

Public Administration and Constitutional Affairs Committee

Oral evidence: [An effective Second Chamber? The size and composition of the House of Lords](#), HC 811

Tuesday 14 March 2017

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Members present: Bernard Jenkin (Chair); Ronnie Cowan; Paul Flynn; Marcus Fysh; Mrs Cheryl Gillan; Kelvin Hopkins; Dr Dan Poulter; John Stevenson; Mr Andrew Turner.

Questions 94 - 186

Witnesses

Baroness Smith of Basildon, Shadow Leader of the House of Lords, Lord Hope of Craighead, Convenor of the Crossbench Peers, and Lord Newby, Leader of the Liberal Democrats in the House of Lords.

Examination of witnesses

Baroness Smith of Basildon, Lord Hope of Craighead and Lord Newby.

Q94 **Chair:** Good morning, and may I welcome you to this session of the Public Administration and Constitutional Affairs Committee about our inquiry into the next steps for reform of the House of Lords? You arrive on the morn of a very topical time, where the House of Lords has been very much in the news, both with the documentary and with recent political events. Formally, I have to ask you to introduce each of yourselves for the record, please.

Baroness Smith of Basildon: I am Angela Smith, or Baroness Smith of Basildon for these purposes, and I am the Labour leader in the Lords and the House of Lords leader of the Opposition.

Lord Newby: I am Dick Newby. I am Leader of the Liberal Democrats in the Lords.

Lord Hope of Craighead: I am David Hope, and I am the Convenor of the Cross-Bench Peers.

Chair: We are very grateful to you for coming. We will ask quite short



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and crisp questions, if we can, and if you can give fairly crisp answers that would be very helpful to us. If answers are going on a bit long I may want to shorten them. So, could we have our first question, please, Paul Flynn?

Q95 Paul Flynn: As a preamble, could I, a practitioner in this place for a long time, state my admiration for your House as a body for scrutinising legislation? It is far superior to what happens here. But the position on the Lords now, which is nothing to do with you, is one that is indefensible in so many ways: the number of peers; the fact that it is possible to buy a place in the Lords if you contribute enough to any of the three main parties; the fact it over-represents London and under-represents Scotland; and that is going to get worse, with all the problems that arise and all the illogical things that come from it. We are all stuck with that now, and there have been many attempts to reform it in the past. But as a bemused nation is watching the ermine-clad antics in the Lords on the television programme, and also some of the serious work going on there, could you list some practical ways to reform the worst excesses in the near future? How can we do it?

Baroness Smith of Basildon: Are you talking about the worst excesses in appointments?

Paul Flynn: I could go on.

Baroness Smith of Basildon: Okay. I think I have the gist. Yes.

Paul Flynn: Another problem is the apparently lax rules for conduct in the Lords. Someone who was being interviewed as a possible lobbyist said, "When I leave the House of Commons I will be in the Lords. I can do a lot more for you for the money you pay me if I am in the Lords, because the rules are far more permissive". There are a whole number of perceptions of the Lords that are there and it cannot be respected any more as a second Chamber because of its—

Chair: We have questions about what reforms are coming up, but this question about the rules and lobbying is something that perhaps you could address immediately.

Lord Newby: We have tightened up the rules on lobbying very considerably. I think the Privileges and Conduct Committee and its sub-committee that looks at them has been very rigorous, certainly in the years when I have been on it, at making sure that the rule that says that you cannot either have public-paid advocacy in the Lords or use your position in the Lords to lobby Ministers on a paid basis has been very rigorously enforced. There have been sanctions against people. I think it has tightened up a lot in recent years, but I think now it is pretty rigorous.

Baroness Smith of Basildon: I would agree, and I think anyone who uses their position inappropriately would be dealt with very speedily by the Committee. If there are suggestions how that could be improved, I am always open to look at suggestions on that. I do not think anyone



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would tolerate Members of the House of Lords, or indeed the House of Commons, using their positions, paid positions or otherwise, in a way that the public might think was acting inappropriately; that would not be acceptable in any way at all.

- Q96 **Paul Flynn:** Can we take the appointments? The reason we are in such a mess at the moment is to solve internal party problems that existed because of the coalition recently. People have been adding to the excessive number already in the Lords in order to solve not problems of legislation of the country, but internal political party problems in the Conservative Party recently.

Baroness Smith of Basildon: Yes. I think you will find across the House of Lords a very broad agreement, as evidenced by debates we have had and issues that have been raised, that the House of Lords has a size now that is beyond what is required to do the job we are doing.

Chair: Paul, I am really sorry. We are going to come to these questions. Other people have been allocated these questions.

Baroness Smith of Basildon: Do you want me to answer, Chairman, or not?

Chair: We will come to these questions.

Baroness Smith of Basildon: Do you want me to continue to answer or for me to wait?

Chair: We will wait.

- Q97 **Paul Flynn:** My general question is, what can we do about it?

Chair: We have other questions on those matters.

Paul Flynn: If we are arguing about the conduct, I would refer you to two cases of Lord Blencathra and Lord Sewel recently, particularly the Blencathra case, which arose out of a complaint that I made, and took two hearings to go through when it seemed to be a very obvious abuse of the rules on lobbying. It had to be done in two stages, and there was nothing rigorous. The Lord was asked to make a very brief apology, and the whole thing is forgotten about.

Chair: Lord Hope, is there more to be done on this question?

Lord Hope of Craighead: I go along with Lord Newby. The Privileges and Conduct Committee keeps a very close eye on what is going on. There is a sub-committee within that Committee that works with the Commissioner to investigate these cases. You have to look very carefully at the facts before you form judgment as to the result of the process. When something is exposed, like, let us say, Blencathra, I think we all would appreciate that something went wrong there and we all learn from it. A great deal of effort is taken when new peers comes in to explain the rules to them and make it absolutely clear that there is a boundary beyond which they should not go.



Q98 **Paul Flynn:** A general question, and I will leave it there; others may have their own questions.

How do we stop people buying places in the Lords by contributions to any of the three main parties?

Lord Hope of Craighead: I want to make the point that so far as the Cross-Benchers are concerned, we are entirely different. The way you come in to the Cross-Benchers is by one of two routes; one is the Prime Minister's appointment system where there are 10 appointees in the life of a Parliament; they are people like Cabinet Secretaries, senior military figures, and so on. The other is through the Appointments Commission, and we are allowed two a year. These people are interviewed. It is a completely separate process from politics, and there is absolutely no question of buying your way in. It is a competitive process, and the Cross-Benchers need to be understood against that background.

Paul Flynn: You have answered a question I have not asked. We are well aware of that system, and it is one that is entirely defensible. But the problem is that politicians, former MPs, appoint the people who are giving their party money. This is going back through all my time in this Parliament.

Baroness Smith of Basildon: I think the question broadly would be about the appointment of peers, and I think there are a number of issues around appointments that I would like to see changed. I would like to see a cap on the numbers of peers who can be appointed to the House of Lords. I would like to see a more proactive role, either for the current Appointments Commission or for a separate body that looks not just at the propriety of the peers appointed, but at the wider issues and the contribution they could make to the Lords. You also have to take into account the work the Lords has done. I know we are going to get on to some of these other issues in a moment, Chair, but I think there are issues around ensuring that those appointed can be properly vetted—checked to ensure they can provide a contribution. The current system does not, I think, do that now as well as it could.

I also think if we look at the Appointments Commission, we need to look at the resources available to the Commission and the time it is given. There have been a number of occasions when even with the limited powers they have on appointments, they have not really been given enough time to look fully and fulfil their functions. I have no difficulty whatsoever in having an Appointments Commission look at all appointments, but first there must be set out clear criteria that are transparent and open to Parliament and the public.

Lord Newby: Just picking up on that point, I think one of the key things that the Appointments Commission should do is to seek assurance from party appointees that they intend to play an active part in the Lords. I think that would help deal with Mr Flynn's point about people who have been party donors, who in some cases come in with no expectation ever



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of doing a hand's turn. That seems to me to be wrong in principle. I think the only way you could get the principle of being a working peer established is if the Appointments Commission were on a statutory basis and had powers to quiz potential appointees about their future commitment.

Lord Hope of Craighead: Yes. So far as the Cross-Bench is concerned, the system is much more rigorous than it is in the case of the political parties, and everybody who comes in through that route is tested as to whether they are prepared to make a contribution and, indeed, whether the contribution that they can make is worth having. It is a rigorous one, and I think one might want to explore the ability of the commissioners, as the others have been saying, to expand their rigorous process to the political side as well.

Q99 **Chair:** We will come to that. Can I ask a first principles question? Do we all agree what the appropriate role of the House of Lords actually is? Would you like to have a stab at all three of you agreeing on what it is?

Baroness Smith of Basildon: There may or may not be agreement. The standard answer is always scrutiny and revision of the House of Commons. I tend to lean away slightly from that. I think the Canadian Senate uses the term, "A House of sober second thought", which I think is quite a nice approach to the work we do. We do sometimes give the Government a breathing space, as we saw yesterday. The House of Lords gave the opportunity for the House of Commons to look again at an issue. There was a division between us on the panel as to what we as an unelected House do when the House of Commons has thought again, but I think that sober second thought that allows the Commons to think again is helpful. There has been some difficulty with that, though not within the House of Lords. We have seen quite a lot of attacks on the House of Lords suggesting that we have exceeded that remit. I consider that we have not exceeded that remit.

Tax credits was when that allegation first started, when we asked the House of Commons—or asked the Government, because it was a statutory instrument—to look again, and that led to the Strathclyde report.

