

Procedure Committee

Oral evidence: [Private Members' Bills](#), HC 701

Wednesday 26 October 2016

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

[Watch the meeting](#)

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

Questions 204 – 222

Witness

John Nicolson MP.



Examination of witness

Witness: John Nicolson MP.

Q204 **Chair:** We have Mr John Nicolson coming to talk about the private Member's Bill process. I think I need to set the scene here. We are interested in the procedure. We know everybody feels rather raw. Mr Nicolson, you feel rather raw, and I know that our Whips have their own version of events, and that can be fought out in a different place. What we are interested in establishing is your experiences of the process, and the procedures around it. As you know, we have recently produced yet another report on private Members' Bills, and what happened last Friday is of interest to this Committee. If you would like to say a few words before we start, Mr Nicholson, please feel free to do so.

John Nicolson: Thank you very much indeed, Mr Walker, for calling me. I apologise; I have a heavy head cold and I am coughing and spluttering a bit.

I don't think there can be two different versions of events, because there is a timetable, and I have a record of the timetable, which, of course, I have recorded. I am happy to share it with the Committee. As you will know, the genesis is as follows. I was drawn first in the private Member's Bill draw. You get a couple of weeks to try to come up with a Bill, and you are deluged by different people asking you to do different things. I am gay myself and am interested in gay law reform, so in the back of my mind was a gay law reform Bill. Of course, I knew about Stonewall's Turing Bill, so when the Government Whips approached me and invited me into the Conservative Whips' Office, I was delighted.

They said to me, "If you would take on the Turing Bill, we will support you". I remember distinctly the phrase they used. They said, "We will support you with no tricks and no games". I laughed and said, "That feels like a scene from 'House of Cards'." How we all laughed! I then spoke to Michael Gove on the phone, who said that he would give me the full support of the Justice Department to help me with the Bill.

Before I tabled the Bill, the first thing that I obviously had to do was find out exactly what the Turing Bill was. I had a fair idea what it was, but I wanted to know what Stonewall's wording was. I went away and researched that, and came back and confirmed to the Conservative Whips that I had spoken to Mr Gove and Stonewall, and I would be quite happy to proceed with the Bill. I then introduced it in the Commons, met with Fergus, the Clerk, and at that stage I had to start doing some research on how the Bill was going to go from being an outline in Stonewall's briefing pack to something that was legally presentable.

I had a further meeting with the Justice Department, in which they again offered me help, and then over the course of the summer things went rather quiet, and a number of meetings with the Justice Department were cancelled. I finally went in for a meeting with the Under-Secretary, who



said, "I'm terribly sorry to break this to you, but we have changed our mind and we are no longer going to support you on the Bill". I wrote to the Deputy Chief Whip and I said, "What part of 'no tricks and no games' does this fall into?" She called me. We had a conversation on the phone, and she said, "That's not my understanding. My understanding is that we are still supporting you with this Bill". I said, "Well, you had better talk to your colleagues in the Justice Department because they seem to be a bit confused about this".

I obviously found myself in a really odd position at that point. I am a journalist by profession. I know what the tabloids can do with gay stories and I was, of course, acutely aware that it would be possible to make mischief out of this Bill. The opening line of my Bill was, "Nothing in this Act is to be interpreted as pardoning, disregarding or in any other way affecting cautions, convictions, sentences or any other consequences of convictions or cautions for conduct or behaviour that is unlawful on the date that the Act comes into force". In other words, this Bill pardoned gay men who were found guilty of a crime that is no longer on the statute book. Since paedophilia is still a crime on the statute book, by definition, it was not covered by the Bill. Yet last Friday, when the Minister talked out the Bill, his primary defence of his behaviour was that my Bill would somehow give comfort to paedophiles. I think the expression he used was that "unintended consequences" would flow from my Bill. It is a long time since I have heard the conflation of homosexuality with paedophilia, and I found it deeply distasteful.

Q205 **Chair:** I accept that, and I understand that. Can I ask a question? Going into the procedural matters, one of the things that this Committee would like to see is a different route for Back-Benchers to get seriously well-thought-out legislation before the House. You have absolutely identified one of the flaws in the ballot system. It is a game of chance, and when your name comes out, you have three weeks to come up with a legislative proposition. You are bombarded by charities and well-meaning organisations.

