



HOUSE OF LORDS

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**The Select Committee on Trade Union Political Funds and Political Party
Funding**

Inquiry on

TRADE UNION POLITICAL FUNDS AND POLITICAL PARTY FUNDING

Evidence Session No. 11

Heard in Public

Questions 80 - 92

THURSDAY 11 FEBRUARY 2016

2.15 pm

Witnesses: Nick Boles MP and John Penrose MP

Members present

Lord Burns (Chairman)
 Lord Callanan
 Lord De Mauley
 Baroness Dean of Thornton-le-Fylde
 Baroness Drake
 Earl of Kinnoull
 Lord Richard
 Lord Robathan
 Lord Sherbourne of Didsbury
 Lord Wrigglesworth

Examination of Witnesses

Nick Boles MP, Minister of State for Skills, Department of Business Innovation and Skills, and
John Penrose MP, Cabinet Office

Q80 The Chairman: Mr Boles and Mr Penrose, thank you very much for coming this afternoon. As I am sure you know, we have a very tight timetable because we have been asked to get a report out by 29 February, so we find ourselves in the slightly curious position of taking oral evidence more or less in parallel with receiving written evidence. We have to live with that. Would either of you like to make an opening statement, which you are welcome to do? If not, I shall kick off with the question that keeps cropping up over and over again. What is the problem to which Clauses 10 and 11 are seen to be the solution? What are we aiming to achieve?

Nick Boles MP: Lord Burns, thank you for offering me the opportunity to try to shed some light on this, although I will never be able to do as good a job as my colleague Baroness Neville-Rolfe did in the main Chamber yesterday on the very same clauses. There are basically two fundamental motivations. One has its roots deep in the past, in the long history of industrial relations and trade union regulation, and the other relates very much to modern times. The historical one, which I believe was debated at some length yesterday, is that of the continuing discussion between Governments over the past 30 or 40 years—indeed, one could say over the past 110 years—about the precise way in which trade unions secure the consent of their members to make contributions to the political fund. Obviously I know that the Committee will be very well aware of that, but it is important to remind

everyone that the political fund is not necessarily, and for some unions is not at all, a party political fund but a fund to support campaigning of various different kinds. In the last majority Conservative Government there was a process of discussing with trade unions how they were communicating to members the fact that they had an absolute right not to contribute to political funds. As Lord King set out yesterday, an agreement was reached with the General Secretary of the TUC at the time, Len Murray, in which they agreed that trade unions would go further to make sure that everybody signing up to join a trade union or renewing their subscription was aware of the ability to make a choice not to contribute to the fund. Lord King in his exchange of correspondence with the General Secretary of the TUC made it very clear that the Government's agreement at the time not to legislate for what we are legislating now—the compulsory opt-in—was based on an understanding that the trade union movement would effectively ensure that all trade union members were always aware of the fact that they did not need to contribute to the political fund and that therefore they had made a choice to contribute because they were aware that they could choose not to. The truth is that that has not happened across the trade union movement. It has happened in some unions, but it has not happened even in the majority of unions that have political funds. I do not know whether the Committee has been provided with the full programme, but if not I am happy to send it to you. As you go through the list of those trade unions that have political funds and look at the online application forms to join them, I am afraid that not even a majority actually make it clear on the form that, first, there is a political fund, and, secondly, that any member of the union can choose not to contribute to it. Bluntly, the deal that was made between the then Employment Secretary Lord King and Len Murray, then general secretary of the TUC, has not been fulfilled. It is therefore entirely reasonable for this Government, as stated clearly in our manifesto, to bring forward legislation to ensure that there is active consent, an active opt-in, to the political fund. That is the historical reason.

There is actually another reason that if anything makes it even more overwhelmingly necessary to make this change, which is that there has been a very substantial shift across a whole range of areas of public life and consumer activity towards the idea that it is important, when you are asking someone to make a contribution to some other organisation—it could be a supplier of a good or a charity—that they should actively consent

to do so. I am sure that the Committee is already aware that the consumer rights directive, which was implemented in the UK in 2014 and which applies across the European Union for contracts between a trader and a consumer, reinforces the concept of express consent. Traders need the active consent of the consumer for all payments and pre-ticked boxes are no longer permitted under that directive. I am not going to suggest that the relationship between a trade union member and the consumer of a product or service is exactly the same, but that it is strongly analogous.

Turning to the charitable sector, last year Sir Stuart Etherington led a review of the approach to self-regulation of fundraising in charities and strongly encouraged that, again, all fundraising organisations should take steps towards adopting a system of “opt-in only” in their communications to donors. Charitable donation is another pretty strongly analogous situation. The same applies to financial products. The FCA is very clear that when signing up to a financial product, consumers should be provided with clear information and be offered an opportunity to actively consent to a new commitment. The combination of the historic conversation, and to some extent a deal that was done between a past Government and the trade union movement not having been fulfilled, as well as the modern drift across all sorts of different areas of interaction between individuals and organisations that are taking money from those individuals, makes it absolutely right and proper to introduce what has long been the case in Northern Ireland, which is a compulsory opt-in process to making a contribution to a trade union’s political fund.

