LIAISON COMMITTEE
The Review of Investigative and Scrutiny Committees
Oral evidence

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Mr Mick Antoniw AM – Oral Evidence (QQ157-164)

Wednesday 31 October 2018
10.40 am

Watch the meeting

Members present: Lord McFall of Alcluith (The Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Lord Lang of Monkton; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 22 Heard in Public Questions 157 - 164

Witnesses

I: Mr Mick Antoniw AM, Chair, Constitutional and Legislative Affairs Committee, National Assembly for Wales.

Examination of witness

Mr Mick Antoniw AM.

Q157 The Chairman: Good morning. It is lovely to see you, Mick. It is only a few days since we spoke so it is nice to reacquaint ourselves. May I start off by thanking you for giving us your time? Referring to the Interparliamentary Forum on Brexit, which convened in Cardiff last Thursday, what are your thoughts on that meeting?

Mick Antoniw: It was the fifth meeting in a year of meetings of the interparliamentary forum, so the shape of the forum had become, I think, more consistent. I thought it was very useful at this very crucial time in the Brexit negotiations to be able to meet and discuss exactly where all the parliamentary bodies are with regard to the constitutional changes, the scrutiny changes and the legislature issues that are common to us in dealing with legislation and statutory instruments, and in ensuring that there is a proper scrutiny of the exercise of power. The forum has become quite important, and one where those participating see the value of the exchange of information and the development of a slightly more common strategy and approach on these major constitutional issues that are challenging us.

The Chairman: I found the very same, Mick, and my colleagues were delighted with the press release that was produced at the end of the meeting. I will pass to Lord Lang; he has a few questions for you.

Q158 Lord Lang of Monkton: Good morning, Mr Antoniw. I am very interested in the way the committee structure works in Wales. I see that you are a
member of a large number of committees and I suppose that is a concomitant of being a single-chamber parliament or Assembly, essentially. How many of those committees are concerned with the detailed scrutiny of parliamentary business in Wales and how many are of a more creative outward-looking context that might fit into an inter-parliamentary structure?

Mick Antoniw: I think I have got the gist but the sound is going in and out a little. The starting point is the fact that we are indeed a single-chamber legislature, and that provides its own challenges regarding how committees operate. Similar to Scotland, we operate on the basis that committees scrutinise legislation, scrutinise policy and government, and look at the development of policy in certain areas as well.

I chair the Constitutional and Legislative Affairs Committee and it has a very narrow and strict function. It is there to scrutinise the efficacy, effectiveness and quality of the legislation we are producing; the way in which it is drafted, and the way in which powers are balanced within that legislation. For other committees, and I am on another committee as well and have been on other committees in the past, there is a great challenge. I do not think we have any option with Welsh Assembly committees, because of the size of the Assembly and the growing areas of devolved responsibility, but to have committees that carry out all those functions.

A very specific challenge that we face in not having a second chamber is how we ensure there is some external scrutiny; that there is some engagement with bodies such as the Law Commission, for example, regarding the development of legislation, and how the committee disciplines itself in the way it operates. They have a clear scrutiny function regarding legislation they are also there to challenge the policy direction itself. I think the committees have operated very effectively here, but it has been an enormous work strain. Committees work extremely hard, from early in the morning to very late. I know that is true in all parliaments, but, with a very small number, there is a significant work pressure on everyone. That is how we operate.

There have been some benefits, of course, to the way we operate. Training is available to members of committees. There is a clear definition of the functions of those committees, as far as is practicable. At the end of the day, you can only ask whether it is working. I think it is working, but with the number of Assembly Members we have, there is enormous pressure on the Members to ensure that the quality of the work of committees is maintained.

Lord Lang of Monkton: That is very helpful. How do you envisage manning the inter-parliamentary committee, if that is what develops? Would that be done by the Constitution and Legislative Affairs Committee that you chair, or would it be a new committee in the Welsh context with members drawn perhaps from somewhere else?
**Mick Antoniw:** Because of the challenges—to use that word—of Brexit, in both the constitutional area and the implications that it has for our various areas of devolved responsibility, the Constitution and Legislative Affairs Committee and our European committee both participate within the inter-parliamentary forum. I think that has worked well because there is a significant need to scrutinise the policy aspects of some of the legislation that has been coming through. Our European committee would do most of that work. For example, there were clear policy issues in the Trade Bill and in the coming Agriculture Bill, and so on, as there are in terms of how the powers of the Assembly will be affected. There is some overlap, but the committee I chair will focus far more strictly on the actual legislation as it is drafted and proposed, and look at the challenges of that.

Because of that overlap, from time to time we have met jointly as committees. If UK Government Ministers, for example, have given evidence, we have met jointly to carry out that scrutiny so as not to duplicate because we regard that evidence as being directly relevant to the work of both committees.

When it comes to the inter-parliamentary forum, some of you will have seen that as between myself and David Rees, who is the chair of our European committee, we tend to come at it from slightly different angles and we have explored the issues in slightly different ways. The European committee will have explored the policy aspects far more deeply, and explored relations with Brussels and post-Brexit relationships in far more detail, whereas my committee will have focused on the minutiae and, often, conducted a line-by-line scrutiny of the legislation and the constitutional changes that might be coming through Europe. It is a working partnership that has worked very well.

**Q159 The Chairman:** As you know, we are undertaking a review of our committees and one of the big issues is devolution. What are your thoughts on a potential House of Lords Committee on devolution? What are the benefits and drawbacks of that? What do we have to do to get it right in terms of recognising devolution as a whole and the role of the Welsh Assembly and the Scottish Parliament?

**Mick Antoniw:** It is an interesting question that you put in the context of the developing role of the House of Lords as almost a defender of the constitution. Its function includes oversight of the constitutional relationships and the protection of what Parliament as a whole has done in respect of decentralising and devolving powers across the UK, not just the parliamentary devolutions of Scotland and Wales but in Northern Ireland and London and other cities. The question is what we mean by devolution and what its function would be.

The downside is that it may end up, I suppose, being seen as some sort of supervisory body in respect of devolution, which has already been defined by statute. I would prefer it to go down the road of a formalisation of the functions of the inter-parliamentary forum. It is helpful that there has
been very good scrutiny of devolution in the House of Lords, because I do not think scrutiny has taken place in the House of Commons to the same degree. That might reflect the role that the House of Lords has increasingly taken on board as a constitutional overseer. I would need to clear about the purpose of such a committee, what its function would be and what its relationship with the Welsh Government and Welsh Assembly would be, and how that would relate overall to the constitutional changes that I think will take place within the UK in the post-Brexit environment.

The Chairman: You are talking about defending the constitution. Lord Lang is the immediate past chair of the Constitution Committee and there were a number of influential reports produced during his chairmanship. Do you have any comments on that, Lord Lang?

Lord Lang of Monkton: I would say that Mr Antoniw asks what its function would be. It would be to try to hold the Westminster Government, the Executive, to account. We produced reports, one of which was ignored for over two years, which was an absolute disgrace, and extremely unwise on the Government’s part, and which has led to other difficulties. I am not saying that it is the gospel truth and had to be implemented in full, but there was a lot of sound advice in it. We had a lot of support from the Welsh Assembly, the Scottish Parliament and the Northern Ireland Assembly on the general approach. A chorus would possibly have a better effect on central government than a solo performer, and, therefore, harmony between us all on devolution issues would probably be a great asset. Would you agree?

Mick Antoniw: I think that approach would certainly be received quite warmly. There needs to be a lot more flesh on the bones as to how it would do that. Certainly it seems to be the case that within the House of Lords there has been a greater understanding of devolution. It remains of considerable concern to us that, at the UK governmental level and within the civil service structures, and so on, and you will have seen this reflected in the reports that we have produced, and I think it has been commented on elsewhere, there is a lack understanding of what devolution is and how it impacts on governmental responsibilities. I think that approach would be very useful.

There is, of course, a very important function that has been given as a result of the inter-parliamentary agreement that has been reached between the Welsh Government and the UK Government regarding the regulations coming out of the withdrawal Bill because, effectively, where regulations do not have the consent of the Welsh Government, the House of Lords almost has a veto power as a result of that agreement regarding regulations. The role of the House of Lords within the devolution area has become more important and more significant. That is partly as a result of the fact that the constitution within the UK has been changing in a fairly dysfunctional way and Brexit has speeded up that dysfunction. There is certainly a lot of attraction to the role as Lord Lang has described it, but there would need to be a lot more detail on it to see how the engagement
Mr Mick Antoniw AM – Oral Evidence (QQ157-164)

might operate in practice. It would also have to be seen very carefully within the context of proposals for the reform of the Joint Ministerial Committee as well.

The Chairman: That was emphasised. Lord Smith.

Q160 Lord Smith of Hindhead: On that theme, could we ask for your views on meetings between the Welsh Assembly and Westminster committees and whether these should be held more frequently and on a more formal basis?

Mick Antoniw: What the inter-parliamentary forum has taught us is that there is a considerable need for far greater co-ordination and co-operation between committees. There are three legislatures operating in the UK now: Scotland, Westminster and Wales. All three are passing legislation that can impact on the others, in one way or another. We all have a direct common interest. The issues of common frameworks and so on that are being discussed at the moment directly affect all that. There is greater scope where scrutiny and policy work has taken place in committees—and that is quite common—and a growing justification for saying we ought to look at our own procedures to enable far greater working together on that.

To give you one or two examples that have occurred to me recently, we have been scrutinising legislation on the childcare provisions being implemented in Wales. These are the provisions for 30 hours of free childcare. Similar legislation has been going through Westminster. Both scrutiny processes have identified a number of serious flaws in the drafting of that legislation and produced, in many ways, quite similar points. That was an area where I would have thought there would be merit in greater working together. We have learned from your reports, and perhaps you from ours, but at the early stages of such legislation, common interests and themes emerge at a parliamentary level that are worth looking at together.

We introduced presumed consent in organ transplant legislation, and that raises a whole number of very important ethical issues. We have been through that and, of course, we know that Westminster is looking at the same issue. There is a baseload of learning from the experience we have had of attempting to resolve some fundamental ethical issues, and I think we have produced successful legislation at the end of that that has broad support. There would be areas there, for example, that would benefit from this.

From a constitutional dimension, the inter-parliamentary forum has partly done that, but I can see areas where there might have been scope for working together on particular aspects of legislation. We have spent time looking at the process of sifting and so on and reviewing each other’s reports. In a post-Brexit environment, I would hope we would move towards a more co-operative parliamentary process regarding the common constitutional interests of devolution. Of course, something we
have raised several times, and it came up again at the inter-parliamentary forum on Thursday, is the issue of a speakers’ conference, to start exploring some of these issues. With everything that is happening in the political context at the moment, it seems to be quite difficult for Parliament to step back and look at what is a very important area of constitutional reform. Constitutional reform is almost seen as a distraction, whereas, in many ways, certainly in my view, it should be at the core of our thinking about how we move ahead.

Q161 The Earl of Courtown: You mentioned in your opening remarks the pressure of work on Assembly Members with all these committees to man, but there is also the question of continuing professional development. Of course you realise that we have no CPD for our committees. What particular areas of CPD that you carry out do Assembly Members find most useful?

Mick Antoniw: I have lost the sound.

The Earl of Courtown: Shall I repeat what I said? You have continuing professional development for your committee members, and this is particularly important because of the pressure of work you were highlighting earlier relating to committee work. Are there any particular areas of continuing professional development that your colleagues in the Assembly find most useful and that we could perhaps look at adopting here in Westminster?

Mick Antoniw: First, I think continuing professional development is very important. As the saying goes, it is never too late to learn. In the context of our Assembly, we have 60 Members of the Assembly; 15 hold government ministerial positions, so, effectively, we have 45 Members to service all the committees we have. Every five years, when we have an election, we have an influx of new Assembly Members and, often, the skills and experience base within the Assembly changes. There will be those who have considerable experience in particular areas, some who have experience of the third sector, others from business, others from the trade unions, others from the legal sector, and so on.

The first issue is the structure of our committees. The function and roles of those committees are determined early on by our Business Committee, which is a cross-party representation of all the political groups. Is continuing professional development important? I think it is and it is important in two particular areas. First, new chairs of important committees may have gaps in their own expertise that they want filled, either to give them confidence or greater knowledge in the areas they will be exploring in committee, and in respect of how the committees work, how the Assembly works, the parliamentary function and the resources that are available. All those things have to be learned very quickly.

The other is professional development in respect of particular areas of policy. Individuals have really wanted to understand the subject matter in much more detail before they start exploring with witnesses their views on
particular policy changes. Committee members might not have a base knowledge, and they do not necessarily learn it just from having expert witnesses coming in to tell them what their thinking is. That has been very important.

The other area is how you engage with witnesses and citizens groups, where I think we have been quite successful in developing the skills of engagement and promoting inclusivity with people and with bodies. That is not perhaps something you train for specifically, but you need to provide a framework within which people can gain a certain amount experience of that. It varies from individual to individual, but that resource is available, and individuals have been attending courses. Some of the support staff have also been engaged with that continuing professional development. Sometimes we ignore the importance of the support staff in our work. I believe that in modern society, and in a modern democratic parliamentary system, ongoing training is of considerable value and benefit.

The downside of course is we all only have so much time. Everyone is intensely busy, and sometimes making the time to do that sort of development is very difficult. People start off with very good intentions of attending and participating, but, as the years roll on, and as the pressures of committee and parliamentary work increase, that becomes increasingly difficult. It seems to me that within our structures we have to somehow seek ways of allowing for that development to become part and parcel of the way we operate. We experience some difficulty with that.

**The Earl of Courtown:** Are you saying for those who have no experience in a certain area that pre-briefing, for example, is arranged prior to evidence-gathering sessions on the particular subject that the individual might not have much knowledge of?

**Mick Antoniw:** Absolutely. We always have written pre-briefings which set out the scene. Written evidence also comes in. I will give you an example where I was involved in an energy inquiry into issues of community energy, the grid, how it operates in other European countries and so on, and having advanced briefings on how those systems operated, having the opportunity to meet with experts or even to go abroad and meet with people as part of that process and gain an understanding of different systems was very important in being able to scrutinise the specific evidence that was given. Continuing professional development cannot just consist of external courses and so on; it has to be about the way in which the committee engages with experts who act as specialist advisers in a particular area. That has been very effective in particular areas committees that I have been involved in.

**Q162 Lord Williams of Elvel:** You talked about the burden of work on Assembly Members, particularly members of committees. Does the use of both languages pari passu add to that burden?
**Mick Antoniw:** No, it does not. We have developed a system where people speak naturally in whichever language they feel most comfortable with. The translation service that is provided is of a very high quality. It is very clear. We are able to use headphones and people flit in and out. A bilingual committee operates very normally. To be honest, we do not even notice it. People flit in and out of Welsh and English. Depending on an individual’s particular knowledge of Welsh, they will use the headphones or they will not. Some people understand Welsh well and do not need to use headphones, but might choose to speak in English because of their level of ability. Within the National Assembly for Wales we have developed a system of fairly seamless bilingualism.

**Lord Williams of Elvel:** Is there ever a discrepancy between the version in Welsh and the version in English? If so, how is that resolved?

**Mick Antoniw:** You raise a very important point. We have equality of status of the languages and legislation is drafted in Welsh and in English. We are seeking to resolve this issue now through our own Interpretation Act. As you know, there is an Interpretation Act which covers terms and phrases in legislation in Westminster and that, of course, applies to Wales as well. We have never updated that legislation to take on board the issue of the interpretation of phrases and clauses between Welsh and English. Legislation will be brought before the Assembly and we will be scrutinising it. It is being brought forward by the Counsel General and it seeks to update the Interpretation Act to accommodate that, and to raise the other conflict regarding the interpretation of statutory instruments that emerge from pre-devolution primary legislation, which may have been amended subsequently by Welsh legislation, and the potential conflicts of interpretation there. This will be resolved constitutionally through an Interpretation Act, which will specify the mechanism through which such conflicts are resolved and what priority is given. A dictionary of legislative terminology will also be built up, because there are phrases that emerge from legislation that, traditionally, have not had a standard common Welsh interpretation. The purpose of the Interpretation Act is to resolve that.

**Lord Low of Dalston:** Good morning, Mr Antoniw. I hope you are able to hear me all right. In the Welsh Assembly you have formally documented the responsibilities of committee chairs. Could you tell us what benefits have accrued to the Welsh Assembly as a result of formally documenting the role of committee chairs?

**Mick Antoniw:** The first point to make is that this session is the first where we have done it in that particular way. Chairs of committees have received letters—letters of appointment in a way—outlining their broad responsibilities. The functions and the way in which chairs should operate are set out, and include issues of inclusivity, of respect and how one should engage with committee members to ensure maximum participation and so on—modern committee chairpersonship, if that is the right phrase.
Of course, another important area that has been defined, and, of course, it can only be done each time we meet, is the particular responsibilities of committees, which tend to align with the various responsibilities that exist in government ministerial portfolios. That is important because the committee needs to be focused on which Ministers it may be holding to account. Sometimes, of course, there is overlap.

What is the benefit? It helps to clarify the way in which committees should operate and their function. Beyond that, there is a high degree of flexibility. There is merit to doing it, but, of course, it is only one step in the process. The quality of the committee system is dependent on many other factors.

Lord Low of Dalston: Do you feel that it has made the committees work more efficiently?

Mick Antoniw: I think they do because they are more focused. There is a tendency with committees to begin to stray into other areas and to duplicate the work of other committees. Having a certain degree of delineation is helpful.

I will give you an example, the Culture, Welsh Language and Communications Committee, on which I sit, is looking at the growth of the media industry within Wales: the skills, the training and employment issues around that. That could overlap into inquiries by government into how efficiently money is being used, investment in that area and so on. It is important that the committee stays focused on the industry, initiatives to develop that industry and to create more opportunities, the obstacles that industry faces, and not stray unduly into the area of the financial accountability, which would be the responsibility of the Finance Committee. Having some delineation there is quite important.

We had a situation where a committee carried out a preliminary investigation and subsequently referred the matter to the Finance Committee. I think that was the correct way of doing it. In the past it might have been the case that it would have overlapped and gone off on an exercise of its own, exploring areas that were much more within the expertise of another committee. Having that delineation is important. It is probably even more important in a body such as the Welsh Assembly, where, as I say, we have, effectively, 45 working Members at the committee level in an Assembly where responsibilities have doubled, if not trebled, since 1999, or certainly since the Assembly became a legislature. The pressures have become greater and the need to maintain efficient committees within a one-chamber legislature is even more challenging.

The size of the Assembly is being looked at, as to whether it should be increased, and how that might happen. That is an ongoing discussion and may or may not result in legislation at some time in the future. It reflects the fact that the committee structure is the powerhouse, the engine of any parliament. That is where the real work is done and if the committee structures are not working to maximum effect, it is a bit like having an
engine that is not firing on all cylinders; you do not get the maximum efficiency and product out of it. It is an important area and part and parcel of all those additional pieces.

Q164 Lord Foulkes of Cumnock: First, apologies that I was not here when we started. I had another meeting that overran. Like you, I am a Labour/Co-op Member, so please take that into account with the question I am about to ask you. In the Scottish Parliament, of which I was a Member for four years, when the SNP had a majority, it also had majorities on the investigative committees, as a result of which they were not the best investigators; they were a bit like lapdogs. What is the balance of membership of the committees in the Welsh Assembly and is there any suggestion that Labour dominates and they are not as questioning of the Labour Administration as they might be?

Mick Antoniw: You raise a very important issue. It is an issue that we often have within my political group, and I am sure it happens in others, and that is the importance of committees being able to act independently. That has become a much more important issue since we became a legislature. One of the functions of myself as a Labour/Co-operative Member is to scrutinise my own Government’s legislation independently, and to ensure that where there are flaws and weaknesses, we highlight them.

Our committees are politically balanced, as they are within all Parliaments, and that is a challenge because, first, it means the pressure is on the majority party to get its legislative programme through but, at the same time, as I say, our committees undertake legislative scrutiny as well as policy scrutiny, and those two things can sometimes play against one another.

Lord Foulkes of Cumnock: What is the actual balance of Members on your committee, for example?

Mick Antoniw: The Constitutional and Legislative Affairs Committee, up until now, has been a unique committee. It has been a committee that had consisted of one person from each of the groups, so political balance has not been an issue. We have worked independently regarding our scrutiny function. Where we have needed to be critical, we have been very critical. We raise issues of concern in the way legislation is drafted, about the flexibility of drafting in terms of the balance of powers between the Executive and Parliament and so on, and, particularly recently, issues around the so-called Henry VIII powers. The Constitutional and Legislative Affairs Committee has been uniquely different. However, it has just changed because it has become a sifting committee. The view was taken that it should be compatible with sifting committees at Westminster and that it should be politically balanced in the same way they are. How that will operate, we shall have to wait and see. I have not been to a single Constitutional and Legislative Affairs Committee meeting where there has been a vote on any issue. Consensus has always been capable of being
achieved. It has also been the case that individuals have exercised their function very independently of government and of party. That is because of the very specific nature of that particular committee.

On other committees, it is more partisan. I should of course say that we have very rarely had a Government with a majority in the Assembly. We have always had to depend upon coalitions. At one stage, we were in coalition with the Welsh Nationalists. At the moment, within government there is an Independent and a Lib Dem Cabinet Secretary of Education. The nature of politics within the Assembly has always been slightly different because we have never had a majority Government. The make-up of the Assembly is 40 constituency Members, with a top-up of 20 Members on a proportional basis. It has operated politically very differently.

There has been, by and large, a lot of consensus within committees, but there can be a breakdown of consensus, particularly regarding legislation and legislative amendments. Those are the areas where political balance becomes more important, but I think it has worked reasonably well. We have an arrangement regarding the distribution of committee chairs. The chairs of committees, although they may be allocated from a particular political grouping, are, nevertheless, appointed by the Assembly itself, so it is possible for more than one person from a group to put themselves forward and be elected. How that will work remains to be seen, but it is a reflection of the view that, in a one-chamber legislature, maintaining the independence of our committees from government, to enable them to carry out their role independently, is seen to be extremely important. Are we satisfied that we have achieved that? I am not completely satisfied that has been the case. There is probably room for some improvement in that area, but we are very conscious of it.

Lord Foulkes of Cumnock: That is very helpful. Thank you very much indeed.

The Chairman: Thank you for your evidence this morning. We apologise for the session overrunning, but it was very helpful to us, and we look forward to continuing engagement in the inter-parliamentary forum as it develops. You will be coming to Westminster in January for that and I look forward to seeing you then. Thank you.

Mick Antoniw: I look forward to meeting you again. Thank you very much.
Wednesday 13 June 2018
11.30 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Smith of Hindhead.

Evidence Session No. 9 Heard in Public Questions 69 - 73

Witnesses

I: Sir David Bean, Chairman, Law Commission; Professor David Ormerod, Law Commissioner for Criminal Law and Evidence, Law Commission; Jessica de Mounteney, Law Commission.

Examination of witnesses

Sir David Bean, Professor David Ormerod QC and Jessica de Mounteney.

Q69  The Chairman: Good morning and welcome to the Committee. Could you identify yourselves for the record, starting with Professor Ormerod?

Professor David Ormerod QC: I am the Law Commissioner responsible for criminal law.

Sir David Bean: I am a judge in the Court of Appeal and I am the Chairman of the Law Commission.

Jessica de Mounteney: I am parliamentary counsel to the Cabinet Office, currently on secondment to the Law Commission.

The Chairman: As you know, we are undertaking the first review of committees for 25 years and it might be another 25 years before we review our committees again. Given that situation, we are looking for your advice as to the way forward on these issues. Do you have any general observations on that to begin with?

Sir David Bean The committee that we would particularly like to address you on is the Special Public Bill Committee which is constituted ad hoc for certain law reform measures. There are other committees that we have had interaction with, for example the Constitution Committee, but you
know all about them. The Special Public Bill Committee is not very well-known, even among parliamentarians, and perhaps we could say a word about that, either now or later in your questioning.

The Chairman: We will do it later. I think we have a supplementary on this one.

Baroness Hayter of Kentish Town: It may be that this will bring us on to both questions. I am interested in what it is for your work that the House of Lords Committee most offers. If you can imagine we were unicameral or an elected House, what would be missing from your work? In a sense, that might bring you to that question.

Sir David Bean: As you know, our work consists of law reform in areas that are not party-politically controversial. We have the problem certainly at the other end of the Corridor that not many people are interested in what we do and it is not considered justified to take up whipped Floor time in either House. This problem is not short term. It is nothing to do with Brexit, although that makes the problem worse. For decades there has been a problem with getting parliamentary time for law reform that will never feature in anyone’s manifesto but which happens to need primary legislation. In this House there was the Jellicoe procedure in the 1990s, but that fell into abeyance. In 2008 this House agreed to a new special procedure, initially on a trial basis, and in 2010 the House voted to establish it permanently.

Typically, the Committee consists of 12 Members of the House of Lords. It hears evidence from witnesses to assure itself that the Bill is indeed uncontroversial and to explain anything that the Committee considers needs explaining. The Committee goes through the Bill clause by clause in the usual way and reports to the House. Report stage is taken on the Floor, but by this time the heavy lifting has been done by the Committee. We think this is a valuable way of considering the sort of Bill which justifies detailed attention from 12 people but does not warrant detailed attention from 800 people. It is particularly valuable when, as you know at the moment, the House is rather preoccupied with more controversial legislation—but, even when times are less remarkable than at present, it is useful. Whether the pressure of mainstream business is great or small, it is surely possible to find 12 members of a House of 800 who can give their time to serve on the Committee. We think it is a very valuable procedure.

Baroness Hayter of Kentish Town: How would it work if we were an elected House? How much do you rely on those 12—and, forgive me, I do not know who the 12 are at the moment, which shows how right you are about us not knowing enough.

Sir David Bean: Perhaps I might take up that point straightaway. It is not a permanent committee. It is constituted ad hoc each time the House authorities and the government business managers agree that a Law Commission Bill should be introduced into this House and that the procedure should be used. The 12 members are found for that Committee,
and the next year it will be a different Bill and a different Committee. I am sorry to interrupt.

**Baroness Hayter of Kentish Town:** Do you rely on a lot of rather expert legal—using the shorthand—people, and, if we were an elected House, would we still be able to fulfil that role, or do you just need good political people, whom you would get by whatever process our House was put together?

**Sir David Bean:** The Special Public Bill Committee does not consist entirely or even mainly of lawyers. It is often chaired by a retired judge. The composition of the Committee is agreed, I understand, through the usual channels, with a certain number of Conservatives, Labour, Liberal Democrats and Cross-Benchers. There are rules about what constitutes a conflict of interest and so on, but the idea is to have 12 people who are interested in the subject and can make a contribution.

You asked what would happen if you were an elected Assembly or if this place were unicameral. The Scottish Parliament has recently introduced a form of special procedure. The Law Commission of England and Wales’s writ does not run north of the border. There is the Scottish Law Commission, and I am sure it could tell you more if you wanted the details. In that unicameral elected body there is a Delegated Powers and Law Reform Committee, and in the last three years some Scottish Law Commission Bills have been taken through that procedure.

**Q70 The Earl of Courtown:** That is very interesting, but I will move on now to the Joint Committee on Consolidation Bills. Do you have any comments on its work? What can we learn from the Welsh and Scottish experience about timetabling consolidation Bill work?

**Sir David Bean:** I do not have any personal experience of consolidation Bills. My colleague Jessica de Mounteney of the Office of the Parliamentary Counsel, seconded to us, does from past work in that office. As you will appreciate, consolidation Bills have gone out of fashion. In the 40 years up to the end of 2006 there were more than 200 consolidation Acts. Since New Year's Day 2007 there have been only two. Not many people know that. The Joint Committee is, as I understand it, constituted at the beginning of each Parliament, but it has not had much work to do. There was the Charities Act 2011 and the Co-operative and Community Benefit Societies Act 2014, and that is it.

We hope very much that next year Parliament will have before it a big consolidation Bill to do with the law and procedure of sentencing, about which Professor Ormerod can tell you anything you would like to know. I will put it this way: that is phase two of the parliamentary process. The difficulty has been that, before a consolidation Bill can be introduced, there has to be pre-consolidation paving work. That has normally historically been done by adding a couple of clauses to a passing government Bill on a connected subject and then the paving clauses go through in no time at all. This year there has not been a criminal justice Bill before your House, or the other place, and so we are trying to find ways of getting the paving clauses introduced before the consolidation committee can do its work. As
I say, David can tell you more about this, but that is the only current consolidation project.

**Professor David Ormerod QC:** Could I add something in relation to consolidation? I think it is often undervalued. I am not sure that the parliamentary and committee process can do much to enhance the realisation of that value. To take the Sentencing Code project as an example, it does far more than bring together all the law in one place, although that of course has great benefit. In doing so, it reduces the complexity of the law and reduces the phenomenal rate of error that is currently occurring in the law. In doing so, it renders the law more accessible, so it has a positive benefit in terms of public confidence and huge financial savings. Ministry of Justice analysts estimate that over £250 million might be saved by consolidation over the next decade. Given that it will go through a committee and not be a great burden on parliamentary time, that is a huge saving and a very efficient process. As the Chairman says, that is inhibited by the current inability to secure these pre-consolidation amendment clauses in a government Bill with sentencing in its scope.

**Sir David Bean:** We would suggest, if I might go back to the last subject, that it would be very suitable indeed for the Special Public Bill Committee, because the paving clause Bill has, in effect, one substantive clause, which David could tell you about, and all the rest is the mechanism of getting the legislation into exactly the right shape where it can be the subject of a consolidation Bill. That would be a wonderful thing for a Committee to do because the remainder of the House, let alone the other place, would not be interested.

**Q71 Lord Lang of Monkton:** I am very sympathetic on this consolidation issue and appalled by the figures you have just quoted, which are in your paper as well. I would like to ask Professor Ormerod and Ms de Mounteney a question in view of what you have said about this, Sir David. In your paper you touch on two possible ways of accelerating the process. You talk about codification rather than consolidation and technical reform. You also talk about the joint committee producing some pre-consolidation amendments which could be put through, I think, although you do not say so, secondary legislation. Perhaps you could comment on both those against the instinctive reaction that I have, which is that people will say, “Hang on a minute, this is going to change the law”. People will be suspicious of it. They will feel that you are taking shortcuts, cutting things out and possibly changing the law. On the secondary legislation point, if I am right that that is what you are considering, you are going into territory where there has been a huge battle raging, as I am sure you know, between the Executive and Parliament over what we see as the transfer of powers from Parliament to the Executive through secondary legislation and statutory instruments. Would you like to comment on that?

**Jessica de Mounteney:** I can comment from a technical point of view. I did a consolidation relating to the National Health Service way back in 2006, which brought to an end the last of the big tranches of consolidations. In relation to that project, we had a power to make pre-consolidation amendments by order. The scrutiny of those amendments

was undertaken by the Joint Committee on Statutory Instruments. I recognise that the landscape has changed quite considerably since 2006 and, obviously, the DPRRC is very jealous of this and of the other House losing any power. I would say in relation to pre-consolidation amendments that they have a fairly defined scope. They are allowed only for the purpose of facilitating consolidation. Although that does not have any precise definition, it has a clearly understood parameter. In relation to the National Health Service consolidation, I think we made something in the region of 150 to 200 very technical amendments, which were cleared by the JCSI prior to the main consolidation going through. Certainly at that time—and it was 12 years ago—there was no concern that that was being used in any underhand or devious way.

Lord Lang of Monkton: I am sure it would not be the intention, but it is what people might perceive.

Jessica de Mounteney: It is. I suppose the only answer is that one would hope that consolidation is a different world from the world where the Houses would be concerned about those kinds of amendments. There is certainly no guarantee of that, because the political landscape has undoubtedly changed considerably in the intervening period.

Professor David Ormerod QC: As the Chairman said, and Jessica has emphasised, the Sentencing Code project divides into two parts. The bulk of the work—450 clauses or so—is pure consolidation, and I cannot see that being considered to be controversial because it is a re-enactment of something that Parliament has already enacted, and nothing untoward should be seen in re-enacting it in a purer form, in a clearer, more robust structure.

The second element which comes first in time is that we need these pre-consolidation amendment clauses. They are both technical and uncontroversial and would seem therefore to be ideal candidates for the Special Public Bill Committee. There is a forest of very technical detail about the circumstances in which amendments will need to be made to facilitate the consolidation itself. They are uncontroversial in the sense that they would not give rise to a change in any maximum penalty. They are not designed to give rise to any change to the prison population. They are designed simply to facilitate a clearer statement of the law in the consolidation Bill, subject to the one innovation we have introduced which we have described as the “clean sweep”, which allows for the layers of historic sentencing legislation to be removed so that anybody dealt with in the criminal court after the Sentencing Code is introduced will be sentenced under that code, irrespective of the date of the commission of the offence.

We have consulted extensively on this and there is unanimous support for it. It allows us to break the cycle of this layering of sentencing legislation. It is very technical and it is completely uncontroversial in political terms, so it would seem to be a very good candidate for the Special Public Bill Committee. The problem is that sentencing is a controversial subject—but that does not mean, of course, that the clauses have to be controversial or that the consolidation itself has to be controversial.
Lord Lang of Monkton: I raise it simply to say that if you are proceeding in these direction, it would be very important in the way you present it to emphasise the fact that there is absolutely no underlying motive. The Constitution Committee recently interviewed the Lord Chancellor and pressed him on consolidation issues, and I know that you are interested as well, particularly on the sentencing side of things. What are the main parliamentary barriers to consolidation, other than the ones that you have mentioned? Is it the fact that it is very time consuming, that it involves a lot of people and that it is costly to do, or are there other issues that we ought to address?

Professor David Ormerod QC: There are probably two parliamentary barriers. The one that we have just discussed—finding a vehicle for the pre-consolidation amendment of clauses—is the most acute for the Sentencing Code project. Finding a government Bill with the relevant subject matter within its scope is a particularly challenging prospect at the moment, and use of the Special Public Bill Committee could resolve that.

The second, which I have already mentioned, is that consolidations are undervalued and that greater awareness of the financial and other savings and the efficient use of parliamentary time might assist. I am not so sure that that is a matter for parliamentary committee work. Rather, there should be greater awareness within government and Whitehall departments of the value that consolidations can bring.

Lord Lang of Monkton: You have not tackled the immigration legislation recently.

Sir David Bean: We have not. We have been asked by the Home Office to do a scoping project on streamlining the Immigration Rules as part of our new programme. As I am sure you know, Lord Lang, that is not primary legislation; it is a very special type of secondary legislation. The idea is that it should be possible to make the Immigration Rules, whatever their political content, simpler, easier to use and easier to search. Further ahead, there is also a need for the immigration primary statutes to be consolidated. That is not going to happen in the next year or two. You can think of as many reasons as I can for why substantive immigration law may change in the next year or two, but at that point there is a very good case for consolidating that—and that would be an old-fashioned consolidation.

Lord Lang of Monkton: That would take a long time.

Sir David Bean: Yes.

Lord Foulkes of Cumnock: You said that consolidation is technical and uncontroversial, but some of my colleagues do not agree. How do you convince them?

Sir David Bean: It is the most technical form of legislation that there is. Consolidation in the Westminster definition, in this building, means changing substantively nothing. There are very strict rules about what changes can be made, which Jessica knows better than I, but, broadly, if you are referring to a body or a form of order or something that no longer
exists, you can change that, and you can change dates and so on, but you
substantively you can change nothing.

I have had an exchange of correspondence with Lord Adonis, who did a
blog suggesting that sentencing procedure law should not be consolidated
because that might lead to more people being sent to prison and the effort
should be devoted to sending fewer people to prison. As David told you a
moment ago, our sentencing procedure consolidation should not result in
any increase or decrease in the prison population, so I wrote back to Lord
Adonis to explain why I thought he was wrong. It is, with respect, not a
good argument against consolidation to say, “Well, you ought to be
changing the law substantively”. That is a matter for you folk and the other
place. However, we think the law ought to be simpler, easier to find, easier
to look up and easier to apply.

Lord Foulkes of Cumnock: So it is a rule that when you consolidate you
cannot change anything substantively, as it were.

Sir David Bean: Yes.

Lord Foulkes of Cumnock: Is the reduction in the number not a function
of Brexit? Is it not twofold? First, there is this evolvement of EU law into
British law. I think David Davis said that 6,000 civil servants are working
on Brexit, which presumably means that they cannot do anything else.

Sir David Bean: I can best respond to that by saying that the Law
Commission has scope to do law reform work that other public servants do
not have time for at the moment, for the reasons you have just set out.

Lord Foulkes of Cumnock: So you could do it.

Sir David Bean: We can do some work. We should not do politically
controversial work, but there is some reform work in our programme just
begun which Whitehall departments and their legal departments simply do
not have time for.

The Chairman: Professor Ormerod, can I ask you a potentially silly
question? If we go back to paragraph 17, you say: “To go back to
sentencing, there has been an independent survey that suggests that
around 30% of appeals in the Court of Appeal Criminal Division on
sentencing involve an unlawful sentence. That is because of a mistake by
the judge as to the powers available in relation to the sentencing
determination”.

If I have it correct, the powers are there but they are spread out. What
you are doing by consolidation is bringing them all together. Why the
judges are making those mistakes is beyond me. Is it because the law is
so complex that the judges do not understand it?

Professor David Ormerod QC: It is in part that. To explain the survey,
it was a survey of 262 appeals in relation to sentencing review and, of
those, 95 or 96 were found to have an unlawful sentence. There was no
disagreement between the appellate court and the trial judge about the
tariff or the length of the penalty that could be imposed but, rather,
whether the power existed to impose that penalty at all. Part of the problem is the volume. There are over 1,300 pages of primary legislation dealing with sentencing procedure spread across several centuries of legislation.

Part of the problem is systemic. In criminal justice the way we legislate on sentencing is year on year to layer different criminal justice Bills, each with their own transitional provisions. You will introduce a Bill in 2000 and in 2002 another Bill will introduce amendments to what has become the Act, but of course the amendments will take effect only in relation to people who are dealt with after a particular date.

In any particular case, a judge is dealing with a series of parallel sentencing regimes that operate within a specific date range, and the risk of applying the wrong one is a significant cause of that high number. By bringing all the legislation together we reduce that risk, but we have done far more than that in the code. We have restructured the legislation having consulted extensively with the judges. Over 1,400 people were consulted in the course of our consultation. We structured the Bill in a way that will work best for judges and practitioners. We decluttered the Bill, if I can use that expression, by moving more of the technical material into schedules, leaving the primary provisions to do the work.

**The Chairman:** I cannot get away from my point that the complexity is leading to a lack of understanding.

**Professor David Ormerod QC:** Yes, in part; the complexity and frequency of amendment.

**The Chairman:** The Office of the Parliamentary Counsel has expressed good law as that which is “necessary, clear, coherent, effective and accessible”. It seems as if people are not listening to you.

**Jessica de Mounteney:** The main issue from a drafter’s point of view is resource. You would probably get the answer from almost any civil servant that in an ideal word there would be lots of resource available for consolidating, but, unfortunately, in political terms at the moment there are probably more pressing matters, because it takes a long time to consolidate.

**The Chairman:** Could the Law Commission not do a submission and say, “Look, we’d better get ahead with this politically”, because if 30% of our appeals are unlawful, there is a lot of human misery and cost there?

**Sir David Bean:** You are quite right. I sit in the Court of Appeal Criminal Division and I am amazed at how routine it is that a mistake has been made that nobody has spotted at trial: not the trial judge, not the defence counsel, not the prosecution counsel. An appeal comes to our court where the defence is saying, “Five years is too long. It should have been three”, or something, and the staff of the Criminal Appeal Office, who know about these things, point out that the sentence was not just, arguably, too long but was unlawful. This is something of a scandal. It has been pointed out time and time again. Our sentencing procedure consolidation project is designed to meet it.
As to the case for consolidation more generally, we have made it, we constantly make it, but it must be said, as Jessica has just said, that consolidation is an expensive process because parliamentary counsel are a scarce and expensive resource. Once it gets to your House and the other House as a consolidation Bill, it takes up almost no parliamentary time except in the Joint Committee—traditionally about five minutes in each House—but there are funding implications of doing consolidation projects. Our core funding has been very substantially cut in the last eight years and if we were starting now we could not possibly undertake a project such as sentencing procedure consolidation unless the request to do a particular consolidation came with funding.

The Chairman: We are undertaking a review of committees. We want to ensure that they are fit for the next five, 10 or 20 years as a result of it. It seems to me that there is a wider implication here for the review of committees, because we have established a Joint Committee on Consolidation Bills and yet we are going along with the same old practice. We need something from you as we go along—further papers on this—so that we get an understanding, the House of Lords can carry out its business in an efficient way, and we end up with the definition that the Office of the Parliamentary Counsel gives of good law. Do you accept that? If you do, we would look for further information from you.

Sir David Bean: We do, and we would be very happy to correspond further with you, but the short answer is: please cherish the Special Public Bill Committee procedure and use it, because there is so much that we do that can best be handled by a committee of 12 rather than a House of 800.

Professor David Ormerod QC: Can I add one supplementary point in relation to the complexity and the systemic problem of the layering of legislation that I described? Once the consolidation has occurred and there is a new Sentencing Code, as I hope there will be, it is important to guard against that code becoming contaminated, as it were, by subsequent legislation that introduces new criminal justice and sentencing procedure that does not take effect through the code.

I would encourage parliamentarians that whenever there is an amendment and whenever there is a new sentencing procedure after the code has been introduced, it takes effect through the code by substituting, repealing and amending the code so that there is only ever one primary source. That will go a long way to reducing the risk of error. That is a burden placed upon Parliament, whether by committee or otherwise, to protect the purity of a code once it has been produced.

The Chairman: I think it is well worth us hearing further on that, so that we can all play our part in there being more efficiency and better law as a result.

Q73 Baroness Hayter of Kentish Town: I have two separate questions. The first is to Professor Ormerod. You were talking about the rules on consolidation whereby you can only take out bodies that no longer exist, and things like that. Clearly, there is a move to having gender neutral legislation. Are you able to do that?
The separate different issue, which has already been touched upon by Lord Lang, is immigration. We are about to have a new immigration Bill and it is going to become highly political. I am interested to know how on earth you can clear up the rules at a time when there is a very hard-fought new Bill going through.

Sir David Bean: I will take the second point and perhaps ask Jessica to answer the first point.

On the second point, at the moment we are at the scoping stage. We have been asked to take a chunk of the Immigration Rules and produce a draft of what they might look like if they were cleaned up. If that finds favour, following consultation we might be asked to do a draft of the whole lot. It is a big project. If you have an immigration Bill before you in the current Session, that will be over and done with long before we get to redrafting the whole of the Immigration Rules, if indeed we do.

Jessica de Mounteney: On the other point about gender-neutral drafting, one of the great things about consolidating is that you have the freedom to improve the language and make it as modern and clear as you like. The only thing as a drafter that you have to represent to the Joint Committee on Consolidation Bills is that you have not changed the law. A consolidation Bill will often look very different from its previous component parts, but as long as you have not changed the law you can do a lot. Yes, you would always consolidate in gender-neutral terms.

Baroness Hayter of Kentish Town: Automatically.

Professor David Ormerod QC: That has been very well received.

Jessica de Mounteney: New legislation is always drafted in gender-neutral terms now.

The Chairman: If there are no further points, can I thank the three of you for your evidence, and particularly for your paper, which has been very helpful? If we can continue this dialogue, I think that will be very helpful for us all. Your evidence has been excellent. Thank you very much.
The Chairman: Good morning. Welcome to the second session for committee chairmen. Could you introduce yourselves, please, for the shorthand writer?

Lord Blencathra: I am chairman of the Delegated Powers and Regulatory Reform Committee, and I am guilty of sending you a 25-page, 100-paragraph magnum opus on some of my radical ideas for what we do post Brexit.

Lord Trefgarne: I am chairman of the Secondary Legislation Scrutiny Committee.

The Chairman: Lord Blencathra, I did justice to your paper. I read every paragraph. I highlighted it, as well, as I went along. That is the proof for you. I commend you on your effort. It was very helpful.

Can I put a general question? What is the purpose of the House of Lords committees, from your angle?

Lord Blencathra: First and foremost, it is to assist in holding the Government to account. Of course, we are a revising Chamber. Our specialist committees, supported by incredibly able clerks and staff, do detailed scrutiny work and report to the House. Lord Trefgarne and I share an excellent clerk. My committee has the benefit of four parliamentary
The fact that we do not shadow House of Commons committees is another strength. We have our own particular niche, where we do specialised work. There is some complementarity as well. The Delegated Powers Committee, which has no counterpart in the House of Commons, took the unique step of reporting on the European Union (Withdrawal) Bill while it was still in the Commons. Normally we report on Bills only once they have had a Second Reading in the Lords. We also reported on the Taxation (Cross-Border) Bill. We pointed out that it had more Henry VIII clauses than about 10 European Union (Withdrawal) Bills.

Uniquely, we reported on those Bills while they were being considered in the Commons. That provoked Members in the House of Commons to say, “Goodness me. We didn’t know that you people, doing this rather specialist work, existed in the Lords. Can you now report on some other Bills for us, please?” We have had to curtail our enthusiasm, in some ways. We cannot report on all House of Commons Bills, but where we can, we have assisted. We will consider in future whether or not we should do that as well.

Of course, the other role of committees is that we have an internal organisational structure. We have specialist committees here, such as the Liaison Committee itself, that look after internal affairs: the work of the House and how the House functions.

I began by saying that we hold the Government to account. In some ways, we also hold Parliament to account. In my opinion, post-legislative scrutiny is very important. We had post-legislative scrutiny of the Equality Act 2010, an excellent report that was dismissed, or even dissed, by the Government. We had the excellent report by Lord Cameron on the Natural Environment and Rural Communities Act 2006. As I said in my submission, I believe that we should do more post-legislative scrutiny.

Lord Trefgarne: Our committees must support the work of the House. The purpose of committees must be to understand the context and the purpose of the House as a whole. This House is respected for its deliberative approach to legislation, its ability to bring to bear the expertise of its Members and their willingness to consider the technical detail of government proposals. That has been the experience and the achievement of the Secondary Legislation Scrutiny Committee over the 15 years since it was set up. The absence of similar committees in the House of Commons points to another characteristic of Lords committees: they should be complementary to activity in the Commons, not in competition with it. Other than that, I can only support what Lord Blencathra has just said.

Q81 Lord Low of Dalston: What do you think are the key strengths and weaknesses of House of Lords committees and, in particular, of their current structure?

Lord Blencathra: In relation to my committee, Delegated Powers, perhaps I can read into the record a quote from Ruth Fox of the Hansard Society, who has supplied evidence. She said, “strengths include the nature
of the specialist expertise of the Members, the forensic and rigorous approach to the scrutiny, and the quality of the reports that consequently emerge. It is fair to say that a number, if not all, of the committees are important sources of persuasion and power, influencing both the views of Members of the House, for example through the Delegated Powers and Regulatory Reform Committee, Secondary Legislation Scrutiny Committee and the Constitution Committee, and the wider debate and views of stakeholders”. I can do no better than to quote the strengths.

Of course, as I mentioned earlier, there is also the collaborative work. The work of the Delegated Powers Committee informs the work of the SLSC. The SLSC referred to the DPRRC’s report on the Digital Economy Bill, and so on.

As far as the weaknesses are concerned, I wish to withdraw the second sentence of the executive summary of my report, in which I said, “The weaknesses are that we write wonderful reports, but nobody pays a blind bit of attention to them, and there is nothing that we can do about it”.

**The Chairman:** You repeated it throughout.

**Lord Blencathra:** Yes, I did. I said it a few times. However, after I got Lord Forsyth’s note last night and read it, I deliberately came early today to listen to what he and Lord Gilbert had to say. I entirely endorse what they said about communications strategy. I had assumed that we would be incapable of improving our communications. It is our biggest weakness. If we implemented what Lord Forsyth and Lord Gilbert were suggesting, I think we would eliminate that major weakness.

**The Chairman:** That is terrific.

**Lord Low of Dalston:** Do you think we have the balance right between sessional and ad hoc committees?

**Lord Blencathra:** In paragraph 70 of my report, I say that I dislike the term “ad hoc committees”. Although ad hoc means “for a specific purpose”, my thesaurus suggests that it also means “slapdash” or “haphazard”, something that pops up and is of little consequence. Therefore, I think the term “ad hoc” somehow diminishes what we do. I recommend that it be changed to “special investigative committee”, or something like that.

Leaving that aside, I do not think that we should get hung up on the balance. The balance between sessional and ad hoc committees, or special investigative committees, does not matter. The important thing is that the Liaison Committee uses the criterion that it is current and relevant when deciding whether to set up a special investigative committee. If there are only two current and relevant subjects to review, we should do only two committees. If there are a dozen, and we have the staff, the secretariat and the clerk back-up and enough Peers to do them, we should do a dozen. We should not have the formula that, because we have six sessional committees, we should have only six ad hoc committees. We should have as many as there are relevant subjects to discuss, staff to people them and Peers to work on them.
Earl of Courtown: Lord Blencathra, in your submission, you talk about the future of EU Select Committees. We have this great resource of staff and Members. The European committees are always very popular with our colleagues. In your report, you recommend, “We should retain the EU Select Committee to do the same task for the EU as the International Relations Committee does for the rest of the world”. You add that we may need a couple of more technical sub-committees. Is there anything you can add?

Lord Blencathra: If I may, I will deal with the thrust of some of the more radical suggestions in my report in response to your question 6, on other perspectives. At this point, I merely stress that there will not be a role for all six of those committees. Because we may stay in Euratom and some other EU institutions—on air safety, for example—there will certainly be a role for an EU Select Committee to monitor the work of the EU, in the same way as the International Relations Committee monitors the rest of the world. That is why I suggest that there may be a need for a couple of sub-committees to monitor air safety or technical aspects of the things we will remain in. However, that will take up the role of one EU committee. The other six, and the main Select Committee, will be redundant. I have my own views on how that expertise is used. I will set them out in response to the last question, rather than take up the Committee’s time now. I can also mention them in response to the question on treaties, which Lord Trefgarne will deal with.

Lord Trefgarne: A key strength of Lords committees is the contribution of their members, drawing on their wide range of expertise and their willingness to play a full role in committee deliberations. A weakness may be the low level of public recognition of the work of Lords committees, as Lord Blencathra suggested. Of course, the media pay far more attention to the Commons than to the Lords, but committees themselves could perhaps do more to encourage greater awareness.

Sessional committees retain an infrastructure to follow up recommendations affecting government and others, but ad hoc committees tend to struggle with follow-up procedures. My committee, the SLSC, already scrutinises certain treaties laid under the Constitutional Reform and Governance Act 2010, but only at the point of ratification. We have seen about 20 of those each year. There is now a lot of discussion about what should happen to the next, much bigger, batch of treaties, which I do not think will be a matter for my committee, not in its present form, in any event.

Lord Low of Dalston: Several witnesses giving evidence for the current review have called for a dedicated House of Lords committee to scrutinise treaties. Would you welcome that?

Lord Trefgarne: I think that is what will happen. I would not oppose that.

Lord Blencathra: I would support that as well. It is largely a matter for Lord Trefgarne’s committee at the moment. I think there was a subtext in the suggestion that that could occupy half a dozen Lords committees—that the current EU scrutiny committees would all be devoted to treaties. It is
a job for one committee only. If we had an EU committee and a treaties committee, that would still leave four redundant EU committees, in my opinion.

**Lord Trefgarne:** We are told that there are likely to be about 200 such treaties in the next few months or years. That would fully occupy one committee, I guess. The important thing is that at the moment we see treaties only after they have been ratified. We are very much in favour of a procedure that has earlier input into the discussion.

Q83 **Lord Foulkes of Cumnock:** First, I think that Lord Blencathra’s submission is one of the best that we have had. He has obviously been thinking very carefully about this. It is very helpful. I agree with him that “ad hoc committee” is not a good name and that “special inquiry committee” or “special investigative committee” would be better.

Can I ask specifically about the idea, which is a new suggestion, of inquiry panels of five to seven Peers, or Peers and MPs, conducting inquiries where a public inquiry might not be necessary or appropriate? There are always calls for public inquiries, which are very expensive and, very often, necessary. Can you suggest the kinds of topics or subjects that might be appropriate for such inquiry panels?

**Lord Blencathra:** This is a more radical suggestion. I was guided by the Hillsborough special panel, which was chaired by the Bishop of Liverpool.

The Chairman: Yes, James Jones.

**Lord Blencathra:** That reported quite speedily, was non-partisan and was highly respected. I will be very careful in my choice of words here. It would not work for something like Grenfell, which is far too high profile and highly contentious. I cannot come up with a list, but there may be a range of things at a lower level where you do not need a full public inquiry, but you need something like a Hillsborough-type panel. That could relieve some of the demand from the public and others that there has to be a public inquiry into something.

I can see the upsides of my suggestion. The downside is that it could be very tedious for Peers to do. It would probably need to be a joint thing, and MPs might not want to serve on it. It is like doing a private or hybrid Bill for HS2: you dedicate a large part of your life, day in, day out, to doing something that might not be politically sexy. In the Lords, there are Peers who would be very able to do it. There would not be many such inquiries per annum. I merely flag it up, because something may come along and the suggestion that we have a special panel, doing a public inquiry-type thing, might fit the bill.

**Lord Foulkes of Cumnock:** Could it be done under the present Standing Orders and constitution, or would there need to be a change?

**Lord Blencathra:** I am not aware of that, but it would probably need some change. All I will say on this and on some of my other radical suggestions is that I am doing the easy bit by flagging up the idea. I leave it to the clerks and the House authorities to sort out the detail.
Rt Hon Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee and Rt Hon Lord Trefgarne, Chair, Secondary Legislation Scrutiny Committee – Oral Evidence (QQ80–87)

The Chairman: I have been informed by the clerks that not much change is required.

Lord Blencathra: Really?

Lord Foulkes of Cumnock: Good.

Lord Blencathra: It is another option. It is another little string to our bow of other things we can do. In the same way, I am surprised and disappointed that the Law Commission manages to do only one consolidation Bill every seven years. I know lawyers go rather slowly, but that is appallingly slow.

Lord Foulkes of Cumnock: They gave us evidence. They are unhappy about it themselves, are they not?

Lord Blencathra: I do not understand why they are unhappy or what the motivation behind it is. It is not as if we are short of lawyers downstairs, my Lords. I know when we have a consolidation Bill it is a joint Commons and Lords Bill, but if the Law Commission is incapable of doing it or, for whatever reason, cannot do it, surely we could have lawyers from downstairs and others working on the draft, pulling it all together and doing one a year. We should do one consolidation Bill a year. The statute book is a mess. It is a perfect job for the Lords.

The Chairman: Last week, we got evidence on the sentencing Bill. They did a consolidation. Accompanying it was a paragraph in the submission stating that, as a result of the consolidation, it was found that 30% of cases were unlawful. It also stated that there would be a saving of £250 million. There is a public policy issue. If 30% of cases are unlawful, because they are not consolidating, that is an issue for us to be interested in.

Lord Blencathra: I agree entirely. We call ourselves a revising Chamber. Okay, we revise Bills coming from the Commons, but we should be revising the statute book as well, for laws that have fallen into desuetude or that are out of date. That is a rather worrying figure.

With the expertise downstairs, we can easily do it. My committee has four lawyers and three top counsel. JCSI has the same thing. If they had nothing else to do, those lawyers could do it in a matter of weeks, because they are so able. Of course, they are absolutely chock-a-block at the moment with other legislation, but in a couple of years’ time, when we are through all the Brexit stuff, there may be flexibility for some of our in-house counsel to take charge of doing consolidation.

Q84 Lord Smith of Hindhead: It is no surprise that the House is expecting a substantial amount of secondary legislation in relation to Brexit. Can you explain briefly how each of your respective committees is preparing for that?

Lord Trefgarne: The first thing we needed to do was to increase the resources we have available for this purpose. Additional advisers have recently joined us and will help us to do that.
The process by which we examine and comment on secondary legislation will be broadly the same as it is now. We will examine each and every statutory instrument as it comes forward. Some of them we will report to the House. Most of them we will regard as routine, and they will go through to the statute book. Once the sifting process becomes live, there will be that additional process to be conducted. That depends on the passage of the Bill, of course. That is when it will start. At that point, we will be ready to divide ourselves into two sub-committees, which we are already authorised to do. We will not need to do that until the volume of secondary legislation reaches a certain level.

**Lord Smith of Hindhead:** You do not foresee changes to the structure of the committees to deal with this, apart from dividing into two sub-committees.

**Lord Trefgarne:** No, not at the moment.

**Lord Smith of Hindhead:** You just need a bit more resource, and to follow your existing plan.

**Lord Trefgarne:** Yes.

**Lord Blencathra:** This is largely a matter for Lord Trefgarne and the SLSC. The Delegated Powers Committee stands ready to deal with other Brexit-related Bills when they come along: a farming Bill, a fishing Bill, an immigration Bill, or whatever. We will apply the same rigour to them as we apply to the withdrawal Bill and other Bills.

I want to make it clear: politically, the EU withdrawal Bill is one of the most important that we will have in this Session, perhaps in this Parliament; we have not changed our criteria one iota to deal with it. We have not made any exceptions because it is a special Bill and the Government obviously need some Henry VIII powers; nor have we come in more harshly regarding criticism of the Henry VIII powers, the necessity test or whatever. We have followed exactly the same criteria that the committee has exercised since it was set up in the 1990s.

I have a note here, which I will not read out to the Committee, of some of the successes of the Delegated Powers and Regulatory Reform Committee. We are quoted extensively in the House by Peers. On many occasions in the last couple of years, the Government have accepted the committee’s recommendations. They have moved things from the negative to the affirmative procedure, and so on. Perhaps I can submit that in evidence to you, as an annexe.

**The Chairman:** Absolutely. That would be great. We want to keep this discussion going.

**Lord Smith of Hindhead:** I have not been in the House of Lords for a particularly long time, but there seem to be many mysteries about what the House does, what the committees do, and all the different aspects of it. I am sure that only Lord Trefgarne knows all the ins and outs and where all the secrets are hidden, because of his long standing in the House. Are there any aspects of the work of your respective committees we may not
already be aware of that you would like to bring to the attention of the Liaison Committee?

**Lord Trefgarne:** I have nothing hidden behind my back, ready to surprise you.

**Lord Smith of Hindhead:** Indeed, but is there any aspect of your work you think we might be interested in?

**Lord Trefgarne:** Our important task now is to prepare ourselves for the increased volume of work that will come with the passage of the EU Bill and then, of course, the additional Bills to which Lord Blencathra has just referred. At the right moment, we will divide ourselves into two sub-committees, for which we have already been given authority by the Procedure Committee. Both sub-committees will have the authority to report directly to the House. It will not need to go back to the main committee. All those arrangements are now standing by, ready to be used.

We are told that about 1,000 additional statutory instruments will come forward. I have made it clear to the authorities that we stand ready to deal with that volume. We think that the volume of routine secondary legislation will probably drop off a bit while the volume of EU-related or Brexit-related legislation comes forward, but we can do it.

**Lord Blencathra:** The Delegated Powers Committee has had high standing since its inception in 1992. As a new chairman, I have no responsibility for the committee’s high standing in the past. When I finish my chairmanship, I hope that the standing of the committee will be just as high and that I will not have lowered it in any way. It is refreshing to sit in the Chamber and hear Ministers and Peers say, “We have the excellent report from the Delegated Powers Committee. We accept the recommendation”, or Ministers having to justify in detail why they do not accept our recommendation to go from negative to affirmative.

The committee does influential work. I quoted Ruth Fox’s comments on that. There is procedural innovation; we are reporting on Bills still in the Commons, and the Commons are gagging to get more reports from us. We will be very careful. The Brexit situation is quite unique. We are not going to get into the business of reporting on all House of Commons Bills, but it is an interesting innovation.

There is the value of the committee’s comments on delegated powers memoranda. For example, in 2014 the DPRRC undertook an inquiry into the quality of delegated powers memoranda. The First Parliamentary Counsel and Permanent Secretary to the Cabinet Office at the time, Richard Heaton, said in evidence to the inquiry that the DPRRC had created a culture in departments where “people think quite carefully now about delegated powers”. He also suggested that, similarly, the fact that the memoranda were circulated to the PBL Committee had “a good internal-discipline effect”. As Lord Forsyth said earlier, the fact that our committees do this work enables the Government, the draftsmen and the civil servants to think carefully about what they are doing.

**Q86 Lord Foulkes of Cumnock:** Can I ask about engagement with the public
and the media? I think that Lord Blencathra is saying that he now pulls back from what he was saying about “middle-aged men … with grey, unshaven stubble” and “a mature Parliament trying to be hip and failing”. He now agrees that we should be looking at how we can get coverage on Instagram and so on.

**Lord Blencathra:** Not necessarily, Lord Foulkes. What I was pulling back from was my initial comment that the Lords do wonderful work and produce excellent committee reports, but no one pays a blind bit of attention, and there is nothing that we can do about it. If we implement what Lord Forsyth was suggesting, we might get more media attention.

I am still very nervous. I do not share Lord Forsyth’s new conversion to Twittering, tweeting, Flickring and all that sort of stuff. I do not touch that myself, because my personal view is that Facebook and Twitter are enormously damaging to young people. The mental health of young people is suffering because of them. I merely suggest in my report—I still stick with this—that we should do careful research to see whether, if the Lords is on Twitter and Facebook, it is actually helping our cause, or whether it is adding to the fake news thing.

If we discover by careful focus group research that young people, or older people, are now treating the Lords with more enthusiasm and respect, and admiring what we do because we are on those social media things, we should continue to do it, or increase it. If the response is, “You are just in there with all the other nutters who are doing Facebook and Twitter”, we should very carefully—

**Lord Foulkes of Cumnock:** We are not all nutters on Twitter. I am on Twitter.

**Lord Blencathra:** That is the exception that proves the rule.

**Lord Foulkes of Cumnock:** Advertisers see social media as a very important way of getting their message over. The mainstream media are suffering because advertisers are moving to social media. We older people really have to come to terms with that if we want to get our message over. Do you not agree that the House of Lords needs to come to terms with it as well?

**Lord Blencathra:** I agree that we need to come to terms with it, but I stick to my suggestion that we should analyse carefully whether it is doing us any good. It may be that, on balance, being on Twitter, Facebook, Flickr and so on improves our standing.

**The Chairman:** The Lords is not on Facebook.

**Lord Foulkes of Cumnock:** We are on Twitter.

**The Chairman:** Committees are not on Facebook.

**Lord Blencathra:** Whatever social media we are on, we need to analyse whether it is doing us any good or enhancing our reputation.

**The Chairman:** Point taken. I am taken by that. We need to analyse it.
Lord Blencathra: We must not just assume that, because everyone is doing it, it must be a good thing.

The Chairman: There are many ways of engaging. The staff have already demonstrated to me that the printed document may be becoming disadvantageous now. We could go to infographics and other things to put the message over. With that in mind, I am delighted to hear your comments about how we communicate. We will undertake that analysis.

Lord Trefgarne: We already have an excellent website, which is beginning to serve that purpose.

Lord Blencathra: I did not see Lord Forsyth’s YouTube bits, but I got his email a few days ago and I must admit that I thought it was excellent. For the first time ever, I looked at a report. I do not go around the place in complete blind ignorance, but when reports are published I do not have a clue that they have happened, and I find them weeks later. This is one that I saw in advance.

Q87 The Chairman: Good. Do I detect a sinner repenting? Not at all. Thank you for your attendance this morning. It has been excellent.

Lord Blencathra: If we have a few minutes, may I end by responding to question 6, which asks whether we have any observations that have not already been covered? Can I stress how strongly I believe that we need to do something radical as far as statutory instruments are concerned?

This is the key thrust of what I mean. I was interested in Lord Neuberger’s point that primary legislation gets a First Reading, a Second Reading, a Committee Report and a Third Reading in both Houses. It is completely judicial review-proof. Because of the shortened procedure, statutory instruments are judicially reviewed all the time. Lord Neuberger says that it is quite legitimate for the courts to overturn them, because they do not get adequate scrutiny.

This is merely a suggestion. If we do more scrutiny of statutory instruments, closer to the scrutiny that Bills get, will we make them more judicially review-proof, or more resistant to being overturned in the courts? I find it reprehensible that courts are overturning the work of Parliament. If the justification is that Parliament is not doing the job properly, we should do the job more thoroughly. When we are out of the EU, those committees will have a role to play.

I also believe—this is the radical part—that we and the Commons should get together in specialist committees to help with the drafting of statutory instruments. We keep Chinese walls. Just because Peers may be on a committee that is helping to draft an instrument, it does not mean that we cannot vote or speak against it when it comes here. I put that in detail in my report, ad nauseam. It is rather boring, but it is a key thing that we have to address.

The Chairman: You made the very good point that statutory instruments are secondary legislation and that there is no judicial review for primary legislation. We will look at that and take it up.
Lord Blencathra: Thank you very much.

The Chairman: Your comments have been very helpful to us this morning. As I mentioned to the previous witnesses, we will be happy to continue this discussion with you. We may even have you back at some stage. Thanks very much. It has been very helpful. Lord Trefgarne, do you want a final cheerio?

Lord Trefgarne: I do not have much more to say. I do not disagree with the proposition that secondary legislation needs more careful scrutiny. Inevitably, that will lead to procedures for amending secondary legislation. I can see Governments resisting that a long way into the future.

The Chairman: David’s point was about judicial review. You want to ensure that there is limited room for judicial review. Is that correct?

Lord Blencathra: It is.

Lord Trefgarne: I do not disagree with that.

The Chairman: Good. Thanks very much. That was very helpful.
Wednesday 20 June 2018
10.40 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston; Lord Williams of Elvel.

Evidence Session No. 13

Heard in Public

Questions 92 - 99

Witnesses

I: Lord Lisvane KCB DL and Rt Hon Lord Blunkett.

Examination of witnesses

Lord Lisvane and Lord Blunkett.

Q92  The Chairman: Good morning, you are very welcome indeed. David, you sent a very good submission, as did Lord Lisvane. Do you want to introduce your submission before we get into other questions?

Lord Blunkett: I will do a very brief sort of Second Reading. There are people in the House of Lords, and undoubtedly members of this Committee, who feel that the world thinks about the House of Lords and its activities as secondary. All our institutions are under scrutiny as they have never been before, and with the major constitutional upheaval we are in the throes of at the moment I believe it is more important than ever that the House of Lords should review its procedures and activities. I strongly welcome your initiative in taking this forward and the possibility of reviewing what will be in front of us in the decade to come.

The restoration and renewal of the Palace of Westminster should be accompanied by democratic renewal. If the Committee felt it appropriate, it could look at what will happen at the time of restoration and renewal and the return of the Lords to the building, which I hope happens in my lifetime, not least because I hope to live to be able to come back in, and to do so with a view to how the world will look then technologically, so that in our outreach we can touch people, areas of the country and activities that we touch only in a more traditional, analogue way at the moment. It would include new ways of reaching people so that they could respond to our committee work and the work of the House as a whole. I know we are online and people in the regions and nations can, if they wish, communicate with us, but there could be entirely new ways for them to do so through
our education and outreach services. That is the context to which I referred
in my brief submission.

I also touched on the importance of the way committee work is followed up. I have limited experience. As you know, I have been in the House only since 2015, so I bow to the much greater experience and knowledge of other people; I never used to but I do now. That should not stop us taking a look, as others do, from outside, and asking how we can do what we do better.

I will not go into this at length, because my colleague will do that. How can we join up with the work of the Select Committees in the Commons? How can we develop the excellent work that takes place in Joint Committees, such as the Joint Committee on Human Rights and the ISC? How can we ensure that when we take evidence and produce reports we are clear as to what the intention is and what we expect to happen, and that we follow it through, with ad hoc committees, on which I have served, having the opportunity to re-form, where that is possible, and review, perhaps after a year or 18 months, whether anything has happened, and hold the Government to account as to whether they have taken any notice whatsoever? I am in danger of going through the whole of my evidence, so I will stop there.

The Chairman: That is very helpful. Lord Lisvane, there is admirable brevity and modesty to your submission, but you have done a lot more than is in your submission, particularly during your many years in the House of Commons and in the *Shifting the Balance* report. We have already looked at the point you made about scrutiny. There is a view that scrutiny should be parliamentary, not just House of Lords or House of Commons scrutiny. There is also the issue of complementarity, which I think you mentioned, so we have taken that on board. With that in mind, what initial comments do you have for us?

Lord Lisvane: Thank you very much, Lord Chairman. I absolutely endorse everything Lord Blunkett says. Your inquiry is extremely welcome and timely.

I have a certain amount of form on restoration and renewal, as, together with my former opposite number, Sir David Beamish, I commissioned the original condition survey from which everything else followed. One of the things in my mind was how it would affect and change parliamentary culture if both Houses moved out for a period of time. How will the Houses be different when they come back? What different expectations will they have? That is a dimension that, at the moment, is completely unknowable, but it is not one to be ignored.

More generally, Lords Select Committees have the opportunity of reaping all the advantages of good Select Committees anywhere, whether in the Lords or the Commons. Consensual and dispassionate evidence-based investigation of a policy area, or examination of a Bill or a draft Bill, is really important. I am a bit obsessive about draft Bills, as we may explore a little later. A key attribute, which touches on what Lord Blunkett said, is that, unlike many other types of parliamentary proceeding, Select Committees
allow direct access to the parliamentary process. People outside can engage with what committees are doing. Of course, we cannot ignore the usual suspects when it comes to witnesses, but it is important that the judgment is not who you are, but how good the ideas are that you contribute to a Select Committee inquiry.

Select Committees are very good at stepping outside conventional political debate, because there are subjects that party organisations, countrywide or in Parliament, find very inhibiting. A good current example is drugs policy; a Select Committee might well be able to make an extremely influential intervention, where politically there are lots of exposed nerve endings.

Select Committees are not particularly good at “what went wrong?” inquiries. I speak as the author of the report on the Westland affair about 30 years ago. We got that one right and it was a very successful inquiry, but perhaps I might say, with respect—which always implies that you are not going to say it with respect—that down the other end there is a bit too much ambulance chasing. I do not think that is particularly constructive. The disadvantage is that inquiries of that sort are incredibly resource hungry, because you are establishing facts in a forensic way and there are real issues about fairness and human rights in properly constituted tribunals, and things of that sort.

Lord Blunkett: Lord Lisvane mentioned drugs policy. As a Minister, I made the terrible “error” in 2003 of taking seriously a report by a Select Committee on which a previous Prime Minister served, along with the Advisory Council on the Misuse of Drugs, on which a previous Prime Minister served, and reclassifying cannabis. Governments sometimes get their fingers burned by being open and honest to the genuine presentation of facts and reality. That was one of those times. I do not think it should stop us pressing very hard that government should learn from, participate in and welcome Select Committee reports, rather than seeing them as an interference, or even a threat. I do not regret taking that advice back in 2003; I just wish we had articulated it more effectively.

The Chairman: I remember that you and I talked about the Proceeds of Crime Act where we could have done more.

Lord Low of Dalston: We had evidence from the British Academy that identified six strong themes that might be the basis for a Select Committee structure: the economy; home affairs; health and welfare; foreign affairs, including Brexit and post-Brexit issues; defence and security; and, finally, the constitution and local government, including the nations, regions and cities of the United Kingdom. What do the two of you think of that as a suitable framework for a Select Committee structure?

Lord Lisvane: I read Alun Evans’s evidence. I would put it in a rather broader context. In a sense, it brings us immediately to the relationship between what the House of Commons is doing and what the House of Lords is doing and whether there are scrutiny gaps. Lord Blunkett used the word “complementarity”, as I think you did, too, Lord Chairman. It is vitally important to acknowledge that the two Houses should complement each
other in their work and not compete. In that way, we use best the strengths of the parliamentary culture, which is profoundly different in each House.

**Lord Low of Dalston:** You talked about a vertical, as opposed to a horizontal, approach. Is it vertical for the House of Commons and horizontal for this House? Would you like to expand on that?

**Lord Lisvane:** It may be a bit fanciful, but I see the House of Commons Select Committee system as vertical, particularly as its lead element is the departmental Select Committee system. The committees look at the expenditure, administration and policy of individual government departments, and then drill down to related agencies, regulators and so on. In this House, there is a much more cross-cutting approach, which is ideally complementary. The danger would be to yield to the temptation to reflect or replicate the House of Commons system too exactly.

Some of your witnesses—for example, Sarah Wollaston in her excellent memorandum to you—said that, provided the contacts and understanding were good, you could steer clear of problems, but as soon as you institutionalise areas of scrutiny you run the risk of the two Houses competing. The practical result is that it is very obvious to anybody in a policy area which are the hot topics, and those will be attractive for Select Committee work, so you are immediately vying for attention and the presence of Ministers and other key witnesses. The bottom line, and the really dangerous thing, is when a Lords committee and a Commons committee come to different conclusions. That is typically carte blanche for the Government of the day to ignore both.

**Lord Low of Dalston:** Do you think the British Academy framework caught your cross-cutting theme effectively?

**Lord Lisvane:** It did on constitutionality and, for example, on social care, which goes so much wider than health. I would be a bit worried about defence and security because there is potential overlap. I would add citizenship to that list, as I think has been suggested to you, because all the constitutional, educational, rule of law, immigration, demographical and social cohesion issues that would arise would be a really good example of a cross-cutting committee that would not tread on the toes of House of Commons committees, or vice versa.

**Lord Blunkett:** I can cut out a lot of my waffle by saying I agree entirely with all of that. You would expect me to agree on citizenship because it has been a theme of the whole of my political life. The cross-cutting proposals are absolutely essential not just to distinguish but properly to differentiate and give the opportunity to do things that House of Commons Select Committees do not do.

They also give us the opportunity to think more broadly. For instance, when we are dealing with security matters, cyber underpins all of that. Although committees dealing with defence and security touch on it, they do not get to grips with it in the way we could in looking to the future. The same is true of citizenship and identity.

**Lord Low of Dalston:** What do you think about industrial strategy? We
have somebody coming later today to talk to us about his ideas for a committee to monitor the implementation of industrial strategy.

**Lord Lisvane:** I would be agnostic on that. I would say a word of warning that whatever structure one ends up with has to be flexible; otherwise, events will run ahead of it, and it will become less relevant as time moves on.

**The Chairman:** These are worthy proposals, but they have still to be worked on. You mentioned very pertinent issues. The idea was to provide a wider footprint for committees in the first instance, so that the House of Lords could undertake public policy inquiries, for which the experience and expertise here are ideal.

It would also provide flexibility. I have had a couple of meetings with Chairs along the Corridor. Frank Field said that in his inquiry into pensions and Carillion he would welcome guesting from House of Lords Members for a short period of time on those issues, because this House is replete with people who have been on boards and have been Chairs of companies concerned with pension provision. It would help him.

The House of Lords could assist the House of Commons in live events. Complementarity is important, but such things are in an embryonic state at the moment. We have to change the structure in some way, but your points are very valid.

**Lord Lisvane:** It would certainly be mind-expanding to go down that road. If you do so, you will have to be careful about the clockwork. On what basis are people being involved? Are they full members? Are they co-opted? Are they advisers, witnesses or whatever? Once the terms of trade are clear, it could be very constructive.

**The Chairman:** The House of Commons has already come out with a report on guesting.

Q94 **Lord Lang of Monkton:** I want to ask specifically about ad hoc committees, but first may I follow up the extremely interesting and helpful comments that you made in your opening remarks and in answer to questions so far? I very much take on board Lord Lisvane’s warning about this House not seeking to emulate the Commons on Select Committee work. For example, when the Public Administration Committee in the Commons added the word “Constitution” to its heading, it sent vibrations into this House. That is a thematic thing.

You seem to be talking more in themes than in specifics. Is it not more difficult when you have thematic Select Committee approaches to avoid overlap and possible contradiction between the Commons and the Lords? Are there any specific gaps you have not already mentioned that you think we should look at?

**Lord Blunkett:** You are entirely right. The more thematic you are, the more clearly you can identify how to avoid double-guessing and replicating. Themes change as society around us changes, so we have to be quick-footed. That is almost a paradox for the House of Lords. A few months ago, I said of an issue we were dealing with that, if you know the hare is going
to be shot by somebody lying in the undergrowth, you might as well put your money on the tortoise. We operate like that.

If we are to address issues that are of the moment, but have long-term implications, which is what we have been talking about, it takes a bit of intellectual capacity to work out how to carry that forward. We can do it incrementally. We can deal with an issue that is immediately relevant, but we can place it in a long-term context and continue to develop work that allows us to monitor it.

Monitoring on its own is interesting. The Commons does that, or at least the departmental reflection of the Select Committees is supposed to do that, whereas, if we saw an issue as the first incremental step in something much more cross-cutting and long term, we would get the best of both worlds. I have just served on the ad hoc Committee on Citizenship and Civic Engagement, chaired ably by Robin Hodgson. Incidentally, we are seeing one of the Ministers following up that committee at 11.30, so I had better be brief.

We think we could carry that committee forward and return to it in due course. It might not be exactly the same membership. Even during the course of the committee, members on the government side were promoted to the Front Bench and, therefore, there was a change. It was a very able change. Margaret Eaton joined us, and that was fine. There will be change, but the idea, and the work that has already begun, could be built on.

Lord Lisvane: If I take it that the relationship between focused subjects and thematic coverage is at the heart of your question, the key thing is to keep the radar on and keep looking at it, and there I think informal contacts between committee staffs and exchanges of programmes of work, for example, can be of great practical utility.

If we are talking about scrutiny gaps, as I suppose to an extent we are, one of the things I have always been extremely sceptical about is a committee on legislative standards, which arose in the evidence you took from Lord Norton and Lord Cormack, but now my concern about the quality of primary and secondary legislation and the quality of scrutiny has brought me round to thinking that a legislative standards committee would be a good idea. It would probably have to absorb, or be based on, the Delegated Powers Committee, because the delegation of power is such a central issue in the quality of legislation, but both the DPRRC and the SLSC show how a gap in the Commons can be very effectively filled by the Lords.

There is one big scrutiny gap that I find very frustrating. In the Shifting The Balance process, one of the things I was very closely involved in was developing the core tasks for Select Committees, to give them a checklist of what they should be doing to cover the waterfront in the Commons method of operation. One of the things it was most difficult to get Select Committees to engage with was finance. That is frustrating because finance constitutionally falls primarily to the Commons; nevertheless, Parliament-wide, that is probably a scrutiny gap.
Lord Blunkett: It is important that Select Committee members, particularly on ad hoc committees with which I am more familiar, play a bigger part in determining the structure, the questions and the evidence to be sought than they appear to do at the moment.

Lord Lang of Monkton: Can I follow up on ad hoc committees? You raised this quite strongly in your evidence, Lord Blunkett. You talk about follow-up, but you do not suggest how it should be followed up. You touched on the fact that a Minister is replying to your report today, but is it your view that the ad hoc committee itself should remain in existence in order to carry out a follow-up, in which case does that not undermine the whole ad hoc committee principle? May I suggest that there are other ways in which it should be done? For example, should this committee be able to lean on government and Ministers in a heavier way to get quick reactions and proper debate?

