



Procedure Committee

Oral evidence: [E-petitions](#), HC 235

Wednesday 11 June 2014

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Members present: Jacob Rees-Mogg (Chair); Jenny Chapman; Thomas Docherty; Sir Roger Gale; John Hemming; Mr David Nuttall; Martin Vickers.

Questions 1-20

Witnesses: **Sir Robert Rogers KCB**, Clerk of the House of Commons, and **Danielle Nash**, Clerk of Public Petitions, House of Commons, gave evidence.

Q1 Jacob Rees-Mogg (Chair): Good afternoon, and welcome to the public session of the Procedure Committee. I am standing in for the Chairman, who is absent and sends his apologies. We are very grateful, Sir Robert, that you have come and, Ms Nash, that you are here too. We are very pleased that you are here, Sir Robert, because you are a great parliamentary institution, almost as longstanding as petitioning itself. You will be enormously missed at the end of your enormously distinguished tenure. Speaking as somebody who has been here only a few years, your help, guidance and courtesy have been hugely appreciated, and I am personally very sorry that you have decided to retire at such a young age.

Sir Robert Rogers: That is extremely kind of you to say, Chairman, and you are even more kind to give me this opportunity of a last hurrah, as it were.

Q2 Chair: The first question to ask you: historically, what you would say is the place of petitioning in the British parliamentary system?

Sir Robert Rogers: I think it is absolutely central, and one of the interesting things is going to be that some of the proposals that you are considering will bring it back centre stage again, which I very much welcome.

My learned predecessor, Gilbert Campion, pointed out in his Procedure of the House of Commons, originally published in the 1920s, that the

practice of petitioning the King goes back way before the identifiable existence of Parliament. Indeed, if you look at Magna Carta, there is a petitioning element there—I think clause 61 is probably the focus of it. Petitioning was a large part of the business of Parliament from the earliest days. If you look at the 1305 Parliament, which we have a remarkable amount of information about, there were nearly 500 petitions presented and heard. A lot were from individuals and some were from outside Parliament, and it also appears that two of them, from the *pauvres hommes de la terre*, were from the Commons collectively, so it was a central activity.

Indeed, from the process of petitioning, one can trace the development of public and private legislation, because so often in order for grievances to be redressed, you had to change the law, so it was almost a petition for a Bill. I think that the idea of a petition and a redress of grievances is a fairly typical sort of collective purpose to someone or something in authority. That was there in the earliest days and I think it is at the heart of the petitioning process we have now, which Danielle is in charge of—the traditional petitioning process—and also of the collaborative scheme that the House has asked your Committee to look at.

Q3 Mr Nuttall: Following on that from that, given that there is now so much more direct communication—indeed, it is so much easier for constituents to contact their Members of Parliament than it used to be, and so much easier for them to make their views known due to the development of technology, basically—is it really still relevant to have a petitioning procedure in the 21st century? Do you think that there is still a place for it, and how relevant do you think it still is?

Sir Robert Rogers: In a sense, it follows from my first answer. I think it is highly relevant and, indeed, in many ways central to the sort of business that Parliament should be doing. This House is the central institution in our democracy. It is owned not by its Members, I would suggest, but by the people whom its Members serve, and it seems to me of fundamental importance that our citizens have a way of bringing their issues to Parliament directly.

That is not in any way to downgrade or downplay the role that Members play. Indeed, in my resignation letter, which the House was so kind to receive in kindly fashion, I did make the point of the service that Members provide for their constituents, and they do that, of course, as those around the table know very much better practically than I do, in a whole variety of ways. I think there is a sort of subset to your question that I detect, which is whether electronic or other means, but that might be an aspect that we come on to a little later. I would say that, yes, it is a complementary function—the one does not

supplant the other—and I can see a very high value on citizens being able to petition Parliament—the House of Commons—directly.