Q81 The Chairman: It has been put to us, of course, that, given the way you describe the problem, there may not have been the degree of compliance that you would have liked to see. Nevertheless, the whole content of 10 and 11, taken together, is disproportionate in dealing with that, particularly in many of the arrangements that are built around it, which are both expensive and make it less likely that—in the short term, certainly—consent will be achieved. The question which a number of people have raised is that surely there would have been a lighter-touch way of dealing with the first problem you identified, and even the second one, than that which is described in 10 and 11. We have been through and heard today evidence that the sum of money that people are contributing is, on average, £5 a year and that the whole cost structure that now surrounds this proposal is disproportionate.

Nick Boles MP: I certainly do not think that this is anything other than a proportionate intervention. However, I absolutely accept that we need to make sure that the transition from the pre-existing approach to a modern approach of opt-in is possible for the unions to do in a way that is successful for them and their members and not punishing in terms of costs. I know that Baroness Neville-Rolfe indicated yesterday in the debate that on questions of timing for transition and methods by which an opt-in could be declared she was very much open to arguments and would be reflecting on them before Report. I endorse everything that she said. This is not designed to trip people up. We want it to be done in a normal way. I think Lord Burns is right about the impact assessment. In our slightly unimaginative way, we projected the costs of making this change if existing methods were required. It is perfectly reasonable to say that surely there are methods that could ensure that those costs are not as high as have been projected in the impact assessment and we are very happy to look at that.

Q82 Baroness Dean of Thornton-le-Fylde: Good afternoon, Minister. Perhaps we can turn to the impact assessment—of which, as you are aware, there has been a lot of criticism, not least that it was not available until the Bill came to the House of Lords after Second Reading. Perhaps I may draw your attention to a few of the clauses in it. In paragraph 263 of the impact assessment you say that you allow 30 seconds for each response to be dealt with within the union. This is on the basis of the written application coming in, being opened, being tracked and the computer being dealt with. Where did you get that assessment from?

Nick Boles MP: Obviously you have to make reasonable common-sense assessments. Yes, it seems reasonable to me because it is not a complicated matter as to whether someone has declared that they do or do not want to tick a box. If you look at how long it takes someone reviewing a ballot paper in an election, which is a similar exercise where there is a box in which someone has put a tick, I would have thought that 30 seconds was a lot longer than for most people who count elections every single year in this country.

Baroness Dean of Thornton-le-Fylde: Yes, but there is a fundamental difference. A union ballot paper goes in its separate envelope, it is opened and then it is counted, usually automatically. This would be different in the sense that the form is coming in and has to be related to the individual member's record on the union computers. That has to be done individually. It cannot be done in 30 seconds.

Nick Boles MP: Baroness Dean, first, all I would say is that I was not referring to union ballots but to all other ballots, ones in which people receive a ballot paper and they have to work out what it says and what the indication means. Secondly, and perhaps more importantly, I have already said that we are open to discussing the precise method of communicating the desire to opt in, as Baroness Neville-Rolfe made clear in Committee yesterday. So while we can certainly have a discussion about the ins and outs of the current system, we are open to replacements for it if they can be suggested in a way that is secure and stable. Secondly, the impact assessment has been reviewed by the real experts who—I hope you will not take this amiss—are not me and nor, I suspect, any other member of this Committee but are on the Regulatory Policy Committee, which looks at impact assessments the whole time. Its job is to single out, without fear or favour, when it thinks we have made unreasonable projections. No doubt you will be on the point of reminding me that in our impact assessments on the consultation, which we published long before the Bill reached the Lords, we did not secure the glowing reports from the Regulatory Policy Committee that we might have wanted. But it has been satisfied that this projection is reasonable and I defer to its judgment on that point.

Baroness Dean of Thornton-le-Fylde: Thank you very much for that sophisticated put-down but it has not worked. I do not accept the point that you are making as regards 30 seconds being sufficient. I am from a trade union myself. Let me take you to the second point, on page 66, paragraph 251, which is the nub of my question to you. You say—or the assessment says—that you have concluded overall, “We do not think that the net behavioural responses are more likely to lead to an assumption of a decrease rather than an increase in contribution levels”. I presume by that you mean individual members, not actual contribution levels: not the level they pay but the individuals.

Nick Boles MP: The level of the percentage of members who will be contributing.

Baroness Dean of Thornton-le-Fylde: The number of members. Thank you. We have taken evidence from the Behavioural Insight Team that worked in No. 10 and it pointed out to us on Tuesday that it felt there would be a fall in membership paying on an opt-in basis but that if you link that with past history—if you like, what has happened in the past—when there have been moves from opt-out to opt-in and back again, in each instance there has been a substantial drop in people opting in. If you look at Northern Ireland, which is often quoted,

of course, what you do not have there are unions affiliated to the Labour Party. However, even there, on the trade union figures which have been given, you are talking about 25% to 27% opting in. How do you reach that conclusion in paragraph 251? I have tried to find it in this report but I cannot.

