

Procedure Committee

Oral evidence: Commons scrutiny of Secretaries of State in the House of Lords, HC 338

Monday 18 December 2023

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Members present: Karen Bradley (Chair); Jack Brereton; Sir Christopher Chope; Samantha Dixon; Chris Elmore; Patrick Grady; Nigel Mills.

Questions 1-54

Witnesses

[I](#): Lucy Powell MP, Shadow Leader of the House of Commons.

[II](#): Rt Hon Penny Mordaunt MP, Leader of the House of Commons; Alex Burghart MP, Parliamentary Secretary, Cabinet Office.



Examination of witness

Witness: Lucy Powell MP.

Q1 **Chair:** Can we welcome the shadow Leader of the House to our Committee? I think this is the first time you have appeared before the Committee, so we are grateful—thank you very much. Congratulations on being in this role, which, as I have seen from Thursday afternoons, you clearly seem to be enjoying.

We are really grateful that you have come to see us and talk about this issue. A predecessor Committee looked at it in the 2005-2010 Parliament, when Lord Mandelson and Andrew Adonis, Lord Adonis, were both Members of the House of Lords and Secretaries of State, so we have some recommendations from previous Sessions, but we are grateful to hear your views on this. Do you want to say anything before we kick off?

Lucy Powell: No, I just welcome very much that you are looking into this. It is obviously something that we have discussed in the Chamber, with the Speaker and at the House of Commons Commission, so I really look forward to you making some good recommendations.

Chair: We will start with the newest member of the Committee, Sam Dixon.

Q2 **Samantha Dixon:** Which I am delighted to be able to do. What is your perspective on the Prime Minister's decision to appoint a Lord to a senior Cabinet position?

Lucy Powell: As one of the great offices of state, it is quite unprecedented in recent times that the Foreign Secretary would not be a Member of the House of Commons. It has happened in not so recent Governments with other Secretaries of State—the Chair mentioned Lord Mandelson, Lord Adonis and other examples. However, for one of the great offices of state—and it was a big surprise for everybody—it has raised and does raise a number of challenges in terms of our democracy and accountability and how the House of Commons works, especially if, let us say, there was a big decision of going to war or something that we had to consider and how that would work with the Foreign Secretary being a Member of the House of Lords, not the Commons.

Q3 **Samantha Dixon:** What do you think the potential risks and challenges would be with Lord Cameron's appointment?

Lucy Powell: Accountability to the House of Commons, to the Members of the House of Commons and therefore to the public is a real challenge. That is obviously what you are discussing today. That is not to say that the Lords are not able to scrutinise very ably; I would not want to appear before the House of Lords myself particularly, because they really know their stuff and they are able to do that, but that is different from coming to the House of Commons with elected Members on behalf of their constituents.



What is especially disappointing is that since David Cameron was appointed, the Foreign, Commonwealth and Development Office has not even been forthcoming in coming to the Commons without being dragged there anyway by urgent questions. We have not had any statement proactively made in the Commons for getting on for five weeks now, I think, which, given that we have major conflict and really important developments happening in Israel and Gaza and the ongoing conflict in Ukraine, is just not good enough. It has amplified the risks of that appointment—that somehow that position and that Department become set aside from the democratic process and become aloof.

Q4 Jack Brereton: I just have a few questions following on from that. We obviously recognise that previously there have been Labour Secretaries of State who have been in the Lords as well. Is it your view that the significance of this office, given that it is one of the great offices of state, is why there should be further scrutiny for this specific role?

Lucy Powell: Yes, I agree. I read back over the report that your predecessor Committee did in 2009, and I thought that the recommendations there for that time were good ones. Perhaps we have moved on a little in the way in which, for example, Westminster Hall, Grand Committees and other things have worked since that time. Even then, with Secretaries of State who were not in the great offices of state, there was a consensus that there should be accountability and scrutiny with the Commons—

Jack Brereton: You are saying it should be for any.

Lucy Powell: For any, but I think it is—how shall we put it?—undesirable for the great offices of state in our democracy to be held by Members of the House of Lords and not Members of the House of Commons but, given that we have got one, we will have to work out how best to deal with it.

Q5 Jack Brereton: You mentioned very significant issues, such as if we were to go to war. Surely, in those sorts of circumstances, it would be the norm, and expected, that the Prime Minister, not the Foreign Secretary, would give statements to the Commons.

Lucy Powell: Yes, and that may be. But there is not just that one moment of, say, a vote on military action. There would be the run-up, the aftermath, and the ongoing, unfolding situation. At the moment, we have the unfolding situation in Israel and Gaza. We have not heard from the Foreign Secretary in the Commons about that. We have not even proactively heard from the Foreign, Commonwealth and Development Office in the House of Commons about that.

The perspective that Members of the Commons bring to those kinds of debates is different from the perspective of the House of Lords. As I say, they are very able to provide scrutiny and accountability, but they tend to come from a perspective of their own expertise and experience. We come from the perspective of what we are hearing from our constituents. Take



the Israel-Gaza situation: many of us have received hundreds and thousands of emails about that and attended meetings with our constituents. We are bringing a very different perspective to that foreign affairs issue from what you would see in the House of Lords.

Q6 Jack Brereton: The current mechanism in the Commons for scrutinising a Secretary of State who is in the Lords would be through Select Committees. How frequently do you think Lord Cameron should attend Select Committee hearings?

Lucy Powell: I personally do not think that Select Committees on their own are sufficient in these cases. Looking at the report that your predecessor Committee looked at in 2009, we need far more frequent accountability and scrutiny that is open to all Members. I would welcome something more like questioning in Westminster Hall or in a Grand Committee for statements, urgent questions, oral questions, and that type of thing.

Q7 Jack Brereton: So you are saying that if there was a requirement for him to attend the Foreign Affairs Committee every month, for example, that would not be sufficient?

Lucy Powell: I do not think so, because there is only a small number of colleagues who can attend that. He should attend the Select Committee frequently. There are a couple of Select Committees to which he would be accountable. I would like to see regular attendance at those. But what we are doing now is a different type of scrutiny—a different type of occasion—from how it works in the normal run of things for usual statements, urgent questions or departmental questions, which are open to all Members.

Chair: Thinking back, when we have had votes on military action, the debate has usually been opened by the Prime Minister but closed by the Foreign Secretary. Clearly, that is a difficult situation if the Foreign Secretary is not able to come to the Dispatch Box and close debates.

Q8 Chris Elmore: To expand slightly, it is quite clear that you think there should be more scrutiny than just Select Committees. I am particularly curious about statements and legislation. The Foreign Office do not do much legislation, but over the last four or five years there have been quite significant bits of legislation made by the Foreign Office, particularly linked to Ukraine: there were amendments that went through—I can never say the surname—that were led by the Department. I am curious about legislation and how you think Members of the Commons can scrutinise it when it is led by the FCDO, if it is not the Foreign Secretary.

You mentioned several times the different perspective that we, as Members of the Commons, would give about constituents' views; that the Lords often come with expert opinion, which is crucial in scrutiny, but completely different from what a member of the public's opinion may be; and that, fundamentally, we are the elected House. To expand on the practical element of how you think things could work, Westminster Hall seems the obvious choice, but there are only 40-something seats. How



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would that work logistically? If we were to go down a legislative or debate route, does that limit scrutiny in the broader sense?

Chair: To add to the point about Westminster Hall, when we took advice from the Clerks in private, they raised concerns around security at Westminster Hall and whether it could ever be sufficiently secure because of its geographical location.

Lucy Powell: That is probably a whole other issue, really. Everywhere on the estate should be secure. If it is not, then we have a problem. My starting point, and the view on the Opposition, would be that these kinds of positions and this kind of conversation we are having should mean that we end up with maximum scrutiny and accountability, but with minimal pomp and ceremony and occasion. I know there have been debates about coming to the Bar of the House. That provides lots of occasion and attention and everything else, but maybe not the sort of scrutiny that we are looking for here.

Westminster Hall is one option. An alternative is setting up a Grand Committee, which could take place in Committee Room 14 or one of the big Committee Rooms. We have precedent for that—we have Grand Committees of the House of Commons. We could house more people in Committee Room 14. It is set up to do that; some of the other bigger Committee Rooms could potentially do that as well. Where it is for Members on the Order Paper, for example, maybe Westminster Hall is more appropriate, because you largely know the numbers for that. For big, important statements, however, I think we would have to use one of the larger Committee Rooms and have it as a Grand Committee. That would be my and my party's preference, rather than standing at the Bar of the House, which is not the optimal option.