Q4 Sir Roger Gale: Sir Robert, that 1305 process that you referred to, if I am right, was when people were effectively petitioning the monarch, and that was a process of a supplicant making an application for justice in one form or another. That was overtaken at some point by the presentation of petitions by Members of Parliament on behalf of their constituents or a group of constituents. Now, there is clearly therefore a fundamental difference between e-petitioning and the traditional form of petitioning and presentation by a Member of Parliament. What I would like to seek your advice on is how e-petitioning fits in, if at all, with the traditional petition. If it does, how does a Member of Parliament retain ownership of the petition? How does somebody—effectively some elected Member—manage it and ensure that it receives a proper hearing?

Sir Robert Rogers: I think that it fits with the historic process of petitioning, because it is doing something by a different means. I think one needs to be quite cautious as to whether that different means—it is the McLuhanesque medium and the message—changes the result in any way, or the character of what is taking place. But I would say that although you are absolutely right, of course, to draw the distinction between the original process of petitioning the King to the process of Members of Parliament being the filter—the owner, as it were—of the petition as is presented to the House, there is a similarity in that while previously it was not moderated, the Member is the process of moderation between the citizen and the body that ought to be able to give relief from the problem that the citizen wishes to raise.

How the Member maintains ownership is the \$64,000 question. That is the one on which I think a lot of people are waiting for the wisdom of your Committee. Certainly I think that there needs to be some sort of Member filter, if I can use that shorthand, for petitions that are specifically addressed to the House of Commons. Of course there is another issue there that no doubt you will address, which is that petitions need to be addressed to an authority that can actually do something about the problem. When I was doing Danielle's job many years ago, I used to feel that it was a cop-out to say, "Wherefore your petitioner prays that this honourable House will urge the Government to do something," rather than dealing with something directly in the power of the House. A lot of petitions will be in that form, won't they, because they are about things that the Government do?

Danielle Nash: Yes, or local authorities, so something that is not directly in the House's remit, so it is kind of urging the Government to urge someone else to do something.

Sir Robert Rogers: But I think the Member filter, if I can take it down to the bottom end of the market, so to speak, needs to be there, because with what one might call a green ink-type petition, there needs to be some sort of judgment taken as to whether it is something that should start a journey, however effective and however complex, from the presentation of a petition to the redressing of a grievance.

Q5 Sir Roger Gale: Can I just probe a little bit further? I am not sure that we do have—certainly yet—the answer to the \$64,000 question. I was rather hoping we might hear it from you.

The lead constituent traditionally has determined the Member of the Parliament who presents the petition. What I cannot get a handle on is how you identify the lead petitioner and determine which Member of Parliament is going to take ownership of a particular petition and manage it through a process, or does it just go direct to some amorphous body somewhere electronically and the Government pick it up?

Sir Robert Rogers: I think you have several choices. If you look at the petitioning process as it happens at the moment, a lot of petitions are very local, so it is very obvious who the Member who will take it forward is going to be. Danielle, can you give some sort of ballpark figures for what is local and what is national—sort of half and half, something like that?

Danielle Nash: Yes, probably about that. Some local petitions would be seeking to get maybe a national change based on that local petition.

Sir Robert Rogers: Absolutely, like the Badman report petitions, when there was huge mass petitioning—something over 200 petitions were presented by Members a relatively short time ago.

There are lots of different ways of doing it. If you decide in principle that there should be a Member who, like a Member in charge of a Bill, becomes a Member in charge of a petition, you can decide what sort of rights and what sort of discretion that Member has in constructing the process. If it is to be a collaborative process, which the House has asked should be the format, it is if a distinction is to be made between those petitions that are genuinely to the Government and those where the House can grant some sort of relief. It may be, of course, that the relief that the House grants is airing a subject and having it debated, and that even though it may be a matter of Government policy, it is the House that can provide the debate—the airing and the process of considering the thing in detail.

