



Welsh Affairs Committee

Oral evidence: [Silk Commission Part II: Devolving legislative powers to Wales](#), HC 1239

Tuesday 29 April 2014

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Written evidence from witnesses:

- Paul Silk
- Helen Molyneux
- Professor Noel Lloyd CBE

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Members present: David T. C. Davies (Chair); Guto Bebb; Geraint Davies; Glyn Davies; Stephen Doughty; Jonathan Edwards; Nia Griffiths; Mrs Siân C. James; Jessica Morden; Mr Mark Williams

Questions 1-81

Witnesses: **Paul Silk**, Chair, **Helen Molyneux**, Member, and **Professor Noel Lloyd CBE**, Member, Commission on Devolution in Wales, gave evidence.

Chair: Good morning. Thank you very much for appearing before us once again. We all know one another quite well, so I will ask Siân James to start off with a few questions.

Q1 Mrs James: What is your view of the political, media and public reaction to part II? You agreed the report unanimously, but were there any areas of contention? What was easiest and what was not easiest to agree on?

Paul Silk: Thank you very much for inviting us again; it is a pleasure to be here, as always. I will deal with the second question first. Of course there were areas where we had a more vigorous discussion and different views were put forward—from Select Committee proceedings, you yourself will be well aware of that—but we came forward with a unanimous report. I am very pleased that we did so, because the persuasiveness of our report depends a great deal on the fact that we were all agreed on all of the recommendations we made.

You will find some areas in the report where we set out the arguments in favour of one course or another. For example, on the limit of energy generation capacity we set out four different

arguments. It is not difficult to deduce from that that those four arguments were put forward in the commission, but we were able to come to a unanimous conclusion on that, as on other things.

We have been very pleased by the reaction to the report. Immediately afterwards, we had a reaction from the Prime Minister, who welcomed the report. We have had positive reactions from the Leader of the Opposition and from the Deputy Prime Minister. I understand that this afternoon there is a debate in the National Assembly, with a welcoming motion from the Assembly Government. I look forward to reading that debate and seeing what the different parties say in the Assembly.

Professor Lloyd: I felt that the commission worked very well as a team, if I can say that. Clearly, we all had our different backgrounds—some of us were independent members and some were political nominees. The discussion was very measured. I hope, at any rate, that the text of our report demonstrates the thinking that went into our recommendations and the care with which it was constructed.

Chair: Various members of the Committee already want to come in. Perhaps some of them might address their questions to you, Ms Molyneux, as you have not answered anything yet. The first one is Jonathan Edwards.

Q2 Jonathan Edwards: I have a quick question. This is the second part of the commission's work. Were there any tangible differences in approach in terms of how you undertook the two parts? Which was the easier to complete—Silk I or Silk II?

Paul Silk: Perhaps I ought to answer that; Helen was not a member of the commission for part I, so it would be unfair to ask her to do so. No, I do not think there were. We had a change of membership. Helen and Trefor Jones joined us and Dyfrig John left us, but there was no real change in approach; Sue Essex also left us, of course, and Jane Davidson replaced her. I do not think there was any difference in the ease or difficulty of coming to our conclusions.

Professor Lloyd: The only difference is that the subject matter of part II was much wider than that of part I. Otherwise, we approached the task in a very similar way.

Q3 Geraint Davies: There is a Scottish referendum coming up. If, for argument's sake, Scotland voted yes, would that have a bearing on the recommendations you have made? Secondly, is there an overall cost that you have attached if all of these changes are implemented, particularly given the economies of scale? If we did it for every group of 3 million people around the UK, it might cost quite a lot of money, mightn't it?

Helen Molyneux: In relation to the Scotland issue, we took the approach that we were looking at this from the perspective of what was best for Wales and the United Kingdom as a whole; that was part of our remit. Obviously, we looked at Scotland and the way the devolution settlement works there and used that to inform our conclusions, but Scotland is a very different place from Wales. We looked at each individual part of our report in the context of Wales itself. While it was useful to look at Scotland, it did not necessarily influence our thinking on what was best for Wales. The outcome of the referendum will change the landscape slightly, but our conclusions stand by themselves.

Q4 Geraint Davies: And the overall costs?

Professor Lloyd: We address the issue of cost at all places in the report. We took that very seriously and had estimates of potential costs from the different Departments concerned; we mention that in chapter 16. Of course, if the recommendations are accepted, there will be a transfer of resource from Westminster to Cardiff. That is around £500 million. In terms of the cost of

implementation, we estimate a very small cost of, at most, about £5 million, which is about a 20th of 1% of the total Welsh Government expenditure budget. We would expect that to be less, because it does not take into account the benefits of alignment. Part of our recommendations is to align some things with responsibilities already held by the Welsh Government, so there would be benefits of alignment in that sense. That would be roughly the order of magnitude; it is pretty much break-even.

Q5 Geraint Davies: Let me make sure I have got this right. What is being said is that in some instances devolving services will save money. Presumably, in some instances, because of economies of scale, there will be a net overall cost to the public Exchequer, but the global impact of the cost changes from the devolution recommended in this package is not known. I know you mentioned implementation, but what I mean is when it is running.

Professor Lloyd: They cannot be known because it depends on what actually happens. We have an estimate that we would expect the net additional annual cost to be less than £5 million, which is roughly one 20th of 1% of Welsh expenditure.

Chair: We had better move on.

Q6 Jessica Morden: Can I ask a general question, before we get more into the detail? I am interested to know how you would respond to people who express their weariness with the time that is spent on process, structures and powers. You refer to it a bit in the introduction to the report but, in some people's eyes, it leads to politicians talking more about their own powers. How do you feel about that?

Paul Silk: All of us would very much like to see the end of a discussion about process and much more concentration on outcomes. It is easy to talk about process. We were discussing this yesterday. Helen was saying how important it is for the whole Welsh polity to concentrate on the outcomes, rather than on the processes. We were asked to do a job that, essentially, was about process and was not about outcomes. We hope that we have done that job, and that it will lead to a consensual approach to a system of governance inside Wales that will lead to the outcomes that we all want for the people of Wales. We tried to centre our report, as far as possible, on what was good for the citizens of Wales, not on what was good for the political class, so outcomes are very important to us.

Q7 Chair: Since we are still on the first one, let me leap in with a question that I was going to ask later. If your recommendations are implemented, how long will this settlement be good for—permanently, for a decade or so, for a couple of years, for six months or for just a few weeks, which seemed to happen last time around? How long will it be before we have you back for Silk III, a pleasure though it is?

Paul Silk: You will never have me back for Silk III—I have done my bit now. It was difficult for the commission to say that this was for ever, for the obvious reason that one member of the commission was a member of Plaid Cymru. We as a commission could not say that this was for ever. I do not want to say that to this Committee today, because it was not the commission's conclusion, but we hope that what we recommend, if it is implemented, will lead to stability for a generation, let us say.

Q8 Chair: A generation?

Paul Silk: Twenty-five years.

Chair: That has answered the question, thank you.