Nick Boles MP: The truth is that we are explicitly acknowledging, which certainly no one has suggested is unreasonable, that a number of different eventualities could arise and it is quite hard to say with any confidence what those will be. You are right that some unions in Northern Ireland which have political funds do not secure the same rates of contribution and percentage of members contributing as unions in the mainland UK which do not offer an opt-in. However, equally, the Prison Officers Association and the RMT secure opt-in rates of 85% and 82%, which compare favourably with unions which are not offering opt-in at all but relying on opt-out. It is of course true to say that there have been historical moves, but they were made in the first half of the 20th century—an age ago in which communication with individual members was much more difficult. Sophisticated marketing techniques, not least advised by people such as the Behavioural Insight Team, were simply not understood and were not available. I do not think there is any clear way of assuming that there will be either a drop-off, an increase or anything in the middle. Ultimately we are motivated by the principle that if you are asking an individual to contribute money towards another organisation, they should make an active choice to do so. Ultimately, yes, it may have some short-term effects on contribution rates; or it may not. The RMT and the Prison Officers Association seem to suggest that you can get back to a substantial level of support and we are willing to talk about reasonable transition times. However, the fundamental principle that people should make that active choice is one we want to deliver, as we promised in our manifesto.

Q83 Earl of Kinnoull: I want to come on to another aspect of the impact assessment. In particular, I have been concerned about IT systems for the trade unions. It seemed to me that there would be an IT system for the membership-related matters and an IT system for counting-related matters. The effect of Clauses 10 and 11 would require adjustments to be made to those IT systems, for obvious reasons. You have to have an audit trail to see which members are contracting in and another for the various different types of costs that will now have to be reported on as well. The first thing is that that sounds expensive to me—I have

some experience—and there is nothing in the transition costs of the impact assessment for that. The second thing is that making adjustments to IT systems is not an instantaneous thing, and according to the Explanatory Notes there is an aggregate amount of time from Royal Assent to the Bill becoming effective of five months, which I felt was frankly impossible. Could you comment in general about that?

Nick Boles MP: I should first say that I am absolutely no expert on the implementation of IT systems and I will not claim to be. I point out that most—I am not suggesting all—of the unions which operate in Great Britain in the area that is covered by the measures in the Bill also operate in Northern Ireland, where they have to operate an opt-in approach, so it is not an unreasonable presumption that they have already worked out what the system is to handle that, because they have to do it for a substantial group of members in Northern Ireland, where opt-in has been in place for a very long time, as you will know. So that is not an unreasonable assumption. However, as I say, and as Baroness Neville-Rolfe said yesterday, this is not designed to trip people up, so if people have very substantive concerns about transition times, we will be very happy to look at them. On the matter of costs, if that was going to be an issue, I would have expected us to have got some push-back from the Regulatory Policy Committee or others on this, but I am not saying that you are wrong, because you sound like you are an expert, unlike me.

Earl of Kinnoull: In the summary of costs, you go down to £3,000 as being material—enough to appear—but I am saying that I estimate that you will have to change 50 IT systems, which, even if your Northern Ireland point is a lucky win, is still more than 25. It sounds to me like it should have appeared in here in the impact assessment. The RPC is not perfect.

Nick Boles MP: I have not yet heard that either from any individual union leader or from the General Secretary of the TUC and I promise you that they have communicated with me regularly on almost every matter in the Bill. However, you may well have come across something and I will be very happy to look at further evidence of that.

Q84 Lord Wrigglesworth: This morning before the Committee we had USDAW, the Fire Brigades Union and the teachers' union, the last of which is not affiliated with the Labour Party. They are very different unions. One of the problems in assessing the cost and the administration is that unions, such as the Fire Brigades Union, with 35,000 members and

virtually no full-time staff, which operates largely on a voluntary basis, with volunteers doing a lot of the work, as against USDAW, which told us that it costs £200,000 to mailshot their 400,000 members, and then on to Unison and others—are not a group of organisations that are all the same. They are very different. In the whole of this I am slightly puzzled why there has not been more consultation between the Government and the unions, as there was between Lord King and Len Murray on the occasion that was drawn to our attention in the Chamber last night. Will you have consultations with them about how this will operate? We have raised only the tip of the iceberg as regards how this will operate. If you are going to proceed down the course you are, would it not be sensible, from everyone's point of view, for you to have discussions with the trade union movement about the impact that this will have?

Nick Boles MP: I am a great believer in trying to anticipate problems and in helping people work out how to avoid them. I simply point out that we made this commitment in black and white in our manifesto, which was much discussed. We then spent quite a lot of time last year undertaking very detailed consultations on other measures in the Bill—I think there were three or four public consultations. I have had meetings with Frances O'Grady from the TUC and with the leaders of the Scottish TUC. We took evidence in the House of Commons Committee from leaders of a great many of the most significant and important trade unions in the country. To my best knowledge, while their many concerns have been raised, the specific question of the precise cost of implementing opt-in was not raised. While it is absolutely right to say that we must make sure, as I said, that this is not designed to trip people up, if we are introducing similar expectations for all people who sell goods and services, many of whom will be very small—quite possibly sole traders—or for all charities, many of whom again will be very small and will not have huge revenues, first, it is not unreasonable to apply the same to all trade unions, but also it is not impossible to do it in a way that is not egregiously expensive.

Q85 Baroness Drake: Coming back to the main estimate that there will be no change in the number of members contributing to the political fund, we took evidence from the Behavioural Insights Team. It is a matter of public record but, if you read its evidence, it quite clearly contradicts your main evidence, because its clear view was that, in the absence of other push forces, opting in produces lower participation rates for all sorts of behavioural

reasons and, secondly, opting in in written form produces lower participation rates than doing so by electronic form—the evidence elucidated lots of examples where financial services and other traders were quite aware of this. Therefore its evidence contradicts you on that point.