Q9 **Samantha Dixon:** Following on from that, what about the proposal to stand at the Dispatch Box?

Lucy Powell: No, I do not think we should break precedent to that degree. The Dispatch Box is for elected Members of the House of Commons, and I do not think we should use it like that. That would be our view. As you asked at the beginning, this is why it is sub-optimal and not very desirable in the first place to have such an important office of state—at such an important time for that office—being given to somebody who is not a Member of the Commons. As the House of Commons, we should have some disquiet about that.

Q10 **Sir Christopher Chope:** Lucy, I share your concerns about the decision to appoint as Foreign Secretary a Member of the House of Lords. Would you agree that one way to overcome this would be to put into our Standing Orders a prohibition on any of the key Secretaries of State being Members of the House of Lords? They would have to be Members of this House in the same way that a Prime Minister must, which would remove the scope or temptation for Prime Ministers to appoint somebody to the very top positions as a Member of the House of Lords. That would



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overcome the problem at a stroke, instead of us having to try and get round it. At this instant, we have to try and find a short-term way of getting around it, but wouldn't a longer-term solution be to have an absolute prohibition on these key positions being held by Members of the other House?

Lucy Powell: For the great offices of state, I would concur. I have not looked at the Standing Order issue—that might be something for you to consider. Prime Ministers should feel that they should not need to do that for the great offices of state. There might be times for other Secretaries of State, because of particular expertise and so on, as we have had in the past.

Q11 **Sir Christopher Chope:** The Lord Chancellor—a key player—always used to be a Member of the House of Lords.

Lucy Powell: We have managed that okay in the past.

Q12 **Patrick Grady:** I wanted to build on the question that Sir Christopher has just asked. Do you think there is a risk—risk is not necessarily the right word—that this might set some sort of precedent, especially if we find a solution or a new way of working, for encouraging future Prime Ministers to appoint more Cabinet Ministers, whether other great offices of state or any other Cabinet Secretaries, from outside the House of Commons? Do you think there are any advantages, disadvantages, or possible precedents here? Might future Prime Ministers now feel more at liberty to appoint Cabinet Secretaries and then put them in the House of Lords, essentially from outside the House of Commons?

Lucy Powell: I would hope that any recommendations you make don't then offer an incentive. I am sure they wouldn't; I am sure you will couch that in terms such that, whatever you recommend, this is sub-optimal—because it is sub-optimal. Ultimately, these things come down to political pressure on the Prime Minister of the day, don't they? Perhaps if a general election was not now around the corner and this was not a fairly short-term issue—touch wood, on my side anyway—there might have been a bigger build-up of political pressure about this.

I hear what you are saying. You don't want to come to an accommodation such that future Prime Ministers think, "Oh, that's great. The House of Commons can now scrutinise these Secretaries of State." I just don't think anything that we can come up with would really do the job. I think that, especially if there was some bigger escalation, some big decision on military action, it would fall flat fairly quickly.

Q13 **Patrick Grady:** There may be a slightly wider issue that we can explore, because there are already Ministers in the Lords for each Department. Some of them have quite specific briefs. I think that sometimes Members of the House of Commons find it quite frustrating when the particular area of a brief that they are interested in is covered either at departmental questions or perhaps more often in a Westminster Hall debate and the responsible Minister is not able to answer, because that



Minister is in the Lords.

I wonder whether where we are going with this work might find a resolution to that, or whether there needs to be some accommodation at Government level so that Ministers responding and Members who are asking questions in the Commons can feel more empowered to speak on the specific briefs that Members of the Commons are interested in. I don't know whether you have any perspective on that.

Lucy Powell: Personally, I think that junior Ministers in any Department should be across the issues in that Department and should be able to do Westminster Hall debates or answer oral questions or urgent questions in the Commons on behalf of their whole Department. Maybe we have not had Ministers who are sufficiently up to speed, but they should be able to do that. That is quite different from the top dog in the Department, in a great office of state, when there are these big issues happening and Members of the House of Commons are not feeling able to hold them to account and bring their questions to them on behalf of their constituents.

I just want to make the point again that Members of the House of Lords are tough questioners and can perform a tough job of scrutiny. This is no reflection on them and their ability to do that. It's just that it is very important for the House of Commons to be able to do that appropriately.

Q14 **Patrick Grady:** Thank you. That is really helpful. It actually leads to my final question. The Leader of the Lords, Lord True, has said that he anticipates that when statements are of sufficient import to be made by the Foreign Secretary, they should be made in the Lords first and then repeated in the Commons, which is a reverse of the normal situation, in which a statement is made in the Commons and then repeated in the Lords.

Do you have any concerns or reflections about the fact that Members of the Lords would receive and scrutinise important statements before we do in the Commons—concerns or reflections both on a principle level and on a practical level, because there could be a time gap, depending on the sittings of the House and the other business of the House? Does our business have to be interrupted? How could that be managed practically as well as in principle?

Lucy Powell: Obviously, this Committee—because your remit is for the House of Commons and not for the House of Lords—is going to have to navigate that carefully. I think that if we can come to an appropriate accommodation for the Foreign Secretary to come to a Grand Committee, to Westminster Hall or to the House of Commons in some form to give a statement, they should be giving that statement to the House of Commons first, both because the House of Commons is the supreme Chamber, the directly elected Chamber, and because, as you say, from a purely logistical—time—point of view, we sit earlier. That is a second-order thing, but obviously this is something we will have to navigate carefully with Members over in the House of Lords, because we are not able to tell them what to do.



Q15 **Chair:** Thank you very much for the answers to that. They have been very helpful and certainly answer the questions that we had.

I know that you were warned that we might ask about precautionary exclusion, because you are a member of the House of Commons Commission. We have received a letter from the Speaker—we had written to the Speaker in June outlining our concerns about the original proposal. Many of those concerns have been dealt with through the revised proposal, but we still have concerns from the meeting that we have just had. I cannot go through what we discussed, because it was a private meeting, but we are curious to hear how you, as a Commission, came to the conclusions you did about the point at which precautionary exclusion could be applied, the proxy votes, and the make-up of the panel that will determine that precautionary exclusion will be applied.

Lucy Powell: Yes. Obviously this is with the caveat that I only came in sort of halfway through. I was appointed in September, so quite a lot of this work—the debate in the House and so on—had happened before I was appointed.

Again, I think it is always worth putting all these things in context. This policy is not going to catch all circumstances or all situations—in fact, it probably would only have affected two or three Members of the House of Commons in the past few years—but I think that everybody felt that it was an important signal to send and that it was important that a policy was in place for the most serious cases, so that it might trickle down across all the various other policies, voluntary and otherwise, that exist across the House.

The decision to trigger this process on arrest came from advice from the police. That advice and those conversations happened before my appointment, but I took them as read. The decision around the panel took on board what a lot of colleagues said in order to make sure that there was some opportunity for Members to put their own point of view across, so that the panel could consider other aspects, such as whether the Member in question was already volunteering to stay off the estate and so on. It was originally conceived that the panel would be the two Deputy Speakers, but we felt that adding a third member—a lay member from the House of Commons Commission—would stop there being a problem if those two members were to disagree or whatever. Three is just a better number for this kind of thing.

I think we all felt very strongly about the proxy vote situation. I think we felt, from what we have seen recently—especially since some of these investigations take a long time, and there is a lot of concern across the House about not just police investigations, but particularly some of the party investigations; ICGS is much faster, speedier and more anonymised now, but some of the party processes can take a very long time—that where a Member is subject to a risk-based exclusion from the estate, they should qualify for a proxy vote, so that there is not the concern that they



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are not able to represent their constituents while that process is happening.

That is why we discussed the Speaker writing to this Committee to see whether, given that there is this whole network of other risk-based exclusions, primarily in a voluntary form via the Whips on all sides of the House, you would consider extending that proxy vote to those voluntary arrangements as well, so that there is equality. We have seen some issues of late with Members who are under investigation by their party for very serious violent or sexual allegations that are not with the police. I understand that after a few months of being off the estate, those Members might feel that they have not been able to cast a vote. We thought it would be fairer to think about a proxy vote for them under certain circumstances.

Q16 Jack Brereton: When it comes to proxy votes, why do you think it is appropriate to put people who have potentially committed very serious offences in the same boat as people who are pregnant, on paternity leave or very seriously ill?

