

Procedure Committee

Oral evidence: [English Votes for English Laws](#)
[Standing Orders: Technical Review and Scrutiny of](#)
[the Government's Supply Estimates](#), HC 189

Wednesday 26 October 2016

Ordered by the House of Commons to be published on 26 October 2016.

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Members present: Mr Charles Walker (Chair); Jenny Chapman; Patricia Gibson; Helen Goodman; Patrick Grady; Sir Edward Leigh; Mr David Nuttall.

Questions 25 - 51

Witness

Pete Wishart MP.

Written evidence from witness:

- [Pete Wishart MP, Shadow Leader of the House for the SNP \(EVL 12\)](#)
- [Pete Wishart MP, Shadow Leader of the House for the SNP \(EST 05\)](#)



Examination of witness

Witness: Pete Wishart MP.

Q25 **Chair:** Thank you, Mr Wishart, for coming to see us in your capacity as Chairman of the august Scottish Affairs Select Committee.

Pete Wishart: My pleasure.

Q26 **Chair:** We are here to discuss EVEL. I think EVEL is fiendishly complicated. If you understand it, you are probably the only person within Parliament who does.

Pete Wishart: I thought you were the only one who understood it.

Chair: No, I do not understand it. The Clerks do not really understand it. In fact, nobody really understands it. We have some numbers here, just to set the scene. The new Standing Orders take up 28 pages of the 226 pages of Standing Orders, and there are actually another two pages because we had to change other Standing Orders, so they come to 30 pages of 226 pages. That is a lot of new pages to introduce in the space of a year. Just give us your thoughts.

Pete Wishart: You are absolutely right. I do not think there is anybody who does properly and sufficiently understand what is going on with English votes for English laws. It is immensely complicated and it is also, it has to be said, totally and utterly useless and redundant anyway. The Government has a majority both within the United Kingdom and within the number of English Members, so it will always get its way when it comes to these things anyway.

I believe that, under its current procedures, English votes for English laws is more symbolic than anything else. It is complex and difficult to understand. It is symbolic, but it achieves one very profound thing: it divides Members of this House into geography and nationality. There are some Members of this House who have full privileges and entitlement when it comes to legislation. Then there are other Members of the House, like myself—and I am looking at my other Scottish colleagues here; I do not recognise any Welsh or Northern Irish members of this Committee—who have certain entitlements and privileges in this House regarding how they can vote on legislation. What EVEL has done, where it is totally unnecessary, where it is totally complex, and where it has made a total and utter mess when trying to understand what it does, is it does not achieve or secure what it set out to do but, in the meantime, it has had this impact on the culture of this House about how Members are divided.

Q27 **Chair:** Can I ask you a question? I think the Government will want to retain English votes for English laws, or son of EVEL. What do you think needs to be done to make the process more accessible, understandable and intelligible for Members of Parliament and, of course, Clerks of this House? How would you change it?



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Pete Wishart: What I would do is get rid of this current process. It is unnecessary, unworkable, complex and burdensome to the House. It creates two distinct classes of Member of Parliament, which has had a dreadful impact on the culture and the way that we work. We need to get back to a solution that is based on agreement and consensus. When you have such huge constitutional reform, there is no worse way to progress and proceed than based on imposition by one party of this House. It has exclusively concerned one party. There is no agreement from any other party of this House.

We have to get around the table and discuss, negotiate and see what we could do, probably through a process involving the use of the usual channels, maybe some sort of convention of Members of Parliament. I accept that there are issues and concerns that English Members have about Scottish Members voting on what they perceive as English-only legislation. We have to start again and base it on agreement and consensus, because what we have now is a system that is not working, is cumbersome, and is being imposed. It is being opposed I think by practically everybody—every party in this House other than the governing party.

Q28 **Chair:** Can I ask you something? I mean this as a direct question. We have seen the theatrics of the Chamber. You are a very good orator.

Pete Wishart: Thank you for that.

Chair: You have a certain style. Do you really think it is possible for the Scottish National party, given its domestic audience north of the border, to sit down with a Conservative Leader of the House, and other interested parties from the Labour party, and thrash something out that gives England and Wales a voice?