Before the Brexit process even started, the House of Lords was being threatened with abolition and 1,000 extra peers to get the Bill through. It would have taken about two years to get 1,000 extra peers, but the comments were still made.

How the Government responds to the House of Lords asking the House of Commons to think again has changed, and that perhaps is a wider issue, but I think we are quite clear on our role. If you look at the number of fatal motions on statutory instruments and you look at the number of times the Commons has been asked to think again, nothing significant has changed on that over time.



Q100 **Chair:** Where do the other two witnesses differ from that?

Lord Newby: The answer I always give is: first, scrutiny of legislation, which Baroness Smith talked about; secondly, daily holding of Ministers to account through questioning and debate; and thirdly, the House of Lords has been reasonably good at having early-stage debates on big public policy issues that are contentious and on which there is no consensus; right to die is an obvious example. Some of those big issues have been discussed in the Lords and brought to public view in a way that does not happen in quite the same way in the Commons.

Lord Hope of Craighead: All I would add to that is to stress the work of the Committees. A lot of Committee work goes on in the House of Lords in the EU field and, indeed, looking at legislation, as we did with HS2. The Committee work in the House of Lords is of a very high standard, and a lot of effort is put in by people who perhaps do not play a big part in the Chamber, but are working hard in Committees to develop the thinking through them.

Q101 **Dr Dan Poulter:** Chairman, can I just pick up on your previous question? I have a couple of questions, but before I get into that, in the last answer you all talked about the role of the House of Lords. How much do you feel that your role is helped or hindered by the fact that you do not have a constituency party group of members sometimes scrutinising and focusing on what you may or may not be doing in terms of your potential reselection or not for your role?

Baroness Smith of Basildon: I might be best placed to answer that, having been both in the House of Commons and in the House of Lords—13 years in the House of Commons as a Back Bencher and as a Minister, and now six in the House of Lords.

I see the roles as very different but complementary. That is why I think it is right that the final say is with the House of Commons and that primacy is allowed for the House of Commons, because we are an unelected House. It does not stop me or anyone—I do not know if my colleagues from the House of Lords will agree on this—from feeling the sense of what public opinion is and what issues are, and I can assure you that there is no lack of direct contact. We are not representatives; that is a different role.

Q102 **Dr Dan Poulter:** No. I think the difference between the selectorate and the electorate is what I am talking about. I am not talking about the electorate; I am talking about the selectorate who select MPs. How much do you feel not having, potentially, in your role, to pander to a selectorate, and perhaps with the idea of reselection as a Member of Parliament, helps you or hinders you in your role?

Lord Newby: I think in a way, because you come to it knowing that that is the deal, it is obviously very different from being an MP. What has changed during my time there is that when I started you were operating in a closed box. You got very few letters, really. Now, particularly with e-



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mails, that has changed very significantly. I have had well over 500 e-mails in the last couple of weeks about the Article 50 Bill, expressing a very, very wide range of opinions. Although we do not feel we are accountable in the same way as MPs, I feel, leaving aside any political work I do in campaigning, that I am exposed more to public opinion, as it were, and to individuals with views on issues on which I speak, than I have been in the past.

Lord Hope of Craighead: The Cross-Bench peers contribute expertise. They are people who are chosen from various backgrounds—medicine, for example, university people, military, lawyers, and so on. That is the contribution they make. It is not based on constituency work, and most of them—not all—would never dream of standing for election, probably because they do not have time to do that.

There is one group that you might like to think about, who do sometimes say to me that they feel they do represent a constituency, and that is the bishops. You may laugh, but it is quite interesting; they do speak to people of different faiths. They speak to people of different faiths who contribute their thoughts through them. People know they exist, and through their diocese, which is a large area, they develop ideas. The questions they ask at question time are quite often based on their understanding of how things are within their diocese. Of course, it is very easy to laugh at it, but it is a fact that they do try to represent their diocese.

Q103 **Ronnie Cowan:** Just picking up on that point, is it fair to say that those 26 bishops are not really representative of the different faiths and religions that we have throughout the United Kingdom, are they?

Lord Hope of Craighead: You can say that, but they—

Ronnie Cowan: I just did, yes.

Lord Hope of Craighead: But they know that as well as anybody. The people I speak to say that they are approached by other faiths who know that they are there, and they contribute their ideas to them. Of course, we have the Cross-Benchers—

Q104 **Ronnie Cowan:** Would it not be better to give those other faiths a voice?

Lord Hope of Craighead: There are other faiths in the House. Lord Singh, for example, was on the radio this morning as a Cross-Bencher. There are other people; Lord Sacks is there too. I am just making the point that the bishops should be understood as doing their best to represent a wider range of interests than just themselves as individuals.

Q105 **Ronnie Cowan:** We could be helping them by giving other faiths a voice in the House of Lords.

Lord Hope of Craighead: They are there. Indeed, I agree.

Ronnie Cowan: Not 26 unelected Members.



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Lord Hope of Craighead: I would welcome more faiths on the Cross-Bench group for the very reason you mentioned. It is a question of getting them in through the appointment process, and we have several of them there already on our group.

Q106 **Dr Dan Poulter:** I did not express myself very well. I did not get where I wanted to with those questions.

Anyway, on to more substantive questions about House of Lords reform. Generally speaking, incremental reform has been more successful than radical reform. I wondered from your perspective—each of you in turn, perhaps starting with Baroness Smith—what you would suggest is the next small, essential Lords reform, or incremental reform.

Baroness Smith of Basildon: I think there are a number of small, incremental reforms that could be achieved quite easily. Ending the hereditary by-elections, which are complete and utter nonsense and an embarrassment to the House, would be a first, and that could be done tomorrow. That would be my first. There is a Private Member's Bill that the Government is resisting. The Government take the view there should be consensus. To get complete consensus on anything is very difficult. Getting a broad consensus is very easy, and that one would be there.

I also look to Jeff Rooker's paper to you about some of the issues around powers of blocking or advising powers; that would be a very easy one, a straightforward one, to do. Jeff Rooker, in his paper, made an issue about how we could look at advising powers differently but limit our blocking powers. That was certainly something that could be looked at. Our blocking powers are so rarely used, and we would not get rid of them altogether, but you could extend our advising powers, for example, on SIs.

There are other points I could go into, but I think the one you would be most interested in is looking at the size of the House, and I think there is broad agreement that the size of the House does need to be addressed. It has largely come about as part of the coalition Government, in effect, where David Cameron wanted to award Liberal Democrats. He appointed peers at a faster rate, I think, than any other Prime Minister since 1958 when life peerages were introduced.

Q107 **Dr Dan Poulter:** Yes. I will perhaps come back to that particular point about the size of the House in a moment. The incremental reform that you suggested, which was ending the hereditary by-elections, is only going to gradually erode the hereditary numbers.

Baroness Smith of Basildon: It is not a numbers issue.

Dr Dan Poulter: No, indeed. That is your one easy suggestion. Lord Newby?

Lord Newby: One of the problems that you are faced with is there is no consensus on virtually anything.



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Baroness Smith of Basildon: No absolute consensus. You get broad consensus.

Lord Newby: No absolute. There is a broad consensus that the House of Lords is too big and should be reduced in number, but there is no consensus thereafter on how to do it, not least because each of the parties is differentially affected by virtually any reform that you might care to make.

In terms of what could be done in the relatively short term without major legislation, you could strengthen the Appointments Commission, as we have said. You could stop hereditary by-elections, and you could have a moratorium so that at least you are turning off the tap temporarily. We could go a bit further in encouraging people to retire, although I think that scheme has worked pretty well, really, and it is now more acceptable for people to retire, and I think more will do so in the future.

Baroness Smith of Basildon: I have said on retirements that I agree with Dick on this, but I think it is also an issue that there are people in the House who would retire—certainly on my side I think there are people who would consider retirement—but because our appointment level has been so low since 2010 they do not feel their numbers would be replaced. They would be replaced by somebody from the Government party. That is why I think the whole thing—looking at not just size, but the political balance within that size, how the House works—has to be part of the same debate.

Q108 **Chair:** But you both agree that there should be a cap on the size.

Baroness Smith of Basildon: Yes. Either an absolute cap or a small band but, yes, there has to be a cap on the size.

Lord Hope of Craighead: Can I mention retirement first? I regard it as part of my job to spread the message about retirement. The profile of my group is that, on the whole, we are rather older than the other groups because of the way people come in, and I have worked quite hard to achieve more retirements.

Can I come back to the hereditary peers? The groups differ in their numbers. The numbers of hereditaries on the two groups beside me are very, very small indeed. In my case, it is about 15% of my group. Of course, I recognise that it is an absurd situation having these by-elections, but if it is to be stopped, I would like the ways into the Cross-Bench group to be widened, because otherwise I am losing people at retirement, and indeed mortality, without replacements. It really has to be a quid pro quo. It was always put in as a temporary measure anyway, just to hold the position until a proper reform of the House of Lords was achieved. From my position, I do not think it would be right to just terminate it without looking at the consequences for my group.

Q109 **Dr Dan Poulter:** I think there is an agreement. Across the answers I



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have heard, there is agreement generally that the number in House of Lords is too big. The broad general analysis is there are about 200 more peers than there are MPs at the moment.

However, there seems to be some disagreement, from what Lord Newby said, and the emphasis that Baroness Smith put on the issue, about ending the hereditary by-elections and the impact that would have on a particular subset, as Lord Hope has indicated.

