



House of Commons Governance Committee

Oral evidence: [House of Commons Governance](#), HC 692

Thursday 4 December 2014

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Members present: Rt Hon Jack Straw MP (Chair); Sir Oliver Heald MP; Mr David Heath MP; Ian Paisley MP; Jacob Rees-Mogg MP; Valerie Vaz MP

Questions 770-805

Witnesses: **Rt Hon Lord Judge**, former Lord Chief Justice of England and Wales, gave evidence.

Q770 Rt Hon Jack Straw MP (Chair): Lord Judge, thank you very much for kindly agreeing to come and talk to our Committee. As I think you are aware, one of the issues facing this Committee is the relationship that ought to work best between those who are expert in the constitution—if you like, the keepers of the constitution, who are the Clerks; they have a profoundly important role, not just in this place, but in the operation of the rule of law—and those who are responsible for the administration not just of the building, but of the institution, to ensure that Members of Parliament and Clerks can do their jobs. Although the parallels are by no means exact, we are interested to learn from you about your experience as head of the judiciary in England and Wales, where I know you have a heavy judicial load alongside a heavy executive load. In particular, how do you see the relationship between your administrative responsibilities and how they work, for example, with the Courts Service and its chief executive and with the Ministry of Justice?

Lord Judge: I suspect that when I have finished you may not think there is a very close analogy to be drawn. Before the constitutional changes—I think that is the polite word to use—the Lord Chief Justice of the day—

Q771 Chair: Can I just say for the record that, although I was a member of the Government and therefore collectively responsible for these, I was abroad at the time?

Lord Judge: I had not overlooked that you were a member of the Government, but I had not been aware that you were abroad.

The change is this. The Lord Chief Justice had an office that consisted of about three people—four, I suspect, by the time the revolution happened. Everything to do with administration was done outside his brief, entirely outside his bailiwick. Although no doubt he was consulted from time to time, the Lord Chancellor was responsible. He was the head of

the judiciary. Change has come by accretion, rather than by everybody standing back and saying, “What is the perfect answer to this?”

As far as the running of his responsibilities as head of the judiciary for things like welfare complaints, discipline, the tiny involvement that he has in relation to appointments, and, perhaps most important of all, judicial training—the Judicial Studies Board as was, now the Judicial College—he has a chief executive who has about 60 to 70 people working for her, as it happens, and that relationship works very simply. It certainly did with me, and I am sure it still does with Lord Thomas. From time to time, whenever the chief executive had a worry about any of these things, she would come and see me. We would talk it over and a decision would be made. There was no question.

Occasionally, in relation to complaints and discipline, there is a joint responsibility, as you will remember, between the Lord Chancellor and the Lord Chief Justice. But again, the line of command is terribly simple. There is the judicial office. The Lord Chief Justice gets himself involved to the extent that he thinks it is necessary and appropriate. But then there is the big overarching problem, which is HMCTS: Her Majesty’s Courts and Tribunals Service. That is the big body for running the system, because that is the budgetary body. There we have a chairman of the board and members of the board, who include two judges. In absolutely clear constitutional terms, that board is answerable to the Lord Chief Justice as head of the judiciary and to the Lord Chancellor as the Minister who has to account to Parliament for the way in which the money is spent. There is no problem with that as far as I am aware. Certainly there was not in my time; I have no reason to think there is now.

From time to time, the Lord Chief Justice would see the chairman of the board. From time to time, the senior judges on that board would report to the Lord Chief Justice and the Judicial Executive Board that this and this was going on, and if there was a problem or a concern, a discussion would take place. The board would make its recommendations and then the Lord Chancellor and the Lord Chief Justice would—I use the word “mutually”—negotiate if there was a difference. The most important point there was that in the end the Lord Chief Justice had a right to agree the budget, veto the budget, or say—it would be nice if he had the money, but he does not—“There is not enough here in this budget for us to be able to run the system in a way that is acceptable,” or he is entitled to say, “I’m not prepared to approve it, but I’m not advancing an argument against it.”

So it is actually a very complex situation, but in the end the Lord Chief Justice has the ultimate responsibility for all these things, and in the end somebody does have to have ultimate responsibility wherever we are running it—and, if I may say so, that is true of this House and the other place.

Q772 Chair: Thank you very much, Lord Judge. I said at the beginning that there were no exact parallels, but it sounds to me as though the relationship that obtained before the 2005 Act was similar to that which obtained here in respect of the Palace of Westminster before a series of reforms started in the late ’70s. The Ministry of Public Building and Works was responsible for this place, and we were licensees at will. Building on what you know, have the changes that were made in 2005 and thereafter led in your view to an unnecessary increase in the administrative burden on the Lord Chief, which will obviously run into the time the holder of the office can give to the bench?

Lord Judge: Yes, is the direct answer. I suspect that the administrative burden is increased for everybody, actually, but certainly it is very heavy, because the Lord Chief, as head of the judiciary, is dealing with all sorts of different organisations: he deals regularly with the Department, the Lord Chancellor and the Attorney-General and the Solicitor-General; he deals with the Courts Service board and a whole variety of different organisations. There is no difficulty whatever with what I would call the pastoral role—if a judge is ill or their wife or husband is; that is not a problem, and remains what it always was. But the administrative burden has undoubtedly increased, and you can see it. When Lord Lane was Lord Chief Justice, he sat four days a week. When I was Lord Chief Justice, my ambition was to sit three days a week. I had to have a day for reading and writing judgments, and certainly by the time you added the evening and morning meetings I needed a day to be running the administrative side of the job. I suspect that will have increased since I retired.