Coming back to your enunciation of your two motivators and keeping up with modern times, you said that the principle is the knowledge that someone has a choice and can exercise it, then immediately conflated that with opting in—but they are not the same issue, because opting in is a mechanism for knowing that you have the knowledge and can exercise that choice. Running through financial products and insurance products in particular, you may opt in at the point of sale, but thereafter it is an opt-out or default arrangement endlessly onwards—certainly my insurance products work on that base—and employers frequently use opt-out to secure contract changes. As we know from what the Behavioural Insights Team said, increasingly commerce uses electronic means to fast-track opt-in decisions. Even on pensions you can opt out someone into a contract-based insurance product, which is a pension product, albeit that there has been a public policy decision to allow that to happen. Therefore the issue of knowledge of choice and exercising it does not line up automatically with opting in, and in fact your analysis of what is happening in modern times is not quite as black and white as you have enunciated it. However, you seem very clear here that there is only one way of having knowledge and exercising choice, which is, first, that you have to opt in, secondly, that it has to be in writing and, thirdly, that it has to be renewed every five years. Do you really think the evidence supports your opening assertions?

Nick Boles MP: Yes, absolutely. I have to say that I entirely disagree with your characterisation of what I said. I made very clear that we were open to discussion about the method of communication of that active choice, and Baroness Neville-Rolfe made that very clear in the Chamber yesterday. I am not wedded to the idea that you have to get a quill pen and write on parchment to opt in. We will be open to any reasonable suggestions about how somebody can express their desire to opt in. However, it is also very clear, as I say, from the consumer rights directive, which I have no doubt opposition parties would generally support, and from Sir Stuart Etherington's review of charitable fundraising, that they say that consent should be expressed through an active ticking of a box, not through the failure to untick the other box. That is very clear.

I am grateful to you for raising the matter of pensions and enrolment, because it is important to understand why that is justified when in all these other areas—consumer trading, charitable donations and the like and, in our contention, trade union levies—it is not appropriate. Fundamentally, the difference is this. A pension is an asset of the person who contributes to it. You are not requiring somebody to make a contribution to another organisation that will do whatever it wants to do—maybe it has told you what it wants to do, but nevertheless—with your money. You are asking people to make a contribution to themselves in the future. Even though that is the case, it was nevertheless very controversial. I remember in Parliament long debates about whether it was an inappropriate infringement of people’s liberty to require them to make that contribution to their own pension. However, it was justifiable because it is a contribution to themselves in 40 years’ time. That is not true of a trade union levy, a purchase online or a charitable donation and that is why we should set a higher bar for consent, in my view through an active opt-in.

Baroness Drake: You put your money into a political fund, but that is a regulated activity and the definition of “political objects”—what you have to do to achieve a political fund and how you will have to account for that in terms of both internal democracy and external regulation, and there is plenty of scope for strengthening the regulation if you do not like what the certification officer does. It is not true to say that it is somehow a vacuum; you hand your money over and there is no control.

Nick Boles MP: Nor did I suggest that it is a vacuum, but I do not think it is in any different status than a contribution to a charity, and we have heard that charities in future are going to be required to secure an active consent for a donation to a charity. Charities are equally regulated; in fact, probably rather more so.

Q86 Lord Callanan: Good afternoon, Minister. Thank you for joining us today. I am an avid reader of the *Socialist Worker*. Browsing through my copy earlier in the week, I was surprised to see an item of correspondence from you appearing in it.

Nick Boles MP: So was I.

Lord Callanan: In that document, you hold out the possibility of the Government making concessions on the method of opting in to political funds, as you said earlier. Would you like to give us a bit more detail on that? Are the Government prepared to allow it to be done electronically, by email et cetera? Also, you referred to Northern Ireland, where some

unions achieve quite high levels of active opt-in; we heard figures this morning that show it was up to 43% in the case of the firemen, but they do not have a five-year renewal process. Are the Government prepared to look at that process, alongside electronic methods and possibly a longer transitional time?

Nick Boles MP: Thank you, Lord Callanan. I promise you that it was certainly not welcome to find that leaked document published in full in that magazine. It is, I think, the first time I have ever had the honour of appearing in that magazine, and perhaps the last.

Lord Callanan: You are being quite rude about it.

Nick Boles MP: I hope the Committee will understand that there is a pretty firm principle that we do not comment on leaked documents, especially not leaked documents that were meant to go only between Ministers.

I could perhaps underline two things. The first is what Baroness Neville-Rolfe said yesterday in response to both subjects that you raise: transition and methods. She indicated that she is listening very carefully to the arguments and will reflect on them before Report. In general, and I hope as a further reassurance, we really are not trying to set up people to fail. We would be delighted if every union were able to secure the same level of commitment as the RMT and the Prison Officers Association are able to do in Northern Ireland. We just feel that the relationship between an individual member of a trade union and a trade union—and this, in a sense, is the characterisation of the whole Bill—needs to take advantage of a modern understanding of proper relationships, and modernised in terms of reporting and what is done with their money, which one of these clauses obviously does. That is what this Bill seeks to do. Anything that makes that modernisation more digestible for trade unions we are very happy to discuss.