I wonder, if you had to choose between making an argument for incremental change—there is quite a lot of disagreement about what that incremental change is—and putting an absolute cap or a moratorium on new Members, or something along those lines, which of those would you choose as being a crude mechanism to deliver some level of reform?

Lord Hope of Craighead: I would like an absolute cap, but that depends on the co-operation of the Prime Minister, frankly, whose prerogative is affected by the appointments process that she operates.

An interesting statistic you might like to bear in mind is that we had a vote last week on the Brexit Bill, the largest vote since the 19th Century, and the total figure voting was 633. You test that against the nominal number of our membership, which is over 800, and you can see that in practice, even with all the efforts to get people in, we do not get anything like the 800 people coming in. There is a question as to the actual working number as opposed to the nominal number that is worth considering. I would go for a cap, frankly, at around 600.

Q110 **Dr Dan Poulter:** Agreed?

Lord Newby: Yes.

Baroness Smith of Basildon: I might go slightly lower, but I think the key thing—and I think you are absolutely right—is that we are not going to say today, “We can agree on this”.

On the hereditary by-elections, David says how it affects his group more. It would over 30 years or so when they have all died out, but it would not affect it before then. However, anything we are looking at has a different effect on different party groups, and that is why I think the Lord Speaker’s Committee, which we all have representatives on, was trying to get down to some of these issues. I do not think there will be one thing that is the magic bullet. A moratorium, for example, would advantage the youngest parties and put new people in, and those of us who have older groups would gradually fade away, and the number perhaps would not improve the work of the Lords. I think we can get the Speaker’s Committee to look at this and come up with, perhaps, a range or matrix of issues. If we can get some principles established, then we can see how to achieve them.



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Lord Newby: I think we do agree on the principle; everybody agrees that the House of Lords is too large and should be reduced. End of agreement, I think.

Baroness Smith of Basildon: No, I am more optimistic. I think that is just too simplistic, to say we only agree on that. I am going to put a little bit more faith in the Committee. I do not know who your colleague is on the Committee.

Lord Newby: Alan Beith.

Baroness Smith of Basildon: Alan Beith. We have Ann Taylor and Christine Crawley who are looking at these issues. It is going to take some work, but I think there has to be a determination from all of them to try to find not just the common principle that we think it should be reduced, but how we reach that.

Q111 **Chair:** On the effectiveness of the retirement system, has it exceeded your expectations, or are you disappointed with the number of people who have exited?

Baroness Smith of Basildon: I think it will take a cultural change over time, because many came into the House expecting—

Chair: Disappointed?

Baroness Smith of Basildon: No. Disappointed is probably a bit too strong, but you have to do something else at the same time. As I say, I have colleagues on my side of the House who would retire if they thought that their work would be undertaken by somebody else, but they do not see a new Labour appointment coming in. They have seen hardly any Labour appointments, and lots for other parties. If there was that cap on numbers and reference to political balance, then I think you would see more retirements.

Lord Newby: I think in our group it has worked reasonably well; we have had people who have not participated, who are becoming frail, and who have retired. We have had other people, like Shirley Williams, who have had a higher profile, who just took the view that, given the age they had reached, they thought they should withdraw. As I say, I think for my group it has worked pretty much as I would have expected.

Lord Hope of Craighead: I think the same is true as a Cross-Bencher, but it does require constant effort to look around to people who are reaching that point. The numbers involved are relatively low, so it is not the cure-all. It is not meant to be a cure-all, really, but it is something that can be achieved and continued to be worked on.

Q112 **Mr Andrew Turner:** Lord Hope, I think you have answered this question for me. The numbers here last week were 633. Is it really necessary, given all those efforts to get people here? The absolute maximum is virtually 633.



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Lord Hope of Craighead: Somebody has calculated for me that we need to have about 450 to staff the Committees, and that is the starting point. Then you need some extra residue on top of that, and so on, which is why I go for about 600.

There is a feature of the Lords that I have noticed in my time, and probably others have too, that the more emphasis you put on attendance being necessary and participation being necessary, the less time there is for individuals to speak in debates. We have time-limited debates where you get two minutes; one the other day was with one minute each. That is a feature of numbers as well. It is one of these things where you have to be careful what you wish for, if I can use that expression. I think the overall number of 800 is bad for the image of the House, and we could certainly come down to 600 without diminishing, really, the participation of people who really do participate. If it is about image, you can reduce to 600 without too much loss of effort.

Lord Newby: I would agree. Yes, I would agree with that.

Baroness Smith of Basildon: I would agree with that. I think it is more than image. I would start not by just reducing numbers. It is about the point that David made: what is the number we need to fulfil the functions we have to do? We did a report from the Labour peers back in March 2014, and we started from the basis, as David said, of "How many do you need to fill Committee places, and what is the other work of the House?" It is about being an effective House. You are absolutely right, I think probably just over 600 is the maximum that will attend the House. Anyone who could walk was there last week, pretty much. I do not think that shows the House in a good light either. At the same time as the Government is proposing to reduce the House of Commons, to have seen so many appointments in the House of Lords I think is completely wrong.

Lord Newby: As long as the House of Lords is appointed—and as you know, we would like it to be elected—it makes sense for it to be not simply a House of full-time politicians, which means, by definition, you need more than you would otherwise need, because you are having to spread it out. All of us have to find people to sit on Committees, for example. If people are doing other jobs outside, which we encourage, because that brings expertise in, the amount of time they then have to do Committee and other work in the Lords is limited. So you need more people than if it were a full-time House to fill all those positions.

Mr Andrew Turner: You have agreed on 600.

Chair: You agreed on capping the size, but now you are talking yourself out of having a cap on the size?

Baroness Smith of Basildon: No.

Lord Newby: No. No, because the cap on size that we argued for when we were talking about an elected House in the last Parliament was 450.



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What we are saying, as Lord Hope said, is that you need it to be rather larger than that if it is not a full-time House.

Lord Hope of Craighead: It is really an answer to the prerogative problem. If there is a cap on size then the Prime Minister cannot go above the cap, and that is perhaps the most critical point of all, really, when you think of numbers.

Baroness Smith of Basildon: It is a full-time House, just not all the Members are full-time.

Q113 **John Stevenson:** Clearly an overwhelming majority in the House of Lords are for a cap, and effectively a reduction in the size of the House of Lords. The three of you would appear to be supporting that view. Just take 600 as being the figure; we want 600 as the absolute maximum in the House of Lords. What is the obstacle to achieving that?

Baroness Smith of Basildon: First of all, I would not accept that everybody thinks there should be a cap. The three of us here agree, but in discussions I had with the Government previously, they were not prepared to accept a cap because I was told you could not restrict prime ministerial appointments. I do not consider that cap does, but—

Q114 **Chair:** Are you saying that the Government are the obstacle?

Baroness Smith of Basildon: It may not still be. When I raised this last time, it was under a different leader in the House of Lords. The position may have changed, I do not know. But the Government at the time was not in favour of a cap. Maybe things have changed, but that has not been the position so far.

Q115 **John Stevenson:** That is the Government's perspective. The House of Lords themselves think there should be a reduction in the number of peers. You all seem to be broadly coming around at that figure of 600. Let us assume that that is the figure that the House of Lords wishes to achieve. What are the obstacles to getting there, ignoring the Government's perspective at this moment in time?

Baroness Smith of Basildon: I think the obstacle first of all is agreement. That is why I am saying I am more optimistic than Dick Newby on this. The Committee will meet, we are looking at this now, and I do not think they are deciding, "This will solve the problem", or, "X will solve the problem". Retirement age brings its own problems. There is automatic retirement age, but I am sure Paul Flynn would agree with me that there are Members in their 80s who make a phenomenally great contribution. Alf Dubs, for example, is at my side. Then you have others in their 30s who you never see.

The Committee will have to look at things like attendance and activity, while not at the same time ignoring those people who bring expertise when they do come in, but there should be a basic level of attendance. Some of those things have been partially dealt with. If you do not attend



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in a Session now, you are automatically retired, and that is the end of your membership of the House of Lords. Some things have been addressed. I think what the Committee will be looking at, and I hope they are looking at—I look forward to seeing their report—is bringing all these issues together, seeing what the impact of them would be, and seeing if we can coalesce around some of them to try to bring the size down. It needs buy-in from the Government as well.

Q116 John Stevenson: You see a direct link between composition and membership and the number, rather than just saying 600 and effectively you have to wait till the numbers drop to 600?

Baroness Smith of Basildon: I think we have to proactively work to get the numbers below that level first. Just to say, "The number should be X", 600, for argument's sake, and wait for people to die off to get to that number, I think is unacceptable.

Lord Newby: I think the answer is that you need leadership from the Government, because you are going to need legislation to do all this. If you say, "We want a cap of 600", first, you have to legislate for that, and then you need legislation, probably, in terms of how you do it. The devil is in the detail in reducing the House of Lords, as you have heard. All the groups are differentially affected by the different methods of reducing numbers. You need a lead from somebody, and the only people who can give that lead are the Government. They are going to have to be pretty resolute, because there will be opposition, as we have seen in the past, to every single change that is proposed to the House of Lords beyond, probably, the cap, for which you could easily get a majority. You need some resolute leadership to push it through.

Lord Hope of Craighead: One advantage of a cap from the Cross-Benchers' point of view is that we can calculate the numbers we should have. There is fairly broad agreement across the House that the Cross-Benchers should amount to 20% of the House. At the moment we achieve that with our numbers of approximately 180. I think today we are 177. I would have to shed about 30 Members—35, possibly—to bring myself down to the proportion within the cap, and I can work on that as a target figure.