So yes, there is a difficulty that will arise, I think, about how long the Lord Chief Justice can fulfil what is the really crucial role in my view, which is sitting in court, taking the most difficult cases and offering guidance and help. That is what he is there for and what he was appointed as. It is what all judges are appointed as—we weren't appointed as administrators. From the point of view of the judiciary, at any rate, the administrative side is inevitably less significant as a leadership role. Naturally enough, they cannot see what is going on day by day, nor is there any reason why they should.

Q773 Chair: Would it be better if the administrative burden on the Lord Chief were lifted by transfer to the Courts Service?

Lord Judge: No, because with the greatest possible respect, the Department—I am not going to talk about the Courts Service—is not absolutely crammed with people who really understand the system which the Lord Chief Justice is responsible for running.

Q774 Chair: The implication of your point is that in previous days the Lord Chancellor's office was.

Lord Judge: Yes.

Q775 Valerie Vaz: It feels slightly odd to have you sitting before us, as someone who believes in the separation of powers and the rule of law, but thank you for coming and giving evidence. It is very helpful.

I want to turn to the relationship between the Lord Chief Justice and the chief Clerk. I personally was struck by these words from Robert Rogers in a staff newsletter, which I will quote to you: "When I felt that there was no real understanding between the judiciary and Parliament I got hold of the Lord Chief Justice and the President of the Supreme Court, and together we instituted a private but hugely valuable dialogue, which has headed off a lot of potential problems." How many times did you do that and what did you discuss?

Lord Judge: It is very interesting, isn't it, how memory can play you false. I thought it was because I was concerned about a particular matter and that I decided that the person to get hold of was not the Speaker, directly or immediately, but the Clerk.

The answer to your question is that, as far as I am aware—and I would have been aware of anything in the past 10 years, certainly—there has been only one occasion when such an issue has arisen. It was very specific; it related to the relationship between the judicial system and the House. It arose in the context of courts issuing what were called anonymous injunctions and Members of this House and the other House in effect breaking the court order by using parliamentary privilege to identify the people who were anonymised by order of the court.

It struck me and it struck Lord Neuberger—he was then Master of the Rolls and subsequently became President of the Supreme Court—that it is a very dangerous situation when we accept that the judiciary should not be involved with the legislature, nor indeed the Executive. As a result of that, we puzzled how we should go about this. We thought, “Here’s the Clerk. He is the person responsible. He will give advice to us to the extent that he can. He will certainly be advising the House and the Speaker in the sort of dispassionate, objective way that one would hope the Attorney-General would be advising the Government of the day.” As a result of that and the advice he gave, the Speaker saw us and the Lord Speaker saw us shortly afterwards. That was the only occasion, but that was because it was directly connected with the proper constitutional arrangements between both Houses and the judiciary. I do not know and cannot think of any other occasion. I would like to think that it never needs to arise.

Q776 Valerie Vaz: That is an absolutely fantastic answer. As a lawyer, I am heartened by that. This is probably a theoretical question which you do not really need to answer, but if there was a split between the chief executive and the Clerk, would that make any difference to what you need to do?

Lord Judge: A lot turns on names, doesn't it? You can have a chief executive and you can have a Clerk. There would be absolutely no reason for the judiciary, if it was concerned about the working relationship between the House and the judiciary, to speak to anybody other than somebody who had the ear of the Speaker in relation to constitutional matters. A chief executive running any business has huge responsibilities, but not this one. It would be astonishing to me if the Speaker of the House were concerned about a problem affecting the judiciary and he asked those who worked for him to get in touch with the chief executive to the Lord Chief Justice. It is nothing to do with her, as it happens. I would expect the contact to go straight through to the Lord Chief.

Valerie Vaz: Thank you very much.

Q777 Jacob Rees-Mogg: Do you have an opinion that you would be willing to share with us on whether we would be wise to split the post of Clerk and chief executive, or whether having a single, unified authority is actually better and more helpful?

Lord Judge: I offer the opinion with some deference. I rather hinted earlier that you can call someone whatever you like, but ultimately, there has to be someone responsible—of course, in the final analysis, the Speaker or the Lord Speaker is responsible. But you cannot have a divided top job. Someone has to be answerable. I would have assumed, if you had a chief executive—just from looking at my own experience—that you would let him or her get on with whatever was needed to run the place and administer it. Ultimately, so far as employees of the House are concerned, you have to have someone who is the final arbiter and who can go to see the Lord Speaker or the Speaker and say, “I’m rather worried about this.” I do not see any arrangement of this kind working well if people are of, if you like, identical status. I think there has to be a hierarchy.

Q778 Jacob Rees-Mogg: In your lordship’s experience, it would be ridiculous for the chief executive to be ahead of the Lord Chief Justice. That would be completely absurd.

Lord Judge: Even though it is a leading question, I think I would go along with that. “Ridiculous” might actually be rather a weak word to use.

Q779 Jacob Rees-Mogg: I am asking these questions because I am one of the few non-lawyers on the panel, and I can therefore ask the dumber questions.

Lord Judge: Speaking just from the point of view of the judiciary, the only person we would be dealing with to get to the Speaker or the Lord Speaker would be the Clerk, not least because he or she understands the constitutional implications. He or she might very well say, “Lord Chief Justice, I respect you. I admire you. I think you’re terrific, but actually I don’t think this is something I can advise the Speaker to speak to you about.” I hope that it would not arise, but that is what his function would be. I hope that that answers your question. I have certainly conveyed my feeling about it, I suspect.

