



Procedure Committee

Oral evidence: [Private Members' bills](#), HC 684

Wednesday 27 January 2016

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Members present: Mr Charles Walker (Chair); Edward Argar; Bob Blackman; Jenny Chapman; Nic Dakin; Patricia Gibson; Patrick Grady; Sir Edward Leigh; Mr Alan Mak and Mr David Nuttall

Questions 90-122

Witnesses: **Mr Jacob Rees-Mogg MP**, Conservative, North East Somerset and **Thomas Docherty**, gave evidence.

Q90 Chair: They're here—hooray! [HON. MEMBERS: "Hooray!"] I'm calling that the warmest welcome ever. It is fantastic to have two of the driving forces of our predecessor Committee before us. They were the brains of the Committee, weren't they? We used to lock them in rooms together and let them get on with it.

It is a bit like "Groundhog Day" because here we are, once again, talking about private Members' Bills, on which we thought we had come to quite a sensible position in the previous Parliament, but the Government decided to run down the clock and let our report gather dust on the shelf. We are now back looking at the same vexed issue again.

May I ask both of you a simple question? In answering that question, you may make an opening statement. Thomas, you can answer first, and then Jacob. Do you still stand behind the recommendations of this Committee's report in the previous Parliament?

Thomas Docherty: Yes. That's the short answer. I think there are three purposes to private Members' Bills. The first is that a Member wishes to legislate, either because they have a particular passionate cause—mental health is a good example—or because they would just like to put their name to a Bill. It is fair to say that the MPs who are likely, at the end of this Session, to have a Bill passed into an Act in their name probably would not have picked that subject if they had been asked at their selection meeting, "What is the one bit of legislation you would

have done?" I am not going to pick out individuals, but Members know which Bills are likely to become Acts. There is nothing wrong with that because it is a demonstration that you have achieved something.

The second reason is because you are trying to influence the Government's thinking on policy. Of the many Bills I introduced, three influenced the then Government's thinking on train fare regulation, energy price transparency and the Lobbying Bill, although I take no responsibility for the Lobbying Bill as it ended up.

The third reason is wanting to run a campaign, whether it be on the European referendum, wild animals and circuses, or the bedroom tax/spare room subsidy.

They are all legitimate reasons to do a private Member's Bill and the report's recommendations strengthened those three avenues. I make no judgment about which of those three avenues is the most important. They are all legitimate, but the recommendations that you came up with in the previous Parliament tried—and I hope whatever you decide to do will try—to strengthen those three avenues.

Mr Rees-Mogg: I think the report that the Committee came up with last time was very sensible and that its recommendations stand the test of time. The difficulty it faced was that the Government did not want to do it. That is probably at the heart of any discussion on reform of private Members' Bills.

Q91 Chair: On that point, the Committee in this Parliament—and Parliament itself, because we are earlier in the cycle—may be more assertive on the issue of reforming private Members' Bills. It seems that the mood of colleagues has hardened from the 2010-15 Parliament.

Mr Rees-Mogg: I very much agree with what Thomas was saying about the three different reasons for bringing in Bills. That is a very important part of the analysis, as is the view that it should not be easy to legislate. The people who come high up in the ballot have the right to introduce a Bill, not an Act. That is crucial. Making law is a difficult process and it needs to be done with the grain of Parliament and, ultimately, with the grain of the Government, who have a mandate to decide what is going on. There is then trying to decide how Parliament exercises that function and what avenues it will leave for the Government to stop it, short of having 335 MPs turn up to vote it down.

Q92 Chair: To that end—this is my final question, then I shall let the Committee get stuck in—we did agree around a presumption or convention of a vote on Second Reading. I know that we spent a lot of time, particularly the three of us, coming up with that, and it seemed a sensible compromise, because it provided the sponsoring Member with

the scope to work with Government in between that vote and the Bill going into Committee, as well as during Committee. My view remains that if a Member of Parliament cannot secure Government support or incorporate the Government's concerns during that period then the Bill does not actually deserve to advance beyond Report stage. We were not going to apply total protection; we were going to give a slightly wider window, a broader opportunity, for the Member to make the necessary changes to try and secure Government support. Is that a fair recollection of what we were looking to achieve?

Mr Rees-Mogg: Yes, and I think you make a very important point, that Members need to work with the Government if they are to get their legislation adopted. It is very interesting if you look at the non-handout private Members' Bills that do get through: Sir William Cash got through his International Aid (Gender Equality) Bill in the final Session of the previous Parliament by working with the Government so that they knew what he was doing the whole way through and by explaining it carefully to Back-Bench Members on his own side who might have been concerned about another Bill on overseas aid. Through that he got an important Bill on the statute book. So the point you make that Members need to work with the Government is crucial. The Government have a mandate from the British people, which gives them the right to a very important say in what legislation is passed. I think some Members feel that once they have won the ballot, that is it, and they can bring forward a Bill and everyone else should roll over and say, "That's marvellous." That is not only how it does not work, but how it should not work. You need to have a genuine mandate to get a Bill through Parliament, not just a bare quorum on a Friday afternoon.