Q117 John Stevenson: I think we will come to the size of groups and so on and their composition in a minute or two, but what obstacles do you see to achieving consensus?

Lord Hope of Craighead: I do come back to the point of the figures, because in my case, given the 20%, I am different from the other groups whose percentage may vary from time to time. If you regard the Cross-Bench as a 20% figure within the total number in the House, I can work on people in a variety of ways; attendance, age, state of health, participation, and useful contribution. I think it may be, within our group, a question of persuading people to reduce. Lord Newby is absolutely right; at the end of the day, legislation is needed for one critical reason,



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and that is that we are all entitled to a writ of summons when each Parliament starts up. That gives us an unchallengeable right to attend. There has to be something done to stop that in some way so that those people who should no longer be part of the House are no longer entitled to wave their writ of summons and come in to the House.

Q118 **John Stevenson:** Just quickly, do any of you agree that there should be a retirement age?

Baroness Smith of Basildon: It is one of those things in principle—

John Stevenson: There is for judges, for example.

Baroness Smith of Basildon: Yes, absolutely. In principle, I agree with that. My difficulty is that you look across the House, and some of the best expertise comes from older Members.

Q119 **John Stevenson:** You could take the argument that, for example, we introduce a retirement age of 80, but it does not apply to anybody above the age of 77, or something along those lines.

Baroness Smith of Basildon: There may be ways; this is what I think the Committee has to look at. There are general views. Everybody thinks there should be a retirement age. They usually think it should be five years older than they are, when they expect to retire. So that is one of the problems we always have with retirement ages. That is one of those things that has to be factored in.

Can I just pick up something? I do not think it is for the Government to take a lead on this. I think it is for the Government to not be obstructive on it. We would have got the things about hereditary by-elections through the House, and I think Lord Hope's points could be catered for, but the Government have obstructed it unless there is unanimity. We will have to accept we are not going to get everybody to permanently agree on everything, so the Government has to say that if there is a broad consensus, they will work with us on this. If we just wait for the Government to take a lead, nothing is going to happen.

John Stevenson: Okay. Lord Newby, just out of interest, on age.

Lord Newby: On age, I am not necessarily very representative of all my group, but I am in favour. This will make me very unpopular with some of my colleagues; I would personally support a retirement age.

Lord Hope of Craighead: A question to look at is the age profile of those who come in. In my group people come in between 50 and 60, so one has to think of that against the contribution that they would want to make. If you come in at 60, I would have thought 15 years' service is probably a reasonable thing.

Q120 **John Stevenson:** You would be broadly in favour of that?

Lord Hope of Craighead: It is a combination of age plus length of service, and one could, say, do 15 years; three Parliaments. It could be



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made clear by the Appointments Commission that when you come in as a peer that is what your expectation is, and you will be expected to retire after one or other of these factors comes into play. It could be made clear at the beginning that that is the basis on which you come into the House.

Q121 Ronnie Cowan: We are all talking about the appointments to the House of Lords. I have a solution to this, which I am sure you are not going to like. Why don't we scrap the House of Lords and have a second Chamber that is elected by all the people of the United Kingdom, therefore it will represent all the regions of the United Kingdom, and that seems to solve a lot of our problems.

Lord Newby: I agree.

Ronnie Cowan: Let's have a vote.

Lord Newby: Most of the problems that Mr Flynn mentioned at the start would be resolved by elections, and certainly the very significant under-representation of the English regions, and of Scotland and Wales, would be dealt with by elections.

Baroness Smith of Basildon: I do not think it is quite as simple as that. The Liberal Democrats' proposals for elections that were put forward in the last Parliament had a 15-year term of office, because there is this thing about differentiating between the Commons and the Lords. I would find a 15-year term of office with no re-election completely undemocratic, because somebody being there for 15 years—the Chancellor has said people should be elected every year, which is probably going too far—and not being able to stand for re-election has no accountability in it. I am not a proponent of an elected House, but all I would say is, it changes the nature.

I think if you are looking at this, you need to look at how it impacts the House of Commons as well. I do not think you should see the House of Lords in isolation. I voted for the abolition of the House of Lords when I was a Member of Parliament because I did not support the proposals for an elected House or a hybrid House. It was not that I did not support the notion of a second Chamber—I think there is value in a second Chamber—but we have to think quite carefully how we do that. My reluctance to just to say, "Yes, elect it" is that I would not want a second Chamber to challenge the primacy of the House of Commons. If there are ways of looking at something or any changes on that, I am relaxed about it, but I think it has to be looked at in the context of Parliament as a whole, and not just thinking that by changing the House of Lords you can make a change that does not impact the House of Commons.

Lord Hope of Craighead: In my view, it would cease to exist if you made the body wholly elected, and that would have a real impact on the Committee work that I mentioned earlier, where our group contributes really very substantially to science and technology, medicine, and so on and so forth. I am very much in favour of something that would increase



the representation from elsewhere than London. I come from Scotland. I travel down every week from Scotland, and I am dependent on my £300 to pay my accommodation. That is all we get, apart from travelling costs. The question is: are people from Scotland or Wales and the more remote parts of England prepared to contribute to the work of the House given that that is all they get out of it, from the point of view of covering their costs, and the time and effort it takes to travel between the two places? We are short of representation from Scotland. We are short of representation from Wales.

Q122 Ronnie Cowan: The cost of a second House would be determined by the number of Members we have in it. We are not looking at electing 804 people, we are not looking at 92 hereditary peers, and we are not looking at 26 bishops as well, so the numbers are going to come down substantially.

Lord Hope of Craighead: They would, but I am not quite sure how you are going to solve the problem of regional representation without having some greater effort of persuading people to take part in the institution. The people putting themselves forward to the Commission, as far as I know, are very much centred around this part of the country. Strangely enough, we get more hereditaries from Scotland through the by-elections than we do by appointments through the other systems.

Q123 Ronnie Cowan: That is possibly because people look at the House of Lords as it is now and are being asked: do you want to be part of this? A completely different second Chamber would attract a different sort of candidate.

Baroness Smith of Basildon: There are lots of unknowns in this. I am not necessarily arguing against you, but I think you do have to look at Parliament as a whole. We were talking about incremental reform before, and that would not be an incremental reform, that would be a major change. I think with major change, we need to just look at Parliament as a whole, beware of unintended consequences, and be clear. I just could not support the last proposals put forward for an elected House; there may be other proposals I would support, but those proposals with a 15-year term I thought unacceptable.

Q124 Ronnie Cowan: Do you see any future for 92 hereditary peers?

Baroness Smith of Basildon: No. I have been arguing for many years, and I have supported—I spoke at the Dispatch Box about it—ending the by-elections immediately. To be honest, nobody knows, really, apart from some notable exceptions, who are hereditaries and who are not. I think the differentiation we make in the House of Lords is about those who get on and do a job of work in the House—people who do not are drawn to your attention—but for those who work, you do not know if they are hereditary or not. When I raised this in debate recently the Minister said he could only support incremental change, and that was not an incremental change. Given that the change would probably take effect



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over 30 years, I think that is pretty incremental. I do not justify hereditary peers. It was a deal that was done that was supposed to be temporary and has lived its time. That is not to criticise in any way those who play a part in the House across parties and on the Cross-Benches, but the by-election system is indefensible.

Lord Newby: I think the concern that was expressed when the reforms were proposed during the coalition Government about challenging the primacy of the Commons can be assuaged in part if the House of Lords is seen to have a very different basis of representation, which it would have had. Namely, people would have been elected on a regional basis. Our constitutional proposals go further than just electing the House of Lords and support the concept of the federal United Kingdom. In a sense, they hang together. I think that electing people regionally would give a very different background to their coming to this place. I must say, I never found any difficulty when we have been looking to appoint people from any part of the country to come to the House of Lords. It is not a place that people tend to shy away from if given the opportunity to come, in my experience.

Baroness Smith of Basildon: I think an elected House would be more powerful. If I was standing for election to any body—and I have stood for many, many elections—I would hardly knock on doors to say, “Please vote for me, because I want to be a Member of the second Chamber so I can advise or express an opinion to the House of Commons”. I think an elected House would want more power. That has to be factored in, in terms of primacy. I accept Dick’s comment that it would not challenge the primacy; I think it would. That may be what people want, but there has to be a conscious decision made about a way forward.

Lord Hope of Craighead: The only other point to add on this is that there is another possibility, which is an elected House except for the 20% who are Cross-Benchers, who would be appointed. You would preserve the expertise that comes from the Cross-Benchers through the appointment system, which might be a bit more broadly spread around the regions, as I have been saying earlier.

Q125 **Chair:** This does not sound like part of the most obvious consensual next step. Given that there is consensus over the size, how can this be done without greater control over appointments?

Baroness Smith of Basildon: It cannot.

Q126 **Chair:** It was suggested in the debate on 5 December that it is not possible, and you agree with that assessment.

Baroness Smith of Basildon: Yes. Entirely.

Q127 **Chair:** There has to be control over the appointments process.

Lord Hope of Craighead: I think you come back to the prerogative. So far as the people coming into the Cross-Benches are concerned, the



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numbers are so few, year by year, that they do not affect the overall numbers.

Chair: That is a second point of consensus. There is a cap on the size, and more control over the prerogative. I think we are making some progress. Now Mr Hopkins.

Q128 **Kelvin Hopkins:** Thank you, Chairman. I have to say, my views are more radical than my question would imply, but I shall exercise some self-discipline. There are vested interests at every turn, and a major vested interest is that of the Prime Minister. A more managed system of appointments implies greater limitations on the Prime Minister. The Prime Minister is understandably reluctant to surrender her patronage power. How do we overcome that conundrum?

