



Public Administration Select Committee

Oral evidence: [Accountability of quangos and public bodies](#), HC 110

Tuesday 24 June 2014

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Members present: [Mr Bernard Jenkin](#) (Chair); [Mr Nigel Evans](#); [Mrs Cheryl Gillan](#); [Sheila Gilmore](#); [Kelvin Hopkins](#); [Greg Mulholland](#); [Lindsay Roy](#); [Mr Andrew Turner](#)

Questions 233-394

Witnesses: **Rt Hon Lord Smith of Finsbury**, Chairman, Environment Agency, **Bronwyn Hill CBE**, Permanent Secretary Department for Environment, Food and Rural Affairs, and **Sonia Phippard**, Director, Water and Flood Risk Management, Department for Environment, Food and Rural Affairs, gave evidence.

Q233 Chair: Welcome to this further session on the accountability of public bodies and their relationship to Government Departments in Whitehall. The purpose of our inquiry is to try to understand better why relationships between public bodies and Whitehall Departments work as they do or do not work under certain circumstances, why Ministers tend to keep taking things in or putting things out into public bodies, and find out the real problems that encourage Ministers to think that institutional instability is the answer. In retrospect, we usually find that reorganisations cost more and achieve less than intended. I would like to ask Cheryl Gillan to ask the first question. Before she does so, could I ask each of you to introduce yourselves for the record?

Bronwyn Hill: I am Bronwyn Hill, Permanent Secretary at the Department for Environment, Food and Rural Affairs.

Sonia Phippard: I am Sonia Phippard, Director of Water and Flood Risk Management, also from Defra.

Lord Smith of Finsbury: I am Chris Smith, Chairman of the Environment Agency.

Chair: Thank you very much for being with us. We have a long session with two other panels. Perhaps you can keep your answers as short as possible. I will pull you up if you go on for too long. The same goes for those asking the questions. Can we please have open questions?

Q234 Mrs Gillan: It seems a long time ago since the NDPB was set up under the Environment Act 1995. There have been a lot of changes since then, not least in 2013, moving to England only, and also the acquisition of various other responsibilities, whether it is waste regulation, climate change,

marine navigation, and all sorts of extraordinary things. Lord Smith, you have been there since 2008. You have a lot of experience. I think next month is your last time. We are trying to understand more about the boundaries in terms of both structure and the tone of the relationship. Can all of you say where you think the Department's and agency's respective responsibilities start and end? If we could start with you, Lord Smith, and then move down from each of your perspectives, that would be helpful to the Committee.

Lord Smith of Finsbury: I suppose the basic headline in answer to your question is that the Department sets policy. The agency carries out the delivery of that policy and also regulation against the requirements that have been laid down by Parliament. The detail of it is that there is a very close working relationship. From quite a long experience in the world of Whitehall and Westminster, the relationship between the Environment Agency and Defra is one of the strongest and best working that I have ever come across. We report very regularly to Defra; we discuss with them; we take a steer from both Ministers and senior officials; and we try to deliver as best we possibly can within the funding envelope that is made available to us.

Q235 Mrs Gillan: Do you think that is about the personalities and calibre of you and others within the agency and also the Department?

Lord Smith of Finsbury: It is partly about personality, although I would observe that as chairman of the agency I have now served three secretaries of state of different political persuasions, and the relationship with all three of them has worked extremely well.

Bronwyn Hill: I would very strongly agree with what Lord Smith has said. We have a very strong relationship at ministerial, senior official and working level with the agency. We need to have that. Let me give you an example. I think it stood us in very good stead that, during the very significant and extended winter flooding last year, we had the strong relationships going into those events that kept all of us going through four months of extremely difficult and hard work, both operationally and strategically, within government. I think it was a testament to the strength of the relationships that they worked very effectively during last winter's floods.

I could add more detail to how the relationship works in business as usual. As Lord Smith has said, Ministers are responsible to Parliament and account for the performance of the agency. We have quarterly reports for them that come to our board. The Minister meets Lord Smith and the chief executive twice a year for a formal performance review. That looks at their key performance indicators, discusses issues that have happened and takes a forward look. It works very effectively, because the agency is well led under Chris Smith and Paul Leinster, and I believe there is a very strong and constructive relationship at all levels.

Q236 Mrs Gillan: That is the theory and practice for you. How do you think that is perceived by others? Do you think the complexity of the Environment Agency responsibilities is understood, and that the division in the lines of accountability is understood by outside observers?

Bronwyn Hill: I think outside observers are more interested in what we do and what we deliver. If your house is flooding, you are not particularly bothered about what the framework statement says or what the emergency arrangements are, although they are very important to us. You just want to know why there is flooding and what can be done to stop it. That is one issue. It is

probably being coloured by media commentary during the flooding crisis, but we have a very clear framework agreement that is published on our website every year, not just for us and the Environment Agency but for all the people who have to respond during an emergency. It is very clearly set out; it is at least 100 pages long, but the reason for that is that it is quite complex. Emergency services, local authorities, volunteers and local people have to operate. We then need to get them to interact with the Environment Agency nationally and, through them, with a number of Government Departments, with Defra as the lead in a flood emergency. It is necessarily complex. Could it be improved? We are always looking for how we can learn lessons, and that always feeds in immediately to our preparations for the next event, if you like.

Coming back to the formal relationship, it is complex and it is important we understand that. I think what the media and public would like to know is: are there ways to improve the outcomes we deliver, not necessarily the structures?

Q237 Mrs Gillan: Ms Phippard, you are right at the front line, are you not? Do you agree?

Sonia Phippard: I very much agree. To illustrate it a little further, on the one hand we are looking for clarity, and the flood emergency planning framework which Ms Hill referred to very much sets that out in terms of everybody's responsibilities. Equally, in a crisis we are also looking for partnership and close working and making sure we are understanding the challenges that the Environment Agency is facing, very much not getting involved in their operational decisions but being able to support them if they are resource or other issues; similarly with business as usual. One of ways we ensure that is by secondments between the two organisations. I have several Environment Agency people working in my team to ensure there is a good mutual understanding.

Lord Smith of Finsbury: One of the key bits of learning we had from the 2007 and subsequent floods was the need to practise. We undertook Exercise Watermark about two years ago, where the agency, together with all the other emergency services and Defra, practised what would happen, for example, in the event of an east coast surge. That stood us in very good stead when the east coast surge happened at the start of December.

Q238 Mrs Gillan: We heard about that from Mrs Spelman in an earlier session. Can I ask you about a matter of personal interest? Because in 2013 you went down to England only, do you find that cross-border co-operation with the devolved Administrations works well, or are there any areas that could be improved?

Lord Smith of Finsbury: It has worked pretty well. We still provide quite a lot of services to what is now Natural Resources Wales. That will gradually diminish over time as they establish their own services, but we work very closely in co-operation. We have to because, for example, the River Severn meanders in and out of Wales and England and then forms the boundary. It would be absurd to try to operate in anything other than close partnership.

Q239 Chair: Lord Smith, you described the Environment Agency as a delivery organisation and a regulator. Funnily enough, your chief executive recently described the Environment Agency as simply a delivery body. Does not the combination of delivery and regulation itself confuse your role?

Lord Smith of Finsbury: I do not think it does, because we have a third responsibility, which is that we are an adviser to government on the condition of the environment.

Q240 Chair: The policy role that you had was taken away.

Lord Smith of Finsbury: We have never had a policy role; that has always been in the hands of government. The two principal roles are as regulator and deliverer. I think they help to reinforce each other. For example, the understanding we find on the ground when we are taking water samples, measuring the water quality of a river, or trying to work with a local community to devise a flood defence scheme, tells us an awful lot about the degree of pollution that is coming into the river, where it is coming from and whom we need to regulate in order to get the best possible outcome for the environment.

Q241 Chair: Surely, in terms of the money you are deciding how to allocate to different projects, to an extent that is determined by how you regulate yourself and what your priorities are. How do you separate in your own mind what you are regulating and what you are delivering to make sure that your regulatory arm is independently auditing what you are delivering?

Lord Smith of Finsbury: Virtually the entirety of our regulatory responsibilities are funded not by grant in aid from government but by income from permits, fees, licences and charges that the regulated industries provide. There are very strict rules in place about not being able to use any of that charge income for anything other than the purposes for which it is paid.

Q242 Chair: It is a bit like Ofgem being a supplier of gas and electricity, is it not?

Lord Smith of Finsbury: I do not think so, because it is a well-established principle across government that regulated businesses pay for the regulation which keeps them in order.

Q243 Chair: How are you not conflicted internally? You might want to spend some money on a particular project, but your regulatory function says, “You can’t do that.” That is an internal conflict. How do you deal with that?

Lord Smith of Finsbury: It is not, because there are very clear allocations of funding both within the regulated industry package from the charges that come in, which can be spent only for the purposes for which they are paid, and the grant in aid we receive from Defra. Bronwyn may want to expand on this. What elements of that are due to be spent on what elements of our work are clearly identified.

Bronwyn Hill: The regulations do not prevent the Environment Agency from developing, designing and implementing flood defence schemes, for example. As Lord Smith has said, in the money we give the Environment Agency as grant in aid, spending on flood defences is ring-fenced and settled between ourselves and the agency as part of spending reviews and regular reviews following those. I do not think there is an inherent conflict.

In terms of water quality, for example, the people the Environment Agency will be regulating are the water companies and those who work on the land—farmers and landowners—and most of the impacts on water quality come from them or businesses, not the Environment Agency’s operations. Does that answer your question?

Q244 Chair: Somewhat. Do you want to add something, Ms Phippard?

Sonia Phippard: Not particularly, unless you have more detailed questions.

Q245 Chair: In my constituency, for example, who is accountable for maintaining the flow of water down the Tey Brook? You will not have heard of it, but it is a typical Essex brook, which, if it gets blocked, causes flooding. Sometimes the Environment Agency say it is the job of the farmer, or the farmer is then charged a licence for abstracting from the Tey Brook, even though he does not seem to get any benefit from paying for that licence. There seems to be a lack of accountability, because when the farmer says, “Why is this not being maintained?” the Environment Agency say, “It is your job to maintain it.” What is the farmer paying for?

Lord Smith of Finsbury: It is the legal duty of a riparian owner to keep the banks of the river that flows through his or her property in good repair and order. Where there is a main river that could, if it were not kept in good condition, pose a flood risk to properties and people’s lives and homes, we have the power to intervene as the Environment Agency, but the legal duty in the first instance rests with the riparian owner.

Q246 Chair: Who decided that residential property, not agricultural land, was your priority?

Lord Smith of Finsbury: That has been decided for us by government under all parties; it is a long-standing instruction.

Q247 Chair: I do not want to get into too much detail of whether it was right or wrong not to dredge the River Parrett, but in retrospect it seems there is now a correction in place and there is going to be comprehensive dredging of that river. Who was accountable for deciding not to dredge the River Parrett?

Lord Smith of Finsbury: First, dredging is now happening.

Chair: That is not at issue. I do not want to get into all that.

Lord Smith of Finsbury: And it is currently ahead of schedule.

Q248 Chair: It is a very simple question: who was responsible for deciding not to dredge the River Parrett?

Lord Smith of Finsbury: In response to the 2012 flooding in the Somerset Levels, we agreed with the local community that we would assist the beginning of dredging on the Tone and Parrett.

Q249 Chair: But the decision not to dredge went back much further.

Lord Smith of Finsbury: That was initiated many years back.

