

Public Administration and Constitutional Affairs Committee

Oral evidence: Membership of the House of Lords, HC 199

Tuesday 28 November 2023

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jo Gideon; Mr David Jones; John McDonnell; Damien Moore; Tom Randall.

Questions 1-44

Witnesses

I: Professor Meg Russell, Director of the Constitution Unit, University College London; and Professor the Lord Norton of Louth, Chair, Campaign for an Effective Second Chamber and Professor of Government, University of Hull.

Written evidence from witnesses:

- [Campaign for an Effective Second Chamber](#)
- [Professor Meg Russell](#)

Examination of witnesses

Witnesses: Professor Meg Russell and Professor the Lord Norton of Louth.

Q1 **Chair:** Good morning and welcome to the Public Administration and Constitutional Affairs Committee. Today the Committee is holding its first oral evidence session in the membership of the House of Lords inquiry. This inquiry will examine the arrangements for the appointments to the House, its size and composition and the effectiveness of its role in relation to the House of Commons. We are joined by two expert witnesses on the subject. I will ask them to introduce themselves for the record, starting with Professor Russell, please.

Professor Russell: I am Professor Meg Russell. I am the Director of the Constitution Unit at University College London.



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Professor the Lord Norton of Louth: I am Philip Norton, Lord Norton of Louth. I am Professor of Government at the University of Hull. I am also Convenor of the Campaign for an Effective Second Chamber.

Q2 **Chair:** Thank you both. My first question is to Professor Russell. It is a very straightforward question. What functions do second chambers generally play in political systems?

Professor Russell: Not as straightforward a question as you might present. There are many second chambers around the world. I checked for my students last month and the Inter-Parliamentary Union lists 190 national parliaments around the world, of which 78 are bicameral, so there are 78 second chambers around the world. They exist in large countries, small countries, presidential democracies, parliamentary democracies, and they are very varied. It might interest you to know that only 20 of those 78 are entirely directly elected, around 44 include some members who are not elected at all, and then you have members who are elected by councillors or by subnational parliaments and that kind of thing. It is a very diverse set of institutions in a very diverse environment.

They have a few things in common. Many of them over-represent minorities in some way. Quite a lot of them represent territorial units. Some of you will be familiar with the US Senate where every state has equal representation. That kind of model is quite common. In Australia similarly even less populous states have equal representation and that is also reflected in some other models. You could say that the root of places like the House of Lords is that the upper classes, who were a minority, were over-represented. That sort of over-representation of minorities is quite common.

Generally, they do four things, and it is, of course, a generalisation over so much diversity. They bring a different form of representation on the whole. While you have a lower house that is elected usually—of course there are different electoral systems as well—members of the second chamber in some way represent a different dimension a lot of the time. One thing that they all do is bring second thoughts to the process, particularly of legislation. You have a second set of eyes on Bills before they become law, which irons out some of the risks of policy being made too fast without adequate thought. It allows a bit more time and space in the process for people to consider the implications after it has been to the first chamber. For example, groups outside the parliament and the media and the public in general will look and say, “Does this look sensible? Have they found any problems with it?” and the second chamber is often a place to fix those kinds of problems. Those are very generic functions.

By their nature, second chambers are often a bit more independent of the executive than first chambers because, as far as I am aware, there is only one country in the world where the second chamber can vote no confidence in the Government. That gives you a bit more freedom to perhaps challenge the Government even if you are on the Government



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benches in the second chamber. Of course, they expand parliamentary capacity generally. You have more people, you can have more committees and do more investigations, that kind of thing, but they are very varied in their powers, the kinds of committees and questioning procedures they have.

Sorry, that is a rather long answer. You will want me to do better on the rest.

Q3 Chair: No, that is okay. Lord Norton, do you want to comment on that but also on the specifics of the House of Lords in its current role?

Professor the Lord Norton of Louth: It flows from what Meg said, because the key point is that we are talking about second chambers, so it is their relationship to the first that is fundamental, which shapes them. Looking at those that exist, there are three broad categories. You have those that are complementary to the first chamber, so they seek to add value, which I will come to. There are those that are conflicting because they can stand in opposition to the first. There are those that may be superfluous because they are replicating what the first does. The first is adding value, the second is value detracting and the third is adding no value at all.

The value of the Lords is that it falls into the first category. Its relationship to the first chamber is essentially complementary, in that it seeks to fulfil functions that the House of Commons may not have the time to fulfil or may not have the will to carry out. It is taking on particular tasks that add value to what the Commons is doing. Clearly that is most pre-eminent in legislative scrutiny in that the Commons is the primary chamber, and the Lords accepts that.

The Commons is entitled to determine the ends of legislation. It decides on the principles. The Lords works within that to see whether the detail can be improved. The Commons determines the ends of legislation, and the Lords will focus on the means with a view—I think both Houses would agree—that the purpose is to ensure good law; law that is well-intentioned, so there is a clear principle that is agreed, well-drafted, so it delivers on what it is intended to achieve in the way it is drawn up, and well-implemented.

The Commons pre-eminently gets that first function; the Commons is entitled to what the legislation is for, what it should do, and the Lords will focus on how to deliver it. That is what we focus on. I think that the Lords could expand our role in the third because there is a real role for the Lords in post-legislative scrutiny. That would play to our strengths by expanding the role, but it would all contribute to the goal of good law.

Q4 Chair: Excluding present company here, to what extent do both of you think that the House of Commons relies upon the House of Lords to carry out detailed scrutiny of legislation?



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Professor Russell: Philip will have his own views on that, which might suggest that it does rather too much, I suspect. There is a bit more to it than that. You often hear complaints that the Commons does not scrutinise properly, and all the proper scrutiny is done in the Lords. I will leave Philip to comment on that, if that is not unfair, and say that is certainly not the whole story. The whole point of bicameralism is that you look at things twice.

Chair: I asked it provocatively.

Professor Russell: Yes, but the two Chambers look at things in a different way. The House of Lords fits some of the things that I said in my opening about what second chambers bring in that it brings perspectives in two crucial ways. If I say to my students, "What are the key differences between the Commons and Lords?" they will often say, "Elected versus appointed", obviously. I think some of the key differences are more important than that, which is the presence of a large number of people who don't take a party Whip, who each bring their own individual value to the process but also generally the lack of a government majority, which very much changes the dynamic.

Of course, as Philip said, the House of Lords accepts that it is the secondary Chamber not the primary Chamber. The House of Commons does set piece debates and sets the political lines on legislation and the House of Lords will look at the detail. In the dynamic as to whether the Commons leaves things to the Lords, sometimes it does so deliberately in a way that is a bit unfair on the Lords. If there is something politically controversial in the House of Commons, which perhaps Members of the Government's own Back Benches are not very happy about, there may be rumours of a rebellion and sometimes that rebellion will not even happen. Then you might say supposing a Select Committee had recommended a certain thing that the Government had not listened to, for example, that thing might get taken up in the House of Lords, which might try to push the Government.

Sometimes Members of the House of Commons say, "Let's leave it to the Lords. Hopefully they will sort it out". Because the Lords is less in the limelight, it can do things and there is less controversy associated with it. Sometimes the Government in that slightly less public environment will be prepared to compromise and bring something back that MPs are satisfied with. The relationship between the two is very complicated.

Professor the Lord Norton of Louth: I take issue with the terminology. To say, "relies on" suggests that "We are not going to do it. We will hand it over to the Lords" and I do not think it should be seen in that light. I think it is more positive in the functions of each House. The Commons has a particular job to do, and the Lords has a somewhat different role to fulfil that complements what the Commons is doing. I don't think we should see it as, "We don't want to do that, we will hand it over to the Lords".



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The Commons has tasks that necessarily flow from the nature of the Commons. It is an elected Chamber, and it has certain priorities and Members must focus on those. The Lords will be doing different things that complement what the Commons is doing. One needs to see it in the sense that each House has respective roles, and it is strength through unity of both doing discrete tasks that contribute to the whole, which is good law, as I say. It should be seen in those terms: we are fulfilling functions that are appropriate to each Chamber.

Professor Russell: If I might add, I think it is connected as well to the things I said at the start about the natural process of the passage of time, needing time to ruminate and consider and consult on some of the points that have been raised in the first Chamber. I am due to be writing a small piece on the Levelling-up and Regeneration Bill, which has obviously just gone through. There was quite a lot of controversy in the Commons on that Bill. There were 95 amendments in the Commons, most of them at Report as a result of Government concessions, but then in the House of Lords there were a further 424 Government-sponsored amendments.