Lucy Powell: Because at that stage, they are not guilty: they are under investigation. Often, from the voluntary point of view, they are not under investigation by the police, so there are safeguarding issues as to why you would not want them on the estate, because they have allegations of a serious nature against them. When those allegations are around, you would not necessarily want people on the estate, but they have not yet had those allegations found against them. In that period and only that period—obviously not once they have had those allegations found against them—we would allow a proxy vote for those people, to maintain safety and safeguarding on the estate. Otherwise, there is no way of keeping them off the estate. If they want to come on the estate and vote, they can.

Q17 Jack Brereton: Are you not concerned that, because there is not anything to distinguish those cases from those who are off for paternity, maternity or serious illness, there might be some pretty serious questions from the media and others about why somebody is on a proxy vote?

Lucy Powell: Well, we have had questions the other way: why are people who are under investigation and have allegations against them allowed on the estate to vote alongside some of the same people who have made allegations against them, who are then raising those safeguarding issues on their own behalf or that of other people who work on the estate? We have a responsibility to keep everybody who is on the estate safe, whether they be Members or staff, and provide these sorts of safeguarding measures. At the moment, there is no real incentive for that to happen, so we have had a lot of questions asked the other way.

Q18 Jack Brereton: But you can understand the concern of grouping together, in terms of that proxy voting issue, all these people who are off for very genuine but different reasons.



Lucy Powell: It is not grouping them together, because they would be a proxy for a different reason.

Q19 **Jack Brereton:** There is no way of distinguishing.

Lucy Powell: Well, no, there is not, but it would hopefully keep them off the estate and therefore help other people who are working on the estate to feel that they can go about their business, go about voting themselves or go about as a member of staff around the estate. It is a challenge; I am not saying that there is an easy answer to it.

Q20 **Sir Christopher Chope:** But in practice what you have just described would destroy the anonymity of the person against whom an accusation may have been made but not proved or established. The paragraph in the Speaker's letter that says that anonymity may have already been removed in practice does not apply in all cases, because we know that there are cases in which the police are carrying out investigations and nobody knows the people in respect of whom those investigations are being carried out.

It seems to me that the paragraph in the Speaker's letter about anonymity is rather weak and not a complete answer to the concerns that are being expressed. Surely, as a matter of principle, everybody is innocent until proved guilty. Once they are arrested, it is possible that bail conditions that will protect those people who need to be protected can be imposed. That is the standard process. Is that not better left to the courts, rather than to officialdom in this place?

Lucy Powell: We are talking about two different things here. The exclusions policy proposal that is going to go before the House in the new year talks about people who have been arrested for a serious violent or sexual allegation. We are proposing that those people would go through a risk-based exclusions process. The police would not necessarily feel able to put on such bail restrictions. This is about the House of Commons, the authorities here and all of us being able to protect everybody who works on the estate.

As I say, we are talking about a tiny number of Members—I think three or four—who this would have applied to in this parliamentary Session. That is quite a small number. The arrest of an MP is not something that normally results in anonymity for that Member; very rarely would that not be in the public domain almost straightaway.

On extending proxies to those who have a voluntary arrangement to stay away from the parliamentary estate because of allegations, again, where that is with the ICGS and is anonymised, we perhaps would not know about that. That would not be an issue, because that person would not be applying for a proxy or would not qualify for one. On the whole, when a person loses the Whip, that becomes in the public domain straightaway. These cases are generally in the public domain because they concern people who have lost the Whip or are under investigation, and that is known about.



Through ICGS, it is a much more anonymised process. This is a problem we have now: we will have to consider that we have three different processes for complaints. People can go to the police, which brings a whole other process and set of sanctions and points at which an allegation may or may not come into the public domain. We have the ICGS process, which I think has improved significantly over the last few months since it was set up. It is now very speedy and generally very anonymised. The sanctions can be very severe, as we saw with the outcome of Peter Bone's case.

We then have people making complaints to political parties, which have their own internal complaints procedures. That often results—certainly on the Labour side—with someone losing the Whip quite early on in the process, although that is not consistent across the piece, and some of those processes take a long time and have varying outcomes. We will need to look at this in the round and ask whether we should have clearer signposting for a complainant about where to go when the complaint is of a serious, violent, sexual or bullying nature against a Member of Parliament, and whether those complaints should go primarily to ICGS in the first instance, who would perhaps refer the most serious cases to the police. I think that would clear up some of these anomalies.

Mr Speaker's letter to you was just asking about the anomalous situation in which, should the House agree the policy in the new year, somebody who has been arrested for a serious, violent or sexual misdemeanour could be eligible for a proxy vote, but somebody who has a serious allegation made against them that is not with the police—who has voluntarily said, "Okay, I will stay off the estate; I can understand that that is a challenge for the estate"—would not be eligible for a proxy vote. It is about trying to iron out that anomaly. We could probably spend two hours on the complaints processes, on all the different ways in which one can now make a complaint and on those that are better or worse than others.

Q21 Sir Christopher Chope: I take it from your answer that you are in favour of having something much more precise and definitive than what we have at the moment or what is proposed in Mr Speaker's letter, not least because in the next Parliament, we may find that one Member, whether they vote for the Labour party or the Conservative party, may make a difference to the outcome of votes. We cannot rely on practice as to whether a political party chooses to take the Whip away from somebody; I do not see a political party wanting to take the Whip away from somebody if they will lose their majority by so doing.

Lucy Powell: I think we are talking about somebody who has voluntarily said "I will stay off the estate because I understand that it is a safeguarding issue" being eligible for a proxy vote. Obviously, that person has voluntarily taken themselves off the estate. Let us say that they do not have a proxy vote: if they want to come in to vote, or if they are needed for a vote, they can come in to do so. Peter Bone was voting last



week on Rwanda, for example; he was back from his suspension and voted, as he is perfectly entitled to do whether he has the Whip or not.

People can and do come in to vote even though there is a safeguarding issue that they themselves recognise, but they are frustrated because they find themselves between a rock and a hard place, where there is an extended period of investigation and of their being off the estate, and they do not want that to turn into an issue of them not being effective as a Member of Parliament.

I think it is quite a small, narrow issue that Mr Speaker was asking you to look at. If people are voluntarily keeping themselves off the estate, they can vote if they want to; we are just trying to encourage them to stay off the estate for safeguarding reasons by allowing them to have a proxy vote. Have I explained that or not?

Q22 Chris Elmore: With the clear understanding that you joined the Commission in September and were not privy to the conversations that had gone before, the argument seems to be that this is about someone saying, "Yes, you must be off the estate. The proxy is a way of allowing your vote to continue, but you are off the estate for safeguarding reasons to protect possibly a victim, or just more broadly the thousands of people who work on and access the estate every single day." I am not sure how you answer this, but I will pose it anyway: what about constituency offices? Admittedly it is a very small number of Members, but it does seem to be becoming an annual event that a Member is suspended, arrested or whatever it might be for whatever the action may be, but particularly on the points about serious sexual assault or worse.

Some of the laws in this country are extremely archaic for the protection of Members. We have privilege, for example. I think everyone would agree that it allows us to speak freely for our constituents, but there is very limited legislation around ensuring that we—our function is to represent our constituents, so why is it a safeguarding issue to not come on the estate, but it is fine to carry on holding advice surgeries and carry on going into schools? In lots of other professions, if you were arrested and charged on those terms, you would not be allowed to enter a lot of public buildings such as libraries, schools or hospitals. If you were a lawyer, your licence would be temporarily suspended.

Again, I understand this all predates your work as shadow Leader. I am just curious whether you have a view on that and what the next step is within the Commission for how safeguarding goes beyond the corridors of this building and looks at how we support neighbouring constituencies, or whether other Members provide support if there is a by-election. Sir David Amess and Jo Cox's deaths come to mind, with neighbouring MPs stepping in, but is there not a broader safeguarding point if it is about protecting people on the estate, particularly when most of us in our surgeries will see very vulnerable people on a weekly or monthly basis?



Lucy Powell: You make a really good point. In the few meetings of the Commission that I have attended and other meetings that we have held about this issue in the last three months, that has been at the heart of the conversations. What we can effect, how we can effect it and the best way to effect it is a much bigger issue than the proposal that the House has agreed and come up with. We recognise that that would have affected a very small number of MPs and situations over the last few years, and hopefully an even smaller number going forward. But it was important to do that, at least at first, because that would send a very clear signal and it was the thing that we could effect most quickly.

