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Procedure Committee

Oral evidence: Procedure of the House of Commons and the territorial constitution, HC 1716

Monday 16 October 2023

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Members present: Karen Bradley (Chair); Tonia Antoniazzi; Aaron Bell; Jack Brereton; Patrick Grady; Nigel Mills; Liz Twist.

Questions 93-118

Witnesses

Professor Peter Clegg, Dean of Social Sciences, University of the West of England, and Jon Davies, Chief Executive, Commonwealth Parliamentary Association UK.

Written evidence from witnesses:

- [TTC 21 Professor Peter Clegg](#)



Examination of witnesses

Witnesses: Professor Peter Clegg and Jon Davies.

Q93 **Chair:** Thank you very much for agreeing to give evidence to us today. We have been working as a Committee since the beginning of this Parliament on an inquiry into the constitutional settlement within the United Kingdom—the territorial constitution. In light of the Brexit decision and the fact that we have lots of competences that used to be decided by Brussels, we were looking at how we might make sure that, as Parliaments within the United Kingdom, we understood what the implications were of one Parliament making a decision that perhaps had previously been decided by Brussels and was now something that the national Parliament was independent and free to do whatever it wished on. That is why we started this inquiry.

Apart from the fact that we had quite a big intermission due to covid, which meant that we were a bit distracted, we have been working on this for four years. What we have found throughout is that every time we lift up one layer and think, “Here we go; we’ve got an answer,” we then find there is another difficulty from that. That is where the Overseas Territories and the Crown Dependencies come in, because what we have identified is that what we do in Westminster can have quite a significant impact on our Overseas Territories, but we have not always been cognisant in Parliament of what that impact is when we are making our decisions. We have therefore broadened the scope of the inquiry from just the UK territorial constitution to the wider UK family, as I think it is referred to, of Overseas Territories and Crown Dependencies.

We are very grateful to the two of you for coming to give evidence, which is the first oral evidence we are receiving. We have had written evidence, but this is the first oral evidence we have had on this bit of the inquiry. It would probably be helpful for the Committee if both witnesses could introduce themselves, and then we will go into the questions. Perhaps Professor Clegg could go first.

Professor Clegg: I am Peter Clegg. I am a professor of politics and the dean of social sciences at the University of the West of England, and I have been studying and researching the Overseas Territories for around 20 years.

Jon Davies: I am Jon Davies. I am chief executive of the UK branch of the Commonwealth Parliamentary Association, which is based here in Parliament, funded by the two Houses through a grant and responsible to an executive Committee of both Houses. We are about trying to strengthen parliamentary democracy across the Commonwealth, very much including the Overseas Territories and the Crown Dependencies, and we tend to do that by what we call peer-to-peer learning: bringing



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Members and people from this Parliament together with their opposite numbers from across the Commonwealth.

Chair: I should declare my interest: I have participated in a number of CPA UK programmes, and I know the power and value of the relationships that are built through CPA UK. Liz Twist will start the questions.

Q94 **Liz Twist:** What is your understanding of the way Overseas Territories view having legislation made here at Westminster extended to them?

Professor Clegg: I think they are very cautious about it. They are concerned about how decisions are made and the way in which legislation that might have a significant impact on them is framed. They believe that, yes, the UK Parliament is the sovereign Parliament in relation to the Overseas Territories, but that, if at all possible, there should be consent and discussion about how any legislation, made either through the UK Parliament itself or through Orders in Council, is implemented. I think that is very important. Also, there is a recognition that they are quite different. There are 14 Overseas Territories, four uninhabited, I think, and 10 inhabited. They have different economic profiles, different populations and different geographies, so there is great resentment—I think you could call it that—when legislation is imposed in a rather non-discriminatory way. I would say those are some of the key features that the Overseas Territories see in terms of legislation coming from Westminster.

Jon Davies: I agree. As well as variety between the Territories, there is also variety of opinion within them, as you would expect in any jurisdiction or territory, so you are going to get different views on each subject and on the general principle. I completely agree with Peter about consultation. If something is being done to you, you feel an inevitable impulse to want to have some input into the understanding of that.

As the CPA, we tend to work directly not with the Governments of the Territories but with the legislatures, and the Members of those legislatures feel a responsibility to the people who elected them in a way that will be familiar to members of the Committee. I think they genuinely feel that sometimes they are not able to discharge that responsibility, because they do not have a way of inputting into that legislation.

Q95 **Liz Twist:** Does either of you know any examples of systems like the UK's, where the centre can and does legislate for Overseas Territories?

Professor Clegg: There are quite a few examples, which you may be familiar with: France, the Netherlands, the United States, Denmark, Finland, New Zealand and Australia. Those systems are quite different. Some are quite institutionally heavy in terms of their oversight of their territories—for example, the Dutch and the French models are quite intrusive—and others less so. There is probably a sort of sliding scale in terms of the level of metropolitan involvement, from the French model, which is probably the most interventionist because those territories are actually part of metropolitan France, all the way through to probably the New Zealand model, where the territories—some of them at least—are



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freely associated; they have complete local autonomy and New Zealand just oversees foreign affairs and defence.