Thomas Docherty: I would refine that description of what we agreed, because in the end it was the first seven Bills. We are not saying that every Bill that is drawn in the 20, or that comes as a ten-minute rule Bill or presentation Bill is guaranteed a vote—it is the first seven.

Originally, I think we tried to make it 14 and, from memory, we had looked at dividing up the Friday time, so that you had two Bills, but in the end we felt that it was about the first Bill on Friday. I understand that there was some controversy around a couple of Bills early in the Session—the second one was about medicines or something, and there was lots of discussion about J. M. Barrie on the earlier one. What this Committee proposed would not have changed that. That still would have been the case, because it was the second Bill up. But the first Bill—

The argument is that if you are lucky enough—it is luck, by its nature—to be in the first seven, should you have the opportunity to test the will of the House? Yes, absolutely.

Q93 Mr Nuttall: Welcome back to our Committee, Thomas, albeit on that side of the room. May I explore something? The three different types of Bill you mentioned—one was to legislate, one was to influence Government thinking, and was the third one was part of a campaign?

Thomas Docherty: Yes.

Mr Nuttall: Right. So to my mind, part of a campaign would mean that you are campaigning to change Government thinking.

Thomas Docherty: Yes.

Mr Nuttall: So really those two are pretty similar, aren't they?

Thomas Docherty: You are right to say that there is a blurring part, naturally, but I suppose a better way of saying it is that, in the second category, on Government thinking, it is an issue that the Government are already considering. I used three examples, including train fares and energy prices—that was about people who did not have access to the internet, so older people in particular, who were not getting the best available deals, because they did not have the ability to transact with SSE or Scottish Power or whoever else, and the Government have changed the rules so that people get a fairer deal. Those were issues, Mr Nuttall, that the Government were actively considering, such as where they flagged up that they were going to consider a lobbying Bill or whatever else. The third category included Bills that could be a party campaign. It is probably not unfair to say that the European Union (Referendum) Bill was a Conservative party campaign, and the scrap the NHS reform Bill—whatever the Clive Efford Bill was called; I cannot remember—

Jenny Chapman: It was the NHS reinstatement Bill.

Thomas Docherty: Thank you. That Bill was a Labour party campaign. It is quite possible that the SNP might have a referendum issue in the future that it wishes to flag up. I could not possibly speculate. Those Bills are not necessarily about influencing Government policy, but providing a campaigning platform.

One of the things that frustrated me—this picks up on Mr Rees-Mogg's point, and I will not name the individuals—when I was a shadow Minister was that some Labour colleagues who had been lucky enough to be drawn in the ballot did not put their shoulder to their Bills and left it to other people. I do not know whether Mr Dakin was one of the Whips who had to pick up the cudgels on one Bill in particular. It goes back to Jacob's point: people think, "I have been drawn in the ballot. I therefore have a right to this Bill", but they have to work at it. You have to do the research. You have to go and see the Minister. You have to get the

campaign organisations in the country behind you, and some people clearly thought, "I've got a Bill. It will be done for me", and that is frustrating. People should not go in the ballot unless they understand what they are getting into.

Mr Rees-Mogg: That's absolutely right.

Q94 Mr Nuttall: To be clear, you think that there should be a guaranteed vote on Second Reading at 2.15 on a Friday afternoon?

Thomas Docherty: It is not for me to speculate as to when that vote should take place.

Q95 Mr Nuttall: But you would like to see it.

Thomas Docherty: I think at an appropriate point, whatever—

Q96 Mr Nuttall: If the debate has not finished before then.

Thomas Docherty: Yes. On the first Bill, on whatever day and at whatever time it is, the House should have an opportunity to express its will. Ministers should not hide behind filibustering, however eloquent they may be on occasion.

Q97 Mr Nuttall: Although 20 Bills are chosen every year through the ballot procedure, there are far more Bills listed on the Order Paper, through being brought forward either as a presentation Bill or by what we refer to as ten-minute rule motions, which are typically heard on a Tuesday or a Wednesday after questions.

Without leading you as to what my views are, I am interested in knowing what our witnesses' views are on those other means of bringing forward private Members' Bills, particularly in the future if the procedure was changed on the first seven Fridays so as to result in the first seven Bills being given a vote, say at 2.15. There would be little if any chance of any of the other Bills ever actually having a Second Reading debate. I have probably led you too much already, but I would be interested to know what Mr Docherty and Mr Rees-Mogg thought about ten-minute rule Bills and presentation Bills.

Mr Rees-Mogg: I read some of the evidence that you previously received, and I saw that Michael White was quoting from the Palliser novels. The idea that the Government introduces Bills is a relatively recent one and a not entirely good one. I think that one of the rights we have as Members of Parliament is to introduce a Bill. If a constituent comes to us with a grievance and there is no other way of seeking redress, introducing a Bill to Parliament is a way of doing that and of highlighting the issue and conceivably getting the law changed. It is important that the other routes are available, and it should not be purely

dependent on your luck in a lottery. In many ways, I do not like the lottery. I do not think it is a serious way of determining legislation, but leave that to one side, because we discussed that last time round and the consensus of the Committee was against my view on that.