The Chairman: Just a follow-up question on this. Obviously, we have to deal with whether the amount of funds in a political fund would be likely to be lower as a result of these measures. That is one of the questions that we are looking at.

Lord Callanan: Not that the level of the political fund would be lower, but that the level of contributions to the Labour Party would be lower. It is not the same thing.

The Chairman: I was taking the first step, which is contributions to the political fund. It seems to me that, in the context of your own arguments, the problem that we are looking for a solution for is almost inevitable. All the arguments about why one wants active

consent, and your earlier arguments about why there may not have been full compliance with that agreement, combined with the well-known behaviour of inertia, surely imply that the central case must be that the number of people opting in would be lower than the current level.

Nick Boles MP: I do not accept that it is the central case, but I certainly accept that it is a case: it could easily happen. Some unions that are not good at communicating and perhaps not very good at winning the support of members for their campaigns may see a drop, but I do not believe that it is inevitable.

The Chairman: I am not saying that it is inevitable, but I find it very difficult to imagine that it is the central case, as stated in the impact assessment.

Nick Boles MP: Perhaps I can frame it in this way: we are doing this as a matter of principle. In truth, even if you could prove to me that there was going to be a drop, I would still suggest that this is the right thing to do, as it is the right thing to do for the consumer rights directive, for charitable donations and in every other walk of life.

The Chairman: That is not what I am challenging. I am challenging—

Nick Boles MP: The impact assessment range.

The Chairman: Yes.

Nick Boles MP: I think we acknowledge that it could lead to drops or to a steady state. We have examples of when unions have been operating and doing well. Many of the political funds support fantastic campaigns; HOPE Not Hate is a significant one. As many charities will find, charitable donations have not plunged. Of course they have had to re-engineer the way they communicate with potential donors; you now see incredibly sophisticated marketing and communications by charities, and charitable donations have held up very well. So while I accept that it might happen, I do not accept that it is inevitable.

Q87 Lord Richard: I do not think that anyone is suggesting that it is inevitable, but I note that the wording on page 74 of the impact assessment is: “Our main estimate is that there will be no change”—not that there might be some change but that there will be no change—“in the number of members contributing to the political fund”. Where on earth did you get that from? All the evidence that we have heard, from all sorts of sources, contradicts that statement. What is your evidence for that?

Nick Boles MP: As I have tried to explain, there are examples where levels of contribution have remained very high.

Lord Richard: There are examples, but that is not the same.

Nick Boles MP: But I do not think—

Lord Richard: You are not saying “there may be circumstances in which”, you are saying that there will be “no change”. Is that your position?

Nick Boles MP: When you put forward alternative scenarios, you have to decide which one is in the middle of the probability distribution.

Lord Richard: You have not said anything about the middle figure. You have said: “Our main estimate is that there will be no change in the number of members contributing to the political fund”. Where does that come from?

Nick Boles MP: You are very much at liberty to disagree with that estimate. That is the Government’s estimate—

Lord Richard: What is it based on?

Nick Boles MP: It is based on a lot of the evidence I have given you that many unions are able to do it, and that in other walks of life—

Lord Richard: Some unions are.

Nick Boles MP: Can I please answer your question?

Lord Richard: Your answer is to ask another question.

Nick Boles MP: In many walks of life, people could cope with a similar change and managed to sustain levels of commitment to their organisation. It is not my job to assume that unions are going to fail to persuade their members to make very small financial commitments to very worthwhile causes. I do not believe that that is likely and I certainly do not believe that it is inevitable, but ultimately it will be for them to pull that off. We will try, through listening to their arguments about transition and implementation, to make it as easy as possible for them to succeed.

Lord Richard: It is not your business to assume that unions will fail to do it, but it is your business to assume that unions will succeed in doing it because there will be no change.

Nick Boles MP: I will do everything in my power to help them succeed.

Lord Richard: It also says in the impact assessment, two sentences down: “However, we have conducted some sensitivity testing”. What is that?

Nick Boles MP: That is what I meant by scenarios.

Lord Richard: But where is the evidence?

Nick Boles MP: Lord Richard, when you make an estimate in any walk of life, that does not mean that there is only one possibility that you consider; you consider the full range of possibilities. We considered the full range of possibilities and decided that there was no evidence to assume that donations to the political fund would go either up or down. It could be either, and it will all depend on how trade unions go about communicating with their members the advantages of these contributions.

Lord Richard: The impact assessment says, “we have conducted some sensitivity testing.” What sensitivity testing? Whose sensitivity have you tested? What were the results of testing people’s sensitivity, and please can we have a look at them?

Nick Boles MP: I am sure that you are pretending not to understand what sensitivity testing means. It means considering alternative scenarios. We have considered alternative scenarios. We have looked at the full range of trade unions in Northern Ireland, some of which have very high levels of commitment through the opt-in, and some with very low levels of commitment. We considered all of those and we concluded that the best estimate we can make is that there will be no change because it might go up and it might go down.

Lord Richard: So, “some sensitivity testing” means that the Government have considered some scenarios.

Nick Boles MP: Yes.

Lord Richard: That is all it means.