Having said that, there are some similarities in terms of the balance of responsibilities and power across all those different models: ultimate sovereignty lies with the metropolitan Parliament, and the territories are very proprietorial about their own sovereignty. They resent intrusion and constitutional overreach, which has been used in the context of the UK Overseas Territories recently. There are problems about the economic position of certain of these Territories, law and order, and social policy, such as same-sex marriage, abortion or euthanasia. So it is interesting that, although there is quite a difference in approach across many of these different Territories, the fundamental issues and tensions are quite the same, I would say.

Jon Davies: I have very little to add, other than perhaps to point out that what is obvious, especially physically obvious, if you go to some of these territories, particularly in the Caribbean, is that they are very close to each other and they see all this. You are talking about sometimes sharing an island with people and things being done very differently, sometimes in a place that is literally 15 minutes away on a boat. These comparisons are not an abstract for them; it is lived experience in their neighbourhood, if you will.

Q96 **Liz Twist:** I suppose there are two strands to this, aren't there? We started by talking about the perception from the Overseas Territories of UK legislation. One strand would be: how much control is the UK central legislature perceived as having? The other would be: how strongly do people feel about that? It is like two lines. Could you give any kind of indication of where we might be on those lines? Or would it vary?

Professor Clegg: In terms of the UK Overseas Territories, I think the balance is probably just about right under the present constitutional arrangement. The Foreign, Commonwealth and Development Office in particular is very cognisant of the issue of consent—of not extending UK legislation or authority too deeply into the Overseas Territories. It recognises, as Jon said, that each of these Territories has its own Parliament or council, and that is very important. The constitutional settlement is that there are certain reserved responsibilities for the governor, and then everything else is devolved down to the Overseas Territories. I think that that is important to recognise.

The UK intervened perhaps most recently and quite controversially when in 2018 the UK Parliament passed the anti-money laundering legislation, which was very controversial and provoked a very strong response from the local Governments. Since then, there has been discussion about independence. I think independence is used quite loosely by many Overseas Territory leaders because it can strengthen their domestic base, so not much thought has necessarily been put into the idea of independence, or indeed greater autonomy, but it is necessarily used and does worsen the relationship between the Territories and the UK for a time. There have been other examples of that in the past, although that



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case in 2018 was quite exceptional because it came through legislation from the UK Parliament directly, rather than through Order in Council. It is important to keep that in mind because that legislation was very particular, and is not representative of how legislation more generally is implemented in the Territories. But still, the Territories are very protective of their autonomy and do respond quite strongly if such legislation is implemented, particularly when it is indiscriminate.

Jon Davies: I am not sure I have anything to add to that, to be honest.

Q97 **Liz Twist:** Peter, how could the view of individual Territories be better incorporated where primary legislation extends to them, and how could those views be made transparent to MPs here?

Professor Clegg: I have covered a little bit of this ground already. There are three main areas where the Overseas Territories have an interest in the legislation coming from the UK: first, through the UK Parliament itself; secondly, through Orders of Council being approved by the Privy Council; and thirdly, probably, the powers of the governor in terms of disallowing legislation, reserving legislation or actually passing legislation themselves. It is important to focus on those three general areas where the Overseas Territories, and perhaps parliamentary Committees, could have more of a role and a say.

Orders in Council are, of course, largely a negotiation between the UK Government and individual Territory Governments. That is where consent—early engagement—in the process is very important. I think that they largely do that. There is a risk sometimes that when it goes outside the purview of the FCDO to incorporate other Ministries, the focus on the Overseas Territories is less important. I know that the Prime Minister has recently instituted a mechanism to try to have better liaison across the Departments, which is a positive thing. With Orders in Council, it is that Government-Territory interaction. Interestingly, where the governors have those powers, there have been a couple of recent examples where the governors have blocked legislation and referred it back to the FCDO and the Ministers for discussion. Maybe that is an area where the Committee system in Parliament could have a role to play, because that system of decision making is quite opaque, but on areas that are quite important nevertheless. There would be time as well for Parliament—for the Committees—to provide a judgment, or at least to add to the ongoing discussion, maybe within UK political circles.

With direct UK parliamentary legislation, it is about making sure that, again, the Overseas Territories are incorporated at a particular stage. Maybe you could bring them in—I am not sure whether this goes against parliamentary rules—in the Committee stage, for example. The Dutch Caribbean, or the Kingdom of the Netherlands, again has a different kind of set-up, but you have Dutch Caribbean representatives coming into Parliament when particular legislation is being discussed and is applied to them. They cannot block it, but they are centrally involved in the discussions. Maybe something like that could be done in the UK Parliament.



Q98 **Liz Twist:** Finally, would a model similar to Crown Dependencies, where the UK Parliament can essentially only legislate with permission, work for Overseas Territories?

Professor Clegg: That is a really interesting question. If you look at the Overseas Territories and the Crown Dependencies from afar, you might say that there are quite a few similarities. The UK is sovereign. In theory, even in the Crown Dependencies the UK Parliament can legislate, although by history it doesn't really do that. There are tensions over whether the UK Government are becoming too engaged in local affairs. That has certainly been the case in the OTs but also, fairly recently, in the Crown Dependencies. There are also ways—in terms of international treaties, for example—where the approach is quite similar: there is consent, there is discussion about whether treaties should be implemented in the OTs or the CDs. It is not a blander implementation.