Q250 Chair: Who was accountable for that decision?

Lord Smith of Finsbury: It was before my time, so I cannot answer the question specifically.

Q251 Chair: Was it the Environment Agency or the Government?

Lord Smith of Finsbury: It was almost certainly a mixture of both. What will have been decided is that within the envelope of funding available, which is always limited, the priorities in relation to the management of flood risk on the Somerset Levels did not include at that time the dredging of the two rivers.

Q252 Chair: It might have been an interpretation. I am disappointed that there is not more definition to this question because, if farmland was not regarded as a priority by the Environment Agency, you would not dredge the River Parrett.

Lord Smith of Finsbury: Remember the dredging of the Tone and Parrett does not protect farmland. All it does is help to remove the water rather more quickly once the land is flooded. It does not prevent the flooding; it helps the overall situation.

Q253 Chair: You cannot give me a definitive answer. Could you look into your corporate memory and write to me about it? Between you, how was the decision made that the River Parrett should not be dredged for such a long period?

Lord Smith of Finsbury: We will certainly look at what the history tells us about that.

Q254 Chair: A lot of the public frustration about this seemed to be that everybody down there thought it should have been dredged all these years and nobody seems to be accountable for it not being dredged. At one stage people were calling for your head because they thought it was your fault, however fairly or unfairly. This is part of the interesting question about accountability. Somebody needs to be accountable for such a decision.

Lord Smith of Finsbury: Of course, the decision will have been taken in the context of the funds that were available and a range of actions that were required, including pumping, raising the banks and management of the water courses in other ways, which will have been deemed at the time to be better value for the money available. I suspect that will have been the way in which the decision was taken. It was almost certainly taken by both the Environment Agency and Defra, but we will certainly see if the records can reveal any greater clarity for you.

Q255 Kelvin Hopkins: You do not appear to know. I would have thought that, given the high profile of this decision and how significant it was, the three of you might have come today able to say when the decision was taken and how.

Lord Smith of Finsbury: The decision I was responsible for was in 2012, when we agreed with the local community that we would assist the restarting of dredging, and we put about £400,000 on the table to enable that to happen. Under the funding formula set for us, that was the maximum we were allowed to bring forward for that. What did not happen then was other contributions coming to the table that were required to enable it to start.

Q256 Kelvin Hopkins: Are you delicately protecting, in a most civilised way, the former colleagues, officials, or whoever, who made these decisions?

Lord Smith of Finsbury: These decisions were almost certainly made in good faith on the basis of the evidence available at the time. I would not want to start pointing fingers of blame at anyone.

Q257 Chair: We are not really interested in blaming; we are just interested to find out how these decisions are made so that, when things go wrong, we can learn and improve to make things go right. I am really not interested in scapegoating anybody.

Bronwyn Hill: Some of those decisions could have been taken by former governments. We are probably talking about 20 years ago, but, as Lord Smith has said, the arrangements for how funding works to enable flood defence schemes to go forward are such that we always have more good value-for-money schemes than we have money available under any government. That is just the nature of the flood risk we face.

We ought to explain, very briefly if we may, that the Government set the funding framework. We have set a framework called partnership funding. This was designed and brought in in 2011 to try to make the resource we do have go further and encourage partnership, because the flood risk responsibility is in some cases the Environment Agency's for major rivers and coasts; in some cases the local authority will be responsible for rivers, or ground or surface-water flooding. It is a partnership approach.

Q258 Chair: But in terms of your own funding, what you are saying is that the Department are responsible for how the Environment Agency spend their money.

Bronwyn Hill: We set a funding framework and methodology.

Q259 Chair: Which is a "yes", is it not?

Bronwyn Hill: Yes.

Q260 Chair: If you were not happy with how they were spending the money—

Bronwyn Hill: —we would have a conversation. It is important to bear in mind—this is the bit we have not said—that it is called partnership because the Environment Agency have a very proactive approach to working with local authorities and others and looking at the needs of those areas within the funding framework and methodology that we have to decide what the priorities are, because there are always differences of view among local people about what should be the priorities. I do not want to leave the Committee with the impression that we do not engage with local communities to get them to engage with the options.

Q261 Chair: Who is "we"—the Department or the Environment Agency?

Bronwyn Hill: The Environment Agency do it in practice with regional flood committees, which are very important organisations. It is important to get their engagement in the process of deciding what to do with the money—some of it is locally raised; it does not all come from the Department and the Government—and, for example, to get developers who are interested in flood risk defences to make a contribution. That is the kind of direction of travel of the funding framework.

Q262 Chair: In an atmosphere where there is a lot of fallout from the consequences of spending and policy decisions, is it not important for the Department to take responsibility for that framework rather than let the agency take the heat? It might be convenient for Ministers to let the agency take the heat, but it is the responsibility of Ministers in the Department.

Bronwyn Hill: I am not sure Ministers did that. What the Secretary of State did was to get us, together with the Environment Agency and local partners in Somerset, to come up with an action plan to address the criticisms that we had not done enough to help them. Again, it is not to prevent the flooding, because the dredging of the Tone and Parrett will not stop it; it just means we can get rid of the water more quickly and perhaps reduce the duration of flooding when it happens. The action plan goes much wider than just dredging.

Q263 Chair: I understand that. I am really interested only in the accountability arrangements.

Lord Smith of Finsbury: We are required, as are Defra, by the Treasury to achieve the best possible value for money in any work that we do on flood risk management. In virtually all our flood risk management schemes, we have a benefit-to-cost ratio of eight to one.

Q264 Chair: I am very sorry to interrupt you, but the argument was that the money had been misallocated between flood defence and other environmental schemes. How do you balance those priorities?

Lord Smith of Finsbury: If I can just finish the sentence, the general ratio we achieve in all our schemes is at least eight to one; in some, it is much better than that. In Somerset, for the dredging of the Tone and Parrett the benefit-to-cost ratio is about one and a half to one. That is the scale of difference. The full cost of the dredging of the Tone and Parrett has become available only as a result of a special government decision taken this winter that it required special treatment.

Q265 Chair: It is very interesting that you should say that, because you are saying basically, "It is not our fault we didn't dredge the River Parrett; it was the Treasury's fault," because they created these measures that made you decide that it was not worth dredging the River Parrett, but I would have thought that, after the present crisis—

Lord Smith of Finsbury: We are all subject to the requirements of the Treasury in the money we spend.

Q266 Chair: But does that not mean that the Environment Agency are not really independent at all? Another interesting conundrum we come across is that, however much Ministers want to create a sense of independence, that independence does not exist. There are degrees of independence, but they tend to be eroded when things go wrong.

Lord Smith of Finsbury: Government sets the policy, money and funding parameters. We have to operate within that.

Q267 Chair: For example, in the case of the Home Office we see other agencies, or non-departmental bodies—the Border Agency never had any legal status—being very much brought back into the Department. Why is not the right response here to separate the regulatory function, which clearly needs to have a degree of independence, from delivery, which, in the end, is not independent?

Bronwyn Hill: We looked at that question in the triennial review of the Environment Agency and Natural England that we did last year. We decided that, on balance, the disbenefits of doing that would outweigh the benefits. Let me illustrate one thing that I think was proved by the winter floods. The Environment Agency have very significant operational responsibilities during a flooding emergency. Broadly speaking, it has 3,000 staff who do flood defences as their normal day job all the time. Last winter the Environment Agency had the ability to flex staff across. I think they have about 1,500 staff.

Lord Smith of Finsbury: Yes.

Bronwyn Hill: They were trained, were familiar with it and knew what they were doing.

Q268 Chair: These are regulatory staff who have contact with river authorities and they become involved in flood defences.

Bronwyn Hill: Yes. That resilience during an emergency persuaded our Ministers that separating regulation from the operations would undermine that resilience of the Environment Agency in a flood emergency. I think that was uppermost in their minds in deciding not to split the delivery of flood defences from the wider responsibilities.

Q269 Chair: I have two other questions about money. One is that evidence we have taken suggests that for some reason money for the maintenance of flood defences is harder to come by than capital for flood defences. I have a sea wall in my constituency that is falling down. I raised this last time; you will have seen it in the transcript. The Environment Agency have told us, “We want to wait until it completely falls down and then we’ll have a new capital scheme, which will be much better than trying to maintain this sea wall,” which in cash terms on an ongoing basis would probably be much cheaper. Do you recognise that criticism, and what is your response to it?

Bronwyn Hill: At a general level, it is an issue we are looking at very seriously. We have increased capital allocations. We have a new six-year funding settlement we are working on closely with the Environment Agency as to how that will be best deployed. We have increased maintenance, partly as a result of the winter floods, because there is an awful lot of damage that now needs to be repaired very quickly. I think the total figure is about £270 million. That is the short-term response to what happened last winter.

Looking forward, one of the questions we are looking at, jointly with the Environment Agency, is how to get the right balance between the maintenance funded by revenue and what technical experts call capital maintenance. I think that needs further work.

Q270 Chair: It sounds like an oxymoron in capital terms.

Bronwyn Hill: It is your sea wall, I think. It is not always an easy decision to make in advance.

Q271 Chair: But should you not have the flexibility in the Environment Agency to vire money, if it is cash and good value for money, and spend it on maintenance or capital? What difference does it make, except for some numbers in the Treasury?

Lord Smith of Finsbury: I would love to have that flexibility. It would transform the way in which we were able to approach all of these schemes. Please say that to the Chancellor of the Exchequer, because it is not in my gift.

Q272 Chair: It is another example of where you have no independence. You are told what to do.

Lord Smith of Finsbury: A few weeks back I appeared before the EFRA Select Committee. Their final question was, “Do you have any message for your successor?” It was, “Maintenance, maintenance, maintenance.” It is absolutely the key important issue.

Q273 Chair: But the lack of delegated authority to the agency militates against that.

Lord Smith of Finsbury: The fact that at the moment we have money labelled capital and money labelled revenue, and you cannot switch between the two, hampers the flexibility we do need.

Q274 Chair: You very kindly aim your fire at the Chancellor, but the permanent secretary is sitting beside you. What is the Chancellor’s answer?

Bronwyn Hill: We are talking to the Treasury about how we could get greater flexibility between capital and revenue. That is quite a significant conversation to have, but we are keen to pursue it.

On your question about independence, the way things are structured is that the Environment Agency will have an accounting officer who has to account to Parliament directly for how the agency spend the money. You do need clarity about what the money is for and on what it has been spent, so it is important to have that discipline and rigour.

I am also responsible to Parliament for all of the money the Department spend, whether directly or through an NDPB or executive agency. I am not sure that relationship should be broken. There are ways of looking at revenue/capital flexibilities that do not require us to break the fundamental accountability that I have.

Q275 Chair: How are you going to resolve this?

Bronwyn Hill: We are in discussions with the Treasury.

Q276 Chair: When is it going to be resolved?

Bronwyn Hill: I cannot give you an answer to that.

Q277 Chair: Finally, how much of the Environment Agency’s money is required to be spent by the European Union? Dr Richard North is very hot on this topic. A lot of the attitude in the expenditure

decisions of the Department and the Environment Agency is predetermined by environmental policy laid down by the European Union. How true is that?

Lord Smith of Finsbury: The spending is not specified by the EU. There is, however, a range of EU directives, agreed to by the UK Parliament, which we are responsible for implementing.

Q278 Chair: These are legal obligations under the European Union and they supersede any national preferences we might have that are outside that framework. How much of that money is spoken for?

