



Liaison Committee

Uncorrected oral evidence: Review of investigative and scrutiny committees

Wednesday 25 April 2018

10.45 am

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Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 1

Heard in Public

Questions 1 - 9

Witnesses

I: Dr Hannah White, Director of Research, Institute for Government; Maddy Thimont Jack, Researcher, Institute for Government; Professor Meg Russell, Director, Constitution Unit, University College London.

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Examination of Witnesses

Dr Hannah White, Maddy Thimont Jack and Professor Meg Russell.

Q1 The Chairman: Good morning. Welcome to what I am informed is a historic occasion, given that the Liaison Committee for the first time ever is taking public evidence. We are privileged that you are the witnesses for this historic step. Can you identify yourselves for the *Hansard* writer, please?

Maddy Thimont Jack: I am a researcher from the Institute for Government.

Dr Hannah White: I am director of research at the Institute for Government.

Professor Meg Russell: I am director of the Constitution Unit at University College London.

The Chairman: Welcome. As you know, this is the first review of committees in the House of Lords for 25 years, so we aim for it to be a fundamental review. The focus for us is scrutiny and what the House of Lords can best do regarding scrutiny. How can we complement the House of Commons and, as a result of that, best serve the interests of the entire Parliament, seeing as scrutiny is a parliamentary function? Given the strong position in regard to the expertise, skills and experience that reside in the House of Lords, how can we best, as Members, go about our scrutiny business?

As a general question to you all, what do you believe are the key strengths and weaknesses of House of Lords committees and their current structure? Is there a case for adopting a more thematic and flexible approach to committee activity in the Lords?

Professor Meg Russell: There are many strengths of the current committee system. I would identify one of them as playing to the strengths of the membership of the House, the very particular nature of Members' expertise and specialisms, and the culture of the House. You have things such as the Constitution Committee, which plays to the great strengths in terms of legal and government expertise; the Science and Technology Committee, which plays to the scientists in the House, and so on. The culture of the House, being less party political than the House of Commons, enables the committees to have a different culture and a different impact.

One of the great strengths is the complementarity, the fact that committees in the Lords do not simply duplicate the Commons, and we may want to talk more about that when thinking about the restructuring. On the cross-cutting nature, there are two elements of that: the complementarity per se, in that there is not duplication; and the fact that, while it is a strength of the Commons that the committees shadow government departments, it is also a strength of the Lords committees that they do not. It is good to have cross-cutting committees

complementing departmentally organised committees, as an overall system. Members of the House of Lords are able to take a more long-term perspective on things, and you could perhaps play to that more. There are some topics that are a bit too hot to handle in the House of Commons, which the House of Lords can deal with, not just long-term issues but ethical issues that are rather difficult for the Commons because of the elected basis of that Chamber.

The committees are taken extremely seriously for all these reasons: the expertise, the complementarity, the lack of partisan nature. In terms of the flexibility, the exercises the Liaison Committee has been doing in recent years in consulting on sets of ad hoc committees has clearly given you some flexibility, which is a strength of the system as well. This long-term review is very welcome, but the fact that you do a review on an annual basis of the needs for the next Session keeps you fleeter of foot, and it is a very inclusive process, at least as far as Members are concerned.

My list of weaknesses would be much shorter. Another thing we might come on to is the profile of the committees outside the House. From my point of view as an academic—and I have to bear some responsibility for this—there is a weakness in that the House of Lords committees are almost entirely under-studied. It is a source of some regret to me that this review, which is tremendously important, does not have much of an evidence base for the performance of Lords committees and the ways that they have worked. Now that you are doing it, I am regretting that I have not got to grips and done that work. It would be very interesting work to do. The Commons committees, which both Hannah and I have studied in some depth, have a lot more of an evidence base to build upon in comparison with the Lords committees.

The Chairman: There was the *Shifting the Balance* initiative undertaken in the Commons.

Professor Meg Russell: At the Constitution Unit, we did a study in 2010, which resulted in a large report, called *Selective Influence*, about the influence of House of Commons committees. We studied a set of committees in a lot of depth, looked at their reports, looked at their recommendations and did a lot of interviews. That fed into the Liaison Committee's work in the Commons on changing working practices. That sort of thing has not been done at this end. Given how different your committees are, that puts you at a disadvantage in the review. As I say, mea culpa, I have not done it, and the IFG has not done it. Nobody has done it, unfortunately, and that is a shame.

The last thing, which I am sure Hannah and Maddy will say something about, is the need to relook at the EU Committee structure in the Brexit context.

Dr Hannah White: I would echo a lot of that, and echo the fact that the IFG has not explicitly done any focused study of Lords committees. We have done a number of pieces of work, and two that have specific

relevance to your review. One is the piece of work that I did when I went to the institute in 2014, which reported in 2015, looking at the effectiveness of primarily Commons committees, but one of the case study committees we looked at was the Parliamentary Commission on Banking Standards, which was a joint commission. In the course of that piece of work, I did a lot of interviews with stakeholders of the Home Affairs Committee, the Defence Committee and the Parliamentary Commission on Banking Standards. Many of them had also had experience of giving evidence to Lords committees, so through that process I gathered some opinions on how the Lords system is working.

The other thing we do at the institute is a project we call Ministers Reflect, where we are building up a big public archive of what you might think of as exit interviews with former Ministers—Lords Ministers and Commons Ministers—who reflect on their time in government and what it takes to be an effective Minister. Some of those, in the course of those interviews, have reflected on the experience of giving evidence to Commons and Lords committees. That is the evidence base I can speak from.

I would certainly, off the back of that, support what is well rehearsed: that Lords committees are seen to be more expert, and that the membership has expertise that enables it to undertake very detailed, forensic scrutiny. We have Ministers saying on the record, “The fact that I had to go and give evidence to a Lords committee meant that I had to get all over this topic because I knew I was going to be interviewed by former Chancellors and former Perm Secs to the Treasury”. There is a real impact on government just because of the preparation process, before those people even get into the House and have to give evidence. That is very effective.