Nick Boles MP: That is what sensitivity testing means. I am sorry, it is a matter of English language.

Q88 Lord Robathan: This question may give Nick a break, because it is more for the Cabinet Office. I am a great believer that political parties should always stick by their manifestos. Indeed I put that to Nick Clegg this morning and he sort of agreed as well. The Conservatives said in their manifesto that, “We will legislate to ensure trade unions use a transparent opt-in process for subscriptions,” to political parties. That is a given. However, juxtaposed with that the manifesto states, “We will continue to seek agreement on a comprehensive package of party funding reform.” The juxtaposition cannot be a pure

coincidence, so what we would like to know is what progress has been made towards seeking agreement on a comprehensive package of party funding reform.

John Penrose: Before I start, I should say that I am in awe of Nick Boles' ability to get himself quoted in the *Socialist Worker*. Apparently the Speaker has owned up that he had read the *Socialist Worker* in his youth because he originally thought it would turn him into a Tory. To answer your question, Lord Robathan, since the general election, not a great deal. Members of the Committee will be aware of periodic attempts over many years to create a cross-party consensus on the knotty and difficult question of party funding. Ultimately, creating that consensus is not strictly speaking something for Her Majesty's Government; it is for the political parties to achieve. When they do, and I hope they will but it has been hard yards up until now, it will then fall to me or my successor to introduce legislation which will change whatever it might be in order to give effect to that cross-party approach. There was quite a determined effort under the last Government to achieve it, but the talks broke down, and there were periodic attempts before then which also foundered on one issue or another. As you will appreciate, it has been a little bit difficult to get things moving since the general election because there have been a couple of party leadership changes that had to go through, and then we have had the Trade Union Bill knocking around which is creating an environment where such things might be easy to start in a constructive fashion difficult to achieve. I hope that it will come back and that we will have further opportunities because clearly there are issues which remain to be addressed. It therefore will come up and it needs to do so.

Lord Robathan: I think that that is a fair comment. You are a Conservative Minister in Her Majesty's Government rather than just a Minister in Her Majesty's Government, so presumably it might come to you to take some action on this. Has any action been taken or are you planning on any?

John Penrose: It has not come to me. If you look at the people who were involved in the negotiations under the coalition Government, it was typically the chairman, chief executive or whatever the arrangement was for the major political parties. They were the sort of political party representatives in the room, with sometimes an MP along with them and sometimes not. In the end it will have to be for senior members of each political party, who after all tend to be the people in charge of the treasury and the funding streams for

whatever it might be, who would have to be in the room first. They need to be willing to work out what they think they might be able to live with and what they might be able to talk about in any discussions. It might very well be that at that point there will be some assistance from elected Members of Parliament, or indeed from Ministers. But if you look at what happened last time, the Whitehall machine provided a very limited secretariat function in order to facilitate the discussions, but that was all, and I think quite appropriately so because ultimately it is inherently a discussion between political parties rather than something which is inherently either parliamentary or governmental.

Q89 The Chairman: You will be familiar with this by now, but what has been put to us is that the juxtaposition of these two sentences is not an accident because of course the Kelly report relates to them both. Where there has been what one can almost call outrage in some quarters stems from the fact that one seems to be dealing with the first sentence here while patently ignoring the second sentence. The argument is that these two things should be taken together. The implication in the manifesto is that they are issues that would be taken together, and that then introduces all the arguments about the long tradition of a Government not taking action which is going to affect the funding of the opposition party, particularly as the Kelly report suggested that that would be the consequence of this action.

John Penrose: I shall make a couple of points in response. First, we thought that the idea of opt-in was so good that we mentioned it twice in our manifesto.

The Chairman: Yes, but in different contexts. I have to say that I have struggled to understand what the first mention of it means.

John Penrose: There is one occasion when it is juxtaposed and another where it is less so. The point is that they may be mentioned in one case adjacent to each other and in another case separately within the manifesto, but they are none the less manifesto commitments. It does not mean to say that you can do both at the same time, particularly because, in the case of cross-party talks on the governance of funding, it requires cross-party agreement for them even to be held, let alone concluded. I do not think that we should let one be the hostage to the other, if I can put it that way. I would love us to be able to get under way with more cross-party talks, but the conditions have not yet been right for a constructive dialogue. I hope that those conditions will materialise and be feasible in the future. I would also just say that regardless of the wording, detailed or not, of any political party's

manifesto, there is a fundamental conceptual difference between the way that members agree to fund a trade union and the way that a trade union subsequently decides whether or not it is going to fund a particular political party. It so happens that there is a strong party-political interest in one particular quarter, I agree, but there is an important conceptual distinction between those two things, and we therefore believe that they should be viewed very distinctly indeed.

Q90 Lord Sherbourne of Didsbury: Can I read out to you two statements? The first is from the Conservative Party manifesto which states, “We will continue to seek agreement”—that sounds like momentum to me—“on a comprehensive package of party funding reform.” But in the paper we have received from BIS, the Government say this: “We remain open to action should a cross-party consensus on the broader questions of party funding emerge.” It sounds as though we were proposing action in the manifesto, but now the Government are waiting for something to happen before they act.