Jacob Rees-Mogg: You have indeed. Thank you so much.

Q780 Sir Oliver Heald: Lord Judge, in a recent lecture, you said that it was quite wrong to put a statement to a witness and ask, “What do you say about that?”

Lord Judge: If I may say so, only a vulnerable witness.

Q781 Sir Oliver Heald: Touché. But perhaps I could just do that. Your successor, Lord Thomas, has said that there needs to be a “clear framework” within which the judiciary can have a relationship with other branches of the state. In that context, isn’t it important that the lines of communication should be clear? I wondered whether you wanted to say a word about that in the context of the Clerk.

Lord Judge: As I said, how the House runs itself is actually for the House. But if I were looking at it from the point of view of the judiciary, rather than as a Member of the other place, which I now am, I would say that we need somebody who exercises the functions that the Clerk currently exercises. It would be quite absurd, to be perfectly blunt, although it

sounds arrogant, for the Lord Chief Justice to be ringing up No. 2 or No. 3 in the hierarchy of the House. I don't think he would do it—I think he would ring No. 1 up. If No. 1 is the Chief Executive, he would be ringing up a person who does not really understand the issues that are likely to be of concern to the Lord Chief Justice. So, looked at entirely from my former perspective, I think that the Clerk is the individual who must have this responsibility and, therefore, be ultimately responsible for the way in which the chief executive does his or her job.

Q782 Sir Oliver Heald: During your time, you made a great effort to talk to the various other branches of the state in an informal way, but respecting the independence you have to preserve. Lord Thomas has said: “the relationships between the judiciary and the other branches of the state had prior to 2005 and have thereafter continued progressively to diverge...However, the independence of the judiciary, far from precluding relationships with the other two branches of the state, requires engagement with both.” My view would be that quite a lot of the concern has been dealt with by the informal contacts that you, certainly, had. Do you agree, or do you feel that there is more to be done to improve the way in which we talk to each other?

Lord Judge: I think that as between the judiciary and the Executive—for this purpose, I am including the Attorney and the Solicitor as part of the Executive, although that is obviously quite an interesting constitutional question—I have had no difficulty speaking to the Lord Chancellor, as I have done with the Chairman. As to the Attorney-General, it is no particular secret that I arranged to, and the Prime Minister was perfectly content for me to, see him about once every six months—twice a year—to discuss issues of concern to the judiciary. That works.

So far as the relationship with the legislature is concerned, one has to bear it in mind that the Executive fills the legislature too in this wonderful separation of powers that we say we admire and that was the justification for the constitutional reforms. I would worry if the visits of judges to give evidence to Committees increased too much. It is sensible for judges to be available for Committees who have responsibilities which affect the judiciary or about which the judiciary can give evidence to help them to their conclusions. The danger is when it becomes too familiar, and the Committees think that the judge really ought to be coming along to tell them how to run their business. We cannot comment, for example, on what a provision in an Act of Parliament should be—it would be very interesting to do so, and between us, of course, we do that frequently.

So the relationship works pretty well. It is a good substitute for the previous arrangement, in which the Lord Chancellor was a member of the Cabinet. I don't think it is a complete answer to the change in the role of the Lord Chancellor, but I have given evidence about that in the House of Lords to their Constitution Committee. On the whole, I found it worked well. What is more, I found—I suppose I would say it, wouldn't I?—that nobody broke the rules. Talking to the Lord Chancellor about money—well, he would say, “We haven't got it” or not. Talking to the Attorney-General or the Solicitor-General, saying that we were very concerned about the quality of this or that—that's fine. That is a sensible means of communication. Nowadays, I don't think judges can possibly regard themselves as sensibly positioned if they are isolated.

Sir Oliver Heald: Thank you very much. We are very grateful for this discussion.

Q783 Chair: Lord Judge, you said that if the senior judiciary were asked to comment on a particular provision in draft legislation, you would decline the offer, and I fully understand why. The key function of this place is to make law, and one of the key functions of the judiciary is to interpret what we have made and to apply it. The application can sometimes be made much more difficult because the meaning is not clear. Leave aside the interpretations that have been handed down from the Bench on the meaning of a particular section of a particular Act; there are clear rules about that. Has there been any stage in your career on the Bench when you felt that the way we make law here, the literal way in which law is drafted—the architecture of it—and the way that law is dealt with both here and in the other place could be improved so as to make the job of judges not easier but better?

Lord Judge: It is very tempting, but you would have to have an hour and a half. I am talking about criminal justice legislation, but most legislation seems to be very haphazard. Some of the Acts of Parliament that I have had to deal with are as difficult to penetrate as treacle, and there is a terrible tendency to think that you have to produce legislation that caters for every conceivable circumstance that the human imagination can create in a nightmare, and even so not cover it. Your legislation—the legislation, because I have to accept responsibility for this now—and the legislative process does not seem to be as good as it should. Wash-up legislation has the potential for disaster, and the way in which the parties come together to do a deal about legislation leads to compromise and bits of an Act that are inconsistent with other bits of the Act.

I am very strongly in favour of process, because you have to get to the answer through a process, but the legislative process has got itself into something of a muddle on the relationship between this House—your House—and the other House, and where legislation starts. Shouldn't it always start in the same place? Shouldn't there be a process by which this House has its say, the other place has its say and then the legislation comes back here if the other place doesn't agree, so that you have the final say?