Baroness Smith of Basildon: I do not think there is a suggestion from most to remove the Prime Minister's patronage altogether, but I think it is about bringing an element of control, transparency and audit—all those kinds of issues—into the process. At the moment, it is a different process. As David has said, if you are a Cross-Bench Peer you have undergone a different level of checking from HOLAC, the House of Lords Appointments Commission, than if you are a party-appointed peer. While I think if you are representing a political party it is understandable your political party wants a role in your appointment, there could be a wider remit for HOLAC to address.

One of the things HOLAC could be asked to do—and this would be for the House of Lords Committee and the Lord Speaker's Committee to look at—is, "Can you suggest criteria that you think it would be appropriate to look at if you had a greater say or a greater scrutiny role on political appointments?" If that is going to happen, whether it is HOLAC or a similar body looking at political appointments, then I think there has to be great transparency on that, and they have to be given the resources and the time to do it.

We have heard several times already about where HOLAC have been given the whole load of appointments and told, "The Prime Minister wants to announce these on such-and-such a date". If they are going to do an effective job of scrutiny, they have to be given the time and resources to do it. I would not say there is a suggestion of removing prime ministerial patronage altogether, but there needs to be far greater transparency, and it cannot just be, "I am putting these people in because I need to up my numbers", or, "I am in a coalition now, so we need to increase the numbers of two parties". I think that has led to the current position we have where the House is so large.

Lord Newby: You would still have prime ministerial patronage, just as you have patronage from the other party leaders, if you had a cap. The two constraints that I think we are suggesting will be put on that patronage are first on the numbers, and secondly saying that anybody that the Prime Minister put forward would still have to go through a



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slightly more rigorous process with the Appointments Commission to make sure that they were people who would play a valuable part in the House of Lords, which clearly has not always been the case in the past.

Lord Hope of Craighead: My group depends on the Prime Minister, because first of all through the 10 per Parliament route it is for the Prime Minister to decide when, let us say, a former Cabinet Secretary or the Chief of the Defence Staff should come in. The Prime Minister also controls entry through the Appointments Commission, and it is quite interesting. David Cameron established a principle that there will be two a year coming in through that route, but it broke down towards the end of his period in office and there was one year when he did not appoint anybody, although there were recommendations. Four were then appointed to make up for that, in I think 2015, but we have had no appointments since then, although the Appointments Commission have at least four people that they have recommended. There is a complete moratorium on this for some reason that I do not understand.

So there are two aspects to this. On one hand you want to control the Prime Minister's appointments to the political groups, but at the same time encourage more generosity, should I say, to the Cross-Benchers. In particular, if you ended hereditaries, we would have to ask the Prime Minister to be prepared to make up the gap if somebody who was an hereditary died, to replace the person through the Appointments Commission. That side needs to be looked at as well.

Q129 **Kelvin Hopkins:** Could the Prime Minister not simply be removed from the picture, and the commissioners could appoint worthy people? There are some automatic people, former Cabinet Secretaries and so on, but the problem with the Prime Minister's appointments is that it is not just for the House of Lords; it is for the House of Commons too. It is a corrupting influence, is it not, that some people in the House of Commons are looking to membership of the House of Lords and will curry favour with the Prime Minister and be obliging when it comes to resigning their seats at a convenient time so that the Prime Minister of the day can slot in favourites to safe seats? These things go on. Is that not a major problem?

Lord Hope of Craighead: None of our group comes by that route. None of the people I am talking about have been Members of Parliament at all.

Q130 **Kelvin Hopkins:** It is about appointments in general, not just to the House of Lords, and it is the effect on the House of Commons as much as on the House of Lords. With the Blair and Cameron Governments, particularly the Blair Government, Blair was very adept at slotting people into safe seats when they became available and one or two Members went to the House of Lords. In fact, one Member was offered a seat in the House of Lords, we understand, then he was replaced in his seat and not put in the House of Lords and became very angry because he thought he had been tipped the wink. These things damage our democracy.



Lord Hope of Craighead: I think I am right in saying that constitutionally, all the recommendations for the House have to pass through the hands of the Prime Minister to go to Her Majesty, and one has to think about that route. That is why I am saying that in my case with the Cross-Benchers we are not looking for people who have been in Parliament before. That is the whole point of our group, and I am not sure the point that I fully understand you are drawing attention to affects my particular group at all.

Baroness Smith of Basildon: I do not know if I can entirely satisfy you, but one of my worries when we are looking at the issue—I think it might have been David who suggested there should only be a 15-year term for people to stay in the House of Lords—is that it encourages, I think, the term to be the last 15 years of your political life when you go to the House of Lords, which I think is unacceptable. I think if there are clear criteria that you are expected to fulfil X, Y and Z, that removes that.

I can understand your comments, but I think in some ways, if people want to go to the House of Lords to do the work that is required of them from a House of Lords point of view, I am not terribly worried. What I do worry about is people who think, “I can then take it easy” or, “I will get a seat in the House of Lords if I stand down”—that kind of corrupting influence. My priority would be that it would not wholly resolve the issue if that should still occur. I think it is less likely though, with boundaries coming up—who knows?—but I think with a criterion that there are expectations of those who come in, the danger is there are some people who would promise anything to get in. That is why I think the steps we have started to take whereby if someone does not attend in a Session, for example, they are gone, might be looked at more by the Committee looking at this. There is always going to have to be an element of Prime Ministers having a role in appointment, but if you can firm that up with criteria, that may help.

Q131 **Kelvin Hopkins:** One last question: the great thing about the House of Commons is that despite the fact that parties try to control selections, awkward-squad individuals do get into Parliament and do make a difference. It is important to have people who are grit in the oyster—people who are going to challenge, not just go along. In the House of Commons, that can happen. In the House of Lords, that is almost impossible—especially since the hereditaries are going, because the hereditaries might be more independent.

Baroness Smith of Basildon: Where I would dispute that is that in practice it just does not happen. Once somebody is given an appointment to the House of Lords, they are beholden to nobody except their conscience. I have to say I do not find in my group, and this might be particularly evident over the last few weeks, people thinking, “I was appointed by the Prime Minister. I have to be of that point of view”. It just does not work like that. I can think of numerous examples from all political parties in the House of Lords where people who might have been



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expected to vote in a certain way just do not. There is a certain perception—there is not the same Whip in operation in the House of Lords as you have in the House of Commons, and people do not feel bound in the same way. They have party allegiances, but that is not absolute. If you look at rebellions you would probably find there is more independence from those in the House of Lords.

Chair: Some might argue that is one of the advantages of an unelected House.

Marcus Fysh: Exactly.

Chair: Moving on; some of what I think you have in front of you has been covered, John, but carry on.

Q132 **John Stevenson:** On that issue of the power of the Prime Minister and patronage, if we were to cap it at 600, say, and if we curtailed the Prime Minister's patronage to a certain extent in the appointment of those 600, should the Prime Minister still have the ability to appoint Ministers over and above that 600 as a general principle?

Chair: Yes or no, briefly?

Baroness Smith of Basildon: I would argue no. My idea has always been a band. It might be a band of five or 10—

Q133 **John Stevenson:** So the Ministers would have to come from that 600?

Baroness Smith of Basildon: The Ministers would have to come from that, no problem at all.

Lord Hope of Craighead: I think that would follow.

John Stevenson: That is fine. Thank you.

Q134 **Chair:** So there is an agreement on that point? Interesting.

Baroness Smith of Basildon: There is agreement. I would say that I have suggested a band of five as an absolute number, but the Prime Minister could go below 600 and could keep some of them in his pocket. There is no problem with that.

Q135 **John Stevenson:** Again, we have broadly accepted that there is a limit to the size of the House of Lords, but then we have the issue of the groupings within that number. What sort of principles should apply to how we balance between the political parties and the Cross-Benchers and any future new political parties that may form? How do we go about dealing with the composition of the 600?

Lord Newby: We wanted it elected, which deals with it automatically. I think if it—

Q136 **John Stevenson:** I do agree with you, but on the assumption that it is not elected?



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Lord Newby: If you are not going to do that I think it would be possible, although very difficult to get consensus on it, to reach a system under which you looked at results from possibly two or three cycles of elections and had some combination of votes and seats taken into account. I think any system has its shortcomings, but I think that would be probably the best way of dealing with it. At the moment we have the situation that the SNP under the current rules refuse to be in the House of Lords, which means that is a skew in the system, but I think that is the way you could do it.

Q137 **John Stevenson:** You could say the Liberal Democrats are over-represented as well.

Lord Newby: The Liberal Democrats throughout the last few decades have been under-represented in the House of Lords. Temporarily, taking the House of Lords alone, we are over-represented; taking Parliament as a whole, it is about 8%.

Q138 **John Stevenson:** Are those the principles that you think should apply?

Lord Newby: That is what I was saying. I think you have to look at some combination over two or three cycles, because clearly on any individual election any party, as we know to our cost, can go up and down quite a bit, and I think that stability—and this is not a Liberal Democrat point—in the House of Lords makes a lot of sense.

Baroness Smith of Basildon: Largely the same. I think the principles are that there should be a certain percentage, 20% of Cross-Benchers, and I think the House welcomes Cross-Benchers. It is one of the issues that the public thinks of as independence in the House, and they rather like that as well.