John Penrose: As I think I mentioned just now, the conditions are more difficult, I would argue, than they were in the last Parliament. We have had two new leaders—

Lord Sherbourne of Didsbury: We have a Labour Party leader who is in position. This came to us this morning.

John Penrose: Yes, but what I am trying to say is that the circumstances in which you might be able to get cross-party talks under way have got more difficult. It does not mean that they are impossible, but they have got more difficult since the last general election. That is because, first, we had a period of interregnum while new leaders were chosen, and since then we have had this issue with the Trade Union Bill which makes it frankly difficult to establish such things. That does not mean that were conditions to improve we would not be delighted, but it is rather difficult to start leading horses to water if they are not drinking.

Lord Sherbourne of Didsbury: The juxtaposition which the Chairman has referred to of the proposal on opting in has created a difficulty for fulfilling the second sentence.

John Penrose: I do not think that the juxtaposition has anything to do with it at all.

Lord Sherbourne of Didsbury: You seem to be saying that the fact that the Government are legislating for opting in has created a difficulty for fulfilling the second commitment to seek consensus.

John Penrose: No, that is not entirely what I am saying. It has been a factor, but I do not think that it should be. I do not think that we would agree or accept for a moment, as I said before, the notion that how members of trade unions choose to fund their trade unions should necessarily have a connection with how trade unions then decide to fund political parties of any type or stripe. But some people view it that way, and you will have taken evidence from those who feel very strongly about it. Therefore, even though we would disagree with the central principle behind their argument, it is going to be difficult to create those conditions. However, were the conditions to improve and we were able to convene, of course we would be delighted to come to the table. But it is not just up to one party or another to say, “We are going to hold these talks. We are going to occupy a room and wait for other people to turn up”. You actually have to have other people who are willing to walk in the door and join in the process.

Lord Callanan: I do not see what is so difficult about taking forward the commitment to invite the other parties. You could fulfil the commitment by inviting them to come to a meeting to discuss it. What you are saying is that you are sort of waiting for something to spontaneously emerge—albeit not in the pages of the *Socialist Worker*—to find out whether there is in fact a consensus to be arrived at. It seems to me that you could take forward the commitment fairly easily by inviting the chief executives of the three parties to come together to explore each other’s positions to see if there is a possibility that they could reach agreement.

John Penrose: As I said, I think that that would be something which the chief executives or leadership, particularly the organisational leadership of the major parties, would probably need to take a lead on. I do not think it is necessarily a programme for a Government to do.

Lord Callanan: How can three people take a lead to meet spontaneously unless somebody invites them to do so?

Q91 Lord Wrigglesworth: The question is on this point. Is not the truth of the matter that the Conservative Party has consistently been reluctant to see any fundamental change in the funding of its own activities? When the Deputy Prime Minister in the coalition Government called for joint party talks, the Labour Party and the Liberal Democrats put forward spokesmen, but no spokesman was nominated by the Conservative Party until the Cruddas affair broke in the *Sunday Times* and the treasurer of the Conservative Party had to resign.

That was the stimulus for the Conservative Party participating in the joint talks that the Deputy Prime Minister had called for. There is a reluctance, I think, that one can see from many bits of evidence, which shows that the Conservative Party is unwilling to give up its position of advantage in party funding. That is why, despite this commitment in the manifesto which one assumes the Government are going to take a lead on, no all-party talks are taking place. All there is is what most people think is going to be an attack on the major opposition party's funds.

John Penrose: Lord Wigglesworth, I will not seek to countermand your view of history because I was not involved in the earlier rounds of the process at all. But I would just say that it would be entirely open to any of the major parties' leaders to say, "We are going to start convening on this". It would not have to come just from the Government, as you assert. In fact, you have given an example where, because in your view everyone was not involved to begin with, others convened and it was difficult for the missing pieces to stay out of the room. It is entirely possible for initiatives to be taken by party leaderships right the way across the political spectrum. We have a slightly more complicated party geometry nowadays than perhaps we had five years ago, but none the less it would be entirely possible to do that. I think it is wrong to say that it has to come from the Government. This is something which, by definition, if you are going to get cross-party consensus, you have to have cross-party agreement to start, continue and complete the talks.

Baroness Drake: I come back to the point you made about the conceptual distinction between paying moneys into a political fund and paying moneys into the Labour Party. I remember Baroness Neville-Rolfe labouring this point—that is not a pejorative phrase, it just reflects the effort she made—at Second Reading. But of course it is the case that the only moneys that can be paid into the Labour Party by the trade unions has to come through the political fund because you cannot pay moneys into the Labour Party other than through that fund. So if an action or a policy is taken that could impact quite sizeably on the level of moneys going into the political fund, there has to be, either directly or indirectly, an impact on the funds available for trade unions to put into the Labour Party. If I can use an analogy, it is like looking at sex or race discrimination. You do not look only at the direct instance of discrimination, you look at indirect instances as well. I struggled at the time and I struggle now at the ability to say that it is possible to look at and have a policy on the impact on

political funds but somehow say that that has no flow-through into funding of the Labour Party.

John Penrose: I do not want to stray into Nick's territory but he made the point, and I think he was right to do so, that you can have plenty of people who, let us assume for the sake of this example, opt in to pay money into a political fund. That union may then decide that it wants to use that money to fund the Labour Party—or not. There are examples of both of those two things. So there is not necessarily a connection at all. That therefore rather bolsters Baroness Neville-Rolfe's point quite strongly.