Lord Blunkett: That would probably be a more sure-footed way of doing it. As well as debate on the Floor of the House, which is taken as read but not always taken as seriously as it might be, I had it in mind that the committee, if the Chair was prepared to do so, could convene for perhaps two sessions a year later, take a look at what had happened and get the appropriate Ministers—five in the case of the cross-cutting committee I served on—to say whether they had decided to do anything, and, if they were honest about it and did not want to, to say they had no intention of doing anything, so that we did not waste our time.

Lord Lisvane: I absolutely endorse that. In my 40 or more years’ experience of Select Committees at both ends of the building, but certainly at the other end, one of the things I used to emphasise to Select Committee members and Chairs was the importance of follow-up. If you do not do that, you get to the end of an inquiry and policymakers and administrators heave a great sigh of relief, close the drawer of the filing cabinet and life moves on, but, if they know that you are going to go back to the inquiry in six or 12 months’ time, it is remarkably mind-concentrating.

In that context, I remember a lot of bleating—I am sorry to use an inappropriate word—from Select Committees that, oh dear, they did not get government replies in time. My technique was always to say to them, “Schedule a meeting with the Minister a week after the time limit for submitting the government reply. It works wonders”. That is well worth thinking about.

There is an important point about the structure of Lords committees. The evanescence of ad hoc committees is a problem. There is flexibility in appointing ad hoc committees, perhaps in completely new fields. I declare an interest because I made the proposal for a rural economy Select Committee, which I am delighted to say you and the House approved. That is very good, but the idea that it becomes functus officio after 12 months is a problem. To keep it in some sort of shadow existence may give procedural, structural and presentational problems, but if there were some way of institutionalising the follow-up it would be a great advantage.

Baroness Hayter of Kentish Town: David, there is only one bit of your
evidence that I disagree with. You say that you are going to “make no mention in relation to Brexit because the review will be inundated with thoughts on this matter”. In fact, we have heard almost nothing. Quite a few bits of evidence say that Brussels will still be there, or make some passing comment, but with one exception we have not had much serious thought about how we deal with Brexit. Could I ask both of you what your thoughts are about how the Select Committee structure might deal with things post exit next year?

Lord Blunkett: It would be a truly cross-cutting piece of work, but a way of defining it and refining it to manageable proportions would be to take a look at post-Brexit Britain in the round. We, the Government and the media are inevitably focused on the immediate issues coming before the two Houses and their implications, so there is very little debate about what Britain will look like in 10 years’ time and the steps where government could assist.

I am not a believer that all these things are down to government. We have issues to raise about the operation of our business community and civil society, and the reshaping of the regional and local government structure. Where would Britain be, and what would be our recommendations for putting an electric shock through the system? I am in favour of staying in, as you know, but, if we are to be out, we will have to do something dramatic. There will have to be a lightning bolt to the whole system in Britain if we are to survive in the new environment. The House of Lords could be much more radical in taking a look at that future than I ever envisaged when I entered it.

Lord Lisvane: I was giving evidence to the Commons Brexit Committee a few weeks ago. I likened it to a 14th-century religious poem with which I was certain Mr Rees-Mogg would be familiar.

Lord Blunkett: From the nursery.

Lord Lisvane: He said he did not know about it. It is called “The Cloud of Unknowing”, which really sums up where we are, because it is extremely difficult, with all the moving parts going on in Brexit and post Brexit, to see what we will end up with. One thing that is absolutely certain is that there will be a very lengthy legislative agenda. It will not stop with a period of transition or a period of implementation; I make a distinction between the characteristics of both of those things. It will not just be assimilation of 44 years of the acquis; it is about 60 years, because we gained the acquis when we joined on 1 January 1973.

The process of repatriation will be extremely complex and lengthy, and we must adapt our scrutiny processes to ensure that both Houses engage with it effectively. There will be sifting, whether by the European Scrutiny Committee in the Commons or the SLSC in the Lords, or however it works out, and there will be scrutiny, but that will be a continuing requirement. How one shadows the work of the joint EU-UK committee, for example, is another question.

Going back to “The Cloud of Unknowing”, it may be that after a period of time things settle down and we can go back to a departmental or thematic
approach, but the turbulence means that it will be some time before we can confidently go down that road.

Lord Blunkett: I am very diffident about raising this. On the international front, the issue of Britain’s place in the world was first addressed in my time by Richard Crossman in the late 1960s, and nobody thanked him for it. Occasionally, we return to it, but the place of our country in the world after Brexit will be like touching a hot stove. People will not want it to be thoroughly investigated, debated and presented, but I think the Lords might be able to do it.

The Chairman: “The Cloud of Unknowing” is not known just to you, Lord Lisvane; our clerk, Philippa, knows it very well too, so that is two of you.

Lord Lisvane: I am immensely reassured by that.

Q96 Lord Foulkes of Cumnock: I confess I know nothing of it, but I will chase it up.

We had some interesting contrasting evidence from Lords Boswell and Howell yesterday about post Brexit. They did not agree with each other, which was useful. Lord Lisvane is probably the best person to deal with this question. Would it help if Select Committees had more power to require witnesses to appear before them?

Lord Lisvane: Absolutely not. If I can direct your attention to a paper I wrote for the Commons Liaison Committee when I was Clerk of the House of Commons, it is a conundrum that has been lurking around all Select Committee work for years and years, and it comes to the surface when a Select Committee has a run-in with a particularly difficult witness. It rather ignores the fact that tens of thousands of witnesses readily appear before Select Committees, some quite reluctantly.

The big problem, related to the proposal to codify parliamentary privilege, which I hope has been shelved indefinitely, is that the moment you provide those powers, you have to provide for their exercise and for people not complying with the exercise. The only way you can do that is through the law and the courts. Even if you include safety devices, such as an Attorney-General’s fiat or something in between, you will not get away from the fact that in the end a court will ask, “Is it fair for this committee to ask this witness to attend?” Even further than that, a court might say, “How many dates did you give the witness? Did you give the witness the opportunity to be accompanied? Let’s have a look at your last evidence session. Were you badgering witnesses?” The court might want to see a video.

The moment you go down that road, anybody involved on this side of the road would think that sort of intrusion into parliamentary proceedings was retrograde in the extreme. Having talked to a number of very senior luminaries on the other side of the road, it is something the High Court and the Supreme Court would run a mile from.

Lord Foulkes of Cumnock: That is really helpful.

Q97 Earl of Courtown: We have already talked about the structure of committees and where we might be going. Lord Lisvane, you have talked
about how important it is that we do not have competing and replicating committees in both Houses. Taking that into account, how can we develop the relationship between the committee structures in both Houses so that we make most use of the strength of Members of both Houses? Sarah Wollaston said she would welcome input from this House, on a guest appearance basis. How do you think we can develop things so that the committee structures in both Houses gain from the membership of both Houses?

**Lord Lisvane:** There are a lot of ways to do it. Starting at staff level, although I have been out of this for four years, great effort was put into imparting and sharing best practice. What worked in an inquiry? What got you better evidence? What got you better outreach and engagement with an inquiry? I am sure it is still done. There is scope for the sharing of that experience between committee staffs in both Houses, and that is a positive development.

Given that the political cultures differ pretty profoundly in the two Houses, there is a limit to how far you can co-ordinate or share the scrutiny task. One thing that is helpful, but you need to exercise judgment in each case as to whether you deploy it, is the use of Joint Committees. Some of them, such as the Joint Committee on Human Rights, work extremely well. I am a great fan of draft Bills, and Joint Committees on draft Bills work very well. They ought to be attractive to the business managers because they avoid double-handling, and involve both Houses in consideration of a Bill, which should simplify subsequent proceedings, and would certainly improve their quality. It is not a panacea, but there is scope for using them a little more extensively.

**Lord Blunkett:** In my opening statement, I said that I am strongly in favour of developing what exists, carefully and where it is appropriate. In addition, it is possible to make more use of sharing evidence that has already been presented to a committee either in this House or in the Commons, so that people do not start from scratch. We tend to reinvent the wheel all the time. Government do it. They have no collective memory at all, which is quite worrying. We could have a collective memory by drawing on what has already been presented and using the expert adviser service. We could share that better as well, including analysing when it has worked well and when drawing on expert support and adviser work has been appropriate.

**Lord Williams of Elvel:** Can I ask a question about the composition of committees? Do you believe it is a strength or a weakness that they are Back-Bench committees?

**Lord Lisvane:** It is a great strength. If there are Front Benchers from one side, you need to have them from the other side, and the potential for confusion and confused motives is very strong. If you are seeking good Select Committees, which, without being anodyne—I emphasise that—can operate consensually and powerfully, the easiest base upon which to do that is purely Back Bench.

**Lord Williams of Elvel:** Would you say the same for this Committee—that it should be wholly Back Bench?
Lord Lisvane: I would not have the temerity to give an answer to that, only to observe that this Committee does a rather different job.

Lord Blunkett: As regards Whips on Select Committees, I am not even going to tread where angels fear.

Baroness Garden of Frognal: Lord Blunkett, in your comments at the beginning, and in your submission, you mentioned outreach and engagement as important for Lords committees. I am sure Lord Lisvane also has a view on that. How do you see it working? I am conscious that in our outreach through Peers in Schools we are very dependent on people from outside inviting us. How do you see committee outreach working?

Lord Blunkett: With the Chairman’s permission, I am about to sneak away and leave Lord Lisvane to pick up the pieces. One of the things I am still campaigning for is to get citizenship well taught in schools and colleges, and to get young people interested in what takes place here. We might think we are boring, but I do the outreach programme and I talked to two lots of children from schools yesterday. They love it when they come here.

The ability to teach citizenship and make it part of the process of understanding our constitution, Parliament and democracy, and for older students to be able to contribute something, is really important. We involved young people as part of the Select Committee hearings, but they turned up as representatives of formal groups, which rather undermined what we were trying to do.

With new technology, it will be possible to do things in 10 years’ time that we are just touching on at the moment. Technology would work rather than breaking down all the time. We will be able to do outreach to community groups and things of that sort. It will bring alive the purpose we seek to serve. The Commons obviously will need to be very much on the ball, because they are elected and accountable, but I would not hold my breath.

Lord Lisvane: Engaging with Select Committees is just one facet of improving the general engagement of Parliament, which is here to serve the people. Although many things can be done and so many exciting advances can be made, personal contact will still have a very powerful role to play. For about 30 years or more, I have given 70 or 80 talks a year to an extraordinary variety of audiences about how Parliament works and the worth of Parliament. If we all do that sort of thing—of course, all the people in this Room do—it is a very valuable component.

We need to take into account that for a lot of people engagement with a Select Committee can be extremely daunting, which is an easy thing to forget from within this institution. People become a bit trepidant about engaging with a place that looks like a cathedral from outer space. Will they do it right or will they do it wrong? There is a lot of room not only for knowledge building but for confidence building.

I have a word of warning. When you build up the value of engagement, you have to deliver. If you invite people to become involved and put in their views, which you should be doing, you need a credible and convincing
way of taking those into account and showing people that for Parliament’s part it has engaged with them just as they have engaged with Parliament.

**Lord Blunkett:** That is a superb conclusion, if you will let me go. It involves resource, but when people provide evidence, if we do not feed back to them what we have done, what the conclusion is and that we are trying to follow it up, they will become even more disillusioned.

**The Chairman:** Lord Blunkett, we are grateful for your presence this morning. Integral to this review is increasing the reputation of the House over time. That is very important. Do you have a last word on that?

**Lord Blunkett:** We are moving slowly to greater reform. I know that not everyone agrees, but the survival of the House of Lords in a way that does not simply end up with an elected Second Chamber that mirrors the elected Chamber and leads to gridlock means that the way people see this House and value it will really matter. We cannot bury our heads in the sand because the world will overwhelm us. We have to stand up and be counted on occasion, as many people are doing at the moment. If we ignore public opinion, we do so at our peril. We owe it to the people who will come after us to try to make sure we get this right.

**The Chairman:** Lord Blunkett, we give you our thanks. Best wishes to your committee.

**Lord Blunkett:** I am already late for the meeting, but, as it was relevant to what we are discussing, thank you for letting me speak.

**The Chairman:** Lord Lisvane, what do we keep in mind as we move forward?

**Lord Lisvane:** I would endorse the criteria for success Lord Norton gave you in evidence. Lords committees, and the House of Lords more generally, should be making a difference to the content and quality of legislation; they should be informing and shaping debate; and they should be valued in the world outside for doing those things. Those are not things that should be done in 10 or 20 years; they should be done now, but we can build on that approach. The more the House of Lords and, come to that, the House of Commons do that, the better. I have always had a mantra about the relationship between Parliament and the people. If you understand something, you start to value it, and, if you value it, you start to own it. Ownership on the part of the people Parliament is here to serve is an immensely important factor.

**The Chairman:** That is a superb peroration.

**Lord Low of Dalston:** From what you have just been saying and from Lord Norton’s evidence, there is a distinction between process and substantive committees that it is important for us to latch on to in our work. The legislative standards committee, and I suppose the Secondary Legislation Scrutiny Committee, are a bit of both; they are both substantive and process, but it is important to get hold of that distinction.

**Lord Lisvane:** It is very important. It may be said that those committees need to engage rather less, because they are dealing with technical issues
and advising the House in a very direct and mechanical way, although “mechanical” is the wrong word. They are producing a product for the immediate use of the House. For the Constitution Committee, there is a broader issue. Nevertheless, for the SLSC and the Delegated Powers Committee, the distinction you make is a valid one.

**Lord Low of Dalston:** I am sorry to ruin your peroration.

**The Chairman:** Thank you very much, Lord Lisvane.
Lord Boswell of Aynho, Chair, European Union Select Committee and Rt Hon Lord Howell of Guildford, Chair, International Relations Committee – Oral Evidence (QQ88-91)

Tuesday 19 June 2018
11.55 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 12 Heard in Public Questions 88 - 91

Witnesses

I: Lord Boswell of Aynho; Rt Hon Lord Howell of Guildford.

Examination of witnesses

Lord Boswell and Lord Howell of Guildford.

Q88 The Chairman: Good morning, Lord Howell and Lord Boswell. For the Hansard writer, can you identify your committees, please?

Lord Howell of Guildford: I am chairman of the House of Lords International Relations Committee.

Lord Boswell of Aynho: I am chairman of the House of Lords EU Select Committee.

The Chairman: Thanks for your attendance. Lord Howell, thank you for your submission, which was very interesting.

Based on your experience of chairing your committees, how can the House better support you and your committee?

Lord Howell of Guildford: My comments are on the advisory side. The House of Lords is a legislative and an advisory Chamber, and I am anxious, as I am sure we all are, to see that our advice and guidance to the Government, Parliament and the public debate is of the highest quality and relevance in the coming years. The paper I submitted to the Committee, which you kindly received, was focused entirely on that, and not on pre and post-legislative committees, Joint Committees, procedure or management committees, or scrutiny committees for delegated legislation. I am talking about the advisory committees.
My preamble remark is that we are dealing with a totally changed world. An entirely new era of international relations has emerged, with new relationships. The context has changed, with major implications for this country, for both its external relations and its domestic and everyday life. That transforming process has been in train for a long while. It was not necessarily triggered by Brexit, although Brexit is obviously part of the changing scene. The decision to leave the European Union has accelerated all the changes, but they were there anyway: the vast transfer of power and wealth to Asia and China, and our interests; the whole Middle Eastern chaos; the new aggression from Russia; and, above all, what is supposed to have been the bedrock of the last 70 years of our international affairs, our reliance on America. That bedrock is now rocky and it changes everything. What I have to say to you is offered in that context.

The Committee adjourned for one minute.

Lord Howell of Guildford: The number one question is whether the current committee structure should be changed, and the answer must be yes. We need an entirely new pattern of investigative committees, both dealing with external issues and, to a lesser extent, with internal domestic policy, although nowadays there is a huge overlap between the two, which has to be disentangled all the time.

We have moved into a much more fluid world, with alliances changing the whole time, and changing relationships governed much more by networks and regions than by countries, as problems over defence indicate. No one knows clearly who the enemy is and who should be aligned with whom and in what defensive arrangements, a matter that will come up at the NATO summit in a few weeks’ time.

The suggested draft I put before the Committee was very much a first shot at where we should begin the reshaping business. I am very happy to go into that in detail, if that is what you require at this stage. Broadly, it seems obvious that the subjects in the EU sub-committee structure will have to be reallocated. There are vital new areas of foreign policy that need to be addressed by committee work. I see the case we have now for the mother committee of the European Committee dealing with sub-committees in enormously important areas, but, if one is still thinking in mother committee terms, the new umbrella on the international side will have to be an overall foreign, Commonwealth, security and soft power committee, just as we have the existing Economic Affairs Committee with its sub-committees on the home side, although again there is enormous overlap.

When the board is redrawn and the dice are shaken, we will certainly need a key European committee to monitor and report on European relationships, our new deep and special relations with our neighbours and all European institutions, and with the EU beyond, as well as the European relationship with Russia. That is reflected in many papers being put out about an entirely new security and defence relationship with all our European neighbours, or a stronger one, rather than a new one.

I am afraid that I am a bit of a party pooper on the whole business of a neat deal and a neat departure. It is not going to happen; it will take years
Lord Boswell of Anyho, Chair, European Union Select Committee and Rt Hon Lord Howell of Guildford, Chair, International Relations Committee – Oral Evidence (QQ88-91)

and years. It took 20 years of my life for us to join the European Union, and I think it will take at least five to disentangle, if not more. That will require very intense and expert committee work and familiarity, so there are two European committees that we still need.

The big play, all the growth in the world economy and probably the major security issues, will be in Africa and south-east Asia, and in Pacific and Latin American spheres, where we simply have to develop our knowledge and understanding and convey it as best we can to the British public. With the Indo-Pacific and Asian Pacific regions and central Asia being where the play is happening, sub-committees of an overall foreign, Commonwealth, security and soft power committee might focus on those areas, particularly on China and Japan, which are the second and third largest industrial nations.

The central problem, which is now shaking beneath our feet, is the UK-Atlantic-USA relationship. Maybe we need a committee to focus on how we get on with our best partner and ally, the Americans, in the new conditions. I have just been in Washington with my committee, and I can only report that, if we think Europe is divided on some things, it is nothing compared with the canyon-deep divisions in Washington. It is a tale of two Administrations, or more, arguing with each other and very uncertain about their new relationship with us or anyone else in Europe.

The whole Middle East and north Africa scene has been transformed, not least by changes in the energy scene, but by many other factors, and we have to follow that. My committee has produced one report on the changing Middle East, but hardly was the ink dry when it was already out of date. We need more and better information about what is happening there.

We have to recognise that defence is no longer just tanks, rockets, guns and missiles, and military equipment; it is all about intelligence and cybersecurity, vast new areas of hybrid warfare and complexity, internal security, homegrown terrorism and all the rest, which have to be addressed in a coherent way by a committee of this House. I do not think that comes under my umbrella of foreign, Commonwealth, security and soft power; maybe it needs a separate committee.

Our excellent Science and Technology Committee will need expanding, because technology is now intruding into every aspect of our existence and daily lives. It is not just a question of science research and universities, but something much wider.

The multilateral institutions we have lived by for the last 70 years are all restless and reforming. The UN and NATO, as I already mentioned, are having to face the fact that public diplomacy is now intruding in a massive way on their affairs, and they have to work out how to reach out and not be left as a narrow silo expert with unintelligible jargon and inward-looking arrangements. The Bretton Woods institutions, which I have just been visiting in Washington, are in something of a dilemma as to how they fit into a world where China and the Shanghai Cooperation Organisation are now saying that they want a parallel arrangement, or even a different
arrangement, ranging from challenging the dollar with the renminbi to completely new defence architecture.

There is a completely new scene, and we have to address it. Will we overlap with the Commons? Not necessarily. The Commons can look at departments and do that very well. I helped to build up the 1979 Commons Select Committee system; we evolved it from something earlier, and had forecast it in a pamphlet I wrote in 1970, *A New Style of Government*. That has worked well, but we can go deeper and broader, and look more strategically; we do not have to confine ourselves to departmental budgets, when a lot of the issues cross departments and agencies.

Do we want ad hoc and sessional committees? Yes, that is a very nice balance that we have to keep. We can use the ad hoc side to meet all the flexibility that I have described and the new issues coming up. As for short and long-term inquiries, my committee has chosen to do some long-term ones and scatter them with much shorter-term inquiries, where we are not seeking the Government’s immediate response but are seeking input to the debate, and maybe to get a debate in the House on a particular issue coming up. The NATO conference is one example and the UN Assembly in September is another; the recent Commonwealth conference here in London could be a third. These things come by, and people want some starting point from which to comment.

That is all I will say at this stage. There are some remarks to be made about engagement with the public and the promotion of reports, and some to be made about the reputation of the House of Lords generally. I see that they have been touched on; my colleague Lord Forsyth mentioned them. I have plenty of views on that, but I will stop there.

**The Chairman:** Thank you very much. Lord Boswell, thank you for your submission.

**Lord Boswell of Aynho:** Thank you, Lord Chairman. At this stage, it is probably sensible if I make a statement of position on what I do, and we can perhaps explore later some of the Brexit-related stuff to which we referred in our submission.

It occurred to me as I reflected for this meeting, and it is perhaps a reflection of the experience that this House can bring to the whole business of inquiry, that probably my first experience in public life was in the 1960s, at the time of the Crossman experimental committees, when I was a staffer to some members of the Agriculture Select Committee, which caused a considerable flurry. In a sense, that taught me some of the benefits and pitfalls of this way of life, but in no sense did it prepare me for the scope of the job I have been discharging since 2012 as chairman of the EU Committee.

That is a unique position, because my predecessors and I have all been formally elected by the House, at the start of each Session, as the principal Deputy Chairman of Committees. I am therefore, as indeed you are, Lord Chairman, as Senior Deputy Speaker, a salaried officeholder like the Lord Speaker. I am required to lay aside any party affiliation for the duration of
my term in office, and I am not subject to the rotation rule. It is all bound
to colour my evidence, which I am giving on behalf of the committee; you
have already referred to the fact that it is a committee submission, which
I was very anxious that we should consider and promote. It has been
agreed by the committee and reflects its views. I shall tend to park my
more trenchant personal views to one side and concentrate on what we
said.

The Chairman: Maybe we can have a coffee over that.

Lord Boswell of Aynho: We can have a private discussion. I am finding
the comments I have picked up from others very stimulating.

The only point I want to make at this stage is that I do not want to see my
experience as in any sense a defence of the status quo regardless, because
it is not. Equally, it is not quite a precedent for others, and we need to start
with that assumption.

Because I am an officeholder of the House and have put aside my party
affiliation, I get Rolls-Royce support; I am not running around asking for
more, most of the time. I can represent the committee in the way that the
Lord Speaker represents the House, which justifies the administration
putting a heavy investment into our work. That is redolent in things such
as the office I occupy, and the fact that it is co-located with committee
staff. Every single report of an EU committee since the 1970s is available
to me immediately in physical form. I am surrounded by them.

Clearly, I do not want to create a kind of fantasy world, and I try to balance
it in practice. I have an office that is very conveniently sited for the lift on
the fifth floor and I make it a normal practice to keep my door open and
expect to be called on by colleagues who are chairs of the six constituent
EU sub-committees and by other colleagues who have offices there. I am
also available to committee staff and expect them to call. It is not an
attempt to put ourselves behind closed doors, but it provides a slightly
different tenor and timbre to what one is doing. There are costs; if you mix
it more, that in a sense compromises the political impartiality of the office,
and you have to watch the balance rather carefully.

It is perhaps occasionally of benefit in dealing with international relations,
to which we may come back, that you can, when necessary, slot into the
role of representing the House, or there is an expectation that you may. I
shall get it on record that we have a regular flow of visitors coming to see
what we are doing, what we are interested in, what our primary concerns
are and even, on occasion, how they can pick up procedural and scrutiny
tips from us.

This is my final point at this stage. Since my initial orientation visit to
Brussels over six years ago, I have been going into Commissioners’ offices,
and it is always gratifying that, unless their staff work was superb and
dedicated to the task of flattery, which I do not think it is to that extent, I
find a remarkably large incidence of House of Lords EU committee reports
scattered on people’s shelves. Clearly, from their conversation, they have
been read.
Yesterday, we as a Select Committee were interrogating two Ministers, DExEU Minister Robin Walker and Northern Ireland Minister Shallesh Vara. In parallel, two of my colleagues, with the principal clerk, were in Sofia representing the committee and our House at the COSAC meeting, which is the confederation of all the associated European parliamentarians, and a major forum. Our footprint is quite large, and over 43 years we have maintained our ability for dispassionate comment and a degree of integrity, which I would not wish to forgo.

The Chairman: I can validate that view from Brussels and Strasbourg, and the Speakers’ conferences I have attended in Europe. That is quite correct.

Lord Smith of Hindhead: I do not think I have ever been so well briefed on international relations in my life, so thank you very much indeed for that. I now have a very clear understanding of your work, Lord Boswell, with the EU Select Committee.

What is the purpose of House of Lords committees? Also, if I manage to shake this cough and am still alive in 10 to 20 years’ time, as I very much hope to be, where should House of Lords committees be by that time?

Lord Boswell of Aynho: I sympathise with the cough, which you may have detected that I too am trying to deal with.

First, it is a mistake, whatever our formal configuration, our pay arrangements or anything else, to divorce the work of committees from the work of the House as a whole. We should be, for the purpose, a specialist dedicated microcosm of what is going on in the House.

The House does three things. We seek to hold the Executive to account. We scrutinise legislation; I may come back with a slight caveat on that, because of the tuning between EU legislation and domestic legislation. Thirdly, we seek to promote informed debate, in the way I indicated, by producing reports that change the weather or give people a chance to look at things in a different way. Recently, somebody asked my view of the current output from a well-known weekly journal of record, and I said that I rely on it for baseload. I share its thoughts on what is happening in the world, and in about one in every five editions there will be a particular article that strikes me. To use the vernacular, I think, “Blimey, I hadn’t thought of that before”. It takes your thinking on.

I had a recent discussion with an ambassador in London about one of the many Brexit-related reports we have done, and he just said quietly, “I think that made the weather”. It changed the way the debate was scoped. That is a very important part of our role, all of which is without prejudice to issues about how we communicate that, which I have been listening to and participating in as part of the committee, and which are clearly of concern to you. The authoritative baseload work, the excellent support staff work and the quality and impartiality of what we come up with, often but not necessarily studied to the embarrassment of the Government, or to put pressure on them to do things, are entirely appropriate.
Lord Boswell of Anyho, Chair, European Union Select Committee and Rt Hon Lord Howell of Guildford, Chair, International Relations Committee – Oral Evidence (QQ88-91)

**Lord Howell of Guildford:** Yes, it has to be about feeding into the public debate and the Westminster bubble debate new views and angles on major and serious issues, and possibly doing a little more preparation for longer-term developments, which always seem to come up and take everybody in the political establishment by surprise. The House of Lords is better placed to do that, possibly, than the elected Chamber.

Every situation needs its narrative and a bit of music, as well as endless information. Assimilating and gathering endless information is wonderful for researchers but is not necessarily the way to get creative decisions and insights of the kind that you want to lead the debate. I hope that all the Lords committees can always be ready to tread a little into the future, into the preparatory world and into other angles of looking at things. I hope they exist in 20 years’ time, although, in a world bombarded by change in the digital era, who knows what could emerge?

These are gatherings of people with experience, who know the ways of the inner Westminster, and understand and are possibly in touch with a mass of outside organisations. It is often forgotten that the Lords is a unique assembly in being a network connected not just with the rest of the political system but with a huge range of outside social and domestic think tanks, developments, charities and so on—everyday community activities. I hope that the system will persist, but who is to say, in 20 years? They say nowadays that one inch ahead is total darkness.

**Q90 Lord Foulkes of Cumnock:** Can we get down to the nitty-gritty? There seems to be a bit of a conflict. As I understand what Lord Boswell is saying, he envisages the chair of the EU Select Committee as it is at the moment continuing for the foreseeable future, and there would be a committee to scrutinise international agreements, one to deal with the devolved Administrations and a sub-committee to deal with external parliamentary relations.

Lord Howell has come up with a list of about six committees that he wants set up to deal with different aspects of international relations. I was a member of the Liaison Committee arguing in favour of setting up the International Relations Committee. Like me, Lord Howell will remember the opposition that we had from the Floor of the House and the establishment here. It was not just on overlap with the EU Committee or the Commons; it was a question of resources. If we are moving towards having a smaller House with fewer Members, how on earth will we manage to keep half a dozen foreign affairs committees of different kinds and three or four EU committees with a full-time chair?

**Lord Howell of Guildford:** The short answer is that we are not going to manage; there has to be a shift. The whole of my argument is that now, because of outside world affairs, of which the changing European situation is only one aspect, if we want to keep up with the modern world we will need a new pattern of committees that is more reflective of what is really going on in the world.

Europe is immensely important to us. It is our neighbour, but if one is realistic, in proportion to worldwide activity, it is a lesser rather than a greater part. The huge creation of world wealth and economic activity, the
advance of technology and the dangers of security are happening as much, if not more, in a post-western world outside Europe, and indeed, outside the Atlantic area.

Do we want to change our committee structure to meet the new reality, or do we not? Obviously, if we keep the old committees we cannot do everything and we cannot plunge out into the wider world. If we want to look at the wider world and tell our nation what is coming and what the problems are, we have to change the pattern of committees.

**Lord Foulkes of Cumnock:** But we have to be realistic. You remember the debate we had about setting up the International Relations Committee. It took two or three years to get agreement, and you had to lobby hard, and some of us on the committee had to work hard, to get it. How on earth are you going to get agreement to set up half a dozen committees dealing with a whole range of things, some of which are dealt with by the House of Commons anyway?

**Lord Howell of Guildford:** Thanks to the information revolution and thanks to the nature of public debate, we are rising up the learning curve very fast indeed. Of course, I do not know how the European situation is actually going to work out, nor do any of us, but certain realities intrude so glaringly that we can no longer ignore them. As you say, we set up the International Relations Committee before the phenomenon of President Trump and the phenomenon of doubts about the bedrock of our relationship with America. We set it up before Brexit and before the real rise of China or the new announcement that, far from being concerned only with its inner affairs—the inner kingdom—it was going to expand its links and influence right across central Asia and into Europe. A new world has emerged in the last five years, and we have to adjust to it.

**Lord Foulkes of Cumnock:** No one is disagreeing with that. I am being devil’s advocate, because I know what kind of problems we are going to face: how do we convince the establishment in the House of Lords that we should have such a wide range of committees with all the resources that implies?

**Lord Howell of Guildford:** To convince is a difficult exercise. Debate goes on. If the House of Lords does not want to be convinced and wants to stick to the old ways, digging diehards out of ditches is quite a hard business. We have to rely on the common sense and experience of people in our House, which is very considerable. People are very aware; they travel around the world a great deal and see the impact of what is coming and what is affecting this country, in our budget and social security structure, as well as the internal balance in our localities and regions. We have to rely on that wisdom to see that we have to move on.

**Lord Foulkes of Cumnock:** Am I right in saying that Lord Boswell wants to keep a fair structure of the EU Select Committee?

**Lord Boswell of Aynho:** The last thing I want is to be involved in a power grab for somebody else’s territory. An area we have held back from, and would expect to hold back from, is consideration of domestic legislation,
which your earlier evidence sessions addressed. Indeed, some of us, not least because of the political contention, have absented ourselves from some of the direct business on the European Union (Withdrawal) Bill debates. One area that we flag up in our evidence, which I think will require further scrutiny—we do not have a fixed view as to how it is to happen—is that we see a role for more effective upstream scrutiny of the treaty-making process, rather than simply ratifying when it is too late to seek substantive changes. We draw an analogy from the European Parliament. One learns something from the experience of the European Parliament, which is very much built into this and has the beef to do it.

**Lord Foulkes of Cumnock:** How does that affect the committee structure?

**Lord Boswell of Aynho:** We have no interest in whether we have six committees, or whatever, and it is not for our decision. It is very much a matter for the House authorities and how they want to dispose of that. All I would say for now, as we say in our evidence, is that Brexit is a process. It is not a one-off event but a process of which, notoriously, we and everybody else are not yet fully aware, because it has not been negotiated through. We know that we have known territory until 29 March next, where British Ministers attend European Councils and other Council meetings. We have an obligation to do scrutiny, which is going on intensely. In fact, we are probably putting more stuff to scrutiny.

**Lord Foulkes of Cumnock:** You say that it is a matter for the House authorities, but you are paid as chairman of a committee advising the House authorities. What do you think is an ideal or a necessary structure for committees? Is it just one EU committee, or one plus three sub-committees? What do you think?

**Lord Boswell of Aynho:** That is going very much beyond what we formally recommended in evidence. The most important point is that it is too early to say, until we know what form the Brexit deal takes. We need to look at scrutiny of our Ministers and how we can control it in future, even if they are not formally decision-makers in Europe. We need to look at scrutiny of areas where we will continue in a relationship with the European Union—Euratom, for example, although that is not finalised yet—and how they should be dealt with by this House. Then, there is the wider issue of our relations within the United Kingdom, with the devolved legislatures, and with the Crown dependencies, overseas territories and others, which we addressed yesterday and have addressed in a number of reports. Then, there are our external relations.

The last thing I want is to get into the position of being a bed-blocker, which is a phrase I have used internally. We are not there to say that we must have everything exactly as it was, but we think there are definite disadvantages in moving too rapidly away, until we have some handle on what the future structure of the country’s relations will be with Europe. Then we need to map on to that, which is not in any sense gainsaying or indeed rubbish the role of the International Relations Committee, with which we have perfectly good working relations. We should not leap from our known expertise to a position that may be ahead of where the
institutions are, but that is in no sense unreadiness to consider, encourage or make our subsequent input as the situation develops. We will do that, and we will be very happy to assist this Committee again.

**Lord Howell of Guildford:** I see Lord Boswell’s dilemma. I am all for caution and not rushing into things, but we have to make some assumptions. One assumption is that it is current policy that on 31 March, nine and a half months from now, we are no longer a member of the European Union under the treaties. This is probably an issue that the Committee dealt with at an earlier session, but literally on that morning there will cease to be a stream of European legislation and regulations to scrutinise. Those who were doing that scrutinising before will be redundant or will need to turn their efforts elsewhere. It is going to happen.

**Lord Foulkes of Cumnock:** That does not allow for the transition period.

**Lord Howell of Guildford:** But the halt in the legislation is, I think, at the beginning of the transition period. I agree that there are more important things, such as defence and security arrangements, crime arrangements and Interpol, as well as all the cultural arrangements. Masses of things are bound up with the European situation, quite rightly, and frankly I hope they remain so. All of those will have to be readjusted.

The energy and aviation situations are immensely complex. All those things will require attention, which is why I say that there should be at least two European committees operating, if not more. It will be a changed world and it will come rather suddenly, so I should have thought that some sort of preparation for what is most likely at the moment, although nothing is certain, would be wise and prudent.

**The Chairman:** During the transition period, whenever it is going to end, do you wish for the same arrangements for the EU committee as now, with the main committee and six sub-committees?

**Lord Boswell of Aynho:** We are not mandating the number of sub-committees. Indeed, we coped with a change in the number of sub-committees just at the beginning of my time. But we are recording that there is an actual change of substance in the role, as Lord Howell said, from our withdrawal on 29 March: Ministers will no longer be bound by scrutiny obligations, because they will not exist.

We have had a dialogue, which is referred to in our evidence, with Ministers about continuing scrutiny during the transition period. Frankly, however, although we have done some internal staff work on it, we have yet to meet, but are to meet, at an official level with the DExEU team to look at how it might do it. I do not think that Ministers are dragging their feet, but we want some reasonably copper-bottomed understanding as to how to do this, which will of course have to be reported to the House.

A separate issue arises about long-term scrutiny arrangements where we continue with Erasmus, Euratom or whatever. Not all of that needs to be done by the EU committee or its six sub-committees, and I am not trying to argue for that. It is probably a bit too early to come to a final view until
we know the structure we are dealing with, which we then need to scrutinise.

**The Chairman:** We are sensitive to that aspect.

**Q91 Lord Low of Dalston:** Can I focus in this way and ask Lord Boswell about primary and secondary legislation that is introduced as a direct result of Brexit? How far should Lords committees participate in strategic scrutiny of that, or is it also too early to say?

**Lord Boswell of Aynho:** I think it is. In one sense, in due course, once the label disappears and we are no longer members of the European Union, all legislation becomes domestic legislation. We have a separate issue, which is about the scrutiny of EU legislation that is applicable here in a transition period, or anything that happens thereafter by way of backstop arrangements, and so forth. We need to be clear that that needs doing, but, if it falls into the realm of domestic legislation, it is for consideration how we best articulate that. Of course, that is related to who is actually dealing with our European colleagues. Colleagues are already familiar with our External Affairs and Trade Sub-Committees, which work on common security and defence policy with their European counterparts, for example, and participate in Anglo-French parliamentary exchanges.

All I am really saying is that, in a sense, the relationship that has been channelled through the EU, and is something we have known and been familiar with, becomes much more protean and varied. We will need to have continuing thought, with open minds, as to how best we can influence that process for the future, rather than simply digging in where we are, which is not what we want to do, or moving to a radically different structure that cannot capture the point.

The only point I would make specifically on what we might call the committee interest is that there is a body of expertise that it would be not even in Europe’s interest to throw away. I am staggered, because I see the scrutiny correspondence from the sub-committees, by the sheer depth of interrogation of Ministers, which of course is reproduced in dealings at official level with their counterparts, which our committee normally turns out. This week, I signed off nine scrutiny letters from the EU Energy and Environment Sub-Committee, saying to Ministers that we were happy, that we needed further information or that they should keep us in touch. We may get no credit for that as a House—although that is a separate issue, and I am interested in your wanting to engage with it—but it is a really essential part of the groundwork of seeing that the interface with Europe is properly addressed.

**The Chairman:** Thank you very much for your evidence, which was very helpful to us. We will continue this discussion, because we have a period of time to look at the issue. What you have provided is invaluable to us. It is nice to see you back, Lord Boswell.
Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)

Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)

Wednesday 11 July 2018
10:35 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston.

Evidence Session No. 19 Heard in Public Questions 142 - 143

Witnesses

I: Lord Cameron of Dillington; Baroness Deech; Lord Filkin; Lord Inglewood; Baroness McIntosh of Pickering; Lord Shutt of Greetland.

Examination of witnesses

Lord Cameron of Dillington, Baroness Deech, Lord Inglewood, Baroness McIntosh of Pickering, Lord Shutt of Greetland and Lord Filkin.

Q142 The Chairman: For the Hansard writer, can you identify yourselves and indicate what committees you chaired?


Lord Inglewood: Extradition Law Post-Legislative Inquiry.

Lord Cameron of Dillington: I chaired a committee looking at the NERC Act: the Natural Environment and Rural Communities Act 2006.

Baroness Deech: I chaired the Select Committee on the Equality Act and disability about two years ago.

Baroness McIntosh of Pickering: I chaired the ad hoc Committee on the Licensing Act 2003. Whether it is relevant or not, I chaired the House of Commons Environment, Food and Rural Affairs Select Committee.

Q143 The Chairman: Thank you very much and welcome. We have 15 witnesses today, so if one witness has said something and you agree with it, if there could be acceptance, I would be delighted with that. How does post-leg work in an overarching structure in the future? What emphasis should we give to that in the review?
Lord Shutt of Greetland: It is important. We spend lots of time passing laws and it is not a bad idea to see that they are fit for purpose. To that extent, it is very important. I do not know whether you want me to speak about my experiences doing my committee—I feel it is never finished—but I will do it if you want me to.

The Chairman: If it can be precise, I would be very happy for you to.

Lord Shutt of Greetland: I started by being appointed to chair a committee on 16 May 2013. You do not pick your own colleagues, but I was very happy with the selection given to me and people were very good. I had lots of lawyers—happily I was not one—and therefore chairing them did have its challenges. We met lots of witnesses, took lots of evidence and produced a report on 11 March 2014. We were told that the Government would respond within two months, but they did not. We got the response on 30 June, which I have here, from the Ministry of Justice. I say that because one of the problems I found with this inquiry and the aftermath is that I believe there is turf war and therefore I have a concern about this.

We were not happy about our inquiry. We talked about it and said, “This Government response is not good enough”. So we sought a meeting. We were fortunate that the former clerk to the inquiry was keen to keep going and that is important. There are clerks and clerks, but we were very fortunate with our clerk. The Government said in their response that they liked our report and agreed with most of it, but that was not the case. We made 33 recommendations: 10 were accepted, four accepted but, 14 rejected and five rejected but. So that was the balance, but the weight was with the rejection, not with the recommendations we made and that they said they accepted.

We eventually sought a meeting with the Minister, which we got on 29 October 2014. The Minister said he wanted a month, so we waited. Eventually, we thought we had better have our debate. A general election was looming and we had the debate on 19 March 2015, which was just nicely after the anniversary of the publication date, because we were trying to get further with the Government in terms of their responses. There was some involvement post that, in that Lord Sewel was pursuing the Government on our behalf.

I was summoned to meet a very important woman by the name of Sue Gray of the Cabinet Office, not the Ministry of Justice, who said, “What a splendid report” and how they were going to do this, that and the other—and nothing has happened.

On 23 May, the National Audit Office produced a report into inquiries and its report says, “We have looked at the House of Lords report. Much of what the Government said they agreed with, they have not done”. I then put a question down, which some members may have spotted, on the last sitting day in June, and although I approached several of the members who had served on the Inquiries Act Committee, apart from Baroness Hamwee and myself, there was little said in our oral question. However, again we had the Minister saying, “What a splendid report”, and how they agreed with it and so forth—but black is white, and I have to say that I feel frustrated about this. Here we are now in 2018 and I feel I have a responsibility to keep it going.
The Chairman: So the Government are not paying much attention and there is a turf war.

Lord Shut of Greetland: I think there is. And I must add one thing. In the Audit Office’s report, one of our concerns was that there should be a special unit within government to look after inquiries. They said, “No. We reject this”. Lo and behold, the auditors find out that one has been set up just for the Home Office. When did anybody know that?

Lord Inglewood: It is my view, as a general proposition, that post-legislative scrutiny is an integral part of the wider committee work of the House and that one should approach it in a flexible way. It does not necessarily follow that every Act, or every bit of every Act, should be subject to post-legislative scrutiny. I was thinking perhaps we might do a post-legislative scrutiny of the European Union (Withdrawal) Act five years out. In my case, much of what we were considering was the European arrest warrant, so it has remained on the political agenda in a reasonably high-profile way since then. But, as a generalisation, it is in the post-post-legislative period where things need to be properly worked up. If I can put it this way, we should try to find a way of pinning down Ministers like a butterfly in the Science Museum after our post-legislative work and put them on the spot to see what has happened. That poses issues of structure, staffing and all kinds of things that are interesting.

Lord Cameron of Dillington: I am going to be slightly more cynical. Post-legislative scrutiny is a very good way of avoiding stepping on toes down the other end, but it is the issue that counts rather than necessarily the post-legislative scrutiny. At the moment, we look at issues that are happening on the continent with our European committees and try to anticipate for the benefit of the UK and maybe even Europe what is going on, working out a way of putting in reports about what we are going to do. Rather than taking all the Acts and looking at them on their fifth birthday or 10th birthday, it is the issue that counts. We ought to be continuing to look at what is happening on the continent and anticipating events there that might affect the quality of life in the UK, or, if we are starting to do trade outside Europe, maybe even looking at the United States, Australia, Canada, et cetera, trying to anticipate what is going on. Maybe we can hang it on a post-legislative scrutiny hook if we want, but it is the issue that counts rather than necessarily the legislative scrutiny.

The Chairman: Maybe you could come back to your issue of stepping on toes later on. It is quite interesting, because we have taken evidence from the House of Commons, the Chair of the Liaison Committee and others and we want to have a positive engagement with them, so it is very helpful if you could elaborate on that.

Baroness Deech: I was privileged to chair a committee on disability, about which I knew nothing at the outset. The report we produced will stand almost as an exemplary textbook on the law for all time to come. We carefully designed the recommendations to cost next to nothing so that the Government would not have the excuse of saying, “It is too expensive”. One of the great disappointments of my entire time in the House of Lords is the fact that most of the recommendations, if not rejected, have been
Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)

left to fester or pushed off to some other body such as the Equality and Human Rights Commission. The excuse often given is that it would be a burden on business—which we find difficult to accept, because the burdens are on disabled people.

I was privileged to have an excellent clerk, Mr Collon, who has continued to help me even after the end of the committee. There has been some follow-up. I will make two points. We need to hold Ministers to account. The Ministers keep changing. Even in the two years or so since the report came out, I have dealt with several different Ministers. One has to start from scratch. I suppose it is the civil servants who are making the decisions, and every time we are promised this and that and it does not happen. The un-carried out recommendations should be publicised after 12 months and the relevant Minister should appear to explain why they have not been carried out. I also think that there should be more choice of topics by members. We cannot do every Act post-legislatively. I have been pushing for some while for the Legal Services Act to be reviewed. It is one which Baroness Hayter knows very well. It is extremely unsatisfactory, has been from the very beginning and is ripe for looking at.

Finally, I will say something a little off piste about selection of members. I was very fortunate to have some expert members, but all deeply committed. I took it on myself to look at the membership of all the EU committees, of which there are about 70 or 72 members. I trawled through them as much as I could and, as far as I can see, only two or three of those 70 have spoken out as leavers—there is a hint with one or two others—which seems extremely unbalanced. You would have thought that EU committees would have, if not half, at least a substantial number of people who are avowed leavers, and that committee is extremely unbalanced. I do not know how members are selected, but it seems that something has gone wrong in that particular set of committees. We have been castigated by the UN for not doing anything about disability. I feel deeply committed to it now, because, as we all get older, we have mobility and sight problems and I am very anxious that there should be efficient follow through, cost free.

The Chairman: You had a robust exchange with me before on the choice of topics by members. I am interested in that aspect, so if you can elaborate on that maybe here or elsewhere, it would be very helpful.

Baroness Deech: I was not impressed with the choice of topics this year.

Baroness McIntosh of Pickering: A theme throughout is more member engagement. There are about 400 working Peers and probably fewer than 100 on committees. It is up to us to show more of an interest, but Members could be involved more at the stage of choosing the topics. With the particular topic we looked at—I too had Michael Collon, and the clerk is very instrumental—in terms of following up there will be an issue of resources that the Liaison Committee will have to address, because we cannot follow up without resources, and that involves committee rooms if there are any additional committee meetings or others.
There is a weakness in the way that the Licensing Act has been interpreted since 2003—and I would argue that 10 years is probably a better period to review than five years, when the Act has probably not had time to bed down. I have had a big campaign in both Houses on the role of us looking at statutory instruments. The Licensing Act went through multiple amendments, not all by primary legislation. Obviously I appreciate that the statutory amendments are delegated legislation, but I had a weird discussion with a clerk once and I was told that we could amend the title of the statutory instrument but not the body—and believe you me, there are times when it could be improved. That will be very much the case as we take through all the Brexit legislation and the statutory instruments there. So we need more Member engagement. In its submission, the Law Society of Scotland made a very strong point about the transparency of members. I believe that it should be more inclusive—perhaps the point that Baroness Deech has reflected—and that it should reflect more the composition of the House and expertise.

To start with, I had no particular expertise at all in this committee. The way that we were guided through by a very expert team was very mindful. It is how we use that expertise afterwards. The Law Society of Scotland has argued that there should be more transparency in the way that members are appointed. I would like to learn something from the European Parliament system, where Lord Inglewood and I have both served, of substitutes. Perhaps the Liaison Committee is not the best example. As a rule, members turn up once they are appointed to committees. But there should be substitutes who are allowed to appear at committees as a substitute but not speak unless a lead member could not be there on that particular day. It would mean that they could follow the proceedings and hear the evidence at first hand. It is just a thought to secure more member engagement through the process.

When it comes to how we pursue the ideas and the recommendations that we make, one that I think has been particularly a missed goal in terms of the Licensing Act was where the Home Office has agreed to open a consultation on bringing bars airside and seaside behind passport control. We still have wasted another summer where we are seeing lives potentially threatened and disruption on airplanes by people tanking up before they go on planes. I believe in the idea of co-opting some of the original members of the committee on to an annual debate the year after. Obviously, we can table questions as individuals, but we need something to keep the momentum going. There will be a gap in the scrutiny when we leave the European Union, particularly in the framework directives and devolution as a whole. The role of local authorities in planning and education is something that we would be well placed to pursue in this House.

The Chairman: Your Licensing Act and the deficiencies in airports and flights received quite a lot of coverage. It was very, very good. Colleagues, do you have any points? Baroness Hayter?

Baroness Hayter of Kentish Town: I found that absolutely fascinating. A bit of it has refocused completely—it was what Lord Cameron said, I
think. I think you said it was the issue that counts. Interestingly enough, I thought that what might come out more was the lessons about how we do legislation in general rather than particular issues—in other words, whether it teaches us something about how we write legislation. Do any of you think that, in addition to the particular issues, be it inquiries on licensing or disability, we are missing something from the lessons from what all of you have done about how we write legislation in the future?

**Lord Cameron of Dillington:** We do the legislation as best we can. Within this House, we are a House of experts. Therefore, you turn up for those particular Bills that you are interested in. If we come on to the question about how you select people for the committees, I think the expertise that we have in this House is the key. Somehow, we have to make certain that we plug into that expertise. If we are not a House of experts, our whole raison d’être within the constitution is irrelevant. Today, the legislation is passed to the best of our ability. In five years’ time, first, circumstances change and, secondly, the Government fail to implement it very well. I think we enact the legislation as well as possible. Whether it is implemented as well as possible is another matter.

**Baroness Deech:** I do not think that we make enough use of the expertise of the Law Commission—a topic that came up yesterday—which is queuing up with draft Bills for us to implement. I do not think we fully think through the actual practical effects of legislation that we are passing. The two Acts I know well are the Human Fertilisation & Embryology Act and the Legal Services Act. The effect of those Acts not just on people now but in the future is not fully thought out. There should be more consultation ongoing with the people affected as the Act goes through both Houses of Parliament. Amendments are thrown in and passed or not passed. Nobody stops to think how that amendment will affect those who will operate the Act.

I am also not sure whether, at the end, the parliamentary draftsman looks at all the amendments that have been made to the original Bill and makes sure that they do not cancel each other out and so on. I stand to be corrected on that. I do not know whether there is a review of the entire Act—for example, a big one such as the European Union (Withdrawal) Bill—to make sure that the amendments make sense. They have been thrown into the original body of the Bill. I think there should be more consultation with people who are affected. If you wait for another five or 10 years for post-legislative scrutiny, if it ever comes, the damage will have been done.

**Lord Inglewood:** It seems to me that there is an inherent tension between politics and legislation in post-legislative scrutiny activity. The former is essentially political; the latter is looking at evidence to see whether the thing has worked either as it was intended or as you think it might from looking at the document in question. For example, perhaps you could reduce the problem by having a certain amount of evidence given to the House before we get on to the legislative process. That way, more people would understand more about the reality of the way these things work out there. I pose that as a possibility.
Baroness McIntosh of Pickering: The difficulty with that is that the House of Commons already does a very, very good job of pre-legislative scrutiny on the Select Committees. I was very struck by something that Lord Blencathra said in his evidence to you. The Licensing Act is a case in point. We thought we were all going to be drinking until 2 o’clock in the morning. There was going to be this great café culture. It never materialised. He has made the point that the way that the Bill is implemented may not have been the intention, because it could be different people sitting on the Bill committee and on the statutory instrument as it goes through both Houses. We deal with statutory instruments here either in the Grand Committee room or in the full House. Next door, you are appointed and have to turn up to look at these. They are gone through more line by line. The ethos behind a Bill is sometimes lost with statutory instruments, which are increasingly important because much more is done through the regulatory authority than on the face of the Bill. We need a way to harness our powers of scrutiny there. I would be reluctant to go down the pre-legislative route unless it was to be a joint committee with next door. It is something that the House of Commons does very well. They do the pre-leg work; we tend to do the post-leg work. The bit in the middle that is lost is where the ethos behind the Bill is not always implemented through the statutory instruments, which are then judicially reviewed.

Lord Shutt of Greetland: One of the things that came out of what we were doing is that out of all inquiries, there should be a lessons learned document and that should get somewhere. The Government agree, but National Audit Office says three years later that they are still not doing it. The problem with a lot of what we are talking about today is this is not politically exciting stuff. It is dull, boring stuff that should be done properly.

Lord Low of Dalston: I want to follow up something that Lord Inglewood said. Right at the beginning of your evidence, you said that you thought post-legislative scrutiny should be fully integrated into the work of the House. How should that be done? We have heard a number of suggestions. One is that there might be a dedicated post-legislative scrutiny committee with responsibility for doing the post-legislative scrutiny of the House. The other suggestion is that we should have a thematic committee structure and that the post-legislative scrutiny should be done by the committees that have been concerned with the particular area of policy in which the piece of legislation fell. How would you choose between those suggestions or, indeed, another way of integrating post-legislative scrutiny into the work of the House that you might prefer to come up with?

The Chairman: I might bring Lord Lang in, because that was an area that he was interested in.

Lord Lang of Monkton: I was hoping to introduce that in session, but Lord Low has done it much better than I would have done. It is an important session that we would like you to focus on. We would be very interested to hear your reaction to the alternatives that Lord Low has already mentioned. Can you also think about relating it to whether fixed committees or dedicated committees would lose or gain in terms of
specialist knowledge? Specialist knowledge can become too narrow and too inhibiting. There are specialists on tap available to Select Committees, whether from within the House or from outside. This brings me back to some of the points that were raised in the earlier discussion. Someone might like to start on that.

**Lord Inglewood:** I have thought about this, and I think, and it is not simply in order to ingratiate myself, that the present structure of approaching these things is quite good. In the Liaison Committee, you recognise that there is a need for some post-legislative activity. It is not defined too much. That is good, because what we are looking at will vary, as Lord Cameron said, according to what is important and relevant at any particular time. It seems to me that if you have a convention in the Liaison Committee that you will always have one post-legislative inquiry—or possibly two, depending on the circumstances—you can adapt what the House does to this particular task in the context of its other responsibilities.

I do not think I would be in favour of having a dedicated post-legislative committee, because you get the best value for money from the House by having different members according to the subject matter that you wish to inquire into. That suggests that perhaps if there was some kind of thematic approach to the committee structure, you could tap into that for post-legislative work. That is entirely consistent, but we do not have that structure now, as far as I can tell. That leads one on to what Lord Lang was saying.

In my case, when we were looking an Extradition Law, we had members of the committee—a couple of very senior lawyers—who were extremely knowledgeable and extremely helpful to the committee and to me as chairman about the way in which we should deal with the topic. At the other end of the spectrum, there were one or two people who really had no knowledge or understanding of it at all. They are valuable because they are the kind of “idiot boy” who can tell the Emperor that he has no clothes. So I think that the best form of scrutiny in this area is to have a combination of people who know about the subject, some who probably know a bit less about the subject, and some who are not very experienced because they bring a fresh insight, provided they are intelligent.

**The Chairman:** Okay, all human life is here.

**Lord Cameron of Dillington:** I would totally support everything Lord Inglewood said.

**Baroness McIntosh of Pickering:** Lord Inglewood has expressed how it is working well at the moment. The weakness that we have all identified is the follow-up. I would like to see the system that I think you are looking at of an annual follow-up, possibly co-opting different members. If there is one each year, the question would be whether you have a rolling programme to do that. At the moment, the strength is that you are introducing new people on to a particular issue, which seems to work well. Where it is falling apart is that we are not able to follow it up and keep the momentum going from some very powerful recommendations that we may have made. I think on the Liaison Committee you are well placed to do that.
and to look at the topics and co-opt as you think fit from the original committees.

**Baroness Deech:** I would treat this committee—or a new one, but why not this particular committee—as the overarching committee. Beneath it, it should have a whole number of quite small sub-committees charged with getting through post-legislative scrutiny in a year or less. As Lady McIntosh said, there are 400 working Peers. I am sure there are hundreds of people who would like to be on committees. If you set up a whole lot of small ones to look at different Acts, you could use their expertise or at least their willingness. They would have to get through it pretty quickly with an overarching committee keeping an eye on what they are doing. Just doing one post-legislative scrutiny a year is simply not enough. We need to do dozens.

**The Chairman:** I know you want to come in, Lord Filkin. You are in the second set, but is there is anything quickly you wanted to say?

**Lord Filkin:** No. Sorry. I had 11 o’clock in my diary. My apologies for being late.

**The Chairman:** Yes. Sorry about that. Very well.

**Lord Filkin:** I was simply going to agree with the point about bringing in expertise rather than having the same people doing it. There is still a major opportunity for the Lords in this respect. We are clearly better at pre-legislative scrutiny than the other end, for a variety of reasons. Government does not like doing post-legislative scrutiny, for obvious reasons. It tends to find out what has failed. Therefore, putting more resource into proper post-legislative scrutiny on a very selective basis—a select number of Bills that are truly important, where hopefully you have some articulation of what the Bill was intended to do, which is often lacking—would help in making a greater contribution from the House to better legislation. Some Bills are such a dog’s breakfast that it would be difficult to do effective post-legislative scrutiny on them.

**Lord Lang of Monkton:** I would like to follow up on the question of pressure on post-legislative scrutiny. There is so much more to do or so much more we would like to be able to do. What do you think about the mechanics of the way in which committees are set up—the timing and logistics of the mechanics, rather than the personnel? For example, after a general election it takes a long time to get them established and before they can really get started they are into recess and so on. Have any of you any thoughts about how these processes could be improved on?

**Baroness McIntosh of Pickering:** It was the first time I had experienced any House of Lords Committee, but it seemed to me to work quite well. Lord Shutt mentioned that what we were up against in that particular year was if a general election was called, and that would have interrupted the whole process. I am very attracted to Baroness Deech’s idea of sub-committees. It works well as it is and I stand to be corrected by other colleagues. We all have to get to know each other and we want to keep an open mind. We want to invite the evidence.
It is very powerful to keep saying to people that written evidence has the same weight as oral evidence. Obviously you are not going to be able to interview the same number of witnesses as you would expect to see written evidence from. In addition, exposing it more through social media and creating a lot more outside engagement allows people to feed things in, and if they came forward with an idea for a witness, we would still have time to do that. From someone who is under it for the first time, it seems to work well.

Lord Cameron of Dillington: On that point, the post-legislative committee I took part in last year was at election time. We did not get going until now, as it were. As a result, our investigations were slightly curtailed because we had to publish our report by the end of March. I am not quite sure why it was the end of March. We thought it might be at the end of the session. In any case, we were curtailed. Perhaps if we are thinking of setting up a committee—which obviously was done before the election—the procedure could be done, so that the moment the election is over we can get on with life. We had to wait until the House had approved the members and did not get started until too late and then were curtailed at the end. I never quite understood why.

Lord Lang of Monkton: It does feed into the question of the political element in appointments if there is a change of Government at the election.

Lord Cameron of Dillington: Yes, quite.

The Chairman: We will take Lord Foulkes and the Earl of Courtown’s questions together.

Baroness Garden of Frognal: I thought I would come in earlier, but all right.

The Chairman: Very well. You come in, then, if you want.

Baroness Garden of Frognal: Very well. Thank you very much. That was absolutely fascinating evidence. You all referred to the frustration of the lack of government response to the things that go into reports. Lord Shutt referred to turf wars, Lord Inglewood to pinning down Ministers, and Baroness Deech to the change of Ministers making it difficult. Do you have any suggestions as to how, in practical terms, you might be able to get a more efficient response from Government Ministers to the recommendations? Obviously the evidence and expertise that goes into the post-leg is really valuable, and then it just hits a blank wall and nothing is done. Are there practical solutions as to how we might unblock that?

Lord Shutt of Greetland: I have been thinking about this. We take the best part of a year. We eventually get a response. We then debate it. Perhaps I was unusual in the way in which we challenged the report and tried to keep the show on the road, but I wonder whether we should be keeping the show on the road. I wonder whether the Committee should be brought back for a month every year, or at least we should say that the Committee can have a month to see whether there is anything else it should be doing. That is how I am finding it with this inquiry-type thing.
Here we are in 2018 for a report that we did in 2014-15 and clearly little has happened. Therefore, is it right just to say, “We did our best”, and that is it? Or should we somehow be saying, “There must be a way of keeping the pot boiling?” And how would one do that? That is the dilemma.

Baroness Garden of Frognal: That was the question I was hoping you were going to answer.

Baroness Deech: Outside of this House, I chaired a committee for the Department of Health on women doctors. We decided at the end to meet once a year. We all got together once a year for about five years and trawled through the recommendations. We asked for a report from all the bodies that had been designated as the ones to carry out the recommendations. Which reminds me—I suppose we should always have a list of who is supposed to carry out the recommendations. We called for a report every year. I gave up after five years because there was simply no secretarial support from the Department of Health and it was too much of a burden on me. I could not do it. However, it was quite a good model. Like with unanswered written questions, we should publicise every month or so a list of recommendations that have not been carried out and have that publicised over and over and over again.

Baroness McIntosh of Pickering: The Liaison Committee is very well placed to perhaps annually, or every six months even, name and shame those departments that have not implemented very clear recommendations that would change the law for the good. Otherwise, there are opportunities—and I know Lady Deech has used these on a couple of occasions—to try to amend other legislation that is related, going through and picking those themes out. However, you need something structured.

Lord Cameron of Dillington: This follow-up question is probably the most important part of the whole exercise, it seems to me. We must do this better. There are two bits to it. One is ensuring that what concessions the Government have made are being fulfilled. The other is perhaps, where any suggestion has been rejected by the Government, doing a wider lobbying exercise to try to ensure that what you believe is very important is carried out. It seems to me that, at this stage, the formal Committee stage of televised interviews is probably not the right way. What one wants is to have a small working group of the Committee.

You could even co-opt an academic expert, or someone from the outside, or maybe even someone from the other end to come and help and go and have conversations with Ministers. But it needs the formal backing of a clerk so that it is recognised that they are not simply seeing an ad hoc group of Peers; they are seeing a formal, small group of a Committee from the Lords. Since we produced our report I have tried very hard to go and see Ministers at the Ministry of Housing, Communities and Local Government, but they are reluctant to tread on Defra’s territory. I did go and see David Lidington. I was going to go with an MP who was very keen and very supportive of what we were trying to achieve. Unfortunately, at the last minute the MP could not attend. If we can get a more formal structure with the backing of a clerk and possibly a smaller group and a
different way of working—ie, having sensible conversations with Ministers—that would be nice.

**Lord Foulkes of Cumnock:** I will ask specifically about something that Baroness Deech wrote in her written evidence. She says, “As you may know, the recent choice of four ad hoc select committees has met with some disappointment”. I agree with that. Are you aware that there were rather difficult discussions within the Liaison Committee about these appointments? Perhaps it may be the composition of the Liaison Committee that needs to be looked at. Everyone has been a bit reluctant to suggest to us that our composition might be reviewed. Do you have any thoughts on that?

**The Earl of Courtown:** I want to go back quickly to what Lady Garden brought up regarding responses from Government. Lady McIntosh talked about naming and shaming. That is happening now with responses from government departments: the departments are named and shamed. As far as recommendations are concerned and the take-up of recommendations, that is obviously a political decision in many ways. However, the fact is there is no excuse for poor responses and our inability to get Ministers in front of us. Can you think of any way that Ministers could be perhaps not subpoenaed but forced to come and respond?

**The Chairman:** There are two questions there.

**Lord Inglewood:** Follow-up will cost money. There will need to be more resources dedicated. That is a decision for you all. Secondly, and following on from all these questions, particularly Lord Courtown’s, when push comes to shove I do not think that Governments of any political persuasion are particularly bothered about the House of Lords’ response on a lot of these detailed matters. When I was on sub-committee A, I tried to persuade Lord Radice that we should get a Minister in after every European Council meeting to report to us. We got them to come once and thereafter they never found that their diaries permitted it. We need to find a way to get Ministers in and focus on them, because the Government—and it is nothing to do with any particular government—is quite happy to be named but it very rarely seems to be shamed by it.

**Baroness Deech:** I was present in the Chamber, as I am sure you were, when the question of approving the choice of subjects for this year came up. It was met with a very bitter response all around the Chamber. I described the topics as motherhood and apple pie, because I suspected that the Government did not want anything too meaty because we are all so busy with Brexit. It seemed to me that they were hot air committees. I got in touch with everyone who had made a submission. I looked at those submissions and, in general, they were all much more interesting and important than the ones that were chosen. It seemed to me that we ought to be able to vote or have some input.

Likewise with the members of this Committee; wholly admirable, I am sure, but it is a mystery to me how members are appointed to this Committee or to any other committee. I have no idea how it happens. I do not know how I was appointed to the Disability Committee, although I was absolutely
delighted and regard it as one of the high points of my professional career. It changed my thinking for ever. But I do not know who does it and it should be more transparent, with more input.

Lord Foulkes of Cumnock: You have put your finger on it, and it comes up also in Lord Inglewood’s written evidence, where he says, “I believe the Whips’ Office have too big a role in determining the composition of committees”. Lord Inglewood, you are absolutely right. When we discussed the ad hoc committees—I am not sure if it is publicly known—it was the Government Chief Whip who took the lead in pushing those particular subjects. It is wrong, in a House Committee, for a Government Chief Whip to have such a big influence. But no one has had the courage to come up and make any suggestions about the composition of this Committee. Perhaps that is where the problem lies.

Baroness McIntosh of Pickering: May I respond to the Earl of Courtown’s question?

The Chairman: Yes.

Baroness McIntosh of Pickering: There are two proposals that emerge from what we have said. One is a sub-committee on a rolling basis. The other is for the Liaison Committee to invite Ministers in. There is a general impression that perhaps the other place, and particularly departments, do not take the House as seriously as we would wish. If we have spent nine months and quite a lot of taxpayers’ resources getting to the bottom of the issue, it is important that we have a mechanism by which these recommendations can see life.

Baroness Deech: What we are trying to say is: more members’ input. On the Cross Benches we vote on the topics that are put forward for debate. We are all invited to suggest something when it is our turn and we vote. The same should go for post-legislative scrutiny and various other committees, and, while we are discussing legislation, on Private Members’ Bills. The business of having a ballot seems to me very, very odd. I hope it is a genuine, honest ballot. I suppose it is, but some very strange things come out on top and extremely important things are much lower down and never get attended to. We ought to brush up Private Members’ Bills. There is some very valuable stuff and good ideas there if someone would take a grip on it.

The Chairman: I take it that more member engagement is a feeling shared by every one of you.

Baroness McIntosh of Pickering: No one seems to have grasped my idea of substitutes. It is a way of involving people, and if someone cannot be there on the day you have a substitute so that a witness has a full complement of people taking evidence.

The Chairman: Unless anyone has anything else to say, I will thank you for your evidence. It is very, very important. If you wish to follow up in writing with anything that we have not covered fully—Baroness Deech, you mentioned a couple of things there—I would be happy to receive it. Thank
you very much.
Wednesday 13 June 2018
10.40 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Smith of Hindhead.

Evidence Session No. 8 Heard in Public Questions 60 - 68

Witnesses

I: Michael Clancy, Director, Law Reform, Law Society of Scotland; Robert Khan, Executive Director of External Affairs, Law Society of England and Wales.

Examination of witnesses

Michael Clancy and Robert Khan.

Q60 The Chairman: Good morning. I detect a familiar face. However, for the sake of the record, can you please introduce yourselves?

Michael Clancy: I am director of law reform at the Law Society of Scotland. Good morning everyone.


Q61 The Chairman: Michael, you produced your report and, having looked at it, there are 12 to 14 areas which you have focused on for us and we hope to go through those. This is, however, the first review for 20 years. What should be uppermost in our minds in undertaking this review for the purposes of the Committee as we go forward?

Michael Clancy: That is a very interesting question, Lord Chairman. The first thing in my mind when I think of the review of 20 years ago is that life has changed since then and the world has changed. Some of these things are reflected in the comments the society made about issues concerning new technology, devolution and the incipient withdrawal of the United Kingdom from the European Union. All these will have bearing on the thoughts of the Committee as we go forward. The follow on from that, such as the impact on the economy and society in general, may be foremost in the Committee’s mind. The other thing is that, although it is

20 years since there has been a broad review, there have been reviews in both the House of Lords and the House of Commons by various committees that have a bearing on some of the aspects, which you may want to consider as well.

Robert Khan: I would reiterate what Michael has said. It is worth reflecting that when the last review was carried out, technology was in a very different state. I do not think that the internet had been invented. I do not think we were using emails, and Twitter was only a glint in some inventor's eye. The onset of new technology must be considered. There is also the supervening issue that always comes up of Brexit. That is clearly going to have an effect and we will go on to some of those concomitant effects. Finally, things are different politically to how they were 20 years ago. If you look at the power of the Whips, certainly in the Commons, it seems to be rather less than it was. If you look at structural changes to Select Committees in that House, you now have the election of Select Committee chair people. There are certain trends which may be reflective in your Lordships’ House as well that may be worth looking at.

The Chairman: Structure is important as well.

Baroness Hayter of Kentish Town: What do you think is the purpose of our committees?

Robert Khan: Self-evidently it is to provide robust scrutiny not just of government legislation but of government actions more generally. I also think there is a big role for the Lords committees in looking at those cross-cutting, big supervening issues such as technology. I know that there is a committee set up specifically to look at artificial intelligence. In the Lords there is also an opportunity to have a broader sweep of those bigger issues, whereas in the Commons it is very much looking at the work of individual departments and Ministers. Everyone in the House of Lords is here because they have expertise in a particular subject, which is very helpful in the scrutiny of legislation and government action.

Michael Clancy: Following on from what Robert has said, fundamentally one is looking at policy, examining legislation, looking at the way in which government is working and reporting to the House with recommendations before further action, debate or something like that. These are all important features of the way in which House of Lords committees work at the moment. Nothing in our paper would seek to take away from that. These are core elements in the business of the House of Lords committees, and it is important that the respect which is accorded to House of Lords committees reflects the expertise that Robert has identified as being inherent to the membership of the House. We can all be clear about that. The impetus is to build on that expertise and to make it more widely recognised. That is a clear objective that one would want to achieve.

Baroness Hayter of Kentish Town: I am inclined to say thank you because that is what I was hoping you were going to say. What other people have been saying is quite different—that we should be out there creating a public mood. You are saying that our expertise should be used to influence the Government or this House or the House of Commons. I

wanted you to know what was behind my question. In a sense you are parliament-focused—as both of you have been; other people have a view that we should be doing more influencing. You do not have to comment on that, but I just wanted you to know what I was trying to tease out.

**Michael Clancy:** I hope you will not mind if I do comment on that. The House does not exist in a vacuum. Although the focus which we have both described relates to the influence upon the Government and upon legislation and policy, nevertheless the public expect some kind of reaction from the House of Lords. In the last few years the House of Lords has been seen by the public as a counterbalance to government action. Therefore, I would not underestimate the ability of the House not necessarily to form the public mood but to reflect the public mood. In that sense, not cutting across the elected House, because the tone of the House of Lords is categorically different—but certain soundings taken outwith Parliament would be a worthwhile thing to do. The Interparliamentary Forum on Brexit, which Lord McFall has chaired, is an instance where getting out and talking to people has resulted in deepening understanding of what is happening outside.

One might also push that forward because I remember when there was a discussion about the Bill of Rights. I think it was the Constitution Committee, probably about 10 years ago, which came to Edinburgh to take evidence from people in Edinburgh. I was one of those and I remember the late Lord Onslow asking me about Magna Carta and its application in Scotland, which I am afraid to say I was able to disappoint him about. However, it was important that that Committee came to Edinburgh and sought that kind of comment because if it had not done so, it may have produced a report which went down a different track.

**Lord Lang of Monkton:** It is good to see emerging already a clear distinction between the Select Committees in this House and the other House. I would summarise it as saying that in this House we are engaged in a search for truth, facts and evidence that can inform conclusions, whereas in the Commons there is inevitably a political undertone and a high profile for some of the Select Committees, and it seems that there is sometimes a search for victims rather than for truth. I think it is important that we keep to that and I hope you do too. I think you do but, Mr Clancy, you identified several key reasons why you thought the current House of Lords Committee structure should change. You mentioned devolution, Brexit and technology. How do you think that change should be implemented to make them more reactive and more flexible without losing the underlying search for truth that drives our inquiries?

**Michael Clancy:** That is a very engaging question, Lord Lang. If one were to take each of these in turn, the withdrawal from the EU will precipitate some kind of change in the nature of the activity of Parliament at large. As we deconstruct the supranational legal order and replace it with a national legal order, this place will have much more policy origination work to cope with. At the moment much of the policy of EU directives and regulations is made in the European institutions. That would become naturalised and therefore one could expect that there would be more work in those areas which are currently under EU competence. Looking at the nature of the

committee structure, one might want to reorganise that to fit that kind of change.

I agree with Lord Boswell’s evidence that change should not be precipitate, but we must be prudent about the change and that prudence would dictate that we must prepare for the UK to leave without an agreement on 29 March next year. The House has to be ready in the event that there is no agreement, and have a plan. You may call it plan B or plan X, but we need some kind of plan to take account of what might happen in the event of there being no agreement. With the possibility that there is an agreement and we have a transition or implementation period to 31 December 2020, that would necessitate a different kind of plan because we would still be receiving law from Europe and still be subject to those rules.

Lord Lang of Monkton: And devolution?

Michael Clancy: Devolution has been growing organically since 1998 and the significant changes of the Calman Commission, the Silk Commission for Wales, the Smith Commission for Scotland and the intervening legislation makes the relationship between the UK Parliament and the devolved legislatures and Administrations quite different from what it was in 1998. Who knows what the future may hold? There is no committee of the House of Lords which is charged specifically with dealing with devolution, although that may come under the Constitution Committee’s remit. The Constitution Committee has lots of other things under its remit as well. It is a question of managing the relationships and making sure that the ratio of time to the issue is proper.

Lord Lang of Monkton: The Constitution Committee did produce a report a couple of years ago on intergovernmental relations between Scotland and the UK. I do not think it touched much on Wales at that time. That is a basis on which work could be developed. Do you think that the Governments need to get together? Are the Joint Ministerial Committee arrangements, for example, adequate or do you think that there should be developments there?

Michael Clancy: In all our submissions in connection with the EU withdrawal Bill, we have been at pains to reiterate, with modifications, what Bernard Jenkin said when he was chairman of the Public Administration and Constitutional Affairs Committee in the House of Commons: that this should be not just a whole of government exercise but a whole of governance exercise. We interpret that to mean a relationship between the United Kingdom Government and the devolved Administrations which is well founded and structurally sound; and to engage with civic society, the trades unions, churches, professional associations and universities so that a rounded picture of the relationship between Government and governed should be promoted.

Lord Lang of Monkton: How would a Select Committee fit into that arrangement?

Michael Clancy: It would identify those areas which would need to be inquired into, such as whether the JMC relationship was a good, functioning
relationship, whether the openness and transparency which one might want as a member of society was present and what results were available. That is where a Select Committee would serve a good task.

Robert Khan: I wanted to comment on the Brexit issue because I saw in some written submissions to this Committee saying that you could immediately abolish the European Union Select Committee and their six committees on exit day. In fact, there will be an enormous need for more scrutiny of what is happening in terms of our relationship as we depart. We all know, under the terms of the EU withdrawal Bill, the entire corpus of European law is being retained in UK law from exit day. Ministers have given themselves powers in the withdrawal Bill to amend, cut and paste and make sure that that is consistent, but I think there is a real role for the Lords in making sure that Ministers are doing that correctly and putting their shoulder to the wheel.

Secondly, the slogan of some was to take back control and there may be an exercise in looking at which of those EU regulations we want to retain and those which we want to depart from.

Thirdly, there is the concept of what Lord Pannick calls zombie law, because EU law will continue to develop and move on and reform, while arguably the law that has been retained here will become frozen in aspic. There may be issues around that relationship for your Lordships to look at.

Finally, there is the point that Michael made about the withdrawal itself. We still have no real certainty about how that is going to be effectuated. We know that there is going to be a transition agreement, but the engagement of the UK with Europe is still going to be very intense and detailed and I think there will be a strong need for these committees to continue. The joint Law Societies of England, Wales, Scotland and Northern Ireland run a joint Brussels office and there was some thought that we could close that down. In fact, we have renewed the lease for six years.

The Chairman: The Committee is very much alive to that issue.

Lord Foulkes of Cumnock: That has been very helpful. I do not want to go into preparing for Brexit because if the Government are not prepared, as they are not, I am not sure that the House will be prepared. Can I ask another question about the purpose of committees because both of you have said that they should be robust and challenge Government? There is a tendency for Ministers sometimes not to understand the separation of powers—the difference between Government on the one hand and the legislature on the other and the way in which people are nominated to Select Committees. The House of Commons has moved towards election. We have not. Do you think that we should?

Robert Khan: I think you should.

The Chairman: We do not need to embellish that.

Michael Clancy: That is if you subscribe to the theory of the separation of powers. I am not entirely sure that we have separation of powers in this country. We may have distribution of powers, and Ministers sit in

Parliament. We went through a process years ago of moving the judges out of Parliament. I am not entirely sure whether you want to go as far as to move Ministers out. We also reflected on recommendations from the commission on reform of the Scottish Parliament, which was recommending that there should be elected chairs of committees, or convenors of committees as they are termed in the Scottish Parliament. That is certainly under consideration. There are many recommendations from that commission and the Parliament is working through those recommendations. I do not know when they will get to these provisions, but it is certainly worthy of consideration.

Q63 Lord Smith of Hindhead: Do you believe there is an argument for a sessional committee dedicated solely to post-legislative scrutiny, or should this responsibility be built in to the thematic sessional and ad hoc committees in some form?

Michael Clancy: We believe that post-legislative scrutiny is a good thing. As I indicated in our paper, one post-legislative ad hoc committee was appointed in 2017/2018 to deal with one Bill. But if one looks at the number of Bills which are passed—I indicate those on page 9 of our submission—in Session 2016-2017, 33 Bills received Royal assent; in 2015-2016, 29 Bills; in 2014-2015, 36 Bills, and yet only one Bill is receiving post-legislative scrutiny as such. That means that there is an awful lot of legislation that is not receiving post-legislative scrutiny. Having a dedicated committee may make that an easier task. Maybe more than one Bill could be dealt with over a Session.

If we want to learn from legislation and its implementation, and if we want to learn not to make the mistakes of previous generations, it is essential that we find out if legislation which is passed by Parliament is working. In the previous Parliament the Political and Constitutional Reform Committee, under the chairmanship of Graham Allen MP, published a report for the House of Commons which supported post-legislative scrutiny quite clearly. It is instructive to see the extent to which that has been taken up.

Post-legislative scrutiny is not appropriate for every piece of legislation but it may be for quite a few, and it is in that kind of context that we are making these submissions.

Lord Smith of Hindhead: We need to go back to your point that the Lords is all about expertise. If you have just one committee looking at post-legislative scrutiny, you do not get every bit of expertise which might deal with each different Act which comes through. I sat on the Select Committee on the Licensing Act ad hoc committee, which I have a particular interest in, and that was really useful but if it was a standard committee that might be difficult. That is my view. Do you want to come back on that?