It is important that those options are available, but the Order Paper is confusing. The previous Committee discussed that and had a recommendation that Bills that have not been published should be identified on the Order Paper so that you do not just have these great long lists of Bills that then get advertised by people who support them as if they are Bills waiting to come before Parliament when they are not. The fifth Bill on a Friday may have very little text to it, let alone any chance of being debated. It may be at a very early stage of origination, so one has to be careful about the impression that one is giving.

Thomas Docherty: My predecessor Willie Rennie had a constituent who had been sexually assaulted by her driving instructor and it turned out that he had a previous conviction. Willie took a Bill to say that anyone convicted of sexual offences could not be a driving instructor. He did it as a ten-minute rule Bill and the then Labour Government listened carefully and thought it was a reasonable suggestion. It went all the way through as a ten-minute rule Bill from Willie Rennie: it was popped through on a Friday afternoon—there was no debate on Second Reading and nobody shouted “object”—it went into Committee, the Government had an opportunity to make sure it was fit for purpose and it passed into statute. That is why I do not accept the premise that ten-minute rule Bills cannot become legislation.

Mark Lazarowicz, again in that same Parliament, had campaigned around ship-to-ship transfers of oil and got a ten-minute rule Bill and while the then Labour Government ran out of time and did not get the regs through, Mike Penning, as the Transport Minister in the coalition Government, picked up the issue and took it through. So ten-minute rule Bills can be effective, either directly as in the Rennie case or because subsequently a Minister says, “Do you know what? That is a good issue. I’ll take it away. I want to play with it, and I’ll make it work.” That works in the current system.

Q98 Sir Edward Leigh: Well, Jacob, I would not want to denounce you as a dangerous moderniser and radical—*[Laughter.]* But we are all agreed that if you have one of these private Members’ Bills, you have to take it seriously: you have to square the Government, the Opposition and two or three well known filibusterers. Equally, there is no point in us producing a report that the Government will kill, either, so we also have to get something that has a chance of getting through. If we just say that we think there should be a guaranteed vote, I suspect they will just allow the report to gather dust. You can comment on this, but I suspect the reason

is that they do not want to have to bring in loads of PPSs, ambitious people and junior Ministers on a Friday morning; it is much easier to get a few people to filibuster. I suspect that is where they are coming from.

So what can we do? I think there is some merit in trying to make the process easier for the top seven Bills. How about this idea? At the moment for closure you need to get 100 people, which is virtually impossible unless the Bill is on hunting or something—or the referendum Bill. But if you want to get it through, there have to be 40 people voting. How about if you reduce the number required for closure to 40? If you were a serious person with a serious Bill, you should be able to get 40 colleagues there to close it and have a vote. That would also be bearable for the Government, because they can probably organise 40 or 50 PPSs, junior Ministers and ambitious young Members of Parliament to be around. Do you see my point? I am trying to feel my way to a compromise that may achieve our objective and get past the Government. What do you both think of that?

Thomas Docherty: I do not know whether the brief raised the question of the day of the week, but I am not wedded to Friday. I am happy to talk about that now or later.

Sir Edward Leigh: Let's stick to Friday for the moment, for the sake of the argument, because other days of the week is a whole different debate and that complicates it.

Thomas Docherty: If you presume it is Friday, I absolutely agree that the 100 rule is stupid. I have always said that, because it is an arbitrary number. Exactly as you say, you need 40 for quorum.

In fact, Harriett Baldwin had a Bill which was about setting up a West Lothian commission. Mark Harper was then the constitutional Minister and Chris Bryant was the shadow constitutional Minister, and both sides—both Front Benchers—were, for very obvious reasons, completely against setting up a West Lothian commission before the independence referendum. For reasons that I think they have to explain, they both had a brain freeze.

When Harriett put it to the vote, she did not have enough MPs backing her, because the Government Whips had done a pretty good job of arm-twisting careerists not to support her, but because people like Mark Harper and Chris Bryant voted against the Bill it got its Second Reading, because they made it quorate, if that makes sense. So Mark and Chris then had to come back on Report and throttle it themselves very publicly.

Did that Bill command widespread support? No. Had Harriett, by whatever means, got 40 people to vote on the Bill? Yes. Was she entitled

to take it into Committee? In my view, yes she was. One hundred votes to me just seems to be—It should be a straight majority. I would not have a threshold on closure. Subject to 40 Members having taken part in the vote, if there is a simple majority in favour of closure, the closure question should—

Q99 Sir Edward Leigh: So you wouldn't even require 40 people to take part.

Thomas Docherty: No, I am saying that provided you have 40, it should be a simple majority.

Q100 Sir Edward Leigh: Jacob, what do you think?