I could spend quite a lot of time on this; I am sorry. You are giving me a terrific opportunity, and I would like to think that it is a very serious point. I am very concerned about it. The process by which we eventually arrive at Act after Act after Act, not all of which are entirely easy to understand, is not in the public interest. We should all be able to say—of course we can't all say this—"If I do this with this state of mind, I will have committed a crime and the consequences will be anything from A to Z." Half the time, that is very difficult.

Chair: In that area of Government, I have no alibi to offer, as I was one of the parties to this, as you know, for seven years. I recognise the problem you are talking about and, although it is not quite within the remit of this Committee, improving the process and the method by which we produce laws is really important.

Q784 Sir Oliver Heald: On that point, I would be interested to have your comments. The parliamentary draftsmen do excellent work, at our instruction, when we are Ministers. I don't know whether you have a view on this, Lord Judge, but I would have said our

parliamentary draftsmen are actually excellent; it is just that the instructions are somewhat imprecise, and there is also the difficulty of the two Houses not agreeing.

Lord Judge: Oh no, I specifically did not include the parliamentary draftsmen in what I had to say. Their function is to produce whatever the House tells them to produce, undoubtedly.

Chair: Lord Judge, thank you very much indeed. It has been really helpful.

Examination of Witnesses

Witnesses: **Sir Kevin Tebbit KCB CMG**, Leader of the 2007 Tebbit Review, and **David Orr**, external member of the Restoration and Renewal Programme Board, gave evidence.

Q785 Chair: Sir Kevin and Mr Orr, thank you for coming this morning. Sir Kevin, I recall your work when I was on the Commission in 2006-07. As the Committee is aware, you recommended that the Clerk should combine that role with that of Chief Executive. I think you are also familiar with the evidence we have been receiving, although it is by no means unanimous. Is it still your view to the same emphatic degree that the two posts should be combined?

You know the recommendation for a Chief Operating Officer, which was not followed through. Do you think that, had it been followed through at the time, we might not have this Committee? I would be grateful for your observations at large on this issue.

Sir Kevin Tebbit: Clearly, this was seven or eight years ago, and I have had to refresh my memory of that time, which comes back surprisingly strongly; there are a number of issues one has to reflect on these days. It is now very vivid again.

I spent six months as a sort of temporary Officer of the House, and I was very lucky and fortunate to see the House in all its aspects. The conclusion I came to was basically that there were clear areas where management could be strengthened, but you are right; I didn't feel that that would be improved by splitting the role of the Clerk and Chief Executive. I think what I wrote in the report was quite clear. You say "emphatic". It is very difficult to say anything emphatic about the House of Commons and the way it operates. I think I also said in my report that there is an alchemy here—a curious combination of effects which produces a unique result—and you tamper with it, to some extent, at your peril.

I felt very clearly that the Clerk should remain, as it were, the *primus inter pares* in terms of the service of the House, partly because it is the Clerk who is responsible for delivering for the House and the Speaker the front-line outputs of Parliament, in terms of advice on parliamentary debates, Committees, parliamentary law and procedure. I would go on to add that, I suspect, as time moves on, if you look at who should be supporting the House in its outreach efforts, in its engagement with the general public and in trying to increase the interest of the general public in democracy, I find it difficult to think of an official who should be supporting that more strongly—and, indeed, in relationships with other Houses; as we get more and more federal in the United Kingdom one can see how

important that is becoming—than the Clerk himself. Also, the Clerk is the person in the Chamber who is seen by Members and is the natural go-to place for people wanting redress or support in whatever area it might be, if they choose not to go to the Speaker. For all those reasons, it seemed to me that the Clerk had to stay, as it were, as the Chief Executive.

The analogy with the private sector is very strong. The chief executive is the man who delivers for the board and for the chairman. In this respect, the analogy is not perfect, but the chairman is the Speaker in his role also as chairman of the Commission. I did find a number of areas of management where management needed strengthening above all to unify the House Service more effectively, to bring it under more direct control and direction, to give it a stronger business plan and to ensure that there were processes which were common—common finance system, common personnel human relations system, which I thought was very divided, fractured and fragmented. So there was a clear case for a stronger managerial effort, which would be difficult for any one person to achieve.

The training, background and education of a Clerk is, obviously, in those clerkly functions, not in becoming an administrator, although I did observe in passing that permanent secretaries in Government Departments have had to go through the same process. When I started out, the permanent secretary was basically a policy adviser to the Minister. Now, permanent secretaries are very much expected to deliver managerial outputs, and they are held accountable for a lot more than they used to be. The phrase “accounting officer” used to be a rather abstract thought—responsible for the money, but that was, as it were, a Treasury thing. Now it is a much more active managerial role. That transformation has happened in permanent secretaries, and it did not seem to me impossible for that to happen here.

However, I did feel that the Clerk needed stronger underpinning: a deputy, in a sense, in two directions, and two different deputies, in a way. One of those could take some of the burden, if that were the case, of running his clerkly functions. That was probably a bad phrase, now I think about it again. Chief Operating Officer is not quite the point. What I really meant was that if the burden of also exercising a stronger hand over the management of the services of the House was too great, the deputy to the Clerk in his clerkly role should step up and do more. That was really the point. On the other side, I was at a loss to establish—there were personalities, I have to say, and often when one is doing this kind of review it is quite difficult to separate structure from personalities—who was the key deputy for the Clerk in that administrative function. The director of finance and administration was probably the obvious person, but the structure was not aligned to that because it was just one of the departments rather than sitting, in many ways, above the departments. I tried to improve that by suggesting common financial systems and processes and common finance staff that would be across the whole House. I am getting into rather a lot of weeds here.