Q9 Mr Williams: As you travelled the country taking evidence from different groups, especially the general public, at the meetings you had arranged, did you detect any noticeable difference in the level of interest in the various themes you were looking at when doing it under part II as opposed to part I?

Paul Silk: We saw more people in our meetings in part II than we did in part I. Taxation policy is pretty recondite—we all pay tax, but the policy is a bit of a specialist subject—whereas people felt that they could come along to tell us that they did not like wind farms, had not been treated well in the health service or whatever. It was much more immediate, so we saw more people in the course of this work.

Q10 Glyn Davies: I want to ask you about the reserved model. You seem very keen on that. Could you tell us why you think that would be good for the settlement and how it would make things more easily understood? There has been some suggestion that the confusion arising out of the conferred model led to the references to the Supreme Court, which might not have happened if there had been a reserved one. Can you tell us generally why you think moving to a reserved powers model would be better?

Helen Molyneux: There is no guarantee that a reserved powers model would result in no references to the Supreme Court, but, when you look at the circumstances that gave rise to the references to the Supreme Court, the current model does cause difficulties for Assembly Members and the Welsh Government in terms of understanding the extent of their remit. That is largely a product of the way in which the conferred powers model was drafted in the first place. If you look at the history of it, it was quite a rushed job. It started off with the transfer of the powers that the Welsh Office originally had, so there wasn't a huge amount of detailed consideration given on a principled basis to which powers should be conferred and which should be reserved.

The very act of having to go through the process of drafting the reservations would help to clarify the settlement. It would put the onus on the UK Government to explain and understand what reservations they were seeking and why. The evidence we received from the Welsh Government was very much about having an explanation of why the reservations are being sought, so that that in itself informs understanding of the drafting and the reservations.

The evidence was overwhelmingly in favour of a reserved powers model to provide the clarity that people seek. When you look at the opinion poll evidence, there were areas where people thought the Assembly had responsibility where it did not, and vice versa. There is a very low level of understanding of where powers lie. From the point of view of responsibility and holding people to account, it is vital that the settlement is more understandable.

We have suggested that there should be a Welsh intergovernmental committee, one role of which would be to look at areas of contention and where there are misunderstandings about the settlement and where power lies. That in itself should help to prevent cases being referred to the Supreme Court. Overall, the evidence was pretty overwhelming that a reserved powers model would be clearer and would provide more stability.

Q11 Glyn Davies: I think the move to a reserved powers model, as in Scotland, is the most important recommendation in the entire report. Did you spend much time looking at how the policy works in Scotland? The Secretary of State strongly disagrees with your recommendation. Scotland has to come into this. For all the years I was in the Assembly, there was a comparison between Scotland, with a reserved powers model, and Wales, which had a conferred powers model. Have you spent any time looking at Scotland and taking on board the points that the Secretary of State has made about the Scottish position being different from that of Wales?

Paul Silk: In the report we refer to what Donald Dewar said about why he wanted to move from the conferred powers model that was in the Scotland Act 1978 to the reserved powers model in the Scotland Act 1998. Those are very persuasive arguments in favour of greater clarity. I will give an example that has come up since our report appeared. In the report, we make reference to taxis and say that the Law Commission favours the devolution of powers over those. Sir David Lloyd Jones, the chair of the Law Commission, has been in touch with me to say that actually the Law Commission does not favour anything in terms of policy—that is a mistake that we made in our report—but what has emerged from that is that the Law Commission believed that the regulation of taxis was devolved to Wales, and the position is not clear. If the Law Commission cannot be clear about whether taxi regulation is or is not devolved to Wales, there is clearly a problem about clarity.

Q12 Glyn Davies: The clarity should always have been there. I remember the calf subsidy scheme that the Government introduced, which was not legal; this has happened again. Are you satisfied that a reserved powers model would mean that it would not happen? Can you look at other examples in the world where they have moved from a conferred powers model to a reserved powers model and that has made things operate in a much clearer way, where the public can see what is happening and there is greater accountability?

Paul Silk: As Helen said, we cannot say that it would never happen and that there would never be an absence of clarity in the future, but it is interesting that there have been no references of Acts of the Scottish Parliament or Acts of the Northern Ireland Assembly to the Supreme Court, whereas there have been several in the case of Wales.

Q13 Mr Williams: I turn to specific areas of policy. I want to talk about teachers' pay; I should declare an interest, as a former teacher who is still a member of the NASUWT.

Glyn Davies: Are you going on strike?

Mr Williams: They are not on strike—you are all right. The fundamental question is, how do you reconcile your conclusions with the fears expressed by some of the unions that if teachers' pay and conditions were devolved we could see teachers' wages in Wales considerably lower than those enjoyed by colleagues in England?

Helen Molyneux: The way we approached it was to look at where responsibility should lie. What the Welsh Government then decide to do with their powers is a matter for them. There is no reason why they would not increase pay or use their ability to be more flexible about pay to encourage different levels of pay—however they saw it. Our view on this, taking into account the evidence we received, was that the Welsh Government have responsibility for all aspects of education—training, how many teachers they employ, standards and managing teachers—but do not have responsibility for pay. In most other devolved public sector areas, the pay responsibility sits with the Welsh Government, so it was a slight anomaly in that regard. We just felt that the two should follow each other. If you are responsible for all other aspects, you should be responsible for pay as well.

Q14 Mr Williams: How closely did you look at the examples of Scotland and Northern Ireland, where exactly what you have suggested is indeed devolved? Did you identify any particular problems? Can we reassure our colleagues in ATL Cymru and the NUT?

Helen Molyneux: I do not remember that we received any evidence on the specifics of—

Professor Lloyd: The point I would make here is that our concern was with the appropriate locus for responsibility, not with the policy decisions taken by a Government. I would want to distinguish between those two. Our view was that the appropriate locus for responsibility was the Welsh Government, since education is devolved.

Q15 Mr Williams: On that basis, we should be promoting the principle that the political decision could actually enhance teachers' pay, although there is a risk that it could be diminished.

Paul Silk: It was interesting that in a different context, when we had the Police Federation giving evidence to us, they said that they felt that the devolution of police pay would be a good thing, because it had been a good thing for their colleagues in Scotland.

Chair: Yet it seems that the teaching unions think that the coalition Government are more likely to be generous than the Welsh Assembly Government. Here is another teacher to comment on it.

Q16 Nia Griffith: You have just mentioned other sectors that are devolved and what happens there. Could you explain to us what happens in the health service, in further education and in local government in Wales in respect of pay?

Helen Molyneux: In the health service, the Welsh Government have the ability to set the rates of pay but have chosen to stay within the national framework for pay. What were the other two areas?

Q17 Nia Griffith: Further education and local government.

Professor Lloyd: I do not think we received any evidence on either of those two areas. If you are asking for the factual position, obviously that is in the public domain. As I remember, we did not receive any evidence on further education or on these matters in local government.

Q18 Nia Griffith: I am taking up the point about other areas of devolved responsibility and how they may or may not compare with teachers' pay. If the Welsh Government have not used the power in respect of the health service or have chosen to keep within the same guidelines as the UK, do you see a particular reason for that? Do you think that would apply to teachers' salaries as well?