Q6 Thomas Docherty: I do not know if you have seen Gordon Brown's article in yesterday's *Guardian*, the transcript of the Press Gallery lunch or yesterday's LSE lecture—I should obviously declare he is one of my

constituents at this point—but he is arguing that now people are sovereign, not Parliament, and I wonder if I could very gently challenge an assertion that I think you have just made, which is that while I understand that with a paper petition, you still require a Member of Parliament to present it, the petition, in effect, does not exist without the Member of Parliament? Is it not the case that there is potential with an e-petition that, to make the e-petition exist, you do not need a Member of Parliament, and 100,000 citizens can simply, in effect, get together and produce an e-petition, and that while it is not debated in Parliament without a Member of Parliament taking it up, that e-petition would still exist? Is that an over-nuance that I am reading into it, or is that reality?

I also wonder if this is an area that would benefit from exploration and more thought perhaps in a forthcoming book on how Parliament works as we move through the process of deliberation.

Sir Robert Rogers: How kind of you, Mr Docherty, to mention *How Parliament Works*. I am able to give you the assurance that I gave you in another Committee a short time ago: the seventh edition is at an advanced stage of preparation and will appear in the autumn.

To return to your first question, I do not think that there is necessarily a conflict between the two, because it may be that a petition really is addressed to the Government—it is something that only the Government could do, or the House could have a debate on it. It may be that a petition is more appropriate to be taken forward in a parliamentary forum. I do not think there is a conflict between Parliament being sovereign or the people being sovereign because the opportunities are there in both cases. If we were to have a petitions Committee, which would be a proposition that I would very strongly support, it might be that if you had an orphan petition—if this is where your question was leading—because no Member was prepared to take up, it could perhaps be put directly to the petitions Committee.

Q7 Thomas Docherty: The Government's thinking, as I understand it, is that by reaching a threshold of, let us say, 800,000, the Government would still trigger a response—in fact, I think it is lower than that, as I think it is 25,000 for the Government to respond—so even if you have what you have dubbed an “orphan petition”, an e-petition still generates a response in its own right. Even if no Member of Parliament or even the petitions Committee did anything with it, it is still getting treated—I am not saying this is a bad thing—differently from a traditional paper petition that is handed in. I think Mr Blenkinsop has one this evening, but it takes Mr Blenkinsop to hand it in to generate action. Is it possible that we are going to have two systems: one that is electronic that, when it reaches its own threshold, the Government or Parliament may choose to do

something; and then a paper system that does require a Member of Parliament to pick up the cudgels on its behalf?

Sir Robert Rogers: Danielle, do you want to say a word on the numbers?

Danielle Nash: It is 10,000 for an e-petition and one signature for a paper petition to get a Government response.

Q8 Thomas Docherty: I am sorry for all the questions here, but doesn't it require a Member to hand in the paper petition to get that, so you could have one—

Danielle Nash: Correct, yes.

Q9 Thomas Docherty: But with an e-petition, it does not require that. That is the difference, as I understand it. Is that correct?

Danielle Nash: Yes, and there is a different threshold for the Government sending an observation, a response between the two systems, at the moment.

Q10 Thomas Docherty: Do you think that could continue without there being a creative tension?

Sir Robert Rogers: Sorry, you may think that I am in the mood to pass the buck this afternoon, but I think that is something that you will want to consider: whether you are happy about two routes and what the relationship between the two is. I think I would argue that you need to set this against the background of numbers. I think it is easy to get fazed by the 100,000, the 10,000, the 25,000 or whatever. If you have a threshold for further action—whether it is a debate or Government observations—of 100,000, it becomes a numbers game, not forgetting, of course, that it is much easier to rack up numbers for an e-petition than it is for people signing sheets of paper. Sheer numbers, I think, have their place, but if e-petitions are to be catered for, I think the other end of the scale needs to be catered for as well. If you have 200,000 people signing an e-petition condemning the annexation of Crimea, for example, in a sense that is a no-brainer—it may be quite an easy target to hit—but if you have Mrs Smith, one individual, who is having her life made a misery by some bizarre interpretation of a rule by officialdom, I see her as very much having equal rights in this. I think the two can live together; I don't see it as a zero-sum game.