The Government often use the House of Lords as a space to fix some of the controversies on their own legislation, maybe fix some of the problems that have been pointed out in the Commons but there has not been time to act upon. It looks like that the Lords is having an enormous impact, and the Lords is having fights with the Government, but often they are the same kind of controversies that have been going on since the Bill has been in the House of Commons and the Lords rather gets the blame some of the time.

Q5 **Chair:** The Commons draws its legitimacy from being elected, doesn't it? What gives the scrutiny role of the House of Lords its legitimacy and authority?

Professor the Lord Norton of Louth: I think that it is the nature of the composition because legitimacy is to do with what is logically appropriate, lawful, seen as appropriate. If the Lords is seen as the right body for engaging in detailed levels of scrutiny and is popularly accepted as such—so the first is slightly philosophical about what is right but the second is empirical, in how people see it—it is ensuring that you have the people who are deemed to be most appropriate for fulfilling that particular function.

If the Lords has particular functions that are different from the Commons, you find the people who are most appropriate for doing that and ensuring that there is popular acceptance that those people are the most appropriate for fulfilling the task. It is two elements: first, ensuring they are the most appropriate people and, secondly, making sure that it is recognised that they are.

Professor Russell: I have written about the legitimacy of the House of Lords and described it in three terms that are used by academics. There



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is the idea of input legitimacy, the people who go into it and make it legitimate; there is output legitimacy, which is what it produces, what it does; and the third idea is throughput legitimacy, which is the process by which it does it. The House of Lords in some regards is challenged on input legitimacy. It does not have the democratic legitimacy that you refer to that the House of Commons does but obviously it potentially has the legitimacy of experts being put in or whatever.

There are other forms of input legitimacy, but if what it does is valued and if the way it does it is valued through perhaps less partisan debate, more deliberative, careful consideration, it can gain legitimacy through what it does and what it produces as well as what goes in. I think it relies on that quite a lot but at the input legitimacy end there are challenges, and we will come on to talk about the appointments process. There are problems in the appointments process that potentially undermine those other forms of legitimacy because there is too much focus on the problems of the type of people who get there and how they get there.

Q6 Chair: Lord Norton, which takes me on to your quote about the Lords that "form should follow function". Could you explain what you meant by that?

Professor the Lord Norton of Louth: It follows from what I was just saying, because you set up a body to fulfil particular tasks, particular functions. Having established what it is there for, you then determine who are the most appropriate people to fulfil those functions. I will also add that at the same time you give it the resources and the procedures to enable it to fulfil those functions.

The composition is necessary. It may not be sufficient to ensure that the tasks you expect of that body are fulfilled but it essentially does it that way round. You start with what it is going to do, and you then think about who are the most appropriate people to do it and the two should come together, which is Meg's point about input and output legitimacy. You should not see them as conflicting, which is you tend to get the debate that is at cross-purposes between the input and the output of the House of Lords. I think we should put the two together because they should come together in recognising that the way the body is chosen is appropriate for the work that it does.

Q7 Ronnie Cowan: Following on from that, we have seen in recent weeks that the Prime Minister appointed a Member to the House of Lords who immediately took up a senior position in the Government. Does that blur the lines between Commons and Lords?

Professor the Lord Norton of Louth: It depends how senior they are. You need some Ministers in the Lords to represent the Government. They may be chosen from existing ranks of peers and there is a practice of successive Prime Ministers drawing in people from outside to fulfil those ministerial roles. You can argue that the value of the House is the quality of the scrutiny of those Ministers.



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I remember George Young—now Lord Young of Cookham—saying that when he was at the Dispatch Box in the Commons he generally thought that he was well briefed and probably knew more about the subject than those questioning him. He said when at the Dispatch Box when he joined the Government in the Lords, he thought it was the other way round. You can get detailed scrutiny of Ministers. I think that is the value of the exercise in the nature of the House, but there is a recognition that most senior Ministers will necessarily be in the Commons.

Q8 **Ronnie Cowan:** Having an unelected person now in the Government does that blur the lines between what we think we have?

Professor Russell: There are always Ministers in the Lords. There is a Lords Minister in most Government Departments because you need somebody to answer questions and take Bills through, but they are normally more junior Ministers. It is the status of David Cameron, the appointment of a Foreign Secretary from the Lords, which is unusual. It raises some questions about how scrutiny will work, which were raised most obviously when Peter Mandelson was put into the Lords by Gordon Brown. There were similar kinds of questions asked.

I am not sure about blurring the lines between the two Houses. It is quite common, as Philip said, for people to be appointed to the Lords to do a ministerial job, but it is an unusual appointment. It is the first Foreign Secretary we have had from the Lords for a very long time, and it was controversial when it last happened under Margaret Thatcher.

Professor the Lord Norton of Louth: Lord Carrington resigned in 1982 but that was over—

Q9 **Ronnie Cowan:** How do you think the membership of the Lords affects its ability to carry out its functions effectively?

Professor the Lord Norton of Louth: I would argue fairly effectively on the whole because of the nature of the membership. I think that is why the appointments process is important to try to ensure that we deliver the membership that fulfils the functions we have outlined. It is the point in the submissions about a House of experience and expertise, making sure we deliver on that.

If you look at the membership of the House, and this morning as an exercise I got our Members photo book and randomly looked at the middle, which happened to be women Crossbench Peers. That gives some idea of the flavour of those who are appointed.

There is Baroness Hollins, who is a professor of psychiatry; Baroness Grey-Thompson, the Paralympian; Baroness Deech of course you have seen for the pre-appointment hearing, a very distinguished lawyer; Baroness Finlay of Llandaff, a professor of palliative care; Baroness Butler-Sloss who was the first woman Lord Justice of Appeal and President of the Family Division of the High Court, largely responsible for the Human Rights Act; Baroness Brown of Cambridge, who is an



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engineer; the late Baroness Boothroyd of course; Baroness Hogg, who was the first chair of a FTSE 100 company; Baroness Casey, who is well known for her inquiry into homelessness and then the culture of the Metropolitan Police following the Sarah Everard case. That is just to illustrate what we should be working towards as the norm.

Q10 Ronnie Cowan: I don't think there is any question that there are some very capable people in the House of Lords. I have had the pleasure of working with many and the APPG has been bringing a lot to the table. However, there are 817. I think that is the issue that people have, the size of it. Among the 817, by necessity or by design, there will be a lot of people who are not contributing in the way of the Members you have just listed.

Professor Russell: Can I comment on this? I think your question was: how does its membership affect its ability to carry out its functions? I will say three distinct things on that, and I am sure there are many others that one could mention.

The first is what Philip has said that the nature of the quality of some of the Members makes it a very challenging environment for Ministers who may face experts standing up and asking them questions about their ministerial brief, who have been working in that field for decades.

The second is something that I have emphasised already, which is that the partisan balance of the Chamber greatly affects how it works. You have a large number of Members who are not taking a Whip, who are basically there to listen to the debate and work out which side they are on, and the Government are not assured of a majority, and that greatly affects the tone of the debate. Political point scoring is at a minimum and persuasion and evidence are at a maximum. That is not as a result of it being expert but as a result of the Government not having a majority there.

The third is what you are alluding to in the way that its composition affects its ability to do its job. I think its ability to do its job is increasingly compromised by problems around its composition. The fact that it is too large—and people get in there through an appointments process that the public does not have faith in—undermines its ability to do its job and some of those better features.

The House of Lords is doing battle in the minds of the public. On the one hand it is trying to do a good job but the appointments process, which is not anything to do with the Chamber itself and is out of its hands, is undermining its legitimacy in the eyes of the public and that is a problem. It weakens the House of Lords, Parliament as a whole and politics in general.

Professor the Lord Norton of Louth: Yes, I agree with that. That is the key distinction I was going to draw because it does not affect the capacity to fulfil its function. We have the Members who are there to fulfil the



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functions. The Lords can do what it does and do it well because of the composition and procedures. As Meg said, there are two elements of composition. There is the collective composition, the political composition.