The Serjeant at Arms was clearly also an important area, although I was not quite sure that the traditional choice of the individual for that role was the right one for the functions, particularly in terms of buildings and works. It was not entirely clear to me where that should be, and I still think that there is a need there for a stronger bringing together of functions in the managerial area, but that is not a Chief Executive.

Q786 Ian Paisley: Good morning, gentlemen; David, it is good to see you again. We have been set a question: should the Chief Executive and the Clerk of the House be split? Have you got a view on that?

David Orr: I haven't made a particular study of this, so I would defer to those with more experience, but I would make an observation. We are talking about the two roles: one as the principal adviser to the House and the other as the accounting officer, responsible personally for the resources voted by Parliament. I have been an accounting officer for one of the Northern Ireland Departments and I would have to say that that role of being personally responsible for the resources, staff and money, and leading the Department took all of my time, without adding to it the high-profile role of principal adviser to the House.

I think the question for the Committee, obviously, is, can one person fulfil—in terms of the time available—both those key roles, and can one person have the skills and capacity to fulfil those two roles? Whilst deferring to others, I think my inclination might be to separate the two roles, but I don't think they can exist fully separated—they cannot exist in isolation—and there has to be a close working relationship between the two.

I think my inclination might be to have the Clerk as the principal adviser to the House and a Chief Operating Officer as the accounting Officer, but the latter would be line-managed by the Clerk. They have to have a close working relationship.

Q787 Sir Oliver Heald: You have both been Permanent Secretaries and you will know that the Civil Service has recently had a change, whereby the Cabinet Secretary, who is head of the Civil Service, has appointed a chief executive who has a role across government. Equally, at the Comptroller and Auditor General they have an arrangement whereby the Comptroller is the key figure who heads up the organisation, thinks strategically, and so on, and is responsible, but they have a chief operating officer who chases and makes sure that what is supposed to get done does get done. I wonder whether you feel that this place is so unique that those sorts of examples don't take us very far, or whether you think there are some analogies there which would be helpful. I don't know if Mr Orr would like to go first.

David Orr: I think it should be possible to make that arrangement work, with, as I suggested, the Clerk fulfilling the role as principal adviser to the House and a Chief Operating Officer as the accounting officer with personal responsibility, but the key is to make sure that they work together. I think that only the House can devise how to encourage that close working relationship. I think it should be possible.

Sir Oliver Heald: Sir Kevin, I don't know whether you have any thoughts on that.

Sir Kevin Tebbit: Much as I admire, hugely, the House and way it works—and indeed the service—it is still a relatively small service, compared with the span that most chief executives, for example, have to cope with, or most Permanent Secretaries. This is not a large organisation to run, actually. It is made very complex by the number—certainly, when I was doing my study—of separate compartments which are created. I think those compartments, frankly, got worse because of the shape of the place—the Palace—with its corridors and labyrinthine little areas; and people did not know where other people were. It is perfect for breeding little empires.

This is not a huge service. It is actually very small, although it has a lot of very dedicated and talented people, and it should not be impossible, in my view, to be able to span both functions. The problem I found was that there were very weak processes and systems to unify functions and to put in place common processes for management which made it a lot easier to see how, for example, financial aspects and purchasing aspects were going. So I don't think one should struggle too hard over the scale of that challenge. Coming back to that, this seems to me, again, an argument for avoiding fragmentation and separation, and for unification. The only unifying force at the official level I can see would be the Clerk.

I think the analogies elsewhere sometimes work; sometimes they do not. In the Ministry of Defence, when I was first there, we had at that stage 100,000 civil servants. That is the sort of scale one is talking about, when one feels, "Is the burden really too great?" I had a second accounting officer, who was the chief of defence procurement; so it is possible to have subordinate accounting officers, but, frankly, if you look at the scale of money that is involved, while it needs to be managed extremely well in the taxpayer's interest and the interest of transparency—particularly since the House votes itself its money—it is not a huge amount, and should be manageable with better processes and systems.

That does not mean, to me, a separate Chief Executive. It does mean, to me, a very good subordinate to the Clerk, who can look after most of those things for him. As I said, personalities did matter. Had other things been different I would have created a much stronger role for the finance and administration function, and probably put that in a much stronger position in relation to the Clerk, and with the development of the separate estate works organisation, which I see has been moving on, I think those two changes under the Clerk would probably be sufficient. I am sorry to sound prescriptive, but I did a report, so—these are just opinions.

Q788 Sir Oliver Heald: No, no; I think actually some of the elements of what we heard with the Comptroller and Auditor General, and the operating officer chasing, are in your report.

Sir Kevin Tebbit: Yes, where I think I was wrong was to suggest that that Chief Operating Officer was in the clerkly function area. What I really meant, there, was that if there was too much of a burden for the Clerk he had, as I saw it at the time, four or five extremely competent people around him, and one of those could have become *primus inter pares*, and taken some of that load from him.

Q789 Chair: Sir Kevin, Mr Orr said that his instinct was to split the roles and have a Chief Executive and a Clerk; that the Chief Executive would be reporting to the Clerk, in the sense that the Clerk would be his or her boss and would therefore write his or her annual report, etc.; but Mr Orr suggested, as have some of the other witnesses, that notwithstanding that, it would make sense to have the Chief Executive as the accounting officer. If we went down that road, can you see any reason why the Chief Executive should not be the accounting officer, even though they are technically subordinate to the Clerk?