Q11 Chair: Can we go back briefly to 1305 and what people were trying to do, and indeed to 1689, as the Bill of Rights protects the right to petition the King? In 1305, they are unquestionably petitioning the King,

because it is the King—the Government Crown—who can do things and it is Parliament that can discuss things. I wonder whether, in saying that people petition Parliament, we are confusing ourselves, because they petition Parliament as a means to an end, not as an end in itself. If we go back to the older system of petitioning—clearer that we are petitioning that we are petitioning through to the Crown to get something done—we do not have one petition to the Government and one petition to Parliament; it all neatly becomes the same thing.

Sir Robert Rogers: I think that is a correct description of the implication of article 6 of the Bill of Rights, but not of article 13—Frequent Parliaments—because it is said explicitly in article 13 that for the “Redresse of all Grievances...Parlyaments ought to be held frequently”, so I think there is a clear understanding in the Bill of Rights that Parliament has a role in redressing grievances. Of course, we see also an attenuation of the power of the monarch to do serious things in answer to a petition.

Q12 Chair: Indeed, but that is passed to the Crown via the Government, rather than to Parliament in getting those powers.

Sir Robert Rogers: Indeed, yes. If I can go back to the comparison between Crimea and Mrs Smith, it may well be that Parliament is in a good position to do something about Mrs Smith’s problem, whereas attracting Mr Putin’s attention may be more of a challenge.

Chair: Indeed.

Q13 John Hemming: In a sense, this goes on to the same issues—the article 5 of the Bill of Rights issue. Actually, the first amendment to the US constitution protected the right to petition, and that has been interpreted in the USA to be all the estates of the constitution—this is the point the Chair was making about article 5, which is the right to petition the King, actually covering the wider issues. Then there were the resolutions of the House of Commons: “That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievances, and the House of Commons to receive the same”; and “That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received”. That is relevant today.

Sir Robert Rogers: Oh, yes.

John Hemming: We had a case earlier this year when the London borough of Redbridge were trying to prevent an elderly lady from petitioning Parliament by getting a court order to stop her coming here, which was in the end circumvented by her coming here and petitioning

Parliament, so it was a bit too late for it to stop her. Obviously I encounter lots of cases when judiciary and local authorities try to stop people from talking to me about things, so the petition, as a proceeding in Parliament, obviously is something that is protected constitutionally. The question for e-petitions is whether there are fundamental principles that we as a Committee would need to bear in mind when designing a process for e-petitioning the House of Commons.

Sir Robert Rogers: Yes. I think all of what you said is highly relevant. I think the founding resolutions are still relevant. They are reinforced by those two articles in the Bill of Rights. I think it is important to ensure that when there is a system for petitioning, it is not a barrier but a platform. I think it is quite important to make it clear that there is something important and formal about petitioning Parliament. We live in what sound engineers might call a “democracy white noise”, because so many people are exchanging views and there is so much out there that somebody’s complaint or view has to compete with all the rest, but when that is put on the platform of a formal petition to the House of Commons, I think that makes it a bit different and more special, and there is then a process that can be attached to it. I think that would be a thoroughly good thing.

Q14 John Hemming: Yes. One of my concerns about the e-petitioning process compared with the paper petitions is that very often a petition can be rejected without it ever getting to a Member of Parliament, so Members of Parliament do not know what is being rejected. Do you share my concerns about that?

Sir Robert Rogers: I have every confidence in the determination of a fired-up petitioner—somebody who has a campaign they are pursuing, and you and your colleagues know this much better than I—to pursue every way of getting that campaign noticed. It may be an e-petition, letters to their Member of Parliament, or asking the Member of Parliament to present a petition. I do not see that being choked off. There might be an extreme occasion, and in a sense, I referred to this earlier on, Chairman, regarding an orphan petition when, for political reasons perhaps—this would be something entirely legal; I am not suggesting that it would be couched in terms that might constitute an offence, or somebody improperly seeking the protection of privilege—there was a strong disincentive to Members of Parliament to adopt or be the channel for a petition. If you had a petitions Committee, the rights and wrongs of that could be explored.