I would also echo Meg’s point about the value of your frequently taking a cross-cutting approach. For example, I am thinking of an inquiry by the Economic Affairs Committee, about which a Minister said that the fact that an inquiry was launched looking at immigration to the UK meant that, in government, a piece of work was done, which joined up between departments their thinking on immigration to the UK. It was just the fact of the inquiry being launched and the fact that they knew they would have to go and give evidence on that. There are these very real impacts on what is going on in government through the work of committees. As Meg said, I would encourage you to think about that as a real strength of the system going forward.

The other real strength of the system is, as Meg has said, your long-term approach: the fact that the Lords more frequently than the Commons takes the time to look back at past inquiries, either inquiries of this House or public inquiries, or to undertake post-legislative scrutiny. Those exercises can be really valuable, and often Commons committees do not take the time to do them. I would flag the post-legislative scrutiny of the Inquiries Act. We recently did a piece of work at the institute on public

inquiries and how they can have impact. The process of post-legislative scrutiny of that Act was seen to be very effective.

That piece of work on inquiries brings me to one of the weaknesses, potentially, of the system, of which you are all aware: once the ad hoc committees they have completed their job, they are no longer around to follow up. This bears paying some attention to and thinking about. It is also a flaw with public inquiries. At the institute, when we have thought about it, we have thought that there should be a role for Parliament in following up on public inquiries, but it is also an issue for you, with your ad hoc committees. We can come on to talk more about what you might do about that.

In terms of other potential weaknesses, although you benefit from the expertise and experience of your Lordships' House, it is a large House. The fact that you now have a three-year rule on turnover of membership of committees means that, in order to give lots of Peers the opportunity to take time on a committee, there is potentially a loss of continuity and expertise as people turn over and move on.

Contrary to that, we saw a real benefit from the permanence of Lords committees, in the fact that, after the election, you guys were up and running really quickly to continue your scrutiny, specifically of Brexit, whereas in the Commons we had a massive scrutiny gap. It was really valuable that the Lords were in there, filling that gap. Continuity and lack of continuity are sides of the same coin.

We may talk about this later in the session, but you can definitely do more in relation to public engagement. Thinking about the fact that you are more measured, more expert and there may be fewer fireworks in your evidence sessions than in the Commons, does that mean the media pays less attention in a short-term sense? How can you think about engaging the media more in the excellent work the committees are doing?

Maddy Thimont Jack: I am not sure if I have much more to add on that point, because Hannah has gone through all the work that the institute has done on this. I hope to add something a bit later in the session.

The Chairman: You mentioned the Parliamentary Commission on Banking Standards. I was a member of that, as you know. The reach and the punch of that commission were very good. Given you have studied it, can you supply us with some information on that, and we can look at it?

Dr Hannah White: Yes.

Q2 **Baroness Garden of Frognal:** Meg touched on the EU committees, but what changes do you think will be needed to the current EU committees in the wake of Brexit, and should provisions be made for a different committee structure during any transition period? How can the EU committees help?

Professor Meg Russell: This is something on which the IFG has many more opinions than we do.

Maddy Thimont Jack: Initially, particularly for transition, it may be useful to continue the same structure for the EU Committee, given that it is likely to be a standstill transition. We are likely to be following the same rules, so will still need to be overseeing what the EU is doing.

I have a few thoughts. At the institute we have done a lot of thinking about what Brexit means for government, and we are about to start a piece of work looking at what Brexit means for Parliament. To take it beyond the EU Committee structure for a moment, we have identified three main tasks that Parliament can play a role in after we leave.

The first one comes out of some research we did last year. We published a paper called *Taking Back Control of Trade Policy*, which looked at what sort of institutional structures the Government might need. Particularly given that we have been within the EU, and the way the Government have engaged in treaty-making has been through the EU, some thinking should go into whether committee support is needed in terms of treaty-making for the Government. The Constitutional Reform and Governance Act 2010 sets out how Parliament can ratify new treaties, but it would be quite valuable to think about whether committees in the Lords and the Commons can play a role in setting mandates or being involved in negotiating new treaties once the UK leaves the EU.

I have been involved in a piece of work on devolution after Brexit and how to manage the environment, agriculture and fisheries. We have been thinking about what governance gaps might come out of leaving the EU. What role can Parliament play in replacing some of the functions carried out by EU institutions, in particular the European Court of Justice, in holding the Government to account? One big gap that has already been identified is around the environment, and we have recommended that Parliament should play quite an important role in the new environmental watchdog that the Government have committed to establishing.

It will be quite interesting to see whether committees can play a role in giving the new watchdog some independence from government. We recommended looking at the relationship between the National Audit Office and the PAC in the Commons, as a model for how that interaction might work. There could be quite an important role for the Lords, given that other governance gaps are likely to emerge, and that is quite a big task for Parliament, in thinking about how to manage those two things.

Finally, the other issue that we have worked on is, as I have mentioned, what Brexit means for devolution. There is also quite an important role for committees, again in the Commons and the Lords, to oversee how our intergovernmental relations—the relationships between the four Governments of the UK—will work after Brexit, particularly given the increased tasks for that machinery after we leave, as policy areas are returning where new frameworks will be needed because they are devolved but have been managed by the EU.

An interesting model that could be quite valuable to look at is the relationship between the Scottish Government and the Scottish Parliament, where the Scottish Government have to provide written notice to relevant committees in the Parliament ahead of scheduled intergovernmental meetings, as well as a written summary afterwards of what was discussed. It might be quite important for Westminster to consider how to do that, particularly given research published by the Centre on Constitutional Change, which by looking at other international examples says that, as more decisions are taken between levels of government, it is harder to ensure transparency and accountability. It would be quite valuable for the Lords committees to consider how they might play a role in that.

Dr Hannah White: To follow up on the direct point about the EU Committee system, as Maddy said, we think that if we have a standstill transition it makes sense. We will still have a flow of legislation coming from the EU. That will still need to be scrutinised. It makes sense to leave that in place. It gives a little breathing space to think about what needs to come after that. As it becomes clearer what our future relationship is going to be, it will become clearer what form that needs to take. That future relationship will affect what we need in terms of scrutiny.