Invariably, if you are a Government Back-Bencher, you take through a hand-out Bill, and you had a slightly different experience in relation to that. What we would like to see is a system whereby you and I, for example, and maybe another colleague, Jenny, could have a legislative idea. We could spend a year working it out, getting the drafting right, talking to the Departments over a period of time, talking to other interested parties, talking to people in the Lords, and building a broad coalition of colleagues. We could then present that to the Backbench Business Committee, and they would have it in their power to assign up to the first four slots to well-thought-out propositions. If they did not think any proposition was well thought-out, they would say, "Off to the ballot with you". That would reward serious legislators for investing a significant amount of time in a legislative proposition—an amount of time that would allow them to dot the i's, cross the t's, and work to answer outstanding questions with Government and Departments. Do you think



that has mileage?

John Nicolson: All that sounds eminently sensible. I am obviously an inexperienced parliamentarian. I have only been an MP since last year. I have a background in political journalism, however, so I have been round here a lot. I can see lots of advantages to the proposals that you outline.

In reality, with my Bill, that could have worked perfectly well. I put a lot of work into the Bill. I consulted with Keir Starmer and Joanna Cherry, so I had good legal minds advising me. Stonewall's lawyers were also working on it and, finally, it went before the parliamentary lawyers. Nobody, apart from the Minister himself, had any criticism of the Bill, so that could have worked perfectly. It could have gone into Committee, which all the Conservative MPs—including Mr Nuttall, as I recall—were keen for it to do, and it could have proceeded and worked. Of course you are right; the whole idea of drawing balls out of a jar is ridiculous.

Q206 **Chair:** I will say this. I was closely involved in the Mental Health (Discrimination) Bill. Although I did not bring it before the House myself personally—Gavin Barwell did—I was involved in its drafting at the Lords stage. My experience with that Bill was that the time charge on that was dealing with Government and getting the various Government Departments to sign off—and you also have to get Cabinet sign-off. That took about a year. Even with the experience that you had, and the three months of discussions, my personal view is that probably the Government ran out of time to sort it out. That is my personal view. You could have done with more time.

John Nicolson: After the middle of September, I had no discussions of any kind with any Government Ministers. The Minister stood up and very dramatically said on the Floor, "Work with us to get this Bill through". It was nonsense. He had had months to talk to me if he had been at all serious about co-operating with me. Disappointingly, journalists were telling me subsequently that senior figures in the Government were briefing journalists that their motive was not improved legislation. They did not want to see a Bill get on the statute book that had been introduced by a Scottish National party Member of Parliament. I don't know if that was their motivation, but that is what journalists tell me they were being briefed.

Q207 **Mr Nuttall:** Clearly, we could spend a great deal of time discussing all the ins and outs of this. This is not a party political point in any way, but members of the Committee will be aware, from our many investigations into the private Member's Bill procedure, that there is a small amount of money available to a private Member who is successful in the ballot to help them prepare their Bill. I think I am right in saying that one of the things we have done is suggest it be increased to a more realistic level, or abolished.

Chair: It is, I think, £100.

Mr Nuttall: I wondered, as a matter of interest, if they had told you



about that.

John Nicolson: No.

Q208 **Mr Nuttall:** Obviously, if you were not told, my second question of whether you accepted it does not apply, because you were not told it even existed.

John Nicolson: No, I was not told. I don't quite know what I would have done with £100.

Q209 **Mr Nuttall:** No, but if it had been a more significant sum, it may have assisted you in perhaps receiving outside legal help, rather than having to rely on friends and family.

John Nicolson: I did get outside help, because the Stonewall lawyers, a distinguished firm, were doing pro bono work on it. The Bill is detailed and, of course, curiously, the very things that the Minister said on Friday—he said it would be impossible to effect a pardon for the living—Holyrood did yesterday, which makes his position doubly risible. Of course, I was much more interested, because the Government has tacked on an amendment to the Lords Policing—

Mr Nuttall: Policing and Crime Bill.

John Nicolson: Exactly. I keep calling it the Crime and Punishment Act for some reason. They have tacked an amendment on to this. I think it is disrespectful, given the importance of this issue. It was obviously done at the very last moment, and it pardons the dead, but I am much more interested in getting closure for the living. Ultimately, the point that a number of Conservative MPs made in the debate was that the distance between the Bill being proposed by the Government and mine was tiny, which is why Conservative MP after Conservative MP stood up and said, "Please, Minister, let's put this into the Committee stage and let's discuss it there".

Chair: Mr Nicolson, I do not want you to take this the wrong way, but we are going to have to ask some questions around the numbers you got on that day. We cannot just have a free hit entirely on the Government here, and I know David wants to ask those questions.