Mr Rees-Mogg: I am afraid I don't agree. I think legislation is very important. If two thirteenths of the House of Commons are not here, that is not a very high threshold to set. The nominal quorum is indeed 35 plus Tellers and Speaker, but it seems to me that the right to close down debate and to say, "This will not be discussed any more" needs to have the clear will of the House. That has long been the approach that the Commons has taken. Debates continue until nobody is left to speak or until the House has decided to close down debate with a substantial majority voting in favour.

I do not think it should be easy to get these Bills through. I do not think your approach, if I may say so, should be about making it easier to get private Member's Bills through. It should be about making it more transparent. I think there is a problem, and I am certainly guilty of this—as are one or two distinguished members of the Committee—of talking at length on Bills, and I have done it at the request of the Whips. I rather enjoy doing it—I should not pretend otherwise—but it doesn't make Parliament look great. I think that is a problem, which it is in everybody's interest to solve, but it is not solved by making it easier to get legislation through; it is solved by having a more open process, so that people can see what is happening.

Q101 Sir Edward Leigh: I don't understand—but you want a guaranteed vote.

Mr Rees-Mogg: I want a guaranteed vote, but—

Q102 Sir Edward Leigh: But does that mean you get rid of the closure with 100 people?

Mr Rees-Mogg: You have a vote at the end of the day, at 2.30 pm, on the first seven Bills. You have the similar convention that you have got on Second Readings of Government Bills. As far as I can tell from Standing Orders, there is no provision for an immediate vote at the end

of a Government Bill's Second Reading. It just happens, and I think a similar convention would be extremely helpful. If it is a convention, it is done by the broad consent of the whole House.

Thomas Docherty: There are some people in the Government Whips machinery who do not want this report to see the light of day, and I think that is not acceptable. I do not think civil servants should be blocking parliamentarians, in the first instance, but I also think that this Committee, if you do not mind my saying so, should consider going to the Backbench Business Committee and saying, "If certain individuals in the Government machine are trying to stop a Select Committee from having time, the Backbench Business Committee should provide that time and the House should reach decisions."

Chair: I should say that we are going to wrap this up at five to 4, because there might be some votes around then. Nic, come in now, but we do want to talk about the possibility of the days moving, maybe piloting Thursdays for a couple of private Member's Bills—who knows?

Nic Dakin: My question has been answered.

Q103 Chair: Then I am going to throw a question out quickly here. We have done some thinking, as we did in the previous Parliament, about taking private Member's Bills on a Tuesday or Wednesday evening. Having talked to Labour colleagues who are involved in the management of the parliamentary Labour party, I know that there might be an appetite for piloting two or three private Member's Bills on a Thursday. Nothing revolutionary. Let's just see how it goes. I would be interested in your views on that.

Thomas Docherty: At the moment, there are 13 Fridays with five hours of debating time, which is 65 hours. What we did not address in the last Parliament is whether your starting point in this Parliament is that you want to keep the principle of 65 hours of debate on private Members' Bills and chop up the number of slots to reach 65 hours, or you want, say, 13 sittings? That leads you in different directions. If you want to keep the 65 hours and if you moved, for example, just to Tuesday nights, you would need 22 Tuesday night sessions. A Thursday has an advantage in that you could run for a full five hours, so even if you allowed for departmental questions plus business of the House questions, urgent questions and so on, you would still be able to start at 12 o'clock and get to 5 o'clock. The question is: would you guarantee that five hours, so that the House would sit beyond 5 o'clock if it did not turn to the private Member's Bill until, say, 12.30 or 1 o'clock, or would you compress the debate?

Mr Rees-Mogg: I think the most important thing we do is legislate, which is much more important than general debates. I actually think general debates suit the Government because at the end there is a vote that changes nothing. When we legislate, things happen that affect the law of the land and the Government, so they have to put much more effort into legislation than into general debates. If Thursday is a better, more attended day, it seems to me sensible to have private Members' Bills then and allow Back-Bench business, which can have a very specialist interest, to take place on Fridays. I see no harm in that sort of swap.

Q104 Chair: We have a distinguished Member of the Backbench Business Committee here in the form of Bob Blackman—we have two—and I will bring Bob in after Jenny because I don't think we want to take away all Thursdays. We are just looking at the idea of a pilot.

Q105 Jenny Chapman: I find this days-of-the-week business really interesting because I was a sitting-hours-motivated person when coming on to this Committee initially—I am declaring my interest. I have been here on the Front Bench on a Friday to talk about a Bill and have been corralled by Whips to vote on things when I knew full well at the time that there was absolutely no point being here on a Friday but was arm-twisted into it. From a resources point of view, Fridays seem to be an inefficient way to run Parliament in that we set up for a whole day and require all the paraphernalia that goes with it. That seems a bit wasteful.

I know that is not our main consideration as a Committee, but it looks a bit barmy from the outside, in addition to the whole thing about closure and ballots, which also looks pretty mad. The fact that we use up so many resources on a sitting for something that most of us know will not go very far does not seem sensible.

Were we to move to a different time and should it be a Thursday, in your view would it be desirable or of no consequence if those Divisions could be deferred to the following week? Is that something you think we could incorporate into this report?