We looked previously at the example of the Norwegian parliament, Norway obviously being in an EFTA relationship. It has a committee that takes a very active role in looking at EU legislation. We looked at that as a case study, and if you ended up in that relationship you might want something similar. Similarly, even if we end up as a third country with an FTA with the EU, the EU is on our doorstep and is generating a whole set of legislation, which is going to be highly relevant to many companies and bodies in the UK. The UK Parliament will want to make itself aware of what is going on in the EU. There will still be a role there, if not to the extent of the effort that your Lordships currently put into the scrutiny process, as you will not have that formal scrutiny reserve and process.

Baroness Garden of Frognal: It sounds as if there might be more to say rather than less.

Dr Hannah White: There will still need to be something. This is something that you will need to think about. The current structure of the EU committees gives your Lordships the ability to look across the range of policy areas, but in a different way from the Commons, where it is departmentally focused. When we move on from that, as our relationship with the EU changes, you need to think about how your Lordships will have the capacity to look across the range of policy areas if that is not via the EU system. You have all those sub-committees, which look at the pillars of the EU acquis. What system will step into that breach, so that, even though you are not replicating what is going on in the Commons, you still have a committee that can look at any policy area that will now be the responsibility of the UK Government?

Professor Meg Russell: It is a simplistic thing to say, but there are two sides of this coin, are there not? What machinery do you need to watch

the EU and how that is going to change, and what machinery do you need to watch the domestic politics and how that is changing? You have been talking about both.

On the domestic side, there are some other things. It is rather obvious, but a large number of statutory instruments are likely to be flowing. Who is going to be looking at those? You are obviously already thinking about that. There are the new policy areas, where the same things have come to my mind, in terms of trade and treaties, but also the environment. You can see all those things as being cross-cutting to a greater or lesser extent, so quite suited to the Lords ethos.

Then there is scrutiny, which might be a shorter-term thing, of the machinery of government changes and how the government machinery is responding to Brexit, not on the policy side, but on the constitutional and structural side: where the resources are going, how government is organising itself. That is quite a Constitution Committee sort of thing. It is in part quite a Public Administration and Constitutional Affairs Committee thing in the Commons, but that is an obvious space for the Lords. One of the things you have an enormous amount of expertise in—for reasons that Hannah has already referred to, with the number of former Permanent Secretaries, senior Ministers, EU Commissioners and the rest—is expertise in government itself and how to organise government.

There are some very big questions about how to organise government coming out of Brexit. One of those, although it is only one, is about intergovernmental relations and how policy-making is going to be done, on a shared basis, in these policy areas that we have not had to navigate very much, where the implementation has been at the devolved level outside England.

Q3 **Baroness Hayter of Kentish Town:** I want to build on what you said in answer to the first question. Having gone through what our strengths and weaknesses are, I am interested in what it is that only a Lords committee can do, which the institute, academia or anyone else cannot do? You have just been talking about looking at governance, which is the sort of thing that you also do. What are the areas that, if we do not do them, nobody else will? That is what I am keen to identify. I do not mean by subject, but by approach.

Dr Hannah White: This is not unique to the Lords, but unique to Parliament: your ability to call Ministers before you on things, and the fact that the Government commit to respond to your reports. That is a really key aspect of what you do. The institute and academics can write whatever they like about Brexit, but there is no mechanism to get that response from government. You can take a view on any report, the adequacy of the response and whether the Government end up doing what they said they would do. That is quite a valuable tool. Your status as a parliamentary committee means that people will take the time to come and talk to you, in a way that they will not necessarily talk to other people.

Professor Meg Russell: I would have gone for exactly the same thing, in terms of the government accountability. We are at the moment working on an independent commission on referendums, which has some very high-powered individuals on it, and we are planning to report in July. One of the disadvantages we have is that, no matter how high powered our members are, we cannot force a government response. You can do that, and indeed you can get the evidence on the record.

Something Hannah has said beautifully, which I would emphasise, is that you cannot measure the impact and effectiveness of committees just by looking at recommendations and whether they have been adopted. It is the whole process. Hannah gave two examples of ministerial preparation once an inquiry has been announced, because they know that they will have to account for themselves on the public record. That is a unique power that Parliament has, which I would call a power of anticipated reactions. It is not very measurable, but you change what government does in advance, in expectation of being called to account publicly. The same thing applies today—the banking commission is probably an example—outside government in the broader public sector, in the voluntary sector, and even in the private sector. We simply do not have that power to get that accountability.

Dr Hannah White: I was going to come back to the banking commission, because it makes me think about one of the things that was most effective. That was a joint commission of the Commons and the Lords, and one of the things it was tasked with was the pre-legislative scrutiny of the legislation the Government wanted to bring in on banking. The commission reported on that. By the time the commission had reported, that Bill was going through the Lords. The fact that there was a powerful membership of Lords across the spectrum meant that support for amendments that had been recommended by the commission could be generated by those members who were Members of the House, and changes were made to that Bill in this House because of that. Any other external commission that had made recommendations about amendments to a piece of legislation would have had no power. It could have lobbied you about those amendments, but it could not have ensured they happened.

The Chairman: I remember being in receipt of a letter from the chairman of the commission, who was not in favour of the House of Lords, saying, “It is up to you guys to get the amendments”, and we did.

Q4 **Lord Smith of Hindhead:** Have you identified any current scrutiny gaps within the House of Lords? If so, how should these be addressed?

Dr Hannah White: We have talked already about gaps that may emerge from the Brexit process. There are different categories of potential gap or current gap. There are always gaps from changing circumstances, and Brexit is an example of that. The fact that you are undertaking this review is a very good thing. As Meg said at the start, the fact that you annually think about what ad hoc committees there should be means that

you take the opportunity to think about how changing circumstances create gaps that you would like to fill.