The trade unions who represent the staff who work on the estate raise with us every month the broader safeguarding issues around constituency offices and elsewhere. I think the exclusions policy would apply to constituency offices, but I think your broader point is well made: there are still lots of other places you can go.

Chair: Thank you very much. We have kept you a bit longer than we expected because the topic of exclusion came upon us at the same time. We are grateful for the comments that you have made. We will now suspend the Committee until 4 pm.

Examination of witnesses

Witnesses: Rt Hon Penny Mordaunt MP and Alex Burghart MP

Q23 **Chair:** The Committee will now resume. We have heard from Lucy Powell, and we are very grateful that we now have both the Leader of the House and the Minister with responsibility for the constitution at the Cabinet Office with us today. We will be asking you questions about the scrutiny of Secretaries of State who are in the House of Lords. If time permits, we may also wish to ask questions about the proposals for precautionary exclusion. To kick off, would you like to say a couple of words of introduction?

Penny Mordaunt: First, I would just like to thank the Committee for doing this piece of work. The fact it is being done means that this is unusual, although there is a precedent. I think it is important, and the Committee will know that the Foreign Secretary also thinks it is important, that scrutiny is optimised. Thank you for your work, and we will crack on.

Alex Burghart: I fully support everything the Leader of the House said.

Q24 **Samantha Dixon:** This is the first time in more than four decades that a Member of the House of Lords has held one of the great offices of state. What pros and cons do the Government see in appointing Lords Members to senior Cabinet positions?

Penny Mordaunt: This is not the first time we have had Lords Ministers in Secretary of State roles. You can make the case that it creates some difficulties, which is why we are having this Procedure Committee hearing.



You can argue that there are some advantages to having a very experienced Foreign Secretary in the year we are about to have—a year of unprecedented geopolitical change with all the elections that are going on around the world—and, in my personal view, someone who is not facing having to fight an election per se. I think that there are pros and cons to it. Clearly, this is the Prime Minister’s appointment, and I am not sighted on his personal deliberations on that. Given the situation, we want to ensure that the prime Chamber—the Commons—can scrutinise the Foreign Secretary.

Q25 Samantha Dixon: Do you see no distinction between the great offices of state and other Secretary of State roles?

Penny Mordaunt: I do, and in preparing for this I was trying to think of the scenarios in which the House would particularly want to hear from the Foreign Secretary. You will obviously have heard in previous evidence that, in times of great national crisis, or if we are facing the option of potentially deploying our armed forces, it is often the Prime Minister who leads those statements and debates on the Floor of the House. More often than not, it is a junior Minister from the FCDO who would be going to answer questions, particularly if they relate to a particular region of the world.

There will be some other things that fall between those two categories. For many things, like Op Pitting, the Minister who people most wanted to hear from was the Defence Secretary. I think Israel and Gaza is a good example of when people will, on occasion, want to hear from the Foreign Secretary, even though the Minister for International Development is very capable and could probably speak with great authority on most of the issues that Parliament will want to hear about. I recognise that, and that is why we are keen to help facilitate scrutiny arrangements that the House wants.

Alex Burghart: Just to add, on Lord Cameron’s appointment: there is a very great deal going on in the world at the moment, and having a famous Foreign Secretary can only be an asset. When you think of the British Foreign Secretary turning up in foreign capitals around the world and already having contacts and already being the sort of person who people will cancel meetings to see, I think that is good for British diplomacy.

Obviously, however, as the Leader said, we have to be mindful of Parliament’s need to scrutinise the Foreign Secretary’s work. But, as she has also said, the truth is that at moments of great crisis, it tends to be the Prime Minister who leads on foreign policy issues in the House.

Q26 Jack Brereton: Obviously, we are talking about this now because of the Prime Minister’s appointment, but consideration was given to this issue some time ago, when we had the Labour Government with Lords Adonis, Mandelson and others who were appointed from the Lords. More generally, do you think that we need to look at better scrutiny when members of the Cabinet are appointed from the Lords? Does that process



need to be more robust generally? Maybe the Leader could respond first.

Penny Mordaunt: I think that in your deliberations, you will be concerned about perhaps setting out some principles. I very much feel that the Commons is the prime Chamber and you may want to set out some principles, but I think we also need to be careful about not setting a precedent that might work in this instance but might not necessarily be ideal in the future.

I think it is a great merit of how we do things in this place that we are pragmatic and practical, and we look at each individual case. It is good that these things evolve. Your deliberations will be built on what has happened previously. There may be things that have previously happened that you wouldn't want to see. For example, under the last Labour Government, a precedent was set for statements being given in the Lords first; I think it's a good thing that statements are given in the Commons first, where that is possible. I would urge you to be pragmatic, as you always are.

Q27 **Jack Brereton:** Minister, do you have any thoughts on that issue, in terms of the robustness of scrutiny when we have these eventualities?

Alex Burghart: I think it is important to consider precedent when looking over these questions. It is well within established precedent for the Commons to invite Members of the Lords—or indeed anyone—to come and give evidence in various forums. In recent years, that has tended to be Select Committees, but if you go back into the 19th century it was far more common for people who weren't Members of the House of Commons to be invited to give evidence.

It was also the case that from time to time Members of the House of Lords appeared to give evidence in front of the Commons. The Commons does have the power to request that scrutiny if it wants to and it can choose the means by which it does that.

If you look at the early 19th century, it certainly wasn't unusual for the Commons to find ways to take evidence from the Lords. It also was the case that, from time to time, Members of the Lords sought an invitation to come and speak up about something that affected them personally or affected the business of Government.

As is often the way in the British constitution, if you want to find a means of doing something reliably, the answer is normally in the past. If you depend on precedent, then you are less likely to go about things in a way that will create unintended consequences.

Q28 **Jack Brereton:** Leader, you mentioned Lord Cameron's willingness to be scrutinised. May I ask what sort of discussions have been had with Lord Cameron about his views on the level of scrutiny that he would be prepared to accept?



Penny Mordaunt: I spoke informally to him about this immediately after his appointment and he has been very proactive and forward-leaning. I think he is keen to accommodate what the Commons' optimal solution is. I think he recognises the importance of that and appreciates that it is helpful to him, as Foreign Secretary, to be seen to be having that level of scrutiny. But Foreign Secretaries are also very busy people, and having time with colleagues to understand where they are coming from and their constituents' concerns is very important. I think he will be guided by what you say.

Jack Brereton: Minister, did you have anything further to add?

Alex Burghart: No, I am sure that that's correct.

Q29 **Chair:** Can I come back to the point about historical precedents? I am very curious about that. We have received advice on this and heard about the Duke of Wellington and his famous address. You've clearly done some research into this—are there any other examples you could cite of the way that scrutiny was done in terms of historical precedent? With the Duke of Wellington, we know that a chair was brought to the Bar of the House and comments were made by the Commons towards the Duke. What else has happened?

Alex Burghart: If I remember correctly, that was in 1814, after the peninsular war. The Duke of Wellington asked to come to the House to thank the House for its support and give an account of what had happened in Spain. There were instances in 1805, I think, when Lord Melville had been impeached by the Commons, and he asked to come and clear his name and give evidence.

There was also an instance around the same time—someone will have to check all these references for me, I'm afraid—where Lord Teignmouth, who was involved in the East India Company, was ordered to come to the House and there was a bit of a set-to between the Lords and the Commons as to whether that was proper. The Lords said that it wasn't; they said the Commons had no right to order a Member of the Lords to come and give evidence. The Commons then invited him, and he came. He gave evidence in 1806 and in—I'll say—1814. That was to discuss affairs in India. He wasn't a Government Minister; I don't know of any cases of Government Ministers in the Lords being asked to come to the Chamber.

There have been plenty of other instances where people who were not Members of the Commons were asked to come and give evidence to what we would now call Committees of the whole House. There was an inquiry in 1821 into the *John Bull* newspaper, which was a scurrilous tabloid. There was also an inquiry at some point in the early 19th century into the grand old Duke of York, whose mistress was using her proximity to the duke to take bribes from soldiers to get commissions. That was just the way the House used to do business.

Chair: Thank you. Patrick, did you want to come in on that point?



Q30 **Patrick Grady:** I want to pick up on a couple of things that the Leader of the House said, if that's okay. You said you would expect that statements would continue to be made in the Commons first, but Lord True, the Leader of the House of Lords, has said that he anticipates that when statements are of sufficient import to be made by the Foreign Secretary they will be made in the Lords first, and then repeated in the Commons. What is your reaction to that, both in principle and in practice, in terms of the effect it will have?