Paul Silk: As Helen and Noel said, that would be a matter of policy for the Welsh Government. It was not our business to recommend what policy they should or should not follow, but the responsibility for management and the responsibility for pay seemed to us logically to go together, in accordance with our principles. As a commission, we had no view on what should happen with any of the powers that we suggested be given to the Welsh Government.

Q19 Geraint Davies: I have a quick question on teachers' pay. Basically, do you accept that if there are different levels of pay for teachers in England and Wales it will undermine movements of teachers between England and Wales and that cross-fertilisation? If we have an issue in Wales with a reduction in the amount of language teaching—which there is—and want to attract more language teachers, but pay goes down still further, that might be a problem. The basic issue is that if there is a differential it will impact on cross-fertilisation.

Paul Silk: That is exactly the sort of issue one would expect the Government to take into consideration if they had those powers. If they chose to set pay in a way that was less attractive to teachers in Wales, clearly, that would have the consequence that they would not be able to bring in teachers from England or Scotland.

Geraint Davies: There could be a bidding war, couldn't there?

Q20 Guto Bebb: I accept entirely that there is a difference between the principle of giving responsibility to the Welsh Government and implementation, which is a political matter for whatever Government are in place in Cardiff at that point in time. However, specifically on the issue of the police, you mentioned the Police Federation being supportive of devolution of pay because there had

been an increase in pay in Scotland, but you want the pension arrangements to be retained at the centre. What is the rationale behind that?

Professor Lloyd: There are really three reasons. We discussed this very carefully. In the public sector, there has been a major review of pensions, which is currently being put in place. Pensions are a long-term issue. Looking at the long term, we were cognisant of the fact that that review had only just started to have its effect. The second issue is that small pension schemes are very expensive to run. This is one area where there are significant benefits of scale. The third issue relates to the cross-border portability of pension arrangements. Our view was that at this stage we would not wish to recommend devolution of pension arrangements, simply because of the current instability and the review that is in place and because we are aware that this is going to be a very serious issue over the next 20 to 25 years.

Q21 Guto Bebb: Is there not a potential accountability issue there? If the Welsh Government followed the Scottish Government's lead and increased pay, there would be a knock-on effect on pensions that would not be the responsibility of the Welsh Government. In terms of accountability, a decision could have fiscal implications for the centre, with no responsibility falling on the Welsh Government for that decision.

Professor Lloyd: Responsibility for the contribution to pension schemes would remain, of course.

Q22 Guto Bebb: But there is an undervaluation of the fund.

Professor Lloyd: We accept that there are arguments in the other direction, but our view was that, on balance—not a fine balance; it was a clear view—it was not wise to recommend devolution of pensions at this stage.

Q23 Geraint Davies: I turn to transport issues. You have suggested further devolution for some parts of the transport system—port development, Network Rail funding and speed and drink-driving limits—but not for others. Could you briefly explain that? Do you accept that there are certain problems with cross-border transport and, again, the need for continuity? There is still a mixed picture on transport, with devolution of some issues and not others. While you are at it, could you comment specifically on the issue of speeding limits and drink-driving limits leading to confusion? Maybe it is more obvious going across the bridge, where you can flag it up, but it is thought that there might be an issue with people going across the border and moving from one speed limit to another. If you are over the limit in terms of drinking on one side and not on the other and the police are chasing you, you might run across the border like in some Texas western.

Professor Lloyd: Can I take your second question first? Again, the reasoning behind this was the appropriate locus of such things in relation to other responsibilities already held by the Welsh Government, such as health and safety. If, at any future stage, our recommendation had been accepted and the Welsh Government chose to have different limits in Wales from those in England—they may or may not do that, of course; again, that is a political decision—these are issues that they will have to take into account in coming to that decision. Clearly, there would be a major requirement of information sharing and making those differences clear to the users.

Q24 Geraint Davies: Do you think it is in the public interest to have a different drink-driving limit and speeding limit either side of a border when you are going down the same road? Surely, that is not in the public interest.

Paul Silk: We were persuaded about this by the UK Government's own view in relation to Scotland. They argued that the devolving of speed limits and drink-driving limits to Scotland was appropriate because the Scottish Government had responsibility for road safety and for health. The

Welsh Government have responsibility for road safety and for health. In our view, if that argument applies to Scotland, where people cross the border in exactly the same way as they cross the border between Wales and England, it applies equally to Wales. That was the principal argument that we—

Q25 Geraint Davies: On the principle, what about the Severn crossing? In your report, you argue that there should be greater co-operation between the two Governments, not that there should be clarity over who is in charge. At the moment it is the UK Government. I appreciate that there is an argument that it should be the Welsh Government, but your argument is that there should be closer co-operation. It seems to me that that will lead to a fudge. My personal view is that we should have virtually no toll, because it is a stranglehold on the Welsh economy, but that is beside the point. The issue here is who is responsible. You are saying, “Let’s all get together and have a chat about it.”

Paul Silk: You can characterise it in that way. That is fair, in a way, but, at present, the responsibility is a responsibility of the UK Government. As you say, it has a substantial effect on the economy of south Wales. What we wanted to recommend was that the Welsh Government should have as much input into that as possible because of their responsibility for the economic health of south Wales. We wanted the UK Government to co-operate with the Welsh Government as far as the Severn crossing tolls are concerned.

Q26 Jonathan Edwards: I was intrigued by your answer to the question about the possible impact of the Scottish referendum on your recommendations. My personal view is that the second part of your report will be superseded by events in Scotland; that is completely outside your control, in any case. In your evidence this morning, you mentioned that there would be a slight change in the landscape, but if Scotland votes yes that is the end of the British state. If it votes no, it could end up with devolution max, with only defence and foreign affairs reserved to Westminster. Are you seriously saying that the people of Wales will be content with a settlement that does not even take us up to where Scotland is now?

Helen Molyneux: Our recommendations were based on the evidence that we received, the discussions that we had with members of the public when we went around the country and the opinion poll that we took. There is certainly no appetite for independence in Wales at the moment. The conclusions we came to were based on the evidence that was presented to us and our consideration of that evidence. On the basis that this is what we were presented with and these are the conclusions we came to, I would stand by the recommendations.

Q27 Jonathan Edwards: Twenty per cent said that they wanted to devolve defence and foreign affairs. What would be left if defence and foreign affairs were devolved?

Helen Molyneux: If they were devolved?

Q28 Jonathan Edwards: Yes—what powers would be left for Westminster? You mentioned that there was no support for independence, but 20% want to devolve defence and foreign affairs. On that opinion polling, which was the most detailed study ever undertaken into devolution and which you undertook in the course of your very valid investigation, those were the only two fields of policy where there was not a majority for devolving. One of those fields was broadcasting, which means that we are back to the script.

Chair: I am glad about that.

Q29 Jonathan Edwards: You mention the need for a new Welsh governance body. There is already a Welsh trustee on the BBC, and there is the Audience Council Wales. Isn’t this new Welsh

governance body a fudge? Why didn't you make the case for fully devolving broadcasting, which was the clear view of the people you took research from during your study?