As we have also said, one of the strengths of this House is in looking at things on a cross-cutting basis, the Commons being very departmentally focused. We have identified through our work more widely some things where we think there would be a benefit from a cross-cutting approach in Parliament, one of those things being scrutiny of infrastructure, because infrastructure is a diffuse responsibility across government. I cannot remember the exact figure, but it is in the 20s, of Ministers who have a responsibility for infrastructure, so it is very difficult to scrutinise that effectively via one department. We have said that it could be useful for the Lords to set up a committee focused on infrastructure, looking at the National Infrastructure Commission and the national infrastructure assessment that it is going to publish, and tracking how the Government are implementing and responding to that. That would be an example of something that the Lords can do which cannot be done effectively by the Commons.

Another thing we think the Lords is good at but could do more of is post-legislative scrutiny. I know this is in your terms of reference. We published a report on tax policy-making a couple of years ago, and we said that the scrutiny of tax policy is treated exceptionally in various ways. It is excluded from the suggestion that all Acts should be subject to post-legislative scrutiny after a period of time. We suggested that, in the same way that the sub-committee of the Economic Affairs Committee does pre-scrutiny of Finance Bills, it would be very well placed, given the expertise of the membership and so on, to do post-legislative scrutiny of Finance Acts, to say, "What was the Government's intention here, and did the Finance Act, once it was passed, fulfil what the Government intended? Did it have the effect that the Government intended?" That would be really beneficial. The tax policy-making process could be strengthened in lots of ways, and the learning that could come from your Lordships looking at Finance Acts could benefit the subsequent process of tax policy-making. Those are some of our specific thoughts.

Professor Meg Russell: This is probably another obvious point but in terms of conceptualising gaps, do not ask just what the gaps are in the House of Lords, but what the gaps are in Parliament. We need to see the system holistically, and that is part of the complementarity principle, which governs your work to a large extent already.

There are some ideas floating around. I am not a great specialist in either of these; I have not been a great advocate of either of them, but they are floating around and seem broadly sensible to me. There is the idea of the legislative standards committee, for example. There is the idea of a committee on the future, of which there are examples in the Scandinavian countries and which would play very much to your long-term perspective.

Looking holistically, there will be at times, although maybe not on a permanent basis, difficult ethical issues, which are easier for the Lords to

tackle, because of the lack of electoral pressure, than in the Commons. The obvious one is assisted dying, but there are other questions, such as long-term care. The Lords can be a bit bolder on these very difficult electoral and financial issues than Members of the Commons might feel able to. I mentioned machinery of government; I do not know whether there might be space for greater strategic oversight of regulators. That falls into an infrastructure category, where there are relationships with lots of different departments, but I am not sure anybody has a bigger overview of that.

I assume we will come on to talk about legislation, but there are some gaps in the legislative process that could be looked at, perhaps with some changes to Lords committees. One of the most strikingly obvious ones is that, while we have Public Bill Committees in the House of Commons, which routinely take evidence on Bills that start in the Commons before they start their passage, Bills that start in the Lords have no evidence-taking stage before they begin. It is not a straightforward question as to how you would accommodate that within the Lords system, because of the nature of the Committee stage and of the Select Committees, but that is an obvious scrutiny gap in Parliament.

I would perhaps go further, more daringly, and say not just that there is a very clear gap at the beginning of the passage of House of Lords Bills, but that there could be some benefit in taking at least some evidence at the beginning of Bills arriving from the House of Commons. We have seen recently, with the European Union (Withdrawal) Bill, very interesting and importance evidence sessions by the Constitution Committee, primarily with Ministers, in advance of that Bill reaching this House, despite the fact that it had been through the other House. If there has been evidence-taking in the Commons and that evidence has not been listened to during the Commons stages, it would be interesting to hold Ministers to account for that and get a clearer sense of what the dynamics of the Commons stages have been before the Lords stages begin.

It might be interesting to invite back witnesses who spoke to the Public Bill Committee and ask them whether they feel their concerns have been dealt with, and if not why not, and to get a dialogue going about that in a committee setting before it reaches the Floor.

- Q5 The Earl of Courtown:** You have answered the question I was going to ask, which always leaves me in a slightly difficult place. We were looking at pre- and post-legislative scrutiny. At the moment, we have an ad hoc committee that will be looking at the Bribery Act, and in the past we have had pre-legislative scrutiny of Bills; I cannot remember which ones, but it is not commonplace. How can this be done? Should there be a formal structure, with every piece of legislation getting some sort of post-legislative scrutiny and, likewise, pre-legislative scrutiny? Meg, you were talking about pre-legislative scrutiny in terms of the work the Constitution Committee was doing on the European Union (Withdrawal) Bill. Should it be a matter of rote that this should always happen, or is it applicable only to certain pieces of legislation?

Professor Meg Russell: I have some more radical thoughts on this. I suppose I should say two things from my CV, which you are probably well aware of. First, I have just written a book about the legislative process at Westminster. Secondly, which is perhaps one of the things that sparked my interest, I spent two years as the special adviser to the Leader of the House of Commons, Robin Cook, in 2001 to 2002, when he was in charge of the legislative programme.

One of the things that Robin Cook was very passionate about was pre-legislative scrutiny, and he made it his mission to ensure that all Bills were subject to it. That was what he was aiming at: that all Bills should be subject to pre-legislative scrutiny before their formal introduction. Of course, we are still having that same argument 15 years later, and I am not sure things have really moved on. There are political realities, in that the Bills that get pre-legislative scrutiny—not to denigrate that pre-legislative scrutiny, which can be very important and valuable—are often ones that the Government feel less urgency about and less protective of. They do not mind parliamentarians fiddling around the edges a bit, whereas they want to get the things they are really passionately committed to into Parliament as quickly as possible.

There is a degree to which the pre-legislative scrutiny battle will never be won, so I wonder whether there are ways to get around that a bit more. For example—it is not a brilliant example, because the timetable was pretty short—one of the Bills that I studied as one of the case studies for my book was the Public Bodies Bill, under the coalition, which was a bit of a car crash.

Baroness Garden of Frognal: We all remember that.