Lord Smith of Finsbury: They include things like ensuring that our bathing water is clean, that our rivers have improving quality and that we protect important habitats. These are responsibilities which, if they were not imposed on us by European directives, would be imposed on us by parliamentary decisions.

Q279 Chair: The point is that there is no European directive on protecting homes from floods, but there are lots of European directives on protecting habitats. One is an international obligation—it is like mandated expenditure—and the other is not.

Lord Smith of Finsbury: They are separate streams of money.

Q280 Chair: Exactly, but how much does the EU stream pre-empt expenditure on flood defences, for example?

Sonia Phippard: I think the answer is that there is a stream of money that goes to the Environment Agency for work that is not flood-related. It is very small compared with either the chargeable income raised from regulation or the floods budget. That sum of money goes to some of regulatory responsibilities and other agency responsibilities, for example the work they do on climate change for the Department of Energy and Climate Change.

As to the floods budget, I think your question is rather more about whether a percentage of that gets hijacked by environmental requirements, to which the answer is: there is no clear answer, because it depends on the schemes being done. If a scheme would have a material environmental disbenefit, that needs to be mitigated, but it is a scheme-by-scheme judgment.

The Environment Agency can always override environmental requirements, for example flood defence in an emergency. You can waive requirements if to save lives and property you need to undertake defence activity.

Q281 Chair: Lord Smith, in your letter to me we cannot include the European Union as one of the factors that prevented the dredging of the River Parrett.

Lord Smith of Finsbury: No, you cannot.

Q282 Chair: I have one other question about the framework. How important is the framework agreement in establishing the stability of those personal relationships between the Department and the agency?

Bronwyn Hill: It is important that we have one, and we are now working on a new one to reflect the change to Wales and the post-triennial review position. Like all documents, it is important because it is clear and sets out roles and responsibilities, but if we were referring to it constantly I would be worried.

Q283 Chair: It appears that you have a high level of trust in the working relationships. Trust is essential for the exchange of information, the transfer of bad news as well as good news and learning from experience.

Lord Smith of Finsbury: Absolutely.

Q284 Chair: How do you think you have established that level of trust between your respective organisations?

Lord Smith of Finsbury: I think it starts with the relationship between chairman and secretary of state. Caroline Spelman put it rather well in her evidence to you earlier. She said that when she came into office she was a bit uncertain about how the relationship would work, but then discovered that it would work extremely well and we had a very good partnership. It also has to be reflected in the relationship between the chief executive and permanent secretary and relevant director general. That relationship has also been very close and strong, and that filters down through the rest of the organisation.

Q285 Chair: I have one extra little teasing question for the Permanent Secretary. If this Committee had been so impolite as to ask you to comment on what may have been a disagreement or difference of opinion between two Ministers, what would be the right answer for a permanent secretary to give a select committee?

Bronwyn Hill: A difference of opinion between two Ministers?

Q286 Chair: Yes. What would be the right answer for a permanent secretary to give a committee?

Bronwyn Hill: I would probably explain what they had said but not add any commentary on that difference.

Q287 Chair: Is not the right answer that you are not responsible for what Ministers say to each other and the question should be directed to them?

Bronwyn Hill: Yes.

Q288 Chair: What I am concerned about is that the Armstrong memorandum probably requires you to adopt a line to take when in fact you are not accountable for a disagreement between Ministers, and it should be possible for you simply to say, "That's above my pay grade. You'll have to ask them."

Bronwyn Hill: The only problem with the question is that it is a bit theoretical. If the disagreement arose as a result of bad advice, I probably am responsible for that, but it is the theoretical nature of the question that is puzzling me.

Q289 Chair: I do not think I am getting a very good answer.

Bronwyn Hill: I am responsible for ensuring that the Department provide sound advice to Ministers and then carrying out their wishes on the back of that advice.

Q290 Chair: The point I am making is that it would be invidious to ask you to explain a disagreement between two Ministers.

Bronwyn Hill: Partly because of collective Cabinet responsibility.

Chair: Exactly.

Bronwyn Hill: I would rather they did not disagree.

Q291 Chair: The point is that it would not be right for a committee to hold a permanent secretary accountable for a disagreement between two Ministers, so what is the right answer that a permanent secretary should give a committee?

Bronwyn Hill: It is theoretical, but you can always invite the Ministers to account for their differences.

Q292 Chair: That is right answer, is it not?

Bronwyn Hill: Yes.

Chair: Thank you very much.

Witnesses: **Una O'Brien CB**, Permanent Secretary, Department of Health, **Simon Stevens**, Chief Executive, NHS England, and **Professor Chris Ham CBE**, Chief Executive, the King's Fund, gave evidence.

Q293 Chair: Welcome to the second session this morning. Could each of you give your names and titles for the record?

Una O'Brien: My name is Una O'Brien, and I am the Permanent Secretary at the Department of Health.

Simon Stevens: I am Simon Stevens, Chief Executive of NHS England.

Professor Ham: I am Chris Ham, Chief Executive of the King's Fund.

Chair: Perhaps I can inveigh upon you to give short and crisp answers, and we will endeavour to ask short and crisp questions.

Q294 Kelvin Hopkins: Una O'Brien, can you describe what you understand the accountability arrangements of NHS England to be?

Una O'Brien: Accountability has a number of different dimensions to it, and it is set out in the framework agreement, to which you were referring only a moment earlier, between the Department and NHS England. Essentially, it works like this. The Department of Health set the overall direction and objectives for NHS England. They are translated into a mandate, which is a publicly available document. The mandate is issued every year. The purpose of having it as a live document is that it is reflective of the priorities of the government of the day, but it is the result of negotiation between NHS England and the Department. It is through that mandate agreement that NHS England is held to account.

Every two months there are accountability meetings between the Secretary of State for Health and the chairman of NHS England, Sir Malcolm Grant. The minutes of those meetings are made public. Between those meetings there is an extensive framework of accountability relationships and conversations that take place between the Department and NHS England to ensure that the objectives set are being fulfilled and, where they are not, that the senior management of NHS England is given a chance to explain and is held to account.

The second thing we are particularly interested in is to satisfy ourselves that NHS England is conducting their own relationship with the clinical commissioning groups effectively. As I am sure members of the Committee will recall, the centrepiece of the reforms was to establish clinical commissioning groups. One of the primary purposes of NHS England is to hold those CCGs to account. Through our accountability relationships we will seek to satisfy ourselves that the financial probity and all those elements of the conduct of CCGs are properly tested and assured by NHS England.

Perhaps I should pause there. There are other dimensions to the relationship. I know that appointments has been a factor on this Committee before. Clearly, that is an important dimension of the Secretary of State's involvement in influencing the creation of the board of NHS England. I will stop there. Please do ask me any points you want to follow up.

Q295 Kelvin Hopkins: The creation of NHS England, at least in theory, was a devolution of responsibility, but in reality that has not really happened, has it? We still have a hands-on Secretary of State who is very much accountable to Parliament for things that happen on the ground.

Una O'Brien: I think we do have devolution, insofar as there is the creation of the clinical commissioning groups. Reforms of this sort do not arrive ready made. As I am sure members of this Committee, who have overseen many different public sector reforms, will appreciate, it takes a number of years for those reforms to mature, but we have certainly kept faith with the intention to create the CCGs.

In the early days—I took over my role in the autumn of 2010—we did not envisage that the NHS Commissioning Board, now known as NHS England, would be quite as large as it has turned out to be, but, as we went through the process of the reforms, addressing all of the responsibilities that both Ministers and Parliament wished them to take, including the residual functions of PCTs and SHAs, it did become necessary to have a broader remit for the commissioning board than was in the original White Paper.

There has been a degree of devolution. Before the NHS HQ was embedded within the Department we did not have explicit open conversations that could be visible publicly on how resources should be used for public health, social care or the NHS. My experience is that this new arrangement allows for a more explicit discussion about the relative resource allocations and

where the priorities should sit between those three major delivery arms of our health and care system. Therefore, I think the focus it has brought has been a very positive development.

Q296 Kelvin Hopkins: My impression is that, following disasters like Staffordshire, in spite of all the theoretical devolution Ministers now have a much greater grip. In the past the local health bodies, whatever they might have been over various reforms, were more independent than they are now.

Una O'Brien: There has been a very long history of the relative independence of NHS bodies. Professor Ham can comment on this. When I began my journey in the Department of Health in the early 1990s regional health authority boards were entirely independent of government, apart from the appointment of the chair. We have tried different formulations of the structure in different eras, but the essential truth is that, so long as the NHS is funded through taxpayers' payments, that money is routed through the Treasury and it is voted by Parliament, Ministers will remain accountable. I think that was very clear in the debate on the Act, and that accountability has to be conducted within the structure of the day.

I have always had difficulty with the phrase "arm's length". The length of an arm is a very short one as far as I am concerned, and it is necessary to have a close relationship, just in the way I heard described in the last evidence session on the Environment Agency. You have to work together. It is impossible to put the NHS completely outside of a relationship with Ministers when the system is funded through taxpayers.

Q297 Kelvin Hopkins: I am trying to ask open questions, but my view is that accountability is absolutely right and Ministers should be accountable.

Una O'Brien: I would agree with that.

Q298 Kelvin Hopkins: Simon Stevens, what do you think are the advantages and disadvantages, at least in theory, of not being accountable to the Secretary of State for Health on a day-to-day basis?

Simon Stevens: I think they are four-fold in theory. First, creating organisations that have a distinctive role creates focus; secondly, conducting our affairs in public at arm's length from a civil service Government Department permits greater transparency; thirdly, having to specify the goals we have been asked to achieve by the government of the day tends to lead to a focus on outcomes rather than input measures or processes; and, fourthly, it creates the possibility of greater geographical decentralisation rather than hierarchical control from Whitehall. That is what we have got, given the fact that, of the NHS budget £67 billion, two-thirds is now in the hands of local clinicians through clinical commissioning groups. Those would be the four in principle advantages of having more daylight between the day-to-day political process and the running of the National Health Service. How that works out in practice ebbs and flows a bit, depending on the behaviours of the individuals involved.

Q299 Kelvin Hopkins: You were very much the preferred candidate of the Prime Minister for this job. How much is it really about personal relationships, indeed personal politics, rather than structures and formal arrangements?

Simon Stevens: I was appointed following an open advert by the non-executive directors of NHS England, with the approval of the sitting Secretary of State. My personal accountability is to the board of NHS England and, as Una says, NHS England are accountable to the elected government of the day. Obviously, the Secretary of State has political stewardship of the National Health Service. In addition, as the accounting officer for the NHS England vote—the vast majority of the spending on the National Health Service—I have direct accountability to Parliament.

Q300 Kelvin Hopkins: Were you not really appointed to drive the agenda of the Government effectively to privatise the health service by salami tactics and using commissioning as a cover for that privatisation? Is that not the reality?

Simon Stevens: No, it is not.

Q301 Kelvin Hopkins: A lot of other people have told me it is. Indeed, you come from an American private health corporation background, which is perfectly designed to achieve that job.

Simon Stevens: Since we are having an ad hominem conversation, I spent 15 years working in the UK public service, including the National Health Service, and 11 years working internationally. I hope to bring the benefits of that experience to this role, working with many others, to try to ensure that the National Health Service prospers in the years ahead.

Q302 Kelvin Hopkins: You were described in *The Guardian* by a doctor as “a privateer and architect of New Labour’s opening up of Pandora’s Box to the private health sector”. Is that a fair point?