Q15 Chair: At what point is privilege engaged with a petitioner?

Sir Robert Rogers: I would say that the issue—if I may say so, that is a very good question—will be determined only, of course, if there is a

complaint of privilege on which the Committee of Privileges makes a judgment that is approved by the House. I would say that when a Member goes to Danielle to talk about a petition that they have indicated an intention to present and getting it into due form, I would say that those are acts so closely preparatory to the proceeding in Parliament that they would attract the protection of privilege. It will be the same, for example, as going to the Table Office to say, "I am minded to put this question down," even though at that stage you had not put the question down, or indeed as an amendment to a Bill.

Q16 Chair: Under the right to petition under the Bill of Rights, when does the petitioner get the protection of that absolute right to petition? Is that the point at which they put something on the website, or is that not a protection for them until it becomes a proceeding in Parliament?

Sir Robert Rogers: For the petitioner, I would say that the situation is different. Once the petition has been presented, of course it is absolutely privileged. If it is a petition that is published by authority of the House—I suggest that this will be something that you and your colleagues will need to give quite a bit of thought to—the protection of the Parliamentary Papers Act 1840 kicks in. It seems odd to be talking about the 1840 Act in the context of a website, but it is what the lawyers call *ejusdem generis*—in other words, it is achieving the same thing by a different means—so the technology does not get in the way, and you are still publishing by authority of the House of Commons, so you gain the protection of the 1840 Act.

Q17 Sir Roger Gale: I am uneasy about that because with a written petition, a petitioner would normally seek the advice of a Member of Parliament, and the Member of Parliament will provide the correct, if slightly arcane, form of words. They will say that it has to be written in longhand and that it has to be unamended—it doesn't any more.

Sir Robert Rogers: Not any more. When did it change, Danielle?

Danielle Nash: 2005.

Sir Roger Gale: But it certainly has to be unamended on each copy and then it is eligible to be presented, but none of that really becomes public until it is presented by a Member. Now, you can see a situation, can you not, where a person or a group of people could use a fairly thinly-disguised petition to commit a libel electronically, without any clearance from any parliamentary body, and I cannot see how that could possibly be subjected to privilege?

Sir Robert Rogers: No.

Chair: I think Mr Hemming wants to come in on this.

Q18 John Hemming: It is aspects of privilege, because you have the privilege of publication, which is obviously very important, but there is an additional privilege of the right to not be interfered with. From 1624, you have the master of the felt makers' case and you have Thomas Kemp in 1696, and both were cases when people were held in contempt of Parliament by virtue of trying to prevent somebody from petitioning the House, but that would not apply to an e-petition; that would be only a paper petition.

Thomas Docherty: With a paper petition, which could in theory be libellous—I cannot recall if it is absolute or not for a publication—the publication privilege only applies once the House has published it, so if I am standing on the high street in Dunfermline collecting a paper petition, I do not have privilege. The privilege only applies once it is, I guess, handed to the Clerk, placed in the bag and then published afterwards. Is that correct?

Sir Robert Rogers: I think there are quite a few threads that are becoming a bit confused here.

Q19 Thomas Docherty: So with the e-petition, if you were going to give privilege to it, it would be only when Parliament published it on its website after a process that this Committee, I suspect, will have to recommend. Am I on the right track, or have I gone off it?