Sir Kevin Tebbit: I would still be nervous about that, based on my own experiences as a permanent secretary. Once one starts saying somebody else is responsible, it becomes confusing and difficult.

May I just change tack a moment to add another bit of colour, if you like, to the issues that would affect that answer? I did find, when I did my review, very much a sense of them and us: that the clerkly function—the Clerks were considered very much to be the superior beings who lived on a slightly different planet from the rest of the House Service. I thought that was not good, because I thought there were a lot of very good people indeed in other parts of the House Service, and with the way in which the world is going, with the massive transformation of technology, with the need for much greater connection with the public and the understanding of what Parliament is about, with what used to be called the Library function extending much more into a general information function, with much more emphasis on engaging with the general public and getting them in the place to understand what working democracy is like, I felt that it was very important to try to break down some of those barriers and, if you like, for the Clerks to own a much wider area of responsibility under the Members, under the Speaker.

That was another reason why I was moved to recommend that it was also a question of encouraging the Clerks, very able people, to take on a wider responsibility for the totality of delivering support to the House, rather than to say, “You stay in your little ivory towers”—I am sorry to use that phrase—“You stay in your very specialised functions and let somebody else do the rest of the work.”

Q790 Mr Heath: Sir Kevin, I was slightly concerned about your use of the word “alchemy”. I thought, “Well, alchemical reactions normally produce a lot of nasty smells, but very rarely a philosopher’s stone.”

Sir Kevin Tebbit: I was a mediaeval historian once; alchemy had a better reputation then.

Q791 Mr Heath: I want to ask you specifically about governance at the level of the Commission for a moment. Many of the witnesses that we have had have suggested that normally in a strategic board that is the point at which you would have non-executive directors. Your report rejected that notion and I am interested to know whether you still hold that view, particularly in the context of your own experience perhaps as a NED.

Sir Kevin Tebbit: I’ll be very frank: I had to choose at one point whether I was to produce a report that would get published or a report that would possibly not get published. I think the Speaker who commissioned my work was very clear that he did not want the Commission fundamentally changed.

Given a free hand, I would have recommended external members coming on. I think sometimes one uses the term non-executive directors in a misleading sense. They cannot be non-executive directors in a body like this. A non-executive director, after all, looks after the shareholder interest, independent from—it doesn’t work. What they can be is very useful advisers: a second opinion; a source of how things look outside; offering a different

perspective. In that sense, I think it would have been quite helpful to have had non-executive directors on. I realised that that was a red line at that stage for that Speaker. Whether there would be a red line today, I don't know.

Q792 Mr Heath: That is extremely helpful. Thank you.

Can I also ask you about the role of the domestic Committees, which seem to act as sort of a halfway between an executive body and almost a consumer council for the benefit of Members? Having said that, for instance, everyone tells us currently—in this Parliament, particularly—that the Finance Committee Chair, who also sits on the Commission, assumed almost a portfolio of responsibility within the Commission, and that has worked extremely well. Do you have any further thoughts on the role of the domestic Committees and whether they can be enhanced in their role in any way or how they would work better within that overall governance?

Sir Kevin Tebbit: I think it is a challenge. I think now they have been grouped together under an Administration Committee. Is that—?

Q793 Mr Heath: There is an Administration Committee and there is a Finance Committee, and then there is another one; I've forgotten it. Oh, the Audit Committee.

Sir Kevin Tebbit: And then the Commission. As I did my work, I did not sense the problem very clearly—I recommended, I think, that the Finance and Administration Committees should be, as it were, strengthened to be more of a clear filter of work to the Commission, so that the Commission was less troubled by micro-managing subjects, which to some extent it was, as I saw it, and equally that it should engage rather better with the Administration Committee, which was the result of grouping all the other individual Committees.

That did not seem to be working. At that bottom level, if I may put it like that, it didn't seem to be working terribly well. It was quite new at the time: it was a successor to something like five separate Committees, each looking after each department, virtually, which clearly was rather inefficient. It had 16 members, as I recall, when I was looking at it. I felt that was too many. The argument was: "Well, people can't spare enough time to always be there, so you needed a quorum, so you needed 16." The other side of the argument was: "Actually, if you have that number of people, nobody feels responsible really for doing anything, and so there is a disaffection." Equally, people sitting on that Committee felt they had no power or authority. Members felt, "I'm sitting here, supposed to be looking after even catering, and I don't really have much of a say." So I sensed the frustration as well.

On the one hand, the creation of that new Committee seemed to separate people from the working level; on the other hand, they didn't feel they had sufficient say upwards towards the Commission. I think that is going to be a perennial problem if you have a three-tier structure. I honestly don't know what the solution is. I would certainly have a smaller Committee. I am not sure that you need a Finance and Administration Committee between that and the Commission.

I would suggest that the three-tier thing sounds a bit cumbersome, but that is a personal view. I am just looking at it and reflecting that I don't think I got it right, and I don't think there was a right answer then. I think it still needs working at, but by and large three tiers seems one too many.

Q794 Mr Heath: I think it is clear from what you were saying earlier that your view is that maintaining the unity of the House Service is an important element in avoiding the compartmentalisation that was perhaps there previously. Do you think the current Management Board has achieved that unity?

Sir Kevin Tebbit: I don't know; I hope so. My report was not radical, because I felt that my predecessor, Braithwaite, had done a perfectly good report. I was writing six or seven years later, and I felt that most of his recommendations had not actually been implemented. Rather than recommend a completely new structure, I was trying to work out how to get those sorts of reform properly put into effect. Part of it was how to change the culture and the way in which people defended in little fiefdoms.