No Government have an overall majority and over 20% of the Members are Crossbench Peers. At the same time there is the individual membership, those who have particular experience or expertise who come together. You have that and then the procedures, which are very different to the Commons, that Members are able to use to effect to fulfil the functions.

The nature of the House and of the procedures facilitates a very different culture to the Commons. In the Commons it is a culture of assertion; Ministers know that they will get their way. In the Lords it is much more a culture of justification because Ministers cannot know necessarily that they will carry the House with them. They have to work on it and listen to what is being said and other Members are persuaded by what they are talking about. It is much easier for the Lords than the Commons to develop cross-party allegiances, to ally with the Cross Benches, to put pressure on Government to listen to what is being said in the debate.

The problem is a wider one, which is exactly the point Meg has made, of appointments and sheer size that affect how we are seen rather than what we do.

Q11 **Ronnie Cowan:** The membership, as you read out there, is academic, informed, intelligent. The question is: does that reflect our society at large? Are there people from other backgrounds, maybe not from academia, who should be in the House of Lords to bring their lived experience into that debating Chamber?

Professor the Lord Norton of Louth: That would add value to what we do. I think what the Lords does it does well, but we could do it even better. One of the points I worked into the private Member's Bill I introduced last session on nominations was to include the capacity for the Appointments Commission, HOLAC, to have regard to the diversity of the population of the United Kingdom because we benefit from people who come from a range of backgrounds with different experiences.

That is particularly important when you are looking at experience because everybody has some experience, but it is how distinctive the experience is that will add value rather than duplicate. You have individuals who come in who have had lived experience of different forms. Lord Bird, who founded *The Big Issue* and things like that, knows about homelessness. People drawn from a range of backgrounds like that add value. There is a role for HOLAC in being more proactive in going out and identifying the sort of people you have mentioned rather than simply being reactive to the names that are put forward.

Professor Russell: That page that your book fell open at was a lovely page, but it was not a representative page because they are organised in



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groups. As you say, you were looking at crossbench women as it happened. On the party Benches you would find a rather different mix. You would find a lot of former MPs; on the Labour side you would find people who come from the trade unions; you would find people who come from business and so on. There is more to it than that.

Professor the Lord Norton of Louth: In a way the problem is not those who have the expertise, who are present and contribute. It is those who are there who are not contributing, and your point is those who are not Members in the first place that we could usefully draw in and would add to the value of what the House contributes.

Q12 **John McDonnell:** We should not be naive about this though, should we? The Government always get their way. No matter how many ping-pongs there are, the Government always roll over, so the Government have a majority there in the end.

Professor Russell: I would say no. My figures are a bit out of date, but I have studied the legislative process and the relationship between the two Houses on legislation very closely, tracking through Bills and in particular defeats on Bills. Most of the amendments made in the House of Lords are Government amendments, they are not defeats, but there is a large number of defeats of the Government in the House. The question is: what happens to those defeats; does the Lords win? We traced very carefully hundreds of defeats to work out what the ultimate outcome was. Our data goes from 1999 to 2012, so it is out of date, and I think that the patterns may have been changing. I have been wishing to get back to that.

Q13 **John McDonnell:** Has a Bill been defeated?

Professor Russell: No, because the House of Lords effectively has a convention that it does not defeat Bills. Very occasionally you get things defeated or withdrawn but that is not the role of the House of Lords, really.

Q14 **John McDonnell:** Has it ever exercised its full power to delay beyond a year?

Professor the Lord Norton of Louth: No. Since 1949 there have been only four Bills that have been enacted under the provisions of the Parliament Act and three of those were on free vote measures.

Professor Russell: One of the reasons for that, of course, is because of the composition of the House. It has these powers formally, which it could exercise in theory, but it does not because it is aware of the outcry that there would be in the House of Commons, in the newspapers and in the country of an unelected House trying to knock down something that had been approved by an elected House.

On the amendments, we found in about 40% of cases the Government gave in to the Lords. You will often see something ping-ponging. You saw



it on the Levelling-up and Regeneration Bill that I referred to. There were a number of defeats, some of them were knocked out altogether and for others the Government came back with some concessionary amendments and a compromise was reached. That does happen. I suspect it happens less now than it did in the period that I was studying but it does happen, and we have seen it recently.

Professor the Lord Norton of Louth: The important distinction you are getting at is where the Lords may say, "We don't want this Bill". The point that Meg is making is that the Lords does not take that stance. It is, "Can we improve this Bill? Can we make amendments that are acceptable to Government and to everybody that has the intention of improving the Bill?"

At Third Reading, when we can take amendments, you will get Ministers accepting that as a result of what has happened the Bill has been improved. A lot of it is constructive engagement—and the Online Safety Bill recently is a good example of that—discourse between different parts of the House, proper engagement with the Minister, to seek to improve the Bill not to stop the Bill.

Professor Russell: Very often the amendments that are made are proposed in the end by the Minister, so you don't see a clash. You see it resolved through some sort of compromise.

Q15 **John McDonnell:** They never defeat a Bill; they rarely delay a Bill for the length of time it possibly can. Do you think that is a reflection of the class they are from, that they are part of the establishment anyway? Do they reflect their class nature?

Professor the Lord Norton of Louth: No, because the Members are drawn from quite a wide range if you look at their backgrounds. It is more the nature of the House and its relationship with the House of Commons.

John McDonnell: They are part of the establishment itself.

Professor the Lord Norton of Louth: A number of Members would be aghast at the thought. No, it is more to do with recognising the purpose of the House, what we are there to do to add value to what the Commons is doing. It would be inappropriate for the second chamber to challenge the elected first chamber.

John McDonnell: You roll over anyway.

Professor the Lord Norton of Louth: No, I think that is not our role.

Chair: I am sure if there were a Lord McDonnell that would not be happening, would it, John?

John McDonnell: I assure you there will never be a Lord McDonnell.



Q16 **Ronnie Cowan:** With 784 Members considered “eligible to attend”, votes rarely have more than 500 Members. How many do you actually need to be an effective House of Lords?

Professor Russell: There is a point here on which Philip and I are in agreement. There is a maximum that it should not exceed, which I think is the size of the House of Commons. After the 1999 reform, which removed most of the hereditary peers, the House was cut down from about 1,200 Members to just over 650, 666. It certainly did not function any worse then than it does now.

Ronnie Cowan: We are now at 817.

Professor Russell: Exactly, and I think that is a problem and I have said for years that I think that is a problem. I have published lots of things suggesting that it is a problem. I was the specialist adviser to the Lord Speaker’s committee on the size of the House where they were trying to work out how we can do something about this. I think it is an enormous problem but, in response to those who think that it is fine for it to get bigger and bigger and bigger, I would say that it was probably functioning rather better in the early 2000s than it is now when it had only just over the number in the House of Commons.

We have polled the public and they overwhelmingly think that the House of Lords should not be larger than the House of Commons. It could function perfectly well at the size of the House of Commons or somewhat smaller. It is a well-known fact—and you often see it in the newspapers—that it is the only second chamber in the world that is larger than the first chamber. I talked about the diversity. One of the things that is a common feature of second chambers around the world is that they are invariably smaller than the first chamber that they sit next to. We are the only country of the 78 where the second chamber is larger than the first chamber.

There are some good arguments. There are part-time Members and so on, and we may come on and talk about that. It is not entirely straightforward, but I think we would be better served by a Chamber that is smaller, for public opinion and in its ability to get its job done.

Professor the Lord Norton of Louth: That is accepted in the Lords. In late 2016 we passed a motion unanimously saying we are too large and that steps should be taken to reduce numbers. That is why the Lord Speaker set up the Lord Speaker’s committee, the Burns Committee, to address the problem. It is generally accepted in the Lords that we should be no bigger than the House of Commons.

Chair: We will touch on that and, at the risk of cantering through the entire agenda of that answer, I will go to Damien Moore.

Q17 **Damien Moore:** Good morning. Just touching on that point, would there be any benefit of having full-time Members rather than part-time



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Members?

Professor Russell: I think at the moment—and this is very hard to document—there probably is something of a mixture of full-time and part-time Members. There are some people who attend very regularly. Obviously there are the Ministers and the shadow Ministers for a start, but there are people who are there virtually all the time. Then there are people who are hardly ever there and people who are in between. We have some full-time Members.