At that level, you could say that there are some similarities in terms of the ways that things could, at least in theory, be done and some tensions between them, but I would say that the reality is quite different. There are constitutions for all the Overseas Territories, but not for the Crown Dependencies. There are Acts of Parliament that underpin the relationships with the Overseas Territories but not with the Crown Dependencies. There is a long history of the UK not directly legislating for the Crown Dependencies, whereas for the Overseas Territories it is quite different.

There is a quite interesting different view among UK parliamentarians as well. Look at some of the Justice Committee reports from the last 10 or 15 years that strongly say that UK should not get involved. They do not quite warn the Government off doing so, but they make representations that the UK Government should be very careful before they get too involved in the Crown Dependencies. It is quite the opposite for the Overseas Territories. In many of the recent parliamentary Committee inquiries into the Overseas Territories, it is about inserting UK law proactively into the lives of those who live in the Overseas Territories—in relation to same-sex marriage, for example, or previously in terms of the death penalty and other issues, particularly around social policy but also human rights more generally. That is an interesting view. I am not sure whether it is because the Overseas Territories came from the colonial root and that the Crown Dependencies did not, or whether there is a slightly more paternalistic attitude on the part of the UK Parliament more generally in relation to the Crown Dependencies. I think that mindset might have to change before comparisons are made between the OTs and CDs in terms of what can be done.

Finally—this may be slightly disingenuous—if the UK Government could start all over again, they might not want the level of autonomy that the CDs presently have. If you look at the Overseas Territories more generally, Bermuda has the greatest level of local autonomy. Some of the OTs from time to time say “Can't we move towards Bermuda's example?”, and the British Government have historically said no. I think that is an interesting issue in terms of where they are right now and whether further autonomy or change could actually be given. The British Government feel



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that because they have ultimate responsibility for the Territories, particularly the Overseas Territories, they need the levers of power and control just to ensure that things are going well. If things were equal, I think they would probably wish that to be the case for the CDs as well.

Chair: It is interesting that you mention Committees, because this is one of the areas that we been thinking about. Tonia Antoniazzi has a question on that.

Q99 **Tonia Antoniazzi:** My question leads on quite nicely from that. How could Select Committees work more collaboratively with the Overseas Territories? You mentioned a change in mindset. What are the lessons to be learned from previous inquiries of Commons Committees that we should keep in our mind throughout this inquiry?

Professor Clegg: Interestingly, it is possibly doing some things that local Parliaments in the Territories cannot. If you look at those parliamentary inquiries over the last 20 years that have been influential and are remembered, you could probably argue the case for the reports in the late 1990s around the volcanic disaster in Montserrat, which highlighted a number of quite deep-seated problems with the nature of the UK-OT relationship at that time. Of course, you had the new Labour Government in 1999 and, framed and influenced by those reports, there were quite significant changes, including the change in name from Dependent Territories to Overseas Territories. I think the Montserrat inquiry was very focused. It was looking at the profound relationship between the UK and the Overseas Territories. That was very successful.

In 2007-08, you had growing concerns about the quality of governance in the Turks and Caicos Islands, and local people felt that their voices were not necessarily being heard and that the UK Government was not acting strongly enough to address the issues of alleged corruption there. The Foreign Affairs Committee report was a lightning rod where people's voices could be heard, and it led to the commission of inquiry and then direct rule being implemented. Maybe a third example is around the hurricanes in 2017.

Those reports were the most successful, because they were very focused on particular issues of concern. They looked at the nature of the UK-OT relationship more generally, and they did not get involved in issues that perhaps the Territories would think are their own concerns. Perhaps one example of that is the 2019 Foreign Affairs Committee report, which had some interesting things within it but did not gain much traction, because there was a focus on, for example, belongingship—the local citizenship in the Territories—and on same-sex marriage. The response against the Foreign Affairs Committee going into those areas was very strong. As a consequence, the whole report was put to one side because of that. I would say that the greatest impact is on those really high-profile issues, which look at the nature of UK-OT relations more generally—not when you start to look into particular OT local issues, even though they might be important.



Tonia Antoniazzi: Do you want me to carry on, Chair?

Chair: Jack wants to come in as well, so I will bring him in. Jon also may want to say something.

Q100 **Jack Brereton:** I just want to go back to the points you were raising about issues that are deemed out of scope. The mechanism for that is that the governor would intervene and basically rule that it has to be referred to Ministers for a decision. Do you think that process is currently working, or does it need to be changed and reformed?

Professor Clegg: Again, the position of the governor is a very tricky one. I do not think there is any other position like that in terms of the civil service.

Q101 **Jack Brereton:** Do you think it is a bit compromising as well for that position, potentially?

Professor Clegg: I think it is compromising, but it is difficult to know what the alternative might be. Of course, they are representing the UK Government. They have their own responsibilities, but they are also representing and promoting the Territories themselves. They have some powers—the reserve powers—but they are quite blunt instruments. When they are used, it does cause significant disquiet within the Territories. The British Virgin Islands example is a recent one. Actually, it is about persuasion, consent and discussion. Some say that the governors are wearing two hats, and sometimes it is very difficult to wear those two hats. Sometimes, when they get too involved in an issue, their softer role is compromised within the Territories as well. Overall, their role is affected, so it is really difficult.