Sir Robert Rogers: I think you are. If there is a website to which people have open access and it is not clearly and exclusively Parliament's website, there is no question of privilege. That is the same as you, on a rainy afternoon in Dunfermline, collecting signatures on a piece of paper, and it is similar to the status of communications between a Member and a constituent simply in a constituency, or in a one-to-one way. There are two elements of privilege that can operate. There is the one that I described when a Member goes and talks to Danielle and says, "I am thinking of doing this," or, "Here is my constituent's draft petition. Can you get it into order?" I would say that that is close enough to the proceeding in Parliament—absolute privilege, not through a later Act of Parliament but through Article 9 of the Bill of Rights. However, the 1840 Act kicks in when you put something on Parliament's website or, as with *Hansard*, it is published by authority of the House. I think the question that you will need to address, if there is a collaborative process, is at what point you decide that one thing falls into one category and not the other category. Now, you will be constrained by the fact that the House cannot unilaterally decide that something that was not privileged before is privileged now, and the only way you can do that is by legislation, but as I have been at pains to point out to the Joint Committee on the draft privilege Bill, I

think that legislation for the extension or clarification of privilege is an extremely hazardous route.

Thomas Docherty: Indeed.

Chair: I think that leads nicely, Ms Chapman, on to your question.

Q20 Jenny Chapman: My main concern about all this is that we can somehow end up with a process that makes some sense to the people we would like to use it. My feeling at the moment is that it is not just that we have a paper system and an e-system; we actually have systems owned by two different bodies, so one for No. 10 and one for Parliament. I think it could probably be better co-ordinated, or we could perhaps even have a shared system. I just wondered what your thoughts were about having a single system or a process that could take the place of what we have at the moment, and what the advantages or problems with that might be.

Sir Robert Rogers: May I deal with paper against electronic first of all? A huge number of people use the internet—it is very familiar and holds no terrors for them. However, in anticipation that this might come up, I looked at some figures for the digital divide, which is something that also concerns me with all the efforts that we are making to make so much parliamentary information available on the web, and to take advantage of richer text and all that sort of thing. For the first quarter of the current year, 44.6 million adults—that is 87%—in the UK had used the internet. That is up 1.1 million since the same time the previous year, but 6.4 million adults—that is 13%—had never used the internet. Although the digital divide is narrowing, I think we cannot assume for the paper route that its day is done. In terms of the diversity of access to the parliamentary process, I think that is a really important thing to bear in mind. In 10 years' time it will be different again, but for the time being, that is quite an interesting set of figures, I think. London has the highest proportion of internet users at 90%, Northern Ireland has the lowest at 79%, but there again you may get regional disadvantages. I do not want to get into politically contentious areas, but I live in rural west Herefordshire, where broadband is an issue. That is something that you have to take into account. I would suggest that the process of paper petitions is something that needs to be guarded and protected for some considerable time to come.

In terms of your suggestion about the two systems—if it is going to be collaborative, should it be a single system?—I think there will be privilege questions for you to decide. Of course there will be ownership questions, and there will be questions about the ability to redress grievances as well. It may be that you have, as it were, a set of railway points at some stage where it is identified that something is genuinely appropriate for the House, or indeed that the petitioner really does want that issue to go before Parliament, while there are others that are

so directly about the responsibilities of Government, without the interposition of Parliament, that there is an argument for separate treatment, even though that may be on a collaborative site. I think those are some of the things that you will need to think about.

In the longer term, I would suggest that a lot of these problems would become a lot easier if we were to have a petitions Committee, because one of the problems at the moment, in a sense—in the very first part of your question you touched on this—is that people want to engage with Parliament, but the ownership of the process is not clear to them, and a petitions Committee might well personalise that, or focus that ownership, in a way that would mean that we had a negotiating partner with Government, and also an identifiable responsibility and ownership within the House of Commons to which people could relate.

Chair: Thank you very much. You have managed, with great perception, to answer the last question as well as the previous question, which was on exactly that subject, so that brings our questions to a conclusion. Thank you so much for coming in. I hope this will not be a last hurrah, because I am sure that we will call you back from rural Herefordshire every so often to update us.

Sir Robert Rogers: From my rural fastness, I shall be reading your report with great interest, Mr Chairman. Of course, in the immediate future, if there is anything we can do to amplify or add to our evidence, or if there are other questions that you want to put to us, we will be very happy to help.

Chair: Thank you very much.