Penny Mordaunt: As you can imagine, there will undoubtedly be occasions where, because of sitting times or there being something urgent that needs to be got on the record, that might happen, but under this Foreign Secretary statements have been made in the Commons first. That is an important principle. They have then been repeated by a junior FCDO Minister in the Lords. That is an important point.

Undoubtedly, there may arise a scenario—in part because sitting hours are different—where you do think it is the best course of action to make a statement in the Lords first, by the Foreign Secretary. For matters of particular importance, or following up from a particular international event, quite often it is another Minister at Prime Minister or Secretary of State level who makes those statements in the Commons. I, as Leader of the House of Commons, would certainly want the Commons, where possible, to be informed first. That is an important principle.

Q31 **Patrick Grady:** In the olden days, when the Prime Minister was a Member of the House of Lords, the Leader of the House of Commons answered for the Prime Minister in the Commons. Who knows whether that scenario will re-emerge one day?

After this meeting, we will be able to publish the letter that the Foreign Secretary sent us, which we received this morning. Although there had been this idea that, in principle, he was happy to abide by whatever we and the Commons preferred, what he says in his letter is that "His Majesty's Government is happy to consider other appropriate mechanisms so that Parliament is able to fully scrutinise the work of the FCDO, in full appreciation that any changes will be a matter on which both Houses of Parliament must agree." That does not necessarily suggest that, if we were to propose that he comes before a Grand Committee of the whole House or something like that, it would automatically happen. Rather than at the discretion of the House of Commons, the letter suggests that, in fact, there would have to be agreement between both Houses.

Penny Mordaunt: A couple of things to say here. First, both the Foreign Secretary and the Government are keen to accommodate what this Committee and ultimately the House wishes. I cannot emphasise that enough. Depending on what you come up with, though, there may some things that we have to address: for example, you might propose something that requires the Lords to change their Standing Orders. In that



sense, their lordships have to agree to give the Foreign Secretary leave to come and do what you want him to do.

As I set out at the start, what I think everyone wants is scrutiny arrangements that enable that powerful connection our constituents have to people in high office, via us as Members of Parliament, to be maintained. That is important, but we are talking about scenarios that will not be taking place every week, because more often than not it is able, more junior Ministers who do a perfectly good job representing the Government's position at the Dispatch Box in the Commons. That happens week in, week out. In moments of much greater importance, it is someone like the Defence Secretary or the Prime Minister who is at the Dispatch Box.

None the less, there will be scenarios—Israel and Gaza may be one of them—where you want that direct line of sight with the Foreign Secretary. Provided you do not propose something that requires the Foreign Secretary to do unreasonable or unpractical things, he is likely to want to accommodate you.

Q32 Patrick Grady: That still sounds as though it relies on good will and convention, rather than compulsion, because there are only limited circumstances in which the House or a Committee of the House can compel someone who is not a Member of the House to appear before us.

Alex Burghart: The Leader is absolutely right. Unless the Lords were to change their Standing Orders, you cannot compel a Member of the House of Lords to appear before the Commons.

I think there are two aspects to this which have merged over time. The first is that a Member of the House of Lords has to seek permission to appear in front of the Commons if they have been accused of something. For those who are interested, that goes back to 1674, when the Duke of Buckingham and the Earl of Arlington were both called in front of the Commons—the Duke because of his lascivious lifestyle, and the Earl because he liked the papists. After that happened, the Lords took the view that this was beneath the dignity of their House and that other Members of the Lords should not do it; it would set a precedent if Lords were always being summoned. That is part 1: accusations against the individual.

Part 2 is coming to give evidence. As I was saying, in the early 19th century it was established that Lords could accept an invitation if they wanted to, but they did not have to. If you wanted to get compulsion, you would have to persuade the House of Lords to change its Standing Orders, but I do not think that is going to be entirely necessary.

Q33 Patrick Grady: What does that tell us, then, about the primacy of the House of Commons?

Penny Mordaunt: I fully understand that it is part of your inquiry to anticipate trouble, and you are quite right to raise this, but I do not think those scenarios will be arrived at. If you were to suggest that the Foreign



Secretary has to go to the Bar of the House every Monday lunchtime to be scrutinised, that is not a reasonable thing to ask him to do, because of other things he has to do. I do not think it is necessary. You would not expect the Foreign Secretary to have to do that on a weekly basis. It is something I might worry about, but I am not expecting you, a very sensible Procedure Committee, to come up with this.

I think you are going to come up with proposals—I hope—that will look at those not-hourly scenarios in which there is real value for Members of this House to be able to scrutinise the Foreign Secretary directly. I am not anticipating this having to happen every single week. We will look to accommodate what you propose. Previous suggestions you have made have been very sensible and welcome, and where we think we can add value, we do, but we deliver on them. I have no reason to believe that this will not continue.

Q34 Nigel Mills: Most Departments answer on a rota of once every month or so. You are ruling out weekly, but are you ruling out monthly as well?

Penny Mordaunt: I am not ruling out anything. It is for you to decide what you wish to do. I am just saying that this Committee has always made very sensible recommendations, and you are not going to do something that is either open to abuse or would constrain the Foreign Secretary in doing his other tasks.

The rota of questions is very helpful: it helps Members to prepare for them. I can see you wanting something on a regular format as well as being able to call on the Foreign Secretary if there is something of particular note that you want them to respond to. The Government decide who they field for statements and UQs and those sorts of things. It is quite a short list of scenarios that I could envisage where only the Foreign Secretary would do. As I say, I think you are more likely on those sorts of occasions to get someone in a senior office such as the Defence Secretary or the Prime Minister themselves in those scenarios, but I am not ruling out anything. It is for you to decide what you think is in the interests of this House.

Q35 Nigel Mills: It is a challenge, though, because if we try to put in place a regular appearance, we at least know what we are trying to achieve and what the process and timing is, and if we have a nebulous theory whereby if something is sufficiently urgent that it needs somebody serious but not so urgent that it needs the Prime Minister, then maybe the Government will make something happen that we have not done for 200 years, or maybe they won't, that is going to take us nowhere. Presumably at some point we need to have a plan for the sort of situation that would mean the Foreign Secretary would appear before the Commons and how we go about doing that, rather than having a panic one Tuesday, when we still don't know how to do it.

Penny Mordaunt: But that is what you are doing—



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Nigel Mills: But in the scenario that you dealt with you have just said, “Well, if it’s really serious—if it could be the Prime Minister or the Defence Secretary—it will be extremely rare.”

Penny Mordaunt: I am not telling the Committee how to approach this, but I would approach it pragmatically, by looking at the scenarios when there is value for Members to be able to question the Foreign Secretary directly. Given the evidence you are receiving, the demand might be saying, “We want to be able to do this on a regular basis.” The other evidence you receive might say, “Actually, we would only really want the ability to do this if there was some particular issue that we felt was important.” I am not ruling out anything; it is up to you to decide. In approaching this, I have just tried to think of the scenarios in which, certainly as a constituency MP, I would want to be able to talk to the Foreign Secretary directly on the Floor of the Commons.

Q36 **Nigel Mills:** So the Government do not have a view? There is not a proposal that you think would be the right one?

Penny Mordaunt: No. We stand ready to accommodate your proposals. I am the Leader of the House of Commons. I am the Government’s representative in Parliament and Parliament’s representative in Government. Scrutiny is important. You have a tricky job, and Alex and I will assist in telling you the implications of various things, but it is the House that needs to decide what it needs.

Q37 **Nigel Mills:** It is not unusual, obviously, for a Minister from the Lords to appear before a Select Committee, and we understand that Lord Cameron is more than willing to appear before the relevant Commons Committees. It is just that his strike rate is currently nought for two, isn’t it? I think he has agreed to appear twice and neither appearance has happened.

Penny Mordaunt: In fairness to him, I think that one Committee cancelled on him, and the other scenario is that he is attending a funeral. He is, I think, embarrassed by that situation. In both cases, it is unfortunate that it has happened, but it is very understandable and it is not something that means he has been deficient in performing his duties.

Q38 **Nigel Mills:** How regularly is he willing to appear before those Committees? Is it purely a matter of when they ask, or is there a kind of capacity here?

Penny Mordaunt: I think it is the same as with any Select Committee. There is usually a negotiation between Clerks. I think there is an expectation that the senior Minister in a Department appears on a regular basis through throughout the year, and I know that he would want to do that.