What matters to me more than anything else is that we get honesty for the public, and to get honesty you have to have a vote. There is no other way of doing it. When that vote takes place is really important, because if it takes place on a Friday, there is a massive consequence, as we know. If it takes place on a Thursday night, it is still problematic. Late on a Tuesday will be problematic. So could we have a system whereby Divisions are routinely deferred?

Thomas Docherty: I think that is the worst option by far.

Jenny Chapman: I miss you, Thomas.

Thomas Docherty: I miss you, too. I think it is absolutely the worst option because it means that you get even fewer people here. What is the point in rocking up on a Thursday or the Tuesday or Friday, because you are not going to get a vote on it at the end of the day? You will leave that to somebody else and then you will come back the following week. I suppose you could do a deferred Division on Second Reading, but you could not do a deferred Division on Report, because they would obviously follow on from each other. So I am clear. There is, frankly, no good time to do private Members' Bills; let's be honest. MPs have incredibly busy diaries. You are being pulled in so many different directions. But I stress that I think you need to decide—forgive me for saying this—whether it is the 65 hours you want to protect or a number of slots, and do you want the Question put at the end of the Second Reading debates? Everything else flows on from that, in my view.

Mr Rees-Mogg: Institutionalising deferred Divisions where there have been debates is quite a risky thing to do because it means that you are actively discouraging people from attending the debate. Although I know that I will go down and vote in support of the Government, having not listened to the debate because I have been attending Select Committees, you do not want to set something up structurally that makes that almost the automatic position. Most of our deferred Divisions are on things that have not been debated. They are on reports from Statutory Instrument Committees that are listed on the Order Paper, but are not debatable; likewise, European Committees. If ever an amendment is put down to a European Floor of the House debate, the deferred Division provision is lifted so that there is a vote at the end of the debate. So there is only the technicality of a deferred Division on that type of debate, but it is already known not to be contentious.

I think to institutionalise deferred Divisions after a debate is a big move, which would also need consequential Standing Order changes because Second Readings are subject to amendment, and the amendments have to be fatal, but you cannot have an amendment on the deferred Division and then a vote on what might have happened to the underlying Bill. There are also a number of other procedural possibilities that immediately follow a vote on Second Reading. The Bill can be referred to a Select Committee, a Committee of the whole House or a Joint Committee of the Lords and Commons. All of these require a decision immediately after the Second Reading has taken place, so I think that institutionalising a deferred Division would not be helpful.

Q106 Bob Blackman: I am interested in your view on Back-Bench business. The current position is that 35 days are allocated by the Government for Back-Bench business. Are you suggesting that some of those days could be taken away for private Members' Bills, or would you see, in your ideal scenario, a position whereby the same number of days

would be allocated, but it would be a different day of the week when it happens?

Mr Rees-Mogg: I would be quite tempted to give the extra 13 days to the Backbench Business Committee and say to them, "Look, you've got some Mondays, some Thursdays, and you've got 13 Fridays. You decide how to allocate the business." I know that currently the Backbench Business Committee is prohibited from giving time for legislation, but if you had a Bill that everybody was interested in that was really important, you could say, "We'll have that on one of our available Thursdays because it will be easier for people to come." If you had a number of technical minor Bills that you knew would not attract a great deal of support, you could put all of them on a Friday. It might be quite a helpful way of getting minor things dealt with, but ensuring that the major ones were debated when people were here, and the Government could then quite easily put a Whip on to vote it down, though it does worry me that the Government have begun to use the Backbench Business Committee to make Thursdays a voluntary parliamentary day. I think it is a mistake to go down essentially to a three-day parliamentary week.

Q107 Bob Blackman: Can I tease this out? One issue that Thomas rightly raised is whether we are preserving 65 hours or a number of sessions? What are we trying to decide? I am keen to get from you a clear steer of your view.

At the moment, the Backbench Business Committee has 35 days for Backbench business, not private Members' Bills. Are you saying that some of those days could be allocated for private Members' Bills for the Backbench Business Committee to allocate? Or are you saying, for example, that the 13 Fridays that we currently have could be added to the 35 days to make 48 days? Then the Backbench Business Committee could allocate.

There is an issue with that because one problem is that the Backbench Business Committee gets notice of the time Government are going to allow about one, possibly two, weeks in advance, so scheduling would be a nightmare. It might well be that what we need is a House Committee to concern itself with this business.

Mr Rees-Mogg: We are not going to get a House Committee. It is a pipedream that is simply not going to happen. You make an important point that, if you are legislating, you would need to know some of your Thursdays longer in advance to allow people to prepare their Bills. You might find it useful if you knew you had 13 Fridays, on the other hand, to use them to schedule debates that you felt needed longer time,

because you would always have the Fridays, so it would give you certainty to that extent.

I was suggesting that you give the additional 13 days to the Backbench Committee and they work out when they want to put legislation down for debate and when they want general debates. I would protect the 13 days, or the 65 hours, rather than giving the Backbench Business Committee discretion to cut the two up. I do not think the Government would accept the idea that the Backbench Business Committee could have 48 days for legislation. That would terrify them.