Simon Stevens: My record will speak for itself as the years unfold.

Q303 Greg Mulholland: Simon, is it not the case that we have a problem with the existence of NHS England and their overarching responsibility, and yet Ministers are supposed to be accountable? Sometimes it seems that neither NHS England nor Ministers is taking direct responsibility for important decisions. I refer you to the decision taken by Sir Bruce Keogh to march into the Leeds children’s heart unit and stop surgery. It was a completely unprecedented move, using unreliable data that he was told were not ready and treating that unit differently from any other unit. Do you think we really have accountability when all that happened, when I initially raised it with the Secretary of State, was that he repeated back to me the press release given to him by Sir Bruce Keogh’s office? That is not accountability, is it?

Simon Stevens: The first question is whether it was the right or wrong thing to do. As I understand it, this arose as a result of concerns being raised, which subsequently turned out not to be the case, about whether there were safety issues related to children’s cardiac surgery being delivered in Leeds. Therefore, I think it was the responsible thing to do for the national medical director of the NHS to discuss with the trust whether, while a quick inquiry was undertaken to ensure patients would not be harmed by cardiac surgery taking place there, cardiac surgery should be suspended.

One of the things we have learned from a number of the health care quality problems that have arisen in the NHS is that, rather than brushing concerns under the carpet, it was very important

to act immediately when those sorts of concerns were raised without fear or favour. I think that was what happened in that circumstance.

Q304 Greg Mulholland: With respect, it absolutely is not. What is very sad is that we have not had the courage from NHS England and Sir Bruce Keogh to admit that. That would be accountability. There was a kneejerk decision that did not follow normal procedure and treated Leeds entirely differently from other children's heart surgery units, where there were concerns and no-one marched in to stop the surgery in such an unprecedented fashion, and data were used that Sir Bruce Keogh himself was told were not ready, not verified and should not be used because they were incomplete. Are you still saying that that was the right thing to do? It was not about a review. We had a review, which took a year, and declared that Sir Bruce Keogh and NHS England were wrong at the time of suspension. That of course put lives at risk. People who were booked in for procedures had to be rescheduled or moved elsewhere. That review declared that all along it was safe at the time of closure. Is it not accountability first and foremost to say, "We got it wrong, and we apologise"? Is that now going to happen?

Simon Stevens: As I understand it, the data have subsequently shown that services were safe, and that is a good thing.

Q305 Greg Mulholland: Are we going to get an acknowledgement and apology?

Simon Stevens: Absolutely. With the benefit of hindsight, we now know that and that is a very good thing. The question is: when a concern is raised, should one act on the precautionary principle to ensure that patients' lives are not put at risk while one is investigating? Going forward, we have a different set of arrangements. We have the independent Care Quality Commission. It is principally the Care Quality Commission's responsibility to assure the safety of services being delivered around the country. As you know better than me, Mr Mulholland, a huge piece of work is now going on around children's cardiac surgery in the context of adult cardiac surgery more generally. It is hoped that that will bring to a conclusion some of the debates that have been under way since the time of the Bristol Royal Infirmary inquiry.

Q306 Chair: I do not want to get dragged too much into the substance of the case, but the real question is: who is ultimately accountable for patient safety in the NHS? I am looking at your organisation charts with NHS England surrounded by 20 other bodies, not including all the CCGs and so on. Who is ultimately accountable for patient safety in the NHS?

Simon Stevens: Ultimately, the clinicians who are providing care are responsible for the safety and quality of the care that is being provided.

Q307 Chair: That is one answer, is it not?

Simon Stevens: I think that is the right answer.

Q308 Chair: If there is a breakdown in patient safety in a hospital, as we saw in Mid Staffordshire, it is the Secretary of State in the House of Commons who is accountable.

Simon Stevens: There are accountabilities throughout. We all have accountabilities for different components of this. The Secretary of State today is launching a major campaign to ensure that there is greater transparency around safety in the NHS and that there is a broad-based commitment to improvement, which there is. The NHS is now a world leader in transparency about the quality variation that exists inside every health care system, including our own. There is no simple silver bullet answer as to how we are going to tackle that. The truth is that it is going to require professional leadership and the responsibility of hospital boards, independent inspectors, transparency and the commissioning process.

Q309 Chair: This all suggests that you regard accountability as something quite diffused.

Simon Stevens: The accountability for clinical care and the organisation of 1.3 million staff serving the whole population of England is a shared one.

Q310 Chair: What is difference between delegating responsibility for roles, responsibilities and tasks, and accountability?

Simon Stevens: Are you talking about delegating responsibility for the management of individual institutions? As to individual patient treatment, obviously it is fundamentally about the clinician-patient relationship, and the circumstances in which that takes place is a responsibility that all of us share who help fund and manage the National Health Service.

Q311 Chair: I do not know whether you listened to the *Today* programme this morning and heard Martin Bromiley.

Simon Stevens: I did.

Q312 Chair: He is an airline pilot who set up an organisation called Clinical Human Factors Group. He is bringing his aviation experience to why he lost his wife in a routine operation. He explained how at first he thought there was a problem of information sharing in the surgical team, but this seemed to be a very widespread problem in the NHS. He explained that in an airline, similarly in the offshore oil and gas industry, these human factors are very much managed into the safety culture of the organisation.

Simon Stevens: Yes.

Q313 Chair: Who is responsible and accountable for ensuring that human engineering creates the right safety culture in the health industry in this country?

Simon Stevens: Certainly NHS England has part of that responsibility. One of the goals the Government sets us through the mandate is to improve the reliability and safety of care that patients experience. We have a dedicated team of experts, many of whom work with the kinds of techniques that Mr Bromiley described to embed those across the National Health Service. But we are obviously not the only organisation; there are many others who also have a part to play. The announcement the Secretary of State is making today is about a much broader

collaborative involving many hospitals across the NHS who are all going to sign up to safety to play their part in this broad social movement.

Q314 Chair: But does that not demonstrate that accountability for patients' safety cannot be scapegoated on to the individual nurse or clinician? It rests with the organisation as a whole.

Simon Stevens: It is a shared responsibility, most certainly. There are individual responsibilities, for which clinical professionals are accountable to the GMC or the Nursing and Midwifery Council, but a lot of what goes wrong is not a consequence of poor individual, clinical behaviour for the reasons Mr Bromiley says; it is the way systems are designed, and that is what we have got to change.

Q315 Chair: So it is a question of the quality of the leadership.

Simon Stevens: In part, yes.

Una O'Brien: I just wanted to reinforce what Simon is saying. In an industry as big and complex as healthcare, it is inevitable that accountability and responsibility have to sit at different levels. Fundamentally, the professional calibre of the individual clinician in their relationship with the patient is the first line of defence when it comes to safety: have we trained people sufficiently well? Are they operating under an umbrella of professional regulation? The role of those professional regulators is important.

Secondly, individuals work within a system of a provider organisation: are the rules and expectations within that organisation properly set out? We have been on a 10-year journey to raise the profile of safety and clinical governance. I was a director of clinical governance for four years at a London teaching hospital. We have made very significant improvements, but we have much more to do.

The third dimension is: what is the externality that assures the public that the quality system is good enough and acts when it is not? We now have a much stronger Care Quality Commission. We have the Chief Inspector of Hospitals. I am really trying to demonstrate there are layers to this, necessarily so because of the complexity of the system.

Q316 Chair: What assessment have you made of the risks of laying too much emphasis on published data—which is about outputs and are very often measurements that can be manipulated or even falsified, as we have seen in my own local hospital—as opposed to targeting how people behave and their attitudes? How do you measure that by publishing data?

Una O'Brien: I ran the Bristol inquiry 15 years ago. We had a situation there where data was completely enclosed and not even visible to the people who ran the hospital. The virtue of open data is imply it drives questioning and drives challenges; it does not give you answers.

Q317 Chair: We see the virtue of open data. But the problem is, if you're trying to target peoples' attitude and behaviour, people will say, "Oh, we're not measured on that." What are you going to do on that?

Una O'Brien: Simon can comment, but I heard the point made on the *Today* programme this morning. I think we have got good evidence that greater transparency will drive safety. We will obviously want to learn from experience whether it is fulfilled in the way we expect, but, compared with having less transparency, it is definitely a steep in the right direction to be more open about what is actually going on, because only then can you really confront the source of the problem.

Q318 Chair: Mr Stevens, is this a really short supplementary comment?

Simon Stevens: Yes. It is really about just two things. One, the Chief Nursing Officer is leading a programme called 6Cs, which is attempting to embed precisely the kinds of attitudes and values across the nursing and clinical workforce more generally. Secondly, we have something called the friends and family test, which is a way of eliciting exactly the kind of qualitative information that you are talking about in terms of the experiences people have had. We are going to ask the same question for staff as well, and that provides a real-time insight into what it feels like to either be delivering or receiving care that is different from the kind of published paper you are talking about.

Q319 Greg Mulholland: I am conscious of the time. I have two quick questions just to pursue the line, because it is the first chance I have had to do this with Mr Stevens. It is disappointing—the Bristol case shows that Leeds was treated differently: that you do not march in where there are concerns, or frankly NHS England would be closing services of all kinds up and down the country. It would be appropriate to finally acknowledge that NHS England did get that wrong; it seems clear, sadly, that you are not going to do that.

Chair: For the lack of better information, it was a stab in the dark.

Simon Stevens: I am sure Mr Mulholland and Dr Keogh have corresponded on this at length, but I think it was adopting a precautionary principle, putting himself in the position of a prospective parent whose child might have been treated at a unit where concerns had been raised. Going forward, that is not the approach we are going to be using, because we have the Care Quality Commission, which is the right organisation to address these concerns.

Q320 Greg Mulholland: So an apology would be appropriate. If I can move on, you give the impression that you believe in accountability. I would like to see some more concrete evidence of that. Can I therefore ask you why on earth you have consistently denied basic information requested by the Yorkshire & The Humber Joint Health Overview and Scrutiny Committee, chaired by Councillor John Illingworth, that finally led, just a few weeks ago, to the humiliation of NHS England being forced by a judge at an information commission tribunal to hand over that basic information so that democratic body, which is precisely there for accountability, can do its work? Does that not also—as well as requiring an explanation—mean that NHS England should apologise, including for the waste of taxpayers' money, as well as stopping that accountability?

Simon Stevens: I do not know about the instance you are referring to, but in general, in respect of the review of children's and adult cardiac surgery, this is now an incredibly inclusive and expansive process that has got a patient group chaired by the patients' organisations, a clinical group, and is producing fortnightly blogs with information on everything that is being done—it is pretty transparent.

Q321 Greg Mulholland: With respect, that has nothing to do with the question. That has absolutely nothing to do with a refusal to supply information that a judge has now forced you to. You clearly do not know about that case, so I would ask you perhaps to correspond with me.

Simon Stevens: I would be happy to look into that.

Greg Mulholland: I believe an apology, including for the waste of taxpayers' money, would be appropriate.

Chair: You want an acknowledgement that there was a learning process from what happened.

Greg Mulholland: Chair, with respect, I believe there was a consistent attempt by NHS England to stifle accountability, and I find that deeply worrying. It was only through freedom of information legislation and the tribunal that we got that.

Q322 Chair: Mr Stevens, you will write to Mr Mulholland about this matter?

Simon Stevens: Most certainly.