Professor Meg Russell: That Bill was introduced in October 2010, so there was not a great deal of time after the election, but it was not a secret that the Government were going to do this. They did not put it out for pre-leg, but it was in the Queen's Speech. It was in the manifestos. Could a committee have, in effect, instigated some pre-legislative scrutiny, without the Bill itself but by taking evidence on how public bodies should be reformed, in order to inform the process at an earlier stage and maybe make Ministers, during the drafting stages, a little nervous that they were being watched, in that anticipated reactions way?

If pre-legislative scrutiny is not happening through the formal channels, there are things that you could do to be imaginative and get ahead of the game, by taking evidence on things you know are coming, in order to inform the debates inside and outside government as to what should be expected of those Bills. That would be cheeky, but why not?

The Earl of Courtown: Broadly speaking, the post-legislative ones are very welcome in this House, from speaking to colleagues. I do not think we have done so many of the pre-legislative ones.

Professor Meg Russell: There are some quite difficult questions about who could do that work, because, without specialist departmental

committees, there often will not be an obvious committee. We were talking outside about the pressures and tensions between a functional organisation and a policy topic-related organisation, and you have a bit of both in the Lords. You have the Delegated Powers and Regulatory Reform Committee, which is specialist in that function, and then you have the Science and Technology and Economic Affairs Committees, which are specialist in those topics. If you were taking evidence on a Bill about to be introduced, it would be easy in some cases. Even on the Public Bodies Bill, the Constitution Committee could have done that with a good deal of expertise. If it was a health Bill, say, it is less obvious where that would go.

Dr Hannah White: On pre-legislative scrutiny, I agree with everything Meg said. The crucial thing there is about timing, and how quickly you can move and decide who has responsibility for what, because what will hold you back from doing what she very sensibly suggests is having the intelligence about something coming down the track and getting yourselves organised. I always say to committees, when thinking about how they can be most effective, that it is all about timing. There is absolutely no point producing a beautifully well-argued report a week after the Government have decided to table their own report. You know that, but it probably bears repeating.

On the post-legislative scrutiny, I absolutely agree with what I think you were implying in your question. There is a lot of scope for Parliament—and this probably means the House of Lords—to be much more systematic about post-legislative scrutiny. The Government have committed to produce memoranda on Acts, five years after they are enacted. There is a degree of frustration in government about the infrequency with which Parliament picks those up and thinks about those Acts, because government is producing these things.

I do not think it is feasible to think about doing it for every Act, if you think about the number of Acts that are passed in a Session. You could have a permanent sessional committee responsible for post-legislative scrutiny, at least to ask, "What is the set of legislation that was passed five years ago? What should be the priorities for us in this Session, looking back?" It could either make recommendations on which ad hoc committees should be set up to do that, or do it itself, but with a much more systematic approach to post-legislative scrutiny.

The really key thing is thinking about how the findings from that scrutiny feed back. It is all very well doing it. If those committees are ad hoc in themselves, who is checking whether all the interesting things we found about how it could have been done better are being taken on board?

Professor Meg Russell: I am thinking on my feet here; I do not come with a predetermined package, but, listening to that, there is a bundle of issues here about having oversight of the legislative process, legislative programme and legislative output. The Hansard Society has pushed for a legislative standards committee for some years. In my proposal, one step could be a committee taking evidence from the Leader of the House of

Commons, probably alongside the Leader of the House of Lords, on the legislative programme.

You are talking about getting intelligence. The Queen's Speech is published, so you could have an interesting session afterwards about how they think the timing will work and if they could tell us a bit more. I know there are the debates on the Floor of the House, but that is different from a committee session. Then you can look back at what has been passed and what is worthy of review. There is an overall legislative oversight function there, which might work together, in some way.

The Chairman: If you wanted to flesh that out a bit, we would look forward to that.

Q6 **Lord Williams of Elvel:** In the past, and to a certain extent now, we have been told we must not trespass on House of Commons territory, that its toes are extremely sensitive and that we should back off. This has, to some extent, had holes shot in it by the Constitution Committee and the Economic Affairs Committee. It looks as though we are moving towards some sort of confrontation with the House of Commons. In the past, as I say, it has been fairly clear. The whole clumsy structure of the EU Committee and sub-committees, which is really nauseating, was set up entirely to avoid any conflict with committees in the House of Commons. The instruction for selecting ad hoc committees and ad hoc studies is that we cannot do anything which the House of Commons is doing. Do you think that is a good idea or a bad idea?

Professor Meg Russell: I am inclined to think it is a very good idea. I know that it is a bit blurry around the edges, but complementarity is a really key word here. Politics is a competitive business by its nature; that is completely understandable. People want to be on the hot issues, particularly in the House of Commons. There is a degree of friction and competition even between the committees in the House of Commons on some issues. For the House of Lords to get mixed up in that competition would not be a good thing. The approach that you have been speaking about so far, in terms of identifying real scrutiny gaps and weaknesses in the parliamentary system as a whole and how they can be filled, is the correct one. I do not know to what extent this inquiry is working in collaboration or discussion.

The Chairman: We are going to have evidence from the House of Commons, and we are already in informal chats.

Professor Meg Russell: It seems important to be doing this in collaboration with the Liaison Committee in the House of Commons as far as you can, because it should not always be the House of Lords jumping to the tune of the House of Commons and trying to fill the gaps that it is leaving. It is a two-way process, but it seems to me that the complementarity is extremely important.

There is one thing that it is worth urging caution on. I am a bit of a comparativist in my research. One of the best places to go and look for

examples and evidence of how things might change in other countries, and I have done a lot of that with respect to parliaments. I have studied bicameral parliaments quite a lot. If you look at other bicameral parliaments, you will often find that the committee systems in the two chambers are rather similar. I do not think that that is something to emulate, and I would point out that it is a product of the nature of the legislative process in most countries, where legislation is sent to the specialist committees. If the health committee is dealing with the health Bills, and the education committee is dealing with the education Bills, you arguably need a health committee and an education committee in both Chambers.

That can be quite inefficient. It is one of the things that people complain about in other bicameral systems. The complementarity here is a strength of the system that we have in the UK. It should be relatively easy to find, given the very clear differences between the two Chambers, which I referred to at the beginning: the presence of the Cross-Benchers, the nature of the Members on the party Benches, people's backgrounds, and the fact that they do not have constituents to answer to and have longer-term perspectives. There are lots of opportunities to benefit from that difference in culture and in membership, in order to find complementarity.