Paul Silk: We concluded that the regulation of broadcasting was not something that could stop at the border. We therefore thought that the regulation of broadcasting should be done on a UK-wide basis—at least, on an England and Wales basis. We thought that the governance of the BBC, which is a sub-issue to the regulation of broadcasting as a whole, was not satisfactory as far as Wales was concerned. We were very disappointed that the management of the BBC did not agree to give evidence to us either in Cardiff or in London, so we were not able to ask them what their views on this might be.

Q30 Chair: Why did they refuse to give evidence to you?

Paul Silk: I have no idea. We said that we would see them in Cardiff, in London or wherever they wanted to see us, but they refused to see us.

Q31 Chair: Did they give a reason for that?

Paul Silk: They said that the Welsh trustee, who did come to see us, would represent the views of the BBC. We say in the report that we would have liked to have had the opportunity to speak to the management of the BBC. When the management of the BBC did come down to Cardiff, they said that we had not understood the Audience Council Wales. Of course, as many of you will know, one of the members of the commission is a member of the Audience Council Wales, so I think we did understand the ineffectiveness of the council.

Obviously, there is discussion about the renewal of the licence and what the future of the BBC might be. What we thought was appropriate was to have some model similar to the BBC Trust, so long as the trust exists, that would be responsible for the whole of the output of the BBC inside Wales and would have much more in the way of teeth than the Audience Council has at present. Of course, we also make recommendations about the governance of S4C but, as far as the BBC is concerned, we felt that the present inadequate arrangement should be replaced by a much stronger governance arrangement.

Q32 Jonathan Edwards: In terms of energy generation, in Scotland and Northern Ireland powers over planning policy are fully devolved, yet in your report you have upped the limit from 50 MW to 350 MW. One criticism from somebody like me would be that you are changing one arbitrary level to another one. Why did you settle on 350 MW?

Professor Lloyd: Currently the position is quite odd, in the sense that there is one limit for onshore renewables and another for offshore; the picture is quite complicated at the moment. We looked at the options and present them in the report. At one extreme, you devolve all planning responsibility; at the other extreme, you devolve none. Do you devolve planning processes for renewable projects only, or do you devolve them for all projects, up to a certain limit? Recognising the security of supply arguments, which are very important in terms of England and Wales together, we felt that it would not be appropriate to devolve all energy consent issues. We also felt that it would be inappropriate not to devolve some, because of the impact on localities. It was a case of deciding where on that spectrum one would make the distinction.

We felt that 350 MW was a reasonable level at this stage. It covers most of the renewable projects that are likely in Wales. Obviously, it does not include the very large non-renewable projects—nuclear, for example. It was a case of finding the right point—the fulcrum—on the balance of argument, security of supply being one aspect and local involvement being the other. It is a bit of a judgment of Solomon, perhaps, but that is what we felt was appropriate.

Q33 Jonathan Edwards: Is there a specific reason why Wales should have fewer powers than Scotland and Northern Ireland in terms of energy generation consent?

Professor Lloyd: Looking at the present position and taking all these arguments into account, this is what we felt was appropriate for Wales. We looked at Scotland throughout the report, but we were very conscious that we did not want to make recommendations simply because of something that was happening in Scotland—we did not want to ape Scotland. We looked at Scotland and Northern Ireland as a learning process, but our concern was what would be appropriate for Wales.

Q34 Chair: Mr Silk—or anyone else; I do not want continually to pick on you—what public support was there for the principle of devolving policing?

Paul Silk: As I recall, the figure from our opinion poll was something like 60%.

Helen Molyneux: In the opinion poll, it was 63%. Interestingly, 43% of the people we surveyed thought that responsibility for policing was already devolved.

Q35 Chair: Do you think people fully understood the potential complications that might arise if policing were devolved? At the moment, health is fully devolved, isn't it? We have a completely separate health service in Wales, but people do not understand that. I have said to people, "We have a completely different health service in Wales that is nothing to do with the Government," and they do not believe me. Literally, there are people who think that I am lying or completely mistaken and who assure me that there is, of course, a national health service. There is not, is there? It is nothing whatsoever to do with the Government, is it?

Helen Molyneux: No.

Q36 Chair: I will take your words as independent advisers and show them to them, because many people do not believe this. I do not think they will accept it if they suddenly discover that the Home Secretary no longer has anything to do with policing.

Helen Molyneux: In some respects, policing is slightly different from health, because it is already geographically very firmly fixed within Wales. You have the four police areas, which have their own chief constables. One of the things we looked at was cross-border co-operation and the National Crime Agency. We have not recommended any devolution in relation to that level of nationally policing. The National Crime Agency would not be devolved.

The evidence that we received pointed very strongly to the interrelationship between the police and other devolved services—health, crime prevention and the other emergency services are all devolved. The bodies we spoke to were very clear that there was already a level of co-operation between the devolved and non-devolved agencies, but that that would be helped and improved if the strategy for policing were being set from Wales. There is also the fact that Wales has very different policing requirements from those in some parts of England. We received evidence to the effect that the strategy that is being set in relation to policing generally is very much based on the requirements of the large metropolitan areas in England, which are not replicated in Wales.

Q37 Chair: You have talked about giving the Assembly the power to change powers of arrest, interrogation and charging of suspects.

Helen Molyneux: No. We said that we would not devolve those.

Q38 Chair: According to my brief, "This would mean the National Assembly would in future be able to take decisions on issues such as whether there should be Police and Crime Commissioners or a

single Welsh police force. Police pay should be devolved, but not police pensions. Powers in respect of arrest, interrogation and charging of suspects, and the general powers of constables, should not be devolved unless and until criminal law is devolved.”

Helen Molyneux: So we have not recommended devolution of the powers of the police.

Q39 Chair: But if Wales has a separate system of law, then by default some of those powers will be up for grabs, won't they?

Helen Molyneux: Yes, but we have not recommended the devolution of the criminal law either. In fact, in our recommendations in relation to the reserved powers, we have discussed specifically how the criminal law and basic points of civil law could be reserved.

Q40 Chair: Are you clear that the criminal law should not be devolved in any way at all?

Helen Molyneux: We did not receive any evidence that it should be devolved at this point.

Paul Silk: We do say in the report that nothing that we recommend should remove the power of the Welsh Government to impose through legislation criminal penalties in the areas that are devolved to it, so that area of the criminal law would be devolved, of course. Some agricultural offence could be made by the Welsh Government with a criminal penalty attached to it, but we did not recognise any appetite for the devolution of the criminal law as a whole at this time.

Q41 Chair: Do you not see a situation arising where, little by little, we end up developing a separate series of laws in Wales? Geraint Davies mentioned the issues of drink-driving and speeding limits being different, potentially, in Wales. Surely by default we could end up with different laws and different criminal offences in Wales.

Paul Silk: Obviously, there are different laws in Wales. That is a factor not just of the National Assembly making laws but of the UK Parliament making laws for England that are different from some of the laws in Wales. There is a divergence, but we are not recommending that there should be any divergence on issues such as offences against the person or those sorts of areas of black letter criminal law.