I tried to recommend better management processes and systems. At that stage there was a strategy, which was couched in very general terms and did not seem to be linked up in the daily workings—or annual workings—of the business, if I can put it on that side of things. I recommended a three-year plan that was much more active. If that has happened, that is a good thing. I recommended financial systems that went across the whole House and unified everything, so that there was a common reporting structure that could easily be understood in terms of performance. I don't know whether that is happening. I recommended common HR processes so that good people in the House Service could move around departments and get career development here. I don't know, but I hope that is happening.

I can't really answer the question, but I think it was much more of a need to generate one sense of unity for a common purpose. I recommended a balanced scorecard performance system, which is quite a useful one if you are not simply relying on financial and easily measurable outputs. If that is happening now, then I think that is an excellent thing. I come back to my basic point: this is not a very large place, but it is a very complex one.

Q795 Valerie Vaz: Seven years seems to be a time when everyone reviews what is going on—it's like the seven-year itch, isn't it? I suppose your report is slightly different because we are Members sitting on a Select Committee, but management models move on, as I am sure you will agree. We heard from David Higgins, who has been a very successful deliverer of a certain model, and he talked about having two people who got on with each other and who talked about the work. How often do you think organisations should change their governance structures, given that you are not sure whether certain recommendations that you made—and you took the trouble to write a report—have been implemented?

Sir Kevin Tebbit: How often should one change governance structures? You should not change them because of fashion. G K Chesterton once said that management studies were the idolatrous pursuit of the intermediate.

Q796 Chair: Could you repeat that?

Sir Kevin Tebbit: The idolatrous pursuit of the intermediate. I think there is something in that. It is a question of whether you have got really good people who are absolutely committed to the end product, who understand together what that is, and work together to achieve it—I am now talking about the House Service. That seems to be much more important than worrying too much about structure. However, I think it is very important to have processes that are clearly understandable and measurable, which is why I have gone on about them. That, to me, is the most important thing. With the way in which IT has moved, that is not a difficult thing to achieve, as long as you have the right experts putting in the right processes and measuring the right things. I don't have an easy answer to this, although I think there was certainly enough in my report to try to promote the changes, which were by and large also recommended by my predecessor.

That is not a very satisfactory answer. I know organisations always need to refresh themselves. I am just coming back to the point that I do not think refreshment would be achieved by splitting the role of the Clerk and Chief Executive.

David Orr: I think best practice would be to review governance structures around about every three years. That does not necessarily mean a change. I have found that sometimes you do need a fundamental review and then three years later perhaps a less intensive review. There is also sometimes the need for a focused review of governance. I have recently concluded a review of procurement governance for a public sector organisation in the Republic of Ireland, looking at the governance of a particular function as the case arises.

Q797 Jacob Rees-Mogg: Thank you for joining us this morning, Mr Orr. You are on the Parliamentary Estates Board and the Palace of Westminster restoration and renewal programme. Are the remits for governance arrangements for those two boards clear?

David Orr: Certainly, my remit on the board was made very clear to me when I joined. I was given written terms of reference. In the case of the restoration and renewal board, that is very clearly to support the senior responsible owner, to provide an external perspective on the issues and to provide advice on the basis of my experience of delivering major projects. My remit was clear and the terms of reference of the board itself are also formally set out and are clear to members of the board.

Q798 Jacob Rees-Mogg: Do you feel that the contribution you are making on those boards is similar to the expectations of what a non-executive would bring to a board in another environment?

David Orr: I have been very pleased at the way my advice has been received. Sometimes the executives on boards see non-executives as window dressing—nice things to have, but don't interfere too much. That has certainly not been the case with the two boards in question. My advice has been welcomed, I have been told to exercise my independence

and encouraged in doing that, and I have been involved more in the workings of the board than I expected to be, so it has been a positive experience from my end.

Q799 Jacob Rees-Mogg: So your expectation met what was set out in the first place. Do you agree with Sir Kevin that it would be useful to have non-executives on the Commission?

David Orr: I do. I think the external perspective that is brought can be immensely valuable, but there has got to be a constructive working relationship. As a non-executive I have chaired the procurement expert panel for Crossrail for the past six years. In that role it would be easy to fall into a point-scoring type of mentality. That is just non-productive, because the executives then close ranks to defend their positions. As a non-executive I am there as a critical friend to produce constructive challenge. I certainly find that with Crossrail, the executives bring their problems to us as non-executives to benefit from the external perspective and advice that we can give. I do think it is valuable.

Q800 Jacob Rees-Mogg: Thank you. Finally from me, is there anything that you would like to do to make your role more effective, or make the boards that you are on more effective?

David Orr: I don't think so. It has been a very positive experience and I have been impressed by the way both boards have operated. Certainly they are at least as good as other boards that I have contributed to.

Q801 Ian Paisley: David, you have worked in a complex political environment as well in your role. What skills are necessary, or what are the most important factors in delivering a hugely significant infrastructural change and delivery programme in a complex political environment?

David Orr: I think the very first thing is to spend time at the start of the project determining and defining the scope of what you want to do, because if you change that scope after awarding the contract, it is going to be very expensive, both in time and in money. So spend time defining the scope of what you do.

Secondly, get the estimate right. There is a tendency to be optimistic in terms of estimates. We usually tend to estimate lower than things turn out. We have to combat that and produce an estimate that will stand scrutiny. That is very important to the politicians.