Another principle is that Governments should not have majorities in the House of Lords. That does not mean to say they cannot be the biggest party, and they do tend to become the biggest party over time. Between 1997 and 2005, through appointments, we became the largest party in 2005. This Government has done it much more quickly than that because of the rate of the appointments they have made.

The Labour Party, when it has been in Government, has always governed without a majority in the House of Lords. There have been a few ping-pongs, but by and large it gets its business through because of the primacy of the Commons, so I think that is quite a good principle because it challenges the Government to make a better case and to engage in debate with the Commons having the final say.

I think there has to be recognition of the role of political parties and an official Opposition, and you are right, the Liberal Democrats are over-represented. We would argue you have the SNP under-represented. You could argue that UKIP are under-represented as well. I do not think we can ensure that we have a direct link with one election. I know there were some suggestions last year about having one election. I think if you



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look at probably two, three or four election cycles you would gradually move to ensuring that it was not out of kilter with the House of Commons, but neither should it be a reflection of the House of Commons.

Q139 **John Stevenson:** Lord Hope, I am sure you are going to say 20%, and I get that. What would you say about the remaining 80%?

Lord Hope of Craighead: Can I add something about the 20%? I would argue against a hard and fast line. One of the problems of the unelected House is that you cannot be too precise about this. I say 20%, but tomorrow I may persuade three people to retire and then I am below the 20%. How do I make that up instantly? I cannot do that immediately.

Also, there is movement across the groups. I receive one or two people who for various reasons have decided to leave the Liberal Democrat Party or the Labour Party, and some of the people do so because, in the case of the Tories and the Labour Party, they were appointed to be Ministers without any previous party affiliation. They have served their time as Ministers and they would prefer to be on the Cross-Benches and not subject to Whips. So there is a certain amount of looseness in the figure.

Q140 **John Stevenson:** Accepting that it is around 20%, what principles would you use for the remaining 80% or thereabouts?

Lord Hope of Craighead: I am not a political animal. I am not sure how this can be resolved without discussion between the political parties.

Q141 **Chair:** Lord Hope, I am going to press you on this, because it is quite probable, or possible, that there will be a proposal at some stage that may require you to exercise an opinion in one Lobby or another. So, what is your view?

Lord Hope of Craighead: I do not think one can do better, frankly, than trying to reflect the performance of the parties at the last election. The problem is that you then find if there is a big switch at the election, with a dramatic fall in one political party, people are in the House for life. How can you adjust the thing? You cannot adjust it instantly to reflect the performance at the election. Broadly speaking, if you are thinking of appointments coming in they should do their best to reflect the result of the election, but that is as far as I can take it.

Q142 **Chair:** One of the suggestions that has been made is that in order to adjust the size of the party groupings, the party groupings themselves should have elections to elect from their own number the requisite number for that Parliament, be that what it may. What do you think of that proposal?

Lord Hope of Craighead: That would suggest that one of the party groups that have lost heavily at the election would have to select people within their group to leave. That would be the logical conclusion of that, to make room for other people to come in to rebalance their position. To



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achieve that is going to be extremely difficult without some kind of statutory backing.

Q143 **Chair:** What about the principle of it?

Lord Hope of Craighead: I can see the value of the principle, but how do you achieve it with people who like the position that they are occupying in the House?

Q144 **Chair:** Baroness Smith, what do you think of that proposal?

Baroness Smith of Basildon: That is one of the reasons I would not support having a reflection from the last election. You do a cycle of elections, whatever that cycle is. I think we want to avoid making this more complicated than it need be by saying that after every election you have to elect or not elect. Once you have the proportions decided—hopefully the Committee will come up with something—and we have to work down to those numbers, I think there has to be discussion within the groups of how they achieve the numbers they are expected to have, and it may be different.

Q145 **Chair:** It has to be something that is repeated every now and then. It cannot just be a one-off.

Baroness Smith of Basildon: Yes, it cannot be a one-off but it may not be repeated every year. If you are looking at a three-year cycle there will not be dramatic changes, and I think all of us find in our groups that we have some churn during the course of a year. In our case it is Members leaving, often not of their own volition. With the age of our Members we have had a number who are no longer attending or leave because of ill health, or they have died, and you do get that churn every year. It may be that you ask others, “Are you going to retire?” I do not know exactly how you would do it, but I think you want to avoid having dramatic changes from election to election, because that is not what the House of Lords is. It is not supposed to reflect the House of Commons from election to election, but over a cycle of elections.

Q146 **Chair:** Lord Newby, nobody has any illusions that this is a more difficult problem for your party because of the way the electoral dice have fallen, but you said earlier that you would countenance some reflection of cycles of elections. Is that where you think there might be some consensus about this system of controlling the numbers?

Lord Newby: Yes, I think so. Of course we are great optimists, so we hope that our current position is a temporary blip, but I think that doing something over cycles makes sense. That is what we were proposing when we wanted the House of Lords to be elected. It was to be elected over three cycles to give less volatility in composition than you had potentially in the Commons, and I think that is the way you have to do it.

Q147 **Chair:** So two cycles? Three cycles?

Lord Newby: We proposed three before.



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Chair: Three cycles?

Baroness Smith of Basildon: Yes. I said three or four, but I am not opposed to three. These are the things we would refer to our Committee.

Q148 **Chair:** The number of cycles you want reflects your optimism or not on future elections, perhaps.

Baroness Smith of Basildon: I think it reflects looking to manage stability of the House alongside getting that change. The problem for us at the moment is that our Members were largely appointed in Tony Blair's years during the Labour Government, and because we have had so few appointments since 2010 our Members are getting older. I think you do need to refresh and regenerate. Dick's group would be the youngest group because of the nature of their more recent appointments and younger people being appointed, but there has to be an understanding that there is work to be done, and you want to reflect on that and replenish and rejuvenate your membership.

Q149 **Chair:** Lord Hope, if there was a consensus between the parties about reflecting membership according to a number of electoral cycles, what would be the Cross-Benchers' attitude to that?

Lord Hope of Craighead: I think they would be content with the figure of three that has been mentioned, which seems quite sensible to me. It really is up to the political parties to decide whether they can work with that system.

Q150 **Chair:** We have already discussed the House of Lords Appointments Commission quite extensively. It has been suggested that if it is going to do more, it needs more resources and more powers. At the most limited extent, should it have a more interventionist role of vetting the appointments recommended by political parties and proposed by prime ministerial patronage? To what extent should it have a stronger role?

Lord Newby: I think it should have a stronger role, and as I say, I think one of the key elements in that would be to seek assurances from people about the part that they will play. I think that probably all parties can think of people who have been appointed who never had any intention of playing an active role at the point at which they were appointed. Incidentally, although Cross-Benchers follow a different system, there have been Cross-Benchers who have taken the view that they were being appointed but were not intending to be very active until they had finished a particular bit of their career. It is perfectly sensible to require people to give some kind of formal assurance that they are willing to take an active part in the House of Lords, because I think that would deter some people from allowing their names to go forward.

Q151 **Chair:** How should that be done? With some kind of requirement to sign a statement of commitment, or should there be a list of activities that somebody is undertaking to perform over a defined period? How should it be done?



Baroness Smith of Basildon: The reason I smiled as you said that is I have heard that said in relation to MPs when I was a Member of Parliament as well, so that always comes round to parliamentarians and how you define what the role is.

I would go slightly broader than that. I think you can seek assurances, but people can promise all kinds of things that they have no intention of doing, and once they are appointed there have to be those systems as I mentioned before, so that if someone does not attend, if they are not engaged, they can lose their membership. We have that partially in place now. If you do not attend a Session you are gone, and I think we should look at people who take repeated leave of absence to do other things and only intend to come back to the Lords when there is nothing else. I think that is probably abuse of the system as well.

I would like to see HOLAC work on some criteria, and I think it would be a useful thing for them to do. You can probably gauge from the public and from those of us in the House and from politicians what our expectations would be if somebody is coming into the House and what the expectations should be on appointment. So if somebody has been appointed purely because they have been a donor to a political party, that would not be acceptable. I have seen donors in the House who in one case, fortunately not from my party, I have seen speak once in the entire time they have been there. Maybe they have done work in Committee, I do not know, but that is not probably the best way to do the job of work that is needed in the House. I think there should be published criteria that are open to the public and open to Parliament as a whole of the expectations that should be filled. There should be relevant experience, that kind of thing.

Q152 **Chair:** Okay, got it. That suggests to me from the perspective of a Chairman of a Select Committee that there should be some kind of public pre-appointment hearing for each new peer. Just half an hour in front of the House of Lords Commission, to be cross-examined on the record about what they intend to contribute to the House of Lords. That would create a different atmosphere around these appointments. What do you think of that proposal? Lord Hope?

Lord Hope of Craighead: These appointments are discussed through the usual channels.

Chair: Well exactly, or rather a tap on the shoulder behind the scenes.

Lord Hope of Craighead: You tend to find people who are suitable for the particular Committee you are talking about. If you are talking about Science and Technology you tend to look to somebody who has experience in that field, and the same would apply to the Foreign Affairs Committee and so on. You have ad hoc Committees that we set up that are being discussed at the moment to discuss particular topics. There are different types of Committees. You could have a selection process for Standing Committees that when you have the ad hoc ones that are a



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one-year inquiry only, you are probably best to think of people who are most suited to it, and we know each other reasonably so that we can decide whether a particular person is suited to carry that through. We had one on the national health service and it was somebody who was medically qualified.

Q153 Chair: It sounds as though the Cross-Benchers are already doing this, but how good are the party leaders at appointing people that the House of Lords needs? I think of the dearth of lawyers on the Conservative Benches despite the pleadings behind the scenes of successive leaders of the Conservatives in the House of Lords. Are there examples like that in other parties?