Of course, as a governor, you are parachuted into probably quite a specific political culture, where everybody probably knows each other and there are unwritten rules and ways of doing things. Again, that is also a challenge, and the governor's staff is relatively small. For all those reasons, it is a challenging role. Most of the time it is done well, but there are clear, inherent tensions in that. But, again, what could be put in its place? I am not sure if there is anything different—again, under the present constitutional arrangements—that could do a better job.

Q102 **Jack Brereton:** How frequently do these sorts of issues come up, whereby the governor is having to intervene?

Professor Clegg: There are different levels of intervention. Sometimes it is a word to say, "Do you really want to do this? Are you sure about doing this?" Then it is perhaps about going back to the FCDO and saying, "Actually, I need some help. We need some technical experts. We need some additional assistance in these areas." Or it is the nuclear option of saying, "We need a commission of inquiry" or something like that. There are different levels, and the nuclear option—the commission of inquiry—is always the last resort and always done very reluctantly. Sometimes you could argue that governors wait too long to make that decision, so you could argue—certainly in the Turks and Caicos Islands—that the extent of



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alleged corruption was so significant and so long-standing that stronger action earlier might have been beneficial. But that is, again, acting in a Territory with its own local democratic political systems, and there is the fact that most of the Territories are economically self-sufficient as well. On both those fronts, there is a reluctance to intervene, and sometimes, perhaps, they just wait too long before they do so.

Q103 **Jack Brereton:** Would you recommend anything in terms of how we could improve and change that process?

Professor Clegg: One issue is regarding the accountability of the governors. Of course, they are accountable to the Minister in the FCDO, and I think they are probably accountable to judicial review, maybe, in the Territories, and in previous evidence in past inquiries, the FCDO has said, "Well, it's the role of parliamentary Committees to bring governors in to talk about their roles." So, maybe that is something that does not happen too often but would actually be a good mechanism, because it is something that the local Governments cannot do. Otherwise, it is just linked into the UK Executive, so I think that could be quite a nice mid-point, where the UK Parliament does provide that oversight, challenging and asking the governors about what they are doing, their role, and so on.

Q104 **Jack Brereton:** Jon, would you like to add anything on possible changes that could be made to improve the transparency and accountability of that process?

Jon Davies: The thing that I would say is less about the process, but it may be a way to improve it. Thinking back to my previous role, which was 25-plus years in the Foreign Office, I wholeheartedly agree that the governor role is a very unusual one, and it is not, actually, really a diplomatic role, normally. So I think that it is about ensuring that the organisation of the FCDO puts enough training, support and so on into making sure that the people fulfilling these really responsible roles have the training and support that they need to do that properly. That should be taken seriously and given the weight and support that it needs. Obviously, the better that that is being done, the more likely it is to work within the current constitutional set-up.

Then, if I may, it needs some continuity and understanding, ideally, in the ministerial portfolio. It is one of several ministerial portfolios that has changed hands quite a lot within the Foreign Office structure, and I think—

Q105 **Jack Brereton:** Particularly if, as was referenced earlier, it ends up being a Department beyond the FCDO; it may not be exposed to, and have that experience of dealing with, Overseas Territories and Crown Dependencies.

Jon Davies: And most civil servants, Government officials and Ministers will not have that experience. So I think that would help, so that the individuals fulfilling these challenging roles are actually able to do that to the best of their abilities.



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On the process, I don't think I would really add anything to what Peter said, but if I may just quickly say something on Committees, I agree with what has been said but I think there is also, as it were, that softer role of Committees supporting each other. One thing that we tried to do at CPA UK was to actually bring people from Committees here—both Members and officials—to help local Committees at least do what they can within their local jurisdictions to get the most out of their own parliamentary systems. They have similar sorts of responsibilities as you have here in your Select Committees—whether it be Public Accounts or the like—so I think that that support for their processes, and understanding how the process here fits with the process in-Territory, would help.

I think that one subject where—forgive me—I am not sure whether there has been a UK Parliament Select Committee inquiry, is on how trade has been affected in the Overseas Territories. I think that there has been some looking into this by the International Trade Committee, as was, but that is the subject that we at CPA UK have heard most about from the Territories—the disquiet that they feel and the disconnect between their interests. Actually, that goes for the Crown Dependences as well, to a large extent. They feel that, in the very complex period of the past seven years for the UK as we look at our future trading relationships, a way still has not been found to really understand, include and represent the interests and views of the people of the Overseas Territories, who are all, in their often very different ways, massively affected by the change that is still happening. That does feed across into legislation, at least in terms of treaty-like trade agreements, which are made in this place but often will apply to them willy-nilly.

So looking at how this place thinks about, includes and talks to the various layers of government—whether it be the Governments in the Territories, the legislatures in the Territories or the governors of the Territories—would be another good place to go to show that we are listening.

Q106 Jack Brereton: I have heard members of the Trade Committee raise this issue and talk about the lack of involvement of some of the Overseas Territories in trade agreements. Is there a mechanism that you think would be appropriate to involve some of them in those discussions about future trade agreements?

Jon Davies: It is part of a broader picture. We are still working out how to do that across the piece. Not forgetting the Overseas Territories is part of that, as this place keeps evolving with the relatively new Trade Committee, and we should think about how that Committee can be involved. To be honest, I cannot think of specific ways of doing that—maybe actively seeking out evidence. Sometimes for Overseas Territories' legislatures, this is a very intimidating place, and we should find ways in which they can be supported to bring evidence and questions. Maybe informal consultations and contact with the people who understand the local context would be one way of doing it, short of those more formal sessions with governors, or Speakers or Members of their legislatures.