Thirdly, sponsorship and championship of the major programme. If you look at something like Crossrail, it was very strongly championed by the Mayor of London. So it is important that you have a strong champion and sponsor for these programmes. When the independent options appraisal of the restoration and renewal programme comes to the two Houses, that is one thing that is going to have to be settled: who is going to sponsor and champion it at the political level?

Then there are the normal things, such as proactive management of risk; getting the procurement right so that you have no adversarial contracting—the new conditions of contract that we use nowadays are very helpful in that regard—having external challenge, which we have talked about; and finally, I would say, paying attention to the stakeholders is vitally important. The factors that lead to successful delivery of infrastructure projects are well known. One of the delights of my role on the R&R programme board is to help share that experience with the House authorities.

Q802 Sir Oliver Heald: I have the impression that the people who work here, the staff of the House, are by and large perfectionists. They are people who are highly committed to public service and to the House and they want to do their best, but we have heard some comments that there are delays and difficulties in obtaining clear, joint and timely decisions and direction. I wondered if you had any comments about the first point, namely the quality of the people whom we have working here, and secondly, about this framework of decision making and whether it can be improved and how.

David Orr: I do not want to give the impression that I have gone native, but I have been impressed by the quality of the people that I have interacted with on these programme boards. When it comes to things like attention to risk management, to business cases or to external challenge in the form of gateway reviews, it is all there, it is being done and it is very good.

To turn to the second part of your question, Sir Oliver, one of the things that did surprise me when I came to the role was the bicameral nature of everything in the Houses of Parliament. I was surprised, for example, that there were two directors of facilities and so on and so forth.

Chair: So are we, by the way.

David Orr: No doubt there are reasons for it. Strangely, it has not proved to be an impediment in my experience, simply because a lot of work goes into making sure that the two Houses work together. For example, on the restoration and renewal programme board, there is strong representation from both Houses and they make an effort to work very closely together. One of the indicators of that positive working was the decision in October by both Houses on the publication of the independent options appraisal and the establishment of a Joint Committee to take things forward after publication. I thought that that was a significant decision, which seemed to be arrived at jointly, efficiently and effectively.

Q803 Chair: On sponsorship and championship, Mr Orr, you drew a parallel or gave as an example the position of the Mayor of London as a sponsor of Crossrail. Although there are big stakeholders, the way London government has been constructed is that there is one person, the Mayor, who has executive authority and that is very clear. For the reasons you have just mentioned—this is a bicameral institution— authority is split between the two Houses. We are not trying to anticipate your report, which I think will come out sometime next summer, but one of the things we are looking at is, for example, to try to have more combined meetings between the House Committee in the Lords and the Commission in the Commons, and certainly having an executive committee of the two to deal with security

issues, so that there is one fount of decision for security. Rather than setting up another Joint Committee—I have some experience of them—would it make more sense to have the Joint Committee that is the executive body—as it were, the client side for the delivery authority—being drawn from the two bicameral executive bodies? Thus, there would be a Joint Committee of the House Committee and the steering committee, and both Houses have agreed that this institution will have the authority.

David Orr: Yes, I think some sort of arrangement of that nature will be absolutely essential, but I would go further than that. In a sense, that is to do with managing the client function, which is vitally important, but I would go further. Who is going to stand up and champion this programme? It cannot be left to an official; otherwise it is going to be something that will be done to the Members of both Houses. There has to be some arrangement for championing and sponsoring this in a bicameral way. It maybe does not have to be a single person; there could maybe be someone from this House and someone from the other House, but it is absolutely essential that there is top-level sponsorship by the key stakeholders of a programme of this magnitude.

Q804 Chair: It seems to me to be really important in any institution, but particularly in a bicameral one, that the two sponsors and champions have to be the two Speakers. If they are not sponsors, and if they are critics, the client decision making will become sclerotic at best and, more likely, subversive.

David Orr: I am highlighting this as an issue.

Chair: Yes.

David Orr: In a sense, it is for the two Houses to come up with the answer that suits them. I recognise the force of the suggestion you have made. I would also say that having two sponsors is not unique. Crossrail, for example, initially was sponsored by the Mayor of London and the Department for Transport. These things can be worked at, but it will be important to have top-level political sponsorship of the programme, if it is to be successful.

Q805 Chair: Could I ask both of you, but starting with Sir Kevin, whether there are any final things that you want to say to us by way of concluding remarks, apart from wishing us well in a difficult task?

Sir Kevin Tebbit: I do wish you well. Having spent six months here, I would beware of simply trying to import management models from business and trying to install them here, because of the self-governing nature of the House. We talked about non-executive directors. I sit as a non-executive director on a FTSE 100 board, where my responsibility is to the shareholders. Shareholders here are the Members, so it is quite a different arrangement. Ensuring that one gets that relationship between the Members and the administration—the House staff, as it were—is absolutely critical to ensuring that they are moving together. Often I found that irritants were actually tiny things, which were escalated up to the highest level. That is why I was so keen on having good systems and processes that managed to resolve issues at the right level, rather than wasting the time of very senior people in these

Committees with trivial issues that immediately became political. That is why getting the management and the governance right is so important.

Chair: Mr Orr?

David Orr: No, Chair; it has been a privilege to give evidence to you so thank you for the opportunity.

Chair: On behalf of the whole Committee, we are extremely grateful to both of you for giving up your time and offering us your expertise and judgment. Thank you very much indeed.