Thomas Docherty: I think that the idea of taking private Members' Bills on a Thursday is interesting. I would be very surprised if business managers in any of the three major parties agreed to let the Backbench Business Committee decide which Bills and when they would be taken. One thing that works is that we know early in each Session which Fridays are going to be allocated.

I do not know who does it for the SNP, but whoever gets in the room with the Conservatives and the Labour party should say, "Look, these are the Fridays that we are thinking about," nice and early and fix it. I think you would have to agree that it would not be for the Backbench Business Committee to decide the Thursdays. It would be the House that would decide the Thursdays, if that makes sense.

Chair: I will bring Patrick in.

Patrick Grady: I don't want to ask a question specifically on days and times.

Chair: David, is your question on days and times?

Q108 Mr Nuttall: It is indirectly about the Friday vote. Following on from what has just been said, do our witnesses think, if there were a guaranteed vote on a Friday, that would almost automatically mean that the Government of the day—Labour or Conservative—would impose a Whip? One reason why it is always a one-line Whip now is that they can avoid a vote by simply talking the matter out. If there were a Bill that they wanted to be sure did not pass, they would impose the Whip to ensure everybody was there to vote it down.

Thomas Docherty: Without knowing the innards of the coalition Whipping system, I would suggest that there were occasions when Fridays had three-line Whips for both Labour and the then coalition parties. We were on a three-line Whip for the Andrew George Bill—I forget what it was called—about the bedroom tax and affordable housing.

Q109 Jenny Chapman: A complete waste of time.

Thomas Docherty: There was three-line Whip for us on Clive Efford's Bill as well. I have a sneaky feeling that the Conservative party was on a three-line Whip for the EU Referendum Bill.

Q110 Chair: Lib Dems on overseas aid.

Thomas Docherty: I can't remember if we did or not, because it was the week before the referendum. You are right that there was for certain people. Frankly, you already have three-line Whips for certain Bills, certainly in the last Parliament—obviously I can't speak for the current one.

Q111 Mr Nuttall: Only at the end of the Parliament, to be fair, wasn't it?

Thomas Docherty: The James Wharton Bill was halfway through. You were on a three-line Whip.

Mr Nuttall: Towards the end.

Thomas Docherty: The problem is that we can't speculate about what may happen in the future. What I can tell you is that, in the past, there have been three-line Whips on certain Bills for all the parties.

Q112 Patrick Grady: I raised the question of closure with the witnesses last week, too. Even if you have 100 people in the Chamber, as Nick Thomas-Symonds did, the request for closure can be refused by the Chair because the debate has not gone on long enough, even though the Minister is on their feet and clearly everyone who wants to speak has spoken. You don't necessarily want folk to be able to disrupt business by calling for the closure at any given moment, but that would have been a way of determining the will of the House, because the Government could have whipped people to allow the debate to continue and the Bill to be talked out.

Mr Docherty, of course, has his eye on the Scottish Parliament now and, if and when he gets there, he will find that there is a system of deferred Divisions, because that is what happens at 5 o'clock every day. Votes are at 5, and then people tend to go home. It is done by electronic voting, too, so they go home 15 minutes after the votes. The Member's Bill system there is very different indeed, and there is an awful lot of prelegislative scrutiny before a Bill even gets to the Order Paper, or the Business Bulletin as it is called, and then it is incumbent on MSPs to continue to demonstrate support at every single stage. If they can do that, the Bill makes progress. I would be interested in both your views on more prelegislative scrutiny of Bills before they make it either on to the

Order Paper or on to the Floor of the House. Some of that might involve some kind of chewing over in Committee, whether it is the Backbench Business Committee or a specific Committee, which I think was floated in a previous session.

Thomas Docherty: I don't know whether I am breaching privilege by talking about what we talked about in private in the last Session. The issue of prelegislative scrutiny is something for which I am a huge advocate. My view is that different Parliaments and different Assemblies around the Commonwealth and around the world do things differently. There isn't a right way and a wrong way; they just take different approaches.

When the Scottish Parliament was first set up, it was light years ahead of Westminster. I think it has slipped so that Westminster, in part because of the current Speaker, has moved things on much more effectively and, frankly, the risk of a journalist vaguely paying attention at all is something that Holyrood needs to deal with in the next Parliament. I think the prelegislative stuff that Holyrood does is better but, depending on your point of view, there are very, very few Bills that have actually become law through the non-Executive Bills process—it is a handful. When I worked for an MSP, I was doing one with him on high hedges, which the Commons had actually passed and the Scottish Parliament had failed to pass. They have their advantages and disadvantages. I don't think there has ever been a case of somebody accidentally voting the wrong way in Westminster—I know there has been in Holyrood—although I know that people get locked in the toilets on occasion here. I am not convinced that Holyrood is better; it is different.

Q113 Patrick Grady: Yes, fine. I was interested in your views on prelegislative scrutiny.