Q323 Greg Mulholland: The Self and Sustainable Review that cost a lot of money was "demolished" in the word of one commentator by the Independent Reconfiguration Panel, and the reason for doing the review in the first place was of course one that everyone supported. However, the actual content of the response and the committee doing it was torn to pieces. I quote: "a paucity of basic information"; it was partial—"flawed"; the attitude to people on it with regards to campaigners was "arrogant and foolish". Yet, most of the people who were on that Committee are still involved in the NHS and are entirely unaccountable. Is that acceptable?

Simon Stevens: The review you are talking about preceded the creation of NHS England for the most part. We now have an independent clinical advisory group, chaired by Professor Sir Michael Rawlins. We have an independent clinical experts group. We have an independent patients' group, chaired by the British Heart Foundation. We have an independent provider group feeding in to this review.

Q324 Greg Mulholland: With respect, Mr Stevens, I am not asking you about going forward; it is great to hear—we can have long discussions. People as part of that process did not do their job properly and have not been held to account; they are still involved in some cases in senior decision-making. Is that going to continue and is that acceptable, with those individuals who were deemed to have let people down through their actions during that process?

Simon Stevens: I am not quite sure who those individuals are that you are referring to.

Q325 Chair: But in general it is a perceived problem, probably a real one, that people in the NHS have fallen down on the job and finish up being re-employed elsewhere after a large redundancy payoff. Who is accountable for this?

Simon Stevens: That is a related but different avenue of inquiry, and I think it is something that both Una and I want to put a stop to. Our predecessors have certainly made that point before. There obviously has been a significant redundancy programme across the NHS as a result of the major changes that have followed the implementation of the Health and Social Care Act, but the net effect of all that is that over the course of this Parliament the Government estimates that

about £5.5 billion will be saved relative to the cost of £1.6 billion. So net-net, that disruption will have reduced administrative costs, according to estimates from the Department of Health.

Q326 Chair: But what about the reemployment in the health service of people who were previously perceived not to be up to the job, which is Mr Mulholland's question?

Una O'Brien: Clearly this is an issue that we are working on actively. The Secretary of State has spoken about it. You will be aware, following the Francis Inquiry, Ministers made a number of commitments particularly around a fit-and-proper-persons test, to make sure somebody who—particularly in a position of leadership—has done a bad job does not turn up somewhere else and not accountable for what they have done.

Clearly, as far as clinicians are concerned there is a longstanding professional regulatory framework. We do not have the equivalent for people who work on the management side, and a number of actions following the Francis Inquiry have been to try to address that imbalance.

Q327 Chair: What advice was given to Ministers about the potential consequences of such a large reorganisation in terms of the redundancy costs that have inevitably followed?

Una O'Brien: The impact assessment, which was published, set out exactly what the costs and savings of the reform programme would be, and we have met those objectives. It was not the purpose of the reform programme, but it enabled, as Simon has said, a saving of £5.5 billion over the lifetime of the Parliament to be achieved.

Specifically, in terms of the redundancy terms and conditions that staff had at the point the abolition of SHAs and PCTs was announced, those conditions had to be honoured as they were at the time. We are now seeking—and indeed you'll have seen more generally for the public sector an announcement in the Queen's speech—is, first of all, to legislate to claw back a part of the redundancy payment if someone is re-employed within around 12 months. That is what I think it is in the consultation; the final decision on that timing has not been taken. Even if people are made redundant for reasons of reorganisation, if they get a job within the NHS within a short period of time afterwards, having taken a large redundancy payment, people over a certain salary level will have to pay back a significant portion of that. That is designed to tackle what is a widely held dissatisfaction with these pre-existing terms and conditions.

Q328 Chair: Why was this not foreseen? Why was it not in the original Act reorganising the health service?

Una O'Brien: It was foreseen, but those terms and conditions had to be honoured at the point at which the decision was made.

Chair: So this only applies to new appointments. Understood.

Q329 Mr Turner: Most illnesses are devolved to CCGs; a very small minority are handled by NHS England. Are there any illnesses that have not yet made their position clear?

Simon Stevens: Yes, the position, as you suggest, Mr Turner, is that two-thirds of the NHS's funding is devolved to clinical commissioning groups, and then a third of it is directly

commissioned by NHS England. That split does not map onto individual diseases, but it might correspond to different levels of severity of a particular problem. Somebody with a mental health problem might be treated in general practice, obviously, where the bulk of anxiety, depression and other common mental health disorders would be treated. They might receive care from a psychiatrist in a local mental health trust, which would be commissioned by the CCG. If they needed more specialised care, then NHS England would be commissioning it. So it depends as much on the degree of specialisation of the care as it does on the nature of the condition itself as to who has commissioning responsibility.

Q330 Mr Turner: Are there some illnesses, some treatments, for which you are not clear whether CCGs or NHS England will deal with them?

Simon Stevens: I do not think so; we do have clarity. The split might evolve over time. In the fullness of day, we might decide there are things CCGs themselves could take more control of, and one of those is the commissioning of some primary care services, which were vested with NHS England in April of last year. But we have just said we are willing to explore doing that jointly with primary care clinicians, and there has been a pretty strong interest in that.

Q331 Mr Turner: Yours was a helpful answer, but it was not absolutely clear, and you may be interested to know that a doctor on the island feels there are some issues that have not been settled yet. Who is responsible for deciding which treatment: CCG or NHS England?

Simon Stevens: The government makes that decision; Earl Howe is the Minister within the Department of Health who has responsibility for the consultation on prescribing which conditions would fall as specialised conditions versus CCG commissioned services. Obviously the Isle of Wight has a somewhat more integrated setup than many other parts of the country just by virtue of the fact that you have your community health services and hospital services in a single provider organisation. So that perhaps provides the basis for more integration than is available elsewhere.

Q332 Sheila Gilmore: Somebody has already referred to the organogram that we were shown from the National Audit Office, which shows a complete mare's nest of arrows and organisations. At a time when the Government said it wanted to reduce the number of arm's length organisations or quangos—whatever you want to call them—the setting up of NHS England seemed to be a step in the opposite direction. Why?

Una O'Brien: To be absolutely clear about it, we needed an organisation to commission primary care following the abolition of the PCTs. Secondly, we needed an organisation to commission specialised services nationally. Thirdly—and this very much came through, if you recall, the pause in legislation and further debate—there was a very big concern that CCGs needed to be under some form of umbrella that ensured they properly cared for their money, that they conducted themselves with propriety, and that there was consistency in those fundamentals of good stewardship of public money.

Q333 Chair: And that they were held accountable?

Una O'Brien: Yes, and that they were held accountable, and hence that role was then vested in formerly the NHS Commissioning Board but now renamed NHS England. So those are the

reasons why it was constructed. I am sure Chris, who studied this from the outside, would wish to contribute.

Q334 Chair: Professor Ham, you have been extremely patient.

Professor Ham: I have been listening with great interest. To add to what Una has said, agreeing with that, we now have a very complex and often quite confusing set of arrangements at a national level. Maybe this was what you were referring to in the NAO organogram, because unlike the Environment Agency and its relationship with Defra, DH relates not just to NHS England—I appreciate that is the focus today—but to at least half a dozen far more national bodies: the Care Quality Commission, with Monitor overseeing it; the Foundation Trust; Trust Development Authority; Public Health England, and so on. There are quite diffuse relationships between DH, the Health Secretary, on the one hand and arm's length national bodies on the other.

There is growing clarity about who is responsible for what, but there is certainly potential still for confusion because, again, unlike with the Environment Agency, these relationships are still evolving and only date from April last year. How they will eventually transform the relationship between the Health Secretary and the NHS remains to be seen.

Q335 Sheila Gilmore: We had a reported comment making its way round the media this weekend from the Health Minister suggesting the Government had lost control of its various leaders as a result of all this organisation. Have you got any evidence of that?

Professor Ham: I think NHS leaders reading that comment would be surprised. It goes back to where we started on this discussion, because at one level there was the intention of Andrew Lansley to distance Ministers from the day-to-day running of the NHS, and there is the current reality, which is very different from that. If you are a chief executive running a hospital anywhere in England, you would experience much tighter regulation through Care Quality Commission, or through Monitor, performance management against your targets, than probably at any time in the last 15 or 20 years or so. We still have quite close involvement from Ministers, the Department, and NHS England on their behalf, overseeing the running of the NHS. It does not feel like an organisation that is now out of control.

Q336 Sheila Gilmore: In other spheres—and I have certainly seen it in the relationship between national government and local government, and we have certainly seen this in Scotland—we have seen a government that says, “We’ve given that to local authorities. It’s up to them to do it. We’ve stopped ring-fencing anything.” It suits them at times to say, “It is not us; it is them. They’re making their own decisions and we’ve got nothing to do with it, so don’t talk to us about it—don’t blame us.” Is there a danger here that this apparent uncertainty, where you can have a junior minister on one hand perhaps trying to say, “We no longer have those leaders,” but you are saying, “Well, actually, if anything, they’re still there”? Perhaps in reality a Minister is always going to be held ultimately responsible, because it comes to the point that is who the media and everyone else is going to go after.

Professor Ham: The question for me in all of this is: who is accountable for what? There must be multiple accountabilities for different aspects of the performance of the NHS. I think the

intention behind the 2012 Act was to say the Health Secretary is the overall person responsible for the funding and performance of the NHS as a system. That is different from making sure that each hospital is run as efficiently as possible and providing safe, high-quality care within budget, where the intention of the last Government, and also this Government, was more and more that the accountability for that should rest at the hospital level, in the board running the hospital and its local leaders. Bevan said the principle on which the NHS should be set up was when a bedpan fell in a hospital in Tredegar the sound should reverberate around the palace of Westminster. That may have been appropriate or not in 1948; I think most of us would say it does not feel appropriate in 2014.

Q337 Chair: Sheila, can I just press the Professor on this? It seems to me we are confusing two things. Certainly the Bevan principle is a rotten management or leadership model, but what is the difference between delegated management or delegated leadership and accountability?

Professor Ham: I would say the accountability must rest firmly for operational failures with the boards of NHS provider organisations.

Q338 Chair: I understand your saying that, but when something really serious goes wrong, it is the Secretary of State who has to answer to the House of Commons in a statement to explain what has happened and has to take responsibility. That is the doctrine of ministerial accountability.

Professor Ham: Sure.

Chair: How can you release the health service from that doctrine?

Professor Ham: If you go back to when foundation trusts were set up in 2004 under the last Government, there was a period of about two years where Alan Milburn and John Reid decided that they no longer had responsibility and accountability.

Q339 Chair: What was the consequence?

Professor Ham: The consequence was when things went wrong, the chief executives, medical directors of the organisations—

Q340 Chair: Some would argue that the consequence was the Mid Staffordshire crisis, where Ministers did not answer their letters, they gave them to the Trust to answer, and nobody was held accountable for what was going wrong at Mid Staffordshire until disaster became all too apparent.

Professor Ham: Well, as a sometime historian of the NHS, if you go back over a much longer period of time, to Ely hospital in the 1960s or the very well-publicised failures in psychiatric hospitals and general hospitals after that, when there was very clear accountability of the Health Secretary or the equivalent at the time, that did not stop failures of patient care within the NHS.

Q341 Chair: Right. Well, I think we are getting somewhere, because is not the answer to this that theoretical, technical or organisational delegations or allocations of responsibility are only part of answer. We are interested in what people feel like when they are given these responsibilities, how

they are treated, how much trust there is in the system, how people behave and what their attitudes are. You cannot control that by organisational change, can you?

Simon Stevens: I think those are subtle points, and I would agree with them.