Pete Wishart: I think there is. We can do it through agreement and consensus. I was a Chief Whip for about 10 years and we took the view before EVEL was in place that we would not participate, vote and have anything to do with legislation that we identified as English only. I don't know if any of your Clerks have had the opportunity to do this as an exercise, but you can see, historically, since the advent of the Scottish Parliament, the types of issues that we become involved in, the debates and the votes that we participate in. There are a whole load of them that we did not participate in because they were exclusively English.

It is a supreme waste of my time as the Member for Perth, with a devolved Parliament, to vote on policing arrangements in Plymouth. I would not want to do that because it is not serving me or my constituents. We have an interest in this, too, because there is no way—and I am looking at my other Scottish colleagues here—that we would want to go into the Chamber and participate and vote on issues that are nothing to do with our constituents, and that are being looked after by Members of the Scottish Parliament. As Scottish Members of Parliament, it is also in our interest to seek a proper solution to this.



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Given that we are starting from that, and given that we all want to try to ensure that we are doing what is fair and what is best, I think agreement can be found. What does not work, and what we have seen in the course of the past year, is imposing it, as has been done, without agreement and consensus. What we have done is the worst of all worlds: create something that is useless, cumbersome and divides the House on nationality and geography.

- Q29 **Chair:** Can I ask one specific question relating to something I felt very strongly about? It is more technical than on the broad principle. In our October 2015 report, the Procedure Committee recommended that the consent of MPs from England, or England and Wales, be given at Report stage by double majority voting, rather than in the separate Legislative Grand Committee stage. That stage would be reserved for disagreements. What I am saying is that there are some easy fixes here, whether you agree with EVEL or not, to make it less complex, to save time and to streamline it. If the Government could not reach agreement with you on the principle, would you at least like to see the Government sit down and reduce the number of pages and the complexity of this whole process?

Pete Wishart: I did study your interim report very closely. There were a number of things where I thought your Committee was going in the right direction, trying to resolve some of the more technical and bureaucratic difficulties in the current procedures. That would be better, obviously, than what we have in its current condition with this Legislative Grand Committee, which I think has consumed almost one hour and 25 minutes. That was only because in the first debate we wanted to try to make a few points about it. Other than that, you see these boards going up telling the House it is in Legislative Grand Committee. Nothing is done, nothing is said, and it is just rubber-stamped as it goes through as an exercise.

So that was streamlined, but I could not concede the principle of this double majority—this idea that somehow the membership of this House in a unitary Parliament should be divided by geography and nationality. Unfortunately, I can see where you are heading with this, and you are trying to be helpful to the Government by helping to clarify some of these things, but I don't think you would find me in a position to concede that principle.

Chair: Yes, I know how strongly you feel about it.

- Q30 **Mr Nuttall:** Let's turn to the detail of the certification of amendments, which is made by the Speaker. Is it your view that this reduces the standing of the office of the Speaker?

Pete Wishart: We had massive fears—I think you will recall the debates, Mr Nuttall—where we expressed very clearly our concerns that the Speaker might be brought into a political process, where he was being made to face a political choice about certification of the parts that were



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going to be considered English-only. I am relieved to say that that has not happened, and I think it is because of the good offices of the Speaker and the advice that has been sought and taken.

Mr Nuttall: So it has not happened?

Pete Wishart: I do not believe thus far it has happened, but I think that there is still the possibility, potentially.

Q31 **Mr Nuttall:** Mr Wishart, you have suggested that the Speaker should give reasons. Do you believe that that is the case?

Pete Wishart: Yes, I think it would help clarify. I have seen the written evidence from Lady Hermon, who has raised a number of points of order in response to some of the certification. We want to get on. We want this mutual arbiter of the House, which the Speaker is, to ensure that happens.

Q32 **Mr Nuttall:** You have just accepted that at the moment, under the present system, the Speaker's Office has not been lowered in respect in any way, but you do think he should start giving reasons. Surely, if the Speaker was to give reasons why he had made a determination, that would make it much easier for you and your colleagues to challenge the Speaker and draw him into the political arena. Admit it. That is why you want the Speaker to give reasons—because it will make it easier for you to challenge him.

Pete Wishart: I think it is almost the opposite of that. We want to keep the Speaker out of a political decision and process. As I have said to you, thus far there has been no issue because I believe the Speaker has gone about this business diligently and responsibly. At some point, there will be a point we will come across where there will be a certification made that will be profoundly disagreed with by certain Members of this House. We will not have an opportunity to understand why, because the Speaker is bound by this process not to give any particular reasons. What I am suggesting is that if the reasons were given when we reached that point, it would help to clarify the Speaker's views on this and would hopefully depoliticise it, because we would get a better understanding of why he made those choices.