Q107 Aaron Bell: Thank you both for coming. Apologies for my lateness—I was



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just in for the Prime Minister's statement—and apologies if I have to leave early for the next statement in a while.

I would like to go back to where we were philosophically about all of this, because I visited Gibraltar recently with the armed forces scheme and so on. There are obviously very deep historical ties to Britain. My question is whether the relationship that we have with the Overseas Territories, and indeed the Crown Dependencies if you want to comment on that, has become more transactional—from the point of view of the populations, not just the First Ministers. Professor Clegg, you made the point well earlier that sometimes First Ministers say things for domestic consumption, but do the populations feel that the relationship they have with Britain is now transactional, in that we pay for their defence or we might bail them out if there is an actual disaster, like Montserrat or hurricane season or whatever, and in return, they accept that we have some right to legislate for them? Or is it still founded on a sense of Britishness that perhaps warrants more involvement and more formal representation?

Professor Clegg: It is probably both, and that is not copping out of the answer. The ties are still strong. When one looks at the coronation of the King or the death of Queen Elizabeth II, there was genuine emotion, engagement and a following of what was happening, and the involvement of OT and CD representatives in those official ceremonies in Westminster was very important, so there is a strong bond. In a slightly more abstract way, it is about the nature of the legal system, and the standards emanating from the UK Parliament of democracy, transparency, accountability and all those things.

There are some key, fundamental underpinning issues, which remain very important, but they then go into some of the more transactional aspects. One reason why there is no support for independence across any of the Territories among the more general population is a recognition that when it comes to final legal processes and making sure that democracy is maintained, having the UK there to ensure that those things are maintained is very important. Of course, when there are natural disasters or economic problems, knowing that hopefully the UK will engage and provide assistance is very important as well. So they stand in their own right, but there is also an important connection between those two aspects, which overall make the relationship still pretty strong.

Q108 **Aaron Bell:** Transactionally, do they think they are getting a good deal, if you view it in a transactional way?

Professor Clegg: It is an interesting question, and it is about who has responsibility for what. The UK is often criticised for not intervening or not helping more significantly in environmental issues, for example. The UK would say, "We can provide technical support and advice, but the environment is a devolved responsibility." Then, the territory might say, "Can you give us some more support in this area?" There is a tension sometimes between what is a devolved responsibility and what is not. How

far should the UK get involved—financially or otherwise—or not? It is an interesting area.

There are always greater demands. Take Jon's point about looking at the neighbouring French territories, for example. They have significant French and EU funds, and infrastructure is much better. Their roads are much better. There is a contrast there. Territory citizens ask, "Why is the UK not providing greater support?" That is a tremendous difference between the French territories, where there is so much funding going in—although there are issues about economic productivity and unemployment, so there are downsides—compared with the UK position. It is probably more similar to the Dutch position. We actually try to encourage these economies to be self-sufficient. That is another area where the UK says, "In terms of the economy, you can do certain things or not." Again, that is perhaps encroaching into local concerns.

Jon Davies: There is real variety. You mentioned Gibraltar, which is unique within the ones we talk about. Even compared with the Caribbean Territories, the feel will be very different. I have visited only three or four of them, so I cannot judge as a whole, but there is still a strong link. When the transactional side works well, it is really appreciated. Certainly in all the Territories I have spoken to people from, the support during covid-19 was really exceptional. The fact that the vaccines were delivered to quite difficult places very early earned justified plaudits. That will be remembered—for a bit.

In many of these places, it will still be where younger people come to study if they study beyond 16, but not all of them. That is where competition from the States, Canada and other places will, over time, change the mindset. There are populations even in somewhere you might think of as having very strong links to the UK such as the Falklands. The Falklands has a very diverse ethnic population in terms of the nationalities that live in the Falklands. They are all, even though they have quite small populations, quite complex in the variety of loyalties in each territory.

Among the legislatures, which is what I know best, there is still a strong focus on this place. I think you will know of the interest of Mr Speaker in the Territories and the network that has been created in his term between the Speakers of the Commonwealth and the Overseas Territories Speakers. It is a very productive one, and it has reinforced that British link. In terms of legislatures and parliamentary structures, they very much will look, despite the evolutions of their own systems, to this place as a model and somewhere to come when they have questions and hope to get answers.

Aaron Bell: The vaccines point was well made; it was hugely appreciated in Gibraltar.

Chair: The point about the network has come up when we talked to devolved Parliaments about Committees—that maybe there could be networks for Procedure Committees and Administration Committees and Public Accounts Committees and various other Committee structures could



form networks that would be valuable and we could get learning from each other. That is a really interesting point.

Q109 Patrick Grady: Thank you both for your helpful evidence. We spoke a little bit at the start about issues around consent and transparency, and as the Chair said, this aspect of the inquiry builds on other work we have done around legislative consent from the devolved institutions. The Sewel convention governs that, although there have been a number of dramatic—or, at least, specific—examples where the Sewel convention has been observed more in the breach than in its practice. I wonder if you have any reflections not necessarily on the issue of consent or veto in itself, but in terms of how, if this Committee were to recommend changes to procedure for informing the House of the consent or otherwise of the devolved assemblies, what impact that might have on how such opinions are communicated when they are made in the Overseas Territories or Crown Dependencies, and how we could draw that together.