Professor Ham: Yes, I would agree with that too.

Q342 Chair: What do we need to do to make this system feel more accountable than it is?

Simon Stevens: Accountable to Parliament or accountable to whom?

Q343 Chair: To make it more accountable by the way people behave—how do we make it accountable and make it reasonable that the Secretary of State can take responsibility for when things go wrong, because that is obviously the reality.

Simon Stevens: Yes. If you were to take evidence, and perhaps you have or you will, from jobbing doctors, nurses and managers from the front line of the NHS, I suspect you will not find a sense that they feel unaccountable. They feel very accountable in multiple venues to multiple organisations: to Parliament, to the media, to the local communities, to their commissioners, to the Department of Health, to the Care Quality Commission, to umpteen different bodies. I do not think there is a lack of sources of accountability.

Q344 Chair: My own hospital in Colchester is going through a difficult period at the moment, and, as one of the elected representatives in that area, I do not feel there is accountability. I then go and have a meeting with Monitor, or I go and have a meeting with CQC, but what I want is a meeting with the Secretary of State, because I want somebody with the ultimate accountability to pick it up and shake it by the scruff of the neck for whatever reason, to achieve whatever end. The question is, however much you delegate accountability, do you not have to design systems, techniques, human behaviours and a learning process that acknowledges that ultimately the Secretary of State remains accountable? You cannot avoid that.

Simon Stevens: I do not think anybody here, Chairman, is disagreeing with that. It is obviously that both the 2006 NHS Act and the Health and Social Care Act 2012 make it absolutely plain that the Secretary of State is accountable for promoting a comprehensive health service in England with a view to improving the outcomes of health for the nation. That responsibility is shared and cascaded, but the Secretary of State clearly is accountable for that.

Q345 Chair: The idea that you can create a structure that depoliticised the NHS actually depends upon how the Secretary of State behaves?

Una O'Brien: If I could comment on this, I think my experience is that any structure can be made to work, and you have asked a direct question to say, "What is it that we need to do to enrich the behaviour around accountability?" and my first answer to that would be: leave the structure alone for a significant period of time, so that people can focus on those issues and not get waylaid into more reorganisations. I think that is a really important lesson from my own personal experience: to build those behaviours, we need that stability of organisational form, because any set of structures can be made to work one way or another.

The second thing that I would add to that is that I am a passionate believer in the power of transparency to drive accountability and to drive patient engagement and public engagement with what their institutions are doing. We are seeing the organisations that are more open about what goes wrong as well as what goes well do engender trust with the communities that they serve. That is very important.

The third thing that I think is important—and we do not talk enough about it—is the value of professionalism. We rely ultimately on the education, training and the professional ethic of our doctors, nurses, allied health professionals and others. I think we have got to find a way that we are able to value that professionalism and support it, because ultimately, when we really need help, they are the people that we turn to. The systems within providers and the external inspection all matter and are part of it, but supporting and enhancing the professionalism would be my third point of what we really need to do to build the culture you have described.

Chair: Thank you, and it has just been announced the Secretary of State is to make a statement about patient safety to the House of Commons this afternoon.

Q346 Sheila Gilmore: Finally, in what way does having NHS England work more efficiently and effectively than having the same function within the Department?

Simon Stevens: Yes. I said earlier that I thought there were four potential benefits from the arrangement; one is focus, which is that NHS England is responsible for a particular set of tasks. We are not a general Government Department; we are not staffed by civil servants. We are staffed for the most part by technical specialists whose job it is to try to improve the health of the nation from the money that Parliament votes for the NHS, so there is something about focus.

There is something about transparency, because when we do our business we meet in public. The judgment calls that we have to make are all transparently out in the open; they are not subject to the confines of a Government Department going about its internal business. When there is a conversation about what can be done for the money, that is an open conversation that the British people get to see played out; it is not just occurring behind closed doors.

We have more of a focus on outcomes, because the goals we are set—for example, to save 30,000 lives from people dying prematurely by the end of the decade—are an outcomes-based conversation that, in my experience of working in the NHS, the Department of Health and Number 10 under eight different health secretaries of different political backgrounds, has not been the traditional *modus operandi*. The last piece of it is that it has enabled the embedding of decentralisation across the system. We have groups of doctors and nurses through the clinical commissioning groups who are now leading the National Health Service. If this was all being done from inside the Department of Health at 79 Whitehall, that would not be what is happening.

Those are the potential benefits of the arrangement, but as Una said, and I strongly concur, there are many different possible permutations to lead the National Health Service, and they have been tried in many different incarnations over the years. There is no one right answer, but there is a wrong answer, and that is to keep changing your mind.

Q347 Chair: Just one little accountability conundrum: NHS England is phasing out the Minimum Practice Income Guarantee.

Simon Stevens: Yes.

Chair: Practices with a large number of students have been relying on MPIG, as it is called, to maintain their support for students, who tend to use health services rather more intensively than later in their adult lives. I have a practice, the Rowhedge Practice, that supports the practice for the University of Essex. When I wrote to the Minister to ask about the phasing out of MPIG, the end of the letter says, “I would therefore advise a representative for the Rowhedge and University of Essex Medical Practice to raise their concerns with NHS England directly.” Well, I have already done that, but I am left with a feeling that the system is not accountable, because the consequences of what is being done are being disclaimed by the Minister; he explains it, but he says it is your policy, but you are not accountable; you are only accountable to the framework—to the structure. How do I hold you accountable for the closure of the practice facilities for Essex University?

Simon Stevens: I hope that is not what happens. Obviously you know the context for MPIG, which is that it is an unfair subsidy in general for practices compared with their neighbouring practices, which means that, for treating equivalent patient groups, some practices are earning up to twice as much. That is why it was agreed 10 years ago that a temporary interim measure would be introduced, which is now being phased out over a period of 17 years. Only in the National Health Service would a 17-year funding transition be regarded as expeditious.

Q348 Chair: I appreciate that, but do I come and see you and treat you rather like a Minister, or do I go and see the Minister and tell him to tell you what to do? What should I do?

Simon Stevens: The area teams of NHS England are working with the 98 practices, out of 8,000-odd across the country, most affected this year by the beginning of the phase-out of MPIG to understand the extent to which the extra funding that they have been getting through MPIG is a result genuinely of extra services that have been delivered, say, to students in your constituency, or is the result of unfair subsidy at the expense of other practices. The area teams are having those conversations with these 98 practices around the country as we speak.

Q349 Chair: Should I come and see you or—

Simon Stevens: I would welcome that very much.

Q350 Chair: In fact, you are making yourself directly accountable to Members of Parliament for this kind of day-to-day operational control?

Simon Stevens: Individual Members of Parliament have been writing to me about the small number of practices out of 8,000 that are affected by MPIG and, as I say, our area teams are right now in the process of having discussions with those small number of practices about what needs to change in order to keep them sustainable, provided they are doing something worthwhile for the extra money.

Q351 Chair: I am just using this as an example for the accountability debate. If you stick to what we fear is going to happen—you may well be making provision to change that, and I hope you are and I will come and see you—what happens if all the MPs affected are not happy with what you have decided, and then we go to the Minister. Does the Minister have the power to direct it?

Simon Stevens: The decision to phase out MPIG over what will have been 17 years was a decision taken as part of the GP contract negotiation undertaken last year—

Q352 Chair: Is that the responsibility of NHS England or the Minister?

Simon Stevens: —for which the Department of Health set the policy framework and NHS England helped then execute. The original policy decision is the decision for which NHS England and the Department of Health jointly agreed.

Q353 Chair: I have the right to go back to the Department of Health?

Una O'Brien: Just to draw the distinction: for an individual case, so you are talking about a particular practice and the circumstances of that practice—

Chair: But it is a policy issue.

Una O'Brien: No, your route therefore is to NHS England. You then ask the question about what happens if a group of Members of Parliament together have a broader issue about the policy, whether the inequity of the policy on the one hand, because we have Members of Parliament who are unhappy about that, or about the speed of change. That raises it to the level of being what I would call a system policy issue, and that would be where Ministers are interested. Essentially the role of the Department is to say: “Does this system work effectively as intended?” and if there are system issues, it is then the responsibility of the Department to look at it more broadly and then to raise it, discuss it and pursue it through the accountability relationship with NHS England.

Q354 Chair: We are getting a division of responsibilities here, which perhaps more MPs need to understand. Can I ask one final question? Of course, you represent, Permanent Secretary and Chief Executive of the NHS, two different types of accountability. Mr Stevens, you are not part of the permanent Civil Service?

Simon Stevens: Correct. I am a public official accountable to the board of NHS England. I am not a civil servant.

Q355 Chair: To that extent, you are not perhaps expected to reflect the same degree of impartiality as a Permanent Secretary.

Simon Stevens: Well, I have more independence.

Q356 Chair: Your appointment is more political, as an earlier question—

Simon Stevens: No, my appointment is not political.

Q357 Chair: I appreciate that, but we are talking about degrees of politicisation here. An incoming Government of a different hue might well decide that you are not the right kind of person to lead the Health Service, and when your contract comes to an end they will place you with somebody completely different.

Simon Stevens: Obviously Parliament and Government can decide how it wants to manage the National Health Service, but the statutory framework specifies that the Secretary of State can appoint the non-executive directors of NHS England, and it is the non-executive directors who appoint the Chief Executive.

Q358 Chair: The non-executive directors of NHS England appointed you, not the Minister?

Simon Stevens: Correct; that is right. The Minister did not appoint me; the Minister ratified the appointment made independently by the non-executive directors of NHS England, following an open advert and a worldwide competition.

Q359 Chair: It was reported that the Prime Minister personally asked you to put your name in for the job. Is that correct?

Simon Stevens: I saw those reports; no, that is not the sequence of events.

Q360 Chair: That did not occur?

Simon Stevens: The Prime Minister did not ask me to apply for the job, no.

Q361 Chair: Were you asked indirectly to apply for the job by anyone political?

Simon Stevens: I thought long and hard about whether to apply and take the job, given that this is obviously a period when the Health Service is under great stress, and I asked myself two questions: can the NHS make it over the course of next four or five years, and is the job, as described, doable? By virtue of the fact that I turned up for work, you can infer that I concluded “yes” to both questions.

Q362 Chair: What intrigues me is there are two different kinds of impartiality sitting in front of us—two different appointment procedures: one is intended to be much more permanently impartial, and providing a service to Ministers; the other is carrying out a delegated function statutorily, but really on behalf of Ministers indirectly. I am trying to understand how these two different kinds of impartiality differ, and why a Minister would feel that somehow you are more accountable than perhaps many Ministers would feel their permanent secretaries are accountable?

Una O’Brien: I think it is important here to reference the appointment of non-executive directors, because they are ministerial appointments, and they go through a public appointments process to make sure that it is fair and open. I have sat on the panel for both the appointment of Malcolm Grant and pretty much all the non-executive directors for NHS England, but those panels give Ministers a choice, and then it is a ministerial decision whom they appoint.

That is the essential role and responsibility of the Government of the day, and there will be a new Government of whatever hue this time next year, and they will make their own conclusions about what they want to do on non-executive appointments. That, I would argue, is the essential relationship between Ministers and appointments. I do not know; certainly in my system, none of my executive NDPB chief executives are appointed by Ministers. They are appointed by the boards of those individual organisations.

Chair: That is a very different variation on the accountability. For example, Chris Smith earlier was directly appointed by a Minister.