Chair: I am sorry—I am probably hogging it a bit. I promised to let Jessica Morden come in first.

Q42 Jessica Morden: How do you think devolving policing would reduce offending? Earlier, you mentioned different priorities for policing in Wales, but the crime routes in south Wales are clearly east-west and involve the metropolitan areas. I would be interested to know how you think that would be affected.

Helen Molyneux: That largely comes down to how policy is devised and what policy is implemented. At the moment, the Welsh Government are responsible for looking at how crime can be reduced but are not responsible for the next part of the process. An holistic approach, whereby crime reduction and crime prevention are joined up, particularly in relation to things such as health and the impact on local authorities and social services, would give them the opportunity to devise a policy that recognised the particular circumstances of Wales and Welsh crime.

Q43 Jessica Morden: You have said in your report that the current arrangements are working very well at the moment, so why fix it?

Helen Molyneux: The evidence we received was that the arrangements worked well because the people involved were making them work. The chief constables in Wales have regular meetings

with the Welsh Government, but they are meetings—they are not able to set the policy and the strategy.

Q44 Jessica Morden: The conclusion of Silk II is really that the current devolution settlement is too complex. Aren't you making it more complicated than it is at the moment by suggesting that you devolve policing, yet that the courts and legal system remain non-devolved?

Professor Lloyd: I do not think we are. In our recommendations, we are very conscious of the need for clarity. In terms of policing, we are very much aware that it is a public service that impinges, perhaps in a significant way, on people in their everyday lives. That is the argument that the locus of responsibility should be within Wales. Currently, policing and the rest of the justice system are within different Departments in Whitehall, for example. We do not feel that this makes it more complicated. Indeed, it makes it simpler, in the sense that all the services that impinge directly on the citizen—health, education and the fire service, which is now the emergency service—should be held together and that the responsibility aligning policy responsibility and funding should be within Wales.

Paul Silk: The evidence we received on this from people such as the police commissioners for South Wales and North Wales and from ACPO was very persuasive. Our conversations with senior and middle-ranking police officers since have confirmed to me that we have recommended something that both is doable and will be in the interests of the people of Wales.

Q45 Jessica Morden: Not all of the police commissioners recommended devolving policing. I believe that one did not express a view and that the other said that, unless you could prove it added value and improved the service for people, it would not be—

Paul Silk: That is correct. Christopher Salmon's view was that policing was already further devolved by the existence of police and crime commissioners, that there was nothing that taking it back to Cardiff would do to improve devolution and that it was much better for it to be administered from Carmarthen, Llandudno or wherever the police are based in north Wales.

Q46 Stephen Doughty: I want to pick up a bit of what Jess was saying. Helen, you mentioned that you are not recommending the devolution of things such as the National Crime Agency, counter-terror and other policing operations. In my experience, the most major issues I have come across in Cardiff very much involve that east-west direction of travel; I am sure it is similar in Newport and other cities. On major issues—criminal gangs operating in relation to drugs or burglary, counter-terror operations and a whole series of other issues—co-ordination between those national agencies and local Welsh police forces, right down to the level of an individual constable assisting on an operation, is absolutely crucial. Even though you say that you are recommending not devolution of those powers but devolution of overall day-to-day operational policing, is there not a chance of a disconnect between the two? We already see that, I am afraid, on some occasions between, for example, British Transport police and geographical forces.

Helen Molyneux: When we were taking evidence from the various bodies interested in this, what was quite impressive was the level of co-operation that there already is between forces. We talked particularly about the April Jones issue. The forces around that area co-operated and resource was moved from one area to another very efficiently and effectively, but that was done between the two forces—there was no directive down from the Home Office that that should happen. Those relationships exist and work very well. There is no reason why devolution should change that.

Q47 Stephen Doughty: Why would it add anything to it?

Helen Molyneux: I am not sure that it would add anything to it at that level, but it certainly would not be to the detriment of it.

Q48 Stephen Doughty: So it is a neutral impact.

Helen Molyneux: On that aspect, yes.

Paul Silk: On that aspect of co-operation. My colleagues will correct me if I am wrong, but I believe that when the chief constable of South Wales came to give evidence to us he said that South Wales had a very important armed response capability, which it deployed into England. That would continue. The devolution of policing would have no effect on the way in which that operated.

Q49 Chair: Prior to devolution of the health service, there was a lot of cross-border travel, with people in Wales going to hospitals in England and vice versa, but that has all stopped, particularly in the last 12 months. How can you be certain that the same thing would not happen in policing?

Professor Lloyd: This is a relationship between police forces. It is not at a higher level.

Q50 Chair: In health, there was a relationship between PCTs and health boards.

Professor Lloyd: That is one of the things we have recommended in the report.

Q51 Stephen Doughty: The other question I had was about the development of a separate legal jurisdiction and so on. Could you comment briefly on the historical differences between the situation with Scotland and the England and Wales jurisdiction? That is a very different set-up whose existence goes back far longer, to the Laws in Wales Act. What do you see going forward, with development of laws that are passed by the Assembly and so on? What is the future of that England and Wales legal jurisdiction more broadly, at a conceptual level?

Professor Lloyd: Currently we have laws that apply only in Wales, laws that apply only in England and, predominantly, laws that apply across the two countries. We are seeing an increase in the number of laws that apply in Wales only. It is not huge, but it is increasing. Our recommendations in relation to the justice system look at the spectrum from probation, on the one hand, through to the judiciary and the courts, on the other. Our emphasis here is that the arrangements should take into account the particular requirements of Wales. Looking at the courts, for example, we have a sequence of recommendations in relation to the High Court, the Supreme Court and so on, so that the operation of those courts, which is on an England and Wales basis, takes into account fully the requirements of Wales. That is important.

We avoided using the term “jurisdiction” because different people use it in different ways. It has a variety of meanings, so we do not use it anywhere in the report and concentrate on individual issues. I have mentioned the recommendations in relation to the judiciary and the courts. We felt that there was a strong argument for the devolution of probation, again because of the localism argument. We recommend the devolution of youth justice because most of that is very intimately connected to the education system and social care. We are not recommending the devolution of probation and the prisons, but we recognise the strength of the argument and recommend that it is looked at in detail by the two Governments. However, in general terms, we have avoided the concept of “jurisdiction.”

Q52 Stephen Doughty: You have just mentioned understanding of Wales and Welsh distinctiveness within the legal system. I note the recommendations on the Supreme Court, for example—having a Welsh representative and so on. What is the current situation regarding the Supreme Court? I was not aware of that myself, but is there no guaranteed Welsh judge or position on the Court?

Professor Lloyd: No, not at present.

Q53 Stephen Doughty: Your recommendation is that there should be.

Paul Silk: The president of the Supreme Court has said that when there is a Welsh case it will endeavour to have a co-opted justice—I do not know what the technical term is—who understands Wales. In the recent agricultural wages case, the Lord Chief Justice has sat with the Supreme Court.

Q54 Stephen Doughty: But in a normal case, there are Scottish and Northern Irish representatives.