Q39 **Nigel Mills:** Speaking as a member of the International Development Committee, it has not always been straightforward to convince Foreign Secretaries that their job is to appear before that Committee. Lord



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Cameron is a big fan of development, so do you think he will be keen to appear before it?

Penny Mordaunt: He is. I think he already has a date booked in for that Committee, so he is appearing before that Committee.

Nigel Mills: I don't know whether anyone has told members of that Committee.

Chair: Minister, do you want to add anything?

Alex Burghart: No. I think that all Secretaries of State are keen to co-operate with Select Committees, and I think that Select Committees, by and large, are keen to make sure that their requests are not too burdensome. That relationship is ordinarily very effective, so there is no reason to think that it will not be in this circumstance.

Q40 **Chris Elmore:** Good afternoon. I would like to press a little further. I accept that the Leader of the House has said that it is not her place to suggest things, but I am trying to iron out, regarding our lines of inquiry, how realistic certain options are for scrutiny of Lord Cameron. The Minister has talked quite a lot about being called to the Bar or to give evidence, and how the Duke of Wellington or the various peers over the years have had to come and defend their honour. When someone is asked or summoned to the Bar, which technically cannot be done from the Lords, it is often to try to tackle wrongdoing on behalf of the peer, which I do not think anyone is suggesting of Lord Cameron. He has been appointed by the Prime Minister legitimately.

We can debate the politics, from Lord Carrington to Lord Mandelson, or anybody else, on serving in the Lords as a senior Secretary of State, but how realistic is it, in your view, that the Secretary of State should be called to the Bar or to the Dispatch Box and asked questions in the Chamber of the Commons as a non-Member of the Commons? Is it more realistic for our line of inquiry to be about Westminster Hall, once every three months, with the 40-something seats in there being secured by ballot for the Foreign Secretary to gain an understanding of constituents' views?

I agree that a lot of Members' concerns in the elected Chamber are about just that: we are elected, so our postbags are full of complaints on various foreign policy issues. There has been a UQ on an issue in Hong Kong that had 17 Members standing asking questions. It could be about a personal interest, but it could also be constituents' interests. You are a long-serving Member of Parliament, so you will totally understand the pressures on Back Benchers to pose questions—you answer questions every week.

I am curious about some things, if you can comment; if you do not want to, I respect that. I assume that as Leader of the House, and as a Member of the House, you would find certain things unpalatable, such as Lord Cameron speaking from the Dispatch Box, because he is no longer



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elected. When it comes to the Bar, how would that work? I have read the Duke of Wellington example, so I am curious about the Minister's example from 1806, and others, but the reality is that in those scenarios the Duke and various peers did not answer questions at the Bar; they sat and listened or recounted situations. I do not think anybody on any side of the House thinks that is an effective way of having scrutiny.

Penny Mordaunt: I have a great deal of sympathy with what you have outlined, in terms of both the optics and the precedent it would set for a Lords Minister to speak from the Commons Dispatch Box, but I also think we need to be very pragmatic about how this might work. In the scenarios in which you would want to hear from the Foreign Secretary—I completely endorse what you said about our ability, representing our constituents, to eyeball the Minister who leads a Department—I think you would have quite a number of people wishing to do that. Westminster Hall may not be ideal to accommodate those people. I have also heard concerns about it being less secure than other parts of the Palace, but something like Committee Room 14 might, practically, be helpful.

This Committee has taken a cautious approach to things. You have piloted things, and you might want to review how things are working and take feedback from Members on whatever proposal is implemented going forward. I just think we need to be guided by the practicality of it. Ultimately, in most of the cases when we are going to do this, people will want either to demonstrate that they have told the Foreign Secretary the views of their constituents or raised a particular case, or to hear directly from him about a particular policy issue. We just need to make sure that whatever we put in place practically facilitates Members being able to do that.

Alex Burghart: On your point about people being admonished at the Bar, that is obviously what the Bar is most famous for and what it was last used for in 1957 with the journalist Mr Junor, but, as I said earlier, there were instances in the 19th century of people answering questions from the Bar—members of the public, and occasionally Members of the House of Lords. As I also said right at the start, I can tell you about precedent, and it is for you to decide whether you want to recommend that we follow precedent or try something new. I am certainly not aware of any precedent at all for non-Members—strangers—being able to sit on the green Benches or to use the Dispatch Box. That would really be something very different.

I am sure the Committee will want to consider the fact that although something like this has happened in the past, it would feel very new in the modern age, and in doing so it may have unintended effects. Starting to have Secretaries of State in the Lords and them coming to the Commons to give evidence would probably lead over time to more Secretaries of State being in the Lords. It might, over time, lead to Prime Ministers being in the Lords. That is not inevitable, but it is something that the Committee might wish to bear in mind.



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Q41 **Chris Elmore:** Of course, it used to be quite frequent and often that Members of the other place were Prime Minister—

Alex Burghart: It did, absolutely.

Q42 **Chris Elmore:** They succeeded each other as Prime Minister from their respective parties.

I have two follow-up questions, if I may. On Committee Room 14, I hope that the Minister and the Leader of the House know that I am a Welsh MP, if only by my accent, if by nothing else. We have the Welsh Grand Committee, which is resurrected as and when enough Welsh Members complain and ask for it, and we have a day of debating Welsh issues. Do you see that as a possible option—having a Foreign, Commonwealth and Development Affairs Grand Committee, where 100-plus Members could sit in Committee Room 14? That could be held, I don't know how often, but with the Foreign Secretary present.

Completely separately, in relation to legislation, the Minister mentioned Prime Ministers, other Secretaries of State and the risk to scrutiny in opening up more Secretary of State roles for the Lords. The Foreign Office, historically, brings limited amounts of legislation to the Floor. Take the example, hypothetically of course, of the Prime Minister having decided to make someone from the Lords the Home Secretary. Just in the past two months there has been—depending on which side of the Chamber you are on—very welcome or very controversial legislation. That could be led from the Lords, and it is a scrutiny Chamber so that is quite right and proper, but would it not be odd to have legislatively heavy Departments with Secretaries of State serving from the Lords, without any scrutiny of them by Members of the Commons?

I accept that Transport and Business were under Lords under my party in office, or that, going back into the '50s and '60s, even more Lords were Ministers in the Macmillan Government and the Attlee Government, but it is 2023, not '82, '64 or whatever. I am curious about where you think the line is. There has been a suggestion that the Prime Minister could not be from the Lords, but that is not the case: they could be. I am interested in your opinions about the appropriateness of that. Without any criticism of their lordships' House at all—I am a small "c" conservative in that regard—the lower House is the scrutiny Chamber, the unelected Chamber, and I am curious about your views on where the line is on Secretaries of State.

Penny Mordaunt: On a Grand Committee and Committee Room 14, that is definitely worth looking at and has merits over some of the practical issues with Westminster Hall. I am very sympathetic to that.

With regard to legislation, this is to me less of an issue than some of the immediate, more real-time events and crises that the Foreign Office has to deal a lot with, and that is because we tend to have a Bill Minister, who tends to lead on presenting and taking through legislation. In particular with Home Office legislation, which you mentioned, the bulk of the heavy



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lifting is done by middle-ranking Ministers. On occasion, they have even introduced a Bill themselves, as opposed to the Home Secretary.

In this particular case, as you acknowledge, the Foreign Office does not have a large legislative programme. Certainly in this Session, that would not be an issue.

Alex Burghart: As a junior Minister who has done that heavy lifting on a couple of Bills in the past couple of years, I agree with what the Leader of the House said. I am not sure that it matters so much with legislation, but during the passage of a Bill, if a Secretary of State were in the Lords, one would probably expect to hear from the Secretary of State in the Lords at some juncture, where we know the level of scrutiny is very high. I would not really see a problem in parliamentary terms.

Q43 **Chair:** I have some wrap-up questions on this issue. First, were we to look at the Grand Committee or Committee Room 14-type option, where would you envisage the Secretary of State actually being positioned in the room?

Penny Mordaunt: I have no strong views on that at all. Providing him with a chair on occasion and a glass of water would meet his requirements.

Chair: There are no constitutional or historical precedents.

Alex Burghart: Not that I am aware of. I imagine there is precedent for a glass of water and a chair.