It is horses for courses, choosing what you want to do with the House of Lords in the big sense of whether you want to sweep it all away and replace it with an elected Chamber and so on. It is very much like the argument about different types of electoral systems. There are pros and cons of different ways of doing it.

I am not saying this as an argument against election necessarily, but I think you need to accept that there would be downsides of a fully full-time House. At the moment you have some people, like some of those who Philip mentioned perhaps, who are still active in their professions, and they bring that expertise into the House. Then you have many people who are retired and do not wish to contribute full-time any more but who have a wealth of experience. That includes people who have retired from this place.

One of the things that I rather like about David Cameron's appointment is that it has brought a former Prime Minister back to the Lords for the first time since Margaret Thatcher died 10 years ago. It used to be commonplace, the norm that Prime Ministers, like Speakers of the House, would be appointed to the Lords when they left this place. It is valuable if they turn up occasionally and make contributions.

I think that a mix of people who are full-time and people who are more expert and contribute perhaps less, maybe because they are older, is quite a healthy thing.

Professor the Lord Norton of Louth: I think we recognise that if you have some Members who are full-time it facilitates the administration of the House. The value of having Members who come in who have day jobs in their areas of expertise is that the expertise is current. There is a certain danger with retired Members who are experts that their expertise might be spent after a while. That is the worry and that has occasionally been raised about some of the contributions. Having those who are at the forefront of their particular field, who can come in and contribute is extremely valuable. We recognise that we benefit from it.

That is one of the arguments against having the House as too small a body, a small body of full-time Members, but we do not want to be too large, and we recognise we are too large. Focusing on those who have something to contribute facilitates the work of the House and makes it qualitatively distinctive.



Professor Russell: It might be worth adding, if I may, going back to my first answer, that one of the reasons that you see so much diversity in second chambers is that a lot of countries are trying to square these kinds of circles. There is a number of countries where the chamber has a lot of elected members in it, but it also has an appointed element that brings in people who have expertise outside.

For example, in Italy the second chamber is almost entirely elected but former presidents of the republic serve *ex officio*. In Ireland there is a slice of appointed people who are sitting alongside the elected. The Nick Clegg proposals and the previous proposals under Labour were trying to balance up the benefits of election and the benefits of appointment and saying there are reasons for having people who are perhaps occasional contributors and add to the diversity in the Chamber who can sit alongside people who are there more full-time.

Professor the Lord Norton of Louth: Another advantage occurs to me, coming back to the earlier question about diversity and the nature of the membership. Picking up on what Meg was just saying, appointment means you can also bring in people who may be from under-represented minorities and things like that, who might have difficulty getting candidatures at the election, but appointment means you can move fairly quickly to add to the diversity. You can have a range of Members from a range of backgrounds with expertise in particular areas that contribute to the work of the House.

Q18 **Damien Moore:** Should there be a minimum level of participation or other activity that is monitored to justify their position in there? Earlier you cited what the public deem as acceptable for the numbers but what about what they are doing once they get in there?

Professor Russell: I think this is a very tricky question. I am sure we both watched with interest Baroness Deech's evidence to you, and I agree with 90% of what Baroness Deech said to you. One of the challenges of vetting people for their participation is what you do with people like the former Prime Ministers. You may need two ways of looking at it. There is a general maybe minimum level of participation.

I do not know quite how you square it, but I see it almost as two different routes. There are some people who are put in there because of real very high achievement who you appreciate may contribute a couple of times a year and that this is valuable, but the great majority of people ought to be going in to do a job and contributing very substantially. I do not know quite how you get that balance.

Professor the Lord Norton of Louth: Yes, a minimum level of participation. You cannot participate unless you attend. I drafted the original that became the 2014 Act and I put in there the provision that any Member who did not attend for a whole session—as long the session lasted at least six months—was expelled. Some Members have gone. At the end of the last session the Clerk of the Parliaments announced who



was gone from the Lords because of non-attendance. There is a feeling in the House that we ought to amend it and up it slightly so that at least there is some minimum level of attendance, but then it comes to Meg's point about what that level should be and what form participation should take.

It would be helpful to have some Members who might have experience but are only able to come in occasionally. I am not sure who these people are because, although they occasionally get mentioned as the ones who make only one or two contributions, there is possibly difficulty identifying those who fall into that category. You could up the level of participation but not to the level that it starts to get into those who have jobs that are useful and who come in and contribute. There is certainly a view that we should up that requirement. If you required a 10% attendance or something like that it would remove quite a number of Members who are not contributing significantly at all.

Professor Russell: I think one of the biggest problems of the House is those who don't contribute and also are not particularly distinguished, if we can put it like that. If you had a rule of 10% participation or something, Philip, maybe you could have a dispensation for certain people who have brought a great deal. Those who wish to be appointed to have the title and are not interested in contributing to the House are part of the problem. That is one of the things that needs to be dealt with. They don't bring anything very obvious; they haven't contributed to this place, and they haven't contributed there and what they want is the title. I think that needs to be dealt with.

Damien Moore: Perhaps we could have another book with those people in.

Professor the Lord Norton of Louth: We are conscious of some who are a bit like Jeremy Bentham, present but not voting. Members generally are conscious of the reputational damage to the House, and we are keen to address it. We are alert to that. The Lords is not the problem for reform. It is persuading the Government to take action where legislation is required. We accept that something needs to be done about the size of the House. I accept the point made in various of the submissions to you—and this is far more significant—about the appointments process for public trust. We are very alert to that and think that needs reforming.

Q19 **Jo Gideon:** My question picks up on this theme. Lord Norton, you set out in your submission to this inquiry that one of the main reasons the House of Lords is able to carry out its function rests on the qualification of its Members and in particular their experiences and expertise in different sectors, but there is a perception that at least some are not appointed due to their experience and expertise. What is your assessment of how many Members can be considered to be bringing expertise to the House of Lords?



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Professor the Lord Norton of Louth: I have not done a quantitative assessment. Every Member has experience of something, so it is really how distinctive is the experience and to what extent would it add to the knowledge of the House by being able to draw on that. With expertise it is somewhat easier if one is doing a quantitative study because there are the formal qualifications, expertise in which you are formally qualified, you have studied the subject; so, you are a leading figure in medicine, the law and you have the qualifications to deliver on that.

I am not sure you can come up with the precise number simply because you might have several people who have an expertise in the same area, so what distinguishes them? Sometimes you have experience that is almost hidden experience and until there is a debate you do not know what they have to bring to bear.

I am not sure that one could have too precise a rigidification. I would like to see HOLAC reformed so that it can be more proactive in identifying where there are gaps in the House in its knowledge base: we need more people who have experience of X or who are expert in Y to be brought into the House.

Normally when we debate a subject and peers get to their feet you realise they have lived experience in that subject or they are experts in the field, but there may be some areas where we don't have those or where the experts are retired and the knowledge is spent, so we need to renew ourselves in that. I think that is a job for a study that would inform HOLAC in the work it does so that it could be more proactive rather than reactive. That would add to the wider question I suspect you are coming on to about trust in the institution and people having trust in the appointments process.

Professor Russell: I did a study like that for HOLAC a number of years ago—I think about 2010—where we did an analysis of all the Members of the House of Lords and their backgrounds to try to indicate which areas were over-represented and which were under-represented. There are certain areas that are very well represented.

Politics, as in people who have been MPs or have been MMPs or have been leaders of councils, is very well represented. The law was quite well represented. Then there are other things. I remember that one of those was nursing, which was very much underrepresented and HOLAC took that very seriously and wanted to try to plug some of the gaps. However, HOLAC has control only over those members whom they choose who—as you were hearing from Baroness Deech—have been down to as few as two per year, or even fewer. HOLAC has no control over the people put forward by the political parties.

I may be getting into the next phase of what you want to talk about, but I think giving HOLAC more control over those things or at least having more monitoring of why people are getting there, what their backgrounds are and HOLAC being able to point out, "We do not have any nurses.



Could you perhaps think of appointing some people—” or whatever area it is, people who understand certain areas of science or medicine would be very helpful.

Professor the Lord Norton of Louth: That is particularly useful in identifying the gaps. If you look at your list and you say there are quite a number of lawyers and people like that, it is not that we have too many lawyers because it would depend on where their areas of expertise lie. Say you have someone who has been a Lord Chief Justice, and an independent reviewer of terrorism legislation.