Thomas Docherty: As I say, I think there should be, but again it is about timing. From memory, the ballot tends to be three or four weeks after the Queen's Speech. There is no reason why that ballot couldn't be slightly earlier, and what I argued in the last Parliament was that you then wouldn't have to have the first Friday until—is it 40 days in the Scottish Parliament?

Patrick Grady: Yes.

Thomas Docherty: Something like that. So you can have a period of prelegislative scrutiny, absolutely. You are drawn out No. 1 in the ballot, and you say, "I am going to introduce a Bill" on whatever, and you have 40 days of prelegislative scrutiny before you go to the first Friday, or Tuesday, or whenever.

Q114 Patrick Grady: There is no ballot in the Scottish Parliament, though. Any Member can initiate, but you have to get cross-party support.

Thomas Docherty: And the problem has become, I would argue, in recent years—first, it was designed to take less contentious issues, by its very nature, but also it does require, as Mr Grady points out, a willingness from the Executive party or parties to allow their MSPs to sign up to Bills. You would not have got the EU referendum Bill. You would not have got the bedroom tax Bill under that system.

Mr Rees-Mogg: Chair, may I say something on prelegislative scrutiny?

Chair indicated assent.

Mr Rees-Mogg: It is an extremely good idea, but it is important to bear in mind what people are using the Bills for. Some are using them to start a campaign, and have no expectation that it will pass into law, but it will get the issue sufficient coverage that it may get into law at some later point. Other people are coming forward with a Bill that they think ought to get into law in that Session. I think prelegislative scrutiny is very helpful for the people in the second category, who are really serious about getting a small piece of legislation changed. For the people in the first category, who are starting the process, prelegislative scrutiny does not really help. They are not that interested in it, because they want the publicity that comes from the Bill that they announce and the pressure that that puts on the political system to do something.

Q115 Chair: Do you think there could be a situation, when we bring forward our report, where someone might amend it and say, “Let’s just get rid of Fridays altogether—just get rid of private Members’ Bills.”? I know that would be a shame, but I am not asking whether—

Mr Rees-Mogg: I think it would be worse than a shame. It would be a fundamental attack on the rights of Members of Parliament and on the legislature itself. We have to have the right to change the law. That is why we are here. The most important thing we do is legislate. If you go back to the origins of Parliament, what we do is we legislate and we say to the Executive, “If you do not agree to our legislation, we will not give you money.” That still underpins what we are doing, and the right of every Back-Bench MP to put forward a Bill, or 100 Bills, is one that you really ought to die in a ditch for, because if you take that away, you are taking away something that is fundamental to what we are here to do.

The next step would be to say that Members cannot table amendments to Bills, because that is legislation, but actually amendments to a Government Bill are a very good way of making a point. Even if you know that you will be defeated in the Division Lobby, you make your

point. You get the issue aired. You seek redress of grievance for your constituents. I think that would be a really unparliamentary approach for anyone to take.

Q116 Chair: I'll ask the question, and then I will allow any colleagues to come in with any final thoughts. The reason I ask the question is because there is an acceptance, or a growing realisation, among colleagues that Fridays are rather distasteful. We go along with Fridays because we cannot really think of anything much better to do with them. It would be nice if Fridays became days that were celebrated by more of us, as opposed to avoided by most of us. I just leave that as a thought for my two distinguished witnesses.

Mr Rees-Mogg: I think you are too gloomy, Mr Chairman. I filibustered a Bill in the last Parliament at the request of the Government Whips. The Minister did not want to talk it out. He was talking until about 10 past 2, and I was asked to do from 10 past 2 to half-past, which I duly did, on a Bill introduced by Michael Connarty. This Bill came back, trumpeted by the Government as the Modern Slavery Bill. I do not think that that would have happened if Michael Connarty had not brought forward his Bill, which the Government at that stage did not like because they had not had the chance to fully examine all its consequences, and it had not been through the Whitehall machine and whatever else Governments have to do. Actually, the arguments that were made in the Chamber and the arguments that were made more broadly convinced the Government, and most particularly the Home Secretary, that this was very important, and a very important piece of legislation came out of it.

We sometimes look at Fridays and say, "Well, that Bill didn't get through; it was talked out. Therefore, the whole thing was a waste of time." That is wrong. I think you will see, in the next year or so, the Government do something on off-patent drugs. I think the Government were rather embarrassed about talking out that Bill, which had a reasonable amount of support and has an underlying principle that is not a bad one, but it is a very complex issue. It relates to trade agreements, intellectual property rights and the discussions that we are having with other countries to encourage them to give greater protection to intellectual property, so if we just rush through a private Member's Bill, that may not be the right answer. If the Government have time to deliberate and bring the Bill back, you may get a better answer. However, that will have happened because of what's begun in a process that, on the day it ended, looked to be futile, but it's not as bad as that.

Q117 Chair: Was it on Second Reading or on Report that you talked the Bill out?

Mr Rees-Mogg: It was on Second Reading. The previous Bill was talked about at length to ensure there was very little time for it.