Baroness Smith of Basildon: I have not ever been involved in any appointments for my party, so it is quite hard for me to make a judgment. I haven't thought about public hearings. At the moment that may come up, because there is a lack of confidence in the appointment system, but if there was a public element, so that the criteria were published and the people on the Committee people knew who they were, that might create a different atmosphere. I do not have a view on that. I have not thought about it before. It is something to consider, but at the moment I would quite like to look at the existing system, if it is more open and more transparent. I slightly worry if it is public that people's names have gone forward and they are rejected only because they do not fulfil the criteria at that time, or they have too many lawyers or doctors. That might be seen as something that is critical of them when it is just critical of the whole of the House, and their particular skills are not needed.

I personally would like to have a look at trying to beef up an Appointments Commission, whether it is HOLAC or a separate body with more transparency and more public accountability, and trying to create more public confidence in any system like that.

Q154 Chair: This Committee oversees public appointments. Why are there not advertisements and applications and interviews like any other public appointment?

Lord Newby: I do not have any objections to that. I had most to do with Liberal Democrat appointments to the House of Lords when I was Charles Kennedy's chief of staff, and during that period we had a system under which a panel was elected by our conference representatives from which the leader was required to make most of his appointments. We had a primary system for a list, and they had to stand for election and publish their manifestos before they got on that list, and I think that was a very good system.

There was still some scope for the party leaders to appoint people who had been from the House of Commons, but I have no objection in principle at all to having greater public scrutiny of appointments to the House of Lords, given that people who come to the House of Lords as



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politicians completely avoid the public scrutiny that the selection process as an MP requires.

Q155 **Chair:** Finally, we have talked a lot about the need for diversity, but if you have a commission like HOLAC, how capable is it of making everything rather safe and not having very exciting people coming into the House of Lords? At least party leaders take risks and interesting people turn up as peers who might not be approved by some establishment quango. How do you keep the real diversity? You can have lots of people from different parts of the United Kingdom from different racial and ethnic backgrounds, but if they all have PPE degrees from Oxford there is not much diversity.

Lord Hope of Craighead: The Cross-Benchers have among their number Lord Bird, somebody who never went to Oxford, who learned to read in prison.

Chair: Fair point.

Lord Hope of Craighead: An interesting individual who now contributes some very interesting ideas because of his background.

Q156 **Chair:** I am going to name some names, but who would have appointed Lord Pearson of Rannoch apart from a Prime Minister who liked him?

Lord Newby: I am sorry, Chairman, I thought what you were proposing was that the party leaders would still make nominations, but in order for them to be ratified they would have to go through a public process, not that the party leaders would be taken out of it altogether.

Q157 **Paul Flynn:** Lord Pearson wrote to us and sent us copies of letters he had from the previous Prime Minister saying that he was going to keep the representation of UKIP under daily review, virtually. Clearly, UKIP is grotesquely under-represented in your House and in this House, where it takes 16,000 or so votes to elect most of us and 4 million to elect one UKIP MP. Of all the absurdities that we have in our constitution now, do you think it is appropriate that the only one that the Government is going to put right with any urgency is to reduce the number of elected Members here before they attend to any of the other constitutional problems we have? Should we not have a balanced constitutional commission to look at all the problems that are there and come out with some agreement? Would the House of Lords not contribute a great deal to a rational future constitution if they oppose this self-interested decision by the Conservative Government to enact the only reform that would result in the election of more Conservative MPs?

Baroness Smith of Basildon: I think you heard my comments earlier that I think it is completely appalling that the Conservative Government is reducing the size of the House of Commons while increasing the size of the House of Lords. You may recall that there have been numerous votes. I think the only all-night sitting I recall as a Member of the House of Lords, and I remember them without any fondness whatsoever from the



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House of Commons, was on the issue of the boundaries Bill. Indeed, our last attempt to look at anything on the boundaries Bill was on a statutory instrument where the Electoral Commission recommended that there should be delay in the effective date of the register, and we lost that vote. The Conservative party won that vote.

I think the point you are making, Mr Chairman, about HOLAC was that it would only appoint the great and the good. I think there is an issue that Prime Ministers would put their names forward to a Committee, but I would question whether it should be HOLAC or another Committee that would look at this. One of my concerns would be that if we are looking at people in the medical profession, for example, we have a few surgeons but we do not have many nurses left. I think we only have one or two nurses left in the House. If you are looking at ensuring that you have representation on the Cross-Benches from professions as well, it should be at all levels of that profession, not just at the highest level of the profession, if the person can make a contribution to the work of the House.

Q158 Paul Flynn: Do you think there is a new urgency in the need for constitutional reform, in that the overarching priority of politics here and elsewhere throughout the free world now is the need to restore faith in politicians and political systems, because the alternative is the election of populist people like Trump, and that that urgency should be expressed in all of us going out to restore the reputation of politics?

Baroness Smith of Basildon: I think there is an issue about reputation in politics. I think we are missing a trick and misunderstanding it if we think it is about structures. I think it is far deeper than structures. In all my years as an MP I think I had two people contact me about the House of Lords, but on issues like MPs' expenses there were many more. I think we are making a mistake if we think that we can address the reputational issues of politicians by looking at the structures of Parliament. I think it is far deeper than that.

Q159 Chair: But you see the point I am making about the tendency for the establishment to achieve blandness.

Baroness Smith of Basildon: Absolutely, yes.

Q160 Chair: I am going to ask the House of Lords Appointments Commission how many Eurosceptics they have appointed during their period. How many Eurosceptics are there on the Cross-Benches?

Lord Hope of Craighead: I am not sure I can answer that. As Convenor it is not my job to interrogate people.

Chair: In a way, you do not need to answer. It was a rhetorical question.

Baroness Smith of Basildon: You may recall that in the days when I worked for the League Against Cruel Sports I might have asked the same question about those who supported or opposed fox hunting, as I was



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struggling to get legislation through on fox hunting. I think political issues arise that would not have been considered as a question that you would have asked, so in the years when Cross-Bench peers have been appointed, nobody thought to ask what their view would be if Britain wanted to leave the EU in the future, but as issues arise perhaps that is something that should be fed into HOLAC and the Appointments Commission.

Chair: My advice to someone applying to be a people's peer would be to be very wary about the answer they give. Anyway, that is my view.

Q161 **Kelvin Hopkins:** On managing the size of the House of Lords and how to achieve a size reduction, it seems that this would require at the very least a political agreement between the groups in the Chamber, quite apart from the House of Commons, the Prime Minister and everyone else. So how committed are you personally to the idea of your group agreeing with other groups about reduction?

Lord Newby: We think very strongly that the House is too large, and we are very happy to have discussions with anybody in the search for an agreement. As you have seen this morning there are some elements of an agreement that might be relatively easy to reach, but others that are more contentious.

Q162 **Chair:** So you are committed to discussions, but not necessarily agreement.

Lord Newby: We cannot be committed to agreement any more than any other group can be committed to agreement unless other groups and we agree.

Q163 **Chair:** Okay. How much would you like to achieve an agreement?

Lord Newby: We would very much like to achieve an agreement.

Q164 **Kelvin Hopkins:** Is it not the reality that each group would say, "Well, as long as it is some other group, but not my group", especially when a group is over-represented in the House and they might suffer? Is that not going to be very difficult?

Lord Newby: I think you are making slightly too much about the alleged over-representation of the Liberal Democrats. We have been in favour of a system that would by now have significantly reduced our numbers, because we would have had elections, and we still support that.

Chair: That is a very fair point.

Lord Newby: I do not think that is the relevant point. We would be very happy to have discussions and try to reach an agreement. The point I have made several times is that in all my experience, trying to reach agreement, far less consensus, has been found to be extremely difficult in practice to achieve.



Baroness Smith of Basildon: All agreements require compromise. I think if we are going to move this forward, if we are going to sit in a House that gets bigger and bigger every time a new Prime Minister wants to put somebody in, that is unsustainable and does not bring any credit to the House. It also does not help the work that we are doing. It is very difficult at the moment to see people on my side who would say, "Well, we would retire, but you will not get anybody else to replace me, so I am staying here, because I can do a job of work and I can come in on these days. Perhaps I am not as active as I used to be, but I am still fairly active in the House", and they do a very good job.

Just keeping on increasing numbers for the Government party will not work, so I think we have to reach agreement. It will involve compromise from all sides. I think I am putting a lot of faith in the Lord Speaker's Committee to come up with something that we can work with. It is harder for Dick, and I know you talk about what would happen under a different system, but we are only talking about this system at the moment. I think we are all going to have to accept that all our numbers have to be reduced, and there is not going to be any group that can say they have not lost somebody who was really valuable.

That is a worry, and that is why I think when the Lord Speaker reports, we have to look at that and establish the broad principles, but narrower than just saying, "We think we should reduce the size of the House." Once we have those principles we can say, "How can we achieve that?", and it may be a transition period over which we achieve it. It might not be that we can reduce to 600 next week, but it might be over the next two years or whatever. I am putting a lot of faith in the Committee because all parties and the Cross-Benchers are on it. The bishops have said themselves that they would accept reductions in their numbers if the House as a whole reduced, so there is an onus on us all to reach that compromise. I am very keen that we should be able to do so.