Last week we had the Second Reading of the Investigatory Powers Amendment Bill. Lord Anderson of Ipswich, the former independent reviewer of terrorism legislation whose independent review earlier this year gave rise to the Bill, spoke and we also had two former heads of MI5 speak. We had that range of expertise. Within the law, you have different areas of expertise and different experiences, say as judges or independent reviewers of terrorism legislation and so on.

With MPs, yes, the issue is that we do have about 170 former Members of the House of Commons. Some of them do bring distinct experience because they have served as Cabinet Ministers or have been the Secretary General of NATO. That type of experience in a former Minister can be very valuable. Distinguishing within categories is important.

Q20 **Jo Gideon:** Professor Russell, did you do your report in order to help better inform who was going to be appointed to the House and the HOLAC system?

Professor Russell: In a way, yes. We were commissioned by the House of Lords Appointments Commission to do this work. I can send a link if you like. I cannot quite remember which year it was. I think it may have been something like 2008 or 2010. First, I think the Commission just wanted to get a snapshot of the expertise in the place. That is an intrinsically interesting question. However, it was doing that because it wanted to try to ensure that there was a balance of expertise and professional backgrounds.

The Commission acted somewhat in terms of trying to pick out people who had applied through the crossbench route and who would fill some of the gaps. However, the amount of discretion the HOLAC has to choose anybody is very small. I think HOLAC would also like to ensure that the place is more representative of the territorial diversity of the United Kingdom and ensure that there is a fair balance between women, men and people of different ethnicities but you cannot do that if you are controlling only about 10% of the people going in because the vast majority is controlled by the parties and HOLAC has no say over those appointments.

Q21 **Jo Gideon:** The Lord Speaker’s committee on the size of the House recommended introducing a 15-year term limit. Is there any merit in



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introducing time-limited membership of the Lords in your view? Clearly, that might answer the question of having too much of one sort of expertise in the churn.

Professor Russell: As I have already said, I was a specialist adviser to the Lord Speaker's committee. There are some merits in the proposal but like so many other things, there are also some potential downsides. We can think of people who have been in this House for more than 15 years and who are some of the most valuable members. In parliamentary life, 15 years is not a very long time.

The main benefit—and the reason that Lord Burns was so keen on it—was that it would allow you to get turnover and a decent number of new appointments and bring, as Lord Burns would say, fresh blood into the place.

Before working for the Burns Committee, I produced a report under the auspices of the Constitution Unit looking at what was happening to the size of the House of Lords, which was one of the reasons why I was appointed, and we modelled different ways of trying to get the size down. You could get the size down without imposing a term, but it would mean that you would have to appoint much more slowly.

If you want a lot of refreshment on the benches, you need to get people out the other end but if you want to continue with life membership—and maybe, as has increasingly been happening, encouraging people to retire but of their own volition—the appointments process will have to be slower if you are going to keep a lid on the place, and we are not managing to keep a lid on the place; this is the problem. The place continues to get bigger and bigger, and I feel—I think you have not quite said this, Philip but I think you would agree, probably—that the problem is not insufficient people leaving; it is too many people arriving.

Professor the Lord Norton of Louth: Yes.

Professor Russell: So we have to deal with the inflow. Moving people on after 15 years would be one way for the House to make its contribution but the Prime Ministers have to make their contribution. We have to deal with the inflow, otherwise, we will never achieve a stable membership.

Professor the Lord Norton of Louth: I largely agree with that. I am wary of the artificial, “After 15 years that is it”; there are all sorts of implications for recruitment and who would serve for that period as well, and I do not think it is necessary. We look at some of our members who have been there for more than 15 years and ask ourselves. if we could afford to lose the quality of what they can bring to bear.

There are alternatives. You could have a period where you could say you would normally retire after such a period but there should be some sort of trigger mechanism that allows you to stay on if you have something to offer. However, I think the better route is thinking of it in terms of what



the Burns Committee came up with, say one out, one in—possibly three out, one in. It would make a difference. As Meg said, it would be rather slow so you might have one scheme that is designed to remove members or a tranche of members but then go for the two out, one in formula and it would make a difference.

If you look at the number of members now who retire under the provisions of the 2014 Act and those who die, up to this year so far we have had a net loss of, I think, 20—I looked at the numbers—11 peers have died but that excludes the two hereditary peers because they are replaced and nine have retired and that excludes the bishops, so again the hereditary peers—so a net loss of 20.

Over time, you could make a difference and indeed post-Burns, it was making a difference but there was an influx of new members who then wiped out the benefit of the reduction. So yes, addressing the input is particularly important. We can then make some changes to the output side, and I think that sort of formula would address it.

Q22 John McDonnell: We must remind ourselves at this point that we are in 2023, so can I ask if there is still a role for exempted hereditary peers in a modern parliamentary democracy?

Professor Russell: Shall I start with that?

Professor the Lord Norton of Louth: Yes.

Professor Russell: You have to separate the principle from the individuals, and I think in the case of some of the individuals, maybe there should be. There are some hereditary peers who make some good contributions to the place

John McDonnell: This is about the principle.

Professor Russell: In terms of the principle, no. They are there as a result of the deal, as I am sure you know, that was done when the 1999 Act was going through, though the original Bill from the Labour Government was supposed to be removing all hereditary peers and a deal was done to allow some to stay. That was supposed to be a temporary measure and yet here we still are, 24 years later. So absolutely not and I think not the individuals—you have to emphasise—but the category is one of the things that harm the reputation of the House, this Parliament and our politics.

I have long felt that the by-elections should be ended, and the category should die out over time. There has been lots of pressure on that. However, 24 years later and with a House that is over 800-strong, I now think that the time is for it to go. That was a controversial thing to say a few years ago because it would have destabilised the balance of the House, but the other thing is that among the hereditary peers, around 50 are Conservatives and only a small handful are Labour or Liberal



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Democrat. The rest are crossbench, and we have a problem now that the House of Lords is too big, and it is too Conservative.

One of the problems that we have had is that since 2010, there have been—I have the figures here—206 Conservative appointments and 80 Labour appointments. Now maybe the governing party should get a few more appointments than the Opposition but this is always the pattern, and this is one of the things that drives the ever-large size of the Chamber. If there is a change of government to a Labour Government, then the Labour Prime Minister will face a terrible dilemma as to whether to go into this arms race and try to outnumber the Conservatives in the Lords. An easy way of balancing the numbers somewhat would be to end the hereditary route.

Q23 **Chair:** Your research is quite excessively Liberal Democrat, isn't it?

Professor Russell: I didn't write down the Liberal Democrat numbers. That does confuse things.

Q24 **Chair:** Quite often it does, but 83? That is quite a lot, isn't it?

Professor Russell: David Cameron appointed a lot of Liberal Democrats during the coalition.

Q25 **John McDonnell:** You have excited the Chair but before you come in, Lord Norton, can I just get one thing in for the record?

In my ignorance, I did not know this until today. How they are elected, the hereditary peers, is based on party political elections. When a peer dies, if they die from that political group, it will only be the peers from that political group who will—

Professor the Lord Norton of Louth: That is true of 75; 15 are elected by the whole House to be available to serve the House.

Q26 **John McDonnell:** Let's get this clear. We can take advice on this. I am told that the exempted peers are linked to the original party groups, Conservative 46, crossbench 36, Labour 4, LibDem 4, and non-affiliated, 2.

Professor Russell: This was the balance among the hereditary peers when they departed.

Q27 **John McDonnell:** That is right, so when an election comes up, that balance will be permanently maintained. I am a great believer in the powers of conversion so there is no prospect here of someone seeing the light of socialism or environmentalism or liberalism ever to be elected if that peer who dies is a Conservative. There is no swapping.

Professor the Lord Norton of Louth: The 75 are elected by the party group for that party. Fifteen are available to serve the whole House. It is a whole-House election but under what is known as the Carter formula after Lord Carter who was the Labour Chief Whip at the time and agreed that the House should elect somebody from that party to replace



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whatever party that member is of. Therefore, you are right in terms of the distribution.

Q28 **John McDonnell:** Is there anyone, apart from you two, who understands this method of election?

Professor the Lord Norton of Louth: I thought people spoke of little else.

Coming back to the point, I accept Meg's point that you should distinguish between the individuals and the principles.

Q29 **John McDonnell:** Understood. It is the principle of the matter that we are talking about.