Dr Hannah White: I agree with Meg. You should think about it as playing to your strengths, as opposed to being denied the opportunity to do things. There are things that the House of Lords does really well, which the Commons does less well. That is, therefore, where you ought to focus your efforts.

It is very good news, if unsurprising, that you are doing this review and communicating with the Commons about it. My sense is that there is a bit less thinking going on in the Commons at the moment about the future role of Parliament post Brexit. It is very focused on what is going on right now. I hope that the process you are going through, and more generally as a House, can help stimulate thinking at that end. There is definitely a sense in which you can set the agenda and say, "This is what we think will be needed, post transition, and these are the things we are proposing to do. How is that going to work?"

The obvious point, which I made at the beginning, is that if you end up doing very similar pieces of work on similar topics, you will be calling similar sets of witnesses and examining them. There is an issue about witness fatigue, with people being called to multiple committees.

Lord Williams of Elvel: They will possibly arrive at different conclusions.

Dr Hannah White: That would not necessarily be a bad thing. In terms of how much focus there would be in the media and in government on your version of it versus the Commons version of it, unfortunately, the fireworks and grandstanding aspect at the other end means, for not necessarily the right reasons, it might get more attention. It is better to focus on the different and distinct things, where you have the edge.

Lord Williams of Elvel: Do you think we should discuss taxation?

Dr Hannah White: Yes, I do not see why not. I know the Economic Affairs Sub-Committee looks at it.

Lord Williams of Elvel: That is where the wall is starting to crack a bit.

Dr Hannah White: Yes. The institute focuses on the process of policy-making, and we think that the process of tax policy-making leaves quite a lot to be desired. It does not go through the normal processes that policy-making goes through. Taxation proposals tend to be a surprise, even to Members of the Cabinet shortly before the Budget. More sustained attention from the House of Lords, both retrospectively, as I was arguing earlier, through post-legislative scrutiny of whether taxation measures have delivered what the Government hoped they would, and in anticipation, would add to the sum of parliamentary knowledge and thinking in advance of the House of Commons legislating on these things.

The Chairman: My experience is that taxation is a gap in parliamentary scrutiny. There is not any doubt about that. Meanwhile, Tolley's tax book keeps increasing exponentially, month by month. There is a gap there, and it is a very good point that Lord Williams is alluding to.

Q7

Baroness Garden of Frognal: I have a slightly different question on the role of committees: how do you think House of Lords committees can engage and interact with as wide and diverse an audience as possible, drawn from across the UK, in their work, in order to develop a national conversation and address public policy issues of importance to society? Should this be part of the duty and the role of committees?

Professor Meg Russell: Public attention can be a double-edged sword. I would not overstate the importance of it. Hannah has just referred to the fireworks in the House of Commons. The House of Commons is quite good at attracting attention, and elected politicians have a need to attract attention. It is completely understandable, worth while and legitimate as a part of the process. That leaves a gap, if we are looking for gaps, on the policy areas that you might refer to as worthy but dull, which can be extremely important. If there are things that systematically get overlooked because they are not very attention-grabbing, that provides an opportunity for a less attention-grabbing Chamber to work on some really important policy issues and provide a very worthwhile input into the process.

It is not all about attracting attention; that is really important to emphasise. My research, both on the legislative process and on Select Committees, has taught me that, although political conflict can be very entertaining and newsworthy, and we can all end up being gripped by it when it is happening, it is often not the most effective thing at generating change, because it creates defensiveness among Ministers and others who are the subject of those attacks. Being quietly effective behind the scenes, on committees and sometimes on legislation, can be very valuable.

At the same time, for the work that you are doing, you want to engage where you can. If you are doing something that is worthy but dull, you none the less want some media attention. You are not going to keep it a secret that you are doing it. The House of Lords media operation has got gradually better and much more professional. This is a fairly minor thing, but I noticed, when I was thinking about these questions, that even now some House of Lords committees do not have their own Twitter feeds, for example. This frustrates me, because I sometimes try to generate publicity for you and your committees.

Baroness Garden of Frognal: Thank you.

Professor Meg Russell: Twitter is just one sphere, but there is nothing to retweet. You might not be terribly busy on Twitter but, if you have issued a report and I cannot go to your feed and retweet something, you are making it harder for me to help you get publicity. That applies to this Committee, unsurprisingly, but rather more surprisingly to the Constitution Committee. I had a look this morning.

I confess I have not done enough homework ahead of time and I may be unfair here so, if you are doing all this, just ignore me. In terms of the bigger engagement, the most recent call for suggestions for ad hoc committees that I had a look at on this Committee's website was targeted at Members. It did not seem to be targeted at the public. You have sought to get public input into this inquiry. Very kindly, the Lord Chairman has had a piece on the Constitution Unit blog, for example, trying to reach out to a wider audience, to get people to feed into the Lords committee system. We were delighted to host him

What you are doing with the ad hoc committees is really interesting. It is innovative, flexible and inclusive. There is a workload implication, and perhaps your staff would be a bit terrified by what might come in. Given that you do it on an annual basis, I could envisage it over a few years becoming a bit of an annual political conversation. What are the big issues that society cares about? You can imagine it being discussed on the "Today" programme, or on daytime TV. What do people think is the latest thing that is worthy of Parliament looking at it for a year? It might take a couple of years to get it going, but an annual cycle can be quite engaging for the media. Then you would be listening to the public and responding to their concerns. That is the broad public, but also the specialist groups, the academics, the pressure groups and so on. That would be one simple thing that you could do more of.

Baroness Garden of Frognal: We have quite an extensive outreach programme of going into different organisations, particularly into schools, to generate discussion about what we should do and why we are there. But this is envisaged as being a specific responsibility of committees, to help generate publicity of whatever it is they are discussing.

Dr Hannah White: That is a very interesting suggestion. I agree with Meg that, in terms of the House and committees talking about what they do, there has definitely been significant progress in the House of Lords.