Paul Silk: There are two Scottish representatives and one Northern Irish representative on the Supreme Court.

Stephen Doughty: That is very interesting.

Chair: Let me bring in Siân on youth justice. We will try to come back to that, if there is time, but I am getting a bit worried about the clock.

Q55 Mrs James: I am interested in your recommendations for the youth justice area. We have a problem in Wales, as we do not have many places; a lot of our young offenders and women have to go over the border to England. You talk about the costs quite a lot, but did you take any evidence on the costs to other agencies? For example, women are very rarely released to their original home addresses, so there is a whole issue of children being taken into care and what sort of prison and training opportunities are appropriate for women and for juveniles. I would be quite interested to hear why you think that particular part of the justice system is a clear candidate for devolution.

Paul Silk: For adult female offenders, there is no provision inside Wales. We heard quite a lot of concerns that there was no women's prison inside Wales. On young offenders and the youth justice system, the vast majority of youth offenders are dealt with in the community, not through any sort of custodial sentence. The integration with the health service, the education service and social services was the primary reason why we thought youth justice should be devolved. The issue was not the most serious youth offenders but the vast majority of youth offenders, who are dealt with through community penalties. We felt that that was integrated with devolved services and should therefore be devolved. You are absolutely right that there is a problem with custodial places on both sides of the border. Girl offenders who need custody have to go to England, which is a substantial problem.

Q56 Mrs James: Perhaps it is an opportunity for us in Wales to look at other, non-custodial ways of addressing offending by young women and girls. You concluded that there was a "persuasive case" for the devolution of prisons and probation services and called on the two Governments to review the feasibility of that by 2018. What do you think would be the main benefits of devolving prisons and probation services?

Professor Lloyd: Probation is very much connected with other devolved responsibilities. That would certainly be the case if responsibility for the police were devolved, but there is a close link between the probation service and education and social care. Of course, there is also a close link between the probation service and prisons. Consequently, it is quite a complicated situation. Changes to the probation service are imminent as well. We were well aware that there would be a director for Wales in NOMS, but we felt that there was a strong case for devolving probation. There is a case for devolving prisons as well, but in view of those complications, the exchange of prisoners across the border and the non-availability of, for example, a women's prison in Wales at present, we felt that further work was needed at a level of quite significant detail.

Paul Silk: The plant is not in the right place and is not the right plant for the needs of the Welsh prison population. That is a major practical problem.

Chair: Stephen Doughty's question may already have been dealt with to some extent.

Stephen Doughty: I am happy.

Q57 Geraint Davies: I want to ask about devolution of social security. Don't you accept that if the Welsh Government invest in economic development, as they can, the benefit of that is to reduce social security bills—if people get jobs—and to increase the income tax take? Those benefits are taken by Westminster and are not fully devolved. I appreciate that you cover some of this in your previous report, but don't you think there is still a fundamental mismatch between the fact that we have devolution of economic power and the budgets for that, and the proceeds of that, be they beneficial or otherwise?

Paul Silk: I recall that we explored that area when I came to give evidence before. The Chair also raised the issue of the integration of the tax and benefits system. Our conclusion was that, essentially, what Calman called the social union was the reason why, by and large, social security should not be further devolved to Wales. Since we published our report, there has been the report by the IPPR on devolving social security benefits, which makes some very interesting points and quite a persuasive case, in some ways, for devolving housing benefit, as an example of a benefit that is paid centrally but is affected by the policies that are already devolved in the housing area. In our report, we refer to housing benefit as something that in future perhaps ought to be considered for devolution, because of its relationship to policies that are the responsibility of the Welsh Government.

I can see the argument that a Welsh Government might choose to do different things in terms of housing policy that meant that housing benefit payments would decrease. As I understand it, housing benefit payments have increased not because more money has gone into the pockets of claimants but because it has gone into the pockets of private landlords. That is something that the Welsh Government might choose to affect by building more houses or whatever it might be. I can see that that is a tenable argument, but in our report the fundamental idea on social security was that, in so far as we have a social union between Wales and other parts of the United Kingdom, it is important that benefits are the same to citizens wherever they might be inside the United Kingdom.

Q58 Geraint Davies: At the same time, you are arguing that public sector workers' pay should be devolved; we have talked about teachers and the health service. The wages bit would be devolved, but the social security bit, which might be allied to wages, would not be devolved. Aren't we in danger of getting a bit of a mismatch?

Paul Silk: As we said, we are not arguing that there should be any difference in the wage level for public sector workers. We are saying that the policy should be devolved.

Q59 Geraint Davies: So why devolve it? If there should be no difference, it is a waste of time, isn't it?

Paul Silk: You are correct to say that you could devolve all social security benefits, so potentially levels of social security benefits inside Wales would be different from those in other parts of the country. The arguments that Noel mentioned previously about portability of pensions apply equally to benefits. There are many complications to do with European rules about portability of benefits. It would be very complicated, for example, to envision a world where old-age pensions in Wales might be different from those in other parts of the United Kingdom, as long as we remained in the United Kingdom.

Geraint Davies: That is a case of harmonisation instead of devolution, isn't it? Perhaps we should do a report on that.

Q60 Mr Williams: In your report, you spoke about issues related to health as they affect the borders. You note that you “welcome the overarching protocol that has been established by the two Governments on cross-border healthcare” but “believe that the current arrangements should be strengthened by developing individual protocols between each” LHB “in Wales and ... NHS Trusts in England.” We did an inquiry on this in the last Parliament. I was under the impression that those protocols did exist and were functioning. The fact that you have made a recommendation suggests that the cross-border flows of patients are not operating properly. Is that a fair assessment?

Professor Lloyd: Some of the evidence that we received did raise issues about the relationship between health care on the two sides of the border. This is an area where some significant work needs to be done to assess what the present position is. I am sure some of you will have read the recent report commissioned by the Nuffield Trust and the Health Foundation, which contains some interesting recommendations. One of them is that data should be gathered on a strictly comparable basis in England and in Wales. We feel that there was a significant piece of work to be done here to ensure that the interests of the patient were respected and put first in areas immediately on or straddling the border. The overriding protocol is in place, but our feeling was that there should be more detailed arrangements at local level for the contiguous authorities—the local health boards and NHS trusts. That is a task that needs to be done.

Q61 Mr Williams: You pointedly mention the borders in one of your recommendations, but in terms of accessing highly specialist services it goes a bit broader than that, doesn't it? I can think of constituents of mine from the Hywel Dda board needing to access hospital services in, say, the Frenchay hospital in Bristol, so there needs to be a mechanism. The protocol needs to be somewhat wider, doesn't it?

Professor Lloyd: That is the high-level protocol that is in place at present. We are suggesting that there should be more detailed protocols dealing with things such as where you take a seriously ill patient in an emergency, for example. That immediate cross-border understanding should be put in place.

Q62 Mr Williams: I have not read the evidence, but what did the Assembly Government say about those recommendations when you made them?

Professor Lloyd: We have not yet received the Welsh Government's responses to the report.

Q63 Mr Williams: But you would anticipate that, hopefully, there will be a positive response on the development of health protocols between England and Wales.