Professor the Lord Norton of Louth: When Labour lost its hereditary peers, most were brought back as life peers, given their abilities.

The House itself accepts, I think, that the by-election option has passed its sell-by date, so we are generally agreed, and Lord Grocott keeps bringing his Private Member's Bill forward.

Q30 **John McDonnell:** Do you think there would be a majority in the Lords to get rid of the hereditary peers?

Professor the Lord Norton of Louth: Yes.

Q31 **John McDonnell:** You think a cross-political agreement would get rid of the hereditary peers and they would not object?

Professor the Lord Norton of Louth: Yes. We have tried to do it through Private Member's legislation. When the Campaign for an Effective Second Chamber originally produced a House of Lords Reform Bill over a decade ago, I drafted it to include all that we sought to achieve and that included, then, getting rid of the by-election option.

The objection that is raised by the few hereditary peers who oppose it—most do not—but for the few who oppose it, it is on the grounds that it is the only route that brings members into the House of Lords independent of prime ministerial patronage. Now if you reform the process—

John McDonnell: Current patronage. There was some patronage some time ago depending on who Charles II slept with.

Professor the Lord Norton of Louth: If you introduce reform of the sort that my Private Members Bill was designed to ensure, if you give HOLAC the power so you remove the Prime Minister's power, which means the principal objections that have been raised by those who seek to prevent it being abolished—even among hereditary peers there is acceptance now that the process is past its sell-by date—

Q32 **John McDonnell:** This is helpful. So, this Committee could recommend that the Government bring forward legislation that would abolish hereditary peers and you are confident that that would be passed in both



Houses?

Professor the Lord Norton of Louth: Yes.

Professor Russell: The by-elections, yes. It would be more controversial to remove the whole group.

Professor the Lord Norton of Louth: The sitting ones, yes.

Professor Russell: The by-election provision, which Lord Grocott has tried to end year upon year upon year—because it is a Private Member's Bill it can be blocked procedurally. It is just a minority of members that do not want it. If the Government ever took that Bill up, it would go through.

Professor the Lord Norton of Louth: It would go through, yes.

Professor Russell: The difficulty is that now I think we have reached a stage where we need to abolish the 92 seats rather than ending the by-elections because of the imbalance that you have indicated between the parties and the fact that we desperately need to bring the size of the Chamber down. Bringing it down by 92 and bringing Conservative numbers down by 50-odd would be quite a sensible move but I think you would need to make some of the existing members life peers to be fair to the individuals who have done very good service. It would be somewhere short of 92; I would not like to say how many.

Q33 **John McDonnell:** You have mapped out a useful way through, I think, for the Committee to consider. We shall see.

On to the next question—my local parish priest optimistically describes me as a “lapsed Catholic”—this one: is there still a role for the Lords Spiritual in a modern parliamentary democracy?

Professor the Lord Norton of Louth: That is one of those Pass questions. You will have noticed that when the Government have briefly attempted a big bang reform, which is the one thing they are always wary of? How do we deal with the issue of the Lords Spiritual?

The plus side, if you like, is that of course they are the closest we have to any member with a constituency because they bring the point of view of their dioceses. Some represent a city diocese; others know about rural poverty and that can provide some contribution.

I served on the Joint Committee on the House of Lords Reform Bill back in 2012. As you might expect, the Archbishops were busy arguing the case for retaining the Lords Spiritual. What struck me was that other religions were doing the same because they saw the bishops as speaking for the faiths rather than for particular faiths. That would be the argument for doing it, but it is seen as somewhat anomalous, having them as members of the House. Ours is the only democracy where that is the case.



Professor Russell: Interestingly, they have this system whereby they consult with other faiths, and they see themselves as representatives of faith, not just the Church of England.

I think this is a bit of a second-order issue, to be honest, because there are 26 seats but they never all appear at the same time and they work on a rota. Usually, there are one or two bishops there at any time, so they do not make much impact on the size of the House, the work of the House, or the outcome of decisions in the House.

There is an in-principle argument, which I totally accept, but pragmatically in terms of dealing with the urgent problems that we have with the place being oversized and ridiculed, they are not often brought into the argument. It is something that needs careful consideration, but it is not at the top of the list, I would say.

Professor the Lord Norton of Louth: Yes, and it is worth bearing in mind, of course, that they are not the only people drawn from different faiths. Members represent a range of faiths, and we have a large Humanist Association in the Lords as well. Also, there is a practical problem if you were going down the route of making representation for other faiths simply because of the way they are structured.

The Church of England has the advantage of a hierarchy, as does the Roman Catholic faith but that is precluded from having members in the Lords by their faith, not by the Lords. There was the prospect of I think Cormac Murphy-O'Connor coming in, but it was the church that prevented it. Some faiths do not have a hierarchy so you would have practical problems but that does not affect the point you are raising, which is more one of principle.

Q34 **John McDonnell:** You have both avoided the question. What is their role? What is their role?

Chair: They say the prayers at the start of the day, don't they? Do they say the prayer at the start of the day, John?

John McDonnell: They do. That is it, is it?

Professor the Lord Norton of Louth: That is it.

John McDonnell: Honestly—what is their role?

Professor the Lord Norton of Louth: You saw the submission from the convener of the Lords Spiritual who was making the point about what their role was not, which is not to represent. They are not there to represent the Church of England. They are appointed in a personal capacity, so they speak only for themselves. As you stressed, there is no unified view.

Professor Russell: They do not vote as a bloc?

Professor the Lord Norton of Louth: No. If they vote.



Q35 **John McDonnell:** I am lost here. Their role is to enable us to have a prayer at the beginning of any session, to speak as individuals, turn up whenever they want, not represent faith overall, just their individual constituencies by which they are not elected anyway.

Professor Russell: They are a fine example of people in the House who do have a full-time job outside the House so that is why there are 26 of them, because they have pretty big jobs. It is the Church of England so they are at least distributed around England, but consequently, there is only ever one or two of them here on most days.

John McDonnell: God help us.

Chair: Well, quite. We will see what our report says on these two vital topics, Mr McDonnell.

Mr Jones: Before I ask my questions, Chair, may I make a brief declaration of interest?

Chair: Of course.

Mr Jones: I chair the Council for British Understanding, which has made a submission of evidence in this inquiry indeed on the issue of faith, but I will not add to that.

Chair: Thank you very much.

Q36 **Mr Jones:** You have both identified problems with the appointment process. Which would you say are the principal ones?

Professor Russell: I listed six in my submission. I do not know whether that is too many to be the principal ones.

The basic problem is that the Prime Minister decides how many people can be appointed, when they are appointed, and on what basis they are appointed. There is no scrutiny of the quality of those people, only of propriety. It is a very uncontrolled system.

My six items are: I suggest that the Prime Minister's unlimited power of patronage should end; that there should be a cap on size; there should be a fair formula for allocating seats between parties and other groups, including protection for the crossbench group, which has been in the most sets of proposals; that the House of Lords Appointments Commission's propriety oversight should be extended, as Ruth Deech said, to something like suitability; that the Commission should have oversight of diversity in the Chamber; and that its recommendations on propriety should be enforceable.

Even the limited oversight that there is of party members, which is really only on propriety—we have seen even that can be overridden by the Prime Minister if the Prime Minister chooses, so you need to make that enforceable; you need to extend it to suitability; you need to do something about the numbers. In order to do something about the numbers, you have to have a fair formula for dividing up between the



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parties and the crossbench group to avoid this pattern you can see, that, yes, Tony Blair appointed many more Labour members than Conservative members although, to be fair, the Labour Party was under-represented in the House of Lords at the time.

You see Conservative Prime Ministers over-appointing Conservative peers to the point that now we have around—is it about 100 now?—more Conservative than Labour members at the very point when we might be anticipating a change of Government, which starts the whole thing up again. I think all of that needs to end.

Professor the Lord Norton of Louth: I agree with Meg. That was the point of my House of Lords Peerage Nominations Bill, to work towards the three principles on which we are generally agreed: that no one party should have an overall majority, that the House of Lords should be no bigger than the House of Commons, and that at least 20% of the membership should be Crossbench Peers.