Baroness Drake: But the proposition that one does not have an impact on the other is not correct. One can argue about the extent of the impact but, as a proposition, to alter the rules for the political fund and make a clean assumption that it will not have an impact on Labour Party funding is not a sustainable intellectual position, is it?

John Penrose: My point is not that. My point is that the two are conceptually different. There may be indirect impacts, and Nick has already talked about whether or not the impact in some cases may be up or may be down, and there are plenty of debates to be had about that. But there is and there should be, in principle, a distinction between money paid into trade unions and the separate decision as to whether or not any of that money is then used to fund one political party or another political party or no political party at all. At the end of the day, those have to be voluntary individual decisions that are taken without fear or favour and without being pushed one way or another. If the result of that is that funding to one political party or another goes up or goes down, so be it. But they are distinct decisions and the principle behind them, free will, has to be central and more important than anything else, I would argue.

Baroness Drake: But in terms of impact, even if they are separate decisions, it is only one source of funding.

John Penrose: I am sorry, what is your point?

Baroness Drake: If you are going to take a policy action that could affect the flow of funding into a political fund, you have to stand back and look at the impact of that on the subsequent funding to the political party.

John Penrose: You first have to start with the point of principle and say, "Is this right?".

Baroness Drake: The point of principle is whether people should have a choice and whether they should have knowledge on how they should exercise that choice.

John Penrose: That is—

Baroness Drake: But what about judging the impact? It will still impact on Labour Party funding.

John Penrose: I come back to Nick's earlier comments about—

Baroness Drake: We have already rehearsed it. I am just disagreeing with your point that they are conceptually distinct.

Q92 Baroness Dean of Thornton-le-Fylde: I am not sure to whom I am addressing this point, so you can please yourselves as to who answers it. All the evidence we have had in the short time we have been sitting has given us the view that, if the current proposals were introduced, it would mean a diminution of funding for Her Majesty's Opposition. If you look at that against the background of all the reports, including, with respect, the ones that the Ministers have quoted, they have all said you cannot make a major change in our political balance without it being by consensus of all the parties. I believe that that is why the second sentence, about trying to get agreement, was in the Tory party manifesto. If everyone else is right, and it just so happens that, in this one area, you are wrong when you said that it should not affect Her Majesty's Opposition's funding, what incentive will there be to get consensus in the future? And how would you answer the point that there would be absolutely no incentive at all for the Conservative Party to agree to any change from its current big-donor basis of funding?

John Penrose: You are absolutely right that other issues remain to be decided, and there are a number of things, including whether there should be greater taxpayer funding—public funding—of political parties. My party disagrees with that as we think it should be done by individual decisions rather—

Baroness Dean of Thornton-le-Fylde: There is not political consensus on that anyway.

John Penrose: There is not but I am trying to give examples of other issues which still remain unresolved, which therefore would make holding political cross-party discussions worthwhile to try to reach consensus. I started off with that one but there are other ones to do with donor caps and various other bits and pieces. So there are many other topics which people would want to be discussed and to think about and inevitably, if there were to be a

cross-party conclusion and consensus, there would have to be some compromise and people would give way on one thing to achieve something they dearly wanted somewhere else. That is in the nature of negotiations. I am sure that you will be far more experienced than I am in that sort of thing. Therefore yes, there are plenty of reasons why it would be advantageous for all parties in due course to come back to the table. All of us have things we would like to achieve; at the moment they have not been the same things and there have been very hard yards achieving it. However, that does not mean that it is not worth even starting for anybody.

Baroness Dean of Thornton-le-Fylde: Can I just press that point? Having potentially completely neutered Her Majesty's Opposition, what incentive would there be for you to change from your big-donor party?

John Penrose: I am sorry—I start off by not accepting the premise—

Baroness Dean of Thornton-le-Fylde: Although other people do.

John Penrose: Respectfully, I would disagree with them, too. The Opposition is not neutered at all. Interestingly, if you take an entirely different example, the SNP, it is very noticeable that it does not depend on union funding and has been incredibly effective in the first nine months of this Parliament—it has been an extremely effective voting and political operating block within Parliament since it arrived. So there are many different ways of being an effective opposition—either Official Opposition or minority opposition—party. The central principle is that this has no reason at all to neuter anybody as a result of it—there are many different ways of skinning that cat.

Baroness Dean of Thornton-le-Fylde: Which cat do you want to skin?

John Penrose: To achieve being an effective opposition.

Baroness Dean of Thornton-le-Fylde: We will leave that there.

The Chairman: I think we have probably covered all the ground we were hoping to cover, unless there are any other final questions or remarks either of you want to make.

Lord Wrigglesworth: There has been a helpful comment from the Minister about the speech made in the Chamber last night. Is the meaning of that that the Government are prepared to change the Bill to allow the political opting in and opting out to be online or via email?

Nick Boles MP: I am sure that you will agree that it would be grossly disrespectful of me to interpret Baroness Neville-Rolfe's words or anticipate any future words she might want to have to share with you.

The Chairman: We will have to make our own recommendations in the light of this. Thank you both very much, Ministers. It was kind of you to come.