Q363 Lindsay Roy: To sum up, what are the key success criteria you have set to improve NHS England, and how well are they being met?

Una O'Brien: Thank you for asking that—the key success criteria.

Lindsay Roy: To sum up.

Una O'Brien: To sum up: to ensure that we both improve the quality of health care and we do it in a financially sustainable way. Secondly, that we improve our capability in the out-of-hospital care sector; and thirdly, this year ahead, I think there are some important changes that need to be made to provide better quality and more efficient use of resources on specialised commissioning. In addition to that—it would take me too long to explain, but I am very happy to send it to the Committee—we have an NHS Outcomes Framework, which sets short-, medium- and long-term objectives for the improvement of the nation's health and of the quality of care. Each one of those dimensions has got various indicators that will enable us to track progress over time, and NHS England is required to report publicly each year on how well they are doing.

Q364 Lindsay Roy: I appreciate you have given us the easy bit, the key objectives. Can you give us some detail later in writing about how you are monitoring these and how you know you have been successful or not?

Una O'Brien: Yes. I would be more than happy to do that.

Q365 Chair: Could you also tell us how you monitor performance, given that performance is so much about how you achieve your objectives and not just whether you have been able to produce a piece of paper that says you have achieved the objectives?

Una O'Brien: Chairman, if I may, just by way of conclusion, add one thing, a number of permanent secretaries have supplied to the Public Accounts Committee what we call accounting officer statements, which set out a detailed description of how we undertake the accountability relationship with different parts of our system. I am about to revise or conclude the revision of the statement for the Department of Health, and if this Committee would be interested I would be more than happy to share a copy of that with you, because it might support your investigations.

Q366 Chair: Thank you very much; we would be very grateful for that. You have been very patient with us. Thank you very much indeed, all three of our witness. We are most grateful to you.

Witnesses: **Baroness Morgan of Huyton**, Chair, Ofsted, and **Neil Greenwood**, Deputy Director of Strategy, Policy and Performance, Ofsted, gave evidence.

Q367 Chair: Welcome to this final session this morning on the accountability of public bodies and their relationships with their departments. I am very pleased to be able to welcome our two last witnesses. Please could you identify yourselves for the record?

Baroness Morgan of Huyton: Yes. I am Sally Morgan and I am Chair of Ofsted.

Neil Greenwood: I am Neil Greenwood. I am Deputy Director of Strategy, Policy and Performance at Ofsted.

Q368 Chair: The hot topic of day is: how independent do you feel Ofsted now is?

Baroness Morgan of Huyton: I think Ofsted is an independent organisation and remains an independent organisation, and I think it is incredibly important it is an independent organisation. It was quite interesting just sitting listening to your previous deliberations. I think the really good thing about Ofsted is everybody is clear: a) why it is there; and, b) why it has to be independent, and I think it has cross-party support to be so. I think that remains the case.

Q369 Chair: What has occurred during your term of office that you feel has compromised the independence of Ofsted?

Baroness Morgan of Huyton: I do not think the independence of Ofsted has been compromised, but I think you always have to be very watchful of that happening under any Government. There is always a tendency of any Secretary of State and any Department for Education to feel, "I wish they would stop being quite as independent as they are being." I think all secretaries of state know that in the end, and particularly if you think about the education system and the way it is changing, it is almost more important than ever that particularly parents and politicians recognise that there is a body who will give a proper and fair judgment on the effect of Government policy in the education and the social care system for children.

Q370 Chair: You mentioned how the role is changing. How is the relationship between the Department and Ofsted changing?

Baroness Morgan of Huyton: I do not think the relationship is changing. My personal view is that Ofsted has become more significant and more important as particularly the school system has changed. Most people think of Ofsted only in relation to schools; Ofsted actually inspects children's social care, FE and skills, early years, and prison education as well, so it is a wide organisation. In terms of the school system, which is the one where often there is the most political attention, I think something like 60% of secondary schools are now academies or free schools. In a sense the system is more broken up than it used to be; it used to be much more clustered underneath the local authority.

In that situation Ofsted is the only organisation really holding the ring and saying very clearly how it is, and particularly recognising underperformance and potentially failure, and shining a spotlight. If that was not happening, with that number of schools no longer accountable to local politicians, it would be difficult to make sure that there was genuine accountability. I think the significance is not that the role has changed but that it has become a more significant role because of the changing system.

Q371 Chair: How involved should the Secretary of State be in the manner in which you carry out your inspections, what you are inspecting, and the criteria you are setting for these inspections? To that extent, how can you be independent?

Baroness Morgan of Huyton: The absolute bottom line is that the Secretary of State cannot at any point intervene in an inspection; that is the absolute safeguard in the system. I cannot imagine any Chief Inspector who would put up with a Secretary of State trying to intervene in an inspection, and, of course, the Chief Inspector is accountable to Parliament, rather than to the Secretary of State. Parliament holds the Chief Inspector to account, and wants to hear the truth from the Chief Inspector. The detail of an inspection, if you like, absolutely is Ofsted's business.

The most obvious situation recently, which I will raise before you do, is the inspections in Birmingham. In fact Ofsted undertook some of the early inspections in Birmingham, because we had received concerns about some of the schools, but the Secretary of State then asked us to look at rather more schools. Beyond that, the inspection process, the way those inspections were carried out, and the results of those inspections were absolutely the business of the Chief Inspector and nobody else, and that is terribly important. Where there is not exactly a grey area but a discussion is around some of the broader frameworks within which we are inspecting.

Parliament sets the statutory framework; some of the further details are discussed endlessly between the Department and Ofsted, and I think some of the areas where there is a level of disagreement are pretty public. For example, the Chief Inspector thinks that Ofsted should inspect academy chains; the Secretary of State has not given Ofsted the permission to do that. That is quite a public disagreement. We think it would be helpful to inspect academy chains. At the moment the Department does not agree with that. There is a very open conversation about it.

Q372 Chair: In the case of what is known as the Trojan horse controversy, you seem to be saying that where new circumstances come to light—where there is new information or new circumstances that may compromise the quality of schools—it is entirely legitimate for the Secretary of State to think about that, make his thoughts known, and make his requirements known to Ofsted about how to approach those new circumstances, and that is not compromising the independence of individual inspections.

Baroness Morgan of Huyton: I do not think it affects our independence at all. I think it has always been within the right of a Secretary of State to ask Ofsted to inspect something. We do not routinely inspect schools within the independent sector, but where there have been concerns about a safeguarding issue in an independent school, the Secretary of State, via his officials, reports this to Ofsted and asks Ofsted to undertake the inspection. That does not affect our independence; we then carry out the inspection and we tell it how we find it. What there is not is any influence from the Department or the Secretary of State on the inspection process; that is absolutely vital. Given we put the inspection reports on the website and so on, I think the transparency is pretty clear.

Q373 Chair: You do not regard the criticism that has been levelled at Ofsted—that you judged schools to be “outstanding” and then went back a short time later and changed your assessment of those schools as a result of ministerial intervention—as compromising your independence.

Baroness Morgan of Huyton: I do not accept that position.

Chair: That is right.

Baroness Morgan of Huyton: Yes. Personally I am not responsible for the inspections as the Chair, but the Chief Inspector was very clear that regarding the inspections that were carried out about two years ago, and particularly for one of the schools, there are very clear reasons why the judgments have changed since then, the paramount one being that virtually the entire leadership team has changed in that school over the last 18 months.

Q374 Chair: At that school?

Baroness Morgan of Huyton: At that school.

Chair: So it's a different school.

Baroness Morgan of Huyton: It is a different school, and we were really clear. These are not glib judgments; there is a very strong evidence base that has been crawled over.

Q375 Chair: How good or bad would you say your relationship is with the Department?

Baroness Morgan of Huyton: Mine or Ofsted's?

Chair: Ofsted's.

Baroness Morgan of Huyton: The answer is the same for both. It is constructive; we know our jobs. There has got to be sensible dialogue, of course there has—it has got to be a constructive relationship—but where there are disagreements, I do not think they are hidden. There will be differences around policy; there will be different views at various points. The most important thing is that we are both very clear what our responsibilities are, where they begin and where they end, and I think there is some clarity about that.

Q376 Chair: Neil Greenwood, you wanted to add a comment.

Neil Greenwood: In relation to the Birmingham inspections, Ofsted were already inspecting a number of those schools. We inspected 21 schools in Birmingham, six of which we were already inspecting as result of concerns that had been raised directly with us, before the Secretary of State asked us to go in and inspect those other schools.

Q377 Chair: How does Ofsted react to some of the briefing—off the record, unofficial briefing—about Ofsted that seems to have originated from within the Department for Education?

Baroness Morgan of Huyton: All of us around this table know that you can never quite pin down where briefings come from. I think these things come and go. I think the most important thing, so far as I have been concerned as Chair of Ofsted, is to make sure that we maintain strong cross-party support. Certainly one of the things I have tried to do is make myself very available to MPs or peers of all parties or none in order to make sure that we have constantly good feedback. Were we somewhat irritated by particular parts of the briefing? Yes, of course, but that is life.

Q378 Lindsay Roy: How does Ofsted determine its programme of inspections and who has an influence on that?

Baroness Morgan of Huyton: Who is the influence?

Lindsay Roy: Who has an influence as well as Ofsted?

Baroness Morgan of Huyton: Nobody. We have a broad framework, which was agreed by Parliament, about how often we go into schools and, indeed, into the other institutions we inspect. There is a broad time schedule worked out; beyond that we do a risk assessment where something comes up: for example, if the exam results in a school have plummeted, not just for one year but for longer, we would be alarmed; if there is a change of leadership; if we get complaints from parents; if we get complaints from other people. We also have a parent feedback website, so if something has spiked on that, we would have a level of concern. Within our normal schedule, if a risk comes up we will do something about it.

Q379 Lindsay Roy: You are proactive in that.

Baroness Morgan of Huyton: Yes.

Q380 Lindsay Roy: To what extent do central government and local government have a locus? Do they invite you to go in to inspect a school?

Baroness Morgan of Huyton: If anybody has serious concerns, they can raise complaints. We will assess those complaints and we will determine whether we think that that raises a sufficient concern that we should go in quickly.

Ofsted had three big offices and we were pretty cut off, and we almost made a virtue of the fact that we were slightly cut off. I think both I as Chair and Michael Wilshaw as Chief Inspector wanted to change that, because we wanted to say, "Well, we are absolutely clear we are independent; that does not mean we cannot have a dialogue with people and a constructive dialogue with people." As part of that we have regionalised our structure. We have only been fully functioning across the remit since January, and we have regional offices with a strong regional director and specialist inspectors in each of our remits and, in a sense, we are encouraging a much better dialogue at the regional/local level. We expect our regional directors to know the Director of Education and the Chief Executive in a local authority. In a sense, as well as the hard data that should raise concerns, we are very keen to have the softer intelligence. If you think about a school, the mums talking outside the school gate pick up the problem a lot sooner often than the exam results do. While we cannot be driven by chat, nevertheless we would be concerned about a gathering of that sort of information that is serious enough to be fed through to Ofsted. We are trying to add an extra layer of intelligence on to the work we are doing.

Lindsay Roy: Thank you.

Q381 Kelvin Hopkins: I have a profound interest in education, and have an education background myself. Over the last three decades there have been some serious differences of view about classroom culture, teaching methods, pedagogic versus child centred—all of that. These have had marked results on our children, many of them negative as well: we have not done well in many

areas. If a Government comes up with view that they want to insert a better system of teaching methods in classrooms, does that come through you? Do you have staff who would accept that and implement that, or would there be resistance within Ofsted? You say you are independent, but at some point teaching philosophy, teaching methods and classroom culture are really very important and Government might have a view?