We think about this a lot in relation to Brexit. There have been efforts to corral all the Brexit outputs into one place on the website, so that if you ask, "What has the House of Lords said about Brexit this week?" there is one place to go and look for that. That is all excellent.

When you use the word "conversation", it is really important to show how you are also listening. Conversations are two-sided. Meg is suggesting canvassing opinion from the country about the topics you could look at for ad hoc committees, although your Lordships will have your own ideas. Several committees in the Commons in recent years have undertaken exercises where they have gone out and specifically consulted the public on what they ought to look at in that Session. The Scottish Affairs Committee has done it; the Energy and Climate Change Committee, before its sad demise, did it. Members have found that quite useful in engaging people in conversation on the role of the committee and what it could look at.

It very much depends on the topic. There are certain topics and certain committees where the people you are talking to are, frankly, the set of people whom it is feasible to talk to on that topic. There are others where there is massive scope for broader conversation. There are interesting things going on and techniques that you could think about using in order to hear a wider and more diverse range of views. The Constitution Unit has done work on a citizens' assembly on Brexit, and I think the Health Committee in the Commons is doing something similar at the moment. There is social media, as Meg said. There are lots of different ways to make this a conversation and not just broadcast.

The Chairman: On the issue of a national conversation, in conversations I have had with both Baroness Kidron and Baroness Rebuck, they have emphasised to me that it has to be a two-way process, so that engagement is really important. We have Members focusing on that already, but what you have said is very helpful. Any more you have for us on that will be important. I have just been informed that Alice, Research Assistant to this committee, is sorting out the main House of Lords Twitter account, and from tomorrow it will be tweeting about this Committee. So, Meg, do your business.

Q8 Lord Smith of Hindhead: If you look at the news today, quite far down it you will see that the British Hospitality Association is recommending points to the Government that come out of the House of Lords Licensing Act post-leg committee, which published last March. The British Hospitality Association is a huge trade organisation, and the leisure industry is the third largest private sector employer. It is big business, but it is still quoting a House of Lords report from last year, which was very warmly welcomed by the industry. It was astounded that the committee had absolutely got what its issues were.

I regard that as defining effectiveness for a House of Lords Select Committee. How would you define effectiveness for a House of Lords committee? Thank you, by the way, Professor Russell, for your frequent use of the word "complementarity", which is now my favourite word of

the day. I shall use it all day.

Dr Hannah White: How would you define effectiveness? The fundamental thing I bear in mind is that it is for any individual committee of the House of Lords to define what effectiveness is. It is always up to the members of that committee to decide what they are trying to achieve and what impact they are trying to have at any given moment. That is a decision for them.

My research has been focused primarily on the Commons, but there is direct read-across to the Lords. I should preface this by saying that, being at the Institute for Government, my focus has been primarily on what looks like effective committee work in relation to impact on government. I know, having worked in Parliament myself, that that is not the only thing that Parliament is trying to achieve. I tried to think through what it is that committees actually do that can change something about what government is doing. What is the way in which committees can be effective in having an impact on government?

I have come up with a list of seven things that I think you could all be doing, which I will run through very quickly, but I could send you more on if you are interested. One of the obvious things that you do is collect evidence. You may collect evidence that the Government do not have about a topic. You may talk to someone they have not previously spoken to and tell them something they do not already know. You can be effective in influencing the Government by telling them something they do not know.

The second thing you can do is take the evidence base that government already has, but analyse it in a different way. Because of your expertise, because you are cross-party, because you can take a perspective on something that government potentially is not taking, you can look at the set of evidence out there and draw different conclusions from it. That can change how government thinks about something.

The third thing is really important: you are making government more open. We spoke earlier about the fact that Ministers come to give evidence to you in a way that they would not necessarily do to the Institute for Government or an academic institution. The fact that Ministers sit before you, you ask them questions and they put things on the record, day in, day out, is making government a more open institution, and that is a good thing.

Fourthly, as a by-product of that, by creating that openness, you can help government learn lessons. You can identify the things that government could have done differently. Government often does not have time to look back and think about how things have gone, and committees have time to do that. Committees can be really effective in helping government learn lessons.

Fifthly, as we talked about earlier, you can change government processes. Ministers who come and sit before committees, because a

committee has launched an inquiry into a topic, have had to go back and say to their civil servants, "What is our policy position on this? Why is this our policy position on this?" They interrogate the evidence base for a policy, because they know they will have to come and justify it in front of a committee. You are directly affecting the processes that go on in government. If you ask a difficult question of a Minister and they do not know the answer, they will go back and say, "Why do we not collect this evidence? What are we going to do differently, so that next time I am before that committee I know the answer?" That is a point of impact you can have.

Sixthly—and this is a big one—you can change the context in which government is operating. This is where committees have an impact on anyone other than government directly and then that affects what government is doing. Something that committees do very effectively is to identify an issue and raise it up the agenda by getting it spoken about in public, bringing together different people who care about that subject and publishing a report saying, "This is an important issue, and government ought to think about it". That is changing the context in which government is operating.

To give a topical example, the fact that people in Parliament have taken up this question about "Windrush" recently has changed the context in which government is thinking about its immigration policy. Because it has been brought up the agenda by Parliament, but also by external people, government has to think about it.

The seventh and final way in which committees can be effective is that, by doing your day job, you have an impact on democracy, as I nebulously call it. The fact that you exist, you are asking questions and you are holding government to account arguably gives the public confidence in the democratic system of our country.

The example I always give of this is when I was asking people about the Home Affairs Committee in the Commons. I was talking to lots of stakeholders of the Committee, and I asked, "What do you think this committee has done in the last five years that is important?" A couple of people I spoke to, completely out of the blue, said there was an occasion on which, in the summer recess, no one was in Westminster and we had the riots in England following the police incident. There was lots of destruction of property and real issues in communities. The Home Affairs Committee members got themselves back from Majorca or wherever they were, convened themselves in Westminster and took evidence from the police on how those riots were being policed. People said, "That was really important, because we saw that politicians cared about this thing that was affecting our communities and people. We felt more confident that Parliament was doing its job, because the committee took the time to do that".