Jon Davies: Thank you, I think. I am not an expert at this, but I think that, at the risk of stating the obvious, if you are consulting and it is going to increase consent within the Territory, you need to be thinking really carefully about which part of the very complicated structure that Peter has talked about you are talking about. Consent from whom? From the people? From the people who have been elected to represent the people? From the governor? Whose consent are you talking about? It is about really showing that any Committee or people here have thought about that and understood it. It also comes through to who represents them in the UK. The Territories all choose to be represented in London in slightly different ways, with slightly different powers. Again, understanding who can speak for what part of a Territory's constitutional set-up may seem very obvious, but it is quite complicated and you are often talking about very small numbers of people. It is about being really, really careful about any mechanism you create and understanding the often very narrow but multi-layered set-up within a Territory.

Professor Clegg: In many ways, the present situation is quite informal; it is not enshrined in any particular document. It can be quite effective. You have different pressure points and different points of engagement, which you do not have in some of the Territories elsewhere that have more formal structures. The risk is that if you put something too formal in place, everything goes through that route and the existing, quite informal but quite elastic structures are lost. Because of that complexity—whether it is the governor, the citizens, the Territory Governments or the OT reps in London—that is quite difficult to properly quantify, so I would argue that the existing relationship, with some tweaks on the margins, would still be the best way to go. It is an issue of consent, of course. In the Crown Dependency example, there is consent by precedent and by history; but in terms of the Overseas Territories, there is only consent up to a point. We have seen examples of where consent is not given but changes are nevertheless made. That is an important point of clarification, perhaps.

Q110 Patrick Grady: That is very helpful. On that point, where consent is not given—that is what we have been looking at in terms of the relationship



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with the devolved institutions as well, and I think Jon touched on it—how best is it communicated to this House that the Government is acting on its Executive authority or whatever? How are parliamentarians made aware of that? How best can we be made aware of that in order to scrutinise the decision of the Government?

Professor Clegg: At the moment, when constitutions are agreed and passed through Orders in Council, they are placed with the Foreign Affairs Committee, I understand. Something similar could perhaps be done for legislation—again, through Orders in Council. It would not necessarily be unpicking what has been discussed, agreed or decided, but it is certainly a way of seeing what is going on and providing some kind of reference point and transparency about what has been discussed, sometimes in quite private circumstances.

Patrick Grady: Thank you.

Chair: Do you want to come in again, Jon?

Jon Davies: Just to say that it echoes some of the discussions that have been had more broadly on trade and trade agreements. Again, it is about working out how much information you need early enough to make a difference. A false consultation or a false seeking of consent is often worse than none at all, so thinking through what information can be shared and when, both with members of Committees of this House and then with the Territories, is critical. Otherwise, you end up with the worst of both worlds: an apparent consultation and seeking consent, but actually no such thing. That is not a good place to end up.

Professor Clegg: Can I just add that, occasionally, Orders in Council are threatened but not enacted, which precipitates local discussion? Maybe it is a bit of crude way of doing it, but over the last decade, some of the issues around financial accountability and probity in the Territories have been addressed in that way. Again, it is not always that you move to Orders in Council. That can be used as a mechanism to try to provide consent and agreement earlier on.

Q111 **Nigel Mills:** You were quite generous to parliamentarians earlier, Professor Clegg, when you assumed we had a lot of knowledge about which territories were Overseas Territories and which were Crown Dependencies, and that we put a lot of thought into how differently we treat them. How much awareness is there in Parliament of which of these regimes are Overseas Territories, which are independent and which are Crown Dependencies? I sense that, if you gave us a list of territories, most of us would struggle to know which camps to put them all in.

Professor Clegg: That is probably a fair comment. I think there is a small number of very committed Members of Parliament and lords who are aware, have that knowledge and engage significantly, but many do not. Many perhaps come into this space only occasionally, and therefore lack that background knowledge. I think assumptions are often made and that, among even those who are very committed to the cause, there is a degree of paternalism, as I mentioned. I think that is very important as well. We



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think we know best in relation to certain issues, because we know the Territories—they are our former colonies—and that is something that the Overseas Territories significantly push back on.

I am not sure how you would do it, but I think there could be some kind of exercise to talk more to parliamentarians about the Overseas Territories, the Crown Dependencies, their differences, their relationships, and what the UK Government and Parliament could do and cannot do. That would be quite a concerted and long-term project, but I think that the greater the knowledge and understanding, the easier, in some cases, it would be for the territories to influence and to take arguments and representations as well.

Q112 **Nigel Mills:** To be fair, it takes something to know what is devolved to Wales, Scotland and Northern Ireland—let alone anything further. Being serious, if you think the solution is based around engagement, that is quite hard to get, isn't it? I think it is fair to say that our evidence is mixed—that is probably slightly generous—on whether any of these Territories should have representation in the UK Parliament. I think Gibraltar thinks that it would quite like something, and the others are not quite so keen. Is that your understanding of the situation—that most do not want to have an MP or a lord here?