Baroness Morgan of Huyton: That is absolutely clear, and Government obviously does have view, and at times Government will lay down a programme that clearly Ofsted, in the appropriate time, will have inspected. For example, if I think about previous Governments, the national literacy and numeracy strategy was put into schools. Of course Ofsted had to take account of what was being done, but that was policy driven by the Department. We inspect the effect of the policy on the ground.

It is fair to say there has been a pretty ongoing debate, I suppose, about the best way to teach—of course there has. I was a teacher many years ago, but we have all done things in different ways, and there are different paradigms about the best way to teach, and clearly there has been a push back against some forms of teaching in recent years. That has been a debate between the Department and Ofsted. What we have been really clear about in Ofsted is that in the end what we have to be concerned about is the outcomes for children and young people. That is what we will assess against, so we cannot change our method of assessing how strong the teaching is in a school depending on whether or not they are teaching to a particular model.

In fact, we have resisted that strongly from all sides, because it is fair to say there was a view that everybody should be teaching in a particularly liberal, child-focused way; there was then a view that that should not be happening. That is not Ofsted's job. The Department can have its view about policy. It can have its view about how teacher training should be carried out through the National College of Teaching and Leadership: that is fine; that is their job. Our job is to see what the outcomes are for children and whether schools are being well led and well governed.

We have to be very clear that we will not go in and say, "There is a prescribed way and, unless you are doing it this way, you are wrong." In fact, we have been particularly focused on getting that message across in recent times, because there was a lot of chatter around that we did have a view of the perfect lesson. We are very clear we do not have a view of the perfect lesson; we want to see what works for kids.

Q382 Kelvin Hopkins: There was some research done by the National Institute of Economic and Social Research decades ago showing that different models of schooling worked better or worse. Schools with very similar catchments, very similar pupil profiles, were doing very differently. If you find two schools next to each other, one being taught in one way, one being taught in another, can you not feed back to Government that one works and the other one does not?

Baroness Morgan of Huyton: Of course—if the evidence is that clear. We are really proud of our evidence base, and I have been keen in my period as Chair of Ofsted to say, "We have got fantastic data and very good best practice; rather than keeping it to ourselves, heavens, let us get out there and share it." I think it is fair to say we have changed in our openness to say, "Come and work with us, and come and share our information."

I think it is fair to say that the view of the Chief Inspector is that there is not sufficient evidence to say a method of teaching, a particular way of teaching a lesson, is the determining factor. He would say, if he were in front of you, I know, "Above all, it is about the leadership of the

institution and holding teachers to account.” Certainly as a headteacher, he is very clear that within his very successful school he had quite extreme variations in the type of teaching being done, and he held his teachers to account on how well the children were doing.

One teacher could be really flamboyant and not at all teaching to the book, if you like, and produce great results; another could be much more traditional and didactic, and also produce strong results. In the end, the job of Ofsted is to hold schools to account, in a sense, and make that situation clear. The job of a headteacher is to hold their teachers to account on the outcomes of the children. If we became too prescriptive, that would damage the relationship we have.

Q383 Kelvin Hopkins: Just one more question: this word “prescriptive”. When I was first elected in 1997, I met Stephen Byers, who was then the Schools Minister, and I suggested that they ought to be prescriptive and go into schools. He said, “No, no, we could not do that; we could not be prescriptive about teaching methods in schools.” Yet we have had more problems following that. I could go on, but I think Ofsted could have stronger role in saying to Government, “This does not work and that does work.”

Baroness Morgan of Huyton: It is the word “prescriptive” I suppose; we now do a lot of seminars about good practice—great maths teaching—and we get good practitioners together with our inspectors to help lead on that. Where stuff is absolutely proven, there is a role for that. So, for example, it is now pretty widely accepted that phonics teaching broadly speaking is a good way of teaching reading. Particularly if results were not good in a school and they were not using phonics, we would be surprised to see that and we would comment on that. We would not want to be the body that makes that decision, but where there is proven evidence, Ofsted is going to be co-operative about that.

Q384 Chair: You have talked a lot about maintaining your independence. How are you held accountable?

Baroness Morgan of Huyton: We have a board that, to an extent, holds the executive to account, or holds the Chief Inspector for his delivery of the organisation to account. It is very useful you are doing this Inquiry, because one of the confusions is that every body you look at seems to be different. Our board structure was added in 2006: it used not to exist, so we are essentially a very light-touch board. My job is not actually Chair of Ofsted. I am Chair of the board of Ofsted, not Chair of Ofsted. I am not responsible for running the organisation, which in itself is a confusion, because that is not the case for the CQC.

In a sense in Ofsted it is pretty clear: the power and the accountability are with the Chief Inspector, and the Chief Inspector is held to account by the Education Select Committee. That is the line of accountability. Between hearings, that relationship is with the Department and with the Secretary of State.

Q385 Chair: There is a line of accountability to the Secretary of State from the Chief Inspector, but also a line to the Select Committee.

Baroness Morgan of Huyton: Yes, to the Select Committee. The annual report, which is, in a sense, the state-of-the-nation report, is agreed and laid before Parliament; that is the primary accountability for the Chief Inspector.

Q386 Chair: How does Ofsted manage the personal relationships between the people in Ofsted and the people in the Department?

Baroness Morgan of Huyton: I think that is fairly clear. We have regular meetings between the Education Ministers and the Chief Inspector, me and senior executives, where we have a clear agenda of progress on certain issues and discuss those. There are then strong working relationships between, for example, our senior finance officer with the Department, because obviously our budget is given from the Department, so oversight of the budget is with relevant executives. I think that works fine.

Q387 Chair: Finally, there has been some controversy about the non-renewal of your appointment. Sir David Normington, the Commissioner for Public Appointments, said it had been “blown out of proportion”. What do you feel about it now and what would you like to leave on the record about that?

Baroness Morgan of Huyton: I think there is a serious issue about reappointments, because the reason I thought it was important at the time to raise the issue is because I am really clear how I was appointed. I was appointed through a public process, under Sir David Normington, of applying, a pre-interview, an interview with a panel, including independent people, and then I know a list of people went through to the Secretary of State who interviewed, and I was selected, so that is clear.

I was then, in my view, performance-managed in the following ways: my board and I have an annual assessment, and I was appraised by the Permanent Secretary. I had a very positive appraisal from the Permanent Secretary. I had very regular feedback from the Secretary of State, who appeared to be very happy with the way I was doing the job; to be fair, he said that on the record after my non-reappointment. I know at no point was there any issue raised about my competence to do the job, nor has there since been any issue raised about that.

I suppose what I think is that there is all this clarity about the initial appointment, but then the decision not to reappoint appears just to be taken by a Minister without any public oversight at all. I think that is potentially quite dangerous for the future of the independence of public bodies, because there is a danger that that could, in the end, mean that a chair in their first term thought, “Gosh, the person in the end who really is going to take the decision about whether I am reappointed or not is that Minister, so that is the person I have got to really deliver for, so how independent can I be?” I am not saying that was the case with me, but I think that is an issue for you as a Committee to think about for the future.

Q388 Chair: Is the lesson not that, if you are going to have a three-year term that is renewable and it is an appointment to renew at the discretion of a Minister, it is going to compromise your independence, whether you are reappointed or not? What you are saying is you are a case study that will chill the relationship between such appointees and their secretaries of state if they are up for reappointment. Why should we not do away with renewable terms and just have fixed terms of say five, six or seven years, if you are genuinely intended to be independent? Why should we not do that?

Baroness Morgan of Huyton: I think a longer one term would be very sensible. I suppose my concern is that, when you are appointed, you have got the initial induction into the organisation;

you have then got probably to make some board appointments; you have then got to determine what you are there to do; and then you are almost a year in. I think a five-year appointment would be extremely sensible, and it would mean that when that person had been appointed, with the decision indeed being with the Minister but in a public and transparent process, they serve their term. Make it long enough to do a good job, but not have the murkiness of how reappointments are made—or not made.

Q389 Chair: Which do you think it was in your case: that there was some personal deficiency in your relationship with the Secretary of State, or that it was just that somebody had decided there were not enough Conservative appointees, and there needed to be more Conservative appointees? Was it the outcome of a generic decision rather than a particular decision?

Baroness Morgan of Huyton: My view, as I stated then, and it remains the case, is that it was generic. I am still in post, so I still have extremely good working relationships with all the Ministers and all the senior officials in the Department. It is on the record the Chief Inspector wanted me to stay in the post. I can only assume, as I said at the time, that therefore there was something somewhat generic going on. There was a bit of a pattern that, in a sense, I had not really thought about. There is a bit of a pattern about replacing a particular type of person, and particularly I have to say women, unfortunately, with a particular type of man, with a particular background of schooling, personal wealth, and business and city experience.

We have to be careful about that. There is a decision to be taken about how many independent bodies you have and what type of bodies you have, but if you have decided a body is independent and it is important is so, and that is clearly the case with an organisation like Ofsted, it is very important that we are clear that the governance of that organisation is transparent and is independent.

Q390 Chair: You are not a civil servant; you are not appointed in the same manner as a civil servant. You worked in Number 10 and you probably grappled at the other end of this process of appointing agency heads and so on. It is a more political appointment than a Permanent Secretary appointment, say.

Baroness Morgan of Huyton: I am not disputing that. My point is I think the reappointment is the issue. Clearly the current Secretary of State appointed me, so he made a political decision: he decided that at that point my politics and my viewpoint on education worked for him, and I came through a process that said that I clearly fitted all the spec for the job and performed at the interview. My performance has been measured in the last three and a half years against that specification; I have been appraised; I have come out very positively, but then there is a sudden decision. My point is really that that is an unsatisfactory way to make those decisions.

Chair: Right. Well, I am pleased that you have had the opportunity to put that as dispassionately as you have. Are there any further questions?

Q391 Lindsay Roy: Let me just be clear: at no time was there any criticism of your performance.

Baroness Morgan of Huyton: Absolutely not. Absolutely not—no criticism.

Q392 Lindsay Roy: Quite the reverse.

Baroness Morgan of Huyton: In a sense that is why it was rather a surprise, if I am honest, because I had really good working relationships, and across the parties, I have to say. When the announcement came that I was not to be reappointed, people from all political parties were surprised and, indeed, in the wider educational world, if you like, because there has not been criticism of the way I have done the post.

Q393 Kelvin Hopkins: You come across as being intelligent, enthusiastic, committed, passionate about the job—all positive things—and everybody else has said this. Is it possible they wanted someone a bit more laid back and a bit less hands on, just sitting there, taking the salary and letting the workers get on with job, rather than being as engaged as you?

Baroness Morgan of Huyton: I do not think so, and I would certainly hope not, because it seems to me there is not much point chairing one of these things unless you really believe in what it is doing. They have not made an appointment yet; I hope they make an appointment of somebody who also really cares about the organisation, because, as I said at the beginning, Ofsted is incredibly important in terms of holding the system and the Government, any Government, in terms of the policy, to account. There is not much point having a Chair who is not very interested.

Q394 Chair: Were you allowed to reapply?

Baroness Morgan of Huyton: I think the time has passed.

Chair: Baroness Morgan, Mr Greenwood, thank you very much indeed for joining us today; it has been very helpful. Thank you.