Q33 **Mr Nuttall:** Without wanting to rehearse the original arguments at great length, surely the implication behind any decision that the Speaker makes is that, in the decision of the Speaker—and, of course, Speaker's counsel, for it is not the Speaker entirely acting alone; he has advice from Speaker's counsel—these matters are England-only, or England and Wales-only, matters.

Pete Wishart: Was it not a recommendation in your interim report that obliged the Speaker to seek counsel from two members of the Speaker's Panel?

Chair: Yes, he can do that if he wishes.



Pete Wishart: If he wishes to, so there is not an obligation on the Speaker to seek advice from Speaker's counsel. Because of the work of this Committee, if required, the Speaker can now seek advice from two members of the Speaker's Panel to assist him in making these decisions about certification, which is better than just him taking the decision exclusively.

- Q34 **Mr Nuttall:** Let's be clear about this. When the Conservative party was pushing this agenda in the run-up to the election, the message was that we were going to have English votes for English laws—EVEL. What we have is an English veto on English laws. There is no question of a Member representing an English constituency bringing forward legislation and having it voted on and passed just by English Members of Parliament. We do not have EVEL as it was originally understood by my constituents, so consequently they are going to be saying, "We think it is all very well, all this, but we want to go much further. We want to see you guys passing laws that affect England, just like that nice Mr Wishart and that nice Mr Grady".

Pete Wishart: I think that is an accurate and fair characterisation, and there is a very elegant solution to the position that Mr Nuttall puts, which is that English people deserve and require an English Parliament to make these rules and to make their own legislation.

What I think is unacceptable—I do not know if it is unacceptable to Mr Nuttall, but it is certainly unacceptable to my party and our Members here—is that somehow this unitary UK Parliament could be used as a quasi-English Parliament to progress and promote English legislation. There is nothing wrong at all with English Members of Parliament seeking to design and fashion their own legislation. There is everything wrong with trying to use this, the unitary Parliament of the United Kingdom, for that to happen, as a host.

- Q35 **Patricia Gibson:** Mr Wishart has already said that Members whose constituencies in Scotland, Wales and Northern Ireland are not affected by legislation have no interest in voting or interfering with that, or attempting to veto it. Going back to the potential to put the Speaker in an invidious position, this Committee has already noted that the Speaker is not allowed to take into account any potential cross-border effects or other consequential effects when certifying legislation, and is not able to take into account any potential consequences for devolved funding under the Barnett formula. Do you consider that to be potentially a source of constitutional tension in the future?

Pete Wishart: It is an enormous concern and a potential conflict that we have in the post, down the line, because the Speaker is obliged to ignore consequential issues. It is specified explicitly that that involves financial issues, such as the Barnett formula and Barnett consequentials. We will see a situation where that will become apparent. This is why I made the suggestion that the Speaker should give reasons for any sort of certification when it comes to these things.



This was the major concern that we put forward at first. Barnett consequentials are incredibly important—as you know, Chair, from all the other things you are looking at to do with estimates—in helping support funding for our devolved services, and health and education. If decisions are made about reducing the amount of publicly available funds for health and education reforms, that will have an impact on the funding of our services. As a Member of Parliament, I am charged by my constituents to ensure that public services are properly funded, and if there is to be any change to that, we should have a say in this. That is one of the major concerns we have about the legislation as it goes forward.

Q36 **Patricia Gibson:** Just to be clear, Mr Wishart, you are absolutely confident that, although it has not happened up to this point, these proposals potentially put the Speaker in a very difficult position.

Pete Wishart: Absolutely. The Speaker will have to decide and set aside the consequential issues, which will be funding arrangements, and at some point that will definitely be challenged and tested.

Q37 **Chair:** Challenged and tested where?

Pete Wishart: On the Floor of the House. I think it would be very hard for Scottish Members of Parliament, when confronted with a situation where we can see a vast deterioration in the money available to fund our public services, to just say, “The Speaker decided that, so that is that”. We are charged and obliged by our constituents to make sure that their interests are represented, and part of that obligation is to ensure that our public services are funded properly. There would be a responsibility on Scottish Members of Parliament to ensure that that was challenged, and at least to have a conversation about why this was happening.