Paul Silk: We certainly would. Those of you who represent border constituencies will know this far better than we do, but when we held public meetings in Chepstow, Newtown and Wrexham, this was an issue that came up frequently. People were concerned about cross-border provision of health services. I guess that is replicated right down the border. We felt that there was something that needed to be dealt with by both Governments.

Q64 Mr Williams: On specialist areas, it is much wider than the borders.

Paul Silk: Point taken.

Q65 Chair: Mr Silk, you are recommending the creation of a new committee to oversee relations between the UK and Welsh Governments. Did you have anyone in mind to lead this new committee?

Paul Silk: Perhaps I am looking at the right person at the moment.

Q66 Chair: I wondered whether I was. There is a serious point here. How would you see this committee being structured? Would it come from AMs, from MPs, from MPs and AMs, or from outside?

Paul Silk: We recommended an intergovernmental committee. We recommended that the nominal chairs—or possibly, the real chairs—should be the First Minister and the Prime Minister. There should be Ministers on the committee. It would sit in different manifestations, depending on the subject it was looking at. If police were devolved, let us say, the Home Secretary or her nominee would sit on the committee, as well as the Welsh Minister who is responsible for policing matters—and so on.

Q67 Nia Griffith: Could you clarify that? Are you suggesting a fluid situation like the Council of Ministers in Europe, where there would be different Ministers whose responsibilities were for the particular areas concerned, rather than a permanent, fixed committee?

Paul Silk: Yes—the former. It would be a fluid committee.

Q68 Nia Griffith: Let us take the example of water. You mention the right of the English consumer to have access to water from Wales. What if there were a dispute and Wales said, “We need a lot more money to invest if we are going to maintain the supplies of water to England?” On flooding, for example, what if Wales said, “We need a lot more money for measures upstream on the Severn in order to prevent flooding in English towns downstream?” How would you see this new committee resolving such a dispute? Could we end up in a sort of Icelandic cod war situation?

Paul Silk: The purpose of the committee is precisely to ensure that those issues—there will always be ongoing issues—do not end up as disputes. It is a way of preventing disputes arising—a resolution or agreement mechanism between both Governments. We would like to see it set up on a more formal basis. That is why we propose that there should be a code for intergovernmental relations set out in the Wales Bill that we envisage happening in the next Parliament.

We would like to see the relationships between the Welsh Government and the UK Government put on a more formal basis, but we advocate that not so that disputes become formalised but because we see it as an important backdrop to the relationship between a sub-national Government and a national Government, as it happens in most federal states. We would like the Welsh intergovernmental committee to be a mechanism for resolving disputes before they arise or become serious, rather than a confrontational body in any sense.

Professor Lloyd: The recommendations that we make about intergovernmental relationships and, indeed, relationships at official level between Whitehall and those in Cardiff are perhaps one of the more important areas that we make recommendations on. It is important that the relationship between the Westminster Government and the Welsh Government is formalised and does not depend on individual good relationships between people and on chemistry. It should be formal and transparent and there should be a statutory basis—a statutory code of conduct.

If it is accepted, this could be an influential part of the future scene. It is extremely important that there is good collaboration between the two Governments and their officials, hence our recommendations that in Whitehall Departments, for example, there should be identified persons with particular responsibility for devolution in Wales—one person at the strategic level and another at the implementational level. More importantly, perhaps, the committee that we are advocating should be a high-profile, formal basis for the conduct of discussions between the two Governments.

We make proposals about its constitution; I refer you to box 5.4. It should be chaired by the First Minister and the Prime Minister together. There should be some permanent members but a fluid membership as well, according to need. We propose the kind of things that we would expect its responsibilities to contain. One of them is resolving disagreements; as you mentioned, there will be disagreements at times. There will be further proposals for minor changes to the settlement; we have heard of one or two since we completed our work. This is a formal forum, whose minutes will be publicly available, to resolve those issues and to discuss future developments. We feel that this is an important part of the set of recommendations that we have made.

Q69 Nia Griffith: You then mention a role for the Welsh Affairs Committee in scrutinising that work. Would you therefore see the Welsh Affairs Committee as also including Members of the Assembly? What would be the main criterion for scrutiny? Would it be financial accountability or decision-making processes? What would you see as the key thing to ensure that the committee and scrutiny were working?

Professor Lloyd: This may be your territory, Paul.

Paul Silk: My recollection is that your Committee, uniquely, has the power to meet concurrently with committees of the National Assembly. It would be for you and for the National Assembly committee concerned to decide whether to do that, but we thought that this body should be monitored by Parliament and by the National Assembly. The appropriate body in the House of Commons seemed to us to be this Committee. The Constitutional Affairs Committee of the National Assembly seemed to us to be the appropriate body as far as it was concerned. It is an article of faith for me that Government activity should be monitored by scrutiny bodies inside Parliament. If, therefore, we set up a more formal Welsh intergovernmental committee, it should be scrutinised vigorously by this Committee and by a body inside the National Assembly.

Q70 Chair: Do you envisage a whole load of extra people being employed to do this, or do you envisage that the secretarial work would be undertaken by people such as the excellent Clerk and deputy Clerk to this Committee? Capable though they are, would that not imply quite a lot of extra work?

Paul Silk: The Welsh intergovernmental committee would be a committee inside Government so, in our vision of it, its secretariat would be provided by civil servants working for the United Kingdom Government or for the Welsh Government. I do not think we have looked at what the secretariat needs would be. In the box that Noel mentioned, we say that there would be “a small secretariat of civil servants.” There are people who work on the joint ministerial committee at present, so I do not think we are talking about a substantial number of people or a substantial secretariat.

Geraint Davies: The NAO would do it.

Chair: I think we have covered that. Would anyone like to come in with further questions on anything at all, including—not that I wish to suggest anything—the increase in the number of AMs?

Q71 Glyn Davies: That is what I wanted to ask you about. You make a recommendation that the number of Assembly Members should be increased, but you do not give an exact number. Why is that? Could you explain to us what you see as the public benefit of extra AMs? Moving the number to 80, for example, would cost another £5.3 million a year. What do you think the public view of that suggestion will be?

Paul Silk: It is probably always a difficult time to make any recommendations about increasing the number of paid politicians. We say in the report that, since none of us on the commission is a paid

politician—one of its members is a Member of the House of Lords, of course—it was incumbent on us to grasp this particular nettle and to recommend, as we did unequivocally, that the National Assembly should be larger.

Why did we not come up with a particular figure? We said that 80 seemed to us to be the right sort of figure, but 100 had also been recommended. We suggested that it was probably somewhere between those two figures. There is a relationship to the electoral system, which was specifically outside our terms of reference. Coming up with a particular figure without making a recommendation about how they should be elected seemed to us to be something that we ought not to do. We were aware that there is an issue of practicality about the size of the Senedd building and the offices next to it. We decided not to come up with a particular figure, but we gave a pretty broad hint that we think that at least 80 and less than 100 is the right sort of figure.