Professor Clegg: It was interesting: I read all the written evidence for this part of the inquiry, and clearly the Gibraltar Government quite explicitly said that. In terms of symbolic reasons, and in terms of maybe feeling a bit more vulnerable in their relationship with Spain after Brexit, they might see having some kind of parliamentary representation as a positive thing. There are certainly examples of that across the world. But it is interesting that they also said that they would like to retain their exact same status or maybe go further in terms of their level of autonomy. To be honest, I cannot think of any example across the world where a territory has such parliamentary representation and has either maintained their existing relationship or become more autonomous; actually, the metropolitan influence grows and becomes more significant.

It is not an exact comparison, but look at the three Dutch Caribbean municipalities: Saba, Sint Eustatius and Bonaire. They were part of the Kingdom of the Netherlands, and after the restructure about a decade ago they were incorporated more into the Dutch framework and had representation in the metropolitan Parliament. Then it was much more hands-on in terms of the level of oversight and control from the Netherlands. I think you could talk about parliamentary representation, but you would have to accept that a degree of autonomy and freedom would be given up as a consequence.

That is why, for example, the Falkland Islands are going quite in the opposite direction. They feel that the access points that we have already talked about are the most effective ways of having influence and getting their views across, because they can access all parliamentarians rather than being funnelled through potentially one representative, either in the House of Lords or the Commons. What voice and influence would they



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have? I think there are other risks as well. There are political risks. If there is a very narrow Government majority in Parliament, would that representative be pressured to support the Government or the Opposition? That has happened in some cases; in Ireland for example, I think there were some discussions around that. Those are real and significant issues and that is why there is no consensus.

I am not a constitutional expert, but I think that if Gibraltar, for example, was given an MP, with the level of autonomy that they presently have there may be questions asked elsewhere in the United Kingdom about the impact of that as well.

Jon Davies: I fear you are right about awareness and I think that it is again reflective of the general population in this country not understanding the complexity of our relationship with those Territories. I think you're right. There is a very helpful map, for those of you in Parliament, in the CPA UK room for those of you who want to check.

I agree very much with what Peter said about paternalism. I see that and hear from elected representatives from quite a lot of the Territories that concern about the risk of being represented in a certain way by a Member or Members here. In a way, they say, "Actually, no, it's for us to express our views rather than expressing them through someone who, albeit well-meaning, is seeking to speak on our behalf but does not necessarily understand our present-day reality and the wishes of our citizens." So I think there is a risk of that. I agree with you on the risks of representation.

There is a responsibility on the Territories and indeed on the Crown Dependencies themselves to think about how they represent themselves to this Parliament informally. We have talked briefly about the representatives here in London. You have the Overseas Territories Association as an umbrella body. In the end, like a lot of other organisations they have to think about how they present themselves—and they do think about that. They have to be imaginative and work hard at making sure that people here do understand.

Chair: Nigel, can I just bring Aaron in, very quickly? Sorry.

Q113 **Aaron Bell:** Sorry to interrupt, Nigel, but I just wanted to ask whether you detected any appetite for a copy of the US model, where a number of their territories have non-voting representatives within the House of Representatives, such as Puerto Rico, Guam, American Samoa and so on, because that might answer some of the very real questions that you raised about—if they had voting members here, that undermines an awful lot.

Professor Clegg: Yes, and they can represent themselves on Committees in the US system; they can bring Bills to the floor, as well. However, my sense is that if you want a representative, you really want a full representative, rather than one that is somewhat constrained.



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In the written evidence, I think there were suggestions that, well, we only look at issues that are germane to us. So I think it is probably an unsatisfactory halfway house, which wouldn't fundamentally change the dynamic of the relationship between the UK, on the one hand, and in particular the OT on the other. That is of course about whether you give them all representation, or do you give them a couple of seats and they share them between themselves? Again, there are practical issues as well there.

Aaron Bell: No representation without taxation.

Professor Clegg: That is a big issue for many of the Territories as well.

Jon Davies: Briefly, having heard from the representative of, I think, Bonaire, one of the Netherlands territories that you spoke about, at the Commons and Overseas Territories Speakers' Conference earlier this year, exactly that frustration with the relatively new set-up under the Netherlands system existed. Actually, it was more frustrating in that, yes in theory you have this representation, but you cannot actually do anything useful with it, so you are potentially having the worst of both worlds. You have a voice, but you can't do anything useful or productive with it, and yet the metropolitan power can say, "Well, you're represented; you're here." So there is a risk, I think, to those Territories that go down that path.

Chair: Nigel, back to you.

Q114 **Nigel Mills:** It would be remarkably generous, having just equalised the size of our own constituencies, to give some of these Territories an MP individually, wouldn't it? I mean, there would be a few thousand electors, at best. I suspect that one or two between them might be the only possible way of doing it.

Professor Clegg: Some of the populations are—I think Cayman is about 68,000; Bermuda is 64,000; TCI about 45,000. So, possibly.

Q115 **Nigel Mills:** But some others are somewhat lower than that, aren't they?

Professor Clegg: And those three have no desire to have representation either.

Q116 **Nigel Mills:** If we just touch back on the Privy Council and Orders in Council, I remember very enthusiastically voting in 2018 for public registers of beneficial ownership. I think that was the Order in Council we required the Government to do if the Territories hadn't adopted it by 2023 or something; I am trying to remember what the timing was. Is there a way of improving the Order-in-Council process? We humble non-Right. Hon Members have no idea what happens at a Privy Council, so I have no idea what happens there, let alone somebody in an Overseas Territory. Is there a way of making it feel more transparent so that they feel they have some kind of say in it?