Q38 **Patrick Grady:** Of course, we were told throughout the EVEL process, as we were debating the Standing Orders by the then Leader of the House and his deputy and others, that the way that Scottish Members of Parliament would be able to debate and vote on the impact of Barnett consequentials would be through the estimates process. I wonder if Mr Wishart could be invited to reflect on his experiences of the estimates process since the introduction of the EVEL Standing Orders.

Pete Wishart: This was the most curious intervention from the former Leader of the House. We raised concerns about the possibility and potential of having financial consequences through Barnett consequentials, and we were invited to look at the estimates process. I made what I thought was a very valiant attempt, Chair, in the debate about estimates to question these assumptions. I think I lasted 30 seconds on my feet before I was ruled out of order. One of the few things I have learned is that you cannot discuss estimates on estimates days that are set aside by Parliament, which I find utterly bizarre and ridiculous.

I know that this Committee is also looking at aspects of estimates. I would encourage you to have far-ranging reform, because the way that



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estimates consideration is currently conducted lets this House down. It is a disservice to Members of Parliament. We have no opportunity to look at departmental spending. Our interest was in trying, because we were invited to do so by the Leader of the House, to examine ways of seeing how Barnett consequentials would work in the spend of the domestic Departments. We found that impossible to do because of the way that the estimates days are organised. I know that Sir Edward had a look at this previously and came to the same sort of conclusion: that they are not fit for purpose at all for considering these things.

Chair: That is a very good question, and we want to talk to you about estimates. I know that Helen wants to talk about estimates. Could David just have one last crack on English votes for English laws? Then we will move on to estimates.

Q39 **Mr Nuttall:** To wrap up on EVEL, the English veto, English laws and procedures, do you think that the procedures should apply to all Bills? For example, do you think they should apply to private Members' Bills? Last Friday, for example, we had what some might think was a slightly unusual situation of a member of the Scottish National party bringing forward a Bill that did not apply to Scotland. There may be very good reasons why that was the case but, on the face of it, it may look a bit odd to people. Do you have any thoughts on the matter, Mr Wishart?

Pete Wishart: I am not seeking further to apply the measures associated with English votes for English laws. I am seeking to have them relooked at and, hopefully, torn up and started again. In terms of a private Member's Bill, I think it is a matter for individual Members of Parliament to bring forward any issue of interest. As Back-Bench Members of Parliament, it is the one chance we get to shape and design legislation.

In my own view—I know that you have Mr Nicolson coming in to discuss this later—I thought it was appalling what happened on Friday. There were so many constituents of mine who had an interest in this Bill. I think there were assurances given by Government that there would be assistance to try to facilitate this Bill, and then we find at the very end of the process that the Government are just standing there talking that Bill out.

Q40 **Mr Nuttall:** You said so many constituents of yours, but the Bill did not apply to Scotland.

Pete Wishart: There is a great deal of cross-fertilisation when it comes to issues such as this. Given your interest in this, Mr Nuttall, I am sure that you will have seen the announcement of the Scottish Government yesterday: they will now bring forward their own legislation. There is always an interest in what has happened in a unitary UK Parliament like this. Members of Parliament will bring forward issues of great interest and concern right across the nation, and it will excite that type of interest. We will have that piece of legislation in Scotland to deal with these issues in



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Scotland. All credit to Members of Parliament who bring up huge issues of great concern and things that constituents, like yours and mine, want to see progressed. I found it awful the way that that was dealt with on Friday.

Chair: We will be seeing Mr Nicolson after you, Mr Wishart, and we are going to talk about the issues around procedure. I think we have rehearsed the wider political concerns. What we are looking for is to try to improve the procedural process. Patrick, did you want to finish off? Then we will go to Helen. We were talking about estimates.

Patrick Grady: Yes, I was talking about estimates. Do you want me to continue to ask about EVEL?

Chair: No, I think we want to switch to estimates. Helen is chomping at the bit enthusiastically to get stuck in.

Q41 **Helen Goodman:** Thank you for coming this afternoon.

Pete Wishart: My pleasure.