Q210 **Mr Nuttall:** Before he answers that, I do want to clarify that point, because I think it is important. So far, through your presentation—I think it has been very straightforward and clear—it would seem to anybody listening to this that your principal beef is about the behaviour of Government, Government Whips, Government Ministers, the whole machinery of the Government and the Executive and the way that they—I do not know whether you would use the phrase—misled or maybe gave you the wrong impression about their views. I don't know what word you would want to use, but it seems to me that that is your principal concern; the fact that you were given the impression that you had Government support, but when push came to shove on the day, you did not have Government support. Is that fair? I am not trying to put words in your



mouth. I am just saying that that is what it seems you are suggesting.

John Nicolson: You are absolutely right in what you have said. Nonetheless, I absolutely take Mr Walker's point that there is a fundamental flaw in the whole system. It is absurd for legislation to be decided by the Deputy Speaker pulling balls out of a jar. It seems altogether too random. Of course, I have no other experience of any other system, although I think Mr Grady has experience of the Holyrood system.

Q211 **Mr Nuttall:** If the report of the Procedure Committee does come before the House, you would be prepared to perhaps consider supporting the idea of changing that particular aspect of the system?

John Nicolson: Sure, because one of the joys of working on this was seeing how much cross-party support there was for it. I did not do a single interview in which I claimed this as an SNP Bill. I strenuously stressed throughout the process that it was an all-party Bill. I had cross-party support. I made sure that the sponsors came from the Labour and Conservative parties as well. I was astonished that anybody would want to make it a party political issue, because it seemed to me that it was something that all of us across the House could claim credit for as progressive legislation.

Q212 **Mr Nuttall:** No one is suggesting it is party political. I know journalists may have said that was the view of the Government, but certainly, in my experience talking to Back-Bench MPs, there were views of all sorts about the detail of the Bill, and I don't think anybody thought it was in any way party political. The proceedings on the day and how Parliament deals with it is nothing to do with the Executive. This is a matter for Parliament and the rules of the House. The rule that requires a debate to be terminated on a closure motion—which the Chief Whip of the Scottish National party moved when I was speaking, as a matter of interest, not that that is relevant—

John Nicolson: I wonder why.

Mr Nuttall: That is just how it was. That is just how it felt. When that is moved—I think it is Standing Order No. 36—there have to be 100 Members; that is under Standing Order No.37. Had you done any work to try to ensure that 100 Members were there?

John Nicolson: Of course I had, and of course I am disappointed that we did not get the numbers. I don't think we should have had to rely on 100 people staying away from their constituencies on a Friday. That seems to be entirely wrong. Of course I did, I tried hard to get the numbers there. I was disappointed in the numbers.

People have come up to me subsequently and apologised. Quite a lot of people have come up and apologised for not being there, and what they tend to say to me is, "We didn't think for one moment there would be any difficulty with this Bill". One Conservative MP said, "As late as last week,



the Government were telling us that they were supporting this, so I did not think I had to be there". A number of Labour MPs just assumed that as it was a progressive piece of legislation, and given how keen the Conservative party is to associate itself with progressive legislation on gay issues, it would go through. Plus, of course, there was sleight of hand in the way in which the Government announced that they were supporting the Turing Bill and sent out press releases. A number of people who were not following it that closely thought, "Oh, that is your Bill. They are supporting your Bill," not realising that, actually, they were supporting a Lords' amendment.

Q213 Mr Nuttall: Were you particularly disappointed that, including the two Members who acted as Whips, there were only 34 Members from your own party who turned up?

John Nicolson: Obviously, I would have liked everybody to be there, but people have different commitments, health commitments. We have a couple of MPs who have very young toddlers. I could have gone round and probably bullied more than I did, but I just did not want to do that. Thirty-one was the highest proportion of any party in the House. You will remember that this is an English-only piece of legislation. This would not have affected Scotland. It was an English piece of legislation that those 34 turned up to vote on.

Patrick Grady: Even if every single SNP Member had turned up, there are only 54 of us.

Chair: The point has been made and responded to.

Q214 Jenny Chapman: I really feel for you. I want you to know that your time has not been wasted at all, and that what you have done is a really important, good thing.

John Nicolson: Thank you. That is very kind of you.

Jenny Chapman: You are not the first person to come before this Committee. I do not know if it is a coincidence, but the other person who came before us with exactly the same complaint was in their first year or so in Parliament. I think that, even if you had had the numbers there, it would not have made any difference ultimately, because the Government would have found another way to kill off your Bill, so do not spend too much time feeling guilty about it, and tell your colleagues not to do so, because another reason people stay away is because they know that a Bill probably would not get anywhere without full Government support.