Professor Clegg: Again, I am no expert in the Privy Council, but my sense is that it is a very closed entity. You have a list of members, I think,



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but it is not quite clear who they are necessarily representing, if that is anyone in particular. I know that Guernsey and Jersey have a sub-committee within the Privy Council, but I don't believe that any Crown Dependency representatives are part of that committee.

Going back to your earlier questions about legislation, rather than looking at changing aspects of the Privy Council, which I imagine would be quite difficult to achieve, it is about looking at those earlier areas of access. Where the UK Government are suggesting a piece of legislation is needed, that will go through the route of an Order in Council. At that very early stage, you engage with the Overseas Territories, possibly bringing in UK parliamentary Committees to look at the issue. So way before it gets to that position—that point—is where any improved access in negotiation and deliberation could come.

Jon Davies: It should be a key part of, as it were, the stakeholder mapping. If you are thinking of driving through a piece of legislation or even a piece of policy, then you should work out early on how you—as the UK Government, whichever part—tackle ensuring that the territories are part of that, which is hard work, takes time and is fiddly.

Professor Clegg: Again, there are some examples of that. When there is a discussion about implementing UK legislation in the Crown Dependencies, ultimately you go through an Order in Council, but actually, there is quite a lot of devolved discussion within the local Parliaments about that. The UK Government provide advice and they have suggestions about the implications of the legislation. Again, possibly, in some cases that could be a way in which the Overseas Territories do things. There are examples tucked away that could be used or adapted; they are used presently for the Crown Dependencies but potentially could be applied to the Overseas Territories.

Chair: Thank you. Back to Tonia Antoniazzi.

Q117 **Tonia Antoniazzi:** Just a few questions for Jon. I am aware that you have covered some of these things, but going back to strengthening relations and the Select Committee system, can you outline some of the work that CPA UK does with Overseas Territories? What are the areas where you think the UK parliamentary links with OTs could be strengthened, either via yourselves at CPA UK or outside that?

Jon Davies: With pleasure. As I said at the start, we at CPA UK have always included the Overseas Territories in the work we do, which is all about trying to strengthen their parliamentary institutions. For the last seven years, we have had a project that has had FCO and now FCDO funding, which has focused particularly on public financial management. Part of it has been about the legislatures, so we have asked this Parliament—and the Public Accounts Committee in particular, working with other public accounts committees across the Territories—and we have run a consortium with the UK National Audit Office and the UK Government Internal Audit Agency to support those three strands of public financial management, oversight and scrutiny in the Territories.



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That has gone well. It has helped to make increases in capacity in the Territories, they say, and there is objective evidence of that in their capacity to do those key tasks of a legislature. We do that in the same way we do the rest of our work. It is mostly about peer to peer and practising and learning. It is about people like you—if I may—talking to their opposite numbers about how you do this, how you ask questions, how you get answers and how you work with the auditors.

The other two strands are very detailed. How do you do external audit? How do you do internal audit? What sort of handbook do you use? The support we have been given is very practical, and I think there is learning from it for this Parliament as well. The Members and officials of this place who have been involved in that work have learned about the Territories and their challenges by doing that, and the Territories themselves have learned from and understood the processes. Obviously, the context they tend to do it in is quite often a tiny legislature, as opposed to here, but the processes are often the same. A lot of it is about that. We have slightly broadened that out in the last two or three years—the second phase of the project—to look at broader elements of how you make a legislature work well and how you make elections work well.

We run the election observations for the Territories and, indeed, the Crown Dependencies. Again, it is about trying to look at all parts of the democratic system and democratic cycle, and about strengthening in very practical ways how you set up your electoral commission, how you do the voting, how you do the publicity, how you count the votes, and how you ensure diversity and equality in that process—very practical advice from that part of the cycle, through to post-election seminars and some quite detailed Committee work. We could not do that as CPA UK without the involvement of your colleagues on the various Committees here and the staff of this Parliament.

That has been the core of what we do, and the Foreign Office keep funding us, so they say they believe it is worth while. Governors' offices support what we do and the legislatures support what we do, because we do it with consent by talking to the legislatures and finding out what they want and how we can help. I would say it, wouldn't I, but I think more of that is a good thing. That is virtually all funded by the FCDO at the moment—it is not part of our core funding—and I would love to have some of our core funding available to do that. We are asking for that, and if we can get that, it will help us make sure we can keep doing this, stepping up to Westminster's responsibility to support the other legislatures in the OTs.

Q118 Tonia Antoniazzi: So, more co-operation and collaboration, then.

Jon Davies: Yes, and there is openness to it from both ways. It is not difficult to find the open door on that. Virtually all the Territories, with the exception of Gibraltar, have a Public Accounts Committee, so there is an opposite number Committee to work with. They all have a version of an internal and external audit function, so there are people there who want and need the support. The door is open for that.



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Tonia Antoniazzi: Thank you.

Chair: We did a session recently with a sister Committee, and they were very interested in Humble Addresses and how they might start to use Humble Addresses, which was fascinating.

I do not think we have any more questions from the Committee, so can I thank both of you for your very comprehensive answers and for giving us an insight into the differences but also the common threads that run through the relationship that the UK has with the Overseas Territories? We will certainly be using much of what you have said in our report and our recommendations, so thank you very much for your time.