Helen Goodman: Your concerns about EVEL are equally shared by Ian Murray and by Welsh Labour MPs, and I think you make a fair point when you say that making constitutional change without consensus is foolhardy.

You have set out some proposals for changing the estimates process. Perhaps in a couple of sentences you could describe that for the benefit of people listening. We know that the Government give information on Barnett consequential to the Scottish Executive and the Welsh Assembly. Why do you think that they are not sharing that with honourable Members here?

Pete Wishart: I think they are sharing it with honourable Members. As the Chair said, I chair the Scottish Affairs Committee, so I also see these figures, which give a pretty full description of the Barnett consequential allocations per spend of Department. The problem we have with English votes for English laws just now is that we have the conflict and issue that Mr Grady recognised: we can no longer have a say in a vote or Division on Barnett consequential. We are invited to then take that to estimates.

Helen Goodman: Sure, I understand that.

Pete Wishart: The only opportunity we have, therefore, is to vote on the estimates to try to stop a reduction in, say, departmental spend on health and education. It is not so much knowing that information—we have always had that information available to us—but having a chance to debate that and then having an opportunity to vote. That is particularly for those of us from Scottish constituencies, to represent our constituents if there is to be a negative impact on spending allocations to Scotland.

Q42 **Helen Goodman:** Are you saying that you think we should have separate votes on the Barnett consequential, or that this is not an area where EVEL should apply?



Pete Wishart: The proposals and suggestions I brought forward, when this was last debated, were for a total reform of the way that we do estimates. Obviously, my interest is in the Barnett consequential, how that is going to be debated and how we may have an opportunity to have some sort of vote or say on this. That would only work if there was a desire to move towards totally doing the estimates process differently. What we currently have is so unsatisfactory. A number of topics from Select Committees proposed by—

Helen Goodman: Yes. I know.

Pete Wishart: So there is no opportunity to do this, if there is no reform of the way that we do estimates. What I am suggesting could not be done on its own; it would have to be part and parcel of an absolute reform and reconsideration of how we do estimates in the House.

Q43 **Helen Goodman:** At the moment, we have three so-called estimates days. We could make the substance tie in better with the title, but we only have three such days. How much of that time do you think should be devoted to looking at the Barnett consequential?

Pete Wishart: I just cannot understand why Members of Parliament put up with this process. This is about scrutinising, looking at and trying to understand departmental spend.

Q44 **Helen Goodman:** Yes, I know what it is about, Mr Wishart. Of the time that we might have, what proportion do you think we should devote to looking at the Barnett consequential?

Pete Wishart: It would be significantly more than three days; that is the best answer I could probably give to you. These three days are important because they allow Select Committees to bring forward some of their own proposals and inquiries that they have been looking at. We should not lose these days, but what we have to design—and maybe this is the work of this Committee—is a proper process for scrutinising the estimates process, and the departmental spend of Departments. I think the question of the amount of days required for that is probably in the hands of a better authority than me: this Committee. I know that you are looking at this. I don't know if the Chair has had a look at how much time it would require. A significant amount of time is what I would suggest.

Q45 **Helen Goodman:** One last time: what proportion of whatever time was to be allocated would you think might be appropriate for Barnett consequential?

Pete Wishart: I am sorry if I am not making myself clear. I would not touch the three days, and I would not call them estimates days, because they are nothing to do with estimates. What I am saying is: leave these three days as Select Committee days, as decided by the Liaison Committee, and design a proper process for looking at estimates. I don't know if I can be any clearer than that.



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Q46 Helen Goodman: Mr Wishart, do you think you might be conflicted as between your role as the Chair of a Select Committee and your concern to improve the quality of estimate scrutiny?

Pete Wishart: I am a member of record of the Liaison Committee, so I know how it works. When you go along to Liaison Committee, when they are deciding topics for estimates day, it is whoever can get their hand in the air first.

Q47 Chair: Let me just interrupt here, using my privilege as the Chair of this Committee. We believe that there is a much better way of doing this, and that is for the Backbench Business Committee to hand three days to the Liaison Committee for general debates on Select Committee reports, and the Liaison Committee to hand three estimates days to the Backbench Business Committee, so that we can discuss estimates. We would need to have a trial of discussing estimates on estimates day so that, when you do stand up to talk about estimates, you are not ruled out of order because we are talking about a Select Committee report.