Q44 **Chair:** I am sure that is true. I have some practical examples, which we have been talking about for the past few weeks, of where we might expect a Foreign Secretary to appear. If the Prime Minister decided that we were to take military action and there was to be a debate on that in the House of Commons, we would expect the Prime Minister to open the debate as normal, but the precedent would be that the Foreign Secretary would wind up that debate. Certainly, thinking back to Syria and other times, famous speeches delivered by shadow Secretaries of State or Secretaries of State in the wind-ups have perhaps changed the mood of the House. Again, I know that you cannot absolutely commit to anything here, but in that scenario are you imagining that it would now be more likely to be the Defence Secretary, rather than the Minister of State in the Foreign, Commonwealth and Development Office?

Penny Mordaunt: I think it depends on the issue. Issues of importance, whether they are about domestic security or deploying our armed forces overseas, would normally be led by the Prime Minister—issues of immense significance. I think if it were a case of deploying our armed forces, it would probably be appropriate and more than adequate to have the Secretary of State for Defence or potentially the Deputy Prime Minister—and on issues that involve a terrorist threat or response to that kind of scenario, the Home Secretary, in the circumstances that we have at the moment.



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I think it is, again—I am just stating this fact—the Government’s decision as to who they feel would be appropriate, on those arrangements. Judging by what has happened in the past, it has been those people and that calibre of person. I would think that the Commons would find it acceptable to have another senior Secretary of State, whether the issue is cyber, national security or armed forces. I think it is more on issues where there is perhaps a protracted crisis or a shifting policy response that people would really want contact with the Foreign Secretary directly.

Alex Burghart: I think that is right. It is harder to imagine somebody who was not a Member of the Commons summing up a debate rather than simply answering questions.

Q45 **Chair:** You talked about changing situations. I recall very vividly a statement made by the Foreign Secretary just as we were entering the covid period, when it was still “coronavirus”. We were still all crammed into the House of Commons at that point; it was before social distancing was even a thing. It was a very good statement. Lots of us had constituents around the world who were struggling to contact relatives, or relatives who were stranded, and it was a very long statement. I raised the case of a constituent, and that constituent’s concerns were responded to very quickly by the Foreign, Commonwealth and Development Office; the constituent’s son was able to get home from South America in that case. But that was going on across the whole House.

Do you have any views as to whether it would be acceptable at that point for a Minister of State—admittedly a Minister of State who attends Cabinet—who does not have the full policy brief within their portfolio to be responsible for those kinds of statement?

Penny Mordaunt: There are a couple of things here, and I can give you a current example. Clearly, on issues regarding policy, the Government’s stance on particular issues, and what has happened in the background or in bilateral discussions with other nations and third parties, those sorts of thing would normally take place on the Floor of the House. With regard to casework and other pressing issues, as we saw during Op Pitting and as we have seen more recently with regard to the situation in Israel and Gaza, the Foreign Secretary is clearly available to Members of Parliament.

What we are talking about here is what goes on in the Chamber, potentially, or some other pseudo-Chamber, so that MPs can hold to account and question the Foreign Secretary. The Foreign Secretary has listened to colleagues and has met with colleagues. He has been in contact with Members’ offices, including, I know, those of some members of the Procedure Committee. He has met the families of those held hostage. He has taken a great deal of time—and rightly so—where his attention was needed. He did that in the early stages of this job, because he was asked to by Members of this House and by me in my duties to this House.

So what we are not talking about here, and what is not an issue, I hope, is the Foreign Secretary spending time with Members of Parliament in



meetings, discussing things that are of concern to them. We are talking about a very specific, public moment where he is being held to account by Members of the Commons. If there are any complaints on any of the other fronts, hopefully I will hear about it—if not at business questions, elsewhere. I have already, in his short tenure in office, had many conversations with him—and with his officials and those from the Home Office as well—about ensuring that access and that ability to find out what is going on and raise a casework-type issue are in the best place possible.

Q46 Chair: Thank you. Potentially there is a vote this evening at the United Nations. There are concerns about policy changes that may or may not be the case. Members are concerned as to how we can properly scrutinise the Secretary of State, in this case, on this very important matter. It's a policy issue, so we won't go into it now. I am just raising the point that this is a live example of where Members are concerned about whether there is public scrutiny in the House of Commons, on behalf of their constituents, of the Government's position on those matters.

Can I just finish off on the constitutional risks, Minister? You have referred to the risk that, if we make this too easy and it is so wonderful for Members of the House of Lords to be scrutinised, we may end up with all our Ministers in the House of Lords. I think, legally, there are limits on the number that could be in the House of Lords, aren't there? Clearly any Government can change that if they wish to, but are there any other constitutional risks that you would like to highlight?

Alex Burghart: Those are the only ones that have crossed my mind, but as I said earlier, when you step outside of precedent, you run the risk of unintended consequences. One of the reasons why our system refers back to what has happened before is in order to minimise that risk. As the Committee will understand, a range of possibilities are raised by precedent; and as the Leader has already made very clear, the Foreign Secretary is extremely open to scrutiny and open to working with Members of both Houses to make sure that all Members of Parliament and Members of the Lords feel that their concerns are being addressed.

Q47 Chair: Thank you. Leader and Minister, I don't know whether either of you has anything to say that has not been said already, or anything to say in summary.

Penny Mordaunt: No, just thank you. I know this is a knotty problem to solve, but it is an important one and we look forward to hearing your recommendations.

Q48 Chair: Thank you. We look forward to your being able to include a motion on the Order Paper and a debate that allows us to do so.

Before you go, Leader, could we just touch on the issue of precautionary exclusion? We have received the letter from the Speaker about the House of Commons Commission's recommendations and we have had a brief discussion about the Committee's view on that. We will want to look at this in more depth, but could you perhaps give us your view as to how



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the Commission has arrived at the recommendations that we see before us now? Is there any insight you can give us to explain why the Commission has decided on the course it has?

Penny Mordaunt: On the broad proposals or the issue of proxy?

Chair: Broadly, and then we will come on to the issue of proxy—Jack Brereton wants to ask some questions on that.

Penny Mordaunt: A quick caveat, because I will never tire of saying this: my belief is that the only way we will arrive at what “good” looks like in a modern workplace, have the right standards of behaviour and have the right support for anyone who works on or with the estate is if we recognise that we are not one organisation. We are just shy of 700 organisations, so the only way you arrive at what “good” looks like is to have a very clear vision about what our duty of care is to one another—our staff and each other as Members—and what behaviours we should expect from people, and our responsibilities.

Because we do not have that framework now, we are always going to be looking at things through a silo of a narrow piece of policy, which often does not make reference to what else is going on in other organisations and other parts of the parliamentary system and estate, so we end up in ever decreasing policy circles and ever knottier problems. I think this is a key example of that.

When this was last debated on the Floor of the House, there were some key challenges put back to the Commission. One was about the individual’s right of reply and their human rights. One was a debate about arrest or charge—the approach from the Commission had been about risk, as opposed to a particular default on arrest or charge. The other issue was that this is a very narrow proposal that just looks at Members of Parliament. The bulk of the issue—the bulk of the problem—is not with Members of Parliament. It is with staff. House staff are looked after by the House authorities, but Members of Parliament’s own staff are not. That was another complaint from our colleagues, because it is what the bulk of people who work on the estate worry about.

The proposal that is coming back has kicked those ideas and that pushback around, and has come forward with some slightly revised proposals largely driven by the practicalities of implementing this. It is a situation that I think will be used in a tiny number of circumstances. It is hard to envisage a situation where the police would not apply bail conditions to someone they thought was a real safeguarding problem, and it was left to this panel to rectify that situation in terms of who worked on the estate or in a particular part of the estate—offices and so forth that were not directly associated with it.

For the amount of time that it has taken the Commission, it is a very narrow proposal, but I think it is seen as a foothold to try to address some of the other issues, and it has started to do that. On the staff side, that is



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now being thought about in the wake of particular cases. It throws up questions about how this scenario will work with other routes that alleged victims would have, such as the ICGS or through the party system route. It throws up probably more questions than it actually answers, but it is important that these things have been thought of.

I am sure that Members will want to look at the proposals. My door is always open. I know that there still remain some concerns around arrest. The Commission could not do anything before arrest, because in practical terms that is the only point where the police would be able to give information to the House. But we know that there are vexatious allegations made against Members. I think right hon. and hon. Members from the legal profession particularly think that charge is a more appropriate point for the House to look at these things. All of us on the Commission are still listening. We want the House to have something that it feels it has confidence in. My door is always open, and I know other Commissioners would say the same. That is where we are at.

There is a particular issue that we wanted your Committee to be aware of. We very much wanted this to be viewed in terms of how it would work in practice with what goes on in the Whips Office. If someone has been accused of something, it is quite often in everyone's interest that that person is not on the estate. When someone volunteers to do that, perhaps to their detriment but to reassure other people, they should enjoy the ability to vote.