Michael Clancy: It is not preclusive of taking evidence from those who do have expertise, either in the House or outside the House. Therefore, even if there were one committee dedicated to post-legislative scrutiny, the techniques of post-legislative scrutiny would be effectively universal. It is the detail of whether something is working which would depend upon the evidence which that committee took.
Robert Khan: I agree that it is important for both ad hoc and thematic committees to have the opportunity to carry out post-legislative scrutiny. We believe that post-legislative scrutiny is incredibly important and we do not do nearly enough of it in this country. One example dear to the Law Society’s heart is the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which Ministers said at the time would radically increase the rates of mediation and reduce court cases. In fact, we now know that mediation has dropped by a third because that failed to take into account the role of solicitors in pointing people towards mediation rather than litigation. It is about looking at the claims that are made by Ministers and subjecting them to that scrutiny so that we can avoid those types of mistakes in the future. To their credit, the Ministry of Justice and Lord Chancellor have announced a post-legislative scrutiny of that Act. The issue is that the review will be carried out by the Ministry of Justice, which brought in the proposals. Putting it politely, they might be seen to be marking their own homework. This is where I think that the Lords could do a better job.

Michael Clancy: One of the changes which has happened in the Scottish Parliament is that the Public Audit Committee has taken on a legislative scrutiny role, but that does not preclude the other subject committees in Parliament, such as the Justice Committee, the Health and Support Committee or other committees, from undertaking post-legislative scrutiny of Bills which they have dealt with during their scrutiny in the initial sense. I do not think that having a post-legislative scrutiny committee as such would preclude other committees from undertaking scrutiny if they so desired.

Lord Smith of Hindhead: I have another question on this general theme. Some of the previous witnesses on this review have advocated a legislative standards committee and I would be interested to know your views on it.

Robert Khan: We saw that proposal and think that there is some merit to that. We also have a Delegated Powers and Regulatory Reform Committee, which has played an effective role. Having a committee that analyses Bills and makes sure that they comply more with technical and procedural criteria, rather than looking at matters of principle, would be useful.

Michael Clancy: I had the pleasure of reading Professor Dawn Oliver’s lecture to the Statute Law Society from 2015 about this very topic and I would commend it to the Committee.

Lord Smith of Hindhead: I missed that one.

Michael Clancy: Next time you should come along. Let me know when you are coming. It is important for us to have some concept of legislative standards, and committees already established, such as the Constitution Committee, the Delegated Powers and Regulatory Reform Committee and the Joint Committee on Human Rights, have certain standards against which they test legislation. Therefore, it is not new territory as such. One would have to contend with the reluctance of government to have such a committee because government might see a legislative standards committee as cutting across the freedom of movement of government.

It is difficult to separate criticism of the policy from criticism of the standards of the legislation. Sometimes when people cry out, “This is a very bad Bill”, they mean that the policy behind the Bill is very bad policy and the Bill is simply a proxy for criticism of the policy. Carefully constructed legislative standards would be worth looking at. That has already been looked at by the House of Commons, which one might reflect upon in a report.

Q65 The Earl of Courtown: You have both mentioned post-legislative scrutiny. What do you mean by good scrutiny? People talk about the House of Lords, where exact scrutiny is carried out of legislation, both in the Chamber and in committees, but does that scrutiny mean in the end that we get good law? That is debatable, as you alluded to earlier. How can we improve the scrutiny in any future committee system that we have here?

Robert Khan: Michael has drawn the distinction regarding legislation that is reflective of good public policy, and I was talking about post-legislative scrutiny in that sense, but there is also the second sense as to what makes good law. The Office of the Parliamentary Counsel, as I am sure you will know, defines good law as law that is necessary, clear, coherent, effective and accessible. I am not sure when we look at the morass of legislation that we have seen in the last three years that those metrics are always abided by. There have been great steps in the technical quality of legislation. Lord Lang looked at this in his Constitution Committee inquiry, where we both gave evidence.

Things are improving but there is still much to be done. For example, in situations where statutory instruments amend statutory instruments it is hard to see that being accessible. There are changes in tax law recently that are so complex that Lord Justice Jackson said that the technical complexity would be the envy of Byzantine emperors. There is some way to go, and there is a role for the Lords in upholding those high standards in the technical sense as well as the public policy sense which we touched on earlier.

Michael Clancy: I think Byzantine emperors get a bad deal out of this. The Emperor Justinian promulgated a code of law which I was tested on at university. Some of the law which Byzantine emperors produced was clear, accessible and quite readable and applicable even in 21st century.

Lord Foulkes of Cumnock: It sounds as though you helped him draft it.

Michael Clancy: No, his commission was headed by a man called Tribonian, but that is another story for another day, Lord Foulkes. When I was at university we were taught about Lon Fuller’s “The Morality of Law” and the eight ways to make bad law—not making law which is accessible or public or prospective rather than retrospective, and things like that. Good law and good scrutiny should go hand in hand. What is the nature of good scrutiny? Does it mean that every point which is made is then adopted in some kind of Damascene revelation to government Ministers? I am not sure.
Given that, in the process of scrutiny Ministers may have to answer the points about interpretation of amendments which are proposed, whether they are accepted or rejected, these can, in terms of Pepper v Hart, be produced in court later as aids to interpretation. Therefore, even if the scrutiny does not result in a change to the actual measure, it is not wasted.

We sometimes forget how important references to the parliamentary process and to Hansard, or the Official Report, are when dealing with litigation which emerges out of these pieces of law.

Lord Lang of Monkton: Can I bring the discussion back from Justinian to a rather more transient timescale of ad hoc committees? You had something to say on this, Mr Clancy, in your paper, which is helpful. What should be the ideal duration of an ad hoc committee? Can you expand on your suggestion of how the Liaison Committee could improve the follow-up of ad hoc reports, which is always a sensitive issue?

Michael Clancy: Ad hoc committees are appointed only for one year under the current arrangements. “How ad hoc is ad hoc?” is the question. One year, at the moment. One could conceive of circumstances where an issue which an ad hoc committee is seized with may extend beyond one year. Therefore, there has to be something which allows a little flexibility. I do not think one could get into a situation of saying that there is any fixed, determinate time for an ad hoc committee. It may be as long as it takes and no more to be able to produce a report. That would probably be where I would rest on that.

Lord Lang of Monkton: The parliamentary cycle tends to affect the work of these committees.

Michael Clancy: It does, and therefore the Liaison Committee, which I have suggested should be able to consider on a biennial basis, could also take into account some form of legacy consideration. If an ad hoc committee which is coming up to the end of the parliamentary cycle finds itself not yet in a position to produce its final report, it could issue an interim report which is then placed in a legacy file which the Liaison Committee could carry forward to the next Parliament.

Lord Lang of Monkton: Do you think that would improve the follow-up process?

Michael Clancy: Having legacy arrangements would, because there would be less danger of items getting lost or forgotten about and we would have a greater sense of continuity.

Robert Khan: On ad hoc committees, there is a case for them being slightly longer than one year, particularly on those big, cross-cutting, powerful issues that might be debated. The issue is that if ad hoc committees start to run and run, they start to turn into sessional committees. That is something else, with regard to resource implications, that the House will want to think about.

Lord Foulkes of Cumnock: Can I ask about an example from the Scottish Parliament that Michael might know? As you know, I spent four frustrating years in the Scottish Parliament. There are two Acts of the Scottish

Parliament which have gone into disrepute. One is the named person legislation and the other concerns religious bigotry at football matches. People say that anything could have been dealt with under existing legislation. Do you think that those got through the Scottish Parliament because it is a unicameral Parliament and there is no second chamber to give scrutiny, or is there another reason why these Bills, which have some disrepute, went through?

**Michael Clancy:** That is a timely question because, as you know, the Offensive Behaviour at Football and Threatening Communications (Scotland) Act legislation has recently been repealed by the Scottish Parliament, and a judge-led review was commissioned which has just produced Lord Bracadale’s report on hate crime. On the named person question, for members of the Committee who are not up to date with Scottish legislation, this is about the Government identifying a named person to look after every child. It fell down on being outside the competence of Parliament because it contravened data protection legislation. We had commented on it being likely to be unsuccessful as legislation. The Scottish Government are attempting to make changes to that which they hope will correct the situation and allow the legislation to function. That is still a work in progress.

On these two pieces of legislation and the question whether they got through because it is a unicameral Parliament, I do not think it is about being unicameral; it is about the relationship of the Government to the Opposition in the Parliament and the role of committees. The role of committees in the Scottish Parliament was designed to effectively deal with the sort of scrutiny elements which a second chamber would allow for. A strong committee structure was therefore envisaged in the original legislation and in the Standing Orders, but that is subject to the political will and that depends on the electorate. The legislation to which you refer was probably passed at a time when there was an overall majority for the SNP Government in the Scottish Parliament and the Opposition parties did not have the numbers to oppose that effectively.

**Lord Foulkes of Cumnock:** The committees, such as standing committees, did not carry out the kind of scrutiny of legislation that it was originally envisaged that they were supposed to do?

**Michael Clancy:** I would be less with you on that. The original Offensive Behaviour at Football and Threatening Communications (Scotland) Act was intended to be emergency legislation, and the Justice Committee rolled back from that so that the Bill received proper scrutiny according to the Scottish Parliament’s rules. It is not the case that the committees were weak; it is that the Chamber was strong.

**Baroness Hayter of Kentish Town:** In your answer to Lord Lang you talked about the Select Committees looking at the governance—whether the JMC or whatever worked. We are quite interested in how the Parliaments or the assemblies might have a role. Robert, we have talked about the Welsh Assembly and Scottish Parliament, but we have an assembly in London for 10 million people. Do you have thoughts about, going forward—whether assembly to assembly rather than government to
Robert Khan: That is useful to explore in two ways. We have had devolution in England and Wales for some time now, certainly in terms of the mayoralty of London since 2000. There is a well-developed sense of scrutiny in terms of the assembly and assembly committees scrutinising the work. It may be less developed in other assemblies and in local government more widely. As we all know, there are well developed overview and scrutiny arrangements which this Committee might wish to draw lessons from.

On the more structural question, there may be advantages in committees of the Lords scrutinising what is going on regionally. I know that Andy Burnham gave evidence recently to one of the committees in Parliament on the effects of Brexit. I also think it will be helpful in moving away from what we sometimes call the Westminster bubble. For example, if the Lords were to do an inquiry on the effect of Brexit on legal services, the evidence that you might get from firms in the City of London might be different from the perspective that you got from Manchester.

Lord Foulkes of Cumnock: Can I follow up that interesting question? It was raised earlier that we should meet more often outwith Westminster and take evidence outwith Westminster. Some people say, “We can get it online; get the video conferencing”. I am not sure that you can get the same kind of feel using video conferencing as we are getting from talking to you directly now. What do you think?

Robert Khan: I agree.

Michael Clancy: I have been in committees in the Scottish Parliament where there is some form of video conferencing and it works quite effectively when you are looking for an answer to a question. If it is a more nuanced kind of evidence session, however, personal appearance is better.

Lord Lang of Monkton: The Law Society of Scotland suggested that the terminology that we use in our Select Committees is off-putting, including phrases such as “taking evidence” or words like “witnesses”. To change that will be an uphill struggle. It is a little like changing the King James Bible. There will be a lot of reverberations. Why do you think it is a good idea, and how do you think things could be improved? Before you answer, I understand that you want us to communicate with a wider network and penetrate people’s resistance to taking anything that comes out of Parliament, but that is only partly true. Select Committees also exist to inform the House of Lords, and through them to inform Ministers in government, in the hope of improving their reaction. It is quite a big issue when you open it up; it is not just a matter of a few changes of words.

Michael Clancy: No, indeed. It is good that you raise that, Lord Lang, because I have been thinking about it a little and what sort of substitution one could use—“invitee”, “consultee”? Instead of evidence one could say “views” or “opinions”. What I am giving today is not my evidence, in the sense of something which could be corroborated, but rather a set of views about the topics which have been raised.

On reflection, however—and this is nothing to do with recent events in Parliament—there is a distinction to be made between this kind of session, where a Committee is seeking views about matters of importance to the House, and where there is a more contentious or tense element, where getting to the truth of the matter, which you mentioned in the first question you raised, is the point of the issue. There, I agree that there is an uphill struggle because if a committee is trying to get to the truth of the matter against a hostile or uncooperative witness, it is truly a witness-and-evidence situation.

Work has already been carried out on a joint committee basis and also in the House of Commons on what one does regarding the Committee of Privileges and the privilege of Parliament in calling witnesses, putting them on oath and compelling witnesses in those instances where it is a contentious matter. Therefore, I agree with you. It is not the case that the language has to change in every instance, but there might be more of a modification and a sensitivity to the listener and to the reader when one is looking for evidence in the round.

**The Chairman:** I had an informal conversation with a former Lord Chief Justice on this issue of evidence, and he said that we should not be too hung up. He agreed with my proposition that evidence is a reported conversation.

**Robert Khan:** There is a clear analogy with the legal structure because in court you have witnesses who give evidence. It is important to have a degree of formality so that people prepare properly, respect the court and treat it with the seriousness that it demands. I agree with Michael that some of the language could be made more accessible. We all remember the Woolf reforms that turned “plaintiffs” into “claimants”. I quite like “plaintiffs” but I can see that it was slightly archaic.

**The Chairman:** Perhaps we can come back to you for some assistance on that because your submission has been helpful. Maybe I could look at three points in your submission. You mentioned that any reform has got be evidence-based. Perhaps you could elaborate on that. You also mentioned that we should be professionalised in our committees. You mentioned the effectiveness and efficiency of committees, a written role description for members and chairs, a communication strategy embedded at the beginning with broader outreach, the objectives of the inquiry being established, the context politically and socially and the methods available. That, too, maximised the impact both within and outwith Parliament. On the structure, in passing you mentioned the flexibility to look at long-term public policy but also to respond to live events as we go along. That change of structure will be important to us. On that—evidence-based, the professionalism, the communications strategy, the structure—could you give us your final comments?

**Michael Clancy:** The evidence is part of this process. Rather than simply saying, for example, that we have got to change the committees without deliberately taking views from people and those who are interested in these kinds of topics across a wide spectrum of professional organisations like ours, academic interests and parliamentary interests as well, it might be
interesting to find out what members of the other legislatures think within the UK. That could mean that you get the best evidence for change which would inform the House when it comes to consider your report.

In terms of professionalisation, there is an increasing demand in any organisation that has many committees—the Law Society of Scotland is one—for more focus on the roles of committee members and chairs and the existence of a code of conduct, which we recently published. If you like, I can send that to you. The arrangements for time limitation of holding office in a committee are important.

Communications strategy depends on what you are investigating, what scrutiny is being undertaken and where one would go with that, but if you do not have a communications strategy you may find yourself falling short in informing government stakeholders and the public. It is difficult sometimes, unless one is alert to what is going on in Parliament, to find out that some committees are undertaking some investigations at all. Why is that the case? What is it about the information that has been put out, which is ignored by the media outlets or by social media? It is not being tweeted on, or it is not being reflected in other forms of media. These are the kinds of things which we have been thinking about in Edinburgh and I hope they are of use to you.

The Chairman: Good. And the structure?

Michael Clancy: One might think that the structure might be pyramidical, in a sense, but looking at the list of committees in the consultation document, you have helpfully put it in a linear form. It is linear if you look at it that way, but if you look at it another way it is pyramidical, with the various European Union committees, the non-EU sessional committees, the ad hoc committees and the joint committees, and the apex of that is the House. The structure has to be sufficiently fixed to do the job but sufficiently flexible to take account of changes as time goes on. That is why the work of this Committee may need to be a rolling programme of almost constant review.

The Chairman: We have time because this is a two-term Session and that is important for us. We need to take time on this in light of the comments earlier about the EU and whatever else, and we are conscious of that. Given the evidence you have provided for us, particularly the Law Society of Scotland, and the areas we have still to work on, perhaps we will come back to you on these issues and you can help us as we progress on this rolling programme.

Michael Clancy: Delighted to help if we can.

The Chairman: I am really pleased and grateful for your evidence this morning. It has been very helpful to us. Thank you very much.
Wednesday 11 July 2018

11:20 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston.

Evidence Session No. 20 Heard in Public Questions 144 – 148

Witnesses

I: Lord Clement-Jones; Baroness Corston; Lord Filkin; Lord Hodgson of Astley Abbotts; Baroness Nicholson of Winterbourne; Baroness Pitkeathley; Lord Teverson; Baroness Tyler of Enfield.

Examination of witnesses


Q144 The Chairman: Welcome to the second session. As Chairman, I have a challenge in keeping this to one hour. I am sure you will help me to do that. If anyone has any point with which they agree with others, mute acceptance will be accepted by me on that particular issue. We finished in the last session on the need for more member engagement. There was some suggestion that allowed Members of the House, as opposed to the Liaison Committee, to vote for final topics for ad hoc committees. On the issue of member engagement, does anyone have any comments?

Baroness Pitkeathley: It is a good thing.

The Chairman: Do you mean further member engagement?

Baroness Corston: In choosing a topic?

The Chairman: Yes.

Baroness Corston: I heard that.

The Chairman: Yes, you heard that in the last session.
Baroness Corston: I agree with my friend Lord Foulkes. There is an argument now for no Chief Whip to be present. It is not a question not of whether a topic is embarrassing to the Government or the Opposition; it is a question of whether the House thinks that it is of importance. I am sure there have been subjects in the past which a large number of Members would like to examine which have not been examined for that reason.

Baroness Tyler of Enfield: Yes, I strongly support the idea of more member engagement. There are a number of ways in which it could be done: when topics are being submitted, during the initial shortlisting process and when the final decisions are being made. If I may, I would like to put the record straight from my perspective in relation to something that Baroness Deech said. As someone who put forward the proposition for one of the current ad hoc committees, which I think she described as “meaningless” and “full of hot air”, she said that she contacted all the people who had put forward propositions, but she did not contact me. I like to think that that Select Committee has a lot of substance. I can think of few topics, frankly—

Lord Foulkes of Cumnock: What was your topic?

Baroness Tyler of Enfield: Intergenerational fairness. I can think of few topics of more relevance in this day and age than a whole generation who feel that their prospects are not as great as their parents’. I want to put the record straight.

The Chairman: Good. That is fine. In fact, we have a Committee on intergenerational fairness. Lord Teverson.

Lord Teverson: On member engagement, the area that seems important to me is not so much the selection of subjects, although that is also important. It is more, as Baroness McIntosh said earlier, that out of the total membership of the House, only a certain number of Members are involved in Committee work. That number tend to be quite siloed in their own work, and I include myself in this.

This is a key area of the House’s reputation and ability to be different from the other end, and it is really important that we engage the wider House in the work that Select Committees are doing while they are doing it, and that we find some way in which they can understand or hear about what is going on, if they wish to, and can participate more generally during the process of Committees.

Most people will know something about them; they finish their work, there is a report, but the engagement of the rest of the House is relatively small. There is real importance in this area in trying to get that engagement right the way through the process, and I think there are ways of doing that.

Lord Clement-Jones: I do not disagree. I agree in particular with the ideas which the Liaison Committee has put forward for opening up the way in which the topics are selected. However, I strongly disagree with the idea of putting it to a vote of the House, because if you do that there will, I think, be a very cautious approach to some of these ideas.
One of the great benefits of the ad hoc system is that we have had some very good new things coming forward, and particular proponents of those things have got them through this system. It is a great strength of the ad hoc system. I do not understand why a proponent cannot be the Chair of an ad hoc committee. That seems to me to cut off people at the legs. If you have a passionate supporter of a particular subject—okay, you have to judge whether they are parti pris—they should be allowed to chair a Select Committee if they put forward a really good idea.

**Baroness Pitkeathley:** I endorse that last point. It does seem to me that people put forward subjects because they feel passionate about them, and I have never understood why they cannot be included on the Committee.

The other point I was going to make was on the back of what Lord Teverson said. It is very difficult to think about how you would select the topics without thinking about the process of how Members are selected to be on the Committee. That is of huge interest, because people volunteer. However, the decisions are made not by the House but presumably by the party Whips as long as we continue to have a party balance in ad hoc committees. I do not know whether the Committee wants to look at that, but as long as you do that you are going to have to have some party involvement in the selection of people who serve on them.

**The Chairman:** Lord Clement-Jones, just for your information, with regard to the proposal of an open Chair, that is a convention, not a rule. It is good put that on the record.

**Lord Clement-Jones:** You can always break it.

**The Chairman:** Exactly, it is not a rule.

**Lord Filkin:** I agree with Lord Foulkes on the process of choosing ad hocs. There is a tendency for the usual channels to play cautious, but there is a proper process, with a one-page briefing on the purpose of an ad hoc that is developed with the proponent and put through an informed hustings with the House. The House is perfectly capable of making informed decisions about which ones they favour, setting out both purpose process and importance, but there is a tendency for the usual channels to play it safe.

**Baroness Corston:** Perhaps those staff should not be on the Committee.

**Baroness Corston:** Perhaps those staff should not be on the Committee.

**Lord Filkin:** I am talking about this Committee.

**Baroness Corston:** Yes, I mean that Committee.

**Baroness Nicholson of Winterbourne:** Chairman, I would have suggested that the purpose of selecting a topic is to try to alter government policy or support and commend change. There must be an objective. My slight concern over the years I have been in the House, and I am lucky to be here, is that topics may be chosen because they are of general interest. That can almost mean anything, politically, in a sense. The purpose of selecting that particular topic concerns me.
That falls straight back on how that topic is then treated. How the report is written is a difficult subject itself. I would like to see our report writing at a significantly higher standard, because we are trying to achieve something with the report.

**The Chairman:** Would you also like to see a limit in words?

**Baroness Nicholson of Winterbourne:** I have brought a few of the reports to remind myself, including a report I drafted for the European Parliament and for the Parliamentary Assembly of the Council of Europe. It reminds me of the higher quality of the report substance. The purpose and the structure of the report is much clearer, the length of the report is pre-determined, the length of the timing is pre-determined.

Here, in the House of Lords, with our very antique procedures, it seems to me that we fall into a bit of a heap in producing stuff that is barely looked at. I am constantly told by people that the substance of the report is not looked at, merely the summaries that are at the front or the back. I would like to see not just the topics examined but the ways in which the report is written, the clarity, the dictation and the language of it to be much tougher, much more rigorous and much more rules-based.

**Lord Lang of Monkton:** Could I feed in one or two thoughts about the question of how topics are selected. It is important to take account of what other Select Committees are doing or are going to do and the range of their subjects. It is important to take account of what the other House is doing and not to tread on their toes. It is important to take account of legislation that is in the pipeline that may intrude before a report can be produced, et cetera. There are lots of factors that have to come into the decision.

If it is all going to be opened up and possibly going to a vote, as some has suggested, although Lord Clement-Jones is against that, popular subjects would come up that have come up again and again in the past. I recall that one of the topics that we considered had been endlessly reported on, talked about and voted on as controversial at all times under both Governments. We decided not to pursue it, because we did not think we could add anything to it. That is the sort of subject that might have been voted on had it been put to a vote, and it might not have achieved very much.

**Baroness Corston:** I agree.

**Lord Filkin:** You are absolutely right: one of the criteria has always been to try to avoid duplicating what the Commons is doing. Whatever the system, whether it is decisions by the Liaison Committee or, as I would prefer, an informed decision by the House, some good criteria may be useful, as may sieving a bit more.

I suggest that one criterion might be selecting issues that are neglected, important, long-term and that probably span departments, because that is where we have problems with government. Selecting issues like that are where we are going to bring more value, rather than repeating what has already been done.

**Lord Clement-Jones:** I am slightly in two minds about the selection of topic and the topicality of it. Our Committee was rather breathless in having to run quite hard to keep up with events in the artificial intelligence field. Nevertheless, at the end of the day, it was a very positive experience. We got to the finishing line before the Government. They published their sector deal and then they had to respond.

Choosing the subject is actually a bit of an art form. I do not think you can build a hard and fast rule. Artificial intelligence was highly current. It was exactly what was needed. It demonstrated the relevance of the House of Lords in policy-making.

The one area I would absolutely disagree with Baroness Nicholson about is the writing of reports. The writing of our report was superb. The quality of the input into the writing by our clerks and our policy analysts was extremely good. However, I would have loved a more exciting cover. If only we could get away from the rather dull-looking covers we have, we might get more readership. People have read it end to end. They have not just read the summary.

**Lord Lang of Monkton:** It was very well received by the industry.

**The Chairman:** I think we are still working with the 2005 template for the printed report, so we have to move on that as well.

**Baroness Corston:** To reply to Lord Lang, having been on the Liaison Committee myself I understand those points. What I feel strongly about is that there should be much more opportunity for what I call Back-Benchers to decide the subjects rather than the usual channels. I am not sure whether the Government Chief Whip and the Opposition Chief Whip should be members of the Committee.

**Lord Hodgson of Astley Abbotts:** Chairman, are we leaving the whole question of selection of topics now? Are we about to move to something else? I would like come in briefly on that, if I could.

**The Chairman:** Baroness Tyler first, then you.

**Baroness Tyler of Enfield:** I agree that it would be helpful to have more criteria when people are putting forward their initial proposals. Some of the points that Lord Lang has made are really important, such as not choosing topics which the Commons or other Committees have recently looked at. The 50 submissions that came forward this year and which I looked at were all interesting subjects. It is never going to be an easy decision. Some people, quite understandably, put in a couple of sentences. Other people put in detailed submissions of two pages-plus. That makes the job of the Liaison Committee very difficult.

I would have thought that a bit more guidance, even perhaps a bit of a template, such as which headings to cover, would be extremely helpful and would make subsequent decisions easier. I also support what Lord Clement-Jones says. I do not agree with Baroness Nicholson’s comment about the quality. I think the reports are extremely well written. Certainly
people I have spoken to in the sector have read the financial exclusion report right the way through. Our Committee, too, produced an easy read.

**The Chairman:** We simplified it.

**Baroness Tyler of Enfield:** We had tremendous feedback from the easy-read version with lots of photos in it. I think the standard of report writing is high.

**Lord Hodgson of Astley Abbotts:** I think we need criteria. We need the Liaison Committee to have the blackball ability to meet Lord Lang’s point, but they would have to justify why they struck something out. For the rest of Committee, the issues go to the House to consider, a first sieve having been done by the Liaison Committee so that we are not duplicating what had been done before.

The idea that it should remain with the Liaison Committee for ever will mean there will always be a feeling, rightly or wrongly, that it played safe and that anything controversial will be put to one side. If it is done in the open and we do not allow this to go forward because it has been looked at in the Commons or has just been done, the House can see the reasons for the Liaison Committee’s decisions, and can see that it has gone through the sieve and has gone through the criteria, and it can vote on the topics that are left.

**The Chairman:** Okay.

**Lord Hodgson of Astley Abbotts:** If I could add one other thing about finding topics, we are trying to do outreach. Baroness Pitkeathley and I were on the Citizenship and Civic Engagement Committee, and it would be interesting, as part of our outreach, to ask the schools if they would like to suggest topics to people from the House who came to speak to them—if their sixth form, say, would like to come up with some ideas.

**The Chairman:** Absolutely. There is an engagement element in that.

**Lord Foulkes of Cumnock:** I am what was described by one of our previous witnesses as the “idiot boy” who asks these awkward questions about follow-up to Committees. I wonder if we could have some suggestions about that. I was on the charities ad hoc committee with Baroness Pitkeathley, which was chaired expertly. There has been some follow-up where you get invited to speak at conferences and seminars and you go around talking about the work of the Committee. Are there other ways in which Committee reports could be followed up, and ought there to be some provision for reconvening Committees on occasions? I do not mean all of them, but if there is a sudden new development or new information, could the Committees be reconvened? What do you think?

**The Chairman:** For the record, the Chair disagrees with Lord Foulkes’ self-description.

**Baroness Pitkeathley:** It was a great joy to serve on the Committee with Lord Foulkes, as I am sure everybody can appreciate.
There has indeed been follow-up to that particular Committee, but much of it below the radar. The Government are now about to produce a new strategy for the charitable sector, which we are expecting at any minute, and that comes almost directly from what our report said. However, very little acknowledgment has been given, although I have to say that I have taken it publicly on several occasions.

We ought to be looking very much at more formal ways of following up and checking out what has happened as a result of the report, because not only is it good for the Committees and policy but it is very good for the reputation of the House to see how we influence policy.

**Lord Teverson:** I do find it strange that we put in so much resource and we get such quality out of these systems, but then it seems to die. I chaired the Arctic Committee. It was a hugely important topic, there was a very good report and not a bad government response in some areas.

At the end of this process, and perhaps even at the beginning, we should have a public conference or think bigger and more broadly than we do at the moment. We should have something in the Queen Elizabeth Centre at the end of an important ad hoc committee session where we bring in much broader society. We have great authority as a House and we should use that partly to mobilise a much greater and broader interest in what we are doing. Whether after a year or later, we do need to follow these things up, otherwise they die.

As a Chair of that Committee, I feel quite guilty that I have not worked more proactively myself to do that, but you get involved in so many other things that that is the way it tends to work in the House. Given the investment and the quality of the work, we should not let these topics die. Part of the way we do this has to be public and part of it has to be in the House.

This issue of the Government coming back and the Minister giving you a response to the report is great. It might be a good response, but it might be bad and then there is a debate, but that is not enough. You need more ministerial and government involvement throughout the process, not in a hostile way but in an attempt to bring government along with you, because this is not something on which you are necessarily scrutinising government.

At the end of that process, there are loads of recommendations, but you need almost super-recommendations that you particularly pursue with government for further implementation, and there has to be more than just a ministerial response in a debate or a report at that point. There needs to be a requirement on the Government to take those super-recommendations more seriously and to be more accountable for them.

**The Chairman:** If I remember correctly, Lord Clement-Jones, your AI report was launched at the Royal Society.

**Lord Clement-Jones:** Yes, it was.
Baroness Tyler of Enfield: The follow-up point is probably what I feel most strongly about, and it is based on my experience of having sat on four of the ad hoc committees and having chaired one. All the reports that were produced were very good, but the lack of follow-up has been the greatest weakness of the current system.

As chair of the former Financial Exclusion Committee, I have been active. I immediately wrote letters to all the Ministers and the stakeholders involved, I had follow-up meetings with key stakeholders such as the FCA and the Post Office, two meetings with Ministers, correspondence with members of the public, and pre-active and reactive press work, so I have done a lot of things. I have tried to get Questions and debates in the House—all the ways in which you can try to keep it on the agenda. I found it hard work, because there was absolutely no secretariat support for me on this one.

I am pleased I did it, because all of a sudden there have been some new Ministers and interests; the new Economic Secretary seems to be taking it very seriously and has set up a policy forum that will go look at all our recommendations again. Although I found the original government response very disappointing—most of us in the debate said it was pretty lacklustre—I would now say that there is much more interest. The FCA has just issued some new proposals about overdrafts and such things, which directly take forward our recommendations, so I feel that it had some impact, but we need more formal processes.

Two things could happen. First, the House ought to be able to ask Ministers to come before it and give an account of progress on an annual basis. Secondly, when the Liaison Committee is doing its follow-up work, the chair of the relevant Committee should be invited to co-opt it on for that meeting, because they have the more detailed knowledge of the report.

The Chairman: I can testify to what you have done post-Committee, because we have had a chat, but we still have an outstanding invitation from Michael Sheen, do we not?

Baroness Tyler of Enfield: We do indeed. There is a bit of work to do yet.

Lord Clement-Jones: I agree entirely with the point about a one-year regular update. In a sense, it is not fair to government simply to expect it to make a response at a particular point in time. As soon as the response is published, the responsible Minister should come before the reconvened Select Committee, which would be much more powerful in many cases than simply having a debate in the House, because in a sense the Lords Minister may not be the one who gave evidence to the Select Committee in the first place. I would very much like to see that, plus a one-year regular update.

The Liaison Committee point is also very good. We have to get away from the idea that once government has responded and the debate is over, it is job done.

Baroness Garden of Frognal: The point about linking it in with the
outreach programme is fantastic. Perhaps we could ask Gina to put on the feedback forms whether the particular school groups have ideas for committees. At one stage, the education programme had a schools proposing legislation competition, which it is not running any more, but it would have both primary and secondary schools putting forward legislation.

Again, we really ought to pick up anything that makes our work more relevant to people outside, particularly schools, and go back to the outreach programme with that proposal, which could prove extremely fruitful.

**Lord Filkin:** On the question about follow-up, it is part of the wider question of how we ensure that there is impact from the reports, and these are skilled and expensive resources. No other organisation nowadays would think that the traditional model of producing a report and popping it on the table was how you had impact. There would be a serious communications plan right from the beginning to think about how you impact it. We have heard some excellent suggestions from the comments so far, such as building in PR from the beginning. We were superbly served on the ready for ageing Committee by bringing a PR person in right from the beginning and planning it there.

Secondly, the idea of a conference is an obvious and sensible idea and not that expensive. Thirdly, I strongly agree with the others who have spoken about having to retail it to government. I was told by one Member on my Committee, “Keep going after it”, and I realised what he meant. Five years ago I met government departments and went to the Cabinet Secretary. I felt I was doing this in thin air and I was not even sure that I was meant to be doing it, yet it was enormously valuable, because, of course, they had never read the report. At least when you go and meet them face to face they will get a briefing.

Lastly, with the PAC report the Minister has to respond in person. A Minister responding to the Committee itself on a report would be a much more powerful way of getting engagement than just a debate in the House, and, of course, the 12-month follow-up.

**Baroness Hayter of Kentish Town:** This is not to cut across the idea of getting the relevant Minister in front of your Committees, but I wonder if this is a simple thing. You will all have had debates on your reports—I have only done one of these—but the Chair of the Committee tends to introduce it in the Chamber, then all the speakers speak and the Minister comes last. If we reverse it so that the Chair of the Committee opens the debate and then the Minister and everyone else can come in, would that quite easy difference have any impact?

**Lord Hodgson of Astley Abbotts:** The question is finding a vehicle that provides a consistent focus; otherwise, you depend on the ability and time of the Chair of the Committee to keep the ball rolling. It seems to me that there is a role for a follow-up committee, perhaps a sub-committee of the Liaison Committee that every six months or every year produces a report updating the House on where each of the reports has got to until that
That is done in conjunction with the Chairman of the relevant Committee, who can say, “Yes, we’ve made this progress”, or, “No, we haven’t”, and the report is then made available for the House and will lead, no doubt, to questions and further inquiry. From time to time, if the Committee is very dissatisfied, it could reconstitute the original Committee and invite the Minister to give evidence. However, a structure is required to do it.

**Baroness Nicholson of Winterbourne:** The purpose of our discussions must be to try to make our reports more important in that sense—more valuable, more used and more effective in terms of output and what happens afterwards. Timing is very important. By that I do not only mean picking the right topic at the right moment. Our reports seem to take a very, very long time to produce indeed. The sitting of the Committee is long.

In Brussels, the sitting was a maximum of six months. That meant that the topic chosen was timely and was still timely by the time all the evidence had been heard. It also managed to compress very well Members’ own decisions as to who to call and what evidence to go for, rather than almost everyone coming forward, from school children to NGOs and all the rest of it, like the great public forum that is here. It was much more focused and timely, because one did not have the time to do it. It meant that quite often very important things came out. I seriously suggest looking at the length of time the Committee sits for, the size and dimensions and way in which the report is produced. There should be a classic formula.

We do not have one, so a lot of time is taken in working out the shape and substance of the report. Surely there should be a formula. There should be a rule book which both we and the clerks have access to so that we know precisely what we are aiming for. It should then be short and sharp and hard hitting. This is surely what an ad hoc report should be.

From there, the quality of the report, whether one calls it good, bad or indifferent, is not the point. The point is what it brings, so the quality of the report brings the follow-up itself rather than needing endless extra Committees. One would find, if we did a really hard-hitting report, that the Chair, such as the Chair of the Liaison Committee or possibly of another substantial Select Committee, possibly a Commons one, could take up that topic and move ahead on it. It works very well indeed, but it must be short, sharp, precise and clear and not waste anybody’s time. It is worth looking at this aspect of our reports.

**Baroness Corston:** On the question of timing, which Baroness Nicholson has just mentioned, we do this in a frankly baffling way. We have a summer call for evidence, which is a huge problem for charities and people in the voluntary sector, as people are on holiday. I found that when we began to sit in May. We rose, and we came back, but by January we were looking at the final report. I do not see why we cannot start in October and the call for evidence be in October. We have the session until Easter, and from
Easter we agree the report and report to the House before the end of the Summer Recess. That gives the Government time.

I chaired the Select Committee on Social Mobility and the transition from school to work. We worked with small charities that found fitting all their evidence into the evidence session while people were away was really very difficult. Time was wasted by having the whole of that Summer Recess when I was in Gloucestershire and the staff were here. It became an utterly unproductive time.

**Baroness Nicholson of Winterbourne:** Our House is undervalued, but perhaps the sort of exercise that we are doing today could also consider the cost of the way in which we run our ad hoc committee reports at the moment. It is enormously extravagant and we need to be clear about exactly how we are spending public money. That is a very important matter with these sorts of reports.

**Lord Teverson:** I agree about the timing. On Baroness Garden’s point about schools, we on the Arctic Committee felt that it was such an important subject of interest to schools that we had an open roundtable session with a number of schools as part of the programme. That worked pretty well, perhaps better than I thought at the time, as we had better feedback later on. It worked very well.

Coming back to Lord Clement-Jones’ point earlier, we had a picture on the front of our report that our Committee clerk took in the Arctic, so you can do things.

That brings me back to the broader point, which I have written to the Committee about, that a lot is to be gained by Committee Chairs getting together more, sharing experience and understanding what works and does not work. Perhaps that happens now. Certainly a couple of years ago it did not. A lot can be learned from past experience. In a very short timescale, we go along a learning curve that is absolutely assisted by clerks and staff who have done these things before, but we do not share experience enough to the benefit of those ad hoc committees.

**Baroness Tyler of Enfield:** I very much support Baroness Corston’s point about timing. It could be rejigged very helpfully, particularly so that we do not call for oral evidence over the summer period.

Coming back to Baroness Hayter’s very interesting suggestion about how debates are handled in the Chamber, I am no procedural purist, and some people may find this dreadful, but the idea that the debate is begun by the Minister, who is then held to account, is interesting. That way, the Chair and the other members of the Committee ask questions much more of the Minister, particularly with regard to the follow-up activities, rather than giving a broad account of all the work the Committee did. That could be a much more effective way of holding such debates. It would also help if they were not held as last business on a Thursday when everyone has gone home.

One of my colleagues has come in with the excellent idea that if enough cross-party members of the Committee were not satisfied with the response from Government, it should be possible for that Committee to be reconvened for a one-off session and the Minister asked to attend and be called further to account.

**Lord Hodgson of Astley Abbotts**: It does need a framework to make that happen.

**Baroness Tyler of Enfield**: Yes, it needs a framework.

**Lord Hodgson of Astley Abbotts**: An individual Committee cannot do that. It requires someone to give evidence so that someone says, “Yes, you have a case. We are going to empower it”.

**Lord Clement-Jones**: I agree with the point about the summer-period timing of evidence taking. It is absolutely ridiculous that people are expected to do that over the summer months.

I disagree with Baroness Winterbourne. I do not think we devote an extravagant amount of resource to the ad hoc committees. They should be short and sharp. One of the great things about the ad hoc committees is the comprehensive way in which they look at some of these issues. They are not Commons’ reports, they are Lords’ reports, and they have authority for that very reason. Short and sharp is not appropriate.

The public engagement point is very important. I hope we are going to talk about communication generally in relation to ad hoc committees. I have done about 20 meetings, two of them abroad.

**The Chairman**: When you mention communication, Lord Low, is that your point?

**Lord Low of Dalston**: No.

**The Chairman**: We will bring in the subject of communications after Lord Low.

**Lord Clement-Jones**: Having support for that would be fantastic. I am extremely lucky that our clerks were enthusiastic about helping after the ad hoc committee reported, despite the fact that it was not part of their day job. I have had a bit of support in that respect, but we need to have a much, much better approach to communication. What Lord Filkin said was absolutely right regarding a communications plan.

**The Chairman**: We will take that on.

**Lord Filkin**: There is incredible potential still for the Lords, because they play to our strengths. They involve Members more who feel enormously frustrated that they do not have a chance to get involved in the House and only speak in debates. It involves more people. It involves the world in a way that is absolutely right, and I have found that the quality of the evidence that we get in these processes is remarkably high. We should see them as incredibly cheap. Most of us give our time for love. I would strongly
be in favour of a sensible progressive expansion of their numbers. We can add value here, particularly if we think more about impact and the wider changes.

**Baroness Nicholson of Winterbourne:** We have a partnership and association agreement document with some additional gold stars on it coming in front of the House in the shape of a White Paper. The likelihood is that it will go through, but I do not know. I cannot tell. However, if we move ahead as the White Paper and therefore what the partnership and association agreement proposes, we must recognise that we will be outside a substantial body of work that the European Parliament does on examination of issues and reports in which we are active participants. I was an active participant, Baroness Kinnock was. We have all worked extremely hard there.

Therefore, it is of massive importance that we take a really hard look at what we in this House do. It will become ever more important. We will not have both the shield and the critique of the European Parliament or the value of our input into those reports. Many of these topics will probably matter as much to us afterwards as they do today. I urge you to take my points with some seriousness.

**The Chairman:** We are taking every point seriously this morning.

**Baroness Nicholson of Winterbourne:** It is much easier just to say, “We’re doing very well. Let’s keep it all the same”. I have 14 years of experience to offer in both Brussels and Strasbourg. I am not alone. These reports are just a few of the ones I did. They had impact.

**The Chairman:** Absolutely. You have spoken to me about that in our meeting.

**Lord Low of Dalston:** I want to pursue this question of timing, which a number of witnesses have addressed quite fully. There is one other aspect of it that we have not spoken about. We have received a suggestion that Committees should not necessarily be limited to one session or should not be given fixed deadlines for reporting, and that they could have a bit more flexibility to report when they consider that the time was right and have had enough time to collect the evidence that they needed, perhaps in a shorter time than is customarily allowed. I noticed Lord Clement-Jones talking about his Committee having to work at breakneck speed. Perhaps he might welcome some modification of the deadline. What do our witnesses think about that?

**Lord Clement-Jones:** I absolutely agree. You still need a deadline. A bit more leeway sometimes would be extremely helpful.

**The Chairman:** That is a good point.

**Lord Filkin:** We would go on for ever if we did not have a deadline. The risk with a single deadline is that sometimes we are tempted to select the topic that will fit the deadline rather than the topic that is important. We had one ridiculous topic—much too long—but we did it in nine months. A
bit of flexibility when a topic would benefit from another three months could be helpful.

**Baroness Pitkeathley:** On the topic of timing, I understood that it had to link to the parliamentary timetable so that the work finished before the parliamentary Session had ended. If that is not true, I would be glad to know.

**The Chairman:** That is the case.

**Baroness Pitkeathley:** It has to finish before the parliamentary Session finishes. We have to bear that in mind when we think about the timing.

**Lord Lang of Monkton:** Just on that point, the Constitution Committee is engaged at present in a broad-ranging review of the legislative process. I think Lady Corston is on that Committee. It started when I was Chairman. It must have started nearly two years ago. It published its first stage before the last election. I think it is probably about to publish its second or even its third. I do not know. Is not doing it in a segmented way a sensible way of meeting the point? You might not be able to do that with every topic, but you can do with some.

**Lord Clement-Jones:** By their very nature, the ad hocs are rather more comprehensive, so slicing them up is perhaps less practical. I do not know. I certainly do not think that I would want to slice up our report in that way.

**Lord Hodgson of Astley Abbots:** We have not talked about the post-legislative scrutiny committees, which seem to me to be a totally different way of approaching things.

**The Chairman:** We had a session with post-legislative scrutiny before you came in. Is there any point that you want to make now?

**Lord Hodgson of Astley Abbots:** Yes. First, “scrutiny” is a bad word. Nobody knows what “scrutiny” really means. If you look at your dictionary of synonyms, you will find “analysis”, “examination” and “investigation”. Those are much more generally understood words than “scrutiny”, which has a historical ring to it.

Secondly, there is a permanency about it. It is painting the Forth Bridge; you have to go on doing it and doing it and doing it. I think it should be dealt with and addressed in a completely separate way from the very interesting points that are being made about what are called ad hoc committees and should be called short-term committees.

**The Chairman:** You are tapping into the modernisation of our language. That is a big topic itself.

**Lord Hodgson of Astley Abbots:** “Ad hoc” should go in favour of “short-term”.

**Lord Clement-Jones:** I do not like “short-term”.

**The Chairman:** See what I mean?

Lord Clement-Jones: “Short-term” sounds terrible. It sounds even worse. What about “Specific”?

The Chairman: “Special inquiry” has been suggested. Would that find favour?

Lord Clement-Jones: Yes. “Special inquiry”. I like it. Sorry, Chairman. Will we speak about communications?

The Chairman: Absolutely.

Lord Clement-Jones: Perfect.

The Chairman: I am trying to get to it. I am doing everything in an hour here. I am giving you every opportunity. You have taken that, Lord Clement-Jones, and I am delighted that you have. Lord Low, do you want to come back on anything? If not, we will go on to the subject of communication.

Baroness Hayter of Kentish Town: I am quite interested in communication, obviously, with my background. Is it really different from how we communicate all the work in the House of Lords? Is what you are asking, which I think is right, very different from what we as the House of Lords also ought to be communicating?

The Chairman: Your Committee certainly did very well on communication and engagement, Lord Clement-Jones. Lord Teverson, I have spoken to you about that. Take communication and engagement on board.

Lord Clement-Jones: It was down to our permanent people on the ad hoc committee to do all the social media. We did not have anybody running alongside the Committee. We did not have a communications plan to start with in the way Geoff has mentioned. We basically started a Twitter account and got that motoring. We attracted a huge number of followers. Therefore, we obtained some traction while this was all happening. That was down to our clerks; it was not down to the communications team.

When it came to the report, we had to brief the communications team. Our clerks had to write the press release, in effect. If you are the press officer and you suddenly arrive and have to acquaint yourself with nine months of AI inquiry, you are at a disadvantage. I like Lord Forsyth’s model: have somebody dedicated to it during the time the ad hoc committee is meeting.

The Chairman: Just to be clear, I had a member of the communications team in yesterday. He was quite upset at the comments. Keep in mind the lack of staff on that.

Lord Clement-Jones: Absolutely.

The Chairman: The need for staff and resources is hugely important when we go to that particular issue.

Lord Clement-Jones: They did a fantastic job within the confines.

The Chairman: That is fine. Lord Filkin.
Lord Filkin: I do not think there can be a common template for communications plans. You would want to ask proponents of a committee their ideas on promoting engagement and the impact of the report. The job is not just producing a report; it is trying to ensure that it is listened to and responded to. Asking the press department to come in six months before publication was simple for us. They were superb. They thought of ideas such as a prepublication launch of data, which had a Guardian full-page spread. People thought it was the report. If you build that in, it is part of a process. It is not just PR.

There is also a need to think about who you are trying to influence; you may not know that until you are half way through the inquiry. There should be some sort of process in the Committee of thinking, “Are we clearer now about who we want to influence about what? How will we go about doing that? What are the mechanisms for doing it?” You cannot do that when you have finished that report. It is too late.

The Chairman: We had a session with the committee Chairs of the investigative committees. That came up very, very strongly. Lord Gilbert has taken that away and he is doing a report on communications engagement for us on the basis of that. It is very much alive. Lord Teverson, you wanted to talk about that engagement.

Lord Teverson: I think most of it has been said. I think we were one of the first Committees to have a separate Twitter account. That really started the ball rolling. That worked really well.

A number of these ad hoc committees, such as my own, have quite an international spread. We tend to think that the House of Lords deals with only the UK, but I think that our international profile in some of these Committees is really important. That should be included very strongly in our media thinking, as it helps to build up and feed back into the reputation of the House.

The Chairman: In discussing social media, evidence from others has been that we need to look at those methods of communication as well. One witness remarked that one gets new magazines not in printed form but on the internet itself. We must be alive to that.

Lord Teverson: Absolutely.

Baroness Nicholson of Winterbourne: As Chair of an ad hoc committee, I had an excellent experience with the communications team. I requested, and they set up immediately, a press conference on our report. It gained a great deal of interest, including international interest, quite a lot of press coverage and media coverage. They also made a video and various bits and pieces. I can only praise them for what they did.

The interest in the report was large, so I suggested to colleagues, and they agreed, that we set up an APPG to continue following the substance of what we had been saying. That APPG is running—it is bicameral, of course—and has already produced one report. There is another report coming up.
In addition, the communications outflow was very good. We had a number of articles following on from and related to the Lords’ report. I have only praise for the communications team. They were very active and very helpful and did everything they could to help.

**Baroness Pitkeathley:** I endorse the point about beginning the communication plan early. It should not be dependent on a member of the Committee knowing about Twitter, because not everybody will. You have to have some kind of formal structure for getting that into it.

**Baroness Hayter of Kentish Town:** May I ask about internal communications? I wonder how many other Members of this House know about the work you did when you chaired a Committee. When your reports come out, they are hardly mentioned in our own communications.

**Lord Teverson:** That is the point I was making at the beginning of this session. We need to involve Members of the House and raise the profile of these reports a lot more. They are subjects that most of us in the political and international sphere are interested in. During and at the end of the process, there should perhaps be an opportunity for Chairs, perhaps in a meeting like this, to present their own reports only to Members to begin with. There are still a number of reports that I still mean to read but have not read yet. It is about making access easier.

**The Chairman:** Communications with Members is enormously important. We will take that point on.

**Baroness Tyler of Enfield:** I very, very strongly support what Lord Teverson said there. The idea that we might do internal briefings or seminars for all interested Members of the House is absolutely excellent.

Internal communications are quite difficult. The only way I have found it possible is to get PQs and QSDs on subject matter relevant to the report included, which gives an additional opportunity to talk about it generally to a wider audience. I have also tried to send regular update notes to the former members of the Committee so that they are up to date with the various follow-up activity that I have done, because I have done three or four of these now. It allows them to stay up to date, and it can then spread into their wider networks.

**Lord Clement-Jones:** It is worth mentioning that *The House* magazine is not a bad way of getting information across, if one can tie it in with the publication of the report. You were kind enough to put us in *The Red Box*, Chair.

**The Chairman:** Not in a box, in *The Red Box*.

**Lord Clement-Jones:** In a box in *The Red Box*.

**The Chairman:** *Red Benches.*

**Lord Clement-Jones:** *Red Benches.* That is what it is called, not *The Red Box*. 

**Lord Teverson:** We look at these monitors all the time. There is continual round of them on what is going on today, which is important, but it does not need to happen all the time. I do not see why we do not have much more interesting information and bulletins on things like this on the monitors.

**Lord Clement-Jones:** And we have all done videos.

**The Chairman:** When I took up the post, I wanted information screens to be established at the Peers’ entrance, the line of route and in the Library. About two years later, we are still working on that. I semi-regularly go back and ask for a progress report. Things move slowly here. I am going to keep trying.

Q147 **Lord Foulkes of Cumnock:** Moving on to another topic, a comment has led staff to worry about the cost. This is the most important part of Parliament. As Philippa knows, I keep saying that we spend too much money holding the building together on ceremonies and things like that, rather than on the crucial work. Can I reassure you that the staff do a brilliant job in their scoping notes for the Liaison Committee; they come to people and produce notes for us?

**The Chairman:** Absolutely.

**Lord Foulkes of Cumnock:** Otherwise, it would be much more difficult to choose topics. I wonder, since we have eight very experienced Members here, if we could go a bit beyond the topic of ad hoc committees. It was suggested, for example, that when people say “Let’s have a public inquiry” on a current topic that would be far too expensive and far too inappropriate to have one on that there might be a small inquiry, either a Lords inquiry or a joint Commons-Lords inquiry, into that particular topic.

Another suggestion was that this Liaison Committee might set up sub-committees or that this Liaison Committee might do some of the follow-up to your ad hoc committees. There are a lot of suggestions like that.

Can you go a little beyond thinking about what you did in the follow-up to your ad hoc committees and maybe make any additional suggestions?

**Lord Low of Dalston:** To come in on the back of that, Chairman, we have received a suggestion that rather than Committees being established by the House, we might have a structure of permanent standing committees, which should be able to appoint sub-committees where they saw the need to carry out a more specific or focused inquiry. They would be in a better position to know where a focused inquiry was required and was most appropriate.

**The Chairman:** We are looking at the structure. To date, we have had over 50 submissions for individual Committees. They are all worthy. We are not going to have 50 Committees. How do we have a thematic approach to this? How do we have flexibility for Committees? How can we have Committees that look at long-term public policy issues and can react to live issues and short-term issues and engage Members? That is an issue that we all have to take very seriously. Otherwise, as with the ad hocs, we have

35 submissions but we have to choose three, and many people will be disappointed.

In doing that, we in our Committees have to engage in continuous professional development. The communication strategy that Lord Filkin mentioned earlier is a very important part of that.

**Lord Clement-Jones:** Some of the answer, if I may say so, is not to do what the Commons is doing. That is what worries me about having permanent Committees. They are very clearly delineated. They have their own structures and their own inquiries. We need to be more fleet of foot. Although it is a burden on the Liaison Committee, I personally feel, perhaps because I have been the beneficiary of the system, that the ad hoc system enables us to react quite quickly to topics coming over the horizon and to do them in a more comprehensive way than a Commons Committee. I still think that the decision should ultimately lie here.

**The Chairman:** We are engaging with the Commons. For your information, we have had Sarah Wollaston, the Chair of the Liaison Committee, and Frank Field giving their evidence. We are looking at a dual theme.

First, parliamentary scrutiny, not just House of Lords and House of Commons, will have implications for the website. We should have a common framework for that. The second issue is the complementarity element, so that we are not following the Commons but are complementing what they do. From talking to Chairs of Committees in the Commons, I know that there are areas in their Committees that they cannot look at there but they realise that there is an expertise and a skill here.

The House of Commons has already produced a report about guesting. Frank Field said to me, and it was a matter of record, that when he was looking at the pensions issue, Carillion and corporate governance he valued guesting from some Members of the House of Lords on his Committee for a certain amount of time. We are looking at that closer engagement.

**Lord Clement-Jones:** Very good.

**The Chairman:** It is a very important point.

**Baroness Tyler of Enfield:** On the specific point that Lord Low raised, if you have had a chance to look at my written evidence you will know that I take a slightly different view. I would be in favour of there being a small number—maybe six—of very broad-based thematic cross-cutting Committees, in no way trying to mirror the departmental structure in the Commons, that had a standing permanent presence.

Within them, there could be a series of individual inquiries more like those of the ad hoc committees, the great benefit being that, rather than disbanding them, the body of knowledge they build up is kept and there is a secretary who keeps it. Of the four that I have served on and the fifth one I have just become a member of, all could very usefully have sat within a broad social policy arena. There would have been real benefit from that.
I would like to have both the more coherent thematic structure as well as the ability to do these quick, fleet-of-foot inquiries. I was very taken with the suggestion from one of your witnesses in a previous session that you could do something really topical and controversial, to take the point about not always being safe. The example given was the medical use of cannabis. If we could get in quickly and do something like that fleet of foot, we could start to look a lot more relevant to the public. That is a big issue.

**Lord Clement-Jones:** Good point.

**Lord Filkin:** To answer your general question first, I think having criteria will help. I would hope that you would push the envelope, as three a year seems vastly insufficient, given the potential resource of the House of Lords and its ability to make more of an impact on these issues. It will obviously cost more money. The question of impact will also cost more money, because you have to think about how you have follow-through.

Most of that is putting the responsibility back on to the Chair of the relevant Committee to make the case for how they will make impact. That should be part of the criteria when you are making decisions. It is legitimate to have criteria regarding whether it looks as if a person has thought through what it is for, who they will persuade and how they will do so.

Topicality is the most difficult issue. I remember when we were looking at the reform of working practices that it was incredibly difficult even to determine a topic of debate. You may need to reserve some sort of resource in a different track for things that are set up very quickly indeed. You are right that if we are always seen to be debating only long-term issues or yesterday’s issues, we look a bit off the pace.

**The Chairman:** The resources element is hugely important. It has to be kept in mind that we have much more limited staff numbers here than in the House of Commons. How do we deploy them? Rather than disappoint ourselves with our ambitions, we have to have a zero-budget approach to our resources and ask what amount of money we have and how we best deploy it. That aspect is really important. The staff do a wonderful job in the circumstances that we have here.

**Baroness Corston:** The selection of Members is a challenge. The Whips ought to make sure that people have some idea of what the Committee is about. I say this, because somebody on my Committee wanted to pursue endlessly family life for early-years children. Obviously, that could not be fitted in to an inquiry into social mobility and the transition from school to work. For some of the time, I was firefighting. There should be some attempt to appraise people of the remit of the Committee.

The Government should see these reports as an opportunity to convene an independent cross-party panel of Members to take a thorough look at something and to be part of any policy-formulation process. Some of the recommendations from my Committee ended up, although unacknowledged—I do not care about that—in legislation. I feel too often that these Committees are treated as a nuisance. My Committee debate

was on 21 December. Although a few of us were there, it gave me an indication of the estimation of the work that we had done.

**Baroness Nicholson of Winterbourne:** I have three very quick points. We may have a contradiction in terms on this side of the table. On the one hand, we are saying that we do not want anything short or sharp. On the other hand, we are saying that we want a quick reaction and quick response to important issues. I suggest going down the middle and having a new form of short report for high-emergency issues. Of course, they are debated in the House, but that is not the same as having a Committee look at it. That might be worth looking at. It would be inexpensive and quick but with a formula, with only a certain number of witnesses and a speedy reaction to something that is necessarily quick.

Secondly, when one looks at expense, it is not just our expense here; it is the expense of all the outsiders we bring in, which makes me also think how important it is that our reports should be high-quality.

The final point is that soon—from next 21 March or whenever it is—the reports will be matched in a sense against the reports that are part of the European Parliament and that we are not part of. We are coming out of the European Parliament and we will have no input. We are probably looking at the same or pretty nearly the same topics, and the quality and capacity of what we are doing here must move upstairs a bit.

Q148  **The Chairman:** Lastly, I would say that my post is to assist Members as much as possible. That is a big part of it. Anything we can do to help you, whether in Red Benches or emphasising anything for you, I see that as very important. I have had one-to-ones with most of you on issues and I see the work that you are doing as really important there.

The last question I will ask is: what should the aims and objectives of Committee work be? That is a big topic. Could you give us a snappy phrase?

**Baroness Pitkeathley:** Influencing policy.

**Lord Clement-Jones:** That is really succinct. I also think it is about challenging government.

**The Chairman:** Through engagement?

**Lord Clement-Jones:** Public engagement.

**The Chairman:** Exactly.

**Baroness Nicholson of Winterbourne:** Bringing out things that others are not bringing out, uncovering or valuing as they might be valued. It is about judgment.

**Lord Hodgson of Astley Abbotts:** Giving a voice to the small battalions.

**Lord Teverson:** In a qualitative sense, it is about giving full consideration to something. It is about doing so in-depth and having quality, gravitas and credibility. In its output it is about—

**Lord Filkin:** Authority.
Lord Teverson: Authority, yes. That is probably the word I am searching for.

Baroness Nicholson of Winterbourne: It is about public engagement, dissemination and leading to change in legislation.

The Chairman: Good law.

Lord Low of Dalston: At the risk of leaping across the table and providing an answer rather than a question, can I pick up what Baroness Pitkeathley said about the role of a Committee being to implement policy?

Baroness Pitkeathley: Influence.

Lord Low of Dalston: I beg your pardon. I misheard. I was going to say influence.

The Chairman: When Lord Boswell of Aynho came before us, he said that one of his aims was to make the weather publicly, which I thought was quite a good phrase. I know you are all interested in that. We have all been on our best behaviour, because we have two minutes to go on that. Thanks very much. Come back to us on any of the issues that you think have not been dealt or anything new that comes up. We would be delighted to hear from you. It was an excellent session this morning.
Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbotts, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield– Oral Evidence (QQ144-148)”


Submission to be found under “Sir David Bean, Chairman, Law Commission, Professor David Omerod, Law Commissioner for Criminal Law and Evidence, Law Commission and Jessica de Mounteney, Law Commission – Oral Evidence (QQ69-73)”
Alun Evans – Oral Evidence (QQ28-36)

Alun Evans – Oral Evidence (QQ28-36)

Wednesday 16 May 2018
10.30 am

Listen to the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Baroness Hayter of Kentish Town; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 4 Heard in Public Questions 28 - 36

Witness

I: Alun Evans, Chief Executive, British Academy.

Examination of Witness

Alun Evans.

Q28 The Chairman: Alun, welcome to the Committee. For the Hansard writer, can you identify yourself, please?

Alun Evans: I am the chief executive of the British Academy, which is the national academy for the humanities and social sciences.

The Chairman: I was apprising the members of the Committee of a previous informal engagement in June 2016 with the British Academy, with you, and chaired by Lord Stern. I am sorry to note that Nick cannot be with us today because he is abroad. The theme was that there is presently not a strong rationale for the current structure and shape of the House of Lords committees. Nick Stern stated that the rationale should be twofold: scrutiny and strategy. By doing so, that would provide an overview and a strategic sense of direction for the key policy challenges that we face in society today. The informal group—and I mentioned the members of the informal group—proposed a structure with six strong themes, including a crucial power to appoint sub-committees. Could you expand on that proposal for us?

Alun Evans: Thank you for the opportunity to speak to you today. I appreciate it. It has been quite a privilege doing this piece of work with Lord Stern. He apologises that he could not be here today.

As you say, Chair, that sets out the background to our deliberations. At the roundtable, we had a number of Lords who are fellows of the British Academy, including Baroness O’Neill, Lord O’Donnell and Lord Hennessy—
people with some background knowledge of the subject. I am an outsider but have studied politics for many years, was for 30 years a civil servant and have appeared before House of Lords and House of Commons committees, so I have some experience.

We deliberately tried to keep the note as short, strategic and top level as possible. In the proposals, we tried to achieve three main objectives. The first was to relate our proposals to what we thought were the main objectives of the House of Lords, not seeking to duplicate what the House of Commons does. Secondly, within that, we tried to identify themes that are not constrained by government departmental structures. That seems to be one of the problems—or, rather, shortcomings—of the House of Commons Select Committee system, which inevitably has committees that shadow the main government departments. Thirdly, we tried to identify what we thought were the key strategic themes and the questions and challenges that flow from those.

That is where the set of six themes around the discussion came from. They may not be exactly the right ones, but they provide the right top-level balance between the key challenges for the nation, for society and internationally, and the opportunity to drill down into more detailed areas of scrutiny. The obvious main one over the next few years will no doubt be the implications of Brexit. That is the rationale, and I am happy to go into more detail as necessary.

**The Chairman:** Just give us a wee bit more flavour. For example, you mentioned the power for sub-committees. I noticed in your paper you mentioned the Economic Affairs Committee. Housing could be involved in that, as well as the industrial strategy and other areas.

**Alun Evans:** You have picked up some of them. I will come back to the point about the shortcomings of departmental structures. We can go into Brexit if you want, but I thought of some other challenges, for example the future of the digital economy. In departmental terms, that is the domain of DCMS, the Department for Digital, Culture, Media and Sport, but the digital economy affects every department.

Citizenship, for example, has much wider implications than just the departmental lead in the Home Office. Perhaps we saw in the effects of the Windrush issues that, if you just look at something from one dimension of immigration, you do not necessarily get the full picture. There are other emerging issues in areas such as genetics, which are inherently cross-cutting.

Coming back to your question about the challenges of Brexit, I am not even sure we can identify all the issues that will come out of Brexit now. There will undoubtedly be ones concerning the nature of the implications of Brexit for the economy and how the Executive are going to tackle them. One that always occurs to me is the effect of the abolition of the European Regional Development Fund—ERDF—the European Social Fund and the common agricultural policy. When they disappear, what will be the implications for the regions and nations of the United Kingdom? I do not think there has been nearly enough in-depth scrutiny of that yet. In my view, it would be
an obvious area for a sub-committee of the main House of Lords committee on Europe and Brexit to look at.

Q29 **The Earl of Courtown:** In your evidence, once again going over what the Chairman mentioned, you say this should be structured along six thematic areas. One has to look at both committee structures in both Houses to find where we want to end up. We have to look at the key strengths and weaknesses of the House of Lords committee structure. Are the weaknesses covered by the House of Commons system, or should we do further work on this issue relating to House of Lords committees?

**Alun Evans:** Weakness is perhaps the wrong word, but, as I said earlier, the implications of the House of Commons system are that, inevitably, it looks rather one-dimensionally at particular problems. If you are having a top-down, strategic look, as we are trying to do, you have to ask what the best way is to analyse particular issues as they appear to the nation, not looked at from one departmental perspective.

In preparation for this, I looked at the current list of House of Lords committees. They appear to have emerged on a slightly piecemeal basis. There are some very important committees, but you do not immediately see the contribution of the work of those committees to the overall strategic intent. As I said in our note with Lord Stern, there have been some extremely strong reports, and some members of the committees are extremely powerful, articulate and knowledgeable. With the more strategic framework that we have proposed, the level of scrutiny could be even more powerful.

In terms of scrutiny, I use the words “strategic scrutiny” to distinguish from what one might call the more legalistic or line-by-line scrutiny that is necessary for Bills by the Commons and Lords committees. I am not talking about that. I am talking very much about the strategic scrutiny of the key challenges for the nation today. I should end in saying that the six areas we have proposed—there may be seven; there may be five—are roughly in the right area.

**The Earl of Courtown:** It is always very difficult to compare two Houses. It is like comparing chalk and cheese. You very often end up in the wrong place if you try to compare them too much. In addition, I was wondering whether you have looked at other committee structures in other parliamentary assemblies in the Anglosphere.

**Alun Evans:** The short answer to that is no. What I know most, because of my background, is the way in which the Scottish Parliament works, from my previous work in the Civil Service there. There seems to be quite a strong level of scrutiny. Your suggestion of looking at other parliamentary systems of scrutiny is rather a good one. If you are interested, I am sure the British Academy could help you in your deliberations.

**The Earl of Courtown:** I do not think I have the time.

**Alun Evans:** This is job creation here.

**Lord Foulkes of Cumnock:** For the record, I believe that Brexit is neither
desirable nor inevitable, but I am going along with this consideration nevertheless. You said that they are not seeking to duplicate the work of the House of Commons. Why should we not have committees covering the same areas as the House of Commons? What is the rationale behind it?

**Alun Evans:** The rationale is efficiency. I do not think you should necessarily not do so. To have a House of Lords and a House of Commons committee scrutinising the same work of the same department seems to me duplicatory. If resources are limited, I would probably urge people to put them elsewhere. I am not assuming Brexit is inevitable, but to stick on the Brexit example it would be foolish to say that there cannot be House of Commons and House of Lords scrutiny of Brexit. It is going to be the essential challenge for the nation over the next five years and that will be necessary.

We were trying to say that, in terms of the departmental scrutiny, which is the way in which the House of Commons particularly works, you miss something if you do only that level of scrutiny. That is why I proposed the House should do more cross-cutting scrutiny.

**Q30 Lord Foulkes of Cumnock:** We have now bitten the bullet and set up an International Relations Committee, because we do not want to call it the Foreign Affairs Select Committee. There are hundreds of issues that each of those can deal with. They do not need to overlap. It is similar with home affairs. If the Commons looks at Windrush, the Lords could be looking at something completely different. There is a whole variety of topics that each committee could look at. What is the rationale?

**Alun Evans:** I do not disagree with that analysis at all. Obviously it is unwise to just duplicate it entirely, but, as you have said, there are lots of different subjects you can look at. It seems to me and Lord Stern that it is necessary, first, to have a topdown look at the issues, rather than bottom up, by picking some of these cross-cutting thematic approaches.

Secondly, something that the House of Lords can possibly do better than the House of Commons is to take a longer-term look at these things, in not just one lifetime of Parliament. In other areas, things such as pensions policy or long-term social care, to take the obvious ones that are in the news, cannot, with the best will in the world, be solved by one Parliament. The House of Lords could take a more strategic, long-term, deliberative approach to those, and possibly even take slightly longer over it. It may be preferable to have fewer, better reports, rather than a greater number of shorter reports.

**Lord Foulkes of Cumnock:** That is a very good argument. It could be in the same area, but looking at it in the longer term. Can I move on? You deserve a medal if you directed the Scotland Office for a couple of years.

**Alun Evans:** It was three years, and I enjoyed it enormously.

**Lord Foulkes of Cumnock:** I remember it well, not your three years but my one year. I feel the House of Lords is far too London-oriented. More than 50% of the Members are from London and the south-east. Our meetings, almost without exception, are in London. What more can we do
to engage with the wider United Kingdom community, including the devolved Administrations?

Alun Evans: Thank you for your comments on the Scotland Office. I made a few notes for this, but you have pre-empted one of them. I was saying, "Look for as wide an input as possible, and be careful not to appear London-centric, especially on the Brexit issue". You will get a different result if you talk outside London and the south-east. In particular, if you can, get out and about, meet people and have hearings elsewhere, in Scotland, Wales and Northern Ireland. Without blowing the trumpet of the academy too much, there are national academies in all those countries. We have fellow academies. The expertise of academics in all the areas is vital.

To pick up one obvious example, the Brexit question and the Northern Ireland border, we in the academy have done a lot of work on this, using academics from Queen's University Belfast. I would commend the reports that we have done on that. You could not do it if you just had hearings here because, for a start, people might not be able to come here. The culture does not lend itself to that. I agree entirely with what you said about the importance of getting out and about.

Lord Foulkes of Cumnock: Would it be worth spending that extra bit of money to go to Belfast, Edinburgh or Manchester?

Alun Evans: Yes, absolutely. Otherwise you will be criticised at the end for not taking as wide a view as possible.

Lord Foulkes of Cumnock: Members find a bit of reluctance in the House of Lords administration to move away from London. You think that is something that should be done.

Alun Evans: I am careful what I say. It is not my task to tell you what you should be doing. All reports are much more powerful if you have seen it. I will give you one personal example. Many years ago, 15 years ago, I did an inquiry. I worked on the inquiry into foot and mouth disease. Unless you went and visited the areas affected, including Scotland, Wales, Cumbria and Devon, you had no idea what the implications of that disease were for people in communities. If you lived in London and you saw it on the news, it did not mean anything at all. When you got out and you saw the devastation and trauma that people faced, you could understand better. I believe that our report was so much the better for doing it. If it costs money, it is probably worth spending some more money on.

The Chairman: As a postscript to George’s comments, we had a very good session last week with Sarah Wollaston, the chair of the Liaison Committee in the House of Commons. They were not worried about the overlap. They proposed two themes, complementarity and parliamentary scrutiny, so that we ensured we addressed those issues.

You mentioned pension policy. I have had an informal chat with Frank Field. Unfortunately, he could not come to give evidence, but one of his suggestions to me, informally, was, “Given the expertise there is in the House of Lords in areas such as that, particularly with the Carillion report just out this morning, I would welcome Members of the House of Lords
being seconded for a month or two to my Committee so they could lend their expertise”.

We are very keen on working along with the House of Commons. When we do this report, the House of Commons will certainly be consulted. Sarah Wollaston has suggested Liaison Committee meetings semi-regularly between the two Houses, which is a good way forward.

**Alun Evans:** I agree strongly, Chairman. Some of the most powerful things from history are when there have been joint reports from both Houses. If you pick up the things such as long-term social care and pension policy, there is a head of steam where the more rational thinkers realise these are cross-cutting, absolutely essential to the future of the country and will take more than one Parliament to sort. I strongly accept what you have said.

**The Chairman:** The evidence from Professor Anton Muscatelli, the principal of Glasgow University, adds to your theme about linking with universities, research institutes and whatever else.

**Q31 Lord Smith of Hindhead:** Let us go back to scrutiny. You have covered some of the question I am going to ask in your opening remarks, in the remarks you have just made to Lord Foulkes and in your written evidence under points 6 to 8. I am going to battle on with it anyway. How can the House of Lords committees add most value to the scrutiny work of the wider House? You might want to drill down a little more, to use your phrase, into what you have already said.

**Alun Evans:** I will probably end up repeating myself, but it is to identify the themes where there are challenges, where people, be they academics, politicians or the media, think there is a task to be analysed. We have named some of them there already. There is then a need to make sure that one relates the work of those committees at the lower level to the overall strategic intent. Let me take a committee that I know a little about, because Baroness O’Neill, one of our fellows, sits on it. That is the Committee of the House of Lords on political polling and digital media and the challenges there.

**Lord Smith of Hindhead:** I sat on that.

**Alun Evans:** You did, indeed. That is an absolutely relevant, important topic as we move forward, in terms of not just the implications of polling but fraud, scrutiny and how to use new technology to best effect. Bringing it back to the themes, it seems to me much more effective if it sits within the overall framework: how does this support the constitution of the United Kingdom? How will it apply in, and what will be the differences in, the devolved Assemblies? How can it be used to improve the working of local government? Can we use it to improve turnout in local government?

These are the types of questions that relate to the overall strategic intent, rather than just saying—and I may be being unfair to the Committee—“Let us have a look at the issues of digital polling”. It was quite an interesting piece of work, but it could be even more powerful if it is set within the wider national and possibly international context of best practice.
Lord Smith of Hindhead: We actually found it quite hard to cover the subject. It was so wide and we had limited time, so we were very good on the political polling part, but we could not drill down into digital media as much as we wanted to. We may have benefited from having a bit more time on that.

Alun Evans: The question of time is quite an interesting one. As I said, it may well be more valuable to have fewer and longer reports, so long as one is sure that one has got the scoping and the key questions right at the start of it. Then, as you will know, with your much more detailed expertise than mine, you find the real experts in your subject to help you with the scrutiny and analysis.

Lord Smith of Hindhead: Under your proposal where there are going to be permanent committees covering these subjects, they could grasp that, could they not? They could allocate members to deal with specific things for a longer time.

Alun Evans: The permanent committees will be the ones that keep a strategic overview of issues as they come and go. It may be then we will want a sub-committee on a particular area, but it will be for the permanent standing committees to say, “This seems to us important enough. If we are looking at digital polling or pensions, the type of questions we want to look at, which feed into this, are as follows”.

Baroness Hayter of Kentish Town: My question is this: what is the point of House of Lords committees? What is their purpose?

Alun Evans: At the risk of repeating myself, they are essential for proper scrutiny of the legislature and of the Executive. As I said, there are two types of scrutiny. One is the more detailed legislative scrutiny that goes on in Bill procedures. The other one is strategic, topdown scrutiny. I just do not think that is done well enough. It is to hold the Executive to account, to identify shortcomings in the Executive and to hopefully produce reports that are both long-lasting and powerful.

The Houses perhaps do not go back enough over previous reports and see whether they were responded to—there would normally be a government response to them—and what happened in the next year or five years’ time. Some of the best reports that have been produced by both Houses suffer through not always having the proper level of detailed follow-up by the Executive and by government departments.

Baroness Hayter of Kentish Town: That was exactly the answer I wanted, but many people who sit there say something different. Needless to say, this was not a simple question. They think our role is to go out and influence the public. I have to say I am with you, although there is one question that I will put. That was what I was trying to tease out of you, and luckily you have given me the answer I wanted.

Alun Evans: I am pleased about that anyway.

Baroness Hayter of Kentish Town: There is another role. This was particularly the case over Brexit; this is a personal judgment. Our EU
committees’ influence was over the House of Lords itself. On what we were doing then, in scrutiny, as the House of Lords, not the House of Lords committees, I asked a very specific, different question. I feel that our Lords committees were influencing the Lords as much as they were influencing government. Is that because I am slightly biased by those reports, or do you think it is part of their role to influence not just government but the legislatures, be that the Commons or the Lords?

**Alun Evans:** The role of committees is to influence the whole legislature, which means both the House of Commons and the House of Lords, and to challenge and scrutinise the Executive. That is the fundamental purpose. To come back to your other point, I do not think the House of Lords and the committees should see their role as trying to get media coverage, as it were. There will be other ways of doing that. The power of the House of Lords, despite all the criticisms of it, is that it has this body of expertise and knowledge, as everyone says, and it does not have to look immediately to the next election and whether people will keep their seats.

**Baroness Hayter of Kentish Town:** I could not have written your answer better if I was writing it myself.

**Q32**

**Lord Low of Dalston:** I am going to invite you to get your crystal ball out, if you do not mind. You have made suggestions about a structure for House of Lords committees, but you presumably do not want to see this set in aspic. I am wondering how you see House of Lords committees evolving, where they might be in 10 or 20 years’ time.

**Alun Evans:** The thing that is so important is to look at these big cross-cutting issues that take longer than one Parliament to work through. That is something that the House of Commons does not tend to do so well. In answering your question about where they should be in 10 to 20 years’ time, hopefully there would be, referring to what I said earlier, some reports that really made a lasting difference, in terms of their level of analysis, the weight and value of their conclusions and the contributions they made to policy-making or to the nation as a whole. I would stick with that answer again.

**Lord Low of Dalston:** I suppose you would say they need to learn to adapt more quickly?

**Alun Evans:** They may be the issues of the moment as they arise. They may be issues that have been around for a long time and, for whatever reason, a solution has not been found. If you take long-term care of the elderly and challenges for the social services budget, political parties have failed to come up with a solution to that. The Dilnot report came up with some proposals, which were rejected. It featured strongly in the previous election. It is still a challenge to come up with an affordable proposal that gets enough support. If something like that was done within 10 years’ time, it would be a service to the country, as far as I can see.

**Lord Low of Dalston:** Do you think our committees need to learn to adapt more quickly?
**Alun Evans:** Yes.

**Lord Low of Dalston:** Would you like to expand on that a little? Tell us where they have not adapted.

**Alun Evans:** I will pick up some of my earlier examples. If you look at the Windrush example, there are some big issues around citizenship. That was seen through one dimension of the Home Office approach to immigration, but there are issues about the rights and responsibilities of citizens, what they should expect from being a citizen, the challenges of work and pensions, the role of justice, et cetera. There are more wide-ranging issues than the one-dimensional thing of Windrush. In scoping reports, House of Lords committees could address some of these tricky issues and identify the key questions that need to be answered.

**Lord Low of Dalston:** I think one of the things you are saying is that the broad issues may not change a great deal, but the way they manifest may change over time.

**Alun Evans:** Yes. Sometimes, if you just try to address the immediate issue in the day-to-day news or the political sphere, you may miss some of the longer-term strategic issues. One should not be driven by what is in the news on a particular day in deciding whether you should do a long-term inquiry into that area of work.

**The Chairman:** You said in your submission that the theme would be a long and strategic view of public policy, and you mentioned Windrush, but the two could co-exist, could they not? Some committees could take a long and strategic view, and others could have a very short inquiry on a topical issue of the day.