At the same time it should be designed to strengthen HOLAC; give it an independence through statute so that it is not the creature of the Prime Minister and not seen to be the creature of the Prime Minister; that the Prime Minister cannot make nominations without assent, without receiving the advice of HOLAC; and that HOLAC itself should have clear criteria for assessing nominations, not least that the nominee must meet a criterion of conspicuous merit and must also demonstrate an ability and willingness to contribute to the work of the House and empowering the Commission itself to generate criteria having regard to the diversity of the population of the United Kingdom.

The process itself should be more transparent, that those making the nominations—the party leaders—must inform the Commission of the criteria and the process they employ for making those nominations. It should be clearer why they are doing it and what those members, those nominations, will bring to bear.

I also agree that there is a role for HOLAC. I want it to be more proactive, to be enabled to create more and nominate more, Crossbench Peers. I think it is ridiculous that HOLAC is limited in the way they are at the moment because it is not enabled to address the point I was making about identifying gaps and bringing in highly qualified people to fulfil them. I also think there is a role for HOLAC in advising on the composition of the party balance and what needs to be done to ensure there is a fair balance.

I regard my Bill as very modest relative to public expectations. Under mine, I maintain the prerogative of the Prime Minister making the nominations. It is quite clear from the data from the surveys that were carried out and that have been put in evidence to you that the public would prefer an independent commission to decide on who should be in the House of Lords, not the Prime Minister. That is radical. I think it would be problematic, but you would start to get nominations that are controversial. You would have the question of who was this body



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accountable to, so I can see problems if we were to go too far down that route. However, I think you do need to strengthen HOLAC and for it to be seen to be strengthened because I think that is fundamental from the point of view of public trust.

Meg makes the point in her submission—and I include it in mine—the survey that the Constitutional Unit commissioned about what people see as the most important attribute in relation to the Lords and trust was top in the appointments process. I think that is fundamental.

Q37 **Mr Jones:** Clearly you felt that the appointments process should be founded in statute. Is it possible for a non-statutory appointments process ever to be sufficiently robust and not open to suggestions that it can be abused?

Professor the Lord Norton of Louth: That is the problem. I see that there is reference to conventions. I do not think the understandings that have been followed constitute conventions but if Prime Ministers accepted that they should proceed based on, say, three out, one in or two out, one in, and that they were going to have to have regard to merit, they could extend, of course, the remit of the Commission as well to include suitability and not confine it to propriety. Some steps could be taken without statute, but it would be dependent upon the Prime Minister accepting that and of course you are committing successive Prime Ministers.

Mr Jones: They are quite capable of changing their minds at some time in the future.

Professor the Lord Norton of Louth: Yes, exactly.

Professor Russell: I very strongly agree with that. I think some of what we have seen in recent years both in terms of the numbers and just riding roughshod over the propriety recommendations of HOLAC does suggest that we need to put some of this into statute. However, I do not think that we should allow that to stand in the way of making improvements because it is always difficult to find legislative time, and so on.

HOLAC was established by a letter from Tony Blair to the person that he was appointing as Chair, telling that person what he wanted it to do. The Prime Minister could tomorrow issue a new letter to the new Chair saying, “Yes, have oversight of suitability” as she wants and the Prime Minister could make a statement at any time saying, “I commit to bringing the size of the House of Lords down”.

I think the Burns Committee was right. It should be two out, one in. An awful lot could be achieved through that. I think it is important—while I think probably now we do feel that statute is needed to underpin the system—that we could change these things right here and right now just through the Prime Minister making a commitment to better appointment processes.



Q38 **Mr Jones:** You believe that reform would go a long way to restoring trust in the House of Lords?

Professor Russell: Philip has referred to some of the data. I referred to the figure earlier about the size of the House. We did a survey last year in the summer. We asked whether the Prime Minister should appoint members of the House of Lords or whether an independent body should appoint members of the House of Lords. People were asked to choose between the two. Six per cent chose the Prime Minister and 58% chose an independent body and the others were either saying, "Don't know" or agree/disagree with both equally. Likewise, on the numbers, 3% wanted the Prime Minister to decide, wanted there to be no limit on the numbers, and 65% wanted there to be a cap of no bigger than the House of Commons.

It is not going to be a panacea; it is not going to make everybody suddenly think that the House of Lords is wonderful and the most legitimate thing in the world but given those figures, I think it would be very much in line with what the public wants and would go some way to restoring trust, certainly.

Professor the Lord Norton of Louth: The key point there is 'go some way'—it is necessary but not sufficient—because there is a much wider issue of trust in politics anyway and the problem is that people evaluate politics not on the basis of what the two Houses do, it is not what members do collectively in scrutinising the Government or the work of Committees, it is what members do individually so it is actually conduct that matters so raising standards is at the heart of it.

It can certainly make a contribution to establishing some degree of trust, given that there clearly isn't that in the existing process, so I think it is absolutely crucial to helping to bolster public confidence in the work of the House. The problem is not the work of the House; it is how it is seen outside, particularly in terms of how members get there and, at times, what the individual members get up to. We have other issues to address but I think this is essential.

Q39 **Mr Jones:** What do you believe the priorities should be? Appointing better members to the House of Lords? Enabling the House to discharge its functions better? Increasing its legitimacy? Increasing trust? These are all important objectives. Which would you say are the top priorities?

Professor the Lord Norton of Louth: I think it is a case of A equals B plus C, in the sense that if you get better members, it impacts the legitimacy and trust. Where does legitimacy come from? Where does trust come from? The priority is about focusing on getting better members in the sense of the qualifications and the process by which they are chosen. I think that leads on to legitimacy and trust.

Professor Russell: And fewer.

Professor the Lord Norton of Louth: Yes. Quality rather than quantity.



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Chair: On the theme of quality, the final set of questions from Tom Randall.

Q40 **Tom Randall:** I have some questions on HOLAC itself though I appreciate that has been the theme during your evidence so far.

HOLAC's current role is to review the probity of potential new members of the House of Lords. Do you think HOLAC does that effectively?

Professor Russell: It does do that effectively, but the problem is that HOLAC's recommendations are not enforceable, and its remit is so narrow. Within that narrow remit, HOLAC performs its functions very well. It is a shame that the Prime Minister can override the recommendations and it is a shame that HOLAC does not have a wider remit.

Professor the Lord Norton of Louth: I agree completely. HOLAC does a very good job within the remit it is given. I have no criticism at all of HOLAC. It is a thoroughly worthwhile body. As Meg says, it is expanding what it does, giving it greater powers, expanding that remit that is needed. It has demonstrated that it can do a good job and I have great confidence in the body itself. Enable it to do more than it presently does.

Q41 **Tom Randall:** The new Chair, Baroness Deech, has suggested two changes: advising on suitability assessed against Nolan principles and the production of a suitability statement. Do you think that would aid in the review of candidates and do you think that would have a substantive impact on improving the quality of the membership of the House?

Professor Russell: I do. I agree with the great majority of what Baroness Deech said to you. They are very soft controls in a sense, aren't they? This is not radical. In particular, the transparency point, that there should have to be a published statement by the party leader as to why they think this person is suitable to go into the House of Lords.

I do not know whether there would be a collaboration on that statement, whether it would be one statement or whether the person themselves would issue their own statement. It is crazy that this does not already exist. It is hardly too much to ask. You are being appointed to a seat in the legislature and there should be some statement of why it is that you deserve that.

It might be interesting to see those statements of a few people who have been appointed in recent years. If you cannot put up a decent case in writing for why you should be in the House of Lords, maybe you should not be in the House of Lords. I guess that the suitability checking would be done in some way on the basis of those statements and maybe also on the basis of interview.

Another thing, aside from the propriety role that HOLAC has, the other role is choosing members to sit on the crossbenches, and it goes through a very rigorous process. People can apply. They fill in a form. They get referees. They are invited for a first interview. They are invited for a



second interview. They are also subject to all of the propriety checks but there is a very thorough process of working out whether those people are suitable.

We have not had scandals about people appointed to the crossbenches by the House of Lords Appointments Commission. The scandals have all been about people appointed by the parties. We need to edge in that direction with respect to the party appointments. I am not suggesting that parties should lose control of who their appointees are or should have them imposed on them by an external body, but they should be subject to scrutiny before they are agreed and there should be more transparency in the process. None of that requires legislation, which is one of the benefits of that kind of approach. A lot could be achieved just by a slight tweak to procedures.