Sorry, this is a very long-winded answer, but you have struck upon one of my areas of interest. Those are the seven things, I think, that committees can do, and thinking about, as you are going about your job,

which of those things you are trying to do, and therefore how you can do it most effectively, is well worth your time and effort.

Lord Smith of Hindhead: We will always remember you as Dr White and the seven points.

The Chairman: The seven highly effective habits of Dr White would be the management book.

Professor Meg Russell: I will turn the tables and say, "I agree with Hannah". We have been agreeing with each other all the way through. In terms of defining effectiveness, I would give an answer in the negative: that there is a way of not defining effectiveness, which is merely about the number of recommendations that get accepted and implemented, although that is enormously important. That is the most measurable part of committee activity. In our *Selective Influence* report, we put a lot of time and energy into tracing recommendations, and found that the House of Commons committees—as I said, we did not study the Lords committees at that point—had a lot of impact in terms of the recommendations being implemented. When we did our interviews, including, crucially, interviews in government, it was very clear that that was perhaps the least important element of committee effectiveness.

I am not going to run through them, but we also had a list of seven other kinds of influence, which were not organised in quite the same way as Hannah's, but they covered many of the same things. To give you just one little fact, one of the things you already emphasised was that committee reports can feed into wider debates. They feed into debates outside Parliament, but also inside Parliament. For our book on the legislative process, where we studied 12 Bills, we went through the public record to see how many times Select Committees were mentioned in the formal debates on those Bills. There were 1,700 mentions of Select Committees across 12 Bills. That is about 140 mentions per Bill.

That is just the parliamentary debates, and that is just legislation. Committees inform debate an awful lot. As Hannah has said, they draw together evidence, which is very important. This anticipated reactions function, in providing a unique public forum at which Ministers, people from the private sector and, as you have just referred to, the police have to give evidence on the record, is enormously important.

About a week ago, the Political Polling and Digital Media Committee, the ad hoc committee chaired by Lord Lipsey, issued its report. I was struck, at the launch of that report, that there was quite a lot of talk about the recommendations, inevitably, and which recommendations are likely to be taken up. Are they pitched correctly, and will some of them be ignored? But that report is an enormously serious and considered piece of work, which has gathered some really important evidence together. Even if none of the recommendations was accepted, it would have made a really important contribution, both through the process of evidence-taking—getting people talking, getting people on the public record, getting people thinking through before they attend what their

policy is, what it should be and whether it should change—and in the fact, as you just referred to, that the report itself exists. People will be referring to that report in years to come. If something goes wrong in a future election or referendum, people will be picking that report up off the shelf and saying, “They gathered all this evidence, and things have got better”, or, “Things have got worse. We need to go back to this”. It is a really long-term, subtle and immeasurable influence.

Effectiveness is not just about how many points you win or how much media coverage you get. It is much more subtle, which is somewhat frustrating, because you cannot measure it. But there is plenty of it out there.

Q9 The Chairman: The report by the Artificial Intelligence Committee will come into that category as well. It is a very profound document. I do not think I ever thought that I would be quoting from my MBA lectures of 40 years ago, Dr White. You have stimulated my brain, and I never thought I was capable of that, but there you are.

The Liaison Committee promotes wider engagement with the devolved Assemblies and Parliaments, and we eventually established an Inter-Parliamentary Forum on Brexit, which some of you have made mention of. It was very helpful, particularly in the Clause 11 debate. There is still a way to go on that, but that was something the House of Lords did in an informal way, which engaged others. Mindful of that, how can our committees build stronger relationships with their counterparts in devolved legislatures, and what benefits does that offer?

Maddy Thimont Jack: This is something I have been doing a lot of thinking about for the Institute for Government. At the moment, given the policy areas returning from Brussels, this is clearly a big issue. We have recommended that intergovernmental relations need to be strengthened, because there is more likely to be more joint working, and potentially some shared ownership around policy areas, although we are still not really sure yet what that might look like. Inter-parliamentary relationships are a really important part of that.

There have previously been recommendations—for example, from the Public Administration and Constitutional Affairs Committee (PACAC) in 2016—that these relationships need to be strengthened, but I would argue that now is the time to really try to do that. You have mentioned the Interparliamentary Forum on Brexit, and I have been following that quite closely, because it is a really interesting example. I would be interested to see how it works, and how people involved in it feel it works, in terms of bringing together chairs from committees that are interested in Brexit. It could be quite an interesting model for some of these policy areas where joint working will be needed, particularly around the environment and agriculture and fisheries within that. You can get the chairs of committees that are scrutinising those areas in the devolved legislatures and in Westminster to come together.

One of the benefits of that, a bit like when you talked about the overlap between the House of Lords and House of Commons, is that if you are interested in the same area, it makes sense to co-ordinate your scrutiny. If you are bringing the same witnesses because you want to see how, say, fisheries are working across the UK, it makes sense to build those relationships so that you can manage that and avoid witness fatigue. In terms of the networks that those devolved legislatures have within the devolved nations, in Westminster, if you are really interested in looking at how the new fisheries Bill is working, if the Scottish Parliament has networks within the Scottish fishing industry in Scotland, that would be quite useful and you could build on that.

Beyond the formal networks, the forum is quite interesting. On that, it is useful to hold joint evidence sessions. I know that the Welsh Affairs Committee in the Commons can hold joint evidence sessions with committees of the Welsh Assembly. It has done that on a number of occasions, most recently in 2015, on an inquiry into the pre-legislative scrutiny of the draft Wales Bill. That might be something to look into, as to whether you can amend the Standing Orders so that any committee in the House of Commons or House of Lords can hold joint evidence sessions. In the policy areas where this might be needed, such as the environment, agriculture and fisheries, if you can have some UK-wide frameworks, it would be useful.

The Chairman: Good. I hope you will forgive me, I do not mean to be obsequious, but this is a historic occasion, and great thought was given to who would launch us on our way. The names of Jack, White and Russell were not pulled out of a hat. You had to have the status to do this, and it is very fitting that you have launched it, so thank you very much.