**Alun Evans:** Yes. The neatness of this proposal—I would say this, would I not?—is that it can do both of those two things. You would have six standing committees. If something comes up—I will try to think of an example, if I can get one—that is of such importance and highlights a shortcoming in legislation, overall scrutiny or policy, it can fit within this framework. It can also do work on the big, long-term issues of the day, such as the implications of Brexit, however it pans out.

**Lord Foulkes of Cumnock:** In your reply to Baroness Hayter about the purpose of the committees, you said “scrutiny”. No one is more enthusiastic about scrutiny, or scrutiny of the Government, than I am. However, that conflicts with what you said earlier and what you said in your written submission. You indicated that you see the role of committees as perhaps leading public debate on subjects, going ahead of what the Government are up to, and not just scrutinising the work of a department but taking an issue and moving it forward.

**Alun Evans:** I understand the point you are taking and I agree with it. Maybe it is because I was using a wider definition of scrutiny when I said “strategic scrutiny”. I am not talking about the detailed scrutiny of legislation or things such as that. It is about leading debate on particular areas—I gave some examples; we can come up with some other ones—
and doing it from the top down. What is the purpose of a particular government policy? Where are we trying to go?

To take another area, the constitution and the future of devolution, Governments of both colours have made some progress on devolution. What is the longer-term policy on, for example, local devolution and the role of mayors? At the moment, we have a complete patchwork of a strong mayoral system in London; some boroughs in London have sub-mayors as well; some cities have mayors and others do not. That is an area where one could sit back and do what I would call strategic scrutiny. You might call it leading the debate. I do not think the term matters, but it is an obvious and powerful thing for which the House of Lords committees could provide a really valuable service.

**Lord Foulkes of Cumnock:** That is a very good example, because at the moment we have asymmetric devolution with Scotland, Wales and Northern Ireland. The big gap is devolution in England. You have described it well, with mayors and different authorities coming together in different ways. There is scope for a real study there, which has not been taken up by the Constitution Committee, for example.

**Alun Evans:** No, it has not been, but I will point out that the British Academy is just completing a piece of work on the governance of England, which I will ensure goes to all parties when we complete it this summer, including to the Government.

**Lord Foulkes of Cumnock:** Could you send one to Jeremy Corbyn as well?

**Alun Evans:** I will willingly do that, yes.

**Lord Foulkes of Cumnock:** Yes. He needs it.

**Lord Williams of Elvel:** You have been very full in your responses and we are very grateful. Is there any other issue that you would like to bring before the Committee that we have not already covered?

**Alun Evans:** I do not want to be too presumptuous, but I think it is good to step back and have a completely new look at the system, rather than just tinkering with the existing one. Sometimes a step change can make a difference, and that is what Lord Stern and I have been trying to argue for. We should not just look at the system at the moment and see how we can change it. We should look back and say, "If we are starting from scratch, what would work"?

The offer I make is that I, on behalf of the British Academy, am willing to help in that. We have tried to help a bit already. I am quite sure that the academies for Scotland, Wales and Ireland—the Royal Society of Edinburgh, the Learned Society of Wales and the Irish Academy—would be willing to help, as would, I am sure, although I cannot speak for them, the other national academies: the Royal Society, the Royal Academy of Engineering and the Academy of Medical Sciences.

**Lord Foulkes of Cumnock:** Again in reply to an earlier question, you said you did not know much about international comparisons. Is there any way in which you, as the academy, can help us to look at others? I have just
been to New Zealand and I had a look at the Select Committee system there, but of course it is unicameral and very different from ours. Where it is a bicameral system, as in the United States, Australia or Canada, it would be very helpful to get some comparisons. Maybe that is not your remit.

**Alun Evans:** I agree entirely with you. It is a very good point. As I said, we have not done something along those lines. Maybe we should. I will take it away, if I may, and get back to you. There are resource implications of doing that, not least going to Australia or New Zealand. Someone has to do it. I will think about it—it is a very good point.

**The Chairman:** That is very good. The issue of solid engagement with institutes such as yours and universities across the country is really important.

**Alun Evans:** There is real expertise on these issues, far greater than mine, around the country in universities. I am sure they would be willing to assist the Committee in your work.

**The Chairman:** They help to foster public understanding and engagement, which is important. Thank you very much. You have offered to help. We will take up that offer and therefore you are on notice as this Committee goes on. Thank you very much—you have been really helpful.
Submission to be found under “Dr Sarah Wollaston MP and Paul Evans – Oral Evidence (QQ10-19)”
Tuesday 3 July 2018
11.15 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Low of Dalston.

Evidence Session No. 18	Heard in Public	Questions 134 - 141

Witnesses

I: Rt Hon Frank Field MP; Katy Stout, Second Clerk, Work and Pensions Committee.

Examination of witnesses

Frank Field MP and Katy Stout.

Q134 The Chairman: Welcome to the Committee, Frank. It was a pity that you could not come before because of your accident. We hope that things are getting a little better, but they still look pretty sensitive.

Frank Field MP: I hope that the settlement will be very large. It is going to Feeding Birkenhead, so it is going to a good cause.

The Chairman: Good. You and I had a coffee a month or two back, and co-operating between the House of Lords and the House of Commons was the main issue. We have looked at it from the point of view here that we should look at scrutiny as parliamentary scrutiny. That means Parliament as a whole, which has implications for the website and whatever else.

We should also think about the complementary aspect of the House of Lords and the House of Commons, but given that the Commons is sovereign and elected and the House of Lords is unelected, how do you see that development going? Baroness Hayter has a question on that.

Baroness Hayter of Kentish Town: Yes. My question relates partly to the Commons being the elected House, so we have less authority, but I am also quite interested in the fact that we do not have electors. In other words, we do not have to do all the stuff that an elected Member has to do
to get re-elected. Do you feel that that alters the way we work? You see our reports. We heard that the forum had 3,000 responses in six weeks. As non-elected people, can we or do we need to deal with that? I am interested in your concept of how different we are so that we are helped to learn what our strengths are that we can play to. That is the background to what I am trying to find out.

**Frank Field MP:** Chairman, thank you for inviting me. Katy is our second clerk and, you will soon discover, the one who does the work. I am pleased and privileged to appear before you.

As for general introductory remarks, I would say that we ought to keep clear in our mind that you have the very important part of the constitution, which is to look at legislation that comes from the Commons, to advise, to warn, to amend, and to attempt, in extreme examples, to reject.

We ought to put that on one side, because I do not see it as relevant to the discussions that both you, Lady Hayter, and the Chairman hinted at, because there are other functions that Parliament has to undertake. If we are designing the set-up now for 10 years hence, we need to think about where we want to be. I honestly do not think that many out there—there are a few activists—would question your authority. You are here, you are part of the constitution, so until providence makes it different, why do we not make the most of it?

From the House of Commons angle, I would love to see a structure of committees whereby there are core members who will always undertake basic inquiries but we are able to invite to join our committee Peers who have special interests in the areas that we are discussing, and vice versa. Therefore, increasingly, not only would we see joint committees, as we do in the Commons now, between us and other committees, whether on BHS or on Carillion, but we would also perhaps have joint committees between two of our committees and relevant Members of the House of Lords who wanted to join them, and I would hope that we could see the same with their Lordships.

I would hope that that would do two things. One is that it would make our functions as Members of a legislature more effective in informing ourselves about government policy. Secondly, I would hope that we would also think of what legislation we can suggest that is not necessarily party-based but that would promote the common good, the public interest, in all this, and that we would see our way, in our joint committees and our single committees, to saying that proposing and drawing up legislation in draft is not the only function but it is a function and that we would want access to the legislative committee of the Cabinet in order to put our proposals for legislation. It may reject them or accept them, but I would hope that in some years, speeded by this report, we would be heading in that direction.

I do not think that the authority issue comes up at all, really; I do not think it is the public mind. It was not in my mind this morning when I was thinking about what one might actually say.

**The Chairman:** That is very helpful indeed.
Baroness Garden of Frognal: You have sort of answered my question on the committee structure and obviously possible joint working between the Commons and the Lords. You have also touched on the other thing, which is the topics of the committees. Could you expand on that? You were suggesting that the committees could perhaps influence or suggest legislation? How would you see that working?

Frank Field MP: The Commons has had a Joint Committee—the DWP is one part of that—on the change at the bottom of the labour market, the gig economy. Prior to that, some of us suggested that the Prime Minister do a report, which was the Taylor report. We looked at it as joint committees and we proposed legislation. The Government want to take that themselves, so we are waiting for that. But we proposed a Bill jointly, and I think it would have added huge authority if their Lordships had been part of that inquiry and if we were suggesting legislation.

As well as looking to the legislative committee of the Cabinet to transform and reform that, given that government obviously tries to control our timetable we should be seeking ways of using our time as constructively as possible.

Lord Foulkes of Cumnock: One of the problems that I found as a member of two ad hoc Select Committees in the Lords—first, on the Charities Committee, when we looked at the whole structure of charities in England and Wales, and more recently on the Political Polling and Digital Media Committee—was trying to get witnesses other than the usual suspects. I went on and on suggesting it to the secretariat and to the other members of the Committee, and I kept thinking about it myself. It is very difficult. For the Charities Committee, we got the Charity Commission and all the usual people. For the polling Committee, we got the usual pollsters, the journalists and so on.

How can we find a more diverse group of people to come and give evidence to our Select Committees?

Frank Field MP: Can I ask Katy? She organised our wide consultation on PIP.

Katy Stout: It is an area that our Committee is particularly interested in. In every inquiry on the welfare state, we will hear from those directly affected. Getting them to come to the Committee can be a challenge, but the Work and Pensions Committee has really overcome that challenge and can get them to come on every occasion.

As officials, we tend to go through two main routes to find the people. We make great use of the parliamentary outreach team, who in turn use their own regional networks, because from the Committee’s perspective it is also important that the usual suspects come from the same geographical area, which they often do. We make a point of ensuring that we hear from people in different regions.

We have also developed very good relationships with some of the main charity and lobby groups that have access and work with claimants who are directly affected, so we will often go through them.
It can be a challenge, because the perception of Select Committees is often what is seen on the television. They tend to be the most high-profile and the most heated hearings, so we spend a lot of time speaking directly in advance to those who are coming to give evidence to reassure them that the Committee goes out of its way to make sure that they feel comfortable and that it is a positive experience for them. It becomes a virtuous circle, because we are able to let those who are coming know that we have heard from people in very similar circumstances to them.

For example, the Committee has taken evidence from victims of domestic abuse, and we went to great lengths to make sure that their contributions were completely anonymised and that they felt secure coming in and out of the evidence session. We have also had single parents, benefit claimants—including those who have been sanctioned—and so it helps to be able to tell them that the Committee does this regularly, and the sessions have been very successful.

Baroness Garden of Frognal: Do you pay travel expenses? You talk about bringing people from further afield, but there will be people who would find it expensive to come to give evidence. Do you have a kitty for that?

Katy Stout: We do, and we also cover, up to certain limits, loss of earnings.

The Chairman: We do here as well.

Frank Field MP: Can I ask Katy to add how many submissions we received on our PIP inquiry by using the web?

Katy Stout: We received in the region of 3,000 submissions, which was through an online forum that we worked with Parliamentary Outreach to set up.

Frank Field MP: We drew from that people who would come and give us evidence. So we broke out both from the London prison and from the same organisations turning up to give you the same evidence.

Katy Stout: Another important aspect of the Committee’s work when hearing from these people is that there is a positive feedback loop, so that they do not feel that they have given up their time and gone through what can be quite a stressful experience and then do not receive anything in response. On the PIP inquiry, the Committee published a specific report dedicated to the voices of the claimants, which rounded it off.

The Chairman: What would you take as evidence? Would you take a video as evidence from people, or go out and get information to bring back as evidence?

Katy Stout: We have not yet done that.

Frank Field MP: That is a good idea. We could do that.

The Chairman: A former Supreme Court judge I was speaking to a few weeks ago said that evidence is a reported conversation.
Frank Field MP: That is a very good idea.

The Chairman: You are here to give us ideas, not the other way round.

Lord Low of Dalston: Just to follow up and broaden out a bit Lord Foulkes’s point about hearing from all the people we want to hear from, your Work and Pensions Select Committee has employed a variety of techniques to get the views of all the stakeholders you wanted to hear from—people directly affected by what it deliberates on. Could you expand on that a little and tell us how you have gone about that?

Frank Field MP: It has been an open process, and we are making inquiries. People sometimes suggest themselves, and other times we have to negotiate that they will come. One of the problems is that some people feel that Select Committees have developed into public stocks—it is one of their functions—to give vent to the anger of people out there. That is important post Brexit; this whole question of how we try to do politics anew, taking into account the views of people out there who feel they never get heard, is important. But it is important to negotiate in ways so that those key characters come. Our problem is not finding witnesses but how we choose from those who want to come, and in particular those who we have not heard from before. We can read the written evidence—our wonderful secretariat does work on that for us—but we do not want just to pedal grounds that we have pedalled before.

The question is how we take this committee system to the next stage and try to change behaviour out there which affronts the public, when people who have been in the stocks think that they have done their bit, that is it, and they carry on exactly the same. That is a challenge to both Houses. That is why this whole exchange of views this morning was important, and we will follow up that idea about evidence. It will be very good to take verbal evidence of people whose lives have been destroyed by Carillion as another way following up our inquiry. All this is important.

Might I also comment on a success for both our Houses, which was on anti-slavery? I do not know how the powers worked, but I am sure that it was the then Home Secretary pushing hard. A couple of us spent a summer talking with the Home Secretary’s advisers about how having a modern slavery Act was important. Once she was engaged she was totally committed, and she has been totally committed as Prime Minister. She asked for two things: that there should be a cross-Lords and Commons committee and a cross-party committee to draw up the scope for a new and important piece of legislation, and then, when we had a draft Bill, that we would have a Joint Select Committee of both Houses. When you look at the contribution of the main players on both sides, you see how appalling it would be if we had done this work when only able to draw from one House of Parliament and not the other. We could have run parallel reports, but then we would have had to knit it together, and we would not have been able—as the Chairman just suggested—to take evidence ourselves, going outside and doing it via video; you do not need to have written submissions and emails coming in. All that was massively strengthened. The Act has been in place for three years, and I hope that soon we will have a similar approach to reviewing it and its effectiveness. That was just
one example of what we can do as legislators, not just checking on the Government but for the Government to say, “Can you help us feel our way in this area?”, and maximising that, not just by having cross-party Commons working but cross-Lords and Commons and cross-party working.

Baroness Hayter of Kentish Town: This is not a question for you to answer, but I hope that an academic is writing up that story. It will be an interesting story to tell from beginning to end.

I will ask about the opposite end of who to take evidence from. We have had some suggestions that we might have a committee on the oversight of regulators. On Carillion, I have been involved in this area, and I realise that I have been involved with the Pensions Regulator, the FRC, the CMA—which would be involved because of the big six—the PRA and the FCA, all of which have a bit to answer. It is quite interesting that, as I see it, there is no committee that would look at those regulators. Is that an area that you could see a committee working on? Looking at it from the perspective of the failure of our regulation would be an interesting viewpoint.

The Chairman: We already have a submission from Lord Rooker about a committee for regulators. He has experience as a Member of Parliament, as a Minister and as current chair of one of the organisations.

Baroness Hayter of Kentish Town: The other FRC—the food standards regulator.

The Chairman: He said that regulators are not scrutinised enough here, and I know from my experience along the Corridor that that was most certainly the case. Parliament as a whole seems to be letting itself down in that area, so any ideas you have on that would be helpful.

Frank Field MP: Who are we sitting before, with their experience on this? That would be a brilliant idea, and it should be done jointly, with the Lords and the Commons. We have done reports that were critical of those regulators which affect our work most, and the aim of that is to get change, not to do anything else. We recently had the court case last Friday week, when Sir Philip Green was trying to get a gagging order on a regulator’s report, so there is a judicial side for us to think about. I think people would know where my sympathies might be on this issue. The judge raised good points, dismissing Sir Philip Green, because he had no party to the hearing.

On Select Committees—I assume it is the same in the Lords—we always let people who are mentioned in our main report have sight of it beforehand. They cannot change it but they do see it. Of course, if they came out with something devastating, we would want to take that into account, even at the last moment. Regulators are now at a crucial stage of their development and public confidence, and given the importance now of regulators operating in a state which has such a wide remit of actions, with a lot delegated to legislators, a joint approach to looking into that would be most welcome.

Baroness Hayter of Kentish Town: It is interesting; I had not thought about the joint approach. Because the House of Commons in a number of instances endorses or has a role in the appointment of the chair—I am not
Rt Hon Frank Field MP, Chairman, Work and Pensions Committee and Katy Stout, Second Clerk, Work and Pensions Committee – Oral Evidence (QQ134-141)

sure that it does for all these regulators; maybe not on the Pensions Regulator—

**The Chairman:** That too.

**Baroness Hayter of Kentish Town:** The Pensions Regulator as well? So there is a particular Commons area which I am afraid I overlooked, therefore the idea of joint approach is interesting.

**Frank Field MP:** There is something else we need to push for. Sometimes chairs are very proactive and influential, and sometimes the regulator itself needs to be very active and influential. Therefore the scrutiny of our appointments would be important. I do not know why the Government cannot let go on these sorts of things. It is no skin off their nose at all to have a strong parliamentary input to the appointment of chairs. I do not see why, if the DWP Committee and the relevant Lords group were doing reports together, we should not do that jointly. I am all in favour of that.

**Lord Foulkes of Cumnock:** That is an interesting question. The appointments are still made by the Government in all cases. We recently had the Charity Commission chair appointed, and the whole Select Committee voted unanimously against her appointment but the Government went ahead and made the appointment.

**Frank Field MP:** In the afternoon. That afternoon they stuck two fingers up at the Committee and made the appointment. We need to move beyond that stage. We want a code of conduct from the Government. We work best as a Parliament when we have codes of conduct which we all accept rather than thinking that everything has to be nailed down by legislation. Life is impossible if we think in those terms. This was a big example where the Secretary of State should have said, “I’d better think again. I may confirm my recommendation but I’m not going to snub committees in this way”.

**The Chairman:** I was at a breakfast with Ofcom a couple of weeks ago, when the issue of the internet and regulation came up. It is not doing it, nobody else is doing it, but it is a huge political issue, and there is almost a scrutiny gap there at the moment. My opinion, based on a few years’ experience along the road, is that politicians have franchised their responsibility to the regulators to the extent that the regulators are not held sufficiently accountable in Parliament. We have to fill that scrutiny gap. From the House of Lords point of view, we have been a bit ginger with the House of Commons in that we realise that it is the sovereign body and we do not want to step on toes. Is it correct to say that you are encouraging us this morning to go forward and engage with you more?

**Frank Field MP:** Certainly as far as the DWP Committee is concerned. We have not discussed it as a Committee, but obviously as Chair you spend time trying to get to know the minds of Members. That is why your previous evidence was crucial. Not any old person should be Chair. On the argument that you were developing about the Lords itself coming to a view about the chairs, the Whips should obviously have a role in deciding who forms the membership. But again, you know, do you not, that it was not easy to get it away from the Whips in the Commons so that the Commons rather than
the Whips should decide who the chair should be? Nobody now would ever think of going back to the old system.

**Q139 The Chairman:** Frank, recently you participated, as you mentioned, in the joint inquiry into Carillion with the Business Committee, chaired by Rachel Reeves. That was to investigate the collapse of Carillion, which, as you said, has left a mountain of debt, potential job losses in the thousands, a giant pension deficit and hundreds of millions of pounds of unfinished public contracts—and these issues are still to be attended to. Previously you carried out a joint inquiry with the Business Committee under the chairmanship of Iain Wright. Am I correct that the one with Rachel Reeves was a joint venture, whereas the one with Ian Wright was on mutual interest and benefit?

**Katy Stout:** Both were just joint meetings of the separate Committees, so on neither occasion did we form an official Sub-Committee or an official Joint Committee.

**The Chairman:** But the first one was part of two separate inquiries being together, while the Carillion inquiry was an individual one. Is there any difference, in your view?

**Frank Field MP:** They were the same, and we have not got over the nonsense that we should not just easily set out joint committees, with our fellow committees in the Commons, and joint committees of Commons and Lords Committees. This sort of rigid division of barriers between all of us does not serve any account. Once we have done all this, people will again look back and wonder. But they were both under the same status. I was slightly shocked that you made the distinction, because I thought, “Gosh, didn’t we all work together on that?” Some days Iain would chair, and sometimes I would.

**The Chairman:** I was talking to the structural distinction, rather than the personal engagement.

**Frank Field MP:** Did we not do a joint Carillion report?

**Katy Stout:** We did a joint Carillion report, but it was not an official Joint Committee; it was more a coincidence of interest and time. Certain members from both Committees were nominated to form the Joint Committee, but procedurally it was a meeting of the two separate Committees at the same time.

**Frank Field MP:** But we did meet together to agree the report, whereas on BHS we had to do it in separate rooms and then come back together. So we have overcome that nonsense.

**Q140 The Chairman:** Good. You have answered that point. On that, Sarah Wollaston has given us evidence and has been very positive about the Joint Committee working. In fact, she even mentioned the Liaison Committees in the House of Commons and House of Lords. They are both different in nature but they could meet, say, a couple of times a year. That face-to-face engagement is important and it would help to break down any structural barriers. You have given us a lot of encouragement in that area.
You mentioned earlier how we do politics anew, and where the House of Lords and House of Commons will be in 10 or 15 years’ time. Given the rapid change of technology and given R&R, after which we will come back into this building, what advice do you have for us as the House of Lords about how we should be thinking about 10 to 15 years’ time?

**Frank Field MP:** On the technology front and how we develop that, I am a Luddite, although I do not wish to be. That is why I like your suggestion this morning about bringing video evidence in, particularly for people who could not possibly make the journey or are too frightened to do so. Katy, what views do you have while I think further about this?

**Katy Stout:** The Committee welcomes the opportunity to take video evidence in the room. One of the challenges we find is if you have someone giving evidence on video alongside others in the room, which can be very complicated, so you need to keep them separate. On the use of other technology, and coming back to how we gather evidence, and in particular written evidence, the Committee has recognised that the traditional evidence forum and written evidence applications do not always appeal to the wide audiences it tries to reach. For that reason we have created these online forums. We have used surveys that make it easier for people to marshal their thoughts, as it were, and we have also promoted those through Facebook; you can pay the adverts on Facebook, and the Committee has a budget to do that. That has proved to be particularly successful at targeting those hard-to-reach groups that we try to target.

**The Chairman:** We are hoping to have further external technology. We had Lord Mendelsohn along just last week or the week before, and it was very interesting. Perhaps, Katy, if you looked at that evidence you could convey it to Frank. That would be helpful.

**Frank Field MP:** I might respond in a written note to you on that.

**The Chairman:** That would be great. In terms of the future and public understanding of and engagement with Parliament, is that a real issue for both Houses?

**Frank Field MP:** Yes, and paradoxically, it could be helped by you having chairmen who were paid, for the following reason. The public do not fully appreciate the importance of sustaining a Government, which is one of our functions—or to oppose a Government, depending on which party line we have. The public yearn for politicians who do not go down the normal route to ministerial careers and into the Cabinet. They see these as voices of independence, who both represent clearly their own views but who also encourage the views of others to be heard. If you are to develop in the Lords a group of politicians who in a sense are anointed by the fact that the whole House has elected them, has trust in them, and knows that this will take up a great deal of their time and work, the issue of pay is irrelevant. It is important for the person so that they can do the job and turn down other opportunities. But that role of building up a cadre of politicians who the public see as being on their side, trying to represent their views in this place, both in the Lords and in the Commons, who are known as spokesmen—or spokespeople, whatever the phrase is—will
strengthen politics and not undermine it. The Government should welcome it for that fact.

At the same time, we have to be mindful that if we are to have responsible government, Governments have to be elected on manifestos, and come the election they have to stand on what they have done from that manifesto, so they have to try to get that manifesto through. There is this endless conflict between “We are responsible to the public to implement the manifesto as best we can”, at the same time as having a growing group of people who are known to be such experts that with their committees they help to shape, influence and change public policy, but also whom the public feel are on their side. That is what has been missing leading up to and post the Brexit referendum. They think we are all in the same old boat. Those of us who are not in that boat have the responsibility to say that government still has to go on. Never mind the role we are playing; there is the ultra-important business of government at the same time. Given our constitution, it is about how at the next stage we marry those together.

I hope that we would see automatic working together between our two Houses in doing our reports, with you taking a lead, say, in establishing a special Select Committee on regulators and inviting some of the Members of the House of Commons who are interested to join you. I hope that we would see the development of a group of people in your House that so carry the confidence of the House that they are elected to non-government positions—namely, chairs of committees—and that that is seen as an important responsibility, to one House and then to both Houses but also to the public outside, so that they will know the faces of their champions.

The Chairman: When Lord Boswell of Aynho gave evidence last week, he made the comment that he saw the committees as making the weather outside. That ties up exactly with what you are saying.

Frank Field MP: Just to add to that, our committee has always tried as one of its functions to push beyond where the Government are so that the Government can see, “If they haven’t been blown apart and blown out of the water, it’s safe for us to follow behind”. In that sense, making the weather is an important function of committees.

Lord Foulkes of Cumnock: I should know this, but does the House of Commons have ad hoc Select Committees in the way we do?

Frank Field MP: No, but we had the ad hoc Joint Committee which we established on slavery, for example. That has been the one downside of our Select Committee system. Previously we would move, as I think you can, to establish Select Committees on topics of great urgency. That is how we would have operated during the great period when the House of Commons and the House of Lords were most influential in influencing government in the 1850s and 1860s, by being able to establish Select Committees. I hope that we would look at whatever you say on that on our procedural side, not to do them regularly but on matters of great urgency. Katy will correct me.
Katy Stout: No; I was just going to say that the banking commission was a good example of that.

The Chairman: But that was set up by the Prime Minister, and it was independent; outside staff were also engaged. It was successful in that sense, even to the extent of the legislation, because it was being stymied in the Commons by the Government. Andrew Tyrie is on record as having written to us to say, “It’s up to you guys to get the legislation”, and I have good news for you: we got it.

Frank Field MP: Absolutely. But that is an example of the Government being frightened and of where a special committee can give it confidence and make the weather, and of Parliament immediately responding to the anger out there about what the banking system has done to everybody, except the very rich—those who put their money into equities. Everybody suffered real cuts in living standards.

Lord Foulkes of Cumnock: We had some evidence—I cannot remember where it was from—that we should be able to set up inquiries. A public inquiry would be far too expensive and long, and so on, and Select Committees do not have the remit to do it, whereas either the Commons or the Lords or jointly could set up an inquiry committee to look at a particular issue. That seems quite a positive suggestion. Do you remember who suggested that?

The Chairman: No, I cannot remember.

Frank Field MP: I agree. On your point earlier about controlling the internet, one of our committees is valiantly trying to do work on that, but it has other work to get on with.

The Chairman: By the way, Ofcom is working under the Communications Act 2003, which shows you how absurd the situation is. We are sitting here, impotent on that issue.

Frank Field MP: However talented the regulator is, as it certainly is in this case, it does not make up for this huge gap in our thinking.

The Chairman: Frank, that was really helpful. We will continue that engagement both formally and informally, but it could not have been better this morning. Thank you.

Frank Field MP: A huge thank you for inviting both of us.
Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering, Lord Shutt of Greetland, Lord Cameron of Dillington and Baroness Deech – Oral Evidence (QQ142-143)

Submission to be found under “Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)”
Wednesday 9 May 2018
11.10 am

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 3 Heard in Public Questions 20 - 27

Witness

I: Professor Matthew Flinders, Professor of Politics, University of Sheffield, and Founding Director, Sir Bernard Crick Centre for the Public Understanding of Politics.

Examination of witness

Professor Matthew Flinders.

Q20 The Chairman: Professor Flinders, welcome to the Committee. Can you identify yourself for the Hansard writer first, please?

Professor Matthew Flinders: Sure. I am a professor of politics at the University of Sheffield and director of the Sir Bernard Crick Centre.

The Chairman: Thank you for the paper that you submitted. It has been very helpful to us. Maybe I can start off by asking you how you would define “effectiveness” for the House of Lords committees and, in particular, how the House of Lords can ensure its work reflects the rapid change that we are seeing in society. I notice from your submission, in paragraph 1, you said that the House of Lords undertakes an incredibly valuable role to the highest standards, but its work generally remains hidden to the wider public.

Professor Matthew Flinders: I can follow up from the last witnesses on this notion about the value added to the public. In many ways, the work of the committees has two related dimensions. One is the internal scrutiny work undertaken in relation to specific inquiries, but, quite separately from that, those committee inquiries play an additional role in promoting the public understanding of politics and particularly what the House of Lords does. In many ways, in recent years, the role of the House of Lords has increased massively in terms of influence and the standard of its reports,
but there is almost a breakdown of that relationship with the broader public.

That is interesting, because I spent the last year working for a House of Lords inquiry. When I am beyond SW1 and out of the metropolis, in Sprotbrough in Yorkshire, if I say to people, “I am currently working in the House of Lords”, their first reaction is rather dubious. When I explain what I am doing and what most Peers do, they are pretty impressed—so there is a real missed opportunity. There is a double dynamic here: a dimension of reaching out to a broader audience in order to improve the information entering the scrutiny process, and a very positive spillover dimension, which is that, through that reaching-out process, you will by definition increase public understanding.

It is very interesting to look at the research on attitudes to politics. If you ask most members of the public, “What do you think of politicians, political institutions and political processes?” the responses are generally very negative. However, if you ask exactly the same people, “Have you ever met your local MP? Have you ever taken a complaint to your local councillor? Have you met a member of the House of Lords?”, where they have, their response is generally overwhelmingly positive. There is a breakdown in the relationship. If the House of Lords can engage more vibrantly with the broader ecosystem of society, the benefits will ripple out far beyond the specific inquiry itself.

I often think there is an issue about institutional confidence. The House of Lords might think that, because it is not an elected Chamber, it has less legitimacy with the public. The public, in my experience, are far more sophisticated than they are often given credit for, and understand that legitimacy takes many forms. There is an opportunity for the House of Lords, and particularly the inquiry system, to develop a far more vibrant, mature and balanced public discussion about some of the challenges that we as a society will face. The Lords can do it in a way that the Commons cannot.

The Chairman: You have facilities at your university for this and you have been doing a lot of work on it. It has been suggested to me informally that it would be worth a visit to your place. I will ask you: is it worth a visit?

Professor Matthew Flinders: Sheffield is always worth a visit.

The Chairman: What can we learn if we go there? That is what I mean.

Professor Matthew Flinders: I am going to throw that back at you because, being a Yorkshireman, I think the challenges are about not overcomplicating. I have done a lot of work on deliberative society, citizens’ assemblies, mini-publics and digital democracy. That is all well and good, but the challenge for the House of Lords committees is far simpler: at the moment you tend to produce documents that are, if I am honest, almost designed to put off large sections of the public. That is not to say that they are not valuable for the core purpose for which they are designed, but the biggest benefit for House of Lords committees is to embrace what I call the art of translation, which is basically being slightly more vibrant in how they
translate their main, core inquiry documentation, so that it is simply accessible to a much broader audience.

If I can give you one example, working for the House of Lords Committee on Citizenship and Civic Engagement, we went into the normal process of agreeing the issues and questions paper that went out to set the agenda for the report and to call for evidence. The language that we use is very scary for lots of members of the public, particularly the very members of the public you really want to engage with. I was listening to the issue about witnesses agreeing to come and give evidence. Often, the challenge I face with witnesses is that they are scared. They are intimidated. They do not have the support. People in this room come to this sort of building all the time. Think about the layout of the room and the language: we call for evidence; you will be a witness.

With the House of Lords call for evidence, I translated it into one page of A4. It said, “This is what we are doing, this is what we are interested in and this is why we want to hear from you”. What I found most interesting was that somebody doing that caused people to say, “Whoa”. That takes us back to the issue around the changing society. This is not unique to this legislature or this House. Around the world, Parliaments and their component elements are trying to work out how to engage in a process of catch-up with a society that is increasingly fast paced. There has to be a shift, I would imagine, in how the House of Lords approaches its role and its engagement with that broader society.

I suppose my core point is that that shift is not about institutions or adding on citizens’ assemblies; it is a cultural shift. It is a cultural shift on the part of the Members of the House of Lords, and among the staff of the House of Lords, to understand that the public have a core relevance and role to play in our political discussions. One of the dangers of engagement is that it becomes overwhelming and you drown. In the academic world, there is a condition called “going MAD”, which organisations often face: multiple accountabilities disorder. You are held accountable by so many bodies that you never get round to getting on with your core tasks.

The real point is that, in the House of Lords, I sense that Members are really keen to innovate. Staff often feel quite frustrated: they want to innovate but need to be more empowered to innovate and to take a few risks. In terms of working more smartly but not necessarily harder, there is this notion of translation. The public do not think, “I do not want to engage because I am not going to get what I want out of the process. The Committee is not going to recommend what I think”. What is more important—and this is the great problem with the rise of populism around the world—is that too many sections of society feel, wrongly or rightly, that those in political control are not listening. In fact, my understanding is that many politicians—people in office, like in the House of Lords—are listening and are trying to listen. One of the challenges is how to mediate all the noise. That is where the House of Lords might think about being slightly more sophisticated in how it harvests information, being slightly more dynamic and having a little more confidence.

Q21 Baroness Hayter of Kentish Town: Perhaps I could bring you back to
our particular inquiry, which is about how our committees work. You are clearly a man of great taste: you say we are authoritative, we have experts and we are well considered. Your judgment is impeccable. But one of the things you raise here is our choice of looking at issues in committees, and that is what we are focused on. You say it might, for example, be appropriate to include an emphasis on issues of particular public concern, which, as you probably took from my question before, I thought was important. I happen to concur with that, but what is the way of making sure we have a more thematic approach that would reflect that? It sounds very good, but what is the mechanism for being able to achieve that?

**Professor Matthew Flinders:** In terms of House of Lords committees and where they go in the future, it seems that a broad consensus is emerging in a number of key areas about where they might close certain accountability gaps. That might be around post-legislative scrutiny or long-term horizon scanning. The issue that was closed off there around devolution is critical. There is not a clear structure for bringing the component Assemblies and Parliaments of the UK together.

The core of your question is about whether the House of Lords wants to consider, to some extent—and this is an innovation—democratising the selection of topics for some of its ad hoc committees. If would be possible and quite easy for you to do that using a number of mass-access online platforms.

**Baroness Hayter of Kentish Town:** I am really not asking that at all. I do not want to take you down a line that I did not intend to. I am talking about what our method is, not the examples of it. What would make a change in the way that we work to enable us to do that? We are not going to go out and consult all the public on this. We have to stay where we are at the moment. You have seen the size of our Committee. What could we shift in order to change our criteria, which at the moment are ideas brought to us by active Members of the House of Lords, so they have a focus on issues of public concern? I do not mean by asking the public; I really do not.

**Professor Matthew Flinders:** I am slightly stumped by the question. In a sense, at the moment, the ideas for the selection of topics come from quite an internalised pool. If you want to broaden the spectrum of ideas coming into that pool, at some point you will have to think more innovatively about how you get at least a longlist of those ideas. In a sense, there are similar processes in similar areas, but, in terms of getting those initial ideas on the table, particularly if you are keen to think creatively about the effectiveness of committees and identifying the gaps, there will have to be an experiment in thinking beyond the Palace of Westminster in some way. I am thinking particularly of the recent issue with going out to the public when naming the new boat for the Antarctic Survey.

**Baroness Hayter of Kentish Town:** I rest my case.

**Professor Matthew Flinders:** There is still a reasonably simple way in which you could harvest a whole range of ideas, themes or issues from a broader range of the public, without it being a huge amount of work, because the digital skills now are very advanced, which would at least
provide you with a number of counterpoints that might not have come up from those internal processes.

**Baroness Hayter of Kentish Town:** You are saying that the only way to address public concern is to talk to the public.

**Professor Matthew Flinders:** I am sorry; I think it is, yes.

**Baroness Hayter of Kentish Town:** Possibly I am in a different position from that, but that is really what you are saying. You are saying that the only way you get public concern is from the public.

**Professor Matthew Flinders:** Yes.

**Q22 Baroness Garden of Frognal:** You have partly answered my questions about the scrutiny gap, because you say in your evidence that there is a real scrutiny gap in follow-up and subsequent investigations. I want to ask your advice on how we go about doing that. We have limited staff and limited resources at our disposal to follow up all the committees. It is something that we certainly recognise. It is all very well producing a brilliant report, but you really want to know whether it has been implemented—which is the same with legislation as well. I have to say, there is very little that goes on with that, too. Surely it would be possible to get ideas of particular public concern without asking the public directly, because there are issues that crop up generally, are there not?

**Professor Matthew Flinders:** There are, but there is one interesting thing that might help. An ad hoc committee has just been approved on intergenerational issues. How will that committee make sure it understands what issues it needs to deal with? In terms of getting to the heart of that, there is really no way, with all the best research and advice from the House of Lords Library and the support staff, that you can ever understand. A lot of the issues that you are dealing with, when it comes to public engagement, are about emotions, feelings and understandings of multiple publics in multiple parts of the country. It is very hard to get that from harvesting the available data on paper that is put in front of a committee.

One of the most powerful things, and by far the most beneficial thing, we did with the House of Lords inquiry was that the whole Committee spent a day in Sheffield. We went to the leafy suburbs and to the not-so-leafy suburbs. We went to the old industrial parts. In the staffroom of a very challenged local school, we met people from local communities. That engagement lifted the lid and got beneath a lot of the deeper challenges and issues that would have been very hard to get at in any other way. It is going to be difficult without innovating in relation to building new relationships and using digital technology to do that.

With the follow-up, particularly with the ad hoc committees, that is a real issue at the moment. There is an accountability cliff that it goes off. I might recommend that the Committee does a pilot study, following one of the recent ad hoc committees. I do not know if it is possible, with standing orders, to use a sub-committee of the Liaison Committee or some other mechanism. But an experiment around following an ad hoc committee over
the next 12 to 18 months, in order to test the procedures through which you can put in place and follow up scrutiny, seems vital.

It just came to me that, if you want to know about accountability gaps, there was all the work done in the Commons a few years ago, which Paul Evans will be aware of, around systemic scrutiny and the introduction of core tasks for Select Committees. To some extent it is still there as a framework, but the focus on it has gone out of vogue. Looking at those core tasks was a very useful experience, and there will be some core tasks that, for one reason or another, are not felt to be particularly attractive topics for Select Committees. The House of Lords might provide increased attention to close that gap.

It is not just about the gaps; it is also about the accountability loop. In politics more generally, there is often a great emphasis on consultation and engagement. People go in and try to play a role, and they never see anything coming out of it. Making sure that all the people we engage with receive some recognition—not that they got what they wanted but that they at least played a role—is crucial to maintaining those relationships.

Q23

The Earl of Courtown: Professor Flinders, I had a look through your written submission. Under point 5, you say that the ad hoc post-legislative scrutiny committees perform an incredibly important role that could potentially be developed. How could that be developed? Going on from there, we have also had—although I do not know how many—not many pre-legislative committees. I find that a very difficult thing to go forward with, because of the management of bringing legislation forward. I really do not know how easily these can be developed, but I would be interested to hear your ideas.

Professor Matthew Flinders: Interestingly, beyond the Palace of Westminster the House of Lords committees do not really receive a huge amount of recognition, given that the reports they produce tend to be far more extensive, mature and developed than those coming out of the House of Commons. In terms of developing that work, there is a tension, and this is a perennial theme. If you really wanted to develop the work of the committee structure, you would have to increase the support capacity around those structures. There has always been a tension between the amount of staff resources that the committees possess and a concern among members, who are wary of becoming staff-driven rather than member-driven.

In terms of where you go from here, particularly if you want to take issues around engagement more seriously and in a more innovative, vibrant manner, I cannot help but think that that would require at least some discussion about additional resources for committees.

The Earl of Courtown: What about pre-legislative scrutiny? How can you see that being developed?

Professor Matthew Flinders: The pre-legislative scrutiny is vital. There is lots of scope to undertake that work, and particularly to make sure that the legislation coming through is of the required standard. But the bigger gap is probably in relation to post-legislative scrutiny.
The Earl of Courtown: You think that is more important.

Professor Matthew Flinders: Absolutely, yes. There is very little reflection on whether policies are working until something goes wrong. There is a very interesting point there. Accountability processes in a Westminster context are generally of the blame-allocation sort: “got you.” People are scared, generally, to sit in this seat, although the House of Lords has a less partisan, more mature approach. Other countries are much better at learning from failure, analysing issues that are seen as problematic and looking back at what can be learned through that process to prevent it in the future. That sort of learning and evidence-based approach could be incredibly helpful.

Q24 Lord Smith of Hindhead: The ad hoc committees of the House of Lords are seen as an area where we perform extremely well. The time-limited nature of them—limited to 12 months—can cause difficulties, not least because it sometimes does not give us enough time to deal with the subject at hand. I served on the Political Polling and Digital Media Select Committee last year, and I know that we really struggled to get through it all. We dealt with the first bit but had to leave the second bit alone. It also causes difficulty for the follow-up work. What do you believe is the best way to improve the follow-up work of ad hoc committee reports?

Professor Matthew Flinders: On timing, there needs to be more flexibility. Constitutionally, any ad hoc committee could come back and ask for more time but, in my experience, members and staff are reluctant to do that, if at all possible. This is one of the big areas that the committee has to grapple with. Some capacity needs to be created, either with the committee office or through a sub-committee structure, to allow, even at a fairly low level, a formalised review of ad hoc committees at a certain point after they are completed.

A lot of that would be fairly light touch. It is a bit like the notion of fire alarms: in most cases there would not be a problem and it would become very clear what had happened subsequently after the report. In some cases there would need to be a follow-up process, which is really about closing the accountability loop. The question I am not sure about is what capacity there would be within the committee office to provide that post-report review process, under what sort of structure, in terms of the overview of that, and how that would take place. It strikes me as one of the most obvious shortcomings at the moment, in terms of filling a real need.

Q25 Lord Low of Dalston: I have a question here. Before that, can I ask another question that is not on the sheet, but is more relevant to what we have just been talking about? I am going to ask you about the structure of Select Committees. One of the other people who submitted evidence to us proposed a structure for the major House of Lords Select Committees that reflects both the main strategic and thematic challenges facing the nation and the functions of government today. They said they had identified six strong themes. I will just read you these six strong themes, and I would be interested in your comment on these themes as providing a basis for a structure of Select Committees. The six strong themes are: the economy; home affairs; health and welfare; foreign affairs, including Brexit and post-Brexit issues; defence and security; and the constitution and local
government, including the nations, regions and cities of the United Kingdom. Those were the six strong themes, and I would be interested in your thoughts on that.

**Professor Matthew Flinders:** Instinctively, I think the British constitution works through a rather Whiggish, incremental muddling through. There has historically been almost pride in a sense of amateurism. Where we are now with the House of Lords Select Committees is a professionalisation and development of that process. There would be a case for a more stable structure of the investigative committees that did not overlap with the Commons, but the challenge with reading out those thematic areas is that they sound to me to mirror the main committees of the House of Commons.

**Lord Low of Dalston:** They are a bit broader and not just departmental.

**Professor Matthew Flinders:** Yes, they are. It does not strike me as having the added value or innovation that you might have with committees that were looking at big questions of post-legislative review or big issues of horizon scanning. I can see the value of a more systemic approach, but I am not totally convinced that those six areas are the way to go.

**Lord Low of Dalston:** Are you suggesting that it needs to be freed up a bit more?

**Professor Matthew Flinders:** It does. In a sense, the benefit of the House of Lords is that it is not caught within certain silos that reflect the departmental model. My fear with those areas is that, as an unintended consequence, they might constrain what the committees were doing. If you look at the big social challenges, they tend to be cross-departmental and more thematic.

**Lord Low of Dalston:** Thank you very much. It was good to get your reaction to that. I am now going to ask the question I was supposed to ask you, which is about engagement.

**Professor Matthew Flinders:** Go for it.

**Lord Low of Dalston:** You mention in your written evidence that House of Lords committees should be more proactive in their outreach and engagement. What engagement techniques do you believe would be most beneficial to House of Lords committees, particularly in developing a dialogue?

**Professor Matthew Flinders:** At the moment, as far as I understand, a large number of House of Lords approaches are what I would call fairly passive. They rely on large numbers of distribution lists, and emails and letters going out to a large number of people who are already within the system. It would be far more useful to complement that with, as I said before, new ways that will allow the public to recognise and engage with what is going on in the House. If you really want to reach out to people who are likely to be totally disconnected and, at first, disinterested in the work that is going on here, one of the simple things, which my students do within seconds nowadays, is to use short informatic videos which allow you, through a whole range of mediums, to suddenly access millions of people.
Funnily enough, one of the challenges I have had in the past is the risk that a Select Committee might become overloaded with responses and how it would cope with that sudden influx. It has to be around the innovation of translating documents so that they are much shorter and more accessible, and they think about language. Often it is about where you host the meetings, particularly getting out of London, and even the design of the room can be critical when dealing with certain groups.

Thinking slightly more creatively about that, I could probably give you no more than 10 online mass social platforms that would be happy to host short, informative, accessible pieces of information about the work of committees, which would then get them out to millions of people. The problem at the moment is that the information coming out of the Lords is not of the right type to be hosted on those sorts of platforms.

**Lord Low of Dalston:** How would you go about putting a short video of that kind together? I was thinking as you were talking. You could have a presentation of the findings of the committee by the chairman in the House of Lords itself, but no sooner had I thought of that than I thought that you would probably say that that was far too formal and imposing. That would be more off-putting than anything else, and you would want to get something a bit more informal.

**Professor Matthew Flinders:** I had a slight giggle recently, because that is exactly the discussion we had when the idea of making a short video came up. It would have been a headshot of the chair. There is nothing wrong with the Lord Chairman, of course. I have a face for radio, so it would be no good for me. The key, core message and my strapline for today is that we need to think more creatively about engaging with multiple audiences in multiple ways. There is no one “public” out there, and we need to use technology in a way that allows us to cut down the transition costs and do things a lot more quickly, to get out to a much broader range of people. At the moment, the gap is growing between the governors and the governed. We might well have a short video with the chair of a committee but, more importantly, we might also have a short video with some of the witnesses who came to speak and what they got out of the process, which we host and put on the website.

We should have a website for Lords committees with a short video piece with every member, which tells you a bit about the member, who they are, what they did in their career and what they want to get out of the committee. You need to allow the public to get to know the people and why they are doing it. The good news is that there is a real appetite out there. There is a real longing among sections of the public. They are working with a media that believes that only bad news sells and, therefore, they have become cut off and disengaged. With a bit of vibrancy, energy and passion, it is possible to rebuild those communications.

That is particularly important because of the House of Lords and because of the issues around non-election, but the non-election can be turned round, if you dare, with a bit of confidence, to engage more proactively. I was most taken with working on the Lords committee on citizenship last
year. The amount of work and dedication that went on in that committee and the quality of the final report were absolutely outstanding. A lot of that is because of the quality of the staff we had. Have we really got maximum value for the public out of that time, energy and money? No, because, when we produced the report, the system was not able to drive it out there with the vibrancy and energy that would allow it to connect to the large body of people that it could do.

Q27 The Chairman: Thanks very much for that. To the point you made about informatic videos, our digital team are alert to that and there is an opportunity to do it. In a visit when I went to see them, they said we have a Q&A setup at the moment but, if we go digital, with informatic videos and animation, it could be much more exciting. There are opportunities to do that. Given your evidence, we would be delighted to keep in contact with you on this. If you can help us along on this, it would be appreciated.

Professor Matthew Flinders: I would be delighted to help as much as I can.

The Chairman: If we think it is going to be a value-for-money exercise going to Sheffield, we will consider that as well at some stage.

Lord Low of Dalston: It sounds as though they could put on a pretty good visit for you, Chairman.

The Chairman: Exactly. There you are. Thanks very much for that. As a last word, I notice from your submission that you do not favour elections for Select Committee chairs; I just note that as a matter of record.

Professor Matthew Flinders: Do I get a prize for using the word “gumption” in evidence?

The Chairman: It was very interesting. Thanks very much and let us keep in contact.

Professor Matthew Flinders: Thank you very much.
Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 21 Heard in Public Questions 149 – 156

Witness

I: Baroness Fookes.

Examination of witness

Baroness Fookes.

Q149 The Chairman: Baroness Fookes, welcome to this evidence session, and thank you for your written submission as well. You have vast experience of committees and I have benefited in the House of Lords from your membership of committees. It is nice to have you back with us after your illness. My comments will be brief and I will hand over to Lord Lang.

Baroness Fookes: Thank you very much.

Q150 Lord Lang of Monkton: Lord Chairman, that was very brief. May I say how much I appreciated what you said in your written evidence? I thought it was full of good ideas, large and small. Even though we may not touch on some of them today, I hope we will not lose sight of them when we come to our report.

I want to raise the issue of the purpose of committees, which you touch on in an early paragraph. I welcome in particular your comment that you see no reason why the current committee structure should be changed fundamentally. There is always a danger on these occasions to get carried away and change too much too quickly.

I would like to ask you about the specific nature of some committees differing from the normal, sessional, departmental-covering ones. It seems to me that the committee with which I particularly associate you, the Delegated Powers Committee—Secondary Legislation Committee, rather—Baroness Fookes: I was on the Delegated Powers Committee. I think you are thinking of Lord Trefgarne’s committee.
Lord Lang of Monkton: Yes, indeed. Those two committees seem to be very narrowly focused and confined in that they cannot really do much more than what they are required to do by the documents that come in front of them. By contrast, the Constitutional Committee has to look at every piece of legislation that comes before it, but it also has time to open up new inquiries, sometimes quite substantial ones, which it chooses itself, and run them. Do you think that should be reflected in a different type of committee—in terms of membership, powers and its general position in the scheme of things—for the very technical and specifically focused matters?

Baroness Fookes: I think that the Delegated Powers Committee—to use the shortened form of its name—actually does a good, if narrow, job, but I think that it is sufficiently large to occupy the committee. If it were to look more widely and in general, it would probably fail at its purpose.

Lord Lang of Monkton: I am not suggesting that it should change; I am asking whether you think it should operate under slightly different general rules from the other committees, possibly with a different membership, duration of membership and so on.

Baroness Fookes: It is certainly one of the more technical ones, and we rely very heavily on the legal expertise that we have had and continue to have. Let me be frank: it could not operate without that expertise being made available to the committee. For a start, who would have time to go through every single passage of a Bill in detail and draw out from it the right conclusions as to whether the delegated matter should be delegated or what form parliamentary scrutiny should take? Therefore, we rely very heavily on that legal presence to assist us. I believe that there are still three of them, as there were in my time.

It might be useful if members could remain on the committee for longer, given the type of experience that is required. Not everyone takes to it, I have to say. You have to have a special kind of approach to find it tolerable. But for those who benefit from it, yes, I think a slightly longer term of office would be valuable. The important thing is that you do not get too many changes at the same time. That would also be true of other committees of a different nature.

Lord Lang of Monkton: You say that the sessional committees should last for the duration of a Parliament unless there are good reasons for not doing so. Does that mean that you dismiss the alternative view that there is such pressure for members to get on to one of these committees that the term should be shortened, rather than lengthened?

Baroness Fookes: Frankly, I think that the work of the committee is the most important thing, and although we certainly want to give members a feeling of being wanted and responsible and so forth, that should not be at the expense of the work of the committee. By the same token, some members slightly dip in and out, as I call it. I think that those who are going to be on a committee should reckon to be there as many times as they possibly can and for the duration of the committee’s sitting.

Lord Lang of Monkton: Thank you. That is very helpful.
Q151 Baroness Garden of Frognal: I would like to ask you about ad hoc committees. Again, thank you very much for some really excellent ideas. There are two aspects. First, you mention requiring activity to be completed in one year. If there were flexibility on the length of time of the committees, would that have to be decided at the start of a committee, or might it be something where a committee applied for an extension and carried on?

The second question is about the topics and whether they should be selected by the whole House, which is one of the suggestions we have had, and even from outside. We had one suggestion that people who go into schools should ask schools to put forward ideas for committees. I am not quite sure how many accurate or eligible ideas we would have, but how do you see the topics and the length?

Baroness Fookes: On the length, it is more of a question of when the committee is set up. If I may give an example, I am currently serving on a committee—I did so this morning—looking specifically at the Bribery Act, a post-legislative review. We had our first meeting on 12 June. By 24 July we were away for six weeks. We are now back for two weeks and then we are away again. That is what lay behind it: not so much the length but how much you could get in in a given time, having regard to recesses. That was the background to my suggestion.

Turning to the other point about the selection of topics, this will always be a point of conflict where there are different views. Certainly, it could well be opened up for Members of the House to be encouraged to put forward suggestions. If you wanted to extend it to the general public, I suppose that would be possible, but the more you do that, the more you then have to sift what is going to be possible, given the restraints of people’s time—and money. Each one costs: the committee clerks, specialist adviser, and so on. I doubt whether there would be the possibility of more than, say, four new reports a year. That is probably about right—three to four. By all means open it up, but you must have a sieving system that works accurately, and not just any old thing thrown in and we do it.

Q152 The Earl of Courtown: Baroness Fookes, you mentioned post-legislative scrutiny of the Bribery Act. How much further do you think post-legislative scrutiny should be taken? A number of the witnesses who have appeared before the Committee have emphasised that there should be many more opportunities for post-legislative scrutiny to take place, to question the Government and the validity of the legislation and whether it is doing what it is supposed to do. How much further do you think we should take this? Do you think that every Bill should have post-legislative scrutiny? I know there are logistical problems with this, but how much further should this be taken?

Baroness Fookes: In principle, it would be excellent to widen it out to include more Bills, but you would then have the practical problems of implementing that. It might be more important to place greater stress on pre-legislative scrutiny so that you do not make the mistakes in the first place that require you to scrutinise them afterwards.

The Earl of Courtown: That is a fair point, but, as we know, some of
these Bills are not always ready in time to be given proper pre-legislative scrutiny. But you make a good point.

**Baroness Fookes:** Governments often try to undertake too much. If they did less better, it might be better all round.

**The Chairman:** That is a good lesson for us.

Q153 **Lord Smith of Hindhead:** I rather hastily volunteered to ask about the membership of committees, which is probably the subject that has the most differing views. I see in your written evidence that you are fairly happy with the way everything is done with regard to appointing Peers, but you would like new Peers in particular to be a bit more aware of the Select Committees and the ad hoc committees so that they might be able to put themselves forward if they have a specialist interest. I suppose the counterargument is that the Whips in the House of Lords do not have much power, but having that little bit of power to appoint people can help them.

You also mentioned the appointment of the chairmen, saying that it seemed to work well and that you recognised that there were differing views on whether or not they should be elected. Perhaps you could expand on the subject of the rotation rule, which you seem less happy about.

**Baroness Fookes:** My feelings on this grew rather tense when at one point in the cycle it was decided that in order to give more Peers a chance of serving on a committee, the length of tenure should be shortened. As a result, the Communications Committee, which I was coming off, found itself not only with a new chairman but with a majority of new members. That was partly because of the way it was handled, but it was a lesson to me that you need some continuity and that that is probably better served by allowing people to serve for longer. Very often you need to go back to subjects, and if you have such a clear-out of Committee members, the likelihood is that that will get lost.

**Lord Smith of Hindhead:** I suppose the chairmanship skills might need to be less for an ad hoc committee, which is just for one year. I have served on three of those now.

**Baroness Fookes:** That, of course, is different.

**Lord Smith of Hindhead:** Exactly, but the chairman of each has been very good; one who was not as good soon caught up and realised just how much work is involved with it.

I have a point that relates to this but is not in your report. It comes from some previous evidence that we have had, suggesting that there may be merit for ad hoc committees in particular in having Members from the other House join a House of Lords committee and perhaps Members of this House with a specialist interest in or knowledge of a subject joining committees of the other place. What do you think of that?

**Baroness Fookes:** We already have an arrangement for Joint Committees. I served on a Joint Committee on the Mental Capacity Bill many years ago—I think we are having another look at it—but that was pre-legislative scrutiny. That was joint between the Members of the House
of Commons and the House of Lords. The principle is there and it can be very effective. You have to face the prospect, though, that MPs with constituency interests and constituents are sometimes less regular attenders. I have served in both Houses and I know there have been occasions when embarrassment has been caused because you needed a quorum from both sides and there was one from the Lords and not from the Commons. In principle, I think it is absolutely fine. In practice, you may have a few difficulties.

**Lord Smith of Hindhead:** There may be more merit perhaps in a Commons Select Committee having spaces available for Members of this House with specialist knowledge or background to add to its expertise, which of course is what this House and our Select Committees are known for more than anything—expertise.

**Baroness Fookes:** Indeed. I have no objection to that, provided that the House of Commons was happy with it being slightly one-sided.

**Baroness Garden of Frognal:** On the assumption that the Whips make the appointments, I think that is exclusive to the Conservatives. I do not know whether Labour does it. The Liberal Democrat Whips certainly do not appoint people to committees. We always ask for volunteers and we talk to new Peers to see how we can get them on to committees. The assumption that that is standard throughout, that it is used as a political gesture—

**The Earl of Courtown:** Perhaps we could clarify that.

**Baroness Fookes:** I have never been a Whip, so it is a mysterious world.

**The Earl of Courtown:** We ask our colleagues: who wants to go on a committee? They come to us and very often there are a lot more people asking to go on committees than we have places for. So in essence you have to make a decision.

**Baroness Garden of Frognal:** I think the concern came when you took people off committees because they voted against the Government.

**The Earl of Courtown:** No, it was not—

**Baroness Garden of Frognal:** I think that was raised in the House at one stage. There were three or four people.

**The Earl of Courtown:** It was. There was one issue, but there were other issues relating to attendance on committees.

**Baroness Garden of Frognal:** That is fair enough.

**The Chairman:** Internal discussion, Baroness Fookes.

**Baroness Fookes:** I was not listening.

Q154 **Baroness Hayter of Kentish Town:** There are two things you have said that I really appreciate. I think you are the first person to talk about money and how much things cost. Everyone just says, “More, more”. I really
welcome that. I also welcome your point about the work being more important than finding jobs for—not idle hands but, you know.

I am keen to look at the purpose of committees, which we have already touched on. If you were asked to prioritise more widely—perhaps not the Delegated Powers Committee, because it is so specific and so important; it is different and an essential part of how we legislate—would you prioritise committees’ work as being to help the House of Lords to do its work or more broadly to help Parliament and the Government do better? If there was a balance, which do you think we should concentrate on?

**Baroness Fookes:** My initial reaction is that we need to probe deeply into subjects of political importance. That may be useful for the House of Lords, but I look at it not so much in terms of the House of Lords or House of Commons but in doing a job that will be helpful to the body politic generally and the Government in particular. Sometimes I think it is necessary to have a subject investigated thoroughly as a means of, shall we say, putting some pressure on a Government where they need to take action; or, at the very least, if Ministers and civil servants have to give evidence, they have to give considerable thought to what they are going to say.

On the other hand, it can sometimes be helpful to a Government if the probing comes for something they may already be interested in doing, but it is helpful to them if information comes from the expertise of the committee and people who give evidence to it. So it can work as a prod and as an encouragement. That is how I see it primarily. I think the House of Lords has a particular expertise, so I would certainly put that forward as a particular reason for our doing this work, but it is not for the benefit of the House of Lords as such; it is for the broader public benefit.

**Baroness Hayter of Kentish Town:** I like your words “probing”, “prod”, “thorough”, “thought” and “expertise”.

**Lord Foulkes of Cumnock:** On the subject of attendance, my recollection is that in the House of Commons we used to publish every year a record of attendance at committees—the number of committee sittings and the number attended by each Member. First, is my recollection correct, and, secondly, do you think we should do that for the House of Lords?

**Baroness Fookes:** If I am strictly honest, I cannot remember whether we did or did not, but if we did—and I am happy to take your word for it that we did—the key thing is that you can attend for five or 10 minutes, or for the two hours that the whole thing lasted, and the attendance record does not reflect that, which is why I said earlier that it is important that people understand that they are expected to be there for the duration.

**Lord Foulkes of Cumnock:** That is a very good point. The main point I wanted to raise was that you have made some very interesting comments about the European Union Select Committee continuing with its sub-committees during any transition period—if we do come out of the European Union—and then morphing, as it were, into the International Relations Committee with a European Union sub-committee. Please could you expand on that?
Baroness Fookes: I simply felt that when we were fully no longer members of the European Union, having the sub-committees would seem obsolete and out of date but that clearly you would need—because Europe was still there—to have a committee that would look at relationships with the European Union. You could set up a separate committee or you could subsume it within the International Relations Committee. I did not have any strong views on that. I just felt that we needed to have a committee that dealt with that. Precisely how it would work I was a little reticent on, because we do not know precisely how it will work out in practice beyond the great date.

Lord Foulkes of Cumnock: Even if we are going?

Baroness Fookes: That is above my pay grade.

Lord Low of Dalston: Baroness Fookes, I very much appreciated the remarks you made in your introduction about the potentially more long-range and strategic role of the House of Lords committees as opposed to the more short-run considerations of House of Commons committees. This is not a hard and fast distinction, of course. One could not say that the House of Commons never thinks strategically or long-range—or, indeed, that the House of Lords always does. Nevertheless, it is a distinction worth pointing to and could very well be of help to the Committee in drafting its report.

There is one area that you could help us by enlarging on. Could you say a bit more about the follow-up action that committees can take to ensure that the recommendations of their reports are properly addressed by government?

Baroness Fookes: It means that committees have to take a conscious decision—

Lord Low of Dalston: Forgive me, I need to add one point: this is something in which the Liaison Committee itself might have a role.

Baroness Fookes: I was thinking more about where Governments fail to answer reports in a timely fashion or answer them in such a way that it is thoroughly unsatisfactory.

Lord Low of Dalston: Is that not a long-stop function of the Liaison Committee?

Baroness Fookes: That is what I put in my evidence to you. It was simply to give the committee that is dissatisfied the backing of the main Liaison Committee, so that you would have a two-pronged attack if a Government either failed to answer a report in a timely fashion or answered it in a wholly unsatisfactory fashion. That is slightly different from my other point, which is that committees need to build into their structure the idea that they will go back to previous reports to see how they are faring. It is not necessarily to criticise the Government, but just as with post-legislative scrutiny you would do the same thing with the general committee reports.

I will give an illustration. Many years ago now—back in the 1970s, heaven help us—I chaired a committee of the House of Commons that looked at
prison and alternatives to imprisonment. One of the key findings of the report was that there were many people in prison with mental health problems who really should not be there or who should have specialist help. Forty years later, what are we talking about? The number of people in prison with mental health problems. Perhaps if we had had a system that followed it up more thoroughly, we might not be in that position today.

**Lord Low of Dalston:** So you see the sessional committee as having the first point of attack but the Liaison Committee having a sort of oversight role?

**Baroness Fookes:** I was thinking of the Liaison Committee only in terms of the response to a particular report not being forthcoming readily or its contents being wholly unsatisfactory. I had not foreseen a role for the Liaison Committee in insisting that individual committees should follow things up themselves as part of a process—not a criticism of government but a general process.

However, committee chairmen, or the whole committee, might wonder whether their independence was being undermined if the Liaison Committee said, “Why are you not doing this or that?” I was assuming that the initiative would come from the committees themselves.

**Lord Low of Dalston:** Perhaps I should have said that the Liaison Committee should have a back-up role rather than oversight.

**Baroness Fookes:** Back-up, for sure.

**The Chairman:** The lack of follow-up has been mentioned to us before. The way a number of witnesses have put it is that you need to build a constituency for change, so rather than the report lying on the table we have to follow that up with wider engagement to ensure that the report’s recommendations are fulfilled. Publishing a report on its own is insufficient. Is that constituency for change element attractive to you?

**Baroness Fookes:** If the report comes out with its recommendations, the Government answer it and the whole thing gets forgotten, that is what I am trying to guard against.

**Q156 The Chairman:** Earlier you mentioned House of Commons and House of Lords engagement. We have looked at that under the umbrella of parliamentary engagement. It has been suggested that the twin themes on that are parliamentary scrutiny and complementarity. Is that a proposition that finds favour with you?

**Baroness Fookes:** Are you referring to the fact that it is better if the two Houses, with their various Select Committees, do not immediately overlap one another at the same time?

**The Chairman:** We heard evidence from the chairman of the House of Commons Health Select Committee, Sarah Wollaston, and she said that we could be doing more together to help.

To follow up Lord Smith’s point, Frank Field said that he was looking at the issue of Carillion and pensions and he realised that there are a lot of
individuals in the House of Lords who have great experience in that, and that his committee, on a temporary basis, could bring a number of people on to provide that expertise. It is about working more closely together so that we function as a Parliament when it comes to parliamentary scrutiny and parliamentary engagement and that the reports we undertake complement one another rather than vie with one another.

**Baroness Fookes:** My remarks were about each one undertaking something similar, to no good purpose, because we were using civil servants’ time and the time of experts to do two separate evidence-taking sessions prior to a report. What you are describing sounds absolutely excellent. In fact, the Delegated Powers Committee was very pleased when one of the committees in the House of Commons actually asked us to provide evidence to help it. That was absolutely excellent, and that kind of liaison is very much to be cherished, welcomed and encouraged.

**The Chairman:** Sarah Wollaston has actually suggested that the respective Liaison Committees should meet, say, twice a year to look at their present work and forward planning, just to understand what is going on with each other.

**Baroness Fookes:** That would be a very good practical way forward so that you did not fall over one another in the unnecessary way I have described but, on the contrary, used both Houses together on certain issues, which I am sure would be for the greater benefit of all.

**The Chairman:** Thank you very much for your evidence. It is very helpful to us. I say again that it is great to see you back.

**Baroness Fookes:** Thank you, Lord Chairman.
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

Tuesday 19 June 2018
10.35 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 10 Heard in Public Questions 74 - 79

Witnesses

I: Lord Patel; Baroness Taylor of Bolton; Lord Forsyth of Drumlean; Lord Gilbert of Panteg.

Examination of witnesses


Q74 The Chairman: Good morning, everyone; welcome. You are all are familiar faces, but for the sake of the Hansard writers can you identify yourselves?

Lord Forsyth of Drumlean: I chair the Economic Affairs Committee.

Lord Gilbert of Panteg: I chair the Communications Committee.

Baroness Taylor of Bolton: I chair the Constitution Committee.

Lord Patel: I chair the Science and Technology Committee.

The Chairman: How can the House of Lords best support you as chairs to become more effective? Lord Forsyth, I am grateful for the note you gave us last night on communications, so perhaps you and Lord Gilbert could focus on those points. First, Baroness Taylor, how can we best provide support?
Baroness Taylor of Bolton: We are served very well by the staff we have. It is important that committee members individually work hard and take their responsibilities seriously, and I think we do that on the Constitution Committee. Given that we have one clerk, one adviser and some outside expertise, the committee does very well to get through the amount of work it does. We do it and we keep the show on the road, but there is no slack, and if there is one hiccup—a clerk or adviser being ill, or something of that kind—we are stretched. We need a bit more by way of resources, maybe not all the time, but a pool that we can draw on when we have particular pressures.

There may be a question about how long a particular clerk or adviser stays with a committee. I do not think they can stay indefinitely, but we have to make sure that turnover is not so rapid that we do not get the full benefit of their expertise bedding into a committee.

Lord Patel: As you know, Lord Chairman, I took over last July. You and I had a conversation about support, because there was quite a lot of pressure on the then staff and the way they had to work. We have a new clerk and the same analyst, and it now functions better, but I make the same point as Baroness Taylor; we can only do so much. The amount of work we could cover is much greater, so it produces more stress on the staff available to do all the work we have to do. In later questions I think we will focus more on the kind of work that can be done that is not being done now. Extra support will produce better results.

The Chairman: There could be extra support for Chairs; you had wide engagement with your ad hoc committees, particularly on health.

Lord Patel: Yes. I regard the job of the Science and Technology Committee as addressing policy issues in science areas and sometimes in other areas, such as where science impinges on health. We do not do that very often, but in the past, when I was a member of the committee, there was better support and resources for that, and it produced better reports.

The other issue is about what more support would allow us to do for Members themselves. We are starting a science seminar for Members on important areas.

The Chairman: Lord Forsyth, your paper, which is very good, focused on communicating the work of committees and professionalising the role of committees. I think Lord Gilbert made those points as well, so do you want to speak to that?

Lord Forsyth of Drumlean: I do not know whether you want me to repeat the points in the paper, but I can give you the nub of it. I am new to this. Just after the election, I took over the Economic Affairs Committee from Lord Hollick, who did a brilliant job as Chairman. I had been on the committee for some years. Until I became Chairman, I did not realise how much work was involved in being Chairman of a committee. I Chair a bank that is quoted on the main market of the London Stock Exchange, and
some weeks I think I do more work for the Economic Affairs Committee. It is very intense.

**The Chairman:** Does that say a lot for banks?

**Lord Forsyth of Drumlean:** No, it says a lot for my weekends having disappeared. It is quite intense. Quite how our staff, which is limited to three people, manage, I do not know. To make a comparison, the Treasury Select Committee has a staff of 12, including people from the FCA and outside. Quite how they manage the conflicts, I do not know.

**The Chairman:** I think you are wrong about that.

**Lord Forsyth of Drumlean:** You would know.

**The Chairman:** I had 10 years’ experience on that committee. It is not 12. However, we will put that aside.

**Lord Forsyth of Drumlean:** I checked with my clerk this morning, and he showed me the names.

**The Chairman:** Maybe people get drafted in, but they are not full-time staff.

**Lord Forsyth of Drumlean:** The committee has access to far more resource. I do not think we can argue with that. I hope that the changes that will occur when we leave the European Union and lose our EU committees will enable resources to be freed to do the day-to-day stuff.

The Economic Affairs Committee could be doing far more. I personally favour longer in-depth reports. The House of Lords is much better and gets far more out of people. It is a kind of David Frost syndrome; if you do not attack your witnesses, they tend to tell you things that perhaps they would not have done, on reflection.

There is also the degree of expertise that we have in this House and on my committee. Sometimes I feel somewhat outgunned. I have two former Chancellors of the Exchequer and two former Permanent Secretaries at the Treasury. It is a really high-powered committee and we could be doing far more.

We produce excellent reports. The most recent one, on higher education, created quite a stir. The Prime Minister wanted to talk to me about it last week, and the Select Committee on Education wants to meet us to discuss it. Why has that happened? Because it got a degree of publicity and I sent it out to people in advance. I spent a large part of Sunday trying to send out the report. If you want to send an email to all Members of the House of Lords, you cannot; you are blocked from doing mass emails of that kind, so I did it in As and Bs. I thought I had better target it a bit, and when I went to the list I discovered that a number of Peers who are deceased are still on it. To me, that is a classic example of how poor our communications support is.
The press officers are meant to support all committees. They do not have expertise in a particular committee. Each of our committees should have its own press officer who attends the sessions and knows the lobby correspondents well. They should be able to see from the evidence coming in where there is a story. For example, my committee is meeting this afternoon; we are currently looking at RPI versus CPI as a measure of inflation. We have received some evidence that suggests that the two national statistical bodies are not complying with their legislative requirements by not forcing the issue on this matter. That is a newsworthy story. I can guarantee that it will be completely missed; no one will sit through two hours of our committee, or whatever it is.

I could go on all afternoon, but basically the message is that there is absolutely no point in asking busy people to devote their time to producing excellent reports if the result is that the report gets published about eight weeks later when the Government deign to provide a response and the Whips deign to provide an opportunity for a debate, usually late on a Thursday afternoon when everyone has gone home. Unless we can promote that work effectively, it will not be influential.

So that I do not sound as if I am just blowing my own trumpet, when Lord Hollick was chairman of the Economic Affairs Committee he got the then Housing Minister, the very able Gavin Barwell—not much accelerated—to come in for a private session with the committee to discuss our ideas. The Government’s response was delayed because they said, “Would you mind if we delay the response, because we want to put many of your thoughts and ideas in our White Paper?”—which they did. We can be very influential, but we need the means to achieve that.

I have one final point on communications. I am not exactly not politically partisan, but there is a tendency on the part of the House authorities to feel that we must not say anything that looks a bit political, or might be seen to be attacking one particular party’s view. Our reports have always been unanimous. We have had only one vote in the years we have been going, which was under my chairmanship, and even then the report was agreed. The benefit of the House of Lords is that we are not out to make party points and we can make points that would be very difficult for elected Members of the House of Commons to make.

As with boards of public companies, we should have some record of attendance by Members. They want to be on these committees, but the attendance of some people is not very good, and that should be noted. If they are not able to attend the committee, they should come off them and make way for people who are, because it is very difficult to maintain a long inquiry if people are not up to speed. I have probably said enough.

**Q75 The Chairman:** That is excellent. I well remember the report of the Economic Affairs Committee, which you and I were on, about the economic implications of Scottish independence. That was very influential because we adopted an embryonic communications strategy by going to Scotland in that interesting debate, so I accept 100% what you said.
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

Lord Gilbert, there is very poor communications support and we need the means to be influential. You have great experience in this area. Can you add to that?

**Lord Gilbert of Panteg:** I will not repeat much of what Lord Forsyth said. I agree almost entirely with it, and I will tell you why I think it is important. In step with all the work we are trying to do to improve the reputation of the House, we should be doing a much better job of drawing serious attention to the excellent work of the Select Committees, but we need to go out and earn that attention. A shift of resource and some focus on better communicating the work we do would be well rewarded.

As other noble Lords have said, we are well supported by our very small staff teams. They do an amazingly good job of handling each report. They are very expert. Our clerk has been there for a while. The staff give serious expert advice and are very knowledgeable on the subject. The committee is well supported, but that is what we do. We get through a report; we do it well, and we publish it.

An area where we would benefit from a little more help is in getting a focus on publicity for the work as we do it and on drawing attention to our evidence sessions, although members of the committee should do more, and I should certainly do more. As Lord Forsyth said, the nature of our evidence sessions is such that they are polite and very well informed, so we get a lot more out of witnesses than in some other forums. In every single one of our recent evidence sessions, a witness has said something noteworthy and worthy of serious press attention. If we had made a note of it and promoted that evidence session to the media proactively after the event, we would have got significant attention for the evidence. We need to focus on the evidence and on the inquiry as it is proceeding, not just on getting attention for the report.

Apart from anything else, the report lands in a whole range of other news. Our last report, which I think was potentially quite newsworthy, landed at the same time as the Government were considering an intervention in Syria and Mark Zuckerberg was giving testimony in Congress. Consequently, a one-off hit of putting out a press release and trying to get attention for our report was simply not going to work.

Alongside working hard through the inquiry to get media attention on the evidence we are receiving and on our deliberations, another very important role for committees and for us as Members of the House of Lords is to engage with external organisations and take our work to civic society, professional organisations, charitable bodies and bodies that would be interested in a subject on which we are very expert, and position ourselves as people who can make a serious contribution to wider public debate, not just in Parliament and government. The combined effect of that sort of approach and a better understanding of the work of the House is why communication of Select Committee work is important.

**Baroness Taylor of Bolton:** Not all committees are looking for publicity in the widest sense. A lot of the work of the Constitution Committee, or
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

even the Delegated Powers and Regulatory Reform Committee, is about communicating to other Members and Members of the other House. We have to take it as it comes.

Members of this House do not always have as clear an idea as they could about what will be happening. When I got Lord Forsyth’s email 10 days ago, and looked through it on a Sunday, when I have a little time, I thought it was a very good way of making Members of this House understand what was coming up. That was a one-off as far as I was concerned. It was different and useful, and we could do more of that kind of thing in alerting Members before something comes out, not just reading in a press release that something has come out today.

**Lord Forsyth of Drumlean:** The thing we did was really done by our clerk, Luke Hussey. We did very short two-minute videos with committee members. The criticism of the Treasury was actually done by Lord Burns. We attached those as links to the press release. People are very busy; they do not have time to read a summary, but they will watch a video where the main points are put across. The videos were put on YouTube. Within 24 hours, 1,000 people had looked at videos with the main conclusions of a House of Lords report.

Luke did a brilliant job, but they were pretty amateur, and with some in-house facility they could be very professional. Perhaps we could have some kind of unit to do that and communicate to Members. We all get vast amounts of material. If you watched a couple of videos you might think, “That’s quite interesting. I might have a look at that”, whereas the usual thing, in my case, is that you put the report on your desk and think, “I must read that”. A month later the pile has got higher and you never get round to reading it.

**The Chairman:** Baroness Taylor, I think the point you make is that a communications strategy is essential. Who do we communicate with, and how? Last week, Michael Clancy from the Law Society of Scotland mentioned that a communication strategy should be embedded in a committee at the outset. I think Lord Gilbert feels that is the case. Given your expertise in that area, can you help us as we go along, because it is very important to have that communication strategy and to look at professionalising committees?

**Lord Gilbert of Panteg:** A number of Members of your Lordships’ House are expert in communications in a variety of fields. It would do no harm at all to convene a small group of them to look at how we communicate and get the most impact for the work as we are doing it, and how we professionalise the way we dissect a report, find the story lines and proactively sell them to the media. I think we could have found eight or nine serious stories in our last report that would have been attractive to different elements of the specialist and national media. I would be very happy to sit down with other colleagues and have a look at how we might do that.
I echo Lord Forsyth’s point. It is vital, certainly for the Communications Committee, clearly for Lord Forsyth’s committee but maybe not so much for other committees, that there is a press officer in attendance at all the meetings who is able to take stuff from the meetings and produce the story lines.

**The Chairman:** We will take you up on that very good suggestion about a small group.

**Lord Foulkes of Cumnock:** That is really helpful and answers my question about communications strategies. Incidentally, I agree with everything that has been said.

I want to pick up something else Lord Forsyth said. He said he did not realise until he became chair of the committee how much work it involved. That is my understanding. I have not been chair, but I have been a member of committees and I have seen the chairs work extremely hard. We have seen it recently on the ad hoc Select Committee on Political Polling and Digital Media where the Chair, Lord Lipsey, has been working very hard. Peers do not always like to make comparisons with the other place, but for the past few years the Commons has paid chairs of Select Committees. Do any of you think there is an argument for an extra payment for being the chair of a Select Committee in the House of Lords?

**Baroness Taylor of Bolton:** No, and I do not think there should be in the House of the Commons either.

**Lord Patel:** No.

**Lord Forsyth of Drumlean:** No. I want people to love our committees. If we started paying, we would be attacked.

**The Chairman:** That is quite clear.

**Lord Foulkes of Cumnock:** You all say no.

**Baroness Taylor of Bolton:** We all say no.

**The Chairman:** Lord Lipsey came to see me yesterday and left me a paper on communications. He is at one with what you are saying.

**Lord Patel:** The Science and Technology Committee communications strategy clearly differs depending on which inquiry we are doing. We try to be proactive at the beginning of an inquiry and have some kind of press communication, or wider communication, and to do the same at the launch of the report, including what Lord Forsyth mentioned about doing a video, which was highly successful.

**The Chairman:** It was very good.

**Lord Patel:** It produced tremendous press interest; we got coverage in virtually every dimension of the media. We also have a Twitter account that is quite overloaded and difficult for the staff to cope with, because we already have over 50,000 followers.
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**The Chairman:** I think it is 60,000.