The issue is how you define Government support and how that support is expressed through any process that we may have. At the moment, the Government are able—as they have done with you—to indicate support, privately and informally, and then change their mind and take a slightly different position on your Bill. That, in some ways, is the Government's right. You say they played games; did they just change their mind? They are allowed to change their mind.



HOUSE OF COMMONS

John Nicolson: Do you think they are allowed to change their mind? I do not mean to sound overly Victorian, but if you give your word of honour, does that not count for something? Is your word of honour—

Jenny Chapman: You are in the wrong place.

John Nicolson: I love the way you are all laughing at that. Is your word of honour contingent on who your leader is at any one given time? Isn't it a standalone principle?

Q215 **Jenny Chapman:** The problem is that you had what you are describing as a word of honour, but there is nowhere in the process until it gets to the Floor of the House where that position is made transparent to everybody else.

John Nicolson: I should have tweeted it, shouldn't I?

Jenny Chapman: Well. This Committee in its report that we have just published describes the whole process as "A pretence" because you, the public, the press and Stonewall are all led to believe that this is an opportunity, which it clearly is not and most of the time it does not turn out to be. If you have had a chance to read the report, that would be great, but the whole issue for us is around the lack of transparency, and the way that the Government are able to indicate support that does not transpire eventually. As the Chair said, what if you had more time, and a process that enabled you to get access to Government lawyers and the Justice Department, in this case, to work at your Bill, get the wording right and deal with all these issues—I don't know if they are genuine or not—that Sam turned up with on Friday? There will always be something like that, should the Government choose to find it.

John Nicolson: As I said, I was promised access by Michael Gove to the Justice Department civil servants and others.

Q216 **Jenny Chapman:** With the process the way it is, there is no way of you demanding that, is there?

John Nicolson: Once he was defenestrated, that disappeared. Again, I have to say—and you laughed at me a few seconds ago—that I did not question the Whips' words when they said that. I thought that was it.

Q217 **Sir Edward Leigh:** Obviously, as the Procedure Committee, we cannot get into all the rights or wrongs. I am just looking narrowly at procedure. What slightly concerns me about your problem is that if we had the new system, and you had spent a year thinking up your Bill and got it all right, and you had gone to the Backbench Business Committee last May or something and that Committee put you through, the Government could have done exactly the same thing. Do you see my point? My only worry is that changing the procedure would not necessarily, or indeed probably, solve your problem. I am not defending it—

Chair: I think it might have, because it would have given you longer. It may not have done. It is an issue of time. You come out of the ballot;



HOUSE OF COMMONS

you have three weeks. You then have a matter of a few months. There is not time to sit down and work up a piece of legislation, knowing that you will have a good chance of getting it before the House if it is pre-approved by the Backbench Business Committee. That is in no way, Edward, to say that the House is under any obligation to pass it, but they might owe it a bit more attention.

Sir Edward Leigh: Or the Government.

Chair: Or the Government, absolutely, so there is no quick fix to this. It is just trying to find another route to get legislation before the Back Benchers on private Members' Fridays. Sorry, I answered my own colleague's question. John, you must answer his question.

Sir Edward Leigh: He does it all the time.

John Nicolson: It was a much better answer than I would have given, so I am very happy to defer to your answer.

Q218 **Chair:** One thing you have to do in this House is accept failure, but you need to have a fair crack at failure, and I don't think most Back Benchers now have a fair crack at failure.

John Nicolson: I should say, for example—thank you very much for your kind words of reassurance—in a curious way the reaction to this has been quite uplifting, apart from a few tame journalists who have swallowed the Government's press release hook, line and sinker. In fact, some of the more surprising journalists have contacted me to say how sorry they are about it. There has been a huge outpouring in social media. It has clearly created a lot of publicity for this issue. Holyrood has passed it. Whether Holyrood would have passed it had this not happened, I don't know. It certainly, I suspect, was slightly fast-forwarded because of this.

Q219 **Patricia Gibson:** I was going to say, Mr Nicolson, having listened to your very matter-of-fact account, that I think your Bill perfectly crystallises the issues with private Member's Bills that we have been grappling with for some considerable time, as have interested members of the public and of the journalist world. We have been talking today about how you need 100 Members, and how it is for the person who brings a Bill forward to try to lobby, persuade and cajole colleagues to get 100 Members, but we all know that, even if you get 100 Members, if the Government are determined to kill a Bill, then they will kill that Bill one way or another. In effect, that means that the numbers are much more difficult to get because of people's sleight of hand—the expression you used. If that is at play, then it is much more difficult to get people to take a day out of their constituency, knowing that games are afoot and it will end badly.