Why did we recommend it? We did so because we think that, frankly, the level of scrutiny that the National Assembly gives at present to the policies of the Welsh Government is not as good as it could be. If the National Assembly is to have more powers, as it will have under the current Wales Bill—and possibly, under our recommendations, even more powers than that—it will need to scrutinise further very important areas of public policy. Our concern was particularly, but not exclusively, with two groups inside the National Assembly: the Government Members, because with 13 Members in the Government there are only 17 Government Back Benchers to do the work of scrutiny across the whole piece; and, of course, smaller parties, where the division of scrutiny work places a pretty heavy burden compared with the burden there would be with a larger Parliament.

Q72 Glyn Davies: I can see the principle; I have understood it for long enough. When the chamber was built, it was built to accommodate an increase to 80 fairly easily, because this was an issue that was being discussed at the time. Scrutiny increased a lot when law-making powers became more readily usable within the National Assembly for Wales. However, if we—or anybody—are to get our heads round the recommendation, I cannot see how you can do that without touching on the other things. If there is no definite figure, how would a relevant figure be arrived at? When might the number be increased—which election are we looking at? Are you recommending a reduction in the number of MPs, to make the total cost appear more acceptable to the public? Without those recommendations being there as well, it seems to me that you are just putting your foot in the water on a sensitive issue.

Paul Silk: There are two sensitive issues. As you all know very well, the law provides for a reduction in the number of Welsh MPs, but that has not yet been brought into effect. The Williams commission has recommended changes in local government, which might well result in a reduction in the number of councillors in Wales. If those two things were to happen and there were a reduction in the number of politicians in different places, I guess that an increase in the number of politicians in the Assembly would become more palatable politically. If and when there is either a reduction in the number of Members of the House of Commons from Wales or a reduction in the number of councillors was beyond our powers of prophecy.

Q73 Glyn Davies: Do you think they should be linked?

Paul Silk: We do not link those. Of course, if either or both of them happen, it does make it easier to increase the number of Assembly Members, but our recommendation about the number of Assembly Members stands, irrespective of any reduction either here or in the number of councillors in Wales.

Q74 Glyn Davies: Did you get any evidence on how you might do that? Currently, there are 40 parliamentary seats, and there is the 40:20 split in the Assembly election. While there are 40 seats, one could imagine the split being 40:40, if you moved up to 80, and if we suddenly drop to 30 MPs here, it blows that system out of the water a little bit. Without having some definite ideas about how you might implement this, it just does not seem like a very tangible recommendation.

Paul Silk: You will all know this better than we do, but the method of election and the number of list and constituency Members there might be in any future Assembly will affect its composition. All political parties will have views on that. That was outside our terms of reference, so we do not make any recommendations about it.

Q75 Nia Griffith: I can see the point that you are making. It is an internal problem: you have so many people in Government that you do not have many to scrutinise. Did you give any consideration to there being fewer people in Government?

Paul Silk: It was an issue that was raised with us. One area that was outside our terms of reference was a change in the structure of the National Assembly. The argument has been put that Ministers should not be Members of the Assembly and that the Assembly should be a scrutiny body. That is the way the US system of government works—a state Senate does not contain the Governor or any of the Governor’s nominees. That was outside our terms of reference. Reducing the number of Ministers, so that there are fewer of them, would be a much more modest way of doing the same thing. I do not think anybody put that to us as a recommendation, so we did not consider it explicitly.

Professor Lloyd: Our principle was that the level of scrutiny is really important. We make one suggestion about size, but we also recommend that other mechanisms be looked at, in terms of the method of working, to enhance the level of scrutiny and development of expertise among people. It is not just about the numbers of people on several committees—it is about the depth of expertise in any particular area.

Q76 Geraint Davies: If we combined Nia’s suggestion that we reduce the number of Ministers with extending the sitting hours of the Assembly to be the same as those of Parliament, wouldn’t that solve the scrutiny problem?

Paul Silk: I do not think it would. How few Ministers would one be proposing? That is one side of the question. On sitting hours, the extent to which plenary sittings are valuable uses of Members’ time is an interesting question.

Q77 Chair: Feel free to answer and elaborate.

Paul Silk: You will know how few Members attend plenary sittings of the House of Commons. Very few attend for the whole of the House’s sitting hours.

Q78 Geraint Davies: Not the plenary sessions, but shouldn’t they be sitting on Select Committees or scrutiny groups?

Paul Silk: Most Members of the House of Commons are members of one or, at most, two Select Committees. Some Assembly Members are members of four scrutiny committees. Most Members of the House of Commons would find it pretty intolerable to sit on four Select Committees. I do not think hours are the issue.

Q79 Chair: Are you satisfied that the Select Committees are operating as well as they should? My feeling is that, in terms of scrutiny, they do not operate quite as well as Select Committees at Westminster.

Paul Silk: You are tempting me on to territory I ought perhaps to stand back from a little bit. Just the other day, I read an interesting piece about the BBC and its relationship with the National Assembly. Geraint Talfan Davies has written about how the BBC had a much easier ride when it appeared before Assembly committees than when it appeared before either Committees of the House of Commons or committees of the Scottish Parliament, so that is a tenable argument.

Chair: I will take one question from Mark, as we really are running out of time.

Q80 Mr Williams: This is my last question. The Chair alluded to the problems he had with some of his constituents. I have had the same experience of constituents who just do not believe that health or, indeed, other matters are specifically the responsibility of the Assembly. Part of the answer to that lies in Glyn Davies's questions on the reserved model. Another part of it, surely, is the linkage with part I—ownership and responsibility coming through the capacity to raise taxes themselves, so that people can see that the relationship is there. In that context, how much are we to view both bits of work by the commission as a package—raising the money, as well as the capacity to spend it? You have talked in many instances about seeing part I as a package of measures. There has been some deviation from the package—we will discuss that tomorrow—but how much do you see the two as a package? Some of us have described it as a kind of route march towards home rule or greater devolution. How much do you see the work of the two commissions as one?

Paul Silk: I see it wholly as one. I do not know whether Noel does.

Professor Lloyd: You could see the work of the commission as being one. The two reports could be combined; the first report could be various chapters of the full report, so they are closely connected. You asked whether one should talk of a package. Possibly—I do not know—there are elements of the second report that are more likely to be implemented than others, but they are closely connected. The principles of accountability that we have enunciated in part II are very much at the heart of part II, as they are of part I. The link would be through the principles that we have established for those two reports.

Paul Silk: On the package issue, Noel is absolutely right—we are not saying that, if you do not implement it all, you should not implement any of it, but, obviously, we have not made our recommendations either in part I or in part II other than because we think they ought to be implemented.

Q81 Mr Williams: Notwithstanding the fact that you have done a huge body of work, that your commissioners and staff have all worked very hard and that we have had the opportunity to question you, do you think it was right to divide this into two separate areas?

Paul Silk: It worked very well, although I know that some people said we should have done part II before we did part I. I guess that, if we had been set the mandate the other way round we would have discharged it the other way round, but it worked perfectly well.

Mr Williams: Maybe an all-embracing Government of Wales Bill with one referendum would have clarified things even more.

Chair: We will never know. Thank you for your answers today.