Pete Wishart: That is an eminently sensible suggestion. It does take us in the right direction, where we are having that proper scrutiny on estimates.

Chair: It is baby steps in this place, as you know.

Pete Wishart: Yes, absolutely.

Chair: Whatever we would like to do, obviously it always helps if we can get the Government to agree to it.

Q48 Sir Edward Leigh: What we could do is have these three days simply for estimates and, if there were any Barnett consequential that you or your colleagues or anybody else were interested in, you could make a bid to the Backbench Business Committee or the Speaker or whoever had the final authority. We would have to have a trial run, wouldn't we? If you were convinced that there was a Barnett consequential and you could only discuss it on the estimates days, at least there would be a procedure by which you could be sure of getting your debate. I would have thought it should be possible to have a vote as well on it.

Pete Wishart: I think that is a fantastic suggestion. I would suggest that probably more than three days would be required if we were looking at scrutinising estimates properly.

Sir Edward Leigh: We do not know yet, but I think we just have to trial it, and see how it works and how many days it needed.

Pete Wishart: I like that suggestion.

Chair: We will probably have a two-year pilot. We need to make sure that, if we do this, Members turn up and participate when they are presented with the opportunity. We are going to wind up soon, but Patrick, I know you want to ask a couple more questions.



Q49 Patrick Grady: It is not just about debates, though. It is about votes, and this is where the two—English votes for English laws procedure and estimates procedure—collide and the inadequacies of both of them, especially for us as Members from Scotland, becomes clear. We can debate Barnett consequentials until we are blue in the face, but because of the current EVEL procedure, we still do not have a vote on them. Would you agree that we need to find a way to either have a vote on policy decisions that will have Barnett consequentials or, through the estimates process, have a vote on the consequentials themselves? Ultimately, we can debate things—the same is true of Brexit—but at the end of the day it is votes that decide things. That is what we really need to have as an outcome of this review process.

Pete Wishart: I think Mr Grady makes a very good point, and some of the suggestions we have submitted to this Committee to have a look at suggest that. If there were to be particular motions on these estimates days, as suggested by Sir Edward, we would have the opportunity to amend that. If those amendments were accepted by the Speaker, we would have the opportunity to vote on that.

Q50 Sir Edward Leigh: When we used to have estimates days in the 19th century, the House could not vote to increase them. This might be quite good for you, I would have thought. We would have to work our way through this, because what you are worried about is some future UK Government dramatically cutting spending on, say, the health service because they want to privatise a bit. They deny they want to do this, but this is purely as an example. Then you want that proposal to go to the estimate day, and there would be a vote on it.

I think our Clerks need to research this. Mr Clerk, are you listening to what I am saying? My dulcet tones are very interesting. It is quite an interesting point. Under existing procedures, if the Government were embarking on such a course, and we had an estimates day on a Barnett consequential, could we have a vote on that—in other words, prevent the Government from doing what was proposed, if it had a consequential? I am just asking—this is all hypothetical—whether it is in the rules of the House. Are we allowed to do that?

Chair: We will not have the Clerk answer that immediately. The Clerk will have to ponder that. It would be procedurally not on for the Clerk to have to get involved in the Committee's debates, but can I look at the Clerk and ask him to produce a note for us on that point?

Sir Edward Leigh: I think it is quite important, from what Mr Wishart was saying.

Pete Wishart: I might be in a position to help Sir Edward here, because I approached the Clerks for assistance in ensuring that my submission was drafted properly, and it would be within the strictures of the House. I think that what we produced would be something that would be quite close to what Sir Edward is suggesting, where there would be an amendable motion that would be able to be debated properly. There



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would be an opportunity to divide the House, if necessary, on some of the issues that we were concerned about.

Sir Edward Leigh: Okay. I did not mean to put the Clerk in an invidious position.

Chair: No, and you didn't.

Sir Edward Leigh: I just think it is an interesting point that we need to—

Q51 **Chair:** Funnily enough, Sir Edward, that is exactly what the Clerk and I were whispering about as you were halfway through your interrogation of our witness. Does anybody want to have a final question before we move on to the next part of our discussions? Are you happy, Mr Wishart?

Pete Wishart: As long as I have served the Committee. That is the only desire I have today, Chair.

Chair: As an experienced Select Committee Chair yourself, we expected nothing less. Well done. Thank you very much.