If, for example, somebody had bail conditions applied to them and they were off the estate, or if the panel had required them to be off the estate, and they had access to a vote via a proxy vote, we felt that that was an anomaly that needed to be addressed. I feel very strongly that if someone has volunteered for the benefit of the parliamentary community to be off the estate and not present, they should not suffer for that rather than going before the panel, which may then award them a proxy vote. That is the anomaly we wanted the Committee to look at.

Chair: Thank you. Jack Brereton has specific questions on proxy votes.

Q49 **Jack Brereton:** Previously, proxy voting has only been extended to people on maternity or paternity leave, and we have extended it to those who are seriously ill. There was quite a lot of reluctance to do that, so why is it appropriate that it should now be extended to those who have potentially committed a very serious offence?

Penny Mordaunt: Because you are innocent until proved guilty. The reason that it has taken so long for these proposals to be deliberated on is that we are asked to come to this place on behalf of our constituents, who expect us to represent their interests and to use the vote we have been given. If you are going to prevent someone from doing that, the reason needs to be sound.



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Although we deliberated for a time and have had proxies, and it has rightly taken a great deal of thought and care, we have given people who are seriously ill the ability to exercise their vote while they are unable to be on the estate because of ill health. To me, that is the right thing to do. To ask or compel people not to be on the estate, when potentially they have done nothing wrong, is not right, in my view. Clearly, there will be moments when having a vote is not appropriate, but on the current proposals put forward by the Commission, the view of many learned colleagues is that when a person is arrested for something, their innocence must be assumed until they are proven guilty.

The police may impose bail conditions, or the panel may decide that there is a safeguarding issue for somebody, but if you have one scenario in which, for example, the police have put bail conditions on somebody and you allow that person to have a vote, and you have another scenario in which somebody may not have any conditions put on them by the police but they have volunteered not to be on the estate, that is an anomaly that makes no sense.

Q50 Jack Brereton: There are concerns about grouping those who are on paternity or maternity leave or who are seriously ill with those who are potentially very serious offenders. A person may face all sorts of questions just because they are going on paternity leave, because, publicly and very clearly, they now have a proxy. Surely there should be a way to distinguish those who have a proxy for reasons of paternity, maternity or serious illness from those who are under investigation for very serious offences.

Penny Mordaunt: That is a slightly different question. I fully appreciate that somebody who is off the estate because of ill health may not wish to disclose the details of their illness. That is about distinguishing one set of individuals from another. There are things that you could do potentially that would address that point. If you are allowing somebody in one set of circumstances in which, say, the police have imposed bail conditions because they view them potentially as a safeguarding issue or because their alleged victim is on the estate and should not have to endure their presence, to vote, and somebody who had wanted to go until things had been resolved but was not able to vote, that does not sit well. Your Committee has all kinds of knotty problems to solve, and we rely on you to think them through and solve them. It is an important point of principle that, unless there is a very good reason, we facilitate Members of Parliament being able to exercise their vote on behalf of those who sent us here.

Q51 Chris Elmore: I asked this question of the shadow Leader of the House, so it is not aimed at anybody. I appreciate that you are only two members of the Commission, and that it is a broader body looking at a really complicated issue, so I do not make light of any of the work that the Commission has done. We have made our own responses to Mr Speaker and the Commission over the past year, or however long it has



been since we have been looking at this work.

On the safeguarding argument, I am curious to know what the Commission's next step is in relation to constituency offices. Members of Parliament are governed—that is a loose term—by some archaic laws, which give us privilege, which is a privilege and should be allowed to continue, so that we can say what we wish on behalf of supporting our constituents without legal recourse; you know that. However, in any other profession, if the police had charged somebody who had a licence to practise such as a doctor or a solicitor, or someone were a teacher, that person would not necessarily be in a position where they had access to vulnerable constituents, or could go into schools.

While completely agreeing that if someone voluntarily is not to be on the estate for a safeguarding reason—a victim should be allowed to go round the estate and carry on with their work, for example—are we putting that on its head with a different fact? There are thousands of people who work on the estate, but as MPs we have access to thousands of constituents. The police do not necessarily set bail conditions, but this could come from a constituent. How do we deal with a scenario where it is publicly available that someone has a proxy because they have been asked not to come on to the estate for safeguarding reasons, but can continue going about their constituency business?

Penny Mordaunt: I will bring you back to what I said at the outset. We are never going to arrive at what “good” looks like, or something that makes remote sense to anyone in a normal place of work that is one organisation, unless we start to address these problems together with other organisations. We are talking, in some cases, about a set of circumstances that are vanishingly small but which might crop up. The Speaker's Conference has done a good job of looking at the relationship between Members of Parliament and their staff, and thinking through all of that, but we should look at these things in the round.

It is not just about behaviours—it is also about security. How are we going to arrive at excellent security and ensuring that people are safe in this place unless the Cabinet Office, political parties and the House authorities are working together? That is now starting to happen on a tighter basis. Without that we are not going to arrive at what the best looks like. That is my view, and I will continue to say it to every Committee I appear before.

Q52 **Nigel Mills:** Could you see a scenario, Leader, in which you would want to be one of the panel of three who determined exclusion or otherwise?

Penny Mordaunt: If the House voted for this—and it is not the proposal that I would be on the panel—if my name were included, and the House wished that process to be stood up, I would discharge those duties. My thinking, if I were to do that, would be completely focused on risk. There is always a danger when you set up a body that people automatically feel that they have to err on the side of caution, as it were, and they would reach a conclusion that that individual should not be on the estate. The proposal has merit only if it is a genuine risk-based approach that looks at



credible information from the police, and at what conditions they have set, as well as whether someone has volunteered to leave the estate themselves, and reaches those conclusions. When the issue was debated on the Floor of the House, Members of Parliament felt that this should be led by their peers, not by HR people and that sort of thing.

Q53 Nigel Mills: I came to the same view. The reason for asking is that we have a panel with one of the MPs on the Commission. There are up to six people—one of them in the Cabinet, one in the shadow Cabinet, another one a Government appointment, another one an SNP appointment and two Committee Chairs, one appointed by the Government and one by the Leader of the Opposition, basically. It is not a brilliantly accountable or impartial process if we are not careful, is it?

Penny Mordaunt: That is something that people can feed back on. The original panel set-up has evolved, based on what Members of Parliament have suggested. It is not the case that I would be sitting on that—

Nigel Mills: You are one of only six who could.

Penny Mordaunt: I think it would not happen—everyone else would have to have had something unpleasant happen to them for that scenario to arise. Of course, we all have—

Nigel Mills: It would be down to the shadow Leader of the House as well.

Penny Mordaunt: This comes back to my point. All of us have all kinds of personal interests and things that we want to happen in our parliamentary career: there are things that we want to do or offices, jobs or Committees that we would all like to sit on. However, none of those personal and private concerns should trump our obligations to one another and the place in which we are fortunate to sit.

In all that we do, we can try to strengthen that, make people aware of those obligations and support and call out situations in which people are being intimidated into doing the wrong thing, should that scenario arise. However, if we cannot rely on one another—we all write the rule book and police ourselves—we are all doomed, quite frankly. The vast majority of people who are given responsibilities sitting in judgment, for want of a better expression, on colleagues know what their duties are and exercise them with the responsibility matching the authority that they have been given.

Q54 Nigel Mills: I am just trying to work out why the House of Commons Commission chose the panel member to be a member of the Commission and not a member of the Liaison Committee, who would at least be a Committee Chair elected by the House. There are various other ways to find a senior MP who is not connected to the Government or the Opposition who might feel a little—

Penny Mordaunt: That is a legitimate question. In part, the proposals are arrived at with regard to trying to keep confidentiality and those sorts



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of concerns, but that is a legitimate piece of feedback, just as the charge point is a legitimate piece of feedback. As I say, the Commission has arrived at this proposal, but I know that we are all still in listening mode, so if you think that it can be improved or would have greater confidence for the House to have that different panel make-up, please let us know.

Chair: Thank you very much, Leader of the House and Minister. I know that we have tested you on many points, so we very much appreciate it. Can I ask members of the Committee to stay behind for a few minutes for a private discussion?

That is the last piece of evidence that we are taking, and we will look to report back to the House in the new year on the matter of Secretaries of State in the House of Lords and their accountability to the House of Commons.