**Lord Patel:** It is increasing. That produces a problem of resource. Some people expect some kind of dialogue or response, which is not always possible for the staff to deal with when the volume gets bigger.

The last report we produced, which was much more technical and specialist, was on the life sciences industrial strategy launched by the Government. At the launch, we produced a cartoon-type video that was well received by the sector, because it highlighted the issues raised in the report. I have no doubt that the next one we are planning will receive much wider publicity because of that.

**Q76 Lord Smith of Hindhead:** I hope that if I manage to curtail some of the more unhealthy aspects of my lifestyle I might still be in the House of Lords in 10 or 20 years’ time. My question is twofold. What do you believe is the purpose of House of Lords committees and, importantly, where do you think House of Lords committees should be in 10 to 20 years’ time?

**Baroness Taylor of Bolton:** Assuming we are not superseded by election. The role of the House of Lords is very much to hold the Government to account and give the House of Commons opportunities for second thought, but because we are not the prime Chamber we have the opportunity to take on wider issues that may cross departments, as we do with some of the ad hoc committees. We can have a more interdepartmental look at some issues. Some of the work we do on issues is good and has been good in the past, and we have had ad hoc committees.

My main concern, which was touched on vaguely earlier, is that the House is too afraid of controversial issues. We almost equate controversy with party politics. There are a lot of issues that are very controversial but that totally cut across the political divide. We have had suggestions for committees on certain issues in the past. ID cards is one of them. I would very much like this House to take that on board because I think we could be very purposeful, productive and take the heat out of some of the party political arguments on issues such as prostitution and the present controversy about legalising drugs. The House of Lords could play a very purposeful role.

Politicians in the Commons are very wary about touching any of those issues because of the political consequences. I would like to see the House of Lords being a bit bolder in the issues it takes on. We could have a very significant role in moving public debate if we were to do so.

**Lord Forsyth of Drumlean:** I agree with every word of that. To try to answer the question directly, when colleagues said to me, “What on earth were you doing advocating building more council houses? We didn’t think you would be in favour of building more council houses”, I said, “The evidence led us to that conclusion”. The strength of House of Lords Select Committees is that they are evidence-based. We do not tolerate people who try to make partisan political points. That is not our role. The fact that it is evidence-based, that I do not really care if I upset anybody in my party
and that there is no patronage involved, which is increasingly a feature in the House of Commons, gives us an edge.

Where will we be in 20 years? I hope that we will be in a position where we have a House of Lords with the kind of expertise that we draw on in our committees, but that we are not able to tap into because the committees are so constrained by resource. This is in a week when our sub-committee is considering trade and all sorts of things under our rules. Lord Gilbert made the point that we have to be able to demonstrate to the wider country the quality of the work being done here, and get away from the idea of half-asleep people in funny clothes claiming £300 a day for which they do nothing, which is the image we have in the country. We will not dispel that image by saying it is not true; we will dispel it by showing the depth and quality of the work we do.

The most egregious example is the fault not of this House but of the BBC. For a whole year, the BBC was following people around the House. It filmed committees but did not even show the work of the committees, which is a bit like turning up at Buckingham Palace and not showing the Queen. This is central to what the House does, but we are not getting that across. Whether we are here in 20 years’ time doing what we are doing will depend on how effective we are at communicating that work and persuading the country that we are acting in the nation’s interests.

Lord Gilbert of Panteg: I agree. The work of committees looking across government departments produces very good reports. I am struck by the number of departments we take evidence from in some of our inquiries and the continued lack of joined-up government. Our reports can help with that.

In 10 years’ time, we should have a set of Select Committees looking at the big, broad fundamental issues facing the country and the connection of policy, perhaps driving ad hoc committees that look at specific issues that arise from those. For example, recently a number of Select Committees have been looking at apprenticeships from different perspectives, not repeating one another’s work. I know Lord Forsyth’s has. Our committee produced a section on apprenticeships in its report on the theatre industry. A model for the future could be Select Committees looking at broad policy-making, but then, perhaps from the work of those Select Committees, ad hoc committees could be formed to look at immediate public policy issues that arise.

Lord Forsyth of Drumlean: I am sorry to talk too much, Chairman, but I want to give one little anecdote, for which I will probably be told off, to show how people do not understand what we do. We want the Secretary of State for Education to come to our committee to discuss our latest report. We have been trying to get a date. We were offered dates on Thursdays and Wednesdays. I said to the clerk, “Go back to his office and explain that Ministers’ first duty is to Parliament and we meet on Tuesday afternoons”.
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

To be fair to the office, they sorted it out, but they did not realise that our committee met at a fixed time on Tuesday afternoons. There is a big gap for the House of Commons and the Executive about what we actually do. It is not just communicating to the public and to ourselves; it is also communicating to the Executive.

**Lord Smith of Hindhead:** I always find it odd that the media tend to measure what Members of the House of Lords do by the number of times they speak, or whether they have spoken in a debate. I agree that some noble Lords ought to speak a little more and others perhaps a little less. I am not encouraging anybody. I hope that, if communication can work and we can get a wider understanding of the work of Select Committees and ad hoc committees, it might also be a measure of the work Lords do. Having served on three ad hoc Select Committees, I know how much work goes into them.

**Lord Patel:** The Science and Technology Committee, in the House and sometimes outside, is regarded as a technical committee. In the House itself, a lot of people think that it is science-based and highly technical and those who are really interested will take part in it; the rest of the House does not. That can be changed by making the science that forms the basis of policy important, because all policies at the end of the day are based on some evidence; otherwise, it is not worth having them.

There was a point about communication to the wider public. We meet in Committee Room 4 and sometimes in other Committee Rooms. There is a facility to do broadcasts on the web, but not on television channels. Committee work is hardly ever recorded on the television channels. Many more people would follow it and watch it, particularly sessions on science-based areas, if it was possible for them to see the sessions.

We do not have facilities in all Committee Rooms to do that; only some Committee Rooms are equipped for it. I am starting seminars—the first is on 11 July—to better inform Members of the House on key areas of science. Numbers are limited because of the facilities. The first one will be on the threat of global infections, and we will move on to technical and other areas in due course.

**Baroness Taylor of Bolton:** One thing that has not been mentioned as a possible role for committees in the future is post-legislative scrutiny, to see how the legislation we pass is being implemented and what the difficulties are. We have a very significant role there.

**The Chairman:** Lord Norton has given us both a paper and evidence on that. We are very alive to that really important point.

**Lord Low of Dalston:** There is a question on the sheet that I have been invited to ask, but first I want to ask Lord Forsyth a little question about communication. Lord Patel suggested that there might be a bit of a burden on staff, particularly if people were interacting with the committee and responding. When you made those videos that 1,000 people looked at, did anybody come back to you in response?
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

Lord Forsyth of Drumlean: I think 1,000 people responded within 24 hours. I do not know what the latest number is, but today I have received two emails from people saying that they have problems with student loans and things of that kind and asking whether I can help. I will refer them to their Member of Parliament. I have been on and off the Economic Affairs Committee for quite a number of years. In all those years, I have never had that experience.

Someone made the point that there will be a resource issue arising from more exposure, which will need to be dealt with. I do not do Twitter; I do not tweet or whatever, so fortunately I miss most of the stuff people say about me, but I am beginning to think that perhaps one ought to succumb. The truth is that a lot of the people we need to reach do not read newspapers, and one thing we have not touched on is that our expertise and ability to communicate on social media is at about my level, which is not a very complimentary thing to say.

Q77 Lord Low of Dalston: That is very helpful. I will move on to my question. Can you tell us what you think are the key strengths and weaknesses of House of Lords committees and their current structure? Since that is quite a pro forma question, you might like to concentrate on the structure.

Lord Patel: First is the support the committee receives. I am speaking for my committee. A large inquiry, as Lord Forsyth says, takes longer, but we are able to do it well because we explore the depth and breadth of the subject. That takes a long time. At one time, Science and Technology did one short inquiry and one long inquiry. In that way, we could do three inquiries in a year. Now we tend to do shorter inquiries, but we do not cover the subject in depth, and the sector outside says, “You did not cover X, Y and Z, which are important”. They are right. Support for committees is the first thing.

The second thing is support for the chairman. I do not know about the other chairmen, but, in my case, whenever we do an inquiry, lots of people want to see me. Whether we are going to ask them for evidence or not, they want to meet me. It is not possible for me to handle that. Most of the time I say I am sorry that I do not have time to respond. I do not want to place an extra burden on the clerk by arranging meetings with those people. If you have a meeting and there is a real purpose for it, you need somebody who will take a note of it and feed back to the work. Again, I cannot add that, but it is an important point if we are to develop and strengthen committees.

Lord Gilbert of Panteg: I agree. We need support for chairmen. We all get lots of requests for meetings, and I try to see everybody who wants to see us. We get a lot of written evidence. Our latest inquiry will probably be for 12 months because it is an in-depth inquiry, and we will have a lot of written evidence. If members of the public take the trouble to write to you in response to an inquiry, you have a duty to read their evidence. There is a lot of work, probably three days a week of committee work.
One of the strengths and weaknesses is the way reports are produced. It is very formulaic. The strength of that is that the professional teams—the clerks who review each other’s work—do a really thorough job. They know how the reports are produced; they do a very good job of analysing and checking each other’s work, so our reports are always sound and they never go wrong. However, we look at a lot of different subjects and I wonder whether the formulaic approach to producing reports works well.

In our last inquiry, we wanted to explain the digital advertising market, which is incredibly opaque and different, and we would have liked to produce something really graphic in the report to demonstrate that. There was no opportunity in the way reports are produced to get into subjects using graphics and different ways of presenting evidence. The balance between accuracy, thoroughness, intellectual integrity and creativity in presenting our reports is something we should look at.

**Lord Low of Dalston:** Do you think we have the balance right between sessional and ad hoc committees?

**Lord Gilbert of Panteg:** On the whole, yes. There may be some merit in the Liaison Committee looking at some of the things coming out of a number of sessional committees and spotting an issue that could lend itself to an ad hoc inquiry, but I think the balance is right.

The other thing I wonder about is giving notice of all the questions to our witnesses. A lot of our witnesses these days are professional witnesses. Our committees do a very good job of interrogating them, because they know where they are coming from. Members are polite and they are knowledgeable in their questioning, but, if we send out nine questions, witnesses come along with nine three-minute statements that they read to camera. We have experimented with one or two of our witnesses by sending them only three or four broad questions and allowing 20 minutes on each one for members of the committee to ask supplementaries and hold them to account. I wonder whether that practice works well now.

**Baroness Taylor of Bolton:** I agree with what has just been said about the formulaic nature of reports. It has strengths as regards checking, but there are some weaknesses. We have to be willing to be adaptable.

The balance of ad hoc committees is probably okay at the moment, but we have to reconsider that post Brexit. We may need to look at the structures again, and I know you want to take that opportunity.

The greatest strength is that members of committees do not grandstand, as you might see in other places. The importance of that cannot be underestimated. As to weaknesses, although committees try hard, I think we have to try even harder to ensure that the people who come to give evidence are not just the usual suspects.

**The Chairman:** Absolutely. There has to be a UK-wide approach.

**Lord Forsyth of Drumlean:** I agree with all of that. This is going to get me into trouble, but I would like the powers of the usual channels to be
somewhat diminished in this area. Committees should have power to co-opt and bring in expertise when they are pursuing particular areas of interest. The Economic Affairs Committee has a sub-committee that usually looks at the Finance Bill. At the moment, there is a whole load of things that are very topical and that we could be looking at.

Our committee—you may have been on it at the time, Chairman—looked at the role of the big four post the financial crisis, and we made a number of recommendations about the conflicts between auditors and people who were doing other work. Those were subsequently introduced at European level and were very influential. I am looking at what has been going on with the big four at the moment, and I would love our committee to be able to do something, but we simply do not have the resource. I look around the House and see lots of people who could make a contribution to an inquiry of that kind. I know this is all about resources, but it is also about being topical. We have not yet decided on our next long-term inquiry, but if our committees are seen to be relevant and influential people’s whole perspective of the House of the Lords will change.

The Chairman: It would be good if you took up the issue of Beaufort Securities.

Lord Forsyth of Drumlean: That is another one.

The Chairman: That is live at the moment and it is very important.

Earl of Courtown: How do you think that any future committee system we develop can cover gaps in scrutiny? Do you think that working more closely with Commons committees could help to cover that?

Lord Forsyth of Drumlean: The latter point is really important.

Baroness Taylor of Bolton: It is.

Lord Forsyth of Drumlean: I have asked our clerk to invite the Education Select Committee to a joint meeting to discuss some of the issues, and it may be able to follow up on them. It is really important. One of the things that is very irritating is that we do not always know what the House of Commons committees are going to do, or they do not know what we are doing, so people duplicate work. Quite frankly, if we are doing a long inquiry, we will cover it in much greater depth than the other place, where sometimes one has the impression that the staff drive it and members come along and read out their questions and do not always attend terribly well.

The Chairman: Sarah Wollaston, Chairman of the House of Commons Liaison Committee, has given evidence to our committee. She recommended that both Liaison Committees meet. To your point, Lord Forsyth, Frank Field had coffee with me and said that in his present inquiry on Carillion corporate governance he would value guests from the House of Lords, so we are opening up that conversation.

Baroness Taylor of Bolton: We need more flexibility.
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

Q79 Lord Foulkes of Cumnock: Lord Forsyth implied that he was not very happy about the way in which members and Chairs of committees are nominated and chosen because it is by patronage; it is by the Whips.

Lord Forsyth of Drumlean: It cannot be in my case.

Lord Foulkes of Cumnock: I wondered about that. It seems very unusual. Would any of you favour changing the system, or are you all happy to leave it to the Whips to make that decision?

Baroness Taylor of Bolton: I am not in favour of changing the system. It is up to the party groups to create their own system, as we do in the Labour group. The Labour group approves the nominations. If other parties have their own ways, that is for them. There might be merit in what Lord Forsyth was saying about the possibility of co-opting people, but that is a separate issue. I would leave the existing system as it is, but perhaps with a bit more flexibility. I declare an interest.

Earl of Courtown: A number of you commented on attendance at committees. I assure you that the Conservative group looks at that very carefully.

Lord Patel: I have no further comment, except to say that when party groups choose members, particularly on a technical committee such as Science and Technology, they should bear in mind what the committee does. It does not help either the member or the committee if it is not an area where they want to contribute.

Lord Gilbert of Panteg: Looking at my committee, that certainly works. Members of the committee, from all parties and the Cross Benches, are expert and experienced in the area, but interestingly that has not made it an echo chamber. We have ended up with committees, certainly in my case, of really good and appropriate people, and our job now is to get what they do more valued.

Lord Forsyth of Drumlean: If the question is whether we should elect Chairmen and go to the House of Commons system, I do not think that would work terribly well. There might be a certain amount of game-playing, and as a Tory I might be somewhat disadvantaged. I agree with Baroness Taylor that it is for the party groups to sort out.

I hinted at reducing the power of the usual channels. I agree with Baroness Taylor that one of the absolutely screaming issues is whether we should have some form of national identification, through cards or some other system. For two years running, people have put that forward as a possible ad hoc committee, and for two years running it has not happened and there has been a row on the Floor of the House. That is what I am thinking about. Perhaps the system needs a bit of tweaking, because, if there was a vote in the House, there would be overwhelming support for the issue to be looked at.

Lord Foulkes of Cumnock: You could have a word with your members on the Liaison Committee the next time we consider it.
Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)

Lord Forsyth of Drumlean: I thought I was getting into trouble.

The Chairman: That was a terrific session and really helpful. The points you have made to us about staffing, support and communications strategies are important. We have had submissions on structure on which we can engage with you, but I like to think that as we go on with the inquiry we will continue this discussion. It has been hugely helpful to us this morning. Thank you for your attendance.
Dr Brigid Fowler, Senior Researcher, Hansard Society and Dr Ruth Fox, Director and Head of Research, Hansard Society – Oral Evidence (QQ37-47)

Dr Brigid Fowler, Senior Researcher, Hansard Society and Dr Ruth Fox, Director and Head of Research, Hansard Society – Oral Evidence (QQ37-47)

Submission to be found under “Dr Ruth Fox, Director and Head of Research, Hansard Society and Dr Brigid Fowler, Senior Researcher, Hansard Society – RISOE0005 – Oral Evidence (QQ37-47)”
The Chairman: Welcome to the second session of our Committee’s deliberations today. Can you identify yourselves for the Hansard writer please?

Dr Ruth Fox: I am the director of the Hansard Society.

Dr Brigid Fowler: I am a senior researcher at the society.

The Chairman: Welcome. We received your report a day or so back, but I have not really had time to look over it. Maybe as we go on we will be able to delve into it. I notice, in the first paragraph, when you talk about strengths and weaknesses of the current House of Lords system, you say it is more flexible, it is not tied to the shadowing of government departments and it therefore has more discretion. That seems to fit in with what the previous witness was talking about. Could you focus on the strengths and weaknesses, and the gaps we have in the system at the moment?

Dr Ruth Fox: Could I just begin on a note of transparency? For your information, four members of the society’s board of trustees have links to this House. Three members of our board, including our chairman, are members: Lord Sharkey, Baroness Jay and Lord Lexden. The former Clerk
of the House, David Beamish, is a relatively new trustee as well. I will just note that for the record.

The Chairman: I was at a breakfast meeting with Lord Sharkey and he wishes you well, so there you are. In terms of transparency, Philippa Tudor, the clerk to the Committee, declares the following interest: her husband, David Beamish, is a trustee of the Hansard Society. We have now completed the declarations.

Dr Ruth Fox: You have heard this from numerous witnesses, so it will be repeating the evidence somewhat, but strengths include the nature of the specialist expertise of the Members, the forensic and rigorous approach to the scrutiny, and the quality of the reports that consequently emerge. It is fair to say that a number, if not all, of the committees are important sources of persuasion and power, influencing both the views of Members of the House, for example through the Delegated Powers and Regulatory Reform Committee, Secondary Legislation Scrutiny Committee and the Constitution Committee, and the wider debate and views of stakeholders.

Importantly, of course, they also influence government. The committees have what my colleague at the Constitution Unit, Meg Russell, describes as anticipatory power, in terms of persuading Ministers to think again. That is not necessarily a measurable and quantifiable strength, but upstream in Whitehall Ministers are considering what the select committees in the Lords might think about the issues that they are dealing with.

Brigid has looked at the issue of the scrutiny gap compared to the Commons following an election. One of the strengths of the House, reflecting the less partisan nature of things, is that you can be up and running much more quickly than the Commons certainly managed after the last general election. Looking at when the EU Committee in this House, compared to the Exiting the EU Committee in the Commons, managed to get up and going, we are talking about a number of months’ difference. That is an important strength.

Inevitably, because of the less partisan nature of Lords select committees, the cross-cutting issues and the often very technical scrutiny issues that you tackle, such as secondary legislation, delegated powers and constitutional matters, are less headline grabbing. That does not lend itself to the kinds of public engagement that some of the House of Commons committees can undertake. I would argue that is a strength, but you can also see that, if you are concerned about wider public engagement, it could be a weakness as well.

The Chairman: I was a member of the Economic Affairs Committee here when it produced the report on Scottish post-referendum independence. That had an enormous impact in Scotland and it was a matter of real debate. It led to a greater understanding of the issue and it was quoted in all the debates the whole way through. That is just one, but there are quite a number of examples.

Baroness Hayter of Kentish Town: Before the end of the session, I have to leave. Brexit has not quite finished, so I will have to go before the end,
I am afraid.

I have a question about Brexit—Brexit will never finish. I have read the paper, but not in the depth that I have read the other ones, because we have not had it for very long. There are two questions. One is about the role that committees ought to have during the transition period. Post that, there will be all the trade agreements, which presumably people will have to alter. Could you say a little about how you envisage committees working in both those timeframes, first over transition and then, following that, over any trade deals?

I am partly interested because, as you heard earlier, one way of dealing with this is to look subject-wise, rather than task-based. I am interested in teasing out the difference. For example, the task of scrutinising a trade deal is not subject-based; it is task-based. In answering it, bear in mind that I am interested about how committees work both during transition and when there are trade deals. That should be an easy one.

**Dr Ruth Fox:** Brigid leads on our Brexit work.

**Dr Brigid Fowler:** Thank you for the question. As far as the immediate Brexit and transition-related questions go, the first point is an obvious one. That is the degree of uncertainty that we are still looking at. I note that the EU Committee in this House has made you a submission that says, “We may need to come back to this later in your inquiry when it is to be hoped that some greater degree of certainty about how transition is going to work will have been achieved”.

That said, in a sentence, we recommend that the EU Committee in some form should continue to exist during the transition period. We see that there will still be a job to be done in monitoring new EU law and policy as it comes through during the transition period. We can say some more about that. The main challenge in terms of that task will be the information that is or is not coming through. The current EU scrutiny system in both Houses rests entirely on the information and the documents that the UK Government receive as a member state Government, which they then deposit in Parliament. My reading of the draft withdrawal agreement is that they will no longer be receiving those documents. One thing that the scrutiny committees in both Houses could usefully do, as soon as everybody feels confident that this is definitely what is going to happen, is to clarify who is going to be getting what information from the EU institutions in the transition period. There is a monitoring role.

The European scrutiny system in the UK has rested on the idea of holding the UK Government to account for their behaviour in the EU Council, and they will not be there any more. You might say, “Why do we need a scrutiny system?” The UK Government may still have some very limited areas of discretion under the terms of the draft withdrawal agreement. They may still be able to opt into some justice and home affairs law, and they may have the right not to abide by some foreign policy decisions where they would have a veto as a member state. There are some tiny bits of executive discretion that may still need scrutiny.
Dr Ruth Fox, Director and Head of Research, Hansard Society and Dr Brigid Fowler, Senior Researcher, Hansard Society – Oral Evidence (QQ37-47)

There are two other things I would mention. One is the UK-EU joint committee that is provided for in the draft withdrawal agreement. That will need some form of parliamentary oversight. The EU Committee has already started to take this up with the Government. It has not got much clarity so far, but that will need some kind of parliamentary oversight. That may have precedent-setting effects, because it is possible that that kind of bilateral joint committee will be a feature of future UK trade agreements with new partners post Brexit. There is that.

Finally, again, we are not sure, but it is likely that negotiations with the EU on the post-transition relationship are going to carry on during the transition period. We do not know how much of the meat of it will have been done before we leave and how much of it will carry on. It is likely that at least some of it will still be going on. Those negotiations will need to be scrutinised, as the EU Committee is doing at the moment. There is quite a bundle of things that will need EU-related scrutiny, monitoring and oversight during the transition period. Our view is that, given the EU Committee is already doing that, it seems simplest to still have it in place, although it may not need to function exactly as it does now. The scrutiny reserve resolution will not be necessary, but there will still be things for a committee to do.

Baroness Hayter of Kentish Town: I am feeling so embarrassed. I had completely forgotten about the EU-UK joint committee. It slipped off my agenda. A supplementary to that, and it is possible one of my colleagues is going to mention it later, will be about the devolved aspects that are coming back. The Chairman here, Lord McFall, has already set up some talks or meetings with the devolved Parliaments.

The Chairman: They are about Brexit.

Baroness Hayter of Kentish Town: It is really interesting. Might you see that as part of the overview of Brexit as well?

Dr Brigid Fowler: I would have thought so. I am not a specialist on devolution, and I am aware it is very complicated and delicate. I would make the general point that the Brexit process so far does not seem to have increased levels of trust between the UK Government and the devolved Governments. It is not clear exactly how the relationships between the Governments are going to work post Brexit, but anything that Parliament could do, and in particular this House, to build relationships and to include the devolved Assemblies would be valuable. When we come on to looking at new trade agreements, which was the second part of your question, the devolved Assemblies will want to have their voice heard and built into the process somewhere.

Lord Foulkes of Cumnock: On the committee structure generally, can I say first that this is one of the best submissions we have had? It has more innovative suggestions than I have seen from any other and it is really good. I particularly like three things. One is a legislative standards committee and more work on post-legislative scrutiny. We can certainly look at doing more on that. We are right behind you there.
I like the idea of a new permanent committee on devolution. That is very interesting. A number of colleagues have suggested to me that the House of Lords can be the guarantor of devolution. Perhaps I should say "the House of Lords or its successor", because it is going to be overtaken, once we get a Labour Government, by a new senate of the nations and regions. That can be a guarantor of the devolution settlement and bring it forward. I know you said you are not an expert on this, but if we could have more information about how it might work from someone in the Hansard Society, that would be excellent.

Also, on policy foresight and horizon scanning, this future forum or committee is a really interesting suggestion. Again, I would like more ideas on that. Some of the other submissions are really just nuts and bolts. This is really positive and forward thinking, and I would welcome any more information you can give us on it.

The Chairman: That was a snappy supplementary, George.

Q39 Lord Williams of Elvel: Could I pursue this question of future trade deals and how they might be scrutinised? Undoubtedly, any negotiation is going to be more or less in the public domain. You cannot stop it. You get a mention of chlorinated chicken and the whole of the press goes up in arms. How do you form a committee that will follow day-to-day negotiations of a trade deal, rather than simply scrutinising what comes out at the end?

Dr Brigid Fowler: That is one of the key points. As the Committee will be aware, at the moment the default procedure for the scrutiny of international agreements in the UK is very much weighted towards the back end. Parliament formally gets involved only when it comes to implementation and to consent for ratification, under the Constitutional Reform and Governance Act. There is quite a strong consensus, among people who work on trade deals and know how other countries do trade deals, that for scrutiny to be effective, and indeed for the whole process of making a trade agreement to be effective, it is very useful for Parliament to be involved upstream in the earlier stages of the process, and not just Parliament but civil society, business and stakeholders more broadly.

I am hanging quite a lot of my hat on the Government’s acknowledgment, in connection with the Trade Bill, that the reason it suggests that Parliament should be content with only relatively weak scrutiny of implementation at the back end of the trade agreements that are going to be made under the Trade Bill is because of the so-called EU rollover agreements. The Government say that these have already been subject to a domestic scrutiny process in the UK, through the European scrutiny system.

I am hoping that means the Government see the value of that kind of upstream scrutiny when it comes to the UK making its own ab initio trade agreements that are not currently covered by the Trade Bill. I have to say that is a hope, rather than anything that is particularly strongly founded. The Government, to put it mildly, are not being hugely forthcoming about how they see the scrutiny of new trade agreements at the moment. It is understandable why, but we do not have much information.
Dr Ruth Fox, Director and Head of Research, Hansard Society and Dr Brigid Fowler, Senior Researcher, Hansard Society – Oral Evidence (QQ37-47)

The Chairman: We have seen that as a gap.

Dr Ruth Fox: Brigid is working on a paper about the scrutiny options for trade going forward. That will be forthcoming in the coming weeks, or possibly months, depending upon her progress and how things develop.

Baroness Hayter of Kentish Town: There is no pressure there, then.

Dr Ruth Fox: Of course, we will ensure that all members get it. We are looking at a range of options and consulting on them.

Q40

Lord Smith of Hindhead: I also have to give apologies, because I will have to leave before the end of the session today. You have just touched on my question. I wonder whether you have identified any current scrutiny gaps in the House of Lords. If you have identified any, how should they be addressed?

Dr Ruth Fox: We are not thinking about them so much as gaps in the scrutiny by the House of Lords. We are looking on a bicameral basis at the gaps in the scrutiny landscape across both Houses, thinking about the relative strengths of both Houses and what they would focus on.

In terms of this House, there is a mapping exercise to be done, whether it is between this Committee and the Commons Liaison Committee, about what exactly is already being done and where the gaps are. One of the gaps that our research has spoken about in the past is financial scrutiny. The Commons departmental Select Committees have that as a core task in relation to the annual reports and so on of their departments. But the breadth and depth of financial scrutiny in the Commons in practice is actually quite limited. This House has done less of it, until the formation of the Economic Affairs Committee, in part of course because of the whole debate about the financial precedence of the Commons.

We advocated as long as 10 or 12 years ago in our report on financial scrutiny, The Fiscal Maze, that there was a case, given the technical expertise that this House is known for, for it picking up things such as tax administration in more detail, which the Commons is not going to do. There is also an argument for consulting with the Public Accounts Committee and the NAO, and looking for things in their reports that the PAC does not have the capacity or expertise to pick up, that are cross-cutting and that could arguably be looked at in this House. Those are two examples.

For us, a big strength of this House and what it is known for is legislative scrutiny. One of the big gaps is post-legislative scrutiny. One ad hoc committee every session looking at one Act is not enough to build up a significant body of evidence to develop the cycle of learning around legislative standards, or to influence policy debate on future legislation. That is also not something that the House of Commons does or is ever likely to in the foreseeable future. That is a very obvious gap that this House would be well equipped to fill. Those are some examples. There are others in the submission.

Lord Smith of Hindhead: It is a very useful answer. Thank you.

The Chairman: The fact that Sarah Wollaston mentioned the Liaison
Committees meeting is a real step forward, if we can put some meat on that.

Q41 Lord Williams of Elvel: You have covered quite a lot of this already, but how should the work of post-legislative scrutiny committees be developed, and in what direction?

Dr Ruth Fox: We know that the Government are committed to reviewing an Act three to five years after Royal Assent. The first thing we need from them is a clear programme of work for what pieces of legislation are going to be reviewed when, and what the pipeline is, so that any committee would have that and know what the work programme is going to look like. Then it would need some criteria for thinking about how to select and prioritise what to look at. The question that would need to be thought about quite a bit is this: do you have a permanent committee looking at the review of Acts one by one, or do you have a committee with a series of two, three or four sub-committees, each of which is looking at an Act? It would build up that volume of evidence quite quickly. You might, for example, in one Parliament get through 14 or 15 reviews, as opposed to four or five, depending on how you structured the committee.

I would have thought that the committee, similarly to things such as secondary legislation or delegated powers, would issue guidance to government about what information it expects to be provided in the reviews and any supplementary information it wants. I imagine the committee would be able to call the Leader of the House to account for issues pertaining to the legislative programme. It would be able to call the Ministers at the time the legislation had come forward, and the Ministers now in post in the relevant department, to look at whether what Ministers claimed at the outset has indeed been delivered and, if not, why not. That is not in a culture of blame, but rather in a culture of learning and trying to take that forward, so that public policy mistakes are not repeated constantly.

Lord Williams of Elvel: It is perfectly clear that there is going to be an enormous volume of secondary legislation once Brexit comes about. Is there a role for House of Lords scrutiny of the effect of secondary legislation, in the same way as there is for an Act of Parliament?

Dr Ruth Fox: Yes, undoubtedly. The Secondary Legislation Scrutiny Committee will do the sifting of the instruments coming forward. Whether it also does, through an expansion of resources, a subsequent review of the changes, or whether you want a separate committee, perhaps a sub-committee of a post-legislative scrutiny committee, to look at that is open to question. It is unclear at the moment what the timetable of the statutory instruments coming forward is going to be, dependent on transition and the link between the European Union (Withdrawal) Bill and the withdrawal agreement and implementation Bill, and what the Government’s plans are, post transition, for reviewing the secondary legislation. It may well be that they do not plan to bring forward proposals to review and change many of those regulations, but within government some people will be pressing for quite substantial review and a deregulatory approach.
Dr Ruth Fox, Director and Head of Research, Hansard Society and Dr Brigid Fowler, Senior Researcher, Hansard Society – Oral Evidence (QQ37-47)

Until we know a little more about those plans, it is difficult to be definitive. But it might be that a sub-committee of the post-legislative scrutiny committee, or indeed that, if it is just one committee, could have that on its radar and liaise with the secondary legislation scrutiny committee about that.

Lord Smith of Hindhead: It would be a Henry VIII committee.

Dr Ruth Fox: It is more than Henry VIII. Yes, there will be some of that, but there will also be a huge volume of non-Henry VIII powers that could have huge impact on public policy. In fact, the concern we have is that people are focusing too much on the Henry VIII powers, which could have minimal actual administrative or public policy impact, and missing a lot of the non-Henry VIII powers, which could have huge influence and potential for change. We need to focus on the policy implications, not the form of the power.

Q42 The Earl of Courtown: We have already touched on the devolved legislatures, and I was wondering, when we look at gaps in scrutiny, how any future committee structure can be improved by our relationships with the devolved legislatures. Basically, I want to hear where the Hansard Society thinks this should go, rather than what the Government think they are going to do. We have heard a lot about what the Government are going to do; it would be good to hear about the Hansard Society.

Dr Ruth Fox: We have long argued, prior to Brexit as well, that there is a gap, in that there hitherto has been no inter-parliamentary forum to address devolved issues. That is clearly a gap and it needs to be filled. I know there are now informal arrangements, but formalisation of those would be helpful.

We have suggested in our evidence that there is scope for a devolution committee. That could simply be for the nations of the union, or it could be for nations and regions. It depends how you want to do that, what else you might do with regional policy issues and whether they would go to a different permanent committee. That would give you a structure and a forum for tackling some of those issues. We need to think about how that would differ from what the Scottish Affairs and Welsh Affairs Committees in the Commons are looking at. Clearly, there would be a link into the Constitution Committee but, given that this is going to be an expanding and increasingly important issue for us going forward, to have devolution matters largely dealt with in this House through the Constitution Committee model may be too constraining. You might want to think creatively about how you engage the members from the other legislatures in that, whether on a formal or informal basis.

In relation to public engagement, there was a suggestion that you go out to Scotland, Wales and so on. We talked about this in relation to comparative analysis of what is happening in other legislatures around the world. You do not have to do it by going, if you have the technology. I have given evidence to the Canadian Parliament by video conference. I did not have to go to Canada, as much as I would have liked to. There are ways in which you could do that consultation with Scotland and Wales with the new technology.
The Chairman: Public engagement and understanding is important, as a concept.

Dr Ruth Fox: It is important. We have been trying to get to this in our evidence. Some committees, in their models and their focus, lend themselves more to public engagement than others. Simply having public engagement as a requirement of all the committees is unrealistic. With the best will in the world, delegated powers and secondary legislation, and to some extent what the Constitution Committee studies, are subjects of such technical and legal complexity that there will not be massive amounts of public engagement built around them.

The Chairman: I can understand that.

Dr Ruth Fox: The International Relations Committee, the Economic Affairs Committee, the devolution committee or the committee we talk about on the big cross-cutting policy issues of the future would be the focus for public engagement.

The Chairman: You mention in your report the current barriers to engagement, which is good.

Lord Foulkes of Cumnock: Do you work with the Constitution Unit, the Constitution Society and other non-governmental bodies on issues like this?

Dr Ruth Fox: In what way do you mean “work”?

Lord Foulkes of Cumnock: Do you have joint seminars or joint working parties?

Dr Ruth Fox: Occasionally, yes. It tends to be more informal than that, but we work quite closely with the Constitution Unit. Professor Meg Russell is a good friend of ours, and we work closely with them on research. We try to avoid duplication, if anything, where we can. We have held joint events. Occasionally we have held joint seminars.

Lord Foulkes of Cumnock: I appreciate what you said about modern technology, and House of Lords committees have taken evidence, on a number of occasions, using different types of modern technology. Nevertheless, if we constantly meet in London, there is a perception, rightly so, that this body is very London orientated. As I said earlier, more than 50% of Members now live in London and the south-east. That is not a national legislature, is it?

Dr Ruth Fox: It technically is a national legislature, but it has flaws and weaknesses in it, as a result of the composition. We would encourage some committees, where it is relevant, to go out. If you had a nations and regions committee dealing with devolution, it would be an obvious candidate for spending more time outside London than others.

Lord Foulkes of Cumnock: How do we widen the audience? Many LSE and Oxbridge graduates know a lot about our work, but ordinary working people do not know so much. How do we get more people involved in what we are doing and a wider audience?
**Dr Ruth Fox:** I would turn it round a bit. The question, in terms of your communication and engagement strategy, should always be this: why are you doing what you are doing? What is the objective and what are the audiences you wish to influence as a consequence? To go back to the earlier discussion, for a number of the committees, reaching out and engaging the general public is not necessarily the objective. For certain committees, influencing Members in the House, and providing them with an analytical evidence base that they can use in their own individual scrutiny of legislation or public policy, is critical. Influencing the Commons is important. Influencing government is important.

On the cross-cutting issues, thinking about the citizenship and civic engagement committee inquiry, the public polling and digital media inquiry or some of the work of the Lords Communications Committee, for example, where you are looking at a broader public policy agenda, there is a case for reaching out through a broader range of stakeholder groups. I can send you a copy of a report we did a few years ago for the House of Commons, which was about improving the communication strategies for the new digital age.

With the best will in the world, you are not going to reach Joe Public on most of these issues. Most members of the public do not even realise that committees like this exist and are happening. They think that even departmental committees in the House of Commons happen only when a real crisis hits and they get Rupert Murdoch in. They do not realise that that is the daily meat and drink of parliamentary scrutiny in the House of Commons. You have to be realistic about what you are aiming for and the audience that you want to influence. If it is the general public, that is going to be problematic, because I suspect you do not have anywhere near the resources to achieve that.

**Lord Foulkes of Cumnock:** Is reaching out more the role of the House of Commons, the elected Chamber, anyway?

**Dr Ruth Fox:** I do not think it is necessarily more its role, but the nature of the inquiries it does, being more headline grabbing, lend themselves more easily to that. As elected politicians, that is higher up their agenda than it is for you. The point is that you should be and are demonstrably different, and should play to your strengths. That is not to say there is not a lot of work that could be done in terms of improving understanding of what you are doing among the media, in particular. The quickest route to influencing the broader public is to influence the media about what you are doing, and to work through stakeholder interest groups, not necessarily London-centric stakeholder interest groups, but reaching out more broadly through umbrella networks across the nations and regions.

**The Chairman:** You are saying that there is a need for public understanding and engagement, and we need to reach out. Not every committee needs to reach out, but it is important for some committees to reach out, and therefore committees have to have a communication strategy for that. For example, to give you an ad hoc committee, Baroness Tyler did financial exclusion; that was hugely helpful, reaching out. Only yesterday we engaged Michael Sheen. He opened a credit union in
Scotland. There was a causal link between the report that we did and what he did, so it led to greater public understanding. Parliament, in the words of John Bercow when he spoke to me, is becoming a bit more like society, rather than an exclusive set.

**Dr Brigid Fowler:** That goes directly to one other point I would add. Research we have done strongly suggests that people are often looking for evidence of their engagement having an impact and of feedback. If committees expend the resources involved in having a consultation or a particularly wide evidence base, or going outside London and holding events, and all that happens is you generate material that then sits on a website, that risks making the situation worse than it was if you had not even bothered. People are looking for evidence. What happens next? Why should I get engaged? What are you going to do with it? What is going to happen as a consequence?

**The Chairman:** You articulated that by saying not “broadcasting”, but “feedback”. It is a two-way communication: push, pull. That is a very important element.

**Q44 Lord Low of Dalston:** I am Colin Low, by the way, and like Lord Foulkes I greatly appreciated your submission. Given the pace of change these days, do you think that House of Lords committees need to learn to be more adaptable, and to adapt more quickly?

**Dr Ruth Fox:** Our critique would be that the adaptability and flexibility you have built in is essentially a once-a-year opportunity through the choice of the ad hoc committees. We would question whether that is necessarily as flexible as you might want going forward. For example, Lord Smith made reference earlier to the polling inquiry, and said a year was not long enough. You could have done with longer, but were constrained by that. That flexibility has not worked quite as effectively as you might have wished.

Our argument, based on the evidence, is that, if you mainstreamed some of these cross-cutting and longer-term issues in a future-type committee model, you would obviate the need to have as many ad hoc committees as you do, and could reserve the ad hoc for real flexibility during a Session, at any point where something came up that Members felt there was a real need to address and that was not being picked up by the House of Commons. That would give you more flexibility.

To the broader point on technology, there is a general question across both Houses about whether committees are making the best use, or as expansive a use, of technology as they might be able to, and whether they will be able to keep pace with the way technology is developing and changing. I would not say that we are necessarily experts in that area.

**Lord Low of Dalston:** What you envisage, then, is a framework with flexibility or adaptability built into it.

**Dr Ruth Fox:** Yes.

**Lord Low of Dalston:** That addresses my point.
Lord Williams of Elvel: May I throw a curveball at you? Have you any view on the composition of different committees: whether members should be elected by the House, appointed by the Whips or whatever? Have you any view on that?

Dr Ruth Fox: We have not done any work on it. We have not picked up, although you may have, anything from Members over the last few years suggesting that there is any deep unhappiness about chairing arrangements or membership. We have picked up concerns about membership rotation, every three years, and whether that is working as well as it might.

Lord Foulkes of Cumnock: People are concerned about it.

Dr Ruth Fox: Some members have expressed concern that that is not working effectively and you get a loss of experience. We have picked up some of that.

Dr Brigid Fowler: I have heard of it being raised particularly in the context of Brexit. People are worried about looking at a multiyear process and some quite technical issues, and I have heard concerns that committees might lose people mid-process.

Dr Ruth Fox: Looking at the Commons by way of comparison, election of chairs and members was regarded very positively in the 2010 Parliament. There is a sense in which it has not been quite as effective in later years, or at least there is some criticism of it that we were not hearing in the early periods. In terms of the election of members, we sometimes find in the Commons that either the parties have used the election process to obstruct the composition of the committees, and therefore that has created a scrutiny gap, for their own important political reasons, or sometimes not enough people are putting themselves forward for election to those positions. It is not a universal success story. There are some issues and flaws with it.

Our view would be that, unless there is deep unhappiness among members, if it is not broken, it is not something you need to focus on fixing.

Lord Foulkes of Cumnock: In my brief intervention earlier, I was hoping to get a response about both the permanent devolution committee and the policy foresight horizon scanning committee. Would you be able to flesh it out a bit and say how you think each of them would work?

Dr Ruth Fox: Do you mean now, or in a paper?

Lord Foulkes of Cumnock: I mean in a paper.

The Chairman: It would be good if you could take up the comments from the previous witness, Alun Evans, as well.

Lord Foulkes of Cumnock: They are very good suggestions, and more information about your thinking on it, how it would work, who would sit on it and their remits would be really helpful.

The Chairman: Can I read you a couple of short paragraphs?
“Parliament consistently fails to present itself as the sum of its parts. As a result, much of what is best gets submerged in broad-brush criticism of those areas in which it palpably fails to meet the expectations of the world outside.

“Irrespective of the incremental improvements being made in almost all aspects of Parliament’s work, the pace and, in some cases, the nature of change are failing to match that which is taking place in society at large. The result being that Parliament is not only failing to stay abreast of developments and opportunities but is, if anything, falling behind”.

You may be familiar with that, because that was the Hansard Society report from 2005, and that was a foreword by Lord Puttnam. Do these comments still have a resonance, 13 years later?

**Dr Ruth Fox:** To some extent, yes, and that is why we would point to our ideas around the futures committee, the longer-term thinking and the cross-cutting policy issues. It is about not just thinking of where we are now, but getting ahead of where we may end up in some of the complex policy areas the country is going to face, particularly in relation to Brexit. Yes, there is a task-based job to do, with scrutiny of the here and now, the transition period and so on, but there is also a longer-term scrutiny exercise to be done on the challenges and opportunities for the country in whatever new world we face.

**Lord Foulkes of Cumnock:** We will still be in the European Union a year from now.

**The Chairman:** Apart from the noise from the sidelines, can I thank you for your presence this morning and your submissions, which were excellent? We look forward to continuing engagement with you. It was very helpful indeed. Thank you.
Lord Gilbert of Panteg, Chair, Communication Committee, Lord Patel, Chair, Science and Technology Committee, Baroness Taylor of Bolton, Chair, Constitution Committee and Lord Forsyth of Drumlean, Chair, Economic Affairs Committee – Oral Evidence (QQ74-79)

Lord Gilbert of Panteg, Chair, Communication Committee, Lord Patel, Chair, Science and Technology Committee, Baroness Taylor of Bolton, Chair, Constitution Committee and Lord Forsyth of Drumlean, Chair, Economic Affairs Committee – Oral Evidence (QQ74-79)

Submission to be found under “Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communication Committee, Lord Patel, Chair Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee – Oral Evidence (QQ74-79)”
Wednesday 31 October 2018
11.15 am

Watch the meeting

Members present: Lord McFall of Alcluith (The Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Lord Lang of Monkton; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 23 Heard in Public Questions 165 - 173

Witnesses

I: Lord Hennessy of Nympsfield FBA.

Examination of witness

Lord Hennessy of Nympsfield.

Q165 **The Chairman**: Lord Hennessy, welcome to our evidence session on the review of committees. We are delighted that you have been able to give us your wisdom on the way forward. I know that you want to make a brief outline of your views, so the floor is yours.

**Lord Hennessy of Nympsfield**: Thank you very much. It is a great honour to appear before you.

I have a few preliminary thoughts. On what does the continuing value and utility of the House of Lords rest? Above all, I think it depends on our being a house of knowledge, which we display in two ways: through our scrutiny function and the deployment of our investigative Select Committees, both sessional and ad hoc, to maximum advantage.

Like any other storehouse of knowledge and experience, we have, I think, a prime duty to disseminate, to assist, indeed not just to influence Parliament's deliberations but to help to shape the wider national conversation too—to help the country make sense of how we have got to where we are in our national life and our international relations, and to offer a feel of what the great French historian Fernand Braudel once described as the “thin wisps of tomorrow” that are just discernible today.

We need, in short, to mobilise every particle of our thought and our analytical capacity, aided by a communications capability commensurate with that ambition. We must not hoard what we know and what we find
out. The freeing up of the resources brought about by the partial dismantlement of our European constellation gives us a shining chance to refresh our committee arrangements that goes with the rich grain of the past but also cuts along new lines.

Over a quarter of a century ago, the Jellicoe committee recognised the considerable scope and reach of the Lords Select Committees, but was struck, I think quite strongly, by how this has been accomplished, as it put it, “without any coherent structure”. There have been several improvements since then, but now is the moment to have another go and to strive for even greater coherence and reach.

Q166 The Chairman: Thank you very much for that explanation. You mentioned the issue of a national conversation, and I remember in a previous seminar with you that you illustrated that point. Why is it so important for us to have a national conversation?

Lord Hennessy of Nympsfield: We live in a world where evidence-based policy and evidence-based discussion are not always in rich supply. This is very much an evidence-based House. One of the justifications for having a non-elected House of Lords is that you can bring people in who have been around the block a bit, to say the least, in the professions that they have held. They have had considerable experience before they come in, either as politicians at the other end or in their own particular professions.

Perhaps this is overdoing it a bit, but we could be the best think tank in town, because we have the right to summon persons and papers, we have terrific back-up with the clerks, we have specific advisers and we have people who could bite on anything that comes up of almost any magnitude. One thing I was struck by after I came into the House in 2010—I thought I knew quite a bit about it having been a journalist for quite a long time—was that the depth of knowledge and expertise was even greater than I had imagined. We have to make maximum use of that. We can do that, and I think we already do; it is not a revolution we need, it is a very pointed and careful evolution.

The Chairman: Should we expand on with whom we have a conversation?

Lord Hennessy of Nympsfield: I think the country are our clients, are they not? The whole nation. Also, we have the educative function with the young, which we can come back to in a minute. I am sure we will come back and talk about how we might do that to greater effect. When you consider the accumulation of reports each year, I would value—and the country might as well—a six-monthly summary of what the Lords had found out and what the Lords had recommended, which in the days of electronic media can be disseminated everywhere.

When I was on the Times, long ago and far away, when we thought the first language of the readership was Latin, we were taught to write as if we were writing for the clever sixth-former in Wigan who had masses of curiosity but no prior knowledge. If we went down the route of, say, a six-monthly publication, written with bounce, it would be absorbable by the clever sixth-former, and I think that might help. It is just a small thought.
There is a tremendous degree of ignorance out there about how the House of Lords operates. Of almost all the national institutions, the moving parts of the constitution, we are the most wide open to parody, and through parody misunderstanding, and anything we can do on this front is our primary way of mitigating it.

**The Chairman:** That is an excellent idea.

Q167 **Lord Lang of Monkton:** In your short introductory remarks you demonstrated your justified reputation as a musician with words and a magician with analysis—

**Lord Hennessy of Nympsfield:** That is kind of you.

**Lord Lang of Monkton:** —and I think you struck a lot of chords even in that short time.

The come-back question tends to be: “Yes, but how?” May I ask you about two aspects: on broadcasting and the media? You know that the television programme on the House of Lords failed to make any reference to the committee structures at all, which must have been a deliberate, wilful decision to play to their own picture of our activities and how they wanted to project them.

The second aspect is the form of the studies that we do. We tend to do longer studies rather than the short, focused tomorrow’s-newspaper approach that inevitably happens in the House of Commons. We would not want to dilute the reputation for quality that our reports have, but how can we promote them more effectively? Is it the form of the reports and the timing of them, or is it the media itself, and how can we get round any perception and bias against us that exists?

**Lord Hennessy of Nympsfield:** That is a crucial question. When I was a practising specialist journalist, there were about three committees that I used to watch very carefully for the *Times*. Cultivating a relationship with the Chair and some of the members, and indeed the clerks, and get to know them is a crucial element, because the churn among specialist journalists is not as great as it is among general reporters, and there is a symbiosis of interest.

Obviously, there are lines to be drawn because confidentiality comes into these things, of course it does, but if you make a friend of the specialist journalist, in the sense of letting them know what is coming up, what might be important and what they might be interested in, and flagging up the evidence sessions that they may not pick up otherwise, you get a relationship between the press bench and the committee which I think can be very productive. When I was a practising journalist, we had naturally very good relationships with successive chairmen of the Treasury and Civil Service Committee. We were not entirely specialist journalists but very largely. That is one way of doing it.

I am very keen on a mixed portfolio of the long, deep studies and the quicker ones. Walter Bagehot wrote an essay in the 1850s about Robert Peel, the Prime Minister, and he said that the key to Peel was that he always kept “a mind in reserve” that could be applied when unforeseen
circumstances struck. I think our ad hoc committees are our mind in reserve, our ability each year to swing in on an area that is not necessarily covered by the Standing Committees.

You can have short, sharp inquiries that can still give the very highest quality indeed. We must not get drawn into headline chasing, because we are the more reflective thinking end of the whole process. We need a portfolio of products that can fit these circumstances, and I think we have that already.

Perhaps being a nerd by birth almost, I do not mind reading heavy-duty reports, and I rather like the way we disseminate them, but it does not work for everybody. This is me being a media tart, to be honest, but I think every committee ought to think about which are the couple of sentences they want to cling to the Velcro of memory and to be the key sentences for the leader writer of the newspaper concerned to focus on in thoughtful coverage of it. I am not sure that committees always strive to find those encapsulating sentences with a degree of vitality that leap off our pages and leap on to theirs.

Lord Lang of Monkton: Would you agree, though, that a more important responsibility than getting our reports out into the public domain is to inform government and persuade it of the strength of the arguments that we are laying before it?

Lord Hennessy of Nympsfield: Absolutely, and I should have said that in my opening remarks because that is crucial. Indeed, unlike any other think tank, we are in the fortunate position that Governments have to reply to us within a fixed time.

Lord Lang of Monkton: They should do, yes.

Lord Hennessy of Nympsfield: They should do. They do not always, but they cannot ignore us, so we have a very privileged position there.

In the end, it is the quality of ideas that works. I remember that wonderful line of Keynes at the end of *The General Theory of Employment, Interest and Money* where he says: “Madmen in authority, who hear voices in the air, are distilling their frenzy” from “some defunct economist” of many years back. We have not to be defunct or many years back; we have to be current. Whoever is in authority, and however they distil their knowledge, our input should be crucial to that, which I think it is. We must not undersell ourselves.

Lord Foulkes of Cumnock: Peter, as you know, I have great respect for you and the work you do. However, we are not a think tank, and knowledge and experience is not the prime requisite. We are a second chamber of a legislature. I was talking with someone the other day who did not understand that we deal with all the legislation that the House of Commons deals with, in the same way and in such detail, and they could not believe that we have Members here who are not paid, who get no secretarial or research assistance and very little help in other ways. Do you know of any other second chamber in a bicameral legislature where the members are treated in the same way?
Lord Hennessy of Nympsfield: I do not. The paradox that we live off, and we do very well by, is that we are a house of amateurs, but deeply professionalised as well. We are sort of volunteers, are we not, in that sense?

I should have emphasised more in my opening remarks the scrutiny function, but we tend to think of that as our bread and butter. We do it very well. There is more care and attention in here than most second chambers apply, because of who we are and our strange mixture of backgrounds. You would not design the human inflows that make up this Chamber, but somehow they have considerable effectiveness.

Lord Foulkes of Cumnock: More than half the Members are from London. Most of them have other jobs doing something else and this is a sideline. Is that really the best way to run a second chamber of a legislature?

Lord Hennessy of Nympsfield: It may be a sideline for some, but it is a sideline taken very seriously by them. I forget which Member of the Lords mentioned this to me when I first came in. I was trying to absorb how it felt to be within the House as opposed to reporting it, but they said that we are a coalition of the willing and knowledgeable. Depending on the business, we descend on it, but in a different constellation of Members depending on the subject matter, and I think that is why it works very well.

Roughly speaking, on a normal day there are about 400 of us, but the make-up of the 400 changes according to the business. You would not design it like that. It is an extraordinarily eccentric way to choose a group of people for a second chamber. Essentially, it is a product of history. Nowhere else is there a mixture of blood with the hereditaries, piety with the Bishops, and the political charge of the great many.

I never know quite how to describe the Cross Benches without sounding presumptuous, but you would never design any institution where piety and blood mixed with professionalism and political high charge, would you? It is bonkers. It is not rather like that description in JK Galbraith’s wonderful little book *American Capitalism* of the bumble bee. An aeronautical engineer would say that a bumble bee should not fly with wings that small and a body weight that size. It simply should never be airborne, but this does not seem to worry the bee; it just does it. I think we are a bumble bee chamber.

Lord Foulkes of Cumnock: As always, you describe it beautifully and poetically, as Lord Lang said, but I still disagree with you.

However, there is one other aspect that disturbs me about this Chamber, and that is that the legislature and the Executive do not seem to be clearly defined. There is an awful lot of interference by the Executive in the work of the legislature. Do you detect that and do you think that is a worry?

Lord Hennessy of Nympsfield: That is a running theme in the British Parliament and always has been. As Clem Attlee once said of the H-bomb, “It needs watching”. In fact, there are many Members of this Chamber who are very sensitised to it—including you, if you do not mind me saying so—and quite rightly too, but there are advantages in the Executive being
drawn from the legislature. You know people much better that way, it reduces the chances of gridlock, and deals can somehow be done to keep the show on the road.

I have always been ambivalent in my thinking about that, but the Executive power grab is always lurking, is it not? The House of Lords is surely one of the great organised resistance movements in the western hemisphere. People spot that at some distance in this Chamber. We are a wonderful resistance movement. We disguise it in various ways, but that is what we are. We are a permanent awkward squad, are we not?

**Lord Foulkes of Cumnock:** I hope so. Thank you very much.

**Lord Smith of Hindhead:** You will be pleased to know that I have written down “Velcro of memory” on my piece of paper here, which I am hoping to use again at some point in the course of the day.

I liked your phrase that we “must not hoard knowledge”. I have served on three ad hoc committees and, even though I am a sideline Peer, as George described it, I somehow managed to get that done as well. I have sometimes been frustrated that once we have done our work, it does not have the wide public view which perhaps some of the committees in the other place have. That is not because of the subject but perhaps because the Lords is not a particularly sexy subject as far as the media is concerned.

What is your view of Peers with specialist knowledge or skills occasionally going down to the other place and serving on one of their committees, where a Peer could make a contribution and would get perhaps a slightly wider public view or audience, just for the reason that those committees tend to be reported on more than ours? Might that not help the reputation of the House of Lords and perhaps focus on the fact we have this expertise?

I am not suggesting that many MPs would want to come up here to serve on our committees; I think the traffic would be rather one way. But we have this expertise here and we should not hoard our power and knowledge, as you said. Could there perhaps be a benefit if a mechanism were put in place to do that?

**Lord Hennessy of Nympsfield:** That is very interesting. We could become sort of interns in each other’s systems. I defer to members of the Committee who have been MPs, I really do. I think there might be a bit of jealousy or amour propre. You sometimes see this on the Joint Committees anyway, which have a mixed record. Some do very well. I was on the Joint Committee on the pre-legislative scrutiny of the House of Lords Reform Bill 2012. That did not work particularly well as the atmosphere was sulphurous because of the very nature of the question, Lords reform being, as we all know, the Bermuda Triangle of British politics. Every two generations, a set of politicians disappears into the Bermuda Triangle and some never reappear. Others reappear but vowing one thing: never to go back in again. I think that committee was a bit doomed from the start.

Some are a bit of a disappointment. I do not want to be critical, but the Joint Committee on the National Security Strategy, for example, has terrific people on it, but it only meets one a month and its reports are not that frequent. The drum beat is much lower than the quality of the committee
deserves, because it is a very high-quality committee. We all have our pet projects of what a new committee might be—

**The Chairman:** We will not let you go without mentioning it.

**Lord Hennessy of Nympsfield:** That is one area that we can look at. It is very difficult, because the emotional geography of the two Houses internally is so different, and the emotional geography between them can also be very tricky. Many of you—I am not one, because I have not been a Member of Parliament—are naturally amphibious when it comes to understanding the two anthropologies and the difficult anthropology between. It is an intriguing thought. I do not think anybody has suggested that before.

**Q170 The Earl of Courtown:** You mentioned education in your opening remarks and how important that is to reach and scope and how far the work of the committees is expanded upon and spread.

The question at the back of my mind is: what is the purpose of these committees? Can we be an educator and hold government to account, which I think is one of the prime and most important features of the committee work in this House? As far as the reach of the committees is concerned, there is always a suspicion in my mind that it very often reaches the same class of individual, the same group of individuals, and it is very difficult to expand it further. How can we expand the reach of the committees while remembering that, in my view, the prime importance of the committees is to hold government to account?

**Lord Hennessy of Nympsfield:** Of course the only sure way of getting media attention is to have a frightful row, but that applies to all institutions. Having been a judge on some book prizes, for example, you get no coverage at all unless there is a huge falling out which somebody leaks, and that is not what we should be thinking about.

Maybe I am Pollyanna-ish about this, but when I graduated from college just under 50 years ago, 7.5% of my age group went to university—it is just touching 50% now—and I have always had the view, and I still have it, although it has not been fulfilled bountifully, that college education is not the be-all-and-end-all, but if you have a cohort of that size going through, surely the market for thoughtful, careful and analytical work increases.

Paradoxically, the quality newspapers have not flourished that much in recent years, for economic reasons, but in some ways they have not flourished because there has been a poverty of aspirations. Surely one can imagine a wider market for our committee, but you are right to keep bringing me back to the scrutiny function, which is the first and foremost function. Perhaps a think tank was not a very good metaphor, but when you think about it, not many institutions can call upon the resources that we can call upon as a matter of routine in our committee coverage.

Another problem which was touched on is the fact the media does not take much notice of the House of Lords unless it is showdown time, as you know because you are a Whip. Lord Marlesford and I worked on the *Economist*
together in 1982. We shared a room, and it was a most happy period professionally because he was a wonderful roommate. I remember he said to me when I came here, “If ever you feel the need to blow an official secret without any danger, do it on the floor of the Chamber because nobody will ever pick it up”.

**The Chairman:** In the incident with Peter Hain last week in the Chamber he made his personal statement at 2.43 pm, and it took the *Telegraph*, which had been working on the story, three-quarters of an hour to find out, so that perhaps makes your point.

**Lord Hennessy of Nympsfield:** It makes the point rather powerfully, does it not?

Q171 **Lord Williams of Elvel:** Could we talk a little more about media attention? It seems to me that the Commons committees get quite a lot of media attention, not least because they are more confrontational than we are and they can summon senior Ministers. We cannot summon senior Ministers of the Commons because we are not allowed to. This means that Ministers come here by invitation that is accepted or they do not come. Since they come by accepted invitation, our meetings tend to be more emollient than they would otherwise be. If we could get a Secretary of State sitting in your place here and we were allowed to interrogate him as we might, even though politely we might get more media attention. Would you agree with that?

**Lord Hennessy of Nympsfield:** That is profoundly true. Another factor affecting Commons committees is that the MPs tend to know the political correspondents as a matter of routine. We know quite a lot of them, but not in that strange way where the lobby lives with the House of Commons to a high degree, and where you get much more media attention to start with because of the quiet word, “You might find something interesting being said tomorrow morning; do turn up”.

I would not want us to get rougher in style—I do not think you are suggesting that—because of all the legislative chambers in the world, courtesy is used as a weapon here, and I think it is a very powerful weapon.

**Lord Williams of Elvel:** I am talking about being slightly more pointed in some of our exchanges.

**Lord Hennessy of Nympsfield:** Pointed but courteous.

**Lord Williams of Elvel:** Certainly as polite as we all are. Nevertheless, we can be polite and pointed or we can be polite and banal. The latter is the often the case, I am afraid.

**Lord Hennessy of Nympsfield:** That is very interesting. Maybe I have been lucky. I was on the Science and Technology Committee and I think we avoided banality and we were quite pointed, in a particular way, partly because that committee is dripping with fellows of the Royal Society, so it is bound to be forensically very gifted, is it not?

**Lord Williams of Elvel:** And you are batting on their wicket.
Lord Hennessy of Nympsfield: That is right. I found the Science and Technology Committee absolutely fascinating for another reason: it is the most agreeable form of adult education I have ever experienced. I was on it as a token innumerate. I was truly privileged to be on it. That is the only one I have sat on for a proper span.

Q172 Lord Low of Dalston: Peter, I think we would be interested to hear about something you are peculiarly well placed to comment on. In your introduction, you spoke about committees participating in a conversation with the nation, not just talking to themselves. What is the value for committees to be derived from a conversation and interaction with the thinking parts of the nation, perhaps predominantly the academic world and the research community but not exclusively? We would love to hear from you about how we can get value from that and, indeed, whether that is an area in which we should be particularly trying to develop a conversation and, if so, how we get best value out of it.

Lord Hennessy of Nympsfield: Thank you, Lord Low. I think we could make genuine friends and partners—in fact, we already do—with bodies such as the British Academy, of which I am a fellow, and the Royal Society and the Royal Society of Engineering, not just the S&T Committee but more widely across the piece. The British Academy covers all the arts and humanities and the Royal Society covers the scientific side. They know where the pockets of knowledge are in a way that is very hard to find out unless one is in the profession already. In my experience of being a fellow of the British Academy, they are more than delighted if they are summoned to the colours of Parliament one way or another as expert witnesses, or, indeed, as informal consultants about who we might turn to for specialist advice.

On the Braudel point I was making about horizon scanning and the thin wisps of tomorrow, would it be possible to think in terms of part of the remit of the team backing up the sessional Standing Committees being a horizon-scanning element to look at what might be coming that could be massively important and is just a little touch at the moment? The person designated to be on watch for that could deal with the better end of the think tanks, because some of them are pretty good at that, so that our committee structure can be right on the edge of everybody else; not looking for novelty for the sake of novelty, but having a sense of what might be preoccupying the country and Parliament in the years to come, in the near and middle future.

We could look to have a kind of Territorial Army reserve that can help us. It is very hard to know without the help of the learned societies which person in which university department is the exact person you might need to help with a particular inquiry. Think tanks, universities and learned societies are deeply flattered to be asked to help, so I think it would work quite naturally if we went that route.

Lord Low of Dalston: Academics are particularly well placed to exercise a strong influence within the committees, because as often as not they will provide the expert advisers to the committees.
**Lord Hennessy of Nympsfield:** Yes, exactly, but the tricky bit is discovering the young up-and-coming ones. Quite often, understandably, the academic help that is sought is from those who are deep into their professional lives, which is as it should be, but if you can find a very clever post-doctoral student who is way ahead, that would be useful.

When I was supervising PhD students, I used to expect the best of them within three weeks to know more than I did about their subject, and invariably they did. Baroness Hayter, who I think is a member of this committee, was one of my best ever PhD students, and she certainly passed that test—not that she was a young post-doc when she came to me, she was a mature student and an extraordinarily wonderful person to teach. Lord Low, you know from your own experience just how stunningly good the young post-docs can be, but we do not pick them up soon enough, is what I am perhaps suggesting.

**The Chairman:** Horizon scanning is an idea that we will look at.

Q173 **Lord Lang of Monkton:** You have touched on some aspects of the topic I was about to raise, which is the structure of committees, so I will broaden the question I was going to ask slightly and ask: if you were starting with a clean sheet, how would you build a committee structure in the House of Lords? Would you shadow departments or shadow particular subjects? Would you take a thematic approach? Would you enable committees to appoint sub-committees in certain areas or even co-opt specialists in a particular subject for the purpose of one particular inquiry, such as a solder or a surgeon—whoever might have the expertise that a committee might like to have on its own side rather than as a witness? Have you any thoughts on that in a broad sense?

**Lord Hennessy of Nympsfield:** That would be a good idea.

**The Chairman:** Can I add to that question? On the last couple of occasions I came along to them, you were a participant in the British Academy seminars, led by Lord Stern, on the structure of committees. Could you incorporate your comments on Lord Stern’s proposals into your answer to Lord Lang’s question?

**Lord Hennessy of Nympsfield:** That was very much the thematic approach: to try to think of perhaps six areas of running concern to the country, society and the world, and to go broad in that sense, but also to have the capacity through the sub-committee appointments to go narrower into a bore hole—in the good sense of going into a bore hole. I had not thought of the power to co-opt a really knowledgeable person who was not a Member of either House, but that is a tremendously good thought.

**Lord Lang of Monkton:** Or even from within the House for the purpose of one particular inquiry.

**Lord Hennessy of Nympsfield:** Absolutely; knowledge from this House for a particular inquiry would be very good.

I do not know what the constitutional position is concerning somebody co-opted to sit where you are who is not a Member of either House.
**Lord Lang of Monkton:** Nor do I.

**Lord Hennessy of Nympsfield:** What we perhaps need is what Philip Zeigler once said to my MA students: that the British constitution depends almost entirely on instantly invented precedents. If we were designing afresh, we could do that.

However, the main test is effectiveness. That is always very difficult to measure. All the best things in life are beyond the measurement of Treasury performance indicators, as we all know. Given our own resources, being able to measure our impact is very difficult indeed, but that is no reason for not thinking high, wide and handsome. If you were starting afresh, it would be very interesting.

I am not sure what I think is the best number on a committee. I have the feeling that some are a bit too large. You need a combination of bite and intimacy on a committee, which is quite hard to do. A problem with the Joint Committees is they are almost invariably rather large.

**Lord Lang of Monkton:** You also have to straddle the party representation to avoid a partisan result coming out.

**The Chairman:** We are taking that issue forward in the next few months with seminars, and hopefully we will have Lord Stern along looking at the structure of committees, so we look forward to your involvement there.

You mentioned the constitutional position. I am also chairman of the Procedure Committee on whether the Standing Orders are to be changed, so I will take that back directly.

**Lord Hennessy of Nympsfield:** So you could invent a precedent.

**The Chairman:** I have had informal discussions with the House of Commons about looking at the issue of parliamentary scrutiny, not just in the House of Lords but the House of Commons, and I got some very positive feedback from the chairperson of the Liaison Committee, Sarah Wollaston, and Frank Field. Frank Field, in his position on the Work and Pensions Select Committee, said that during the Carillion inquiry he would have loved Members of the House of Lords who have experience in corporate governance and pensions to be on his committee for a certain time. We are looking at that. There are issues associated with it, but I suppose you would think that was a good idea.

**Lord Hennessy of Nympsfield:** I certainly would, yes. While we are on the theme of the Commons, I have never been bothered that much by overlap. We can get a little too precious about that. When you look at the instant success of the international relations sessional committee, some might see that as cutting across the Foreign Affairs Committee in the House of Commons, but I am not sure it does, again because the anthropologies of the two Chambers are so different that it is a different set of minds and backgrounds on the same themes. We have perhaps been hypersensitive to that in the past.

**The Chairman:** From my discussions with MPs they appear quite relaxed
about it. I have spoken to the chairs of the Defence, Treasury and Health committees, the Work and Pensions Committee, and other committees, and I think we could find a rich seam there.

**Lord Hennessy of Nympsfield:** That is very encouraging. There are two areas that I think would benefit from having a Standing Committee. The first is the one that Lord Hollick presses very persuasively, which is the industrial strategy. Everybody is signed up to the need for one of those. We are now living through the eighth industrial strategy since 1945. At the moment all parties think that is necessary. That is a big running theme, and we have a lot of people in here who would bring a lot to that.

The second area is defence and national security. If you look at the National Security Council’s *National Security Capability Review* of last June, there is an extraordinary width to how the old Cabinet Office Overseas and Defence Secretariat has developed. We need to reflect the way the Government do it, and I think the National Security Secretariat and National Security Council is a reform of David Cameron’s that will endure. Given the background of many people in our Chamber, they are absolute naturals for that. Of course, that would overlap with foreign affairs in the Commons, and with defence, and to some extent with international development.

Also, the new Cabinet Secretary’s fusion approach to policy-making very much reflects the new National Security Secretariat realities. We need to catch up with that. If we were designing afresh, we could do that. As the House of Lords, we should have had that ever since Arthur Balfour invented the Committee of Imperial Defence. The National Security Council is just the old Committee of Imperial Defence with better IT, as far as I can see—it is a very Arthur Balfour institution—but the House of Lords did not go in for Select Committees much at the beginning of the last century.

**Lord Foulkes of Cumnock:** I am very glad that you mentioned the success of the International Relations Committee, but it is indicative of some of the difficulties of getting change in this place that it took us three years to overcome the objections from the establishment in this place to setting it up. We have to take that into account. You probably think of me as a continuing rebel and trouble maker. We need them here.

**Lord Hennessy of Nympsfield:** One of my favourite books of AJP Taylor is called *The Trouble Makers*.

**Lord Foulkes of Cumnock:** You mentioned the National Security Committee, but the Intelligence and Security Committee is a very good Joint Committee of both Houses, appointed by the Government. Do you not think it is astonishing that of the two Members of the House of Lords on that committee, there is no one from the Official Opposition?

**Lord Hennessy of Nympsfield:** There used to be. I think the Labour Party very kindly gave it up so that a Cross-Bencher could take the place.

**Lord Foulkes of Cumnock:** No, we did not.

**Lord Hennessy of Nympsfield:** You did not. There was a degree of coercion, was there?
**Lord Foulkes of Cumnock:** No, we sought a place on it and did not get it.

**Lord Hennessy of Nympsfield:** One of the things that worries me about that committee, as you know Lord Foulkes, because we have talked about it, is we do not routinely debate their reports any more. We used to debate them every year, but we have got out of the habit of doing that. I think that innovation has worked. It has developed mightily since 1994 when it was created.

I am trying to think of an example of a new committee—I know it is sui generis in terms of security and it is like none of the others for a variety of reasons—but when you look at the Standing Committees we have created, they have nearly all worked out very well.

**Lord Foulkes of Cumnock:** The last time we debated the Intelligence and Security Committee, I was on it and I had to report to the Grand Committee. I do not think we have had a debate since then.

**Lord Hennessy of Nympsfield:** I think we might have had one since then which we both spoke in, and I remember it because we sat next to each other.

**Lord Foulkes of Cumnock:** Who answered on behalf of the committee?

**Lord Hennessy of Nympsfield:** Lord Ancram.

**Lord Foulkes of Cumnock:** Michael Ancram. We have had one.

**Lord Hennessy of Nympsfield:** I think so. We have got out of the habit of that, which is a great pity because it continually matters, and the reports are fascinating.

**Lord Foulkes of Cumnock:** They are.

**Lord Hennessy of Nympsfield:** They are classically an example of what we have been touching on a lot this lunchtime. When I was a young jounro in the old days, in the late 1970s, when Whitehall was amazingly buttoned up compared to how it is now, if you leaked the existence of a Cabinet committee let alone its Cabinet Office classification number, there was very often a leak inquiry. So much more is disseminated now. We forget just how tight a system it was in the late 1970s. We now get all this cornucoplic reporting on areas that were of maximum sensitivity in the Cold War. Of course, they are still sensitive, but in our lifetime of looking at the secret world there has been a transformation in the way information is put out there. It is very rarely picked up, which amazes me.

**The Chairman:** You mentioned earlier that you wanted to come back to the issue of the education of the young. Could you do that and include the issue of the review of committees, in your view, being linked to the reputation of the House and increasing its reputation?

**Lord Hennessy of Nympsfield:** I think it was your idea, Chairman, when we were talking the other day. That if we had a six-monthly review of the output of committees and the House of Lords’ findings, you could easily
send it to every sixth-former in the country, not just those doing politics A-level. The Science and Technology Committee, for example, does stuff that is relevant to the scientific and technological side of life.

I think we all find, when we have groups of students coming in from schools or from universities, that they are pleasantly surprised by this Chamber when we show them things and the things that we do. The electronic revolution means that we can reach people almost cost-free instantly, so that is the way I would do it.

The education outreach scheme is very good whereby people go and talk to schools and all the rest of it. The trouble, again, when you make these visits is that for at least half of the session you have to get the students to go beyond the parody view of us. The only picture they ever see in the newspapers is us in scarlet dressing gowns. We are kind of the last Ealing comedy that was never made—not that they know these days what Ealing comedies are.

The Chairman: Are there any other comments? No. Lord Hennessy, that was a fascinating discourse, and your views will be very helpful to us in formulating our approach on the review of committees. Thank you very much for taking the time. The quality of your evidence was overwhelming.

Lord Hennessy of Nympsfield: Thank you very much. It was a pleasure.

Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbots, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield – Oral Evidence (QQ144-148)”
Lord Hollick and Lord Mendelsohn – Oral Evidence (QQ100-105)

Submission to be found under “Lord Mendelsohn and Lord Hollick– Oral Evidence (QQ100-105)”
Rt Hon Lord Howell of Guildford, Chair, International Relations Committee and Lord Boswell of Aynho, Chair, European Union Select Committee – Oral Evidence (QQ88-91)

Rt Hon Lord Howell of Guildford, Chair, International Relations Committee and Lord Boswell of Aynho, Chair, European Union Select Committee – Oral Evidence (QQ88-91)

Submission to be found under “Lord Boswell of Aynho, Chair, European Select Committee and Rt Hon Lord Howell of Guildford, Chair, International Relations Committee – Oral Evidence (QQ88-91)”
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

Wednesday 27 June 2018
11.20 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 16 Heard in Public Questions 116 - 125

Witness

I: Ken Hughes, Assistant Chief Executive, the Scottish Parliament.

Examination of witness

Ken Hughes.

Q116 The Chairman: Mr Hughes, welcome to the Committee. Could you identify yourself for the record, please?

Ken Hughes: I am Ken Hughes from the Scottish Parliament.

The Chairman: Are you assistant chief executive?

Ken Hughes: I am indeed.

The Chairman: Would you like to make an opening statement and update the Committee on the key themes and progress relating to the Commission on Parliamentary Reform’s Report on the Scottish Parliament, published on 20 June 2017, and to which I gave evidence on behalf of the House of Lords?

Ken Hughes: Surely, and thank you for the opportunity. I shall explain briefly who I am. I hold the strategic lead for constitutional issues that relate to both the Scottish Parliament and to parliamentary reform. In a way, they are quite complementary topics, because they are all about building parliamentary capacity and the furtherance of the Parliament’s scrutiny objectives. There is quite a synergy between the two big topics.

The commission was chaired by an independent chairman and it had a 50:50 balance between representatives of the political parties in Scotland and representatives of young people, organisations, universities, churches, the private sector and those with diversity expertise. We tried to create this balance of expertise and knowledge from both inside the Parliament and externally to get a view of the Parliament.
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

The commission’s report contained 75 recommendations and, as the Chairman has just said, it reported almost exactly a year ago. The Parliament is currently working through all 75 recommendations, with a view to agreeing and implementing or at least to agreeing the majority of the recommendations before the end of this calendar year. We want to keep some impetus in the scrutiny and implementation of the recommendations and not just let things run into the sand. That is why we have put a firm deadline on that piece of work to finish by the end of this year.

I would categorise the key themes as relating to Chamber business. That may have come more from an external perspective, as that is the showcase of any parliament and is what people see the most. There are quite a few recommendations on parliamentary business and in particular—again, you will not be surprised—a focus on First Minister’s Questions and how they are perceived. We have worked through the recommendations concerning that.

The Chairman: You extended the time for that, did you not?

Ken Hughes: We did two things immediately: we extended the time and did away with the diary question preamble. We ditched that and it is now straight into Questions.

A lot of the recommendations could be grouped under the theme of stronger committees. At least part of the impetus for setting up the commission was that in previous years we were coming under increasing criticism about party of government dominance on committees and whether committees were truly independent, and that point was addressed in some of those recommendations. Perhaps the biggest visible change that we are still working through, and we are quite a bit of the way through it, is how we improve public engagement.

A subset of that is working with young people. There were quite strong recommendations on how we should improve our engagement. Lastly, there were recommendations on equality and diversity. That preceded slightly the current agenda on diversity and inclusion and the recommendations in the commission’s report have been slightly subsumed by all the later events that have occurred. The Parliament is responding independently to that as well. I am happy to leave it there.

Lord Lang of Monkton: Arising from what you have said, Mr Hughes, I am interested in the profile that the Select Committee seeks to achieve. You are a unicameral parliament and that creates quite a different environment from Westminster, for example. You have pre-legislative scrutiny committees and I believe you have post-legislative scrutiny committees, both of which I am very much in favour of and I wish we had more.

In the interests of pluralism, does the Select Committee system see itself as the plaything of the Administration or as an independent source of advice, criticism, information, et cetera? Do Select Committees see themselves as standing out from government and criticising it as necessary?
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

**Ken Hughes:** It would be fair to say that some committees do and some committees do not. In part it depends on the make-up, the Chair and the subject matter of each committee. In this Session of Parliament, where there is no government majority, I can confidently say that most committees, if not all, would see themselves as fulfilling that independent scrutiny role.

**Lord Lang of Monkton:** Does the Administration respond by replying quickly and effectively, taking seriously committee reports?

**Ken Hughes:** Yes. In fact that has never varied through the 20 years of our existence. We have a protocol between committees and Government that sets down the expectations of behaviour and relationships on both sides. Part of that protocol is the amount of time that the Government have to respond to committee reports. We have never got into a situation where a Government have been so dilatory that they have actually interfered or held up parliamentary business.

**Lord Lang of Monkton:** How fortunate you are.

**Baroness Hayter of Kentish Town:** I am finding it quite hard to get a handle here on a very similar issue, which in a sense is the purpose of your committees. At one point earlier you were going to go down what for some of us is the old-fashioned way. They were described at that stage as the engine room; in other words, that is where the majority of the work was done, which would be familiar to those who were in local government a hundred years ago, and it then went to plenary, or whatever.

That is also how the European Parliament works. That was the early description of the committees. However, that is very different from having a scrutiny role and watching over what others do. We are struggling with what exactly the committees do. I think that form ought to follow function, so I am really interested in what you see as the core function, which will then help to explain the form. Could you explain it slightly more so that I can work it out? It is partly because different committees do different things, but could you describe how you see them now?

