench Peers themselves?

**Lord Jay of Ewelme:** I think that you need a balance between those who bring a view from outside and those who bring a view of how the House of Lords works. I think that there is a case for having people who are Members of the House of Lords. At the moment, we have party-political members on the Commission but it acts very much as a commission that appoints people to the cross-benches. I do not get a sense of party-political considerations coming into the process of appointing to the cross-benches.

**Lord Crickhowell:** But it might be different with a wholly elected House.

**Lord Jay of Ewelme:** It might.

**Q24 Lord Norton of Louth:** Would your point about the statutory basis—that the Commission ought to be statutory in any event—apply whether or not there was any change in the House of Lords? In other words, if there is to be reform, you none the less believe that it should be statutory.

**Lord Jay of Ewelme:** That would be my view. It is not the unanimous view of the Commission as a whole but it has always been the view that I have taken.

**The Chairman:** Thank you very much, Lord Jay. We have almost reached the time which you kindly agreed to give us. I wonder whether any Member of the Committee feels that there is an issue that we have previously discussed which has not arisen with Lord Jay.

**Q25 Lord Rodgers of Quarry Bank:** Just a final word. You have a very difficult job in trying to choose the appointees. There have recently been 59 and you have been involved in many of them. Would you say, in looking back, that the success rate in relation to the appointees has been 10 out of 10 or would you perhaps simply say “a good lot”?

**Lord Jay of Ewelme:** I have to be rather careful in this company in how I answer that question. I would never say that anything that I had done was 10 out of 10. I think that there has been a very high level of competence and commitment from those who have been appointed recently and that the cross-benches have benefited very much from the process. I personally feel that it is rather an honour to be engaged in this process. It contributes a lot to the way in which the House of Lords works. It is never perfect—there are always ways in which you can make it better. That is one reason why we look all the time at ways in which we can adjust our procedures.

**Q26 The Chairman:** One point that came up several times in relation to diversity, which we have already covered, was the question of the geographical spread of Members of the House. Before we met you—and this comes back to your point about improving procedures—the Members of the Committee were discussing whether there was some way

in which the methods of monitoring geographical spread and diversity should be more formalised by the Commission. Is that something that is being actively engaged with?

**Lord Jay of Ewelme:** It is a very important point. There is a lot of emphasis on Scotland, Wales and Northern Ireland. Of course, as a Commission we are conscious of the need for Scotland, Wales and Northern Ireland to be properly represented, but in some ways it is almost more difficult for the regions of England to be properly represented. It is something that we look at carefully in the sense that we would feel uncomfortable if we were interviewing six people and they all came from the south-east. So when we look at nominations, the fact that somebody comes from Newcastle or the north-west or well outside London is something that we would take notice of and we would be pleased if we found people who, as in the case of Lord Curry, came from the north-east. That is an important part of our job.

**The Chairman:** Again, following the answer that you gave earlier to Lord Irvine, the approach to these issues tends to be one of subjective judgment by the Commission. You do not have any formal monitoring process.

**Lord Jay of Ewelme:** We are appointing four or five people a year. There is merit and then there are four or five different diversity criteria. If you start formalising them, you find yourself in a straitjacket. The Commission knows what it wants to do; it knows what the criteria are; it knows the importance of diversity; and it knows that a committee such as yours regards that as important. On that basis, it takes these things really seriously and it takes them into account.

**The Chairman:** Thank you very much. Does any other Member of the Committee wish to make a point?

**Q27 Lord Norton of Louth:** There is the point about the Commission having a look at the geography, and you may have covered that earlier. However, I wonder whether the

applications themselves are skewed geographically, because there is obviously a practical problem if you are some distance from London and committing yourself to work in the Lords.

**Lord Jay of Ewelme:** They are skewed in favour of London. An awful lot of people come from the regions of England but will now be living in London because that is where their professional life has taken them. Equally, there are people who retain close links with the regions from which they come. That is a question that you have not touched on—how far we, as a Commission, should go around the country advertising what we do and talking about it. That is something that we discuss a lot. Just at the moment, when there is uncertainty about the future of the Lords, that is a difficult thing to do. If we were to do that and we encouraged a large number of applications and then the shutters came down, or we were told, “No, not four or five; only two”, I think that we would be in rather a difficult position.

**The Chairman:** Thank you very much again, Lord Jay. Is there anything apart from the last point which you feel we have not covered and which you want to mention?

**Lord Jay of Ewelme:** No. I think that that is all.

**The Chairman:** Well thank you very much indeed. It has been a very useful session. Thank you once again for making this part of your annual reporting system. Even if you are not formally accountable to the House, it is very important for us to have this session with you.