Lord Hope of Craighead: The Committee that has been mentioned is chaired by Lord Burns, who is a Cross-Bencher, and he is well aware of the views of the Cross-Benchers who have written in to him. I have encouraged my Members to write in and express their own views. What I am looking for is his recommendations as to how we should achieve within our group the reduction that is necessary, as I mentioned, when we know what the figures are. For me it is a relatively straightforward process—if we reduce to 600 then I have a target figure. I will look to Lord Burns's recommendations, and on the basis of that I will be strengthened in working with my group to achieve the reduction.

Q165 **Chair:** We are going to wait and see what Lord Burns's Committee has to say before we report.

Lord Hope of Craighead: Yes, I think it is reasonable to do that.

Q166 **Kelvin Hopkins:** We have already interviewed two of your former Lord Speakers, Baroness Hayman and Baroness D'Souza, and it was very clear



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from you too: it seems to me that all the changes you would be prepared to tolerate are very minor, marginal, incremental changes. If we are going to get radical changes they have to come through parties and elections, and the party that gets elected being committed to doing something different. Isn't that the reality?

Lord Newby: I think it is the reality, because I think there is such difficulty, as I have said, in getting people to agree. Different individuals have very different views.

Q167 **Chair:** What does it take to get your groups to come with you?

Baroness Smith of Basildon: It depends if we are talking about major change, Kelvin's all-elections radical change or incremental change. I agree with you, radical change has to come from the political parties, it has to be the Government that is in power bringing forward legislation. Lay that to one side for the moment. In terms of bringing the groups with us, for my group if there is a reduction in numbers I think they will be looking to fairness, and I think they have an open mind on it. There are some people who are concerned.

Q168 **Chair:** Basically, the pain could be mitigated by the pace of the reform.

Baroness Smith of Basildon: The pace and how fair they perceive it to be.

Chair: The fairness?

Baroness Smith of Basildon: Yes.

Chair: All agreed on that?

Lord Hope of Craighead: Yes.

Lord Newby: I think so.

Q169 **John Stevenson:** Do you think the initiative should be coming from the House of Lords or from the Government?

Baroness Smith of Basildon: It is coming from the House of Lords now.

Q170 **John Stevenson:** It depends on Lord Burns's report. If it is reasonable?

Baroness Smith of Basildon: The initiative in setting that up, yes, the report has come from it.

Q171 **John Stevenson:** To take it forward, if legislative change is to be brought in, do you think that initiative really has to come from the House of Lords rather than from the Government?

Baroness Smith of Basildon: All the initiatives on this have already come from the House of Lords. The Government seems to take the view that there has to be not just broad agreement but absolute consensus on



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something, and that is not necessarily the same position if legislation is needed.

Lord Newby: Virtually all substantive change requires legislation. The minor changes that we have had in recent years have been done by Private Members' Bills. You could do things by a Private Member's Bill.

Baroness Smith of Basildon: A couple of those have been blocked. David Steel's bill took forever. I agree with you.

Lord Newby: I was about to say the problem is that it is a very uncertain path, the Private Member's Bill, starting in the House of Lords, not least because it has to come to the other place. My view remains that if you are going to have substantive change you are going to need Government support for it anyway, so if they took the lead and made any legislative change a Government Bill, that would be much more likely to succeed than going through the Private Member's Bill route.

Q172 **Chair:** But the Steel Bill was a success without the Government taking the lead.

Baroness Smith of Basildon: But significantly changed.

Lord Newby: Absolutely filleted, and it took years.

Lord Hope of Craighead: Can I say that the purpose behind the Burns Committee's appointment is to achieve something that has a reasonable prospect of being accepted by Government, with a view to Government legislation? For various reasons that is the best way to proceed if we can achieve that. That is the aim, to find something that has enough consensus across the House for the Government to feel that it can work with it and put forward a Bill that would command sufficient support to be passed.

Q173 **Paul Flynn:** Lord Hope, you said that you thought there was an influence by monarchy in the choice of peers. Do you really believe that the monarch has an active role and takes up that role in the choice of peers? You said there was this further check that the appointment had to be approved by the monarch.

Lord Hope of Craighead: Please do not misunderstand me. The monarch is simply figurative, but every peer when appointed receives a patent that is under the signature of the monarch. The recommendation has to go through the Prime Minister to the monarch to complete the process.

Q174 **Paul Flynn:** You are not suggesting that she takes any active part in this?

Lord Hope of Craighead: No, no.

Q175 **Paul Flynn:** She acts in the same way that she does with honours, and we have been told that she takes no part in that, except only one time



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when she apparently took an active part to point out that one of the people who was due to get a knighthood was dead. Other than that she has not taken any active part.

Lord Hope of Craighead: Yes. It is purely a formal process within our constitution that that is the route by which appointments are made. The key person is the Prime Minister, and the speed at which things are done and the names that are put forward depend upon the initiative of the Prime Minister.

Paul Flynn: That is a relief.

Q176 **Chair:** What do you think could be achieved without legislation? Could any progress be made on any of this without legislation through conventional agreements?

Baroness Smith of Basildon: If the Prime Minister agreed to a cap on numbers, then I think we could find a route to reduce numbers. Part of the obstacle, particularly from the discussions I had with the former Leader of the House, is that no party is willing to reduce their numbers if they can just be increased again over time beyond that number, whether it is in a year or five years. I think the cap on numbers is something that the Prime Minister could agree to, and that would serve as an impetus to the parties to agree a reduction.

Q177 **Chair:** But that is like offering the Opposition a rod for your own back.

Baroness Smith of Basildon: It is not necessarily. It depends how they play it, but there is no way that you can reduce the numbers of the House if you do not guarantee a cap on the numbers overall.

Q178 **Chair:** If a Prime Minister was to agree that, of any party of any Government, they would have to be reassured that what they perceive as the imbalance against them inherited from the previous Parliament was going to be redressed at the same time.

Baroness Smith of Basildon: This Government has done that already. They managed to become the largest party in a very short space of time, so I think that issue has been addressed.

Chair: And we are in this arms race. Lord Hope?

Lord Hope of Craighead: We have legislation for two reasons. One is that if you are going to terminate the elections for the hereditary peers, you would have to amend the House of Lords Act 1999, and the second is that you need to address the question of the writ of summons, which was dealt with in the 1999 Act. You cannot have a system where we have all agreed with everything and then somebody turns up and waves the writ of summons and says, "Look, I have a right to come in anyway".

Q179 **Chair:** It can be disrupted by individuals regardless of what is agreed between—



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Lord Hope of Craighead: Yes. You have to allow for the fact that that is a possibility.

Lord Newby: The other thing you have to allow as a possibility is that even if the parties agreed voluntarily either to put pressure on people to retire or to bring down the size, there is nothing to stop a member of one of our groups opting to become an independent in order to avoid any pressure from their party group. It is a very imperfect system unless it is underpinned by legislation.

Q180 **Chair:** How could you deal with the independents in the legislation?

Lord Newby: That is one of the challenges, but you would absolutely have to deal with the independents because otherwise you could just get seepage out to the independents and they would end up being a big, uncontrolled group.

Q181 **Chair:** I can see the lawyer on this panel is not itching to give me a definitive answer.

Baroness Smith of Basildon: I think we have to show some leadership within our groups on this.

Lord Hope of Craighead: It is a very fair point. They are called non-aligned, and there are quite a number who choose to be and to remain non-aligned. There are some non-aligned peers who are in the process of transition from one group to another, and it is a very curious situation. There is a mobility within the House of Lords that you need to be aware of.

Q182 **Chair:** Could a law define categories of peers according to the party they were affiliated to when they first arrived in the House, or would that be a breach of Article 9?

Lord Hope of Craighead: I do not know if you can do that.

Lord Newby: I do not know if you could do it legally, but one of the quirks of the system is that somebody can change party in life but in death if they are a hereditary they revert to the party of which they were originally a member. So in our case, somebody was a Liberal Democrat hereditary, and he now sits as a Cross-Bencher but on his death the election for his successor will be as a Liberal Democrat.

Q183 **Chair:** Could this be addressed by the Standing Orders of the House rather than in legislation?

Baroness Smith of Basildon: End hereditary by-elections, basically. That would solve the problem.

Chair: If there is nothing further any of you want to add, I have one further question. A very brief one, Mr Flynn?

Q184 **Paul Flynn:** This House has belatedly got rid of wigs and we no longer print our Acts of Parliament on goatskin. When is the House of Lords



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going to end the practice of dressing up and looking like playing cards and looking like a pantomime and come into the 21st century?

Lord Newby: I think we are in the process of changing the position on wigs for our Clerks to bring ourselves into line with the House of Commons.

Q185 **Paul Flynn:** What about the Silver Stick-in-Waiting? Does he still exist?

Baroness Smith of Basildon: I do not know what a Silver Stick-in-Waiting is.

Paul Flynn: Oh dear. Robin Cook had a big campaign against him. We are going back a bit.

Q186 **Chair:** I just have one very brief final question. It relates to a point raised earlier by Mr Flynn. How are your party groups going to vote on the boundary proposals when they come to your House?

Lord Newby: We are not going to block them, so we will vote for them.

Lord Hope of Craighead: I have no idea, because as a group we have no corporate view on anything.

Baroness Smith of Basildon: As I understand it, all that has come before us is an SI, for which legislation has been passed, so there is not a constitutional reason for us to vote against them. As much as we think they are the most appalling proposals and fought against the Bill, the Bill has been passed. All that is left is the SI to give effect to the legislation.

Chair: So you will not oppose it.

Thank you very much indeed. It has been a very illuminating session, and if I may say so, the degree of courtesy and co-operation between the three party groups is a great example of why your House is so effective and a lesson to our own House. Thank you very much.