Professor the Lord Norton of Louth: I agree completely. On the last point, I think that is absolutely right. If the parties know they have to make a suitability statement, that focuses the mind anyway on thinking about who is suitable and what you would say about the qualifications of this candidate. I agree completely with Meg.

If you look at the role of HOLAC at the moment, looking at probity—look at its website where it lists what it does by way of vetting—then it is very much reactive, just checking in terms of probity rather than suitability, making sure, essentially, that there are no red marks against a person rather than why is the person particularly suitable to join the House of Lords. That would be a valuable concentration of the mind. Publishing a suitability statement, demonstrating why this person, would be very good for the individual so that they can be seen to be qualified.

Coming back to the much wider point, it would be a benefit to the House more generally and public recognition that this person is qualified. Enabling the Commission to do that and for the parties to know that they would have to explain the suitability of that particular candidate would be a wholly good thing. I cannot see any arguments against what Baroness Deech advocated.

Q42 **Mr Jones:** How long do you think that process should take? Could it be done in a weekend?

Professor the Lord Norton of Louth: When you think about what you are looking at, it depends on the individual and their qualifications; their suitability might be fairly apparent.

I would have said that it is the rigour of the process, which may possibly be done very quickly, that is important. It is the ability to undertake that scrutiny that is the key thing.

Professor Russell: Frequently, of course, it has had to be done very quickly, for example in the case of the appointment of Ministers. I think that is a slightly different thing. The people about whom there have been controversies in recent years are not people who have been appointed as Ministers. The Government are putting that person into a quite high-



pressure position with lots of responsibilities. They are not putting people in there lightly. They think quite carefully. The appointees are looked at for propriety, and, as far as I can remember, we have not had any controversies about people who have gone in via that route. It is some of the others.

Professor the Lord Norton of Louth: A side point there, with the Ministers in the Lords, there is a current problem, which we are highly aware of—the sheer number of Ministers in the House of Lords who are not paid.

Q43 **Tom Randall:** A final question from me, Professor, on what you said in your previous answer about the powers of HOLAC being set out in a letter from the Prime Minister of the day. If you were the Prime Minister and you were appointing a new Chair of HOLAC and setting out HOLAC's responsibilities in that letter, what changes or reforms would you set out?

Professor Russell: I think I would do what we have just been discussing in terms of saying, "Don't just look at propriety; look at suitability". I would also ask HOLAC to monitor diversity, which maybe they do a little, but I think Baroness Deech was in favour of much more transparency. I know that you asked her about the resources of the organisation.

It is a very, very small organisation so some of these things do have resource constraints but I think minimally there should be somebody looking at the gender, ethnic, geographical, and professional diversity in the House of Lords regularly, just keeping it under review and publishing those results. HOLAC should do that because that could act as a spur to the political parties to try to work towards closing some of those gaps, getting away from the fact that HOLAC cannot close them all on its own.

I would also like to see a commitment on numbers. The Prime Minister could promise HOLAC that it would have 20% of appointments for the crossbenches. That would be healthy and would put it back on a stable footing in terms of how many members it is appointing. Of course, even without legislation, the Prime Minister could say, "I want to bring the size of the House of Lords down. It is too big. Please will you help me?"

Essentially, I think we need to move from the system that we have always had whereby the Prime Minister puts in however many he or she wants when they want to, to a system whereby vacancies arise in the House of Lords, and somebody calls for nominations to fill those vacancies.

If we had a fixed size—we would have to deal with a transition period of getting from the 800 plus to the 650 or 600 or whatever the destination point is, but once you get there—if people die or retire, vacancies arise and HOLAC would look at them and say, "Well, who deserves to fill this seat? Is it Labour's turn or is the Conservatives' turn or is this a crossbench one?" It would probably be annual, actually, so you might say, "There are 12 vacancies this year and this is the distribution" and go



to the parties and ask for nominations. That would be a much more professional, sensible, rational process.

It is probably quite hard to achieve without—well, I don't want to put too much of a damper on it. I think you could achieve it without legislation. Would it be more robust if the cap on the size of the House and the very existence of HOLAC were put into statute because it would give it more power to enforce? It would give it more legitimacy. However, if the Prime Minister wrote to Ruth Deech tomorrow and said, "I've got a target of getting the size of the House of Lords down to 650 through two out, one in; help me to do it", I am sure HOLAC could do it and that would be a huge improvement.

Professor the Lord Norton of Louth: I agree. It might be aspirational so you might need some other steps to do it. However, one could move in that direction and move very quickly because it sends out all the right signals. It would give HOLAC that responsibility. Look at the point about resources. HOLAC does a fantastic job on very little money, if you look at the expenditure in its latest report. It is very cost-efficient in what it does.

I agree completely with what Meg said. I also agree with the point about not just improving the quality of the House but how the House is seen. That key point about having trust in the appointments process. Once you had it established by one Prime Minister and it was starting to bed in, it would be much more difficult for a successor to move away from it.

Moving in the direction that Meg indicated—if we could achieve all that she summarised, it would be ideal. Achieving even some of it would definitely be a step in the right direction, certainly from the perspective that I think is key to your inquiry, which is not just improving the quality of the Lords but improving trust in the institution. It is only part of the process of restoring trust. It is not going to ensure that everyone will say it is doing a grand job or anything like that, but it would be a step in the right direction and a necessary step. I think the House of Lords accepts that

Chair: We have a brief coda from John McDonnell.

Q44 **John McDonnell:** I can see that the proposal you are putting forward—particularly the two out, one in—will reduce the numbers overall. The problem then becomes the allocation of who will nominate people for the vacancies because you would have to have some agreement about what would be the ideal-type balance of political representation in the Lords and that is where the problem comes in, isn't it?

Professor Russell: Yes, that is one of the trickiest parts. The Burns Committee did try to grapple with that. The Burns Committee set out a formula. Is it the perfect formula? I do not know but it is better than what we have now, which is no formula at all. Therefore, yes, getting an agreement between the parties about the share between the parties, and I think that 20% for the crossbenches is fairly uncontroversial, isn't it?



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As the Chair said, the allocation for the Liberal Democrats could cause something of a scrap. Then you have the parties that are not even in there, like the SNP, which does not want to take seats, so, yes, getting that agreement is not straightforward.

I would be inclined to say that we need to get back to a level playing field. The two main parties ought to be on roughly level pegging, which is where they were when Labour left office in 2010. Labour had only just got not a majority but had, I think, surpassed the Conservatives by about nine seats when Cameron took over. Cameron appointed more than twice as many Conservatives as Labour and here we are. We need to get back to something closer to parity as a starting point and then we need a formula going forward to fill seats in what people can agree is a fair manner although that is very much hard to do objectively.

John McDonnell: If there is a change of Government, there is a real potential for escalation.

Professor the Lord Norton of Louth: I think we recognise that. That is not an issue. It is how you give effect.

John McDonnell: Part of the process.

Professor the Lord Norton of Louth: Yes, so we need to wrestle with that because we are conscious of that very point.

Professor Russell: Tony Blair governed, I think, through the whole of his premiership, with fewer Labour peers than there were Conservative peers and that was very quickly overturned and there have been many more Conservatives than Labour appointed. It is possible to govern with a smaller number of peers, but it does not seem very fair.

Professor the Lord Norton of Louth: It takes time because Labour did eventually overtake the Conservatives.

Professor Russell: Eventually.

Professor the Lord Norton of Louth: Eventually, yes, so you could try to move more quickly but the key point you are making, yes, there would be an acceptance of that, as Meg says. The formula: do we do it on seats or seats and votes?

Professor Russell: I think you need a starting formula, probably, which is based on several general elections. Where would the House of Lords be now if we had had a formula based on general election votes for the last—what is your start point, though? If you said 10 years, it would be tilted towards the Conservatives. If you say 20 years? Do you say let's take the balance of general election votes over the last 30 years? It's complicated but something needs to be done.

Professor the Lord Norton of Louth: Yes, and maybe we just go for something rough and ready and then move in a direction—



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Professor Russell: Yes, parity, I would say.

Chair: The note that something needs to be done is a fine conclusion, in all seriousness, to this morning's session. I thank Professor Russell and Professor Lord Norton for a very engaging and interesting almost seminar. I know that you have made submissions but if there is anything further that you wish to let us know about, please do write to us, but, for the moment, thank you both very much indeed for your time. Thank you.