Q118 Jenny Chapman: Madness. What you have just said makes perfect sense, but that is not what anybody watching it or most of the people who were there will have gleaned from what actually happened.

Mr Rees-Mogg: I absolutely accept that. That is why I said earlier that I don't think it should be easy to get legislation through, but I think the issue is transparency; the problem we have is transparency. It is not about making legislation easier and it is not even that the Government obstructing Bills is invariably malevolent. It is not. They are quite often doing it for reasons why any party would do it if in government: they just need to be certain that the legislation is rightly phrased.

Q119 Nic Dakin: I absolutely agree about transparency. The problem is that with certain Bills, members of the public believe the Government are on their side and it's horrible people—odd MPs—talking it out. That lack of transparency does not do anybody any good, so anything that can move us away from that is better.

Mr Rees-Mogg: That is something that it is very hard for the Government to give up.

Thomas Docherty: They are not the only villains, though. There is a range of villains in this. There are MPs themselves, who say that they have this Bill that is going to be legislation when it has no chance at all. I think the biggest group of villains sometimes, though, is the charity sector—I'm assuming it has not changed that much in the 10 months since my early retirement. 38 Degrees are the people—

Mr Rees-Mogg: Sabbatical. [Laughter.]

Thomas Docherty: People are emailing, saying, "It's really important you're here on this Friday for Bill No. 7." Then you as MPs have to go back to your constituent and say, "Look, it's No. 7 on the Order Paper. We're not going to reach it." This is about transparency, but also certainty; the two go hand in hand.

There are two groups of recommendations in our previous report. One is about the big ticket items—when and how votes are done—but there is a bunch of technical stuff. Even if the civil servants and others do not want to do the day of the week, there is no reason why we should not have those really straightforward things—for example, there should be advice to Members when they go into the ballot. One very simple change the House could make is that when you sign the book for the ballot, they should give you a leaflet that says, "Actually, this is what you're signing up to." With the best will in the world, David Natzler does not need to

wait for this Committee to get time to make those types of changes. In terms of the Order Paper, it's a great idea to say, "Bill not yet published", so that Fergus, the Clerk of PMBs, is not dealing with 20 phone calls a day from people who want to know, "What is happening to this Bill?" Those practical steps on transparency could be taken tomorrow.

Chair: Bob has a question. I think we'll make it the final one.

Q120 Bob Blackman: One suggestion has been that instead of the current ballot, Members at the start of the Session should say, "The title of my Bill will be x." Thirty or 40 Members may all come forward with the same Bill. Instead of having a ballot that results in the bizarre position that if you come top of the poll you get inundated with all sorts of requests, you would have to come forward and say—taking Jacob's point—"I want to change the law on this particular subject." You would have to name your subject at the start of the Session before having a ballot. What do you think of that idea?

Thomas Docherty: I am opposed to it for two reasons. One is that where you are drawn in the ballot may determine what you choose to do. If you are drawn No. 1 in the ballot, you are obviously guaranteed your airtime and you would take something where you know that even if you are not going to succeed, you have up to five hours to have a debate on it, whereas if you are drawn No. 18 or 19, as Bill Cash was—he took something that was very important but not, frankly, controversial. There is a tactical element to it.

Secondly, all MPs are equal. If you start getting into a popularity contest, inevitably the bigger parties will end up with the most names and the biggest level of support. I remember with some fondness the days when the SNP had only six MPs. Caroline Lucas is the only Green MP, yet she is as equal as anyone—apart from Jacob. The people of Brighton Pavilion have elected Caroline. Why should she not have the same opportunity through the ballot as everybody else?

Q121 Bob Blackman: But she could demonstrate the interest—

Thomas Docherty: She has, because she has been elected by 70,000 people.

Q122 Bob Blackman: Across the House.

Mr Rees-Mogg: I argued the case that you are putting the last time the Committee discussed this. Thomas disagreed with me, and the report reflected Thomas's view rather than mine.

What we are about as politicians is building up support—building coalitions for our views. If you have a Bill that you really want to bring forward and you can get a couple of hundred Members to say, “That’s what we want to have,” that is a really powerful starting point. It would raise the quality of private Members’ Bills. It would reduce the need for handout Bills. It would reduce the pretty poor charity Bills that sometimes get sent in.

It is open to abuse, because the Whips could say to everybody, “You must all sign this Bill.” You would do it on a ratio basis, so that people had to get support from across parties. If they had 200 Conservatives and only one Labour, that would not really cut the mustard; they would need to have some proportionality. We could work out a scheme like that, which would cover Thomas’s point that, of course, MPs have equality, but ensure that the Bills you get have some genuine support. It is a very attractive idea.

Thomas Docherty: That sounds like qualified majority voting to me—
[Laughter.]

Mr Rees-Mogg: Definitely not.

Chair: I thank our two witnesses for coming before us today. That was an enlightening and good-natured evidence session. It is a pleasure to see the two of you, and I hope our recommendations will find your approval. Thank you very much.