**Ken Hughes:** The theory has always been to have an amalgam of functions in committee so that a subject committee with a stable membership can build up subject expertise in whatever the subject matter is, and when it comes to scrutinising legislation that falls within its remit there will be a body of knowledge among the membership as well as among all the officials supporting that committee. Those functions are complementary, and by and large I do not think anybody has criticised that dual functionality. Most people see the benefit in that.

The problems we have had in past, almost for the whole time we have been in existence, is that some committees, most notably the Justice Committee, get so many government Bills through that they do not have the time to do any inquiry work of their own. That has eased slightly in this Session, but that has been a problem. Does that explain it?

**Baroness Hayter of Kentish Town:** It is quite hard from my experience, which is much more of the European Parliament, to see how those two
roles go together, and whether a committee, by its own resources, can generate its own ideas or whether it is responding to an agenda set by someone else. It is quite interesting to see how it works in reality.

Another question I wanted to raise is this. Having viewed all this, what do you think is the right size for a committee? I do not know what your average size is at the moment. Presumably you have worked there for over 20 years, so what do you find is the best size for a committee?

Ken Hughes: You should bear in mind the context, which is that we have 129 Members and when you take out office holders and Ministers, we have fewer than 100 potential members of committees. From time to time some political parties—

The Chairman: How many committees are there?

Ken Hughes: It is usually around 16. That means that the committees invariably meet weekly. Membership of a committee varies from seven up to 11, although we have had 13-member committees. The number of members dictates the number of committee places. Usually you have members on two committees that meet weekly. They have all their other constituency and Chamber duties to do as well.

It is quite onerous on Members to fulfil all the parliamentary duties that are put on them. When it comes to, for example, determining the committee’s own agenda, again that is slightly interfered with by the Government’s legislation agenda, but on average, as a rule of thumb, committees do about three or four major inquiries per year in among all the other business they are doing.

Baroness Hayter of Kentish Town: I am struggling to see whether what the committees do is endorsed by the whole Parliament, which often argues for bigger committees—otherwise there is not the same political balance and recommendations can be overturned—or whether the inquiries merely act as an influence on the discussion and the committees’ recommendations do not need to be adopted by the whole of the Parliament. Which is it in your case?

Ken Hughes: When I make occasional speeches or even speak to Members about this, I try to get across the message that, yes, committees are there to scrutinise the Government and legislation that is put before them, but when you drill down, committees are there to improve public policy through scrutiny. It is about exposing objections or views on extant public policy and gathering those views.

I suppose the litmus test would be if committees published reports and the majority of them were ignored. Again, that is not the case. They have impact, and if the report is particularly important, in the eyes of the committee, it will take that report to the Chamber and debate it in Parliament, and you will end up with a resolution.

Baroness Hayter of Kentish Town: Thank you.

Q118 Lord Williams of Elvel: Has a procedure for the election of convenors been put in place now?
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

**Ken Hughes:** We are working on it. Our Standards, Procedures and Public Appointments Committee has looked at that issue once, if not twice, before. There has never been a majority view, frankly. There is an underlying concern or feeling of disquiet about it that since we have such a small electorate, an election might be just window-dressing and it might still be manipulated behind the scenes and what is the point of it? Not to pre-empt the Parliament’s decision, but if I had to guess and speculate where it is going, I think it may well vote this time around for elected convenors.

**Lord Williams of Elvel:** Has there been any reaction from the public about all this? Are people marching in the streets demanding the election of convenors?

**Ken Hughes:** No.

**Q119 Baroness Garden of Frognal:** What has worked best in the Scottish Parliament’s training and continuing professional development for committee chairs and members? I see in your report on page 55 the comment that there are some areas that the current CPD programme does not fully address. How are you responding to the areas that you have identified as being lacking in that?

**Ken Hughes:** The thing that works best is probably the just-in-time training. At the start of each parliamentary Session, when committees are scrutinising their first piece of legislation or when they are scrutinising the budget for the first time, we will precede the committee meeting with training—sorry, I should not say training—with continuous professional development—

**Baroness Garden of Frognal:** We accept either.

**Ken Hughes:** —leading Members through the process and informing them of the process. As I say, that is just in time so that information is fresh and they then go into scrutiny mode. We do online training for Members, but that is more on housekeeping matters such as health and safety and GDPR training. That is effective, because again for the former we are getting Members in a committee room who are there for another purpose already, but with online training they can do it whenever they want. We have found that if we say, “Here’s a training event on X”, and expect Members to come, as I explained before with their diaries, it is almost impossible so we have to go to them, and we do that.

**Lord Low of Dalston:** What is just-in-time training? Is that like the way I deal with my committee papers where I struggle to read them just in time?

**Ken Hughes:** I hesitate to agree, but, yes, that is what I mean. The biggest success has probably been the induction training that we did for all new Members. I still get feedback from Members who are almost two to two and a half years in, and the thing they enjoyed and got the most benefit out of was that we did it on a cross-party basis. They saw the huge benefit at a very early stage of being able to converse on a cross-party basis.

**Lord Lang of Monkton:** When you say cross-party basis, I had always
assumed that a Select Committee would automatically adopt a cross-party attitude, as they tend to do here.

**Ken Hughes:** They do, but I am talking about the induction training.

**Lord Lang of Monkton:** You are talking about the training and not about the actual behaviour.

**Ken Hughes:** Yes. It is within the first two weeks after the general election and the committees are not formed at that time.

**Baroness Garden of Frognal:** I see from your recommendations that you recommend that training should include diversity and equality, financial and analytical skills and human rights. How are you progressing with including those elements in your CPD?

**Ken Hughes:** At the top of the list now, as I referred to earlier, is diversity and inclusion training. Again, we are working on a cross-party basis. We have formed a cross-party group, not necessarily involving Members, to take forward the diversity and inclusion agenda. We will by the end of this summer have an awareness-raising training programme in place in which all occupants of Holyrood will take part.

**The Chairman:** Before I call on Lord Low to ask a question on witness diversity, I would just say that this afternoon I am meeting Professor Hugh Bochel from Lincoln University, who helped the Scottish Parliament very much on this issue, so we are following your lead on that.

**Q120 Lord Low of Dalston:** We are anxious to hear from you how your committees go about ensuring the diversity of witnesses so that you are not just talking to the usual suspects and how you encourage interaction countrywide. How do you get the committees to engage with stakeholders throughout Scotland so that they are not just Edinburgh-centric?

**Ken Hughes:** On the first part of the question, at the moment we are running a pilot study to gather data on how we are performing on witness diversity. We thought that would be a robust starting point to see where we are at the moment. We are aiming to conclude this pilot study and data-gathering this week and through the summer we will be working on the evidence we get back, with a view to, by September, putting in guidance that will inform committees on how they should be selecting witnesses, how they should be issuing calls for evidence and how they should be approaching organisations to provide witnesses, because part of it is that we can be beholden on those organisations to supply the witnesses for us.

If we see all-male representation year on year and month on month, I think the time will have come for the Parliament to do more to guide those providing us the witnesses to say, “Look, this is the profile we are looking for”. At the moment, even on the data gathering and monitoring we have done, we are not saying that everything is consistent in the way we identify protected characteristics and gender. Again we hope to put that in place by the end of the summer. Thereafter, we will be monitoring the impact of the changes we have put in place from early autumn.

In terms of reaching out to all parts of Scotland, I had a map in my office,
which I do not think I have now, which had wee dots and stickers on it of all the places in Scotland that we had reached out to. The map was pretty much obliterated with little dots. Just like my Welsh colleague said, it is a matter of how you do it and what your approach is. All members of a committee going to, say, Shetland is quite a big undertaking, especially if it is a formal meeting and you have to have broadcasting and the *Official Report*. There is quite a bit of infrastructure to it. We may do that from time to time, but we may well send delegations from committees to do more informal work, which is a far more agile approach and you can get around far more parts of the country by doing that.

We also have an outreach section in our engagement unit. The geography of Scotland makes it difficult, especially for further-flung schools, to come to visit the Parliament. The further north you go, it is not a day trip but an overnight trip, and that is a barrier. We have four outreach workers dotted about further-flung places in Scotland and they visit schools. We also have an active updated website and Twitter and Instagram accounts to reach out, which are obviously not on a geographic basis either.

**Lord Low of Dalston:** What techniques have you found most effective for tracking the impact that your committees are having? We have found particularly with ad hoc committees, which are set up for a year or so and have a finite life, that they tend to die off once their term is up, and people are concerned to maintain the momentum on implementing the recommendations of these committees. It has been quite difficult to maintain the impact, because people go away and do other things. How have you dealt with this?

**Ken Hughes:** The commission itself was in part an answer to that, because we genuinely wanted academics’ and the general public’s view on how we are doing. At the end of the day we are all here to serve the people of the country. The commission itself got out around a huge amount of places in Scotland to ask people about the impact they see of committees. A lot of the evidence that we got back from that fed through into recommendations in the report. We have done academic studies before, admittedly not for quite a while, on committee impact and other parliaments do the same sort of academic study from time to time as well, but there is nothing more methodical than that I can offer.

**Lord Low of Dalston:** I suppose some committees are a bit more assiduous than others in extending their life. Would that be a fair statement?

**Ken Hughes:** Perhaps I should have clarified that we do not usually have ad hoc committees at all. Once committees are set up, they are there for the length of the Session.

The other thing I should have added is that, in terms of measuring performance, the oft-quoted Public Petitions Committee is led entirely by members of the public, and a resolution one way or another is usually achieved within a period of nine months to a year. The performance of that type of activity is quite easily measured.

**Q121 The Earl of Courtown:** You have stressed the importance of public
engagement in all areas of your work. It appears to me that it is very difficult to compare the committee structure here in the House of Lords with the committee structure in Holyrood. A unicameral system has different demands. It could be argued that it is more important to have public engagement with your unicameral system than on some of the specialist issues that are debated and considered in our EU committee structure.

In looking at this, the commission emphasised the importance of interaction with young people. You mentioned social media in the previous answer. On top of that, you emphasise in your report the need for closer working with the Scottish Youth Parliament and how MSPs should meet their counterpart MSYPs to facilitate closer links between the work of each Scottish Parliament committee and its relevant SYP committee.

How important do you think this is? Will there be much to be gained from this? How long will the Scottish Youth Parliament meet for? I did not see that in the evidence.

Ken Hughes: It has quite a high turnover, as you might expect, and it is a creature of government rather than parliament. It gets its money from government and I think the periods of office are perhaps two years.

The Earl of Courtown: How will this help the committee work at Holyrood, and how much do you think we should be looking at this issue as well?

Ken Hughes: First, the voting age in Scotland is 16, so even when we are talking about school children, they are voters. That is also the age at which people start going to the Scottish Youth Parliament, so if you needed motivation, there is that in part.

We are looking at that in an even wider sense at the moment and we have been thinking about how the Parliament addresses the issue of young people. The Scottish Youth Parliament absolutely has a role in that, but so do other Scottish youth organisations. Again, the spirit of that report is not to say, "Here we are", or indeed, "Here's what we are going to do for you". At the moment we are working with youth groups including the Scottish Youth Parliament to co-design events that will happen in the Parliament at the end of the year, to smoke out and elucidate what young people think the agenda should be and what the Parliament should be looking at.

Putting social media to one side, when I was asking around among committee colleagues before I came down, what I got back was that the most valuable and prized benefit derived from any engagement activity with young people was through meeting them and not through Facebooking them, for example. That seems to be old hat with young people anyway. Again as my colleague from Wales said, part of that is about going to where they are and not expecting them to come to us all the time.

Lord Low of Dalston: Did 16 year-olds have a vote in the referendum in Scotland?

Baroness Hayter of Kentish Town: Not both referendums.
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

**Ken Hughes:** No, not the UK referendum.

**Lord Low of Dalston:** The independence referendum but not the Brexit one.

**Ken Hughes:** Yes, because that was UK legislation.

**Lord Lang of Monkton:** I am interested in the communications strategy once a Select Committee’s report is finished and published. Presumably each committee differs in the strength and purpose of its report and therefore its potential interest to the media. Do they each have their own communications strategy? Is there a central press officer, or does the Government helpfully offer to do it for them and some things never see the light of day?

**Ken Hughes:** Not the latter.

**Lord Lang of Monkton:** You surprise me.

**Ken Hughes:** We were perhaps a wee bit weak on this in the early years, but we have developed a system now whereby each committee has a dedicated media relations officer attached to it. Those media relations officers might have more than one committee, but they tend to sit in on most if not all committee meetings, so they are building up a media narrative themselves and thinking about what the media lines could be when it comes to the publication of reports.

**Lord Lang of Monkton:** Just while we are on that point, is that part of their job or are they dedicated to the work of the committee?

**Ken Hughes:** It is part of their job.

**Lord Lang of Monkton:** It is part of their job and they do other press-related matters or other civil service jobs.

**Ken Hughes:** They do other press-related matters.

**The Chairman:** How many do you have in the Parliament?

**Ken Hughes:** I am sorry, I should know this because they are next door to me. There are around eight media officers covering all committee activity.

**The Chairman:** Communications and press. How many are there in total?

**Ken Hughes:** There are eight press officers.

**Lord Lang of Monkton:** Do they develop relationships with the media or with public relations firms outside? Do you ever employ public relations firms or is it all done internally?

**Ken Hughes:** No.

**Lord Lang of Monkton:** Always internally.
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

Ken Hughes: I would be wary of that. We employ them directly and, yes, part of their purpose is to build up relations. We have media people in Holyrood and they build up relationships with media representatives.

Lord Lang of Monkton: Do they promote coverage in some other way? Do they encourage the setting up of a conference to debate the matter in public, possibly with local academics or experts in the field, or is that all taken care of at the evidence-taking stage and they are not involved there?

Ken Hughes: They are not involved there, but over recent years, when the press and media have generally seen their numbers being depleted and we were perhaps early in doing this, we have thought that the way to help them and to get our message across was to create packages. We create media packages so that when a committee report is launched, depending on what the report is, media colleagues and the convenor and perhaps the deputy convenor of a committee will do a piece to camera and we will package that up, put it on the website and offer it to media outlets.

The Chairman: How many in total do you have in the communications department, press and media, other than just the eight media officers for the committees?

Ken Hughes: No, sorry, that is eight in total, and there are some administrative staff.

The Chairman: You have press officers there as well.

Ken Hughes: Again, they have all the functions. They do the news releases and the packages.

The Chairman: How many do you have in total?

Ken Hughes: Still eight.

The Chairman: Eight in total.

Ken Hughes: Yes.

The Chairman: That is not the information I got when I went up to give evidence, but do not worry, we will have a look at that.

Ken Hughes: Is it wildly different?

The Chairman: It is quite a bit different, but we will explore that.

Q123 Baroness Hayter of Kentish Town: I want to return to Brexit, I am afraid. I put the same question to your colleague from Wales. I know there is a bit of an issue between the Scottish Parliament and the UK at the moment. However, assuming that we will go ahead with what the Act says—and it is now an Act—as the Parliament, and I guess a committee in the Scottish Parliament, is looking at the legislation becoming Scottish law, or the bit that will remain in the frameworks, what would be the most useful thing that the House of Lords could do with your Parliament to oversee those aspects of Brexit?
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

Ken Hughes: I will preface what I say by observing that there has always been interparliamentary co-operation between the Scottish Parliament, the Lords and the Commons, and Wales and Northern Ireland. The level and benefit of that activity has risen so much since Brexit, because again the common ground is scrutiny. We are all about scrutinising as best we can what is put before us.

The Interparliamentary Forum on Brexit has been mentioned already. Individual committee relationships have built up. I sit on a group called the deputy clerks’ group, which includes Simon Burton from here, and we try to take a strategic view on parliamentary capacity for all the Brexit challenges that are coming our way.

The greatest benefit of the Lords, or any other institution that we have links with, is co-operating and collaborating on the scrutiny, because again our concern is that we might not see enough to scrutinise. It is partly about trying to put forward an agenda that protects the role of the Parliaments.

Baroness Hayter of Kentish Town: Related to that, will your committee structure have to alter now, or will it be the same committee that has been looking at the European issues that will do Brexit?

Ken Hughes: We thought about that a year or 18 months ago. We are keeping the same structure, but the main committee until now has been the Finance and Constitution Committee chaired by Bruce Crawford. That has the lead, and then there is the Culture, Tourism, Europe and External Relations Committee working alongside that. As we now see, post-Summer Recess, all the waves of policy and Brexit-related legislation coming through, I can see our environment and agriculture and fisheries committees seeing a lot more of the action, so to speak.

Q124 Lord Smith of Hindhead: Your Commission on Parliamentary Reform’s fascinating 100-page report published in June last year says that criticism was levelled against committees because they did not allocate sufficient time to post-legislative scrutiny. As a result, the Public Audit Committee’s remit was widened to include post-legislative scrutiny, thus becoming the Public Audit and Post-legislative Scrutiny Committee. One year on, how is that developing?

Ken Hughes: To be honest, a year out it has developed better than perhaps had been thought. Again, I was worried about the committee’s capacity to find the time to do it. It went out and almost had a call for evidence and asked what Acts should be scrutinised in a post-legislative sense. It got quite a response back.

It has been working through a list of five Acts that it chose to scrutinise from that consultation. It has now set up a process for itself to continue that work on. It will become—perhaps it has already become—part of the normal work of that committee. That will just roll forward through the years.

Lord Smith of Hindhead: Have you found that legacy reports help to improve committee scrutiny?
Ken Hughes, Assistant Chief Executive, the Scottish Parliament – Oral Evidence (QQ116-125)

**Ken Hughes:** If you referring to the reports that committees do at the end of each parliamentary Session and leave to their successor committee, the one benefit I see is that it certainly adds a degree of continuity between Sessions of Parliament. If there are any outstanding issues where the Parliament ran out of time and the committee did not have time to look at them, or there are outstanding issues from a previous issue that it scrutinised, it highlights that, which is the benefit. It is up to the successor committee to choose whether it takes up those suggestions or not.

**Lord Smith of Hindhead:** Going back to post-legislative committees, have there been any committee recommendations to improve legislation as a result of post-legislative committee meetings?

**Ken Hughes:** It is still early days on that one, but we have now created a system whereby that is a performance measure, and I would have thought that will come quite quickly. Again, to clarify, the post-legislative scrutiny aspect is about the effectiveness of the policy intention, because the Law Commission will look at defective law or law that needs that consolidative action, so we are not so much in the technical area; we are more in the policy intention area and whether that has been effective or not. I would expect that to come quite quickly.

Q125 **Lord Smith of Hindhead:** Could I ask you the same question that I asked Mr Warner in the previous session about what you accept as evidence at committee inquiries?

**Ken Hughes:** The answer is almost the same. We will accept anything. The world is changing and there are so many different ways to communicate and engage now. In addition to the normal ways of submitting evidence, from time to time we will run events and get people’s views. We will do online quantitative or qualitative surveys.

One example relates to the Social Security (Scotland) Bill. The constituency that was more interested in that was less likely to be able to come to the Parliament, and on occasion we send clerks out to people’s houses to talk. That type of activity is not automatically put in the record, but there will be clerks’ and researchers’ notes, and in cases where Members witness that they will often refer to that experience.

**Lord Smith of Hindhead:** Sometimes staff will go out of Parliament to visit groups or individual people in their homes and they will bring that evidence back and submit it to one of your scrutiny committees.

**Ken Hughes:** Yes. That is perhaps an extreme example, but we have done it. We do a lot more activity such as sending clerks out with Members to community groups or interest groups on a particular topic to talk to people. That is then brought back to the committee in a clerk’s note.

**The Chairman:** That evidence is privileged.

**Ken Hughes:** Anything said or done in proceedings is privileged.

**The Chairman:** So the videos are also privileged.

**Ken Hughes:** Yes, that is a record.
The Chairman: If there are no other comments, can I thank you for that evidence? It has been hugely evidence helpful to us. You mentioned Bruce Crawford. He has been very helpful on the Interparliamentary Forum on Brexit, and we have a strong link there, which is really good. You can take back our thanks to him for that. Thank you very much.
Lord Inglewood, Baroness McIntosh of Pickering, Lord Shutt of Greetland, Lord Cameron of Dillington, Baroness Deech and Lord Filkin – Oral Evidence (QQ142-13)

Lord Inglewood, Baroness McIntosh of Pickering, Lord Shutt of Greetland, Lord Cameron of Dillington, Baroness Deech and Lord Filkin – Oral Evidence (QQ142-13)

Submission to be found under Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)"

Submission to be found under “Michael Clancy, Law Reform, Law Society of Scotland and Robert Khan, Executive Director of External Affairs, Law Society of England and Wales – Oral Evidence (QQ60-68)”
Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)

Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)

Wednesday 23 May 2018
11.30 am

Listen to the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 7 Heard in Public Questions 55 - 59

Witnesses

I: Lord Puttnam; Baroness Prashar; Baroness Kidron.

Examination of Witnesses

Lord Puttnam, Baroness Prashar and Baroness Kidron.

Q55 The Chairman: Welcome to the second session of the morning. We are delighted for your attendance. For the sake of the Hansard writer, could you identify yourselves, please, starting with Lord Puttnam?

Lord Puttnam: I am David Puttnam.

Baroness Prashar: I am Usha Prashar.

Baroness Kidron: Beeban Kidron.

The Chairman: Good. Again, thank you very much. Baroness Kidron, you have provided us with a submission; Lord Puttnam, your submission dates from 2005, but it seems as relevant today as it was at that particular time, so maybe you could elaborate on that; and, Baroness Prashar, you can give us your comments following those. Maybe I could start with Baroness Kidron.

Baroness Kidron: I very much welcome the review and I read your piece, Chairman, in the Red Benches, setting out some of your ambition for the review. What I wanted to emphasise in my submission was the changing world outside and how our committee system needs not just to reflect it and catch up with it, but perhaps develop itself to anticipate some of the changes that are still to come. The disruptions that we have seen across all sorts of sectors will also disrupt, the workings of democracy, of this House, Parliament more broadly as well as the institutions all around us. My argument is for a more responsive, porous and light-footed system that can shape and reshape itself in different ways. Perhaps, as we go on, I can
Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)

say exactly more about what that might look like, but that is my general principle.

The Chairman: Great. Lord Puttnam, in your Hansard Society commission in 2005 you mentioned that Parliament consistently fails to present itself as the sum of its parts, and, despite the incremental improvements taking place, it does not keep up with the nature of change and is failing to match that which takes place in society.

Lord Puttnam: I re-read the report, and interestingly enough—and I wish this was not the case—there is not one word of my foreword that I would change if I were writing it today, really not one. Of course there have been changes, and some of them very welcome changes. Particularly the organogram that we rather controversially set out in our original report has been significantly changed resulting in improvements in the management of Parliament, but I would change very little of what I said.

There was an interesting piece on the “Today” programme this morning about Oxford and inclusion, and the word that was used in respect of change was “glacial”. I am afraid I would probably have to use the same word here. Change does occur but it occurs at a glacial pace. Unfortunately, the speed of change in real life is more and more rapid, and therefore the potential is for the gap between Parliament and the expectations of the outside world to grow rather than diminish.

Baroness Hayter of Kentish Town: Yes.

The Chairman: Baroness Prashar, with your extensive knowledge outside, in business, charities and voluntary organisations, how do you see this?

Baroness Prashar: Can I say, like my colleagues, that I really welcome this review? I think it is much needed. Unlike them, I have not written anything but I have a great deal to say about what I think. One area on which I agree with Baroness Kidron is the scale of change that is taking place in the outside world and the disruption. It is well reported that the disruption is so high that the capacity to keep up with it is not around. Therefore, it is important that we have a system that is responsive. I would like to see maybe four or five Standing Committees that are thematic, and underneath them we can then have sub-committees that are responsive in those areas.

The model I would suggest to you is the one that the EU Select Committee has. It has a main committee and then sub-committees that deal with different aspects. That would give us the flexibility.

If I may just give an example, some months ago I organised a talk by Nik Gowing on thinking the unthinkable. He has recently published a book. A few Members of the House of Lords came to listen to him, and that emphasised to me the need for capacity for us to think about change in the external world to which we can make a contribution. I felt that we do not really have the capacity through the Select Committee system to discuss those issues if we are going to be responsive to the external changes.
There is a lot more that I can say, but I am happy to respond to the questions as they arise.

**The Chairman:** Thank you. Lord Smith, you asked a question in the previous session that is relevant here.

**Q56 Lord Smith of Hindhead:** Yes. I will ask it again. I am very much hoping to still be in this noble House in 10 years’ time and, God willing, perhaps in 20 years’ time. Could I ask you to get your crystal ball out—I said tea leaves in the last session, so I will mix it up a little bit—and let us know where you think House of Lords committees should be in, let us say, 10 or 20 years’ time?

**The Chairman:** On that, could I ask you to keep in mind restoration and renewal?

**Baroness Prashar:** Yes. When I was thinking about the question, I wanted to envision how the Select Committee system would be perceived by the outside world. I would like to see a very established, independent Select Committee system, which is renowned for its expertise, and is highly regarded and connected in a very constructive way to the outside world—whether that be academia, research institutions, universities or non-governmental organisations—so that there is a flow of information and therefore it becomes a go-to place where people can see that there is a group of people who, over the years, have done a body of work that is highly regarded. That is where I would like us to see ourselves and, therefore, to be perceived as people who have done work that is relevant, who have contributed not just to the work of the House of Lords but in some ways influenced even our government departments and outside thinking. I think we have that capacity here. That is where I see ourselves being in 10 to 20 years’ time.

**Baroness Kidron:** I would agree with that wholeheartedly, but perhaps I could say a couple of things about the process. We have to imagine a world in which technology may offer some benefits to us. For example, the machine learning and research right now is absolutely astonishing, it might be that, as we meet in committee, someone is able to gather the whole history of what we are discussing and present it as an infographic in front of committee members in real time. We must anticipate that there is going to be a different kind of interaction with the outside world across jurisdictions and time zones, some of which will be more immediate. I would argue that it gives us a huge advantage in terms of where we might seek our information, a broader group, a more international group, and perhaps not so many public affairs people—a richer diet.

At the same time, the physical presence of debate and discussion, and the collegiate nature of that discussion, is a key part of the committee system. So we need to respond to the opportunities of the virtual and reinvigorate the commitment of how we work together, and perhaps also burst out of the building, to answer your point about renewal. I think that we should get out more in general.

**Q57 Lord Low of Dalston:** I had a question here for Baroness Kidron, but it also follows on from what Baroness Prashar was saying, so perhaps you
Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)

might both care to address it. Lady Kidron in her written evidence suggested that there should be a smaller number of broad thematic committees, and I think Baroness Prashar was suggesting that as well in what she said. Could the two of you please elaborate for us on what you believe would be the benefit of such a structure?

The Chairman: I am conscious that Lord Puttnam did not have the opportunity to answer the other point. Do you want to say something just now before we go on to Colin’s question?

Lord Puttnam: I would say two things. I think the most under-regarded and certainly under-discussed benefit of the committee system—and the committees I am referring to here are pre-legislative, the normal Select Committees and, I would beg, post-legislative—is the ability to work on a cross-party basis and address complexity in detail. What emerged on the two pre-legislative committees I chaired was a genuine cross-party corpus of knowledge, so that when the Bill came to be debated in the House important issues did not break down along party lines. This may not necessarily always suit the Whips, but the truth is that real thought and intelligence had developed that had been derived from four months of scrutiny. That ability to create relationships and understanding, and to reach agreements prior to reaching the Chamber, is invaluable, and its importance is not necessarily sufficiently understood.

The issue of post-legislative scrutiny, to which I’ve just heard Lord Cormack refer, is fundamental. It would give a real, and, additionally important role for the House. There is no question that we suffer from not being able to revisit legislation that has proved to be inadequate or, frankly, useless.

Baroness Prashar: Can I reinforce that point? I have been an avid supporter particularly of post-legislative scrutiny because I think it is important, given the complexity and the level of legislation that we have. With an area such as criminal justice, it seems to me that we have to look at that. I absolutely agree with the points about pre-legislative scrutiny because it is bringing to bear analysis and objectivity to a piece of legislation. We are a revising Chamber and we want to add value. The way in which we do that is both by pre-legislative and post-legislative scrutiny.

The Chairman: Baroness Kidron, did you want to come in first?

Baroness Kidron: I was going to answer Lord Low’s question, if I might.

The Chairman: Lord Low put that question on a thematic committee structure. That is very important.

Baroness Kidron: Stepping back to the question that Lady Hayter was asking as we walked in, which is what is the committees system for, ? I feel that what we do in committees is build an up-to-date knowledge base for Members and for the House on a broad range of issues. That is the first thing that we do. We also support the legislative process.

We interrogate the common concerns across party and there is an enormous amount of consensus—I say that as a Cross-Bench Peer. It is
interesting how close we can all get when we share the same evidence and experience.

Then there is something about it being a more responsive, swifter inquiry than the other forms and processes of government, which can take literally years and sometimes decades. I would also like to see more emphasis on giving the opportunity to public and civil society to feel that they contribute to the development of public policy. It is a very important way in to the political system.

With those things in mind, it seems to me that to have this small set of thematic committees that can respond quicker, be more integrated and work together would be a much better approach. You will notice in my evidence that I suggested four main Standing Committees and then additionally one on exiting the European Union and one on the digital environment.

My reasoning for that is that I think this is a time where we are going to have to look forward internationally and that any international committee would be absolutely weighed down by issues of the gaps created by, the changes in, the integration of, and indeed our ongoing relationship with the Europe Union, so Europe does need to have its whole self committed in that direction.

I declare my interest as someone whose declared interests are all about the digital environment, but I think it is unarguable at this point that we need to not only look at our own processes but we have to teach ourselves, and our colleagues at every level throughout the Palace of Westminster, about what the issues are at a very profound level, and we have to support all the other committees in the places that their work integrates with the digital world. A committee on the Digital Environment would have a teaching function, a learning function and an organisational function. That is why I separated out those two things and left everything else very broad.

**Lord Low of Dalston:** What were the four committees?

**Baroness Kidron:** Home affairs, defence, security and foreign affairs, constitution and economic.

**Lord Low of Dalston:** Thank you.

**Baroness Prashar:** Could I respond, as the question was addressed to me as well?

**The Chairman:** Sure.

**Baroness Prashar:** Again, in terms of the themes, if you look at the Commons, they are on a departmental basis. I would like to see thematic things, which are overarching, because one needs to see a joined-up policy approach here.

Again, answering your question, the committee system has to respond to the role of the House but add a bit more to it, such as scrutiny and revising.
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Adding value is the in-depth investigations and reaching out so that we can help or perform the function of the House much more effectively.

As to themes that I had worked out, they were home affairs, health and welfare, foreign affairs and international, and within that I would put the EU. In the interim, the EU committees will obviously have to reflect the transition arrangements, in a way, while we have to watch how it is dismantling itself, but at the same time the relationship between the European Parliament and our Parliament is going to be quite important. So, that comes as part of that; within that would also come the development aspects of policy, and then defence and security and constitution. I also had down digital disruption, because I absolutely agree with you on that.

You can look at those as thematic committees, and, as I said at the outset, underneath them you could have sub-committees as and when—time limited and ad hoc—in whatever form you actually want them.

Lord Puttnam: Chairman, could I offer a recent example of exactly what has been said? On Monday evening there was a very short debate on nursing shortages and related issues. Lord O’Shaughnessy was at the Despatch Box and raised my concern at growing levels of teacher shortages, simply to make the point that, unless you get a sufficient pipeline of good teachers moving through the system, you are never, ever going to solve the nursing problem. It was a good, short debate.

I bumped into Lord O’Shaughnessy yesterday, who has previously held the education brief, and he said to me, “That was very good yesterday. You are absolutely right”. I was trying to make the point that in my first six years in this House my job, working for David Blunkett, was in addressing what were then alarming levels of teacher shortage. I arrived in 1997 because we had a crisis. We now have another crisis.

Other than speaking on the Floor of the House, which can immediately sound somewhat confrontational, there is no way that I can offer or be encouraged to offer any of the learnings—and we made a lot of mistakes between 1997 and 2003—to help in this new crisis. If only there were committees that somehow could be drawn together to say, “Look, we have been here before”, because with most of the crises we hit its true to say we have been here before. So surely the issue is “Who knows about them? Who can bring experience to them?” We do not do that. We simply don’t seem to have the committee mechanisms to use the experience available to us.

The Chairman: Are you suggesting that, if we have a bigger footprint, that could be looked at?

Lord Puttnam: We have wonderful people here.

Lord Lang of Monkton: I want to pick up a point before it gets lost that Baroness Kidron mentioned when she said we should get out more, and our formal questions may not cover that ground. I think it is very important. Lady Kidron, you brought it forward very strongly when you talked about committees developing a national conversation and contributing to public debate. It is easy to say it, but it is very difficult to
get away from this building, to get a committee out on the ground or out of London, even, which is more preferable. Are you contemplating that we should hold conferences sponsored, launched and controlled by the committees or by the House of Lords generally, or do you have any other thoughts?

For example, the *Spectator* and quite a lot of other magazines and organisations hold debates for the public at which their leading experts on certain subjects argue with each other to stimulate a debate. What sort of initiatives do you have in mind for getting out more? Lord Puttnam and Baroness Prashar might want to comment as well.

**Baroness Kidron:** I was very aware on the committee on which I serve, which is the Communications Committee, that when we went to Manchester to take evidence not only did the people who live and work in Manchester feel much more connected to what we were doing, but we understood things in a slightly more rounded fashion, because it is not only the questions; it is all the bits in between.

We also did some really interesting work with young people, which is something we should make a much bigger effort to do more generally. When we were looking at questions of their engagement with the digital world, we invited them to this building, and I went to visit some other groups elsewhere. They contributed very profoundly to our processes and our attitudes. When we did the theatre inquiry, we went to visit a theatre. We were in their space, in their house, not our House. I am aware that a Commons committee just went to Washington to take evidence as well.

I see a lot of opportunity of virtual meeting and breaking a the walls in that sense that opportunity is coming, but perhaps, when you are looking at the resources and the financing and so on, it should be made an expectation of committee work that it goes to visit some of the people who are the subject of our inquiries in their environment rather than in ours, because it does rather change the feeling of things.

**Lord Puttnam:** I would like to answer the same question from a slightly different perspective. I have had two roles for this Government. I was a culture and trade envoy to south-east Asia. Prior to that, for five years I had been a consultant or expert adviser on media and communications issues to the Singapore Government. I think that we, the mother of Parliaments, could do a better job at being a little more humble. Western democracies do not have all the answers any longer and have not had, actually, for quite a long time. There are practices in the Singapore Parliament and the Taiwanese Parliament that we could do very well to look at and in some cases assimilate into our own procedures. We are just not very good at it.

We start from the basis that we are there to teach them, not necessarily there to learn anything from them, but in truth there are any number of parliaments around the world that are doing things very adventurously and in some cases very successfully—and a little humility on our part would, I think, go a long way.
Baroness Prashar: I absolutely agree with the comments made by my colleagues. As to a wider public conversation, there are different models that would work. I would like to see us not to be too straitjacketed in a sense and to try the different things that we have been talking about. We have to use digital and social media much more than we do.

When I was chair of the EU Home Affairs Sub-Committee, we brought in people who had come here as refugees and talked to them. It brings a very different feel to the proceedings. I think outreach is very important. It is about engagement and it is about knowledge. It is important that the legitimacy of the House comes from having that access—this piece of information.

I really want to underline the point about humility because, in my different capacity as part of the British Council, we have been doing some work in Hammamet in the Maghreb countries. When you talk to people about democracy, you begin to realise that there are different practices that we really need to be learning from. It is important that we engage and learn, and it is now about mutual learning. That has to be the way that we move forward.

Baroness Kidron: May I add that I would rather not be sponsored by commercial companies or specific conferences, but I do think there may be an opportunity through the IPU and other institutions within Parliament?

Baroness Prashar: That is a very good point.

Lord Lang of Monkton: Thank you.

The Chairman: Understood.

Baroness Hayter of Kentish Town: I want to come back to the purpose of the committees. It has been very interesting that what has been said has been quite different. The questions have to be: are we here to influence government or this House, or wider? You have come up with much more interesting things about the functioning of the House, getting cross-party consensus and the way of working, as well as what we are looking at.

I would still like some more thoughts about what exactly it is that the committees do that is different from the House. It is very nice saying that we should go out, but I have to say, as the shadow spokesperson on Brexit, that the House does not allow me to go to Brussels. The EU Committee goes to Dublin and to Gibraltar to meet people. We have to look at the resources. We have to see the committees as part of the whole House. Is it the House that needs that dialogue or is it committees? Again, what is it that the committees are doing rather than the House? What is the role of the committees, and, particularly post Brexit, to what extent does the House have to understand this whole new world, or is it committees, or is it committees to influence the House? I have no answers.

Baroness Kidron: You are describing, I hope, the very tension that the committee system should be answering, in a way. I do feel that it is so much about knowledge-building, creating the environment with and being separate from but cognisant of the legislative programme. I mentioned in
my written evidence, that in the middle of the Data Protection Bill where everybody on all sides of the House stood up to say, “We don’t understand the full implications of GDPR, and yet we are passing a piece of legislation that directly builds on it”.

At that moment, I am not sure that if it was not Lord Puttnam who suggested that we have a short committee inquiry to tease out the themes of GDPR and inform the House while the Bill was making its way between Houses. Of course there was not the capacity; there was not the responsiveness built into the system; the people who could have done it were busy with their own programme. It just was not possible.

My answer, which is perhaps not a very technical answer, is that the committee is there to round out the business of the House; it is a layer of skin between us and the world. It is there to articulate that, “These things are happening in the world, and we must consider them and bring them into our purview, and at the same time these are the things we are doing, and we must consider them and get them out to the public”. I actually think it has that role.

Lord Low of Dalston: There is a precedent for what you are proposing or Lord Puttnam was asking for on the Data Protection Bill, and that was the committee that was set up in the course of the deliberations on the Trade Union Bill. The purpose may not have been identical but it was a kind of precedent. On the Trade Union Bill, its purpose was to bottom a knotty problem that the House was having difficulty getting over. You are suggesting that there might be a role for a committee in assembling the common knowledge that members of a committee needed to have in order to deal effectively with it.

Baroness Prashar: Exactly.

Baroness Kidron: That is exactly what I was suggesting, and I think it should be a normal and expected function of the committee system as redesigned rather than something extraordinary that we can point at that. By having fewer, broader committees, but having a more responsive ad hoc system underneath it, there would be capacity to do just that. It was beautifully put, so I am not going to try.

Baroness Prashar: There is an example I could give. I see the sort of structure you are outlining, but it seems to me that, if you look back, soon after Brexit the EU Select Committee and sub-committees did a spate of reports very quickly, and that was precisely the purpose—

Baroness Hayter of Kentish Town: They were brilliantly done too.

Baroness Prashar: —to do those reports, to inform the debate in the House. It was designed for everybody. We worked really hard, and thanks to the staff of the Select Committees. That is the way we were trying to be responsive to the issues. We add value to that and we provide the information in some depth to help the work of the House. That is a fine example.
Lord Puttnam: I have three practical solutions to offer. This excellent document Lines of Inquiry came out this year. It is the guide to the Select Committees in the other place. I checked with the people who publish The House, and they have no plans to do one for the House of Lords, which is absurd because it sets out the purpose of each committee, as seen by its chair, it sets out who the members of the committee are, what its purpose is and what it is going to achieve in the coming year. It is a really useful document. The fact that The House magazine has not thought that it might be a good idea to do exactly the same for the Lords—

The Chairman: I will tell you what—in my role, I will get on to them. Okay?

Lord Lang of Monkton: Lord Cormack is editor-in-chief.

The Chairman: We will get on to him.

Baroness Kidron: Sorted.

Lord Puttnam: That was one point. The second one is that maybe the most important line in these two reports is that cut-price democracy can never ever be seen as a bargain.

The Chairman: Yes, that was your third point.

Lord Puttnam: That is fundamental. We could get ourselves into a lot of problems—I will not be here at the time, but others will—with the renewal and restoration project. It is very welcome, but it is going to be hugely expensive. The very idea that such a sum of money should be spent out of the public purse and then not be matched by a superbly well-orchestrated, and reorganised Parliamentary system has to be a nonsense; it really is. I can well imagine a perfectly thoughtful newspaper—the FT by way of example—saying, “Hang on a second, what has happened here? We have this superb building with amazing facilities, but the actual way in which the institution itself operates has barely changed at all”. I am looking at Lord Smith as I say this. There is a wonderful opportunity here to match purpose, organisation and, as it were, the costs of construction.

Baroness Prashar: Hear, hear.

Q58 The Chairman: Taking in the wider resource element.

Lord Puttnam: That would be my second point.

My third is about the crystal ball, but mine has maybe a slightly rosy glow. I think that within 10 to 15 years we will accept the fact that defence, health and education have to fall outside the political scrum. I am quite certain that that consensus on this will begin to emerge. If that is the case, then it would be wonderful to move towards a point where the committee system began to anticipate that and promote the case for greater interconnectedness between health and education, for example. You cannot deal with that type of change in the way that we are set up at the moment, but, on the other hand, if we could get our heads around how to
better address these issues we may come up with solutions that none of us has ever thought of.

**Baroness Prashar:** Hear, hear.

**Baroness Garden of Frognal:** Yes. What do you believe are the strengths and weaknesses of the current system of selecting chairs and members of committees? We heard Lord Cormack’s views earlier on. I noticed, Baroness Kidron, in your submission that you point out that it would be beneficial to have a clear understanding of the expectations inherent in committee membership, including but not limited to attending. I am a great fan of setting out what the criteria are for doing any sort of job, and I am not aware that we have such guidance. How do you think members should be selected or elected?

It is obviously different in different parties. I was quite astonished by what Lord Cormack said, because we have a system where people volunteer, and then the Whips probably come in and work out, if there is more than one person for each committee, who should be on it; but there is no idea that membership is imposed or that it is selected from outside. People start by volunteering themselves, but obviously that is different in different parties.

**Baroness Kidron:** As a Cross-Bench Peer, we do volunteer and are chosen by some means, but I am not sure what the criteria are. The point that I was trying to make is that I consider committee membership a huge privilege. It comes with responsibilities of attendance, homework, thoughtfulness and so on. I am not suggesting that people should have some sort of contractual relationship with their committee, but there should be slightly more clarity about what the expectation is and that if you cannot meet those expectations you should move on to give a place to someone else. I think that committee membership is also very hard-fought over because we are many and committees are few.

There is another point that I was interested in, to which I do not have an answer, but I would like to put to you. People have a mix of skills in the House and one function of a committee is to spread those skills and understandings among colleagues. Perhaps there should be some kind of skills audit so that people are bringing expertise, but we are also spreading expertise. That may be a useful criteria.

For example, in the period that I have been on the Communications Committee we have done an awful lot of work around the digital environment, and it has been transforming for many of our members. They are really well informed and really interested in an area that they, frankly, said at the beginning they felt very unsure about. I would like you to consider, among other things, how skills can be best used but also spread so that the House’s reputation for expertise is continued.

Then I wondered about whether there should be an election of the chair, as there is in the Commons, but I do not have strong feelings.

**Lord Lang of Monkton:** Can I pick up a small point about the need for skill? Is there not also a need for an empty but inquiring mind and an
attentive Peer who becomes enthralled because they have to listen, instead of coming with their own preconceived certainties?

**Baroness Kidron:** Absolutely. I think that is what I am suggesting by saying there should be a mix of openness and skills.

**Lord Lang of Monkton:** I put myself in the latter category. I am a daft laddie who asks questions, sometimes rather silly ones, but actually gets interesting answers.

**Baroness Kidron:** Absolutely.

**The Chairman:** Could you add to your points, Baroness Kidron? In your few detailed points you mention skills and expertise, but you also mention about it being beneficial to have a clear understanding of the expectations inherent in committee membership. In that regard, others have said that we need communication strategies for each committee informed by the objectives of the inquiry, the context in which the inquiry takes place—socially and politically—and to follow that aspect through.

The third aspect you mention is that the tradition of providing questions to witnesses in advance can make for over-rehearsed processes. There is nothing over-rehearsed about yourselves this morning. This will apply to other people, but it is a point I want you to address.

**Baroness Kidron:** I am going to fall on my sword here because I have not appeared in front of a committee before today and it was really wonderful to have the questions in advance. However, I am concerned that many witnesses are from public affairs with specific well-rehearsed interests. I think when we give them the questions and then stick to them—if we do not have time to have supplementaries, argument and pick up on what they say when we run out of time for that piece—we do not get the maximum benefit out of them. There is a sort of nuanced place between a full set of questions and saying, “This is what we are looking to address in general”. Perhaps, when we know that a witness is coming from an environment where they do not have a huge office of people to give them notes, then they could get rather more help from committee staff than in other cases?

It is preposterous when you get someone from a top-100 company there with the questions, with the answers and with the suit. That is what I was referring to.

**The Chairman:** Good; thank you. Lord Williams wants to come in, but Lord Puttnam wanted to contribute.

**Lord Puttnam:** Again, I had a recent experience where I learned a lot—it realtes to the committee on Artificial Intelligence that I was sitting on. It is a very good example of what Baroness Prashar and Baroness Kidron were just referring to. We put out a call for evidence. Immediately the big tech businesses responded, sometimes with very voluminous and quite expert evidence. When you look back, the dominant voice in evidence, written and oral to that committee was, I would say, a technology voice. We did not do anything like enough—and it is my fault as much as anyone’s—to get
educationalists involved. We had three, I think, from memory. There was an imbalance.

I would not like us to fall for the same problem they clearly had in the US Senate, which is the extraordinary dominance of well funded vested interests and our inability to find the alternative, smaller and less tutored voices. That was a mistake.

The other mistake—and I think it is an easy one to solve—is that at the moment we are only allowed to publish evidence that we have received. What happened in this case—it is no one’s fault and because our clerks and advisors did a brilliant job—is that the Economist Intelligence Unit at exactly the same time that we were doing our report was doing a not dissimilar one. We should have the breadth of knowledge to know what is going on in the outside world and be able to bring it in to our own considerations.

The net result was—and this is no especial criticism of the Minister, Matt Hancock—that he made an assertion that we are no. 1 or no. 2 in the world in our preparedness for AI. The Economist Intelligence Unit report, two weeks later suggests we are no. 8 or no. 9. We could only publish the Minister’s unchallenged assertion, and we end up potentially looking a little bit stupid. It is an own goal really.

**The Chairman:** On that gathering of evidence, some of the staff had mentioned to me informally that there was a case for Welsh fishermen and they wanted to give evidence by video, but we could not accept that evidence. They would have to come and lose a day’s pay as a result of that. We have to look at that issue of evidence, absolutely.

**Baroness Prashar:** Going back to Baroness Garden’s question about the selection of committee members and chairs, I agree with you. I think at the moment it is right to have the critical balance, the cross-section and so on. We need a mixture of expertise and inquiring minds. It is like any other board where you need people to ask stupid questions so that you get good answers. In that sense, it is important to have that kind of balance too.

Going back to your point, if you are going to modernise the building, we have to professionalise the way committees work as well. The professionalisation comes with people having chairing skills. The communication strategy is going to be quite important, because if you really want to engage with the outside world and make sure that what you do is disseminated, it requires a proper communications strategy. We really need to up our game in that area. Therefore, it is very important that we have the right kind of expertise—the right kind of balance.

The one word I would use is “professionalising” what we do, because if you are going to be a body that is seen as having expertise, a place to go to and have the kind of reputation that we want it to have and all the things we are doing, we have to professionalise the way we operate. I am very keen, as Lord Puttnam says, that we keep an eye not just on what economists are doing, but on what research organisations are doing, and how we pull all that together. Sometimes the rules of our current Select
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Committees are quite restrictive, and we have to look at how we bring that flexibility to make sure that we engage.

**Lord Williams of Elvel:** I want to get back to this notion. There is nothing opaque about committee selection. It is all done by the Whips, and I am afraid in our party, for instance, the Whip circulates and says, “These are the criteria that I insist you observe, and, if you are interested, you come and see me, and I will appoint you”. The leaders and the Whips decide which committees take place. It is not something that is presented to the House other than as a fait accompli.

The Whips will decide how far you could go in expenditure. The Whips will replace you on your committee, as they replaced Lord Cormack. What you are saying, fundamentally, is that you think the task of the Whips should be much reduced—that is, the power of the Whips should be broken. For that to happen, you have to take on the Government—any Government—because the Government want to make sure that their business gets through the House in due, proper manner. I would invite your comment on what I have said, but I am not sure that we are in the real world here.

**Lord Puttnam:** I will take a stab at an answer because Baroness Royall, when she was leader, faced this problem. We had quite a hoo-hah in our own party about the appointment to committees and the appointment of chairs of committees. The argument made by the Whips—and Lord Williams is exactly right—was that we must not take away their power of patronage. If we took away their power of patronage, it was reducing their effectiveness. That did not go down well with most backbench Peers in the party. I do not think we have really ever come up with a resolution other than it being little less brutal and a little less obvious than it was, but it could be a lot more transparent and we could be a lot more sensible in appointing people with expertise.

I think Lord Williams is right. In the end, in the order of priorities about what you could bring to a committee, expertise came about fourth.

**Baroness Hayter of Kentish Town:** I do not know why you are looking particularly at me. I am no longer a Labour Whip.

**The Chairman:** So you are all signed up for transparency.

**Lord Smith of Hindhead:** I am also a Whip but I am a very humble Whip compared with the noble Earl who has left. I am a soft Whip rather than a hard Whip.

**Lord Lang of Monkton:** There is no such thing.

**Lord Smith of Hindhead:** Could I ask you if you have identified any current gaps in the scrutiny process across Parliament as a whole, and, if so, how these might be addressed, at least in part, by House of Lords committees?

**Baroness Prashar:** In answering the question we are talking about, on the thematic reports, the work that we have done so far is very good and it needs to be built upon. I would like to see much more thematic work
done where we can see joined-up policy, issues that we talk about in education, health and so on. That is a real gap. I see that much more in the arena of international relations and development, but also in digital disruption. I would very much like to see thematic Select Committees so that we can begin to look at things in a joined-up way, because, as I said, the House of Commons has good departmental ones. If we are siloed, we do not get the overview, and the world is becoming really well connected and the change is much more complex.

I agree with Lord Puttnam when he says issues to do with home affairs, health and all of that will cease to be party political in a sense. There will have to be a joined-up approach to deal with some of these issues. That is where I see the biggest gap. That is the way we need to go forward.

**Lord Puttnam:** Can I offer one other suggestion, which is co-option? I remember very well that we were dealing with a particularly difficult subject before Lord Rees came into the House, and it was very clear that he was the crucial person. Frankly, the idea of having him on our side being able to ask the questions rather than just simply putting in a witness appearance would have been an enormous help at the time.

There is another benefit we could pick up. Co-option would be a pretty good way of beginning to identify and almost rehearse people who might become candidates for the Cross-Benches or generally to join the House. If you have known that someone played a blinder as a co-opted member of a committee, you are that much more likely to say, “You know what—this person would be a very valuable addition to the House”. For me, it would be a much more practical way of going forward than the present appointment system.

**Lord Smith of Hindhead:** That is a very interesting point.

**Baroness Kidron:** It seems to me that if we had the thematic structure it would also make sure that the work of individual committees does not become unbalanced, sometimes you feel as if you are on a particular path and you build towards an understanding through different inquiries, but that means that all the other things that should come under your purview just disappear off the agenda. The idea of an umbrella with more small pieces underneath it allows for things to find a place, and not to fall out of sight.

The last thing, which may sound a little populist, is that it would be interesting to explore a mechanism where members of the public, local authorities or other gatherings could put forward suggestions for inquiries, only because I sometimes feel that to set the question is as powerful as to provide the answer.

**The Chairman:** Sure. We have had other evidence on the thematic approach from Lord Stern, Lord Cormack and Lord Norton on that.

**Baroness Prashar:** Can I make one point here on an issue that is obviously very close to me, and it comes under the umbrella of constitutional issues? We have a very good Constitution Committee. We have been in the area of constitutional reform for a pretty long time, but
we have seen certain changes because what keeps our constitution together is the unwritten rules of the impartiality of the Civil Service, the independence of the judiciary and the rule of law. Some of these things have been under attack. This seems to me to be one area that maybe we need to give a lot more attention to than we have done so far. From my point of view, that has been a gap.

**The Chairman:** Sure.

**Lord Lang of Monkton:** I would quite like to give Lord Puttnam a chance to repeat his thoughts relating to the glacial progress since the 2004 report and the Hansard Society. I will give him two examples to think about. First, I was on a committee that produced a report and waited over two years for a government reply and many more months for a debate. The reply had very little substance; waffle is, frankly, the word I would use. It is very unsatisfactory.

On the other hand, there was a reason for it, and the reason was, I think, although I am never certain, that the Government could not reach agreement internally on what they wanted to say. It is not justified because it was not that sort of a report. The subject was controversial; it was related to devolution.

Secondly, on another matter, when I was a Minister 20 years ago, you were not allowed to reply to a Select Committee report off the cuff and immediately. Even though, quietly, the department had a pretty good idea what the report was going to say, it was absolutely forbidden, and so they had a completely wild run at the Government, and six weeks later they had reached agreement internally and across departments on a suitable reply for the Government. I think that has changed because I notice now that when a report comes out you get a Twitter reply almost within the day, probably followed up by a more detailed reply.

I think both those things reflect the fact that it is difficult for the processes of government to move at the speed at which the media move. Do you think there is a way round that, and would you like to enlarge on anything that you have thought about?

**Lord Puttnam:** When I used the word “glacial” that’s no entirely accurate. I looked across, and I hope Lord Low will not mind me mentioning this. Some remarkable things have happened. I very well remember Jack Ashley—Lord Ashley—when I was first here in 1997, and others may also remember, having the most primitive support for his hearing disabilities; it was really primitive. The House has done extraordinarily well in addressing disability issues. Lord Low might tell me we could do even better, but from my perspective it has been very sensitively and intelligently handled, so it is not that everything has moved glacially. That is a rather nice example of something that has improved greatly. But, rather like you, I have an example that I think may run to the core of this.

The pre-legislative scrutiny committee on the communications Bill in 2003 had about 109 recommendations. I knew well, and was a friend of, Tessa Jowell, who was Secretary of State. When we published our report the then
Permanent Secretary went absolutely ballistic, saying that we had gone completely beyond our remit, that it was not the job—this was one of the very early pre-legislative committees—of a pre-legislative committee to criticise the Government or try to take the Bill apart. In the end, they accepted all but four of our 109 recommendations. What we were dealing with was an instinctive response from the Civil Service to a very inconvenient report, a Secretary of State who actually thought it was a very constructive report, and, eventually, through Parliament, pretty well everything we suggested happened, and on a largely cross-party basis.

I have never fully understood the differentiation—because I am rather ignorant—between Parliament and government, because I have worked for government and I obviously work within Parliament. But I think that some of the problems, exist in the fact that government and Parliament have an uneasy relationship—that government, because it controls, in a sense, the purse strings, is able to pull you back if you happen to be doing too well. I think that is where some form of resolution is needed. I am fascinated by your story that you had an instinctive response, but you could not—

**Lord Lang of Monkton:** We could not use it.

**Lord Puttnam:**—articulate it until it was available on an evidence base. There is an issue here. If we are going to do better with Select Committees and with pre and post legislation, there has to be an acceptance within the Civil Service that that will require more work, more resources; it may well require more people, but we might just end up with better government.

**Lord Lang of Monkton:** Lord Chairman, I think we just have time to ask the panel if they have any observations on aspects of this subject.

**The Chairman:** I will take Lord Smith first.

**Q59 Lord Smith of Hindhead:** I think this is a classic case of going through the list of questions, is it not, as you mentioned? Having given evidence to Select Committees in the past and now served on three Select Committees, I can say that when you are coming towards a Select Committee you absolutely work out in your mind what you want to say but you also work out in your mind what you do not want to say. The secret of asking the questions is to get people to say what they have decided not to say rather than what they want to say.

My question is the one that the noble Earl was going to ask, which is, how important do you think it is to avoid overlap between the House of Lords and the House of Commons committees? I know as a Liaison Committee we spend quite a lot of time thinking about this. Do you think it is an important point?

**Lord Puttnam:** For me, the most interesting difference is that, in my experience, Lords committees do not grandstand. That is not a small difference. I think it is quite a big difference. We are there actually to find out the things we need to find out, as opposed to promoting ourselves in the eyes of the electorate or our constituents. I think that is an important difference. While I am really keen on transparency and on us getting our
message out, our ability to work quietly in a non-grandstanding way is very useful. Is that helpful?

**Lord Smith of Hindhead:** Thank you.

**Baroness Prashar:** I agree with that. We did have a discussion about that when we were looking at the EU Select Committee post Brexit, and for that reason we decided that we needed to have a discrete piece of work. I think grandstanding was avoided by the fact that we are independent, we can stand back and take a strategic view. That is our strength.

**The Chairman:** Could I just say, having spent time in the House of Commons and chaired committees, that not all committees grandstand, so I think it is not a blanket condemnation, if I am correct, is it, Lord Puttnam?

**Lord Puttnam:** It is not a blanket condemnation, but I would say, Lord Chairman, that I do think it is something of a growing practice.

**The Chairman:** Fine—okay.

**Baroness Kidron:** Just to add to that, I would say that I too think there is an importance in some sort of separation, but we recently had the chair of the Communications Committee from the Commons come to address us privately on some joint areas of overlap. It was absolutely fantastic, and I rather think that we all learned something—he and we—and I think that should be part of the system. There should be some sort of informal connectivity.

**Lord Smith of Hindhead:** That is interesting and it has been raised in the past.

**The Chairman:** For your information, we have had the chair of the Liaison Committee in the House of Commons, Sarah Wollaston, come to give evidence to us. Frank Field is coming to give evidence to us, and there is agreement that the issue should be complementarity between the House of Lords and the House of Commons.

**Baroness Kidron:** Exactly.

**The Chairman:** Also, there is the concept of parliamentary scrutiny—in other words, taking in both Houses but with that overarching scrutiny, and that would help. The responses we have had from the House of Commons from the chairs have been very positive, so it is important that we keep in line with them here.

**Baroness Prashar:** We keep the dialogue and the complementarity.

**Baroness Kidron:** Yes.

**The Chairman:** This has been an excellent evidence session this morning. If I could sum up what you have said to me, you are really saying that glacial change is taking place; the ground is changing under our feet; we have to recognise that and we have to engage with the outside world, to use Lord Williams’s phrase, in “the real world”. Is that a fair assessment?
**Lord Puttnam:** Yes. I am somewhat bothered by my use of the word “glacial”. What I am really suggesting is that the disparity between the speed of change outside and our ability to respond to it is growing, and that is particularly worrying.

**The Chairman:** Baroness Prashar, do you have comments on that?

**Baroness Prashar:** No. I think that is fine.

**The Chairman:** Baroness Kidron?

**Baroness Kidron:** The only thing disturbing that was said about this morning session was about patronage. So I would like to say on the record that patronage should not get in the way of having a radical shake-up to make the committee system to make it more fit for purpose and future-facing. If that is a blockage, then it should be dealt with.

**The Chairman:** That is a good message. Lord Lang, do you want to come in?

**Lord Lang of Monkton:** I am going to ask for any observations of matters that we have not asked you about that you were longing to tell us about.

**Lord Puttnam:** I have one final thing, which I have just written down. My 15-year experience with Singapore is marked by one thing: whenever I go there, they are not remotely interested in you complimenting them; all they want to know is, “How could we do this better?” That is the only question they ask: “How can we do it better?” They are in a constant cycle of improvement, and if we could—

**Lord Low of Dalston:** If that is the only question, who answers?

**Lord Puttnam:** Both civil servants and Ministers. I used to go twice a year to see them and talk about what they had done. My instinct was to say, “My word, you’re doing well”. They were not interested in how well they were doing. They wanted to discuss what they could be doing to improve or where are they are managing to do things better? That is a really useful mindset to develop. I think it has a lot to do with their extraordinary success in the last dozen years.

**Baroness Kidron:** My final thought would be about diversity—to make sure that the committee system is not a talking shop for the professional classes. I know we get experts, but I think we really have to work very hard to make sure that we reach all of the different communities.

**Lord Lang of Monkton:** The public and not just experts in matters.

**Baroness Kidron:** I mean we need to go out of our way to have experts of different backgrounds, but also perhaps to be a bit careful about what we think an expert is.

**The Chairman:** There have been plenty of pronouncements on that from government.
Baroness Prashar: I have a final comment. I want to pay tribute to the staff who serve our committees, but I have one plea, having served. Sometimes, the churn is so much that you have to adjust to different clerks in a short space of time. If you are going to professionalise the committees, this will have implications for the staff, the flexibility and the resources, but I want to put on record that I think we are very well served by the staff.

The Chairman: That is great. Thank you for your evidence this morning. I reassure you that member engagement is very high on our agenda, so we are not finished with that engagement with you. As we go along, it is important that members know how we have gone about our business and the emerging themes. We will keep in contact with you on that. We are really grateful for your evidence this morning, and we have finished exactly on time. Thank you.
Tuesday 3 July 2018
10.35 am

Witnesses

I: The Earl of Kinnoull; Baroness Thomas of Winchester.

Q126  The Chairman: Good morning, Lord Kinnoull and Baroness Thomas of Winchester. We are delighted that you are able to provide evidence to us this morning. Before you came in, Lord Kinnoull, a Committee member said that your submission was very succinct, and it was on the basis of that succinctness and comprehensiveness that we invited you here to address us on it. Congratulations on your submission, and we look to much more information coming orally from you in the next half hour.

Q127  Lord Low of Dalston: Baroness Thomas, thank you very much for your written submission, in which you made one main point. That is not a criticism. You were making the case for the House of Lords having a committee on disability. At first blush, a whole committee devoted to this one, specialised, subject might strike people as a rather limited and specialised remit. If people were to challenge you in that way, how would you respond?

Baroness Thomas of Winchester: I am very bad at statistics, but I know that there are millions of people who are disabled who do not feel that they are being listened to very much. A doctor came to see me the other day. She has lupus and her condition is fluctuating. She had a lot of questions. She said, “I’m afraid that disabled people aren’t much taken notice of, are they?” The answer is, “No, they aren’t”. The disabled people I know and have dealings with feel quite beleaguered at the moment and that they are often an afterthought, even in diversity.

Diversity has come up the political agenda, but everybody thinks of it in terms of gender, race and colour, not disability. You feel like saying, “If you take notice of diversity on the board of your company”—or whatever—
“what do you do about disability?” There will be silence. That is why we need a specialised committee on disability.

However, I have also refined my ideas, which I put in my submission. I can go into those a little now, if you would like me to.

**Lord Low of Dalston:** Please do. The great purpose of these sessions is so that people may expand on their written submission.

**Baroness Thomas of Winchester:** Lovely. I thought we might have a committee that was a bit more flexible than the ones we have had before and that would not take months and months on one big inquiry but would do much smaller, more specialised inquiries into issues that affect disabled people in particular. It would mean that the members of the committee would not need to be tied up for months and months, and they would not take evidence from every last person they could think of.

It would be a much more limited inquiry. It would not be replicated in the Commons, but the people on the committee would quite often have direct experience of what we are talking about. That would be quite powerful. The provision of accessible taxis outside London, for example, might enable more people to get to work.

**Q128 Baroness Garden of Frognal:** Do you see their focus being on specific disabilities?

**Baroness Thomas of Winchester:** If you had one that was about mobility, which covers a lot of conditions, of course at some point you would have to have one on visual impairment, on hearing impairment and on learning disabilities. That is certainly true. I do not see why you cannot do all of them. That is why we need a committee that could do that. As I say, it would not necessarily take the length of time on each inquiry that a committee takes now, and the membership could change from topic to topic.

**Lord Low of Dalston:** Just one more point from me. We have just had a disability committee, have we not? We had an ad hoc committee, chaired by Baroness Deech, which came up with a raft of recommendations. Do you not feel that that did the job?

**Baroness Thomas of Winchester:** No. It did a great job, but it was about discrimination. I suppose you could say that it is all about discrimination, but the Deech Committee could not expand on the point about disabled people running for elected office, for example. We could look into the number of disabled people who had made it into elected office and how they needed to adapt and what specifically they found helpful and unhelpful.

I was on that Committee; it was my idea, I seem to remember. We did not go terrifically into how many profoundly deaf people, blind people and wheelchair users were on various councils. We know that there are very few people with obvious disabilities in the House of Commons. Obviously every organisation will have people with hidden disabilities. That is another category that we could look into.
That Committee was very good, but we still need more to look into all the points that a committee such as the Deech Committee can only give the big picture on. We could focus on the smaller picture, and something might even be done to help, because it might be in that field. We might be able to say, "All it needs is for this to happen and that to happen and the building regulations to change to make this very small change".

**Lord Low of Dalston:** Thank you very much.

**The Chairman:** Earl Kinnoull, I heard your speech last night, in which you mentioned that the UK has over 36 agencies. When Brexit is delivered, this will give regulators an awful lot more work and engagement. That was reinforced this morning in a conversation I had with the Earl of Lindsay, who is a member of the EU Financial Affairs Sub-Committee, about what we are going to do. I would like Baroness Hayter to put her question to you on that issue of scrutiny by regulators and the general issue of regulation.

**Q129 Baroness Hayter of Kentish Town:** I think we share an interest in regulation, which is sad. The Financial Services Consumer Panel is about to publish something very much along the lines of what you are saying. I was struck when it said, on this issue of what will happen, that at the moment, any of the proposals—obviously, this is in the financial sector—are scrutinised by the ECON Committee of the European Parliament. It says in this report, which will come out before too long, that it has plenty of resources that support its work, "external consultancies on our books that we can call upon to do external studies for us at any point, and we can call hearings and workshops on any topic ... We have a very comprehensive set of tools at our disposal, with significant financial resources to make sure" that they can oversee the regulation at the moment.

Once the European Parliament is no longer part of that, how do you see this House, this Parliament, or this Committee being able to carry out anything like that degree of scrutiny of the stuff coming through, not just how the regulators are doing it but on the content of the regulation?

**The Earl of Kinnoull:** It is a jolly good question, and it was the basis of my original paragraph. The European Parliament has been doing a pretty good job of scrutinising the bits of regulation that have popped above the UK level and into Europe. To put some numbers on that, according to the National Audit Office, 34 EU regulatory agencies affect the UK, so effectively, our regulators feed into them. We have 90-odd regulators, and the size of our regulators is pretty interesting as well. The Financial Conduct Authority spends £500 million a year just on staff and running itself, so these are very big things. The European Parliament has this committee, and when you look at the resolutions it produces at the end of a year—they run on an annual resolution basis—the resolutions are full of really detailed points. I was looking at—that is how I am built—the resolution of EIOPA, which is the European Insurance and Occupational Pensions Authority. Its latest annual resolution is highly detailed, and clearly parliamentarians did not construct that, as they would not have the time, or possibly the expertise, to do it. It has a fairly thin layer of permanent staff to back their committees up and a fairly fat layer of rented-in staff—these consultants—to help them. We in the House of Lords on the European Union Committees operate almost the other way. We have quite a fat layer of 24 full-time...
staff backing up the committee, who are fantastic—really top-quality people—and every now and again we rent in experts to assist us, and of course we have evidence experts as well. So we have almost done it the other way.

We cannot get around the fact that very good scrutiny has been done of part of regulation within the European Union by the European Parliament, and that will now fall to us to do. We will need to change the way in which we operate in order to be able to fulfil that function. It seems that rather than waiting for things to go wrong and then doing it—what I call the Chinese doctor point—you need to be scrutinising while things are going quite well, and trying to spot problems coming down the wire. I thought that the best way of doing that was to alter the terms of reference for relevant committees and ask them at least to do some of the big regulators around—you mentioned the financial services regulators. I do not know where they would go to, but the committee should have the responsibility to follow on from the European Parliament and what it has been doing, as I said, rather well, in terms of the scrutiny of the European-level agencies.

Baroness Hayter of Kentish Town: One of the really interesting things that you have just said, and it comes out of the quotation that I gave, is that it uses its expertise to help non-experts. It is interesting that the people who are finally doing the scrutiny should not just be the experts but politicians. Obviously from the consumer point of view, you need the expert to be able to do that translation, even though from my point of view we would want a consumer person involved. How do we build into our system here the right balance between the committee not having to be expert? I do not think that we want to put only experts on the committee.

The Earl of Kinnoull: No.

Baroness Hayter of Kentish Town: How do we build in that balance?

The Earl of Kinnoull: We are pretty good at staffing up our Committee with interesting selections of people. There will always be a few people who know an awful lot about particular things that the Committee is interested in and a few people who are quite definitely lay. But we are staffing up with people who are motivated and keen to learn anyway. I would not suggest any change to the membership of the Committee at all, as we handle that very well.

Behind that, we on the European Union Select Committee had chosen to have a lot of experts who are on the permanent payroll and then to get in a relatively small number of people as and when we need particular expertise on something. Probably the way to approach it is to expand on the idea of a panel of experts. Frankly, I would look for the answer by asking the European Parliament to give us a list of experts it has been using for these things so that you can see what type of people it has been engaging. London is the city of consultants; there are any number of people who hold themselves to be experts in the sort of areas where we would need support. The committee that ended up with the task of scrutinising a major regulator would have to have the budget line item: greater expenditure for external experts.
Baroness Hayter of Kentish Town: There are two things. One is looking at the actual regulations and whether they are fit for purpose. Then there is the supervision of the regulators themselves. Do you see those as two separate jobs? We have also had witnesses—nothing to do with Brexit—who think that maybe there should be a House of Lords committee that looks at regulators in general. Do you see the same committee being able to do both?

The Earl of Kinnoull: They are the two work streams, and they are quite intertwined, because sometimes you might say, “We must have more regulation, because the regulator is not doing its job very well”. Given the knowledge of the area that the regulator is seeking to regulate—take the Competition and Markets Authority, for instance, which will have a major change to its responsibilities with the return of the mergers and acquisitions roles—you would have to have one committee looking at both those strands, because the knowledge that you require as a lay member or as a more expert member will be pretty well the same knowledge base.

Lord Foulkes of Cumnock: May I clarify that you are talking about regulators specifically and not agencies? I had assumed that the Home Affairs Select Committee in the Commons would look after the border agency. Take the regulator Ofgem: does the appropriate Select Committee in the Commons not also deal with that?

The Earl of Kinnoull: If we decide that Ofgem needs to be scrutinised by only one House of Parliament—it has been very satisfactorily scrutinised at the other end—that would be our decision and that would be fine. As I said, there are 90 regulators, as defined by the National Audit Office, of which maybe 10 or 11 are the big boys. It is the rebuttable presumption that the House of Lords should have them on its radar screen.

If there was a crack House of Commons committee, we felt that we could rely on and if something really cropped up we would form a special committee; that would be fine, but we must run through the big boys and decide whether we need to scrutinise them. I refer you again to the European Parliament, which has been doing a lot of work here. It has been spending a lot of money on external consultants, and if you look at the resolutions and things that it has been passing, it is detailed, careful, well-thought-through work from good people.

Lord Foulkes of Cumnock: Good. That is very helpful.

The Chairman: If I remember rightly, 10 or 15 years ago there were over 40 EU directives related to financial services and they have been implemented as a whole. When we leave we will have to assume our own roles, which have been in Brussels up to now. That is another factor that we have to take into consideration, is it not?

The Earl of Kinnoull: Yes. We have just had the IDD—the insurance distribution directive—another one that I know a bit about. That, of course, was thoroughly scrutinised in Brussels by a huge number of people, and there were a relatively large number of changes. We will now have to build into our scrutiny process of major changes to very important areas of regulation, such as the distribution of insurance, something that replicates...
The Earl of Kinnoull and Baroness Thomas of Winchester – Oral Evidence (QQ126-133)

what has been happening in Brussels with regard to these major directives. I am sure you are right that there are about 40 of them—there are a lot. The IDD replaced something that was about 15 years old, so they need updating every 15 years or so.

Q131 Baroness Garden of Frognal: Lord Kinnoull, you are among a number of people who suggested that there should be greater interaction between the Lords and the devolved Administrations. We have had suggestions, such as a committee on devolution and a formalisation of the Interparliamentary Forum on Brexit. How do you see this fitting into the current or a future committee structure? Perhaps, Lady Thomas, you could comment on whether you see interaction with the devolved Administrations as forming part of your proposals on disability. Lord Kinnoull, perhaps you would like to kick off on answering that question.

The Earl of Kinnoull: My own interactions with the devolved Administrations on the EU Select Committee have been a little haphazard. We have headed off to Edinburgh and to Cardiff en masse. It must have been quite expensive. When we arrived there were diary problems, we saw only half the people we wanted to see, time got a bit short, the room was being used by someone else.

The whole thing was full of good intention, but because it was a one-off it was pretty rough. We met people who were thinking about Brexit, and when we came back we all said, “Gosh, that was very interesting. They’re looking at it in a completely different way, and they are doing interesting work”, but we have no mechanism at the moment for interacting with the devolved Administrations, particularly the Assemblies.

There is another interest and concern of mine. I spoke in a debate about a draft memorandum of understanding, which was completed in October 2013, so it was before the Scottish referendum, before the Scotland Act, before the Wales Act—before a whole host of devolution that we have had recently. That is a problem.

I feel that the relevant committees in this House should find out which are the relevant committees in the devolved Assemblies and they should set up what I think is usually a video conference but every now and then a face-to-face thing, so that, frankly, one can have a cup of coffee and talk online with the same people who are looking at the same problems.

I have had experience of trying to run things in different countries, and it is amazing how that really helps the fluidity of the interactions that one needs, because instead of reading someone’s name in a paper and an angry soundbite, one knows who is there. It would be a very healthy thing. I can assure you that certainly the Scottish Parliament is thinking about many of the same problems that we think about here.

Q132 Lord Low of Dalston: Lord Kinnoull, thank you very much for your written evidence. In it, you said, “Great committee reports, poor PR and public impact”. That might also be the mantra running through our whole inquiry. Could you enlarge a little on what you meant by that?

The Chairman: Before you do so, Lord Kinnoull, would you like to come
Baroness Thomas of Winchester: I was just going to say that the Scottish Government do some things better than we do. Their treatment of deaf people, for example, is certainly something that we can learn from. Lord Bruce of Bennachie said this in a debate on disability last week when he mentioned the video relay service. That is an example of where we could learn from them, and I am sure there will be others. It is a very good point that all committees ought as a matter of course to try to find out what is happening in the devolved Parliaments.

Lord Low of Dalston: That has given Lord Kinnoull a little time to think about this.

The Earl of Kinnoull: Thank you very much. I wrote in my paragraph the simple numbers and the paucity of resource that we have for projecting what the House of Lords does. I looked back at the now more than 30 reports which the EU Select Committee has produced since Brexit. About four or five of them are really ground-breaking. They are really good reports. Many of them did not see the light of day.

In my commercial career, we had a small staff in-house and a number of agencies that helped us. We changed the agencies over time. Agencies are much better, because of course they can employ a really good person and give them four or five totally different things to do. We are very monoculture, which from a PR point of view is quite boring.

A lot of what we on the European Union Select Committee have been doing over the last two years, properly marketed, would have made a much bigger public impact. I regret that our debates in the House are not mentioned. We had another a very interesting debate last night. I read the Times, but the Times has not mentioned it today. If we had an agency whose job was to let people know, that would be good for the country. Agencies are not that expensive, and it would be very interesting for you to ask them—it is free to ask—to pitch and say what they would do.

The great thing about an agency is that you do not take on a head count and you can cut the budget or the whole agency at any time. It is so good in the commercial world. They are full of good ideas about social media and strong on the things that I am personally weak on. I think that we should increase the budget but not the head count and hire one or two agencies. We should have agencies that are holistic, so I am not talking just about committee work but about debates in the House of Lords.

Baroness Hayter of Kentish Town: I am really glad that you said that, because some people have seen the work of the committees and PR quite separately from the House of Lords. The wider approach that you suggest would be easier to sell, but it is slightly different in the commercial world.

We have also had evidence on how little even other Members of this House know about committee reports. We do not even do our internal communications very well. How have you found that with the EU Committee? Have you found that people on the whole have read them and know them, or is it only one or two of us anoraks?
The Earl of Kinnoull and Baroness Thomas of Winchester – Oral Evidence (QQ126-133)

**The Earl of Kinnoull:** I am afraid that it is fairly limited to anoraks by now. When you are producing report no. 32, to be honest it is only the anoraks who are still there waiting to receive it, because people see the word “Brexit” and there is a little fatigue. But you make a very good point, which I had not really considered, about committees not doing enough internal PR.

**Q133 Lord Foulkes of Cumnock:** I completely agree with you on that. Every time there is a report in some of the media about the House of Lords, they produce a picture of us all sitting at the State Opening of Parliament—not me; I am never there—wearing robes.

**The Earl of Kinnoull:** I am sure we could fit you in.

**Lord Foulkes of Cumnock:** I want to talk about the membership of committees, because I like your suggestion that we have more transparency about committee attendance and that we have a code of conduct. Could you elaborate a bit on that?

Would you also say what you think about the possibility of the members and the Chairs being elected rather than appointed by the Whips, and about the possibility of paying Chairs, as they do in the House of Commons?

**The Earl of Kinnoull:** I will come to those last two questions later, if I may.

I feel that it is a great privilege to be on a committee. Committees are beautifully staffed and you meet very interesting witnesses. If a seat is empty or someone has not read the papers when they arrive at a session, that is a great shame. One can drive better behaviour simply by making the attendance public. I think people care about that. We collect the data anyway, no one could complain about it and it would drive better behaviour.

I also feel that the Chairman of the committee ought to have some duty so that, if someone is not performing, the Chairman has a method of expressing dissatisfaction, privately, in the hope that if the person feels that they cannot perform, they will move on. That could all be well summarised in a refreshed and revised code. There was certainly a booklet about behaviour on committees at some point, but it could be refreshed and revised in order to improve committee performance. We can be better. There are probably one or two bits of the sub-committees of the European Union Committee where there are problems.

Turning to your questions about electing people to committees, that could be very healthy, although quite complicated, because you want committees to have a party balance, and sometimes people who might not be electorally very popular turn out to be jolly good committee members. There is a bit of thinking to be done there, and I cannot do it on my feet, I am afraid.

As for paying committee Chairmen, of course we pay the European Union Committee Chairman already, and I can assure you that we get a bargain, because it is a jolly hard-working post. If there was some element of pay
for the Chairman, especially if they are to have greater responsibilities, that would be healthy.

**Lord Foulkes of Cumnock:** Lord Forsyth of Drumlean in his evidence said that he spent more time as Chair of the Economic Affairs Committee than he does as chair of the bank he is chair of. But when I asked him whether he wanted committee Chairs to be paid, he said no, which was an interesting response.

**The Earl of Kinnoull:** He obviously has the luxury of being able to spend his time like that, but there will be other Members of the House who might make excellent Chairs of a committee but might turn down the role because they simply cannot afford it economically. I was quite shocked when one Member of the House—he joined at roughly the same time as me and I was on a sub-committee with him—turned up one day and said, “I’m afraid I’m going to take a leave of absence, because I’ve got to go back to work”. If the chair of a committee had been available and there was a small payment, it might have kept him in the House. He was quite a young and very talented non-Cross-Bench Peer, and it would have been good to have him.