I think your Bill encapsulates very neatly, if disappointingly, the absurdity of the entire system. I wonder what your thoughts are; you have hinted at them already. Lots of the world was watching this. Lots of our constituents across the United Kingdom were watching this and were very disappointed by it. Do you think that this might be a turning point for our



HOUSE OF COMMONS

attempts to wrestle with the whole process of private Members' Bills? Do you think it feeds into that alienation and sense of detachment that people have from Westminster?

John Nicolson: A distinguished Member of the House not too far from here described this as bringing the House into disrepute, and I absolutely agree. I think that is precisely what it did. I have been deluged with emails from people saying, "How utterly ridiculous"; people saying, "I am not a supporter of your party but this is absurd". As I said in my speech, one of the peculiarities about the whole process is that it is no secret that the SNP wants to leave Westminster, but Conservative and Labour Members of Parliament are meant to be champions of Westminster and trying to persuade us to stay and to sell this as a functioning parliamentary democracy. I have to say I think you could not play more disastrously, from your perspective, into the hands of the separatists than by behaving like this.

Q220 **Chair:** Let me return to the procedural issues. You would have got your Second Reading if you had had 100 Members there, and there were only 57 there. Here is the issue. Your Bill was taken on Friday. You mentioned that Friday is a difficult day to get people into the House, and that is true for everyone. I know for Bob Blackman's Bill on this coming Friday, there is a huge effort to get 100 people, even though the Government have said that they are going to support it. We have in the past suggested—and there is a caucus in the House for this change—doing private Members' Bills on a Tuesday and Wednesday evening, after the main business ends. It would not be Government business, but it would be taken after Government business ended on Tuesdays and Wednesdays, thereby liberating Fridays back for us to spend in our constituencies, and ensuring more people were here to take part.

The Government will say, "Aha, if you do that, then we are going to have to start whipping them". Nobody in this place has a right to get their legislation on the statute and, if the Government want to whip to kill off a private Members' Bill, I bet you they would rather lose it in a Division Lobby than have it talked out.

John Nicolson: You are absolutely right and, of course, it was clear; I could see the Minister muttering with colleagues on the Front Bench on Friday. As one Conservative MP after another stood up to support my Bill, it was quite clear that had there been a Division, I would have won it, and the Bill would have gone on to Committee stage. I think there was only one speech in the four hours of the debate against my Bill—one or two.

Q221 **Chair:** The truth is that the number of 100 is a realistic number. It is hard to get on a Friday, but if you were to do it on a Tuesday and a Wednesday, there would not be any problems getting the 100, but those colleagues who wanted to take private Members' Bills on a Tuesday and Wednesday would have to accept that the Government might be more inclined to whip to kill them off. One could argue that if the Government



HOUSE OF COMMONS

did that, you would lose in a Division Lobby. The Government would dip their hand in the blood, and it would lead to a reduction in the game playing. It would be a very transparent way of knocking a Bill on the head.

John Nicolson: On this particular Bill, I don't think the Government would have wanted to associate itself with opposition to the Bill. That is why they talked it out and they hoped that, by relying on that procedural device, people would not recognise what had been done. I imagine that they are horrified by the level of publicity that this has got. This has not worked out well for them.

Q222 **Chair:** I will conclude by saying as Chairman—it is my privilege to do so—that I am sad at what passed on Friday. It is my view that you could have done with more time to discuss your legislative proposition with Government. It deserved better than your name being drawn out of a hat. It is something you are interested in. There should have been another route for you to negotiate a Bill with Government that both you and Government could have supported. You needed more time. That is not to say that what happened on Friday was not desperately unfortunate.

John Nicolson: Thank you, Mr Walker. I am sorry that it did not get through, because of all the mostly old men who wanted a sense of closure and who had lived with unfair convictions perhaps for decades. They were watching that, and they were hoping that they would get their names cleared. I am terribly sorry they were pardoning the dead, which seems sentimental, and were not pardoning the living, because they matter more.

Chair: It is still getting a lot of attention, and that is not to be despised in itself, because it keeps it at the fore of people's minds.

John Nicolson: Thank you for asking me here.

Chair: Thank you very much.