**Lord Foulkes of Cumnock:** Baroness Thomas, do you have any comments on these issues?

**Baroness Thomas of Winchester:** It is a very interesting question, because there are arguments both ways. We certainly do not want to have people doing jobs who are doing them only because they can afford to do them.

On the other hand, we all know that, if we did start to pay committee Chairmen, there would be plenty of negative headlines, saying that a London-based Peer gets plenty of money at £305 a day. I am not sure which way I would come down on this. I can absolutely see why Lord Forsyth said “no payment”, but we do not want to go back to the old days when only rich Peers could afford to be active Members of the House of Lords.

**Lord Foulkes of Cumnock:** And we need to resolve, as you say, Baroness Thomas, the differential costs of being a Peer living outside London and a Peer who lives in London. More than 50% of the House of Lords is now from London and the south-east, which is untenable.

**The Chairman:** Thank you. Are there any points that you would like to make before you leave? No. You have been very helpful. Thank you very much indeed.
Submission to be found under “Rt Hon Lord Blunkett and Lord Lisvane KCB DL – Oral Evidence – (QQ92-99)”
Submission to be found under “Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)”
Wednesday 20 June 2018
11.25 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston; Lord Williams of Elvel.

Evidence Session No. 14 Heard in Public Questions 100 - 105

Witnesses

I: Lord Mendelsohn; Lord Hollick.

Examination of witnesses

Lord Mendelsohn and Lord Hollick.

Q100 The Chairman: Welcome, Lord Hollick and Lord Mendelsohn. Lord Hollick, thanks very much for your submission, and for the conversation that you and I had about industrial strategy. We looked at that in the context of devising a new structure for the review of committees. Could you elaborate on it for us?

Lord Hollick: I spent six years on the Economic Affairs Committee and chaired it for half of that time. The Economic Affairs Committee concentrates very much on macroeconomic issues and some of the key government initiatives, such as HS2 and energy policy. There is much that we do not cover that is very relevant to a strong, successful and fair economy.

Governments, including this one, have published industrial strategies or industrial plans at five or 10-year intervals since the Second World War. Most of them would score seven or, maybe, eight out of 10 for their analysis and policy proposals. Where they tend to fall down, and where nearly all of them have fallen down, is on implementation. They are launched to great applause and discussion, but then they rather peter out. That is partly because the discussion, the caravan of conversation, moves on, but it is also because there is no mechanism to follow through and to follow up on how things are being implemented and on what has changed: for example, what has changed in the macroeconomic environment and in technology that causes us to alter course. Given that economic growth must be very much at the heart of our concerns, because it pays for much
that we want to do, it is important that we keep a close eye on the development and implementation of the plan. A committee at this end of Parliament would be able to do that.

In addition, it would be able to look at future policy initiatives in certain areas. I have just sat on the Artificial Intelligence Committee, an ad hoc committee. As the industrial strategy says, AI will revolutionise both the way the economy operates and works, and many other parts, such as healthcare and education. Monitoring that, to see its impact on employment and the need for skills investment, for instance, is something we should do on a continuing basis.

At the other end of the Corridor, people look at the issue of the day—the issue of the moment. Here, on a cross-party basis, with the benefit of considerable political, academic, business and professional expertise, we are able to take a longer look on a lot of important things. We would be seen as helping to chart the way forward and giving a longer-term perspective.

It is about follow-up, and about giving a longer-term perspective on things. If you look at the thematic point and say that having a strong and fair economy is key, clearly the Economic Affairs Committee, an industry committee, the Science and Technology Committee, in so far as it relates to developments of that kind, and an education and skills committee will tend to focus on the same space, to a certain extent.

The Chairman: Good. Thanks very much for that. Lord Mendelsohn, you have not put in a submission, but you and I spoke on 14 March, if I remember rightly from my diaries. We mentioned that the reputation of the House of Lords has to be enhanced as a result of this review of committees, but you explained to me that the House of Lords has difficulty explaining our work. The House of Commons has constituents. We have to find a mechanism for making the House of Lords more porous, in your words.

At the time of the BBC programme, you said, “If we allow others to portray ourselves, we will never do a good job. Let the public find their voice”. You reminded us of the pace of technological change. We mentioned the Bill Gates quote; he said that we always overestimate the amount of change that will take place in two years, but severely underestimate the change that will take place in 10 years. Given your wide experience outside, it would be very helpful for us to get your perspective.

Lord Mendelsohn: Thank you very much for that. It is relevant for me to make two declarations of interest. The first is that I am an active investor in areas of social media, technology, communications and media. My wife is a senior executive of a very large social media company. I put that in, because I will touch on those themes.

The second, very important, declaration is that I have never sat on a committee. I sit here having only sat on the Front Bench, but with a degree of absolute jealousy of those who have had the great opportunity to sit on a committee.
I have three basic observations. First, I have always been impressed by the quality of the reports that come out of committees and by the adaptability of the House in thinking about how it addresses issues and how it fits into the framework of committees a consideration of both legislation and contemporary issues. Of course, the fact that it does so without the same immediacy and political elements as the Commons gives it a very distinctive role. The committees themselves have been making great efforts to expand their forms of communication. Very recently, the Economic Affairs Committee did a rather good job of that.

My second basic observation is that the flaw, in my eyes, as someone who has dealt with matters from the Front Bench, is always the issue of follow-up and implementation. I have found that with committees in this House and in the Commons. As I carried through a particular piece of legislation, the debate was really defined by a Select Committee report in another place. Throughout the process of legislation, which dealt with all the vagaries and problems of departmental work—getting the file wrong, getting a few notes wrong, and other sorts of things—up to the eventual implementation, the committee was right in all regards about the flaws and pitfalls. They were all pursued with great vigour, because the committee had no mechanism to enable it to follow up, and it became a burden on the current roster of issues. That is an issue. There is a big flaw in having committees involved in things and then just waiting for a National Audit Office report to say, “It didn’t go as well as we thought”. There is something missing.

My basic point is about engagement. Committee work is a very useful way of doing that. It is true of other areas in this House, but the committees are a particular example of how we can engage much more widely on the work we do. It is worth while in and of itself to explain our work to a wider public. It is worth while to do it to improve the work we do, and the quality of that work. It is important to engage people in a process that helps to rebuild confidence in our institutions. Obviously, that does not mean that every institution is immutable, cannot be reformed and cannot be changed. It is more than just institutions. There is a culture of democracy, debate and consideration, of taking into account the views and thoughts of others. In our contemporary world, we are shriller than we were previously. It is a useful exercise to engage people and teach that culture of democracy. All of that can be done better through the mechanisms that are now rapidly available to us, through forms of social media, forms of technology and other sorts of things. Those are areas where we can both promote our voice and involve people in the work we do.

We have to try to make sure that we are striving not just to receive more, but to engage more. There is an important point about making sure that people feel that the work of the House is properly owned. I think that will improve its quality. There is certainly a huge requirement for external organisations, bodies, companies, groups and individuals to provide more and more information. Many of the submissions that are received, be it in the course of legislation or in committees, sometimes have difficulty being accorded the right sort of priority. There is a belief that something much more discursive or helpful would be available to a committee, because of
the volume of work that is done. If people can see a benefit, a way in which their voice can be given a certain nuance or a way in which they can participate, all those things will be useful. Enhancing and using technology will be important. Providing capability in-house to make sure that we are driving an audience to engage with us would be useful.

Q101 Lord Lang of Monkton: I would like to follow up on Lord Hollick’s comments about an industrial strategy committee. The quality of the reports from your committee during your chairmanship was absolutely first class, so I take very seriously anything that you suggest about further change. I am not quite sure when it developed from an industry committee into an industrial strategy committee, and whether that engenders the sense of a thematic approach. You may want to enlarge on that.

My question arises from that. In a sense, you are now covering two separate government departments: the Treasury and BEIS. Does that pose potential problems? Was it deliberate, or do you think it is irrelevant? Secondly, when you answer, could you tell me why you have not thought about having a sub-committee of the Economic Affairs Committee? I believe that the Economic Affairs Committee has the opportunity to appoint sub-committees.

Lord Hollick: On the latter point, we have a sub-committee that meets each year to look at the draft proposals for changes in tax regulation and legislation. It sits for about three months. We do not have the power, or the resources, to appoint another committee.

As to the name, industry committee sounded a little snappier than industrial strategy committee, but it is essentially the same thing. One particular point is that when the Government presented their industry plan—their industrial strategy—they did so with no reference whatsoever to Brexit. Come March next year, we will enter a completely new world. We may be transitioning. It will be an extraordinary challenge for business, industry and commerce in this country to come to grips with. One of the things we can do, given the expertise that we have in the House, is to analyse that and look at industrial policy in the context of Brexit. What does Brexit mean for it?

You are right. The committee will straddle the Treasury and BEIS. A big skills and education component will be involved. When I was on the committee, I found no reluctance from the relevant department—it was not always the Treasury—to come along to give evidence. We liaised quite closely with the Treasury Select Committee in the other House. I would talk to Andrew Tyrie when we were thinking about doing something, particularly on tax, which is a hot topic. We were not talking about whether the tax rate should be 10% or 11%. We were talking about broader issues, such as how we tax corporations in a digital economy.

Lord Lang of Monkton: Did you talk about a possible joint committee?

Lord Hollick: We did. Again, our resources were limited. Of course, as the Chairman knows, resources at the other end are greater. They can do short-term and long-term inquiries alongside one another. One of the questions you pose is, “Are there any gaps?” There is a resource gap. Joint
Committees are a very helpful way forward. I have sat on two of them. However, the culture is different. In our housing report, we were able to create consensus around allowing local authorities to borrow to build more houses. As one of the committee members said, “I have found my inner socialist”. He was not a known socialist.

The Chairman: He was here yesterday.

Lord Hollick: We are better able to achieve consensus at this end than at the other end, and it is very important to keep hold of that. When we are seen from outside, it gives us a degree of credibility, authenticity and objectivity, which we need to make a lot more of in our engagement externally.

Lord Foulkes of Cumnock: I want to pick up what Lord Mendelsohn said about communications, since we have two experts in communications.

Baroness Hayter of Kentish Town: Before we go on to communications, can I do a follow-up on the idea of an industry committee? If the industrial strategy is to mean anything, it will not be government doing it, but industry. I am not saying that this committee should be another Neddy, but if it existed, to what extent would it oversee the people who will have to implement the industrial strategy—industry itself—rather than just government?

Lord Hollick: Infrastructure is obviously one important component. Perhaps the single most important infrastructure investment we will make over the next decade or, hopefully, a shorter period, will be a high-speed digital connection to every home, using fibre optics. At the moment, only 3% of premises in this country are connected. Most of our competitors, including China, are at over 50%, so we have an awfully long way to go. When the Secretary of State was asked how it would be achieved, he said, “The market will achieve it”. That is in the same category as the magic money tree. I do not think that the market will achieve it. As we know, BT has its own challenges.

Yes, we will look at how corporations can play their role. What is the role of private investment in energy policy—for instance, to produce energy? There is a strong government role to be played in such things as the regulatory environment and funding. The committee would look at both. Our skills continue to fall below the level of our competitors. The advent of AI will demand far more lifetime retraining. The Government have a critical role to play in that. We will have to look at all sides of the problem, but the Government have a very important role to play.

Lord Mendelsohn: This is not my field, but I support what Lord Hollick is saying. Over time, the industrial strategy has started to focus on a number of issues, which are core government plans for the next period. The metric of productivity is being used as the key driver. It crosses a variety of departments, but it is a very important landmark moment for us to say, “This is the definition of success”. Government is now trying to work out what the drivers of productivity are—how to measure productivity in services and other sorts of things. That is something no one has addressed
meaningfully, but it is our core driver for success in the next period. That is beyond industry. It is a core government plan, and will require a whole range of institutions, including the ONS and others, to review how we look at it.

The grand challenges are the big national bets we are making. The industrial strategy has put forward AI as one of the grand challenges. As someone who is an investor in AI, I can tell you that, on every measure, we have slipped, since the moment it came in, to the point where France is probably the leading country in Europe as regards investor sentiment on where it is likely to come forward. Those big bets about the future are part of that. If there is one thing the Government are doing that crosses a different series of issues and some real priorities in the future, the industrial strategy meets that test more than most others.

**Lord Lang of Monkton:** I am sorry to interrupt, but that is not the case on inward investment. The United Kingdom is securing a vastly higher proportion of inward investment.

**Lord Mendelsohn:** Actually, it is. That is also an issue that I think is very sensibly addressed in this way.

**Lord Lang of Monkton:** I am interested in investment in AI technology.

**Lord Mendelsohn:** France has just done a huge match-funding programme, which is why it is moving up. Over a period of time, these things are moving so fast that, if they are our national challenges, we should be looking at that. Apart from two deals, which were of a particular time, if you look at the rest of the field, we are in a very different position. There were a couple of landmark deals that took place in the UK, but triggering investment for other sorts of companies is a different thing.

In general, the inward investment argument is an important one to address in this context, not just because the gap between us and major European countries has narrowed over the last two-year period, but because the impacts of inward investment are now much more uncertain. Things such as net cash inflows and outflows, and what is and is not productive investment, make a huge difference in the new context, which requires us to look at them in a different way.

**Q102 Lord Foulkes of Cumnock:** Yesterday, we had some very good evidence from Lord Forsyth about communications. He has done a good job with his committee and sent us all an email about it. In his evidence, I think he said that the three documentaries about the House of Lords had nothing at all in them about committees. I asked the producer about that. I suggested to her that they should cover the work of Select Committees. She said, “Ah, but they are very boring”. She was more interested in Black Rod’s stockings than in the work of the committees. Are they boring? If they are, what can we do to make them more interesting? How can we get the message out that this is really interesting for the wider public?

**Lord Hollick:** I had a similar conversation with the programme makers. The intention when they came in was to follow the Economic Affairs
Committee. As you say, they found rather more exciting and interesting—some might say trivial—matters to focus on.

Do we do enough to make ourselves user-friendly? The answer is no. We do not have modern, well-resourced communications. We have some very good people, and, given direction, they can make an impact. Having been on the media side of the debate, I know that, basically, organisations now have to sell themselves. Unless there is a huge row or a big hoo-hah going on, in which case everybody will swarm around it, they have to sell their story. We have to tell the media, both digital and traditional, what we are doing.

We need an outreach programme to do that, not just for committee work, but for the House generally, otherwise our work will go unnoticed. I speak to a lot of my former journalist and broadcasting colleagues. Infuriatingly, they say, “Nothing happens in the House of Lords”. When I ask, “Have you read this report?” they say, “No”. Bluntly, you have to spoon-feed them. Their resources are slim, or slimming, as well, so we need a much more proactive approach, using video, as Lord Forsyth did when he circulated everything around the House.

To be frank, communication in the Lords itself is poor. Often, when I mention to somebody that we have come out with a report and have they read it, they say, “No, I didn’t know about it”. We have to market it here and down at the other end. We have to get on the front foot. If you are running this kind of operation, you have a newsroom where people sit down at the beginning of the day and say, “What are the stories of the day? Who is going to say something? Lord Foulkes is going to ask an awkward question”, or whatever. You focus on that. “There is a debate on this. Who is going to speak?”

If we had an eye to editorial content and what is of interest, we could get a lot of attention. People are very interested in some of the issues. We did a report on HS2. We proposed that instead of stopping at Euston, which was going to cost £6 billion more and take seven years to do, it should stop at Old Oak Common. The Chancellor, who came along, said, “Old Oak Common is not in London”. Actually, it happens to be in Hammersmith and Fulham, but that is another matter. The issue affects the lives of a great number of people. I banged my head against the wall, very ineffectually, to try to get that story out. It got out in the locality, but we could have made so much more of it.

Yesterday, as the Statement was being made about the very welcome additional funding for the National Health Service, it occurred to me that we had an ad hoc committee of this House on the sustainability of the NHS. Why does it not sit again, do three hearings and then say, “It meets the targets and the requirements we have set”? We need to be much more entrepreneurial.

**Lord Foulkes of Cumnock:** Could we get more coverage through social media?
Lord Mendelsohn: It is more than just a question of coverage. There is a point in saying, “We need to cover our work more”, but there is a way in which you can talk about the work, or even invite comments about the work. There are now millions, probably billions, of people who are members of groups on a variety of different forms of social media and who engage constantly on issues. In increasing numbers, all sorts of things are now starting to take place on them, in different territories, where there are different requirements. There is a very big small business programme in developing parts of Africa, and a whole series of forms of empowerment and engagement across the Middle East and in other places.

In locations across western Europe and America, patient groups, for example, are getting together and starting to have the participation of researchers, clinicians and other experts, who appreciate, as with all medicine, the efficacy of patient-reported outcomes. Those groups are helping to develop the boundaries of what can be done and are sharing the most extraordinary information. They use a variety of devices that could be used here.

The Facebook Live facility provides the ability to ensure that you have a discussion. Someone can talk about a topic. You can have an interview with them, have questions come in and have real-time observations and comments. If you have people working here to build an audience for whom the issue is relevant, you can have a two-way form of communication and a different form of participation. All sorts of mechanisms are available to provide that, not just to get an audience for what we are doing, but to ensure that a range of voices can participate, or feel that what we are doing is relevant, or even start to understand some of the trade-offs that are required in these sorts of discussions, which are an increasingly important part of building a democratic culture. All those things are possible.

Lord Foulkes of Cumnock: That is really helpful.

Baroness Garden of Frognal: You have pretty well answered the questions I was going to ask about communication and outreach. Obviously, social media and the new technologies are a powerful part of that. Do you also see a role for face-to-face communication, for this House to make more attempts to go out and about and meet people face to face, which, needless to say, is often rather more powerful in certain communities? If so, how would we generate that? How would it work?

Lord Hollick: For a number of reports that we did in the Economic Affairs Committee, we went out and engaged with the participants.

Baroness Garden of Frognal: Did they invite you, or did you have to make the attempt?

Lord Hollick: We convened. We have quite good convening skills. On HS2, for instance, we wanted to go to Manchester to find out what people’s views were. We talked to the local community and the local political and business leadership. That was very useful. On the AI Committee, we spent valuable time with DeepMind, and with Microsoft in Cambridge, looking at all their work. That can be helpful.
We have exactly that challenge at the moment. I am now on an ad hoc committee on intergenerational fairness. I have not done the calculation, but, looking around the room, I would say that the average age is probably nearer 70 than 60. A committee of that age needs to get a different perspective.

I am trying to develop ideas whereby we would have an advisory panel, or something like that, made up of 25 to 35 year-olds who have well-formed views and an interest, which could shadow us, comment on some of the issues and suggest that we look at other arguments. We would then have a great deal more credibility. That is an idea in development. It is a huge challenge. When we are dealing with an issue that impacts on younger people, we need to be able to put our hand on our heart and say, “We have listened, and we have understood”.

**Lord Mendelsohn:** I believe strongly that you have to engage with people and meet people. You have to go out. I am a strong believer in going to visit places. A key part of the work here is to make sure that we have a real sense of what it is, whether it be by travelling to the Office of the Small Business Commissioner to meet the team and to understand what is going on, or by visiting other facilities. That is absolutely crucial.

People underestimate the capacity of social media. Social media can bring together disparate people. The fact that people do something on social media is not to the exclusion of all other forms of activity. It is the modern form of communication in which a younger generation is highly adaptive and capable, but it drives other things. It is no accident that digital companies in retail are creating magazines. No one else can work out the economics of it, but they can. It is no accident that some of the social media sites are now developing magazines, because no one else can do it in the way they can. It is no accident that, if you are driving people towards any sort of activity—meetings or other sorts of things—you do so online. Most people now assemble meetings or do all sorts of promotions online, using digital media.

The absence of utilising these things adequately or fully is something that works to our detriment. It is not a substitute, but, if we are to connect in any meaningful way, these things are waiting to be used, especially as we can do so at a relatively lower price.

**The Chairman:** The committees have increased their Twitter accounts, and we have had quick wins for that. Are you saying that we have to raise our sights even more as regards the technological challenge we face? During our conversation, you said that we should establish a public information office for social media; I wrote it down without fully understanding it. Can you explain that, along with your answer?

**Lord Mendelsohn:** People underestimate the whole digital field. A whole range of forms of social media are used. There are a few larger platforms. Some break by what they do, and some break by age. Twitter is a very good format, but it is a broadcast format. You broadcast the message, and the engagement is quite limited. It is mainly a broadcast format.
There are all sorts of other things that build groups or provide other ways to post what you are doing, be they YouTube, Reddit, Facebook, Instagram and so on. Then there are devices by which you can communicate quite comfortably with friends, groups or others, from Facebook’s workplace products to Houseparty, which is a form of visual communication for large conference calls, or for my 13 year-old to speak to all their friends and see their faces on a large platform. All those things are readily available.

It is important to understand that there are horses for courses, and what you can do with most effect. Using one form is probably too limited. It really comes down to what you want to use it for and how you want to use it. We need an office that is sufficiently skilled and has the means and capacity to do the job that is required. If you want to pull people in, to explain the work or to get out some news, you have to use the different devices. Not to use them would be a mistake.

We have to face up to certain realities. I do not want to bleed into this conversation too much, but in the most recent survey of what are trustworthy news sources, a number of online and digital sites had trust factors way in excess of traditional media for the accuracy or efficacy of news. We have to think about the world as it exists now, and how we engage with that, not the world as it has been.

Q103 Lord Low of Dalston: We have heard quite a lot of concern about follow-up to committees’ work. They meet, they make recommendations that go out into the ether, and they get very little back: a late response from the Government, which often has to be chased up, and a month later a debate in the Chamber. Can you think of ways in which we might get more effective follow-through of committee reports and recommendations?

Lord Hollick: In the Economic Affairs Committee, one of the things that we did, which was quite effective, was to have almost immediate follow-up after the report with the Minister and his or her team. We then got into discussion and debate. I am thinking particularly of the housing report that we published. Bluntly, the Government were in the market for a new housing policy, so in a sense, we had some goodies they could look at. We had a very engaged discussion with them; they were amenable. The Treasury is less amenable, although the Chancellor comes before the committee and we can raise issues.

On the other side of the coin, I have had quite a lot of feedback from people who have now left various departments. They say, “When we get a committee report from the House of Lords, we work out how we can play a straight bat to it. The Minister will probably go through a rather awkward debate, and that is the end of it”. That is where follow-up is important. We need a digital support group, a chorus, saying, “This is important for us. You need to follow it up”. We have to marshal the resources effectively, bluntly, to keep pressure on the Government.

HS2 is now shooting past its budget, as everybody predicted. We need to have the Government in regularly to follow through what is happening, and why they are doing this or that, et cetera; otherwise, we can be kicked into the long grass. That happens all too often.
Baroness Hayter of Kentish Town: This is complete ignorance, but am I right in saying that at the moment there is no ongoing committee on HS2?

Lord Hollick: No. There was a legislative committee to take it through, for all the permissioning.

Baroness Hayter of Kentish Town: Now there is nothing.

Lord Hollick: There is nothing as it is going through.

Baroness Hayter of Kentish Town: There is nothing that is now overseeing the rollout of HS2. How interesting. I had not focused on it.

Lord Hollick: The same is true of energy policy. It is true not just in the areas I have been involved with, but more generally.

The Chairman: A Public Bill Committee comes up at a later time, but that is different. It takes evidence and may do site visits.

Lord Mendelsohn: You must forgive me. I have a slightly more business-oriented view. No committee report is really complete without a sense of its measurement. Once you have a report, what is the measurement by which you will judge whether or not the report has fulfilled its job? If people are not going to agree with every recommendation, what are the measurements? Committee reports should have a traffic-light system that says when they should look at an issue again if something goes wrong. If it overshoots by X or Y, it means that something more material is wrong. They should look at something that says, “These would be the triggers to review it. This would be something that would suggest that it is wrong”—or, in the context of a debate, “The evidence has changed substantially, and we had an unbalanced view”. They should have a sense of the terms under which an issue should be followed up. That is my view.

Baroness Hayter of Kentish Town: But somebody would have to do that follow-up.

Lord Mendelsohn: Correct.

The Chairman: We have no concept of lines of report such as that.

Lord Hollick: I go back to Lord Lang’s point about sub-committees. A sub-committee could be charged with that responsibility. It could look at tax for three months of the year, but for the other nine months it could follow through on some of those issues.

Q104 Lord Lang of Monkton: I was going to ask a question very similar to Lord Low’s. It concerns outreach after the report has been published, not when you are collecting evidence and so on. That sometimes works, and I congratulate you on what you did to get evidence and attention paid to it.

Our publicity is dire. I have certainly had that experience, and it seems to be common across all the committees. The example that Lord Foulkes gave of the BBC programme focusing on Black Rod’s stockings, rather than our committees, is a good case in point. Have you considered the possibility,
subject to the availability of funds, of the House of Lords itself promoting outside conferences or debates, as magazines and newspapers do? The *Spectator* does it; I think the *New Statesman* does it. The *Times* does it occasionally. There is Andrew Neil in conversation with X. It should be possible, in most of our committees, to find somebody who would be really good at debating what the committee had concluded, to get attention, if only from a particular piece of the media, which would report its own debate and, probably, sell tickets for it. Have you thought about something like that to stimulate interest?

**Lord Hollick:** It seems to me that there are some natural partners in the process with whom you can do exactly that. All the people who give evidence actually become part of the committee, so, although they may disagree with things, they are a natural cheerleading group, if you can encourage them.

When we published the AI report, we partnered with the Royal Society. We had a breakfast, which Kate Rock and I went to, where we talked to the inner sanctum of the Royal Society about our findings. Two hours later, we had a meeting at which the chairman presented the report. A lot of the people who had provided evidence were there. A lot of the bodies, such as the CBI, were present. The press came along, because they were intrigued by the process. That is an example of how we could market these things, in partnership with other people, so that they have a continuing life. What followed from that was a rather large number of invitations to members of the committee to address various things, but that is part and parcel of the job.

**Lord Mendelsohn:** The exhibitions business is big, as we both know. There are a lot of partners out there doing it already. It seems to me that there are many occasions when these things go on already. We do not have committee structures such that somebody can go to them to offer some of the committee expertise or people, or some of the stuff that has been going on. There is more scope for what Lord Hollick talked about, which is absolutely right, but even now we are not exploiting the system as much as possible.

It is a simple point. Using effective forms of engagement, which could be physical, through social media or through the application of technology, it would be very interesting not just to have a government response to a Select Committee report, but to assemble, by marshalling the voices of other people, a civil society or a public response to our committees. That would be a very useful exercise to make sure that people fully consider what we are doing. There would also be the benefit of talking to people who may be recipients, practitioners or the victims of different problems across society, and may have very good suggestions that would add to a committee report, after full reflection on it. There is a role for that.

**Lord Lang of Monkton:** To build up a reputation, our input would need to be powerful and authoritative, using the House of Lords as its source of authority, rather than simply one committee giving a particular push on a particular occasion.
Lord Hollick: We have a very strong brand, which we do not use as effectively as we should.

The Chairman: The evidence from Chairs yesterday was that we should get into areas that may be seen as controversial, but the tradition here has been to see anything controversial as party political. People should get their teeth into big public policy issues.

Lord Hollick: One of the strengths of this place is that we can take controversial things and find consensus, by reference to the evidence. We have all worked on committees where we have seen that happen, not necessarily to the lowest common denominator, either. In fact, we can be surprisingly radical.

Lord Williams of Elvel: Going back to the proposed industrial strategy committee, would it not be rather difficult to have a full policy on it without being able to engage in Finance Bills?

Lord Hollick: Essentially, Finance Bills fall under the Economic Affairs Committee, and, in detail, only under its sub-committee, which looks at the efficacy, relevance and drafting of the proposals. For instance, we wrote a very critical report on making tax digital, saying that businesses with a turnover of between £10,000 and £80,000 were simply not ready for that. We were able to get engaged, but we could not talk about the rate.

The Chairman: In fact, the Government responded to that, did they not?

Lord Hollick: The Government responded, and then delayed the proposal. In fact, they have now moved the £10,000 to a much higher level. In the small world of tax on SMEs, we have hero status, dare I say it.

We did a report on corporation tax strategy, particularly in the light of the digital world. It was something I was keen to clear with Andrew Tyrie. He said, “Please go ahead. We are only going to look at the issues of the day, or the Budget issues, so it would be very helpful if you could give us a longer-term view on that”. At the moment, there is a yawning gap as regards how we are going to raise money for public services, with the potential significant decline in fuel duty, as we move to electric vehicles, and the fact that a large number of people are now self-employed, rather than employed, and pay a lower rate of tax. Of course, expenditure is going up, and tax strategy needs to be looked at. This House would be able to do that, and do it well. Although we do not want to tread on the toes of the Commons, there seems to be quite a lot of space to look at long-term or medium-strategy in all those areas.

The Chairman: Looking at our structure, we want a system with a bigger footprint. We want to be able to look at long-term public issues, as well as respond to live issues. Yesterday, the evidence from the Chairs was that we need a communications strategy and we need to professionalise our committees in that area. I know you are very much in support of that.

Are there any final comments? Let us keep our mind on the big issues.
Lord Hollick: I quite like the idea of thematic areas. Obviously, the committee structure will change after 29 March next year. The committee structure for the European Union committees was a mother ship and lots of committees off it. It may be worth looking at that for other areas, so that there is a co-ordinating committee and then a number of other committees or sub-committees that fit in; we can call them what we like.

They need more resources. One of the challenges is that we have to look at how we spend our money and whether we are spending it wisely. Using business terminology, what is the best payback? We have to demonstrate to the wider world that we are relevant and can have an impact. That means that we have to put in more resources. At the other end, in the Commons, they have 10 or 12 members of staff for a committee. On really difficult topics, they often have two or three specialist advisers. Those are the sorts of resources that we need. There is some housekeeping to be done in that respect.

Should we look at electing Chairs of committees? It would create a bit of a buzz externally, that is for sure, and internally.

The Chairman: The three sets of committee Chairs who were before us yesterday rejected that.

Lord Hollick: Maybe it is just my populist side.

Lord Foulkes of Cumnock: Maybe it is because the committee Chairs got there by patronage.

The Chairman: I am surprised you did not follow up with that.

Lord Hollick: There is no question but that the election of committee Chairs in the Commons has significantly enhanced their reputation and the view of them as independent. One of the things that we do not get across enough here is the fact that we are cross-party and independent. As Viscount Hailsham said, we are not just party hacks when we go on to committees. One way of symbolising that is to vote for Chairs.

Lord Mendelsohn: There is huge quality and adaptability in what we do here. We should use the opportunity that will arise from the changes that are likely to take place with the EU committees. There is a real chance for us to be much more inventive and modern in our approach; it is time for us to experiment and to be much radical.

The Commons is much more constrained. We are in a much better position to utilise these things to the full, which would be no bad thing. As someone who, even in business, feels like a bit of a dinosaur compared with some of the young creative sparks, I have to say that it would do us a whole load of good to have some of those people challenging us to think through how we engage with people in a different way and get our message and work out there. That would be a very useful addition.

The Chairman: I would like to come back to that with you, if you can help us with it. It would be very helpful to us. The same applies to the points that Lord Hollick made. Today has reminded us of the economic, social and,
indeed, political environment in which we will exist in the future. Lord Mendelsohn, you made the point that we are doing this not for the present, but for the future. We need a number of discussions on that. You have stimulated our thoughts hugely. We are really grateful to you for coming along. We will keep that engagement with you as we go along. Thank you very much.
Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbotts, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield– Oral Evidence (QQ144-148)”
Wednesday 23 May 2018
10.40 am

Witnesses

I: Professor Lord Norton of Louth, Campaign for an Effective Second Chamber; Lord Cormack, Campaign for an Effective Second Chamber.

Examination of Witnesses

Professor Lord Norton of Louth and Lord Cormack.

Q48  **The Chairman:** Good morning, colleagues, and welcome. Thank you very much for your attendance, for your submissions and for the meeting yesterday, which I found very helpful. It was very good.

Lord Norton, your submission is quite detailed and it would be good if you could give us a pithy summary of the main points that you think we should address. You mentioned the difference in culture between the House of Lords and the House of Commons, but, as we mentioned yesterday, there are issues of complementarity in parliamentary scrutiny and gaps in legislative scrutiny, particularly post-legislative scrutiny, which is a very important part of your submission. At present, we have no overriding framework for committees, so we need something more strategic that maximises the role of the House of Lords as a scrutinising Chamber. Could you elaborate on that, please?

**Professor Lord Norton of Louth:** Yes. It may be helpful if I go a little wider, in the sense of, as you say, identifying where we may want to go. It is important to see where we are starting from as regards our strengths so that we do not lose them, because it strikes me, from the point of view of our committee, that particular strengths are the quality of the inquiries we undertake, by which I mean the choice of topic and the evidence taking, and the quality of the reports. It is not only what the committees do but
their output. Those are particular strengths of the House because they derive from the quality of the membership, and the experience and expertise we are able to bring to bear. That plays to the strengths of the House, but there are two areas of weakness.

One area, which I focused on in the submission, is that we have gaps in coverage. As you are aware, some of those gaps are in relation to policy. Committees are quite sporadic in their coverage; we cover some areas. The only respect in which we could say it is comprehensive is through the EU sub-committees, but of course they are limited to the EU. Otherwise, we have committees covering particular areas, but there are notable gaps.

We have gaps in what I called process in my submission, by which I mean standards and output. It is checking for standards when Bills go through the legislative process. Then there are outputs: are Acts delivering on what is expected of them? It strikes me that those are particularly important areas in the quality of legislation and they are gaps that this House is distinctly placed to fill; I do not think the Commons would necessarily have the political will to undertake that particular exercise. If we do not do it, I do not think it will be done, and it needs to be done.

The other gap is in public engagement. Our committees are very much policy focused and government focused rather than outward focused or public focused. We do very good work, but we are not necessarily brilliant at publicising the work we do. We publish reports, and we now give resources when they are launched to ensure that they get some press coverage, but we are not very good at regular engagement. How many Lords committees have Twitter accounts, for example? Of the Commons committees, quite a few do.

We need to keep people informed about what we are doing, through engagement and thinking more about how to link with outside groups other than in the purely formal sense of taking evidence from organised interests, which we do rather well. Committees are very good at dialogue and discourse with organised interests in their areas, but how do we go beyond that? That is a gap we need to focus on. We need to think about being more outward looking, not simply inward looking in relation to government and public policy.

The Chairman: This morning, staff gave us a report that I did not realise existed. It was a 2009 report, Are the Lords Listening? Creating Connections between People and Parliament, which is very good. I was re-reading it. Maybe before the end, we could develop that as our last question.

Lord Lang of Monkton: Lord Norton, I thought your paper was very lucid. It argued the case for what you are seeking very well, and I find it persuasive. For the sake of challenging it, the present system has evolved organically and therefore has gradually fitted the needs of the time. What you suggest by way of an overarching framework carries with it a danger of centralisation, and possibly loss of spontaneity and flexibility. Are you conscious of that and can you indicate how you might guard against it?


**Professor Lord Norton of Louth:** Indeed, yes. I recognise that. That is why I put in the paper that we should not simply adopt a top-down approach, such that we are prescriptive in what we do. We must maintain the bottom-up element of the initiative of Members coming forward with ideas, particularly with regard to ad hoc committees, which have worked rather well since the 2012 innovation. In a way, you get the best of both worlds, which I know you are focusing on: a fairly coherent structure at the same time as preserving some degree of flexibility. With ad hoc committees, that works extraordinarily well. It would not necessarily be ruled out if we establish that there is a need for a new permanent committee. It is about getting the balance right.

At the moment, we are a bit imbalanced. It is bottom-up, so we end up with an array of committees that do a good job, but the important question is what is missing. By taking an overarching approach, we can address that without losing the flexibility. That is what I was concerned to address. I was also thinking about whether we have the resources to achieve both.

**The Chairman:** Both your evidence and that from Lord Stern and the British Academy mentioned that there was no strategic approach and no overarching framework. I think the two of you are focusing on that particular area, so, for the first time, we could have that.

**Professor Lord Norton of Louth:** Yes.

**The Chairman:** If you want to develop that later, fine. Lord Cormack.

**Lord Cormack:** Lord Norton and I are appearing representing the group that you attended yesterday, the Campaign for an Effective Second Chamber, which has in its membership over 200 Members of this House and Members of the other place as well. We were the two who formed it way back in 2001 because we believe in a more effective second Chamber but an unelected second House.

I totally associate myself with the points made by Lord Norton in his submission and his remarks just now, but one point came out yesterday that we perhaps do not focus on enough. That is the fundamental difference between the elected House, which changes its composition every five years or thereabouts, and the unelected undying House, as the Americans would call it, which continues and therefore has the opportunity of looking forward. I know that I speak to someone who has served on Select Committees in the other place and indeed been a distinguished chairman, and I chaired a Select Committee in the other place as well. One of the difficulties is that we were inevitably working within time constraints that the House of Lords does not particularly have to take into account. That is something that could and should be reflected, and I hope will be reflected, in your report when you and your colleagues come to make it.

**Lord Low of Dalston:** Lord Norton has already begun to address a question I was going to ask. To summarise what you have been saying, Lord Norton, would it be correct to say that you want to see the combination of a thematic structure of committees and a structure that has some flexibility to depart from that where appropriate? It would be a
combination of the thematic and the flexible?

**Professor Lord Norton of Louth:** Yes, absolutely. We need the overarching approach that the House can bring to bear, so that it avoids gaps in public policy coverage, but it is essential, perhaps now more than ever, that we have the particular flexibility we get through ad hoc committees. We identify that there is a particular problem that deserves inquiry and we can move fairly quickly to set up a committee. The initiative for that comes from Members having identified the problem and making submissions to the committee, so that the committee can then make recommendations to the House for ad hoc committees.

**Lord Low of Dalston:** You get the thematic from the top-down proactive approach.

**Professor Lord Norton of Louth:** Correct.

**Lord Low of Dalston:** And you get the flexibility from the more bottom-up nomination of ad hoc committees.

**Professor Lord Norton of Louth:** Exactly. That does not preclude, of course, if necessary, this committee taking the initiative on some sort of problem when it arises, so that you are not solely dependent on Members recognising that there is a problem. There is no reason why the committee itself could not identify a particular issue that would merit attention and put that before the House.

You are absolutely right about the balance between the thematic approach, which I have characterised as the top-down approach, and the flexible, bottom-up approach that allows Members to come forward with proposals. I think it is to the benefit of the House that it can address issues that are particular and thus merit a one-off inquiry, but are also topical. The committees we have had in the past year bear that out.

**Lord Cormack:** We have to be both reactive and proactive. It is very important that we are in a position to look forward and that we can react quickly to a crisis that perhaps deserves attention, in a committee that can be a committee of real experts; one thinks of foreign affairs and so on.

**Lord Low of Dalston:** This committee takes the initiative, but it usually operates consultatively by asking people for their suggestions.

**Professor Lord Norton of Louth:** Could I follow up on the point about flexibility? We are flexible, but we are flexible on a sessional or a year-long basis; we set up a committee, it lasts for a year and it reports. There are issues flowing from that. Sometimes you might need a bit longer, and there are issues of privilege, of course, once it has reported and ceased to exist. There may be merit in being able to appoint committees for a shorter or a longer period, depending on the topic.

**Lord Low of Dalston:** Perhaps not being bound by the one-year cycle.

**Professor Lord Norton of Louth:** Correct. If you think about it, we have already changed the timeframe from sessional to one-year committees, to
take account of the fact that we have a two-year Session. I am slightly prompted in this by the Leader’s Group on Working Practices, the Goodlad report, in 2011. I am pursuing his recommendation for post-legislative scrutiny. His point was that committees could look at four Bills in the course of a year, so that it was not just one Bill per year. We could have a period looking at one Bill and then move on to another and so on. That may give some degree of flexibility in appointing committees, because some topics might not lend themselves to a particularly long inquiry. Some Select Committees do short inquiries and long inquiries. One might have that degree of flexibility with ad hoc committees.

The Chairman: I think the British Academy report yesterday aligned with your view, in that you can have both flexibility and the strategic element combined if the committee has a bigger footprint.

Professor Lord Norton of Louth: Absolutely, yes. There might be flexibility with Select Committees being able to appoint sub-committees to investigate a particular topic.

Lord Williams of Elvel: You talked about the ability of this House to look at the longer term rather than the shorter term. Is that not compromised slightly by Dissolution, when committees are dissolved? Would you recommend that we change that rule?

Professor Lord Norton of Louth: Yes.

Lord Cormack: I certainly would, because the fact that we are a continuing or undying House, and are not bound by electoral cycles in the same way, means that there is a great deal to be said for that difference being recognised. Because of continuity of service, we need to look at how long people are appointed for. We are too restricted in this House. In the other place, as the Lord Chairman knows, because he did two terms, I think I am right in saying, as Chairman of the Treasury Committee, they do not have that inhibition. We are too inhibited, given the fact that we are a complementary House, and that we are such a different House in composition.

Professor Lord Norton of Louth: I know this will be dear to Lord Cormack’s heart. It is not just the cut-off of Dissolution; it is the fact that committees are appointed sessionally. The committees carry on, but the membership changes sessionally, even though there is normally rotation and you are reappointed, but it seems a bit archaic.

Lord Cormack: The operative word being “normally”.

Professor Lord Norton of Louth: Indeed, but why not appoint members for a fixed period?

Lord Williams of Elvel: The problem with what you are suggesting is that at the moment, and possibly for ever, the Whips determine who will sit on committees.

Lord Cormack: I would like to come to that later, if I may.
Lord Williams of Elvel: Right. I will reserve that question.

Q50 Lord Low of Dalston: Lord Norton, a major thrust of your written evidence was your recommendation that there should be two sessional committees, one on legislative standards and one on post-legislative scrutiny. Can you expand a bit on the benefits that you think those committees would offer?

Professor Lord Norton of Louth: Certainly. On legislative standards, it would improve the quality of legislation that is brought forward, because at the moment we are dependent upon government applying its own standards. We are then the recipients of Bills coming forward in whatever form government has dictated they shall be crafted. There is merit in ensuring that we are in a position to check each Bill, not so much for the substance or the merits, as that is up to the House when the Bill is debated, but that it complies with certain criteria, certain standards.

In that regard, the 2011 Goodlad committee was rather good in identifying the sorts of standards that would apply. It did so on an indicative basis. It did not say what they would be, but it said: “The exact content of the legislative standards form would be for further discussion. However, we expect it to include: A clear and unambiguous statement of the policy intention or intentions of the legislation, and of the desired outcomes”. That is extremely important and would tie it to post-legislative scrutiny, because you would get a statement of the purpose of the Bill and how you would know whether it has succeeded. That would then create the basis on which a post-legislative scrutiny committee could examine the Bill fairly objectively.

The Goodlad committee goes on: “An explanation of why legislation, rather than other means, was necessary to fulfil the policy intention, and why such legislation is being brought forward at this time … A summary of the Government’s response to pre-legislative scrutiny on the bill, and, in cases where a bill was not published in draft, an explanation of why it was not … An outline of how the bill relates to existing Acts, and whether opportunities to consolidate such legislation have been considered … An informal Keeling Schedule (not part of the bill) showing in greater detail the effect of amendments to earlier Acts … A list of any new criminal offences created by the bill, and a summary of how they relate to existing offences … A summary of any consultation undertaken in preparing the bill … An estimate of the costs of preparing and implementing the policy set out in the bill (including a regulatory impact assessment) … An indication, where appropriate, of targets and performance measures for implementation”.

The report suggests we could depart from that as appropriate, but it strikes me that those are very good criteria that a committee could utilise, and I think the rigour that that would impose on government would be good in itself. There is a strong case for a legislative standards committee, and of course that case has been made by a number of committees, including the Lords Constitution Committee.

A committee on post-legislative scrutiny derives, as I mention in my submission, from the Constitution Committee report of 2004. We
recommended pursuing a post-legislative scrutiny committee, ideally a Joint Committee, but if necessary a committee of the Lords. I think that would shift things quite fundamentally in how we view legislative success. Traditionally, Ministers and some Members have treated success as Royal Assent: “Oh, we have got the Bill through. It has Assent. That is success”. No. You should assess it on whether it has had the impact it was intended to have. That is success.

The Government accepted that three to five years after enactment a measure should be subject to review, so we have departmental reviews of Acts, and the reviews are published and sent to departmental Select Committees in the Commons, but, of course, they do not have the time to chase up and do their own reviews. That is something that needs to be done. It plays to the strengths of the Lords. We can do it because it is objective; it is not questioning the merits of the measure and it is not political, but whether it has delivered on what it was intended to achieve.

The two proposals link and we come full circle, because we look at what was identified when the Bill was introduced as to its purpose and the criteria by which you determine success. Then we have post-legislative scrutiny; the committee will determine whether the measure has delivered on what it was intended to achieve and could then engage in dialogue with government as to whether change is needed.

**Lord Cormack:** Of course, there are whole chunks of Acts that are never properly enacted.

**Professor Lord Norton of Louth:** Yes. That was something we looked at in 2004: do you look at the period after enactment or the period after commencement, because some Acts are never brought into being? I highlight the fact, of course, that it would play to our strengths, because we already now have, each year, an ad hoc committee engaging in post-legislative scrutiny. What we have seen today shows the value of the exercise, with committees on adoption, on mental health and so on, all doing very good work.

**Baroness Hayter of Kentish Town:** What you read out from Goodlad is exactly what I think every Act should do. What I cannot get my mind around is how a committee would do that. It seems to me that that is a policy decision we somehow need the Government to sign up to, because, if a Bill started in the Commons, it has already gone through taking public evidence and so on, before it comes here. In a sense, it is what we have been doing on the Floor of the House with the withdrawal Bill, looking at the criminal offences and so on. I do not quite understand how you would put that into a Bill that had already come from the Commons on a regular basis. It sounds to me as if it is slightly replacing our committee thing, and what seems more important is to try to get them to adopt the recommendation that every Bill should say what its purpose is.

**Professor Lord Norton of Louth:** Yes.

**The Chairman:** Lord Lang, is your question on the same point?
Lord Lang of Monkton: It is slightly different, I think. I will be very brief. I cannot remember whether you were still chairman of the committee when that recommendation came out, Lord Norton. I think I was on the committee, so I will not be very critical of the suggestion. I am concerned that the creation of these committees, on top of what is there already, could create a danger of overlap and possible intervention. For example, the Constitution Committee is always very careful, as you and I both know, not to intrude into the territory of the Delegated Powers Committee.

Professor Lord Norton of Louth: Indeed.

Lord Lang of Monkton: I fear there would be some overlap and some problem of treading on toes.

Professor Lord Norton of Louth: I do not think that problem would arise in respect to both questions because the committee would not be putting anything into the Bill. It would merely check the standards on the way the Bill was brought forward. Goodlad recommended that it would be when Bills came to the Lords, so they would report in the normal way. It would check whether the standards had been met. It is not the substance of the Bill; it is a statement of what the Bill is intended to achieve and whether we have that, and whether there has been consultation. It would be making sure there is rigour, checking whether there has been rigour, and informing the House what has taken place. Has there been legislative scrutiny?

Baroness Hayter of Kentish Town: That would have to happen within a week or two. It would come out from the Commons on Third Reading. We would go into First Reading on that day, presumably, and then two weeks later we would have Second Reading. That piece of work would have to happen in that period.

Professor Lord Norton of Louth: You can do some prior research, but of course a lot of it would come in a memorandum from the Government, pretty much as you get with European proposals. The explanatory memoranda from the Government go through the legal base for the proposal, and things such as that. It would be imposing rigour on government and we would be checking that they had complied with it because they would be saying what they had done. You would look to government to come forward with an explanatory memorandum, pretty similar to what Governments provide in the context of the EU.

On Lord Lang’s point, one would avoid overlap. In the Constitution Committee, we are not so much looking at the process of the preparation of the Bill; it is more the constitutional standards that are engaged, which is separate from procedural standards.

Lord Lang of Monkton: Yes, I agree, but one merit of the Constitution Committee is that it has a fairly broad, free-ranging capacity.

Professor Lord Norton of Louth: Yes.

Lord Lang of Monkton: Except where it treads on the toes of the secondary committees. Would some sort of protocol be needed to define the distinction of powers between the two?
Professor Lord Norton of Louth: One would probably get that through the terms of reference, and then one relies on communication between the clerks, as one does with delegated powers and so on, just to ensure that there is no overlap, or, for that matter, duplication because there is no point in one committee doing it if the other is doing it already.

Lord Lang of Monkton: Quite.

Professor Lord Norton of Louth: I do not think it would be a significant issue because the Constitution Committee is concerned with what is actually in the Bill and the constitutional implications, whereas this would be more to do with process, consultation and clarity. I do not think there would be significant overlap.

The Chairman: I am mindful of additional questions. If you feel an additional submission is in the air, do not hesitate to send it to us.

Lord Williams of Elvel: Would you include Finance Bills in legislative standards?

Professor Lord Norton of Louth: I do not see why not. This has come up in different contexts, including pre-legislative scrutiny. The general view is no, you must not include Finance Bills, and then people who are expert in finance say: why not? There is no reason why not.

The Chairman: If you could give us that in writing, it would be very good, because it is a very sensitive subject. We will make it late-night reading, with a whisky.

Professor Lord Norton of Louth: As I said, it is to do with process, not substance.

Baroness Garden of Frognal: This is principally for Lord Cormack, but obviously Lord Norton may have views, too. Your evidence suggests that House of Lords committee chairs and members should be elected in a similar way to the House of Commons. What benefits do you think that would bring, and are there other ways in which committees might be more transparent?

Lord Cormack: As a prefatory comment, I believe that the House of Lords has neither point nor purpose unless it is able, within the constraints in which we operate, to challenge government. There is not only the right but the duty, without fear or favour, to ask the House of Commons to think again.

Baroness Garden of Frognal: The Daily Mail does not think so, I am afraid.

Lord Cormack: The Daily Mail and I do not always agree. I believe that the House of Lords is fulfilling its duties if it exercises those powers, always recognising that at the end of the day, which must not be too protracted, the elected House must prevail.

By the same token, I believe that every Select Committee in both Houses should be as unfettered as possible. When I chaired the Northern Ireland
Affairs Committee—not an easy committee to chair—in the other place, all our reports were unanimous. Only one member of my own party was on the committee. The Northern Ireland parties that took their seats in the Commons were all represented and there were seven members from the government party, then the Labour Party. We addressed issues without fear or favour. This House, even more than the other place, should not have party discipline imposed upon it or threatened.

I made my submission because of the way in which a number of us were treated last year. There were some eight or 10 people who in the Article 50 Bill voted for two amendments. We were all removed from our Select Committees, or in my case a sub-committee of the European Union Committee. Although I say it myself, my attendance record had been impeccable. I had taken a proper part in the discussions, examination of witnesses and all the rest of it, and I know that the others—I can name two, Lord Inglewood and the Duke of Wellington—approached it in the same way. We were all removed.

Baroness Garden of Frognal: That was a party decision presumably. I am not aware that the Liberal Democrats or Labour have done that.

Lord Cormack: It was a party decision. We were informed that we were not to be reappointed to our committees, even though we could have been reappointed, in my case for at least another two years. That highlights the fact that if you are to have independent, respected Select Committees, the powers of the Whips should be severely restricted; indeed, I would say they should not be there.

I would favour one of two courses: either the election, as they now have in the other place, of the chairmen of Select Committees, and indeed the members of Select Committees; or the alternative Lord Norton and I were discussing yesterday, when we were considering this session with you, that there should be a respected committee, chaired perhaps by the Lord Speaker or by the Senior Deputy Speaker and it should be the body that would select the members of Select Committees and the Select Committees themselves should then elect their chairmen.

Either of those would be acceptable and would underline the fundamental impartiality, because, of all parliamentary bodies, a Select Committee must be able to look at an issue on its merits, take evidence from witnesses, come to its conclusions and then make its recommendations to the House. What the House does with them is up to it. What the Government respond is up to the Government, but I believe that is fundamental to a vigorous free Parliament, and I believe that what happened last year was deeply unsatisfactory.

Baroness Garden of Frognal: Who would actually do the electing?

Lord Cormack: The House.

Professor Lord Norton of Louth: On the latter point, about chairs, the Goodlad committee in 2011 recommended that each committee should elect its own chairman.
Lord Cormack: Yes. In other words, if we were a committee, the first action would be to decide who should take the chair.

Professor Lord Norton of Louth: You might want to follow Commons practice by giving a steer as to which party should have the chair—something of that nature—to ensure a balance across the House.

Lord Cormack: Yes.

Lord Lang of Monkton: Lord Cormack, you and I sit at slightly different positions on the long line of loyalty to party. I spent five years as a Whip in the other place.

Lord Cormack: Indeed you did.

Lord Lang of Monkton: The iron entered my soul, and most of the time I am on my knees before the Whips’ Office. You are free-ranging and that is highly commendable. I do not think either of us need apologise for the position we take, because this House depends on a broad range of limited or total commitment to party as well as to the overall interests of the House. I do not think that is the issue before us. What you suggest, far from maintaining impartiality and the broad-ranging setting aside of party affiliations, would have the reverse effect. If people have to stand for election, the whole tone of the committee structure would change. I would not have become chairman of a committee if I had not been asked to do it. I would not have stood for election, and I suggest a lot of Members of the House would not have dreamt of standing for election; it implies that you have a manifesto, a particular posture and that, therefore, the committee would become steered.

In the present structure, there is a rotation between the representatives of different parties, with the smaller parties usually represented in smaller numbers, which is fair but obviously one can understand that they might feel aggrieved. It works well because everybody sets aside their partisan approach as they go in. I find it very easy to completely set aside, and indeed I made myself the considerable enemy of the Whips’ Office on a certain number of issues, and was extremely rude about the Government on occasions. By standing for election, you would affect the agenda of the committees and the tone of the committees, and change the nature of the House, because the committees are an important artery of the work of the House.

Lord Cormack: That is a fair point. When I was on the Front Bench in the other place, I completely accepted the doctrine of collective responsibility and never once transgressed, because that was a particular role one had, and one’s arguments took place behind the scenes. But to give the impression that there is political punishment for those who seek to do their duty on Select Committees is deeply regrettable. When I was answering an earlier question, I said that Lord Norton and I were discussing this yesterday, and I believe that the alternative is to have a Committee of Selection, presided over by either the Lord Speaker or the Senior Deputy Lord Speaker, and that would remove the power and influence of the Whips. Those are two alternatives that I place before the committee.
Professor Lord Norton of Louth: That point has been touched on. I think you can move away from the power of the Whips without going to the election of members, for the reasons you mentioned; it becomes, to some extent, a popularity contest rather than members being selected on the basis of skills. There is merit in having a council of elders, a senior committee, which itself may possibly be elected, whereby senior figures can undertake a skills audit, identify what the committee needs and then decide who is best placed to fulfil that need. We have the rotation rule, and you may want to move away from sessional appointment and appoint a member for, say, a three or four-year term to get some degree of continuity. I take the point that the appointment should be based on the merits of the particular member relative to what we expect of the needs of the committee.

The Earl of Courtown: You talked about the fundamental differences between the two Houses that mean that one cannot actually put in place what happens in the other House in this House. When was voting for committee chairmen and membership of committees started in the Commons? Was it while you were the Northern Ireland chairman?

Lord Cormack: No. I was appointed in the same way as Lord Lang was appointed.

The Earl of Courtown: The impression I got from what you were saying was that, in the way the committee was formed, you all worked together and you left your party affiliations behind. Was that an appointed committee or an elected committee?

Lord Cormack: It was an appointed committee, and it worked extremely well. It worked very well indeed, and I have no complaints about that. The other place then brought in an election system, and I flew that kite because I was so concerned about what had happened in our House. As I said, and have repeated, I am entirely happy with the sort of alternative suggestion we have touched on.

Q52 The Earl of Courtown: Earlier, you repeated the fundamental differences between the two Houses. Lord Norton talked about flexibility and how our committees, comparing both Houses, are distinctly placed to cover gaps. How important do you think it is to avoid overlap between committees in both Houses, or do you think it is an interesting concept that we get overlap to promote other ideas and look at things in a different way?

Professor Lord Norton of Louth: There is an obvious need to avoid overlap in inquiries but not necessarily a need to avoid overlap in remit, because we already get that to some extent. We have it with Science and Technology, and we have it with the Constitution Committee in the Lords and the Public Administration and Constitutional Affairs Committee in the Commons. I do not see a particular problem as long as there is communication between the committees to avoid duplicating what they are inquiring into. The sorts of areas covered by the remits are so large, and there is so much that can be explored, that one committee will not make a fantastic difference on its own. There may actually be merit in
committees in the two Houses looking at different aspects of a particular sector.

Lord Cormack: There is another point. How do I put this without sounding unkind? There is significant lack of understanding of what this House does in the other place, and that is not helpful to the functioning of Parliament. At the meeting the Lord Chairman attended yesterday, we discussed Joint Committees. I have served on Joint Committees and I think they can have a very important role, but, as Lord Norton and others pointed out yesterday, often there is a very good turnout from one House and not from the other. It even happened in the Joint Committee looking at the so-called Clegg Bill a few years ago.

I have come up with an idea that I think is worth reflecting on. There would be some merit in having a couple of Members from this House on certain committees in the Commons and vice versa. Those people would make a commitment to attend, and would attend, and it would create a degree of liaison and mutual understanding that does not exist at the moment. It is important that we understand the complementarity of the two Houses better than we do. The problem is not so much in this House, because a significant number of us served in the other place—some of us for a very long time; I was there 40 years—at the other end of the Corridor. I was attending a dinner last night with Members from both Houses, and there is not sufficient understanding of exactly what are our rights and what are our limitations, particularly our limitations.

I would have found it very helpful, for instance, on the Northern Ireland Affairs Committee, if I had had a couple of Members from the House of Lords able to attend and contribute from their knowledge and understanding, not necessarily with voting rights, because that is a different matter; we did not actually have votes on our committee, but occasionally there might be a need for one. I think that is worth reflecting on.

The Chairman: I think I mentioned at the meeting yesterday the evidence of Sarah Wollaston at the Liaison Committee meeting and an informal chat I had with Frank Field on that very point, so we are pursuing that issue. I think it is very good.

Lord Cormack: Yes. I think that is very good. Excellent.

Lord Smith of Hindhead: My Lords, I very much hope that I am still in the House in 10 years’ time and indeed, God willing, in 20 years’ time.

Lord Cormack: Good. Excellent.

Lord Smith of Hindhead: I am asking you both to get out your tea leaves, and look into the future and let us know where you think House of Lords committees should be in 10 or 20 years’ time. It is not a trick question.

Lord Cormack: I believe that there is a continuing role for a complementary, non-competitive second Chamber. The Campaign for an Effective Second Chamber has had two fundamental principles from the
moment we began. That was one. The other was the supremacy of the elected House. Those remain absolute, as far as we are concerned.

I hope that in 10 or 20 years’ time there still will be a slimmed-down second Chamber. I am strongly in favour of a smaller second Chamber. I absolutely subscribe to the Burns committee report. Indeed, there may be a case for taking it even further. I hope there will be and I hope you will be in it. In 10 years’ time, I will be nearly 90 and in 20 years’ time I will be 100 and I do not think I will be in it, but I very much hope that you will be.

Lord Smith of Hindhead: Excellent.

Professor Lord Norton of Louth: Focusing on committees, I hope this is where we will be in 20 years’ time, but certainly from a prescriptive point of view, a normative point of view, where we ought to be would be having committees that achieved three things, and that would be the criteria by which one assessed their success. The first thing would be making a difference to the content and quality of legislation; the second would be informing and shaping debate, which is especially important when new issues come on to the political agenda; and the third would be being recognised by the public, the media and organised interests for making a difference and for being valuable. They would, therefore, be a target for public and organised interests to make representations; they would be a success in both a policy-focused approach and an outward-looking approach. That would be building on our strengths but in a more systematic, comprehensive way.

Lord Smith of Hindhead: But that is the difficult point for the House of Lords, is it not? We are not here to engage with the public to that extent. We are here to advise government and to provide scrutiny and all those things. There is a slight difference. You mentioned Twitter accounts at the start of this discussion. Is that really what we are about?

Professor Lord Norton of Louth: It ought to be, because you cannot divorce the two. We cannot advise government on legislation, I think, without engaging with people outside who can give us some input to help inform us in the process. We cannot operate in isolation, nor should we. We benefit from that engagement. One of the fundamental roles of Select Committees in both Houses is to engage in a dialogue with interests outside. We need their input, but of course our output shapes how they see things as well.

Lord Cormack: That is terribly important because Parliament is answerable to the people, the Commons in a very different way from this House, but we are part of Parliament and that is very important. In 10 or 20 years’ time, I hope every Act will have had pre-legislative scrutiny and post-legislative scrutiny, and that where it has not been enacted or it has been proved to be ineffective it is expunged from the statute book automatically after a five-year period. That is the way we should move forward.

The Chairman: We have five minutes left, so we will take two questions,
Baroness Hayter of Kentish Town: I was going to ask about the purpose of committees, but I will ask you to send us a note on it. Lord Norton, you said it was making a difference to the content of legislation, shaping debate and being recognised outside for making a difference. That could be a definition of the House of Lords rather than of House of Lords committees. We may not have time now, but if you were able to finesse what you say you want Acts of Parliament to do, which is to say what is your purpose, and to send in what you think is the purpose of committees as opposed to the purpose of the House of Lords, I for one would find that really useful.

Professor Lord Norton of Louth: Yes.

Lord Cormack: I think we might even have a session in our campaign on that very subject.

The Chairman: That would be good for public engagement.

Lord Lang of Monkton: My question is very short, and I will express it as a “Today” programme quiz question of the day. You are both arguing in favour of expanding the number of committees and reducing the size of the House of Lords. What is the optimal size of the House of Lords in that context? You must have considered it.

Lord Cormack: Yes, very much. Burns probably got it about right. I do not think we could perform all our duties with a membership of less than 550. Burns is probably about right, and I hope we can get there rather more quickly than present indications suggest.

Professor Lord Norton of Louth: I agree with that in principle. You do not want too small a membership, because you want a reasonably large pool from which to draw, to fulfil the very tasks that we have been identifying. In a way, you need the large pool as well, because you need people who are still doing things outside.

Lord Lang of Monkton: Yes.

Professor Lord Norton of Louth: In effect, we are a full-time part-time body, and we can draw on that expertise. That is extremely important and should guide our thinking on these points.

Lord Lang of Monkton: I am glad to hear that. Thank you.

The Chairman: Good. Lord Norton, if I could sum up, you said at the beginning that you would provide an additional paper for us on post-legislative scrutiny, elaborating on the three points you mentioned: content and quality, public understanding and engagement. We look forward to that. I am very sorry to give you additional homework, but we look forward to it, and we will mark it very studiously.

Professor Lord Norton of Louth: I hope I get a high mark for it.

The Chairman: Thank you very much, and thank you for your evidence.
Lord Cormack: I hope this will be the beginning of engagement with our group and yours.

The Chairman: This is Member engagement. The report is very important and we will keep that dialogue going. Thank you.

Submission to be found under “Sir David Bean, Chairman, Law Commission, Professor David Ormerod, Law Commissioner for Criminal Law and Evidence, Law Commission and Jessica de Mounteney, Law Commission – Oral Evidence (QQ69-73)”
Lord Patel, Chair, Science and Technology Committee, Baroness Taylor of Bolton, Chair, Constitution Committee, Lord Forsyth of Drumlean, Chair, Economic Affairs Committee and Lord Gilbert of Panteg, Chair, Communications Committee – Oral Evidence (QQ74-79)

Submission to be found under “Lord Forsyth of Drumlean, Chair, Science and Technology Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitutions Committee – Oral Evidence (QQ74-79)”

Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbotts, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield – Oral Evidence (QQ144-148)”
Submission to be found under “Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)”
Submission to be found under “Baroness Kidron, Baroness Prashar and Lord Puttnam – Oral Evidence (QQ55-59)”
Professor Meg Russell, Dr Hannah White and Maddy Thimont-Jack – RISOE0001 – Oral Evidence (QQ1-9)

Submission to be found under “Dr Hannah White, Maddy Thimont-Jack and Professor Meg Russell – Oral Evidence (QQ1-9)”
Lord Shutt of Greetland, Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood and Baroness McIntosh of Pickering – RISOE0019 – Oral Evidence (QQ142-143)

Lord Shutt of Greetland, Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood and Baroness McIntosh of Pickering – RISOE0019 – Oral Evidence (QQ142-143)

Submission to be found under “Lord Cameron of Dillington, Baroness Deech, Lord Filkin, Lord Inglewood, Baroness McIntosh of Pickering and Lord Shutt of Greetland – Oral Evidence (QQ142-143)”
Katy Stout, Second Clerk, Work and Pensions Committee and Rt Hon Frank Field MP, Chair, Work and Pensions Committee – RISOE0018 – Oral Evidence (Q134-141)

Katy Stout, Second Clerk, Work and Pensions Committee and Rt Hon Frank Field MP, Chair, Work and Pensions Committee – RISOE0018 – Oral Evidence (Q134-141)

Submission to be found under “Rt Hon Frank Field MP, Chair, Work and Pensions Committee and Kay Stout, Second Clerk, Work and Pensions Committee – Oral Evidence (Q134-144)”
Baroness Taylor of Bolton, Chair, Constitution Committee, Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee and Lord Patel, Chair, Science and Technology Committee – Oral Evidence (QQ74-79)

Baroness Taylor of Bolton, Chair, Constitution Committee, Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee and Lord Patel, Chair, Science and Technology Committee – Oral Evidence (QQ74-79)

Submission to be found under “Lord Forsyth of Drumlean, Chair, Economic Affairs Committee, Lord Gilbert of Panteg, Chair, Communications Committee, Lord Patel, Chair, Science and Technology Committee and Baroness Taylor of Bolton, Chair, Constitution Committee– Oral Evidence (QQ74-79)”

Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbotts, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield– Oral Evidence (QQ144-148)”
Submission to be found under “Dr Hannah White, Maddy Thimont-Jack and Professor Meg Russell – Oral Evidence (QQ1-9)”
Baroness Thomas of Winchester and the Earl of Kinnoull – Oral Evidence (QQ126-133)

Baroness Thomas of Winchester and the Earl of Kinnoull – Oral Evidence (QQ126-133)

Submission to be found under “The Earl of Kinn and Baroness Winchester – Oral Evidence (QQ126-133)”
Rt Hon Lord Trefgarne, Chair, Secondary Legislation Scrutiny Committee and Rt Hon Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee – Oral Evidence (QQ80-87)

Rt Hon Lord Trefgarne, Chair, Secondary Legislation Scrutiny Committee and Rt Hon Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee – Oral Evidence (QQ80-87)

Submission to be found under “Rt Hon Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee and Rt Hon Lord Trefgarne, Chair, Secondary Legislation Scrutiny Committee – Oral Evidence (QQ80-87)”


Submission to be found under “Lord Clement-Jones, Baroness Corston, Lord Filkin, Lord Hodgson of Astley Abbotts, Baroness Nicholson of Winterbourne, Baroness Pitkeathley, Lord Teverson and Baroness Tyler of Enfield – Oral Evidence (QQ144-148)”
Christopher Warner, Head of Policy and Legislation Committee Service, Welsh Assembly – Oral Evidence (QQ106-115)

Wednesday 27 June 2018
10:35 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 15 Heard in Public Questions 106 - 115

Witness

I: Christopher Warner, Head of Policy and Legislation Committee Service, Welsh Assembly.

Examination of witness

Christopher Warner.

Q106  The Chairman: Good morning, Mr Warner. Welcome to our Committee hearing. We are delighted to have you along. For the record, can you introduce yourself, please?

Christopher Warner: I am the head of Policy and Legislation Committee Service at the National Assembly for Wales.

The Chairman: Would you like to make an opening statement updating the Committee on the progress made since the Assembly Commission’s December 2013 review of committee support in the fourth Assembly?

Christopher Warner: Since the review, our work has proceeded in three phases. During the review itself and in the immediate aftermath, we structured our clerking teams. We further integrated the services that we provide the committees. We expanded bilingual support, which is very important to us and our Members. We made sure that we could offer more tailored support to Members’ needs, which centred on having very detailed discussions with individual Members about their preferences for how they undertake committee work.

In the second phase, at the start of the fifth Assembly following the 2016 election, we were able to support Members to look at new ways of working. There was a great appetite to explore innovation, to strengthen public engagement further and to elect our committee Chairs. The procedural changes at that point were supported by other ways in which we have sought to enhance the status and profile of Chairs.
Christopher Warner, Head of Policy and Legislation Committee Service, Welsh Assembly – Oral Evidence (QQ106-115)

The third phase is looking at the strategic challenges that face us at the moment. The two I particularly wanted to highlight were supporting scrutiny of Brexit and making sure that the committee system and the services support the work that committees need to do specifically on the Brexit process and afterwards, and the interparliamentary dimension of that. The Constitutional and Legislative Affairs Committee has recommended that the Presiding Officer draws together work with Speakers from across the UK to look at the interparliamentary arrangements that will be needed to scrutinise new intergovernmental relations.

The second is Assembly reform, which we are looking at at the moment with a view to potentially expanding the Assembly and the number of Members, and at the very least, if that does not happen, making sure that we can support Members to address the capacity issues that have been facing them and that have been identified by our expert panel on electoral reform and other stakeholders.

Q107 The Chairman: Good. How was the vision statement for the National Assembly for Wales committees drawn up? What impact did it have?

Christopher Warner: It was drawn up as part of the consultation process for the review of committee support. We met with individual committee Chairs, Members, their support staff and our staff. We did a lot of work to understand their concerns and suggestions for improvements to the committee system and the services that we provide.

As a result of that, the Commission agreed that vision statement. It has given us the framework for everything we have done since. For example, the Chairs’ Forum, which was convened at the end of the last Assembly, used the vision statement as a framework for its legacy report. My colleagues and I use the vision whenever we are talking to our teams about reviewing our performance and doing service reviews of what we are doing. We have taken the vision at the start of the fifth Assembly not only to the Assembly Commission but to the Committee Chairs’ Forum and to the Business Committee to make sure that it remains current for the current membership.

Q108 Lord Lang of Monkton: It must be very interesting, Mr Warner, to start a constitutional design from scratch. We, in this House, have to build on what we have.

Looking at the letters of appointment to committee Chairs as a starting point, how do you see the interaction between the committee system and the Assembly itself? Is it confrontational? Is it advisory? Is it submissive? Is it integrational? What is the relationship and how do you see it developing?

Christopher Warner: The letters of appointment were part of a process at the start of the fifth Assembly of strengthening the place of the committee system within the Assembly itself. I would characterise the relationship very much as advisory rather than confrontational or adversarial, although individual Committees do assert their authority in different ways during the course of their work.
The letters of appointment, alongside the election of Chairs, helped to confirm the relationship between the Chairs and the Assembly and the Chairs and their committees, and gave us a frame of reference as officials to talk to Chairs about the support that we could offer in light of the expectations that the Assembly has clearly set out for them.

**Lord Lang of Monkton:** The number of committees is likely to be increased from 12 to 14. They are well resourced by Westminster standards. It implies that there is a new empire being built. You are a unicameral system. Is there some way in which the committee system will play a separate role and give a slight flavour of bicamerality, or not?

**Christopher Warner:** I do not detect that at the moment. The committee system is undoubtedly strong, but we reinforce the accountability of committees to the Assembly in the way that they work. They report back to the Assembly. That gives us a degree assurance that the balance is right there.

**Lord Lang of Monkton:** I think you do some post-legislative scrutiny. I think I saw mention of it. It is not an automatic thing, is it? It is an ad hoc process, or am I wrong?

**Christopher Warner:** That is right. We encourage committees to undertake post-legislative scrutiny. The process of legacy reporting has helped with that. The committees in the current Assembly have picked up recommendations about post-legislative scrutiny from previous assemblies.

**The Chairman:** That is very helpful.

**Lord Williams of Elvel:** We have had some quite impressive evidence that the election of Chairs in the House of Commons has given greater authority to those Chairs, and greater impact in the outside world, particularly the press. Has that been the same effect in Wales?

**Christopher Warner:** I think it has. I am not able to point to any scientific evidence of that, only anecdote. The recommendation to elect Chairs following the lead of the House of Commons came from our Chairs’ Forum at the end of the fourth Assembly before the 2016 election. Unanimously, across parties, they agreed that the election of Chairs would increase the independence of committee Chairs.

I have detected, in the way the Assembly operates, that that has been achieved and Chairs are more independent. They have a greater status and profile. They refer frequently in conversations with their committees, among themselves and with us as officials to their role as elected Chairs as being very important.

**Lord Williams of Elvel:** What is the impact on the relationship between the Chair and the relevant Minister? From time to time, there will be some form of confrontation, will there not?

**Christopher Warner:** Yes. The relationships between Ministers and Chairs will inevitably vary depending on the people involved. I do not think that has necessarily been affected too much by Chairs being elected. The
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Government were part of the discussions in putting together the procedures on electing Chairs. While I think the relationships have not become worse, I am not sure if it has made a huge difference that I can detect.

Q110 Baroness Garden of Frognal: In connection with the Chairs and the Members, what is best when it comes to the National Assembly for Wales training and continuing professional development for committee Chairs and Members? Giving training to committee Chairs would not go amiss sometimes in this House too. Could you also describe in that connection how the facility for committees to use external facilitation to assist with strategic planning and performance has worked in practice? Is this training conducted in both Welsh and English?

Christopher Warner: We are very proud of our CPD programme. It is delivered by a mixture of external agencies and suppliers, as well as our own staff. It is tailored towards Members’ individual needs and how committees and other groups of Members want to work. Some Chairs have taken up the opportunity to have one-to-one coaching and executive support, including, in some cases, 360-degree feedback. They have been very happy with what they have received and have been able to employ the learning from that in the very practical things in committee, such as managing, disagreements and helping keep witnesses on track, which they have benefited from. None of this is mandatory.

The committees that have taken up external facilitation have found that an external facilitator can challenge and shape the committee's discussions about ways of working and forward work programming in ways that Chairs and officials sometimes find difficult, so they can ask different types of questions. In practice, some of that facilitation has included asking Members to watch video footage of committee meetings and critique their performance during those meetings and to take best practice examples from other legislatures as well to compare their performance.

As well as ways of working more generally and work programming and strategy, they also look at very specific behaviours in committees. It can be very challenging, but Members have responded very positively to that.

Baroness Garden of Frognal: Do you have to be bilingual to be a Member of the Assembly in Wales?

Christopher Warner: No, you do not. English and Welsh are both official languages.

Baroness Garden of Frognal: Yes, indeed.

Christopher Warner: I do not speak Welsh, although I am learning. We provide training in both languages and we facilitate Members to work in whichever language they choose.

Q111 Lord Low of Dalston: How do your committees go about ensuring diversity of witnesses and interaction countrywide, engaging with Wales as a whole? Are these considerations that are present to the minds of your committees? Are these issues the committees are bothered about or
concerned with? If so, how do they go about ensuring or encouraging that in the witnesses they see it is not just the usual suspects but they have a good diversity and good spread of witnesses and are engaging across Wales? In England, the worry is that it is all London-centric. I suppose in Wales the concern is that it is not all Cardiff-centric. How do your committees deal with that?

**Christopher Warner:** “Not the usual suspects” is a phrase we hear a lot at the Assembly. It must be a common issue with legislatures. The Assembly is very committed to diversity of all types. We want to make sure that the people engaging with committees are across the age range and that we have diversity in gender and background. That is at the very forefront of committees’ approaches to their work. Committees will challenge us all the time about making sure that they are not just reaching the usual suspects in their inquiries. We address that by having as wide a range of tools and techniques as possible to help people engage.

We do not monitor gender representation among witnesses regularly, but in some work a few years ago we took a sample of one committee, the economy committee, and found that only 26% of the witnesses were women. We did a piece of work with a Welsh charity called Chwarae Teg, which was designed to encourage women to give evidence to committees by offering them a training package. It included asking them to submit written evidence and to give oral evidence, which we filmed, and giving them a mock committee situation and critiquing their performance in a very supportive way to demystify and give them more confidence about the process. I was so impressed and engaged by that work that I subsequently became a trustee of that charity. We have some more work planned on that front soon.

**Lord Low of Dalston:** Does that go down well?

**Christopher Warner:** Yes. We use a wide range of technology to try to make sure that people can engage from wherever they are. We are now very used to using online discussion forums and surveys. We work very closely with stakeholders to reach people via them. Where we think we need special effort and arrangements to make sure that people who we are targeting as part of an inquiry can engage with the process, we will work with stakeholder organisations to put together focus groups in all parts of Wales, where we can, to make sure we can reach people directly. We recently had a witness who is a well-known Instagram user and blogger with 170,000 followers. Before she gave evidence to committee, she was able to use Instagram to seek the views of her followers and reflect that in the evidence she gave to committee. Our reach was much wider than just her.

**Q112 Lord Low of Dalston:** What techniques have you found most effective for evaluating or tracking the impact of your committees? We often find that there are problems with following up and receiving government response to a committee’s report and, when the committee is dissolved, if it is an ad hoc committee, keeping up the momentum of the issues that the committee has been concerned with. How do you deal with these issues?
Christopher Warner: The legacy reporting that we did at the end of the last Assembly has helped with that. In relation to some big themes that committees have been looking at over the lifetime of the Assembly, such as poverty, it has ensured that there has been some continuity between the committees of different Assemblies. The current committees frequently go back to the legacy reports of their predecessor committees to follow up on anything that requires it.

It is challenging for committees to follow up on their work, because their remits are very broad and stakeholder expectations are very high about the range of inquiries and work that they will cover over an Assembly term. Having said that, our equality committee, for example, has agreed as a matter of course to follow up its committee inquiries between six months to a year after the report has been debated in plenary. As part of that process, they will write to the Government for an update and consult stakeholders on what further work might be needed. We are seeing a more systematic approach from some committees, which, if it works well, may be adopted by others.

Lord Lang of Monkton: The phrase “external facilitation” catches my eye. Is there a view among the Select Committees in Wales that they should develop an increasingly formal range of contacts with Select Committees in other devolved Administrations and possibly with Westminster? At the moment, contact between Assemblies seems to be limited through the Joint Ministerial Committee. That seems to operate very inadequately. Do you see a merit in that? Is that part of your objective, or are you still focused on the internal development of this new arrangement?

Christopher Warner: The Chairs’ Forum has emphasised to us the importance of interparliamentary working. In some policy areas, there are quite strong networks. Our work is considerably strengthened by the relationships that we have with your staff and staff in other legislatures. Our Chairs see things such as the Interparliamentary Forum on Brexit as extremely valuable. As I mentioned earlier, our Constitutional and Legislative Affairs Committee has recommended that Presiding Officers and Speakers look at this on a more formal basis.

Lord Lang of Monkton: Do you see it as an ad hoc arrangement, which it sounds like at the moment? Would you like to see a more permanent structure develop, possibly with Parliament having a Select Committee that relates with devolved Administrations?

Christopher Warner: I think it would be for the politicians involved to decide based on the way they want to work. I can see value in both formal and informal ways of working. I would not want to lose some of the informal advantages that we have at the moment, but there are probably things that at least should be looked at in terms of a more formal structure.

The Chairman: I know that your contact and engagement with Philip and other clerks is very helpful to us in the Parliament. It is very good.

Baroness Hayter of Kentish Town: What would be most useful for what you are about to do in relation to Brexit, particularly all the framework
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matters? What would be most useful that we in the House of Lords could do to facilitate that? If that sort of relationship grows, how would you advise us to most help you?

Christopher Warner: We need to make sure it is as easy as possible for the relevant committees or Members of the legislatures to work together. From my point of view, I am aware that there is a lot of dialogue between committees and there have been some formal joint meetings, but I wonder whether there is more that we could do collectively as officials to support you to work together more with inquiries and other more formal work to supplement the work of the interparliamentary forum.

Baroness Hayter of Kentish Town: I come from a background where we teleconference all the time. I have not done any of that since I have been here, which is very interesting, and wonder whether our Chairs ought to talk to each other on teleconference once a week or once a month. Are they the sort of discussions that you have started having on the Brexit front, or not?

Christopher Warner: It is still early days, but there does seem a huge appetite to work together. Some of the barriers are about whether we have got the technology right to help people to work together remotely and whether we have thought carefully about reconciling the various demands and timetables at play upon Members of all the legislatures. There is probably more work that we should do that on that.

Baroness Hayter of Kentish Town: Do you teleconference at all in committees?

Christopher Warner: Not on a very regular basis, but we do find it is a very helpful way just to enable evidence sessions to happen where otherwise they would not. The technology for facilitating that has certainly got a lot better, even in the last few years.

Q113 The Earl of Courtown: Lord Low mentioned in his question the late government responses to committee reports in this House. We are now naming and shaming in the agreed minutes government departments that are not responding within a certain timeframe. What is your method in the Assembly to ensure that you get proper and prompt responses from government to committee reports?

Christopher Warner: We do not have a formal mechanism of reporting or naming departments. We rely on the relationships that exist between the Members and officials involved. At the moment, we are not experiencing a big problem with that. Responses are generally fairly timely. The pace of work that has been required on Brexit, for example, has meant that all sides have realised that there is a need to work very closely and quickly together to get things done.

Q114 The Earl of Courtown: Switching subjects somewhat, the Assembly have placed particular emphasis on interaction with young people. Recent committee work involves a rolling programme of scrutiny of policy area for children and young people, which is great. How much interaction are you able to have with young people in these committees? How do you achieve
that and what tools do you use to do that?

In addition, the Welsh Youth Parliament was registering for applications to join that. A point made by a previous committee member about whether this was reaching the whole of Wales would be interesting to know, but will the Youth Parliament have any interaction with your committee structure?

**Christopher Warner:** I am excited to see how the Youth Parliament enhances the scrutiny that committees are able to do and what the interaction will be. The short answer to how will it interact is that this is very much youth led. Until the Members are elected and in place, we will not know exactly what avenues of inquiry they want to pursue and how they want to work. We are very used to reaching young people, and our main way of doing that is making sure that we go to where they are. In physical terms, that means meeting schools and young people in youth groups and outside the school environment, because we think that is very important, and our outreach team has the capability to do that, but it is about going where they are online.

I have already mentioned Instagram. Facebook and Facebook Live are things that we are very much using to reach young people, as well as our own websites specifically dedicated to young people. We make sure that the content that we produce is highly tailored so that it is appealing and easy for young people to engage and interact with. Our best tip on engaging with young people is not to become too wedded to particular ways of doing things. By the time we had written the guidance about how to use Instagram, it would be already out of date. It is about being prepared to try new things. Committees are very keen to continually try new platforms and ways of engaging with young people as we look at them and find them.

The Children and Young People Committee takes formal evidence from young people. We did that recently via Skype to a school, which was very successful, but in order to facilitate that we made sure that we and Members visited the school and talked to the young people involved to build a relationship, which meant we could do the session by Skype rather than dragging them down to Cardiff Bay.

**Lord Williams of Elvel:** Do committees meet outside Cardiff?

**Christopher Warner:** They do. Sometimes they meet as part of our Senedd@ series of events. Senedd@ is where we go to a particular place in Wales and have a week of activities about the Assembly. It does not have to include committee meetings, but sometimes it does where we can line that up. Committees went to Senedd@Newport fairly recently, for example, and undertook visits as part of that.

On other occasions, we have had formal meetings outside Cardiff. Logistically, we cannot do it all the time, but we try to build that into committees’ work programmes wherever we can, and committee Chairs are very keen for committees to get out of Cardiff Bay.

**Lord Smith of Hindhead:** I suppose the best place to meet is Llandrindod Wells, which is mutually inconvenient for everyone.
Christopher Warner: It has very famous conferencing facilities in Llandrindod Wells. We definitely try to reach all parts.

Lord Smith of Hindhead: This House has been taking evidence for many years, so we have evolved criteria for what we do. What do you accept in the Welsh Assembly as evidence? Picking up on the point you made earlier about the lady who gave evidence and her 150,000 Instagram followers, which she said influenced the questions she was answering, what do you think about that? I have my own concerns about that. Who knows who these 150,000 Instagram followers are? What does it matter if they are in Wales or even in the UK? We would all be interested to know what the Welsh Assembly accepts as evidence at committee hearings.

Christopher Warner: A simple answer is that we accept written and oral evidence. There are a larger number of ways now in which the evidence comes in and then becomes evidence than there were traditionally. We can cite any evidence that we can place on the record. If we have a focus group, typically we would write that up and the committee would publish a note of it, which would form part of the written evidence submitted to committee.

In the same way, if we create videos for committees based on what stakeholders have told us or of stakeholders telling us what they think, we can play that to committees as part of formal proceedings. That will become part of the record. Some time ago, we changed our Standing Orders so that material submitted to committees is privileged to the extent that the Assembly has privilege. We changed it from "written material" to "material" specifically to cover the wide range of evidence that we receive.

You have rightly identified the challenge in weighing up the different types of evidence that we receive. We work very closely with committees to make sure that Members and the clerks working on draft reports take into account where the evidence has come from to counteract any effect from 170,000 followers who we cannot verify versus a number of written consultation responses where we know exactly who they are from.

Members feel that the broad reach enriches the inquiry process and gives different perspectives that they can test with the people that they take oral evidence from and from Ministers, but they are very aware of the different types of evidence that they are now collecting and how they need to be used.

Lord Smith of Hindhead: It is a balance between that and the usual suspects, as we have just heard, or, as previous witnesses have said, the suits who just arrive and give the three-minute statement speech based on the questions that they have already had notice of.

Christopher Warner: That is right. I think a wide range of evidence enables Members to see a particular topic from a different variety of angles. In most cases, that does not negate the need to put formal questions to Ministers and conduct some of the more traditional inquiry work that you would expect a committee to do.

The Chairman: You mentioned changing the Standing Orders to make
Christopher Warner, Head of Policy and Legislation Committee Service, Welsh Assembly – Oral Evidence (QQ106-115)

evidence privileged. Does that include videos? Secondly, it is good to have lots of evidence, but do you have any means of ensuring that that is manageable for staff rather than have books sent to you?

**Christopher Warner:** We give guidelines to witnesses about the length of written submissions as evidence. We make a lot of use of surveys now, particularly online surveys, which enables us to structure and limit the way in which people provide their evidence to make it more manageable. We have not yet been swamped with evidence on an inquiry to the extent that we have not been able to manage, but there is the theoretical risk that we could become victims of our own success.

**The Chairman:** And videos?

**Christopher Warner:** Yes. “Material” covers videos.

**Baroness Hayter of Kentish Town:** Will a committee only take account of things that are submitted to it? If there was a very good written academic paper or something like that but nobody had sent it to you, can that be evidence because somebody says, “This is a really important article”? We have not had time to discuss it as a committee, but we heard that a committee in the House once could not take account of something because it was published but nobody had sent it to them. We have not managed to have the discussion about whether that is true, but it would slightly worry me. If you were doing a survey on young people and asthma and it just so happened that there was a brilliant paper in *The Lancet* but nobody had sent it to you, would you be able to consider that evidence even though nobody had sent it to you? Could you use it as part of your report?

**Christopher Warner:** Yes. If there is material that we feel is relevant to the research that we do in connection with inquiries, we bring that to the committee’s attention. Typically, we would put reports and things of that nature in front of the committee to note so they would become part of the record and we would definitely take that into account.

**Baroness Hayter of Kentish Town:** How much academic study is there of what you are doing? We tend to have people like Meg Russell at University College, who is very useful for us, follows a lot of our work and comments on legislation. Has an academic interest developed in the Assembly that somebody is monitoring the extent to which the committee has an effect on scrutiny or legislation, for example? Is there an academic base now growing up?

**Christopher Warner:** There is and we find it very valuable. We have very strong relationships with the Wales Governance Centre based at Cardiff University, for example, as well as a range of other academics from further afield and very close links with the Institute for Government.

**Baroness Hayter of Kentish Town:** The one here?

**Christopher Warner:** Yes.

**Baroness Hayter of Kentish Town:** If we were to ask them how
successful your committees have been, what would those academics say?

**Christopher Warner:** I suppose they would point to a lack of robust and regular evaluation, because I do not think we have done that yet, but they would probably point to the same kind of very compelling anecdotal examples of impact that we would be able to evidence. The most recent, very high-profile piece of academic work that was done by the Expert Panel on Assembly Electoral Reform concluded that at the moment there were capacity issues in the Assembly and any increase in capacity would have an effect on the committee system. The effects would be felt, because Members would not have to double-up or, in some cases, become members of three committees, and they would be able to spend more time on a single committee area.

**The Chairman:** Any other points? If not, can I thank you for your evidence? It has been fabulous and really helpful to us.

**Christopher Warner:** Thank you.

**The Chairman:** We are delighted at the formal and informal relationship you have with us and that you find the interparliamentary group on Brexit very helpful. Our next visit is scheduled for Cardiff and we will see you there. Are there any other tips you have for us, other than the 3.15 at Newmarket?

**Christopher Warner:** I look forward to working with you when you do come to Cardiff. The most effective thing about our committee system at the moment is the flexibility we have, the range of different ways to conduct inquiries and engage with all the people of Wales, which is our mission. That means that, rather than having a prescriptive approach, the committees can really tailor what they are doing to the specific things they are working on, specific stakeholders and members of the public they want to work with and can adapt very quickly to changes in technology and in other circumstances. That is what I would recommend.
Dr Hannah White, Maddy Thimont Jack and Professor Meg Russell – Oral Evidence (QQ1-9)

Dr Hannah White, Maddy Thimont Jack and Professor Meg Russell – Oral Evidence (QQ1-9)

Wednesday 25 April 2018
10.45 am

Listen to the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 1 Heard in Public Questions 1 - 9

Witnesses

I: Dr Hannah White, Director of Research, Institute for Government; Maddy Thimont Jack, Researcher, Institute for Government; Professor Meg Russell, Director, Constitution Unit, University College London.

Examination of Witnesses

Dr Hannah White, Maddy Thimont Jack and Professor Meg Russell.

Q1 The Chairman: Good morning. Welcome to what I am informed is a historic occasion, given that the Liaison Committee for the first time ever is taking public evidence. We are privileged that you are the witnesses for this historic step. Can you identify yourselves for the Hansard writer, please?

Maddy Thimont Jack: I am a researcher from the Institute for Government.

Dr Hannah White: I am director of research at the Institute for Government.

Professor Meg Russell: I am director of the Constitution Unit at University College London.

The Chairman: Welcome. As you know, this is the first review of committees in the House of Lords for 25 years, so we aim for it to be a fundamental review. The focus for us is scrutiny and what the House of Lords can best do regarding scrutiny. How can we complement the House of Commons and, as a result of that, best serve the interests of the entire Parliament, seeing as scrutiny is a parliamentary function? Given the strong position in regard to the expertise, skills and experience that reside in the House of Lords, how can we best, as Members, go about our scrutiny business?

As a general question to you all, what do you believe are the key strengths and weaknesses of House of Lords committees and their current structure? Is there a case for adopting a more thematic and flexible approach to
committee activity in the Lords?

**Professor Meg Russell:** There are many strengths of the current committee system. I would identify one of them as playing to the strengths of the membership of the House, the very particular nature of Members’ expertise and specialisms, and the culture of the House. You have things such as the Constitution Committee, which plays to the great strengths in terms of legal and government expertise; the Science and Technology Committee, which plays to the scientists in the House, and so on. The culture of the House, being less party political than the House of Commons, enables the committees to have a different culture and a different impact.

One of the great strengths is the complementarity, the fact that committees in the Lords do not simply duplicate the Commons, and we may want to talk more about that when thinking about the restructuring. On the cross-cutting nature, there are two elements of that: the complementarity per se, in that there is not duplication; and the fact that, while it is a strength of the Commons that the committees shadow government departments, it is also a strength of the Lords committees that they do not. It is good to have cross-cutting committees complementing departmentally organised committees, as an overall system. Members of the House of Lords are able to take a more long-term perspective on things, and you could perhaps play to that more. There are some topics that are a bit too hot to handle in the House of Commons, which the House of Lords can deal with, not just long-term issues but ethical issues that are rather difficult for the Commons because of the elected basis of that Chamber.

The committees are taken extremely seriously for all these reasons: the expertise, the complementarity, the lack of partisan nature. In terms of the flexibility, the exercises the Liaison Committee has been doing in recent years in consulting on sets of ad hoc committees has clearly given you some flexibility, which is a strength of the system as well. This long-term review is very welcome, but the fact that you do a review on an annual basis of the needs for the next Session keeps you fleeter of foot, and it is a very inclusive process, at least as far as Members are concerned.

My list of weaknesses would be much shorter. Another thing we might come on to is the profile of the committees outside the House. From my point of view as an academic—and I have to bear some responsibility for this—there is a weakness in that the House of Lords committees are almost entirely unstudied. It is a source of some regret to me that this review, which is tremendously important, does not have much of an evidence base for the performance of Lords committees and the ways that they have worked. Now that you are doing it, I am regretting that I have not got to grips and done that work. It would be very interesting work to do. The Commons committees, which both Hannah and I have studied in some depth, have a lot more of an evidence base to build upon in comparison with the Lords committees.

**The Chairman:** There was the *Shifting the Balance* initiative undertaken in the Commons.

**Professor Meg Russell:** At the Constitution Unit, we did a study in 2010, which resulted in a large report, called *Selective Influence*, about the
influence of House of Commons committees. We studied a set of committees in a lot of depth, looked at their reports, looked at their recommendations and did a lot of interviews. That fed into the Liaison Committee’s work in the Commons on changing working practices. That sort of thing has not been done at this end. Given how different your committees are, that puts you at a disadvantage in the review. As I say, mea culpa, I have not done it, and the IFG has not done it. Nobody has done it, unfortunately, and that is a shame.

The last thing, which I am sure Hannah and Maddy will say something about, is the need to relook at the EU Committee structure in the Brexit context.

**Dr Hannah White:** I would echo a lot of that, and echo the fact that the IFG has not explicitly done any focused study of Lords committees. We have done a number of pieces of work, and two that have specific relevance to your review. One is the piece of work that I did when I went to the institute in 2014, which reported in 2015, looking at the effectiveness of primarily Commons committees, but one of the case study committees we looked at was the Parliamentary Commission on Banking Standards, which was a joint commission. In the course of that piece of work, I did a lot of interviews with stakeholders of the Home Affairs Committee, the Defence Committee and the Parliamentary Commission on Banking Standards. Many of them had also had experience of giving evidence to Lords committees, so through that process I gathered some opinions on how the Lords system is working.

The other thing we do at the institute is a project we call Ministers Reflect, where we are building up a big public archive of what you might think of as exit interviews with former Ministers—Lords Ministers and Commons Ministers—who reflect on their time in government and what it takes to be an effective Minister. Some of those, in the course of those interviews, have reflected on the experience of giving evidence to Commons and Lords committees. That is the evidence base I can speak from.

I would certainly, off the back of that, support what is well rehearsed: that Lords committees are seen to be more expert, and that the membership has expertise that enables it to undertake very detailed, forensic scrutiny. We have Ministers saying on the record, “The fact that I had to go and give evidence to a Lords committee meant that I had to get all over this topic because I knew I was going to be interviewed by former Chancellors and former Perm Secs to the Treasury”. There is a real impact on government just because of the preparation process, before those people even get into the House and have to give evidence. That is very effective.

I would also echo Meg’s point about the value of your frequently taking a cross-cutting approach. For example, I am thinking of an inquiry by the Economic Affairs Committee, about which a Minister said that the fact that an inquiry was launched looking at immigration to the UK meant that, in government, a piece of work was done, which joined up between departments their thinking on immigration to the UK. It was just the fact of the inquiry being launched and the fact that they knew they would have to go and give evidence on that. There are these very real impacts on what
is going on in government through the work of committees. As Meg said, I would encourage you to think about that as a real strength of the system going forward.

The other real strength of the system is, as Meg has said, your long-term approach: the fact that the Lords more frequently than the Commons takes the time to look back at past inquiries, either inquiries of this House or public inquiries, or to undertake post-legislative scrutiny. Those exercises can be really valuable, and often Commons committees do not take the time to do them. I would flag the post-legislative scrutiny of the Inquiries Act. We recently did a piece of work at the institute on public inquiries and how they can have impact. The process of post-legislative scrutiny of that Act was seen to be very effective.

That piece of work on inquiries brings me to one of the weaknesses, potentially, of the system, of which you are all aware: once the ad hoc committees they have completed their job, they are no longer around to follow up. This bears paying some attention to and thinking about. It is also a flaw with public inquiries. At the institute, when we have thought about it, we have thought that there should be a role for Parliament in following up on public inquiries, but it is also an issue for you, with your ad hoc committees. We can come on to talk more about what you might do about that.

In terms of other potential weaknesses, although you benefit from the expertise and experience of your Lordships’ House, it is a large House. The fact that you now have a three-year rule on turnover of membership of committees means that, in order to give lots of Peers the opportunity to take time on a committee, there is potentially a loss of continuity and expertise as people turn over and move on.

Contrary to that, we saw a real benefit from the permanence of Lords committees, in the fact that, after the election, you guys were up and running really quickly to continue your scrutiny, specifically of Brexit, whereas in the Commons we had a massive scrutiny gap. It was really valuable that the Lords were in there, filling that gap. Continuity and lack of continuity are sides of the same coin.

We may talk about this later in the session, but you can definitely do more in relation to public engagement. Thinking about the fact that you are more measured, more expert and there may be fewer fireworks in your evidence sessions than in the Commons, does that mean the media pays less attention in a short-term sense? How can you think about engaging the media more in the excellent work the committees are doing?

Maddy Thimont Jack: I am not sure if I have much more to add on that point, because Hannah has gone through all the work that the institute has done on this. I hope to add something a bit later in the session.

The Chairman: You mentioned the Parliamentary Commission on Banking Standards. I was a member of that, as you know. The reach and the punch of that commission were very good. Given you have studied it, can you supply us with some information on that, and we can look at it?
Dr Hannah White, Maddy Thimont Jack and Professor Meg Russell – Oral Evidence (QQ1-9)

**Dr Hannah White:** Yes.

**Q2 Baroness Garden of Frognal:** Meg touched on the EU committees, but what changes do you think will be needed to the current EU committees in the wake of Brexit, and should provisions be made for a different committee structure during any transition period? How can the EU committees help?

**Professor Meg Russell:** This is something on which the IFG has many more opinions than we do.

**Maddy Thimont Jack:** Initially, particularly for transition, it may be useful to continue the same structure for the EU Committee, given that it is likely to be a standstill transition. We are likely to be following the same rules, so will still need to be overseeing what the EU is doing.

I have a few thoughts. At the institute we have done a lot of thinking about what Brexit means for government, and we are about to start a piece of work looking at what Brexit means for Parliament. To take it beyond the EU Committee structure for a moment, we have identified three main tasks that Parliament can play a role in after we leave.

The first one comes out of some research we did last year. We published a paper called *Taking Back Control of Trade Policy*, which looked at what sort of institutional structures the Government might need. Particularly given that we have been within the EU, and the way the Government have engaged in treaty-making has been through the EU, some thinking should go into whether committee support is needed in terms of treaty-making for the Government. The Constitutional Reform and Governance Act 2010 sets out how Parliament can ratify new treaties, but it would be quite valuable to think about whether committees in the Lords and the Commons can play a role in setting mandates or being involved in negotiating new treaties once the UK leaves the EU.

I have been involved in a piece of work on devolution after Brexit and how to manage the environment, agriculture and fisheries. We have been thinking about what governance gaps might come out of leaving the EU. What role can Parliament play in replacing some of the functions carried out by EU institutions, in particular the European Court of Justice, in holding the Government to account? One big gap that has already been identified is around the environment, and we have recommended that Parliament should play quite an important role in the new environmental watchdog that the Government have committed to establishing.

It will be quite interesting to see whether committees can play a role in giving the new watchdog some independence from government. We recommended looking at the relationship between the National Audit Office and the PAC in the Commons, as a model for how that interaction might work. There could be quite an important role for the Lords, given that other governance gaps are likely to emerge, and that is quite a big task for Parliament, in thinking about how to manage those two things.

Finally, the other issue that we have worked on is, as I have mentioned, what Brexit means for devolution. There is also quite an important role for...
committees, again in the Commons and the Lords, to oversee how our intergovernmental relations—the relationships between the four Governments of the UK—will work after Brexit, particularly given the increased tasks for that machinery after we leave, as policy areas are returning where new frameworks will be needed because they are devolved but have been managed by the EU.

An interesting model that could be quite valuable to look at is the relationship between the Scottish Government and the Scottish Parliament, where the Scottish Government have to provide written notice to relevant committees in the Parliament ahead of scheduled intergovernmental meetings, as well as a written summary afterwards of what was discussed. It might be quite important for Westminster to consider how to do that, particularly given research published by the Centre on Constitutional Change, which by looking at other international examples says that, as more decisions are taken between levels of government, it is harder to ensure transparency and accountability. It would be quite valuable for the Lords committees to consider how they might play a role in that.

**Dr Hannah White:** To follow up on the direct point about the EU Committee system, as Maddy said, we think that if we have a standstill transition it makes sense. We will still have a flow of legislation coming from the EU. That will still need to be scrutinised. It makes sense to leave that in place. It gives a little breathing space to think about what needs to come after that. As it becomes clearer what our future relationship is going to be, it will become clearer what form that needs to take. That future relationship will affect what we need in terms of scrutiny.

We looked previously at the example of the Norwegian parliament, Norway obviously being in an EFTA relationship. It has a committee that takes a very active role in looking at EU legislation. We looked at that as a case study, and if you ended up in that relationship you might want something similar. Similarly, even if we end up as a third country with an FTA with the EU, the EU is on our doorstep and is generating a whole set of legislation, which is going to be highly relevant to many companies and bodies in the UK. The UK Parliament will want to make itself aware of what is going on in the EU. There will still be a role there, if not to the extent of the effort that your Lordships currently put into the scrutiny process, as you will not have that formal scrutiny reserve and process.

**Baroness Garden of Frognal:** It sounds as if there might be more to say rather than less.

**Dr Hannah White:** There will still need to be something. This is something that you will need to think about. The current structure of the EU committees gives your Lordships the ability to look across the range of policy areas, but in a different way from the Commons, where it is departmentally focused. When we move on from that, as our relationship with the EU changes, you need to think about how your Lordships will have the capacity to look across the range of policy areas if that is not via the EU system. You have all those sub-committees, which look at the pillars of the EU acquis. What system will step into that breach, so that, even though you are not replicating what is going on in the Commons, you still have a
committee that can look at any policy area that will now be the responsibility of the UK Government?

**Professor Meg Russell:** It is a simplistic thing to say, but there are two sides of this coin, are there not? What machinery do you need to watch the EU and how that is going to change, and what machinery do you need to watch the domestic politics and how that is changing? You have been talking about both.

On the domestic side, there are some other things. It is rather obvious, but a large number of statutory instruments are likely to be flowing. Who is going to be looking at those? You are obviously already thinking about that. There are the new policy areas, where the same things have come to my mind, in terms of trade and treaties, but also the environment. You can see all those things as being cross-cutting to a greater or lesser extent, so quite suited to the Lords ethos.

Then there is scrutiny, which might be a shorter-term thing, of the machinery of government changes and how the government machinery is responding to Brexit, not on the policy side, but on the constitutional and structural side: where the resources are going, how government is organising itself. That is quite a Constitution Committee sort of thing. It is in part quite a Public Administration and Constitutional Affairs Committee thing in the Commons, but that is an obvious space for the Lords. One of the things you have an enormous amount of expertise in—for reasons that Hannah has already referred to, with the number of former Permanent Secretaries, senior Ministers, EU Commissioners and the rest—is expertise in government itself and how to organise government.

There are some very big questions about how to organise government coming out of Brexit. One of those, although it is only one, is about intergovernmental relations and how policy-making is going to be done, on a shared basis, in these policy areas that we have not had to navigate very much, where the implementation has been at the devolved level outside England.

**Baroness Hayter of Kentish Town:** I want to build on what you said in answer to the first question. Having gone through what our strengths and weaknesses are, I am interested in what it is that only a Lords committee can do, which the institute, academia or anyone else cannot do? You have just been talking about looking at governance, which is the sort of thing that you also do. What are the areas that, if we do not do them, nobody else will? That is what I am keen to identify. I do not mean by subject, but by approach.

**Dr Hannah White:** This is not unique to the Lords, but unique to Parliament: your ability to call Ministers before you on things, and the fact that the Government commit to respond to your reports. That is a really key aspect of what you do. The institute and academics can write whatever they like about Brexit, but there is no mechanism to get that response from government. You can take a view on any report, the adequacy of the response and whether the Government end up doing what they said they would do. That is quite a valuable tool. Your status as a parliamentary
committee means that people will take the time to come and talk to you, in a way that they will not necessarily talk to other people.

**Professor Meg Russell:** I would have gone for exactly the same thing, in terms of the government accountability. We are at the moment working on an independent commission on referendums, which has some very high-powered individuals on it, and we are planning to report in July. One of the disadvantages we have is that, no matter how high powered our members are, we cannot force a government response. You can do that, and indeed you can get the evidence on the record.

Something Hannah has said beautifully, which I would emphasise, is that you cannot measure the impact and effectiveness of committees just by looking at recommendations and whether they have been adopted. It is the whole process. Hannah gave two examples of ministerial preparation once an inquiry has been announced, because they know that they will have to account for themselves on the public record. That is a unique power that Parliament has, which I would call a power of anticipated reactions. It is not very measurable, but you change what government does in advance, in expectation of being called to account publicly. The same thing applies today—the banking commission is probably an example—outside government in the broader public sector, in the voluntary sector, and even in the private sector. We simply do not have that power to get that accountability.

**Dr Hannah White:** I was going to come back to the banking commission, because it makes me think about one of the things that was most effective. That was a joint commission of the Commons and the Lords, and one of the things it was tasked with was the pre-legislative scrutiny of the legislation the Government wanted to bring in on banking. The commission reported on that. By the time the commission had reported, that Bill was going through the Lords. The fact that there was a powerful membership of Lords across the spectrum meant that support for amendments that had been recommended by the commission could be generated by those members who were Members of the House, and changes were made to that Bill in this House because of that. Any other external commission that had made recommendations about amendments to a piece of legislation would have had no power. It could have lobbied you about those amendments, but it could not have ensured they happened.

**The Chairman:** I remember being in receipt of a letter from the chairman of the commission, who was not in favour of the House of Lords, saying, “It is up to you guys to get the amendments”, and we did.

**Q4 Lord Smith of Hindhead:** Have you identified any current scrutiny gaps within the House of Lords? If so, how should these be addressed?

**Dr Hannah White:** We have talked already about gaps that may emerge from the Brexit process. There are different categories of potential gap or current gap. There are always gaps from changing circumstances, and Brexit is an example of that. The fact that you are undertaking this review is a very good thing. As Meg said at the start, the fact that you annually think about what ad hoc committees there should be means that you take
the opportunity to think about how changing circumstances create gaps that you would like to fill.

As we have also said, one of the strengths of this House is in looking at things on a cross-cutting basis, the Commons being very departmentally focused. We have identified through our work more widely some things where we think there would be a benefit from a cross-cutting approach in Parliament, one of those things being scrutiny of infrastructure, because infrastructure is a diffuse responsibility across government. I cannot remember the exact figure, but it is in the 20s, of Ministers who have a responsibility for infrastructure, so it is very difficult to scrutinise that effectively via one department. We have said that it could be useful for the Lords to set up a committee focused on infrastructure, looking at the National Infrastructure Commission and the national infrastructure assessment that it is going to publish, and tracking how the Government are implementing and responding to that. That would be an example of something that the Lords can do which cannot be done effectively by the Commons.

Another thing we think the Lords is good at but could do more of is post-legislative scrutiny. I know this is in your terms of reference. We published a report on tax policy-making a couple of years ago, and we said that the scrutiny of tax policy is treated exceptionally in various ways. It is excluded from the suggestion that all Acts should be subject to post-legislative scrutiny after a period of time. We suggested that, in the same way that the sub-committee of the Economic Affairs Committee does pre-scrutiny of Finance Bills, it would be very well placed, given the expertise of the membership and so on, to do post-legislative scrutiny of Finance Acts, to say, "What was the Government’s intention here, and did the Finance Act, once it was passed, fulfil what the Government intended? Did it have the effect that the Government intended?" That would be really beneficial. The tax policy-making process could be strengthened in lots of ways, and the learning that could come from your Lordships looking at Finance Acts could benefit the subsequent process of tax policy-making. Those are some of our specific thoughts.

**Professor Meg Russell:** This is probably another obvious point but in terms of conceptualising gaps, do not ask just what the gaps are in the House of Lords, but what the gaps are in Parliament. We need to see the system holistically, and that is part of the complementarity principle, which governs your work to a large extent already.

There are some ideas floating around. I am not a great specialist in either of these; I have not been a great advocate of either of them, but they are floating around and seem broadly sensible to me. There is the idea of the legislative standards committee, for example. There is the idea of a committee on the future, of which there are examples in the Scandinavian countries and which would play very much to your long-term perspective.

Looking holistically, there will be at times, although maybe not on a permanent basis, difficult ethical issues, which are easier for the Lords to tackle, because of the lack of electoral pressure, than in the Commons. The obvious one is assisted dying, but there are other questions, such as long-
term care. The Lords can be a bit bolder on these very difficult electoral and financial issues than Members of the Commons might feel able to. I mentioned machinery of government; I do not know whether there might be space for greater strategic oversight of regulators. That falls into the same sort of category as infrastructure, where there are relationships with lots of different departments, but I am not sure anybody has a bigger overview of that.

I assume we will come on to talk about legislation, but there are some gaps in the legislative process that could be looked at, perhaps with some changes to Lords committees. One of the most strikingly obvious ones is that, while we have Public Bill Committees in the House of Commons, which routinely take evidence on Bills that start in the Commons before they start their passage, Bills that start in the Lords have no evidence-taking stage before they begin. It is not a straightforward question as to how you would accommodate that within the Lords system, because of the nature of the Committee stage and of the Select Committees, but that is an obvious scrutiny gap in Parliament.

I would perhaps go further, more daringly, and say not just that there is a very clear gap at the beginning of the passage of House of Lords Bills, but that there could be some benefit in taking at least some evidence at the beginning of Bills arriving from the House of Commons. We have seen recently, with the European Union (Withdrawal) Bill, very interesting and important evidence sessions by the Constitution Committee, primarily with Ministers, in advance of that Bill reaching this House, despite the fact that it had been through the other House. If there has been evidence-taking in the Commons and that evidence has not been listened to during the Commons stages, it would be interesting to hold Ministers to account for that and get a clearer sense of what the dynamics of the Commons stages have been before the Lords stages begin.

It might be interesting to invite back witnesses who spoke to the Public Bill Committee and ask them whether they feel their concerns have been dealt with, and if not why not, and to get a dialogue going about that in a committee setting before it reaches the Floor.

Q5

The Earl of Courtown: You have answered the question I was going to ask, which always leaves me in a slightly difficult place. We were looking at pre- and post-legislative scrutiny. At the moment, we have an ad hoc committee that will be looking at the Bribery Act, and in the past we have had pre-legislative scrutiny of Bills; I cannot remember which ones, but it is not commonplace. How can this be done? Should there be a formal structure, with every piece of legislation getting some sort of post-legislative scrutiny and, likewise, pre-legislative scrutiny? Meg, you were talking about pre-legislative scrutiny in terms of the work the Constitution Committee was doing on the European Union (Withdrawal) Bill. Should it be a matter of rote that this should always happen, or is it applicable only to certain pieces of legislation?

Professor Meg Russell: I have some more radical thoughts on this. I suppose I should say two things from my CV, which you are probably well aware of. First, I have just written a book about the legislative process at
Westminster. Secondly, which is perhaps one of the things that sparked my interest, I spent two years as the special adviser to the Leader of the House of Commons, Robin Cook, in 2001 to 2002, when he was in charge of the legislative programme.

One of the things that Robin Cook was very passionate about was pre-legislative scrutiny, and he made it his mission to ensure that all Bills were subject to it. That was what he was aiming at: that all Bills should be subject to pre-legislative scrutiny before their formal introduction. Of course, we are still having that same argument 15 years later, and I am not sure things have really moved on. There are political realities, in that the Bills that get pre-legislative scrutiny—not to denigrate that pre-legislative scrutiny, which can be very important and valuable—are often ones that the Government feel less urgency about and are less protective of. They do not mind parliamentarians fiddling around the edges a bit, whereas they want to get the things they are really passionately committed to into Parliament as quickly as possible.

There is a degree to which the pre-legislative scrutiny battle will never be won, so I wonder whether there are ways to get around that a bit more. For example—it is not a brilliant example, because the timetable was pretty short—one of the Bills that I studied as one of the case studies for my book was the Public Bodies Bill, under the coalition, which was a bit of a car crash.

Baroness Garden of Frognal: We all remember that.

Professor Meg Russell: That Bill was introduced in October 2010, so there was not a great deal of time after the election, but it was not a secret that the Government were going to do this. They did not put it out for pre-leg, but it was in the Queen’s Speech. It was in the manifestos. Could a committee have, in effect, instigated some pre-legislative scrutiny, without the Bill itself but by taking evidence on how public bodies should be reformed, in order to inform the process at an earlier stage and maybe make Ministers, during the drafting stages, a little nervous that they were being watched, in that anticipated reactions way?

If pre-legislative scrutiny is not happening through the formal channels, there are things that you could do to be imaginative and get ahead of the game, by taking evidence on things you know are coming, in order to inform the debates inside and outside government as to what should be expected of those Bills. That would be cheeky, but why not?

The Earl of Courtown: Broadly speaking, the post-legislative ones are very welcome in this House, from speaking to colleagues. I do not think we have done so many of the pre-legislative ones.

Professor Meg Russell: There are some quite difficult questions about who could do that work, because, without specialist departmental committees, there often will not be an obvious committee. We were talking outside about the pressures and tensions between a functional organisation and a policy topic-related organisation, and you have a bit of both in the Lords. You have the Delegated Powers and Deregulation Committee, which
is specialist in that function, and then you have the Science and Technology and Economic Affairs Committees, which are specialist in those topics. If you were taking evidence on a Bill about to be introduced, it would be easy in some cases. Even on the Public Bodies Bill, the Constitution Committee could have done that with a good deal of expertise. If it was a health Bill, say, it is less obvious where that would go.

**Dr Hannah White:** On pre-legislative scrutiny, I agree with everything Meg said. The crucial thing there is about timing, and how quickly you can move and decide who has responsibility for what, because what will hold you back from doing what she very sensibly suggests is having the intelligence about something coming down the track and getting yourselves organised. I always say to committees, when thinking about how they can be most effective, that it is all about timing. There is absolutely no point producing a beautifully well-argued report a week after the Government have decided to table their own report. You know that, but it probably bears repeating.

On the post-legislative scrutiny, I absolutely agree with what I think you were implying in your question. There is a lot of scope for Parliament—and this probably means the House of Lords—to be much more systematic about post-legislative scrutiny. The Government have committed to produce memoranda on Acts, five years after they are enacted. There is a degree of frustration in government about the infrequency with which Parliament picks those up and thinks about those Acts, because government is producing these things.

I do not think it is feasible to think about doing it for every Act, if you think about the number of Acts that are passed in a Session. You could have a permanent sessional committee responsible for post-legislative scrutiny, at least to ask, “What is the set of legislation that was passed five years ago? What should be the priorities for us in this Session, looking back?” It could either make recommendations on which ad hoc committees should be set up to do that, or do it itself, but with a much more systematic approach to post-legislative scrutiny.

The really key thing is thinking about how the findings from that scrutiny feed back. It is all very well doing it. If those committees are ad hoc in themselves, who is checking whether all the interesting things we found about how it could have been done better are being taken on board?

**Professor Meg Russell:** I am thinking on my feet here; I do not come with a predetermined package, but, listening to that, there is a bundle of issues here about having oversight of the legislative process, legislative programme and legislative output. The Hansard Society has pushed for a legislative standards committee for some years. In my proposal, one step could be a committee taking evidence from the Leader of the House of Commons, probably alongside the Leader of the House of Lords, on the legislative programme.

You are talking about getting intelligence. The Queen’s Speech is published, so you could have an interesting session afterwards about how they think the timing will work and if they could tell us a bit more. I know
there are the debates on the Floor of the House, but that is different from
a committee session. Then you can look back at what has been passed and
what is worthy of review. There is an overall legislative oversight function
there, which might work together, in some way.

**The Chairman:** If you wanted to flesh that out a bit, we would look forward
to that.

**Lord Williams of Elvel:** In the past, and to a certain extent now, we have
been told we must not trespass on House of Commons territory, that its
toes are extremely sensitive and that we should back off. This has, to some
extent, had holes shot in it by the Constitution Committee and the
Economic Affairs Committee. It looks as though we are moving towards
some sort of confrontation with the House of Commons. In the past, as I
say, it has been fairly clear. The whole clumsy structure of the EU
Committee and sub-committees, which is really nauseating, was set up
entirely to avoid any conflict with committees in the House of Commons.
The instruction for selecting ad hoc committees and ad hoc studies is that
we cannot do anything which the House of Commons is doing. Do you think
that is a good idea or a bad idea?

**Professor Meg Russell:** I am inclined to think it is a very good idea. I
know that it is a bit blurry around the edges, but complementarity is a
really key word here. Politics is a competitive business by its nature; that
is completely understandable. People want to be on the hot issues,
particularly in the House of Commons. There is a degree of friction and
competition even between the committees in the House of Commons on
some issues. For the House of Lords to get mixed up in that competition
would not be a good thing. The approach that you have been speaking
about so far, in terms of identifying real scrutiny gaps and weaknesses in
the parliamentary system as a whole and how they can be filled, is the
correct one. I do not know to what extent this inquiry is working in
collaboration or discussion.

**The Chairman:** We are going to have evidence from the House of
Commons, and we are already in informal chats.

**Professor Meg Russell:** It seems important to be doing this in
collaboration with the Liaison Committee in the House of Commons as far
as you can, because it should not always be the House of Lords jumping to
the tune of the House of Commons and trying to fill the gaps that it is
leaving. It is a two-way process, but it seems to me that the
complementarity is extremely important.

There is one thing that it is worth urging caution on. I am a bit of a
comparativist in my research. One of the best places to go and look for
examples and evidence of how things might change is other countries, and
I have done a lot of that with respect to parliaments. I have studied
bicameral parliaments quite a lot. If you look at other bicameral
parliaments, you will often find that the committee systems in the two
chambers are rather similar. I do not think that that is something to
emulate, and I would point out that it is a product of the nature of the
legislative process in most countries, where legislation is sent to the
specialist committees. If the health committee is dealing with the health
Bills, and the education committee is dealing with the education Bills, you arguably need a health committee and an education committee in both Chambers.

That can be quite inefficient. It is one of the things that people complain about in other bicameral systems. The complementarity here is a strength of the system that we have in the UK. It should be relatively easy to find, given the very clear differences between the two Chambers, which I referred to at the beginning: the presence of the Cross-Benchers, the nature of the Members on the party Benches, people’s backgrounds, and the fact that they do not have constituents to answer to and have longer-term perspectives. There are lots of opportunities to benefit from that difference in culture and in membership, in order to find complementarity.

**Dr Hannah White:** I agree with Meg. You should think about it as playing to your strengths, as opposed to being denied the opportunity to do things. There are things that the House of Lords does really well, which the Commons does less well. That is, therefore, where you ought to focus your efforts.

It is very good news, if unsurprising, that you are doing this review and communicating with the Commons about it. My sense is that there is a bit less thinking going on in the Commons at the moment about the future role of Parliament post Brexit. It is very focused on what is going on right now. I hope that the process you are going through, and more generally as a House, can help stimulate thinking at that end. There is definitely a sense in which you can set the agenda and say, “This is what we think will be needed, post transition, and these are the things we are proposing to do. How is that going to work?”

The obvious point, which I made at the beginning, is that if you end up doing very similar pieces of work on similar topics, you will be calling similar sets of witnesses and examining them. There is an issue about witness fatigue, with people being called to multiple committees.

**Lord Williams of Elvel:** They will possibly arrive at different conclusions.

**Dr Hannah White:** That would not necessarily be a bad thing. In terms of how much focus there would be in the media and in government on your version of it versus the Commons version of it, unfortunately, the fireworks and grandstanding aspect at the other end means, for not necessarily the right reasons, it might get more attention. It is better to focus on the different and distinct things, where you have the edge.

**Lord Williams of Elvel:** Do you think we should discuss taxation?

**Dr Hannah White:** Yes, I do not see why not. I know the Economic Affairs Sub-Committee looks at it.

**Lord Williams of Elvel:** That is where the wall is starting to crack a bit.

**Dr Hannah White:** Yes. The institute focuses on the process of policy-making, and we think that the process of tax policy-making leaves quite a lot to be desired. It does not go through the normal processes that policy-
making goes through. Taxation proposals tend to be a surprise, even to Members of the Cabinet shortly before the Budget. More sustained attention from the House of Lords, both retrospectively, as I was arguing earlier, through post-legislative scrutiny of whether taxation measures have delivered what the Government hoped they would, and in anticipation, would add to the sum of parliamentary knowledge and thinking in advance of the House of Commons legislating on these things.

**The Chairman:** My experience is that taxation is a gap in parliamentary scrutiny. There is not any doubt about that. Meanwhile, Tolley’s tax book keeps increasing exponentially, month by month. There is a gap there, and it is a very good point that Lord Williams is alluding to.

**Q7 Baroness Garden of Frognal:** I have a slightly different question on the role of committees: how do you think House of Lords committees can engage and interact with as wide and diverse an audience as possible, drawn from across the UK, in their work, in order to develop a national conversation and address public policy issues of importance to society? Should this be part of the duty and the role of committees?

**Professor Meg Russell:** Public attention can be a double-edged sword. I would not overstate the importance of it. Hannah has just referred to the fireworks in the House of Commons. The House of Commons is quite good at attracting attention, and elected politicians have a need to attract attention. It is completely understandable, worthwhile and legitimate as a part of the process. That leaves a gap, if we are looking for gaps, on the policy areas that you might refer to as worthy but dull, which can be extremely important. If there are things that systematically get overlooked because they are not very attention-grabbing, that provides an opportunity for a less attention-grabbing Chamber to work on some really important policy issues and provide a very worthwhile input into the process.

It is not all about attracting attention; that is really important to emphasise. My research, both on the legislative process and on Select Committees, has taught me that, although political conflict can be very entertaining and newsworthy, and we can all end up being gripped by it when it is happening, it is often not the most effective thing at generating change, because it creates defensiveness among Ministers and others who are the subject of those attacks. Being quietly effective behind the scenes, on committees and sometimes on legislation, can be very valuable.

At the same time, for the work that you are doing, you want to engage where you can. If you are doing something that is worthy but dull, you none the less want some media attention. You are not going to keep it a secret that you are doing it. The House of Lords media operation has got gradually better and much more professional. This is a fairly minor thing, but I noticed, when I was thinking about these questions, that even now some House of Lords committees do not have their own Twitter feeds, for example. This frustrates me, because I sometimes try to generate publicity for you and your committees.

**Baroness Garden of Frognal:** Thank you.
**Professor Meg Russell:** Twitter is just one sphere, but there is nothing to retweet. You might not be terribly busy on Twitter but, if you have issued a report and I cannot go to your feed and retweet something, you are making it harder for me to help you get publicity. That applies to this Committee, unsurprisingly, but rather more surprisingly to the Constitution Committee. I had a look this morning.

I confess I have not done enough homework ahead of time and I may be unfair here so, if you are doing all this, just ignore me. In terms of the bigger engagement, the most recent call for suggestions for ad hoc committees that I had a look at on this Committee’s website was targeted at Members. It did not seem to be targeted at the public. You have sought to get public input into this inquiry now. Very kindly, the Lord Chairman has had a piece on the Constitution Unit blog, for example, trying to reach out to a wider audience, to get people to feed into the Lords committee system. We were delighted to host him.

What you are doing with the ad hoc committees is really interesting. It is innovative, flexible and inclusive. There is a workload implication, and perhaps your staff would be a bit terrified by what might come in, but given that you do it on an annual basis, I could envisage it over a few years becoming a bit of an annual political conversation. What are the big issues that society cares about? You can imagine it being discussed on the “Today” programme, or on daytime TV. What do people think is the latest thing that is worthy of Parliament looking at it for a year? It might take a couple of years to get it going, but an annual cycle can be quite engaging for the media. Then you would be listening to the public and responding to their concerns. That is the broad public, but also the specialist groups, the academics, the pressure groups and so on. That would be one simple thing that you could do more of.

**Baroness Garden of Frognal:** We have quite an extensive outreach programme of going into different organisations, particularly into schools, to generate discussion about what we should do and why we are there. But this is envisaged as being a specific responsibility of committees, to help generate publicity of whatever it is they are discussing.

**Dr Hannah White:** That is a very interesting suggestion. I agree with Meg that, in terms of the House and committees talking about what they do, there has definitely been significant progress in the House of Lords. We think about this a lot in relation to Brexit. There have been efforts to corral all the Brexit outputs into one place on the website, so that if you ask, “What has the House of Lords said about Brexit this week?” there is one place to go and look for that. That is all excellent.

When you use the word “conversation”, it is really important to show how you are also listening. Conversations are two-sided. Meg is suggesting canvassing opinion from the country about the topics you could look at for ad hoc committees, although your Lordships will have your own ideas. Several committees in the Commons in recent years have undertaken exercises where they have gone out and specifically consulted the public on what they ought to look at in that Session. The Scottish Affairs Committee has done it; the Energy and Climate Change Committee, before
its sad demise, did it. Members have found that quite useful in engaging
people in conversation on the role of the committee and what it could look
at.

It very much depends on the topic. There are certain topics and certain
committees where the people you are talking to are, frankly, the set of
people whom it is feasible to talk to on that topic. There are others where
there is massive scope for broader conversation. There are interesting
things going on and techniques that you could think about using in order
to hear a wider and more diverse range of views. The Constitution Unit has
done work on a citizens’ assembly on Brexit, and I think the Health
Committee in the Commons is doing something similar at the moment.
There is social media, as Meg said. There are lots of different ways to make
this a conversation and not just broadcast.

The Chairman: On the issue of a national conversation, in conversations
I have had with both Baroness Kidron and Baroness Rebuck, they have
emphasised to me that it has to be a two-way process, so that engagement
is really important. We have Members focusing on that already, but what
you have said is very helpful. Any more you have for us on that will be
important. I have just been informed that Alice is sorting out the main
House of Lords Twitter account, and from tomorrow it will be tweeting
about this Committee. So, Meg, do your business.

Q8 Lord Smith of Hindhead: If you look at the news today, quite far down
it you will see that the British Hospitality Association is recommending
points to the Government that come out of the House of Lords Licensing
Act post-leg committee, which published last March. The British Hospitality
Association is a huge trade organisation, and the leisure industry is the
third largest private sector employer. It is big business, but it is still quoting
a House of Lords report from last year, which was very warmly welcomed
by the industry. It was astounded that the committee had absolutely got
what its issues were.

I regard that as defining effectiveness for a House of Lords Select
Committee. How would you define effectiveness for a House of Lords
committee? Thank you, by the way, Professor Russell, for your frequent
use of the word “complementarity”, which is now my favourite word of the
day. I shall use it all day.

Dr Hannah White: How would you define effectiveness? The fundamental
thing I bear in mind is that it is for any individual committee of the House
of Lords to define what effectiveness is. It is always up to the members
of that committee to decide what they are trying to achieve and what impact
they are trying to have at any given moment. That is a decision for them.

My research has been focused primarily on the Commons, but there is
direct read-across to the Lords. I should preface this by saying that, being
at the Institute for Government, my focus has been primarily on what looks
like effective committee work in relation to impact on government. I know,
having worked in Parliament myself, that that is not the only thing that
Parliament is trying to achieve. I tried to think through what it is that
committees actually do that can change something about what government
is doing. What is the way in which committees can be effective in having an impact on government?

I have come up with a list of seven things that I think you could all be doing, which I will run through very quickly, but I could send you more on if you are interested. One of the obvious things that you do is collect evidence. You may collect evidence that the Government do not have about a topic. You may talk to someone they have not previously spoken to and tell them something they do not already know. You can be effective in influencing the Government by telling them something they do not know.

The second thing you can do is take the evidence base that government already has, but analyse it in a different way. Because of your expertise, because you are cross-party, because you can take a perspective on something that government potentially is not taking, you can look at the set of evidence out there and draw different conclusions from it. That can change how government thinks about something.

The third thing is really important: you are making government more open. We spoke earlier about the fact that Ministers come to give evidence to you in a way that they would not necessarily do to the Institute for Government or an academic institution. The fact that Ministers sit before you, you ask them questions and they put things on the record, day in, day out, is making government a more open institution, and that is a good thing.

Fourthly, as a by-product of that, by creating that openness, you can help government learn lessons. You can identify the things that government could have done differently. Government often does not have time to look back and think about how things have gone, and committees have time to do that. Committees can be really effective in helping government learn lessons.

Fifthly, as we talked about earlier, you can change government processes. Ministers who come and sit before committees, because a committee has launched an inquiry into a topic, have had to go back and say to their civil servants, “What is our policy position on this? Why is this our policy position on this?” They interrogate the evidence base for a policy, because they know they will have to come and justify it in front of a committee. You are directly affecting the processes that go on in government. If you ask a difficult question of a Minister and they do not know the answer, they will go back and say, “Why do we not collect this evidence? What are we going to do differently, so that next time I am before that committee I know the answer?” That is a point of impact you can have.

Sixthly—and this is a big one—you can change the context in which government is operating. This is where committees have an impact on anyone other than government directly and then that affects what government is doing. Something that committees do very effectively is to identify an issue and raise it up the agenda by getting it spoken about in public, bringing together different people who care about that subject and publishing a report saying, “This is an important issue, and government ought to think about it”. That is changing the context in which government is operating.
To give a topical example, the fact that people in Parliament have taken up this question about “Windrush” recently has changed the context in which government is thinking about its immigration policy. Because it has been brought up the agenda by Parliament, but also by external people, government has to think about it.

The seventh and final way in which committees can be effective is that, by doing your day job, you have an impact on democracy, as I nebulously call it. The fact that you exist, you are asking questions and you are holding government to account arguably gives the public confidence in the democratic system of our country.

The example I always give of this is when I was asking people about the Home Affairs Committee in the Commons. I was talking to lots of stakeholders of the Committee, and I asked, “What do you think this committee has done in the last five years that is important?” A couple of people I spoke to, completely out of the blue, said there was an occasion on which, in the summer recess, no one was in Westminster and we had the riots in England following the police incident. There was lots of destruction of property and real issues in communities. The Home Affairs Committee members got themselves back from Majorca or wherever they were, convened themselves in Westminster and took evidence from the police on how those riots were being policed. People said, “That was really important, because we saw that politicians cared about this thing that was affecting our communities and people. We felt more confident that Parliament was doing its job, because the committee took the time to do that”.

Sorry, this is a very long-winded answer, but you have struck upon one of my areas of interest. Those are the seven things, I think, that committees can do, and thinking about, as you are going about your job, which of those things you are trying to do, and therefore how you can do it most effectively, is well worth your time and effort.

Lord Smith of Hindhead: We will always remember you as Dr White and the seven points.

The Chairman: The seven highly effective habits of Dr White would be the management book.

Professor Meg Russell: I will turn the tables and say, “I agree with Hannah”. We have been agreeing with each other all the way through. In terms of defining effectiveness, I would give an answer in the negative: that there is a way of not defining effectiveness, which is merely about the number of recommendations that get accepted and implemented, although that is enormously important. That is the most measurable part of committee activity. In our Selective Influence report, we put a lot of time and energy into tracing recommendations, and found that the House of Commons committees—as I said, we did not study the Lords committees at that point—had a lot of impact in terms of the recommendations being implemented. When we did our interviews, including, crucially, interviews in government, it was very clear that that was perhaps the least important element of committee effectiveness.
I am not going to run through them, but we also had a list of seven other kinds of influence, which were not organised in quite the same way as Hannah’s, but they covered many of the same things. To give you just one little fact, one of the things you already emphasised was that committee reports can feed into wider debates. They feed into debates outside Parliament, but also inside Parliament. For our book on the legislative process, where we studied 12 Bills, we went through the public record to see how many times Select Committees were mentioned in the formal debates on those Bills. There were 1,700 mentions of Select Committees across 12 Bills. That is about 140 mentions per Bill.

That is just the parliamentary debates, and that is just legislation. Committees inform debate an awful lot. As Hannah has said, they draw together evidence, which is very important. The anticipated reactions function, in providing a unique public forum at which Ministers, people from the private sector and, as you have just referred to, the police have to give evidence on the record, is enormously important.

About a week ago, the Political Polling and Digital Media Committee, the ad hoc committee chaired by David Lipsey, issued its report. I was struck, at the launch of that report, that there was quite a lot of talk about the recommendations, inevitably, and which recommendations are likely to be taken up. Are they pitched correctly, and will some of them be ignored? But that report is an enormously serious and considered piece of work, which has gathered some really important evidence together. Even if none of the recommendations was accepted, it would have made a really important contribution, both through the process of evidence-taking—getting people talking, getting people on the public record, getting people thinking through before they attend what their policy is, what it should be and whether it should change—and in the fact, as you just referred to, that the report itself exists. People will be referring to that report in years to come. If something goes wrong in a future election or referendum, people will be picking that report up off the shelf and saying, “They gathered all this evidence, and things have got better”, or, “Things have got worse. We need to go back to this”. It is a really long-term, subtle and immeasurable influence.

Effectiveness is not just about how many points you win or how much media coverage you get. It is much more subtle, which is somewhat frustrating, because you cannot measure it. But there is plenty of it out there.

**Q9 The Chairman:** The artificial intelligence report will come into that category as well. It is a very profound document. I do not think I ever thought that I would be quoting from my MBA lectures of 40 years ago, Dr White. You have stimulated my brain, and I never thought I was capable of that, but there you are.

The Liaison Committee promotes wider engagement with the devolved Assemblies and Parliaments, and we eventually established an inter-parliamentary group on Brexit, which some of you have made mention of. It was very helpful, particularly in the Clause 11 debate. There is still a way to go on that, but that was something the House of Lords did in an informal
way, which engaged others. Mindful of that, how can our committees build stronger relationships with their counterparts in devolved legislatures, and what benefits does that offer? You have four minutes.

**Maddy Thimont Jack:** This is something I have been doing a lot of thinking about for the Institute for Government. At the moment, given the policy areas returning from Brussels, this is clearly a big issue. We have recommended that intergovernmental relations need to be strengthened, because there is more likely to be more joint working, and potentially some shared ownership around policy areas, although we are still not really sure yet what that might look like. Inter-parliamentary relationships are a really important part of that.

There have previously been recommendations—for example, from PACAC in 2016—that these relationships need to be strengthened, but I would argue that now is the time to really try to do that. You have mentioned the Interparliamentary Forum on Brexit, and I have been following that quite closely, because it is a really interesting example. I would be interested to see how it works, and how people involved in it feel it works, in terms of bringing together chairs from committees that are interested in Brexit. It could be quite an interesting model for some of these policy areas where joint working will be needed, particularly around the environment and agriculture and fisheries within that. You can get the chairs of committees that are scrutinising those areas in the devolved legislatures and in Westminster to come together.

One of the benefits of that, a bit like when you talked about the overlap between the House of Lords and House of Commons, is that if you are interested in the same area, it makes sense to co-ordinate your scrutiny. If you are bringing the same witnesses because you want to see how, say, fisheries are working across the UK, it makes sense to build those relationships so that you can manage that and avoid witness fatigue. In terms of the networks that those devolved legislatures have within the devolved nations, in Westminster, if you are really interested in looking at how the new fisheries Bill is working, if the Scottish Parliament has networks within the Scottish fishing industry in Scotland, that would be quite useful and you could build on that.

Beyond the formal networks, the forum is quite interesting. On that, it is useful to hold joint evidence sessions. I know that the Welsh Affairs Committee in the Commons can hold joint evidence sessions with committees of the Welsh Assembly. It has done that on a number of occasions, most recently in 2015, on an inquiry into the pre-legislative scrutiny of the draft Wales Bill. That might be something to look into, as to whether you can amend the Standing Orders so that any committee in the House of Commons or House of Lords can hold joint evidence sessions. In the policy areas where this might be needed, such as the environment, agriculture and fisheries, if you can have some UK-wide frameworks, it would be useful.

**The Chairman:** Good. I hope you will forgive me, I do not mean to be obsequious, but this is a historic occasion, and great thought was given to who would launch us on our way. The names of Jack, White and Russell
were not pulled out of a hat. You had to have the status to do this, and it is very fitting that you have launched it, so thank you very much.
Wednesday 9 May 2018
10.40 am

Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 2 Heard in Public Questions 10 - 19

 Witnesses

I: Dr Sarah Wollaston MP; Paul Evans, Clerk of Committees, House of Commons.

Examination of witnesses

Dr Sarah Wollaston MP and Paul Evans.

Q10  The Chairman: Dr Wollaston, welcome to the Committee. We also welcome your clerk, Paul Evans. Can you identify yourselves for the Hansard writer?

 Dr Sarah Wollaston: I am the Chair of the Health and Social Care Committee and the Chair of the Liaison Committee in the Commons.

 Paul Evans: I am the clerk of committees in the House of Commons.

The Chairman: Welcome. First, thanks for your submission. It is very helpful to us. I will lead with the first question, on the House of Commons and the House of Lords working together on parliamentary scrutiny.

What are the key strengths and weaknesses of the House of Lords committees in their current structure? Is there a case for adopting a more thematic and flexible approach to committee activity in the Lords, given the pace of technological change that we are experiencing in society today?

Dr Sarah Wollaston: Yes. The two Houses should complement each other, rather than directly mirror each other, to add value. The strength of the Lords is the huge expertise that you have here and the fact that you are not so constrained by party politics. That is a huge strength. You look at the cross-cutting issues. In the Commons, we follow departmental lines. Although there are increasing examples of committees working jointly, and we are hoping to work on arrangements whereby we can invite members of other committees more flexibly, we are mostly shadowing a department, whereas in the Lords you have much more flexibility on thematic, cross-cutting issues. Time and again during our committees, we come up against
that barrier: there are so many departments involved. That is where the Lords can add particular value.

**The Chairman:** I had a chat with Frank Field. Frank has given his apologies today. He was out canvassing at the weekend, and he slipped and broke his arm, so he is not going to be with us today but he will be with us another time. He mentioned to me when we were speaking that his committees were looking at issues such as pensions and Carillion. He said, “Given the expertise in the House of Lords, I would welcome Members of the House of Lords being seconded on a very short-term basis to assist my committee with corporate governance and pension policy”. Would that type of initiative be attractive to you?

**Dr Sarah Wollaston:** Yes, indeed. We are already looking at that across the Commons. At the moment, you have to be quorate if you have a joint committee. There is quite a burden on Members’ time, both in the Commons and in the Lords, and having the flexibility to invite an individual to ask questions is a very useful strength.

**The Chairman:** Flexibility is the key when it comes to parliamentary scrutiny and technological change that we are facing.

**Dr Sarah Wollaston:** We are also trying to look at it from the point of view of the public. How do we provide the best service to the public? It is by bringing in expertise and being flexible about that.

**Q11 The Earl of Courtown:** I read your written submission with interest. One of the points that immediately stuck me is that we have to recognise that the cultures of the two Houses are very different, and that the pursuit of joint working needs to add benefits to both.

Going on from that, we are looking at scrutiny gaps across Parliament as a whole, and this is very often the case when you look at the weaknesses in one House and the strengths in the other and the strengths in one House and the weaknesses in the other. How can these scrutiny gaps be addressed, at least by the House of Lords committee system?

**Dr Sarah Wollaston:** There is a particular worry about a scrutiny gap in relation to Brexit, given the vast number of issues that will arise out of Brexit. The Lords has a key role to play there, again working alongside the Commons. It comes down to the extraordinary expertise that you have here to fill the gaps that there will be in the Commons.

**The Earl of Courtown:** In terms of weaknesses, you think there could be gaps post Brexit in committee work. I know thought is being put to that.

**Dr Sarah Wollaston:** It is about identifying those gaps. One of the things we as the Health and Social Care Committee called on the Government to do was to provide us with their inventory of what they are looking at. We are concerned about the apparent lack of contingency planning on issues that might arise if suddenly at the last minute we are forced into a cliff-edge, walk-away kind of Brexit. We are asking for their inventory of what they are planning for and it is not forthcoming. Since it is not forthcoming, there needs to be a very detailed piece of work looking at where those gaps are and making sure that we have detailed recommendations in place.
The Earl of Courtown: There are no doubt scrutiny gaps in the Commons as well. Are they covered by scrutiny in this House?

Dr Sarah Wollaston: Post-legislative scrutiny is not something that the Commons necessarily has the time to look at in depth. There is a particular role for the Lords in post-legislative scrutiny.

Paul Evans: There is universal admiration in the Commons—perhaps “universal” is putting it too strongly—for the Lords’ work on secondary legislation. That is a key area, and the Commons simply does not have the time or the attention span to give it the kind of attention that is needed. It is recognised as a scrutiny gap in the Commons, and it is recognised that the Lords does a lot to fill that gap.

Post Brexit, the other thing that is going to come up is treaties. According to some views of what will happen, we may have dozens, if not hundreds, of treaties to sign. There is a similar detailed and, at times, quite legalistic approach to looking up these things and seeing whether they are going to work. The Commons always likes to have the politics and wants the Lords to have the technical, legal and other grip on things. Trying to balance those two off against each other is always a good aim.

Q12 Baroness Garden of Frognal: Thank you for your testimony. I am going to ask you about witnesses, but I note that here you are looking at statistics for the gender diversity of witnesses, which will be an interesting one. I was on a Digital Skills Committee at one stage and we kept crying out for women to come. Then suddenly we had an avalanche of women who were digital specialists, but it was very worrying at the beginning that they all seemed to be male.

Do you have difficulties in compelling reluctant witnesses to appear? The value of the sort of inquiries we do is heavily dependent on getting the expert witnesses who can give us that evidence. Would you favour stronger enforcement powers for committees to compel witnesses to come?

Dr Sarah Wollaston: Yes. This is something that the Committee for Privileges and Conduct is now picking up again, and the Liaison Committee supports that. There is an issue here about witnesses being reluctant to appear. It is not just outside witnesses. For example, the Defence Select Committee wanted the National Security Adviser to appear, and it took a very long time. We raised it with the Prime Minister directly at Liaison Committee and there was a refusal, but we had to press and that now has been conceded. Sometimes you have to keep asking and pressing the point, and being as flexible as you can be with external witnesses about their appearance, but the bottom line is what you do when, for example, Mike Ashley refuses to appear.

I am going to hand over to Paul Evans here, because he gave us a very useful presentation on this and it might be useful to have his expertise on this point.

Paul Evans: On diversity, we have a lot of statistics and work to show. On the separate issue of reluctant witnesses, following the News International fracas with the then Culture, Media and Sport Committee nearly a decade
ago, the House of Commons eventually, in October 2016, admonished two witnesses who had lied to the committee, and referred the matter of the penal powers of committees to the committee for privileges. That inquiry was then interrupted by the general election and it is only just resuming.

As Commons committees begin to look much more at things that are happening outside government, partly because much of what used to be government work is done by private sector companies but also due to a culture change in committees themselves, there is an issue about reluctant witnesses who are not Ministers and civil servants, among whom there is not a huge problem. There is a feeling that at some point a crisis may come where a witness defies a committee and the powers that we have fail to resolve the situation.

It has not been an issue in a great many cases. Most times, after a lot of toing, froing and negotiating, witnesses finally turn up, as did Mike Ashley, Sir Philip Green and others. The Digital, Culture, Media and Sport Committee is currently looking at fake news, and the Cambridge Analytica brouhaha is quite central to that. The witnesses are reluctant to come. They have made public declarations that they have appeared, but they have appeared so far.

This is certainly preoccupying the committee for privileges in the House of Commons. We expect it to restart its inquiry shortly. It has collected some evidence and is looking at ways in which there can be a clear path to compulsion for persons, papers and records. It is a controversial topic. The question of involving the courts in the exercise of penal powers is something that many Members of Parliament feel doubtful about.

**Baroness Garden of Frognal:** There is no legal enforcement that you can call upon.

**Paul Evans:** There is no statutory enforcement.

**Dr Sarah Wollaston:** May I comment on the point about witness diversity? When we send out the letter to people from the Health Committee, we ask them to consider diversity and its importance, and we are recording it. We are now formally looking at the gender diversity of discretionary witnesses. Naturally, just thinking about it makes a difference.

**Baroness Garden of Frognal:** Are you doing it with ethnic minorities?

**Dr Sarah Wollaston:** We will be following up and doing that piece of work next.

**Paul Evans:** The difficulty with other forms of diversity than gender is that they depend on self-reporting. It is quite hard to get witnesses to do that, so we are focused on gender diversity for the time being, but we are looking at the others.

**Q13 The Chairman:** Some have suggested to us in evidence that it may be the usual suspects who are asked along to give evidence. Have you done anything to widen that area and investigate it more?
**Dr Sarah Wollaston:** It is about being mindful of it and going back to people to ask, “Is there somebody else who could come?” so that you do not always hear from the same people. Wider engagement is important. The Select Committee that I chaired jointly with the Housing, Communities and Local Government Committee is holding an inquiry into social care. For the first time, we are using a citizens’ assembly, which is a larger form of citizens’ jury. Increasingly, we use Parliament’s own resources to conduct outreach. We try to get out of the building, which is very important. We try to get around the country, rather than holding all our hearings in this building.

**Q14 Lord Smith of Hindhead:** I know, from my relatively short time on this particular Committee, that we go to some lengths to avoid choosing subjects for ad hoc committees that might be being dealt with in the other place. I wonder whether you could let us know how important you think it is to avoid an overlap between the Commons and the Lords when selecting committees, and whether there are any benefits to a greater joint working relationship between both Houses to discuss certain matters. If there are benefits to that, what barriers might there be that prevent that from happening?

**Dr Sarah Wollaston:** First, if I can use the example of the ad hoc committee on the long-term sustainability of the NHS and social care, that was a superb committee that added real value by looking at both issues together: health and social care. It started off saying that it was going to look at the NHS and very rapidly realised that the two are joined at the hip, and it had the flexibility to expand its remit. You could argue that this was looking at an NHS issue and that that would be duplicating, but it was not at all.

As an example of how committees can work together across the Commons and the Lords, in the Commons, we called the committee in to give us evidence and to present its findings, so it gave it an extra boost. We have repeatedly raised the findings of the Lords Committee with Ministers. It was really important to meet Naren Patel personally and think about how we can get the most from it, rather than seeing the fantastic committee report that they had produced disappearing. We need to keep it in the public domain.

One of the disadvantages of the ad hoc committees is that they finish their work and that is the end of it. The advantage of the model of Andrew Tyrie’s banking commission, which was set up with both Houses of Parliament, was that the findings could be repeatedly raised in the Commons. It did not just finish, because there were Members within the Commons who could follow up what was happening there. Joint working is definitely in the public interest and we should see more of it. The limiting factors are resource and time: the resource that there is for committees and the time that Members have. I know Paul would like to come in as well.

**Paul Evans:** We discussed earlier the opportunities for joint meetings of the two Liaison Committees when you are deciding your forward programme, because the Commons does not have that kind of flexibility. We have a fairly rigid committee system, and each committee decides for
itself what it is going to do. None the less, when you are in the process of choosing your ad hoc committees, joint meetings might be of value. There is relatively little dialogue, at least at a member level, between the two committee systems of the House, and anything we could do to encourage that and put it on a slightly more formal basis might help.

Lord Smith of Hindhead: The liaisons need to liaise.

Dr Sarah Wollaston: One idea might be, if the Liaison Committee was thinking of holding future ad hoc committees, to involve liaison and see how we could add value with committees in the Commons.

The Chairman: As one who presents the findings of ad hoc committees on the Floor of the House of Lords, I am aware of the criticism and the shortcomings of the ad hoc committees, so we will be looking at that.

In terms of the Liaison Committee’s meeting, that is a very good idea, particularly in the context of parliamentary scrutiny and taking it forward. You would find a receptive audience here on that issue.

Q15 Baroness Hayter of Kentish Town: To some extent, between you, Mr Evans and Sarah, you have answered what I was going to raise. On at the post-leg scrutiny, which is one of the things that we can do, it is quite difficult for us to choose which bits to look at. In a sense, I was going to ask whether it would be useful to talk to your Liaison Committee about that, and I think you are already saying yes.

Looking further forward, you mentioned Brexit for future work. It is a personal view, but I am slightly worried that the way we choose our ad hocs at the moment is based on a member with a particular interest putting something forward. That is the truth of how we choose them, which, in the great scheme of things, may not pick out the issues of biggest public interest or, indeed, interest to you. Given that we can do this longer-term bit of work, I was going to ask, although you are already answering it, whether we could have some guidance from you on what might be most useful. You are probably both already saying yes to that question, are you not?

Dr Sarah Wollaston: It would have a great deal of benefit, as would thinking about who would be best to lead such an inquiry, rather than having an individual coming forward to say, “This is something that I have a personal interest in”.

Baroness Hayter of Kentish Town: I apologise to my colleagues, but, as you mentioned it, I will mention it: Brexit. They know that I am a bit obsessed by it.

Baroness Garden of Frognal: You are leading on it, so you are entitled to be obsessed.

Baroness Hayter of Kentish Town: What you say about looking at the bits that the Government are not doing, which is always the hardest thing to identify, is really interesting. You can identify when the Government are doing something that you think is rotten, but identifying the gaps is quite hard. How does one go about that?


**Dr Sarah Wollaston**: It is very difficult if they are not publishing a list of their contingency planning, because we need to be very proactive in looking at what the gaps would be. In the area of health and social care, we have raised concerns about what would happen to supply chains, not just for medicines but for medical devices and radioisotopes, if there are hold-ups at the channel.

What is going to happen about qualified persons, for example—the ones who are doing the batch checking? When we call the Minister, we are reassured that they have it all covered, but we would like to see their list of where they see the risks might be, so that there can be expertise in both Houses looking at what we need to be preparing for, in all scenarios. As Mr Evans has pointed out, given the huge amount of statutory instruments that will be coming our way, the expertise of the Lords will be crucial in that.

**Baroness Hayter of Kentish Town**: When we were doing—some time ago, in relation to the health Bill or whatever it was called—we kept asking for the risk register. Have you asked for the risk register in your area on Brexit and health?

**Dr Sarah Wollaston**: We were all able to see the documents in the secret reading room.

**Baroness Hayter of Kentish Town**: I saw you there.

**Dr Sarah Wollaston**: Yes, of course. What surprised me most about that register was how quickly I was able to read it. I thought I was going to spend at least two weeks in a dark room and, in fact, it was a few sides of A4 in not particularly small print. Through being able to see that, you can see the amount of planning that is going in.

**Lord Low of Dalston**: Good morning. Thank you very much for your written submission. It was very helpful. The area I would like to explore with you is the question of follow-up of committees’ reports. This is an area where we have had problems in securing adequate follow-up of committee reports. We have had a problem from at least two angles. On our side, there is the problem of availability of staff resources to follow things up. On the government side, we have encountered problems over the Government’s response. It has sometimes been late and rather grudging. We have had to use what resources we have to chase the Government for a response. Are these problems that resonate with you at all? Have you encountered them? If so, what suggestions would you have for dealing with them?

**Dr Sarah Wollaston**: It is sometimes difficult, because you do not necessarily get the response you wanted. That is the main problem: very often, the purpose of your inquiry is to change the direction of policy or try to persuade the Government to do something they are not currently doing. That is the most common frustration on a practical level: that sometimes very few parts of your recommendations will be accepted.
Going back to the excellent ad hoc committee in the Lords, it struck me that there was not a sufficient response to that, and that is where, working together with the Commons, we can add value, to give them more wings.

**Lord Low of Dalston:** That is helpful. We would have more clout if we followed up together, you think.

**Dr Sarah Wollaston:** Indeed, and that may work both ways. There is a case for Members in the Commons identifying somebody in the Lords who would like to take up an inquiry report, so that it gets an airing in the Lords as well. There is much more we can do to amplify the work that we are both doing on behalf of the public.

**Paul Evans:** The Commons committees do not generally receive late replies but frequently feel dissatisfied with what they receive. They are getting more assertive and imaginative in challenging the Government on the quality of their replies, including on one occasion putting the Government’s response out to consultation and inviting the public to criticise it as well, which they very merrily did—so forcefully, indeed, that the Government were persuaded to withdraw their original response and come up with something better. It is an issue, but the committees are finding ways to challenge those inadequacies.

**Dr Sarah Wollaston:** A relatively recent development is that we can present a committee report on the Floor of the House, so it is, if you like, question time for the committee. It is about finding ways to have a wider audience for what you are doing. I do not know whether that is something you routinely do: have Question Time in the Lords when you are presenting a report.

**The Chairman:** You mentioned the Parliamentary Commission on Banking Standards and the amplification of issues in the Lords. There was no doubt that when the Parliamentary Commission on Banking Standards, of which I was a member, reported, the Government did not take up all the recommendations. Andrew Tyrie, as Chair, was in regular contact with us on the amendments that we wished to get passed. In fact, we got those amendments passed in the House of Lords, but it was the close link between the House of Commons and the House of Lords that ensured that. That is a model for the future, if we can get it.

**Dr Sarah Wollaston:** Yes, it is a very good model. In fact, we have asked for No. 10 to consider setting up a similar inquiry for health and social care because we feel that in a hung Parliament it is very difficult to get difficult decisions through. Building in consensus right from the start and in both Houses of Parliament is a very important way of getting things across the line in the public interest.

**The Chairman:** Lastly, you mentioned engaging with a wider and more diverse audience. We have had submissions saying that the House of Lords should be reaching out more, making Parliament more like society and engaging it. The House of Lords, it has been suggested, has an opportunity to do this on long-term and cross-cutting public policy issues. Is that a route that the House of Lords should be taking?
Dr Sarah Wollaston: Yes. Engaging more with people from outside this place is essential for both Houses of Parliament.

Paul Evans: I have two “any other business” points to add. To go back to the witness diversity question, the Liaison Committee in the Commons will be producing a report shortly, probably next month, on the results of our efforts to increase witness diversity. It is important. That will emphasise that we have approached that by dividing witnesses into two categories: discretionary and non-discretionary. In terms of non-discretionary, if you are inviting the BBC, you get whoever is sent. When reaching out to a wider group, as you are talking about, we are putting our efforts into getting the greatest diversity where we have more choice. That is an important point.

The Commons Liaison Committee produced a report a few weeks ago about some standing order changes, which Dr Wollaston referred to a little earlier, concerning the capacity to invite individual Members to join committees. I can see, for example, on an ad hoc committee, it might add value for a rapporteur from one of the Commons committees to be able to join. Rather than having the rather cumbersome joint meetings, it would be a swifter and more light-footed way of doing it, but it would require standing order changes, I presume, on the part of the House of Lords to achieve that.

Q18 The Chairman: The issue of rapporteurs has been brought up with me, to give people more freedom and, in a sense, make it more enjoyable, as someone mentioned in a submission to us. I have a couple of points just before we leave. Dealing with devolved issues is going to be much more important now, post Brexit. Are the present terms of reference sufficient for dealing with them? How would you imagine us going about our business there?

Paul Evans: The nationally based committees in the House of Commons—Northern Ireland Affairs, Welsh Affairs and Scottish Affairs—interpret their terms of reference very freely. They are not overzealous in respecting the boundaries of devolution, broadly in the agreement of the devolved bodies. Each of them works reasonably well with the relevant legislature. What is missing is that it is quite difficult to get devolution looked at in the round.

Another post-Brexit issue, which I am sure Lady Hayter is well aware of, is that it seems that the joint ministerial committees will become more significant in trying to manage the more complex devolved European matters of legislative competence. That is a missing element. As you are well aware, the Brexit liaison group that meets informally is beginning to address these issues and think about them.

The Chairman: Are you talking about the inter-parliamentary forum on Brexit that we have established with the House of Lords and the House of Commons?

Paul Evans: Yes. The gap is looking at devolution in the round, rather than the individual nations.

The Chairman: Having chaired that forum and been to the Scottish Parliament, I feel it has been successful in a social sense. It has brought
people together and there is face-to-face engagement. When you get face-
to-face engagement, it really helps. One of the big issues that we looked
at was Clause 11. We have yet to find out if that is a total success, but
there has been partial success in that. It is because we have established
the channels at the political level and at the officer level. That has been
very helpful.

**Paul Evans:** I am going to take the opportunity to push one of my
hobbyhorses around, which is the lack of a structured, UK-wide committee
forum for inter-parliamentary debate. We have the beginnings, but there
is a long way to go.

**The Chairman:** That is a very good point and we really need to work on
that together. Do you have any other comments or any golden messages
that you want to leave us with?

**Dr Sarah Wollaston:** The key point is to focus on the value we add for
the public. Does joint working across both Houses add value for the public?
I think it does, and there is a very strong case for saying that both Liaison
Committees could meet, even if only twice a year, to look at our forward
planning and how we can complement each other’s work. I would certainly
welcome that.

**The Chairman:** It is an excellent idea. Maybe I will end the session on a
radical note and ask whether you think the House of Lords should be
becoming more democratic, with elected Chairs?

**Dr Sarah Wollaston:** That is not controversial at all, is it? It is somewhat
ironic that those who are now complaining about the Lords are the people
who blocked reform last time round, but there we are.

**The Chairman:** We are very grateful for your evidence this morning, but
particularly for you contacting us at the beginning. We really need to keep
in contact with each other on this issue.

**Dr Sarah Wollaston:** I would really welcome that, and thank you very
much for giving me the opportunity to be here.

**The Chairman:** It has been hugely helpful, and thank you, Paul.

**Paul Evans:** Thank you very much.