



Liaison Committee

Uncorrected oral evidence: Review of Investigative and Scrutiny Committees

Wednesday 9 May 2018

10.40 am

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

Evidence Session No. 2

Heard in Public

Questions 10 - 19

Witnesses

[I](#): Dr Sarah Wollaston MP; Paul Evans, Clerk of Committees, House of Commons.

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Examination of witnesses

Dr Sarah Wollaston MP and Paul Evans.

Q10 The Chairman: Dr Wollaston, welcome to the Committee. We also welcome your clerk, Paul Evans. Can you identify yourselves for the *Hansard* writer?

Dr Sarah Wollaston: I am the Chair of the Health and Social Care Committee and the Chair of the Liaison Committee in the Commons.

Paul Evans: I am the clerk of committees in the House of Commons.

The Chairman: Welcome. First, thanks for your submission. It is very helpful to us. I will lead with the first question, on the House of Commons and the House of Lords working together on parliamentary scrutiny.

What are the key strengths and weaknesses of the House of Lords committees in their current structure? Is there a case for adopting a more thematic and flexible approach to committee activity in the Lords, given the pace of technological change that we are experiencing in society today?

Dr Sarah Wollaston: Yes. The two Houses should complement each other, rather than directly mirror each other, to add value. The strength of the Lords is the huge expertise that you have here and the fact that you are not so constrained by party politics. That is a huge strength. You look at the cross-cutting issues. In the Commons, we follow departmental lines. Although there are increasing examples of committees working jointly, and we are hoping to work on arrangements whereby we can invite members of other committees more flexibly, we are mostly shadowing a department, whereas in the Lords you have much more flexibility on thematic, cross-cutting issues. Time and again during our committees, we come up against that barrier: there are so many departments involved. That is where the Lords can add particular value.

The Chairman: I had a chat with Frank Field. Frank has given his apologies today. He was out canvassing at the weekend, and he slipped and broke his arm, so he is not going to be with us today but he will be with us another time. He mentioned to me when we were speaking that his committees were looking at issues such as pensions and Carillion. He said, "Given the expertise in the House of Lords, I would welcome Members of the House of Lords being seconded on a very short-term basis to assist my committee with corporate governance and pension policy". Would that type of initiative be attractive to you?

Dr Sarah Wollaston: Yes, indeed. We are already looking at that across the Commons. At the moment, you have to be quorate if you have a joint committee. There is quite a burden on Members' time, both in the Commons and in the Lords, and having the flexibility to invite an individual to ask questions is a very useful strength.

The Chairman: Flexibility is the key when it comes to parliamentary scrutiny and technological change that we are facing.

Dr Sarah Wollaston: We are also trying to look at it from the point of view of the public. How do we provide the best service to the public? It is by bringing in expertise and being flexible about that.

Q11 **The Earl of Courtown:** I read your written submission with interest. One of the points that immediately stuck me is that we have to recognise that the cultures of the two Houses are very different, and that the pursuit of joint working needs to add benefits to both.

Going on from that, we are looking at scrutiny gaps across Parliament as a whole, and this is very often the case when you look at the weaknesses in one House and the strengths in the other and the strengths in one House and the weaknesses in the other. How can these scrutiny gaps be addressed, at least by the House of Lords committee system?

Dr Sarah Wollaston: There is a particular worry about a scrutiny gap in relation to Brexit, given the vast number of issues that will arise out of Brexit. The Lords has a key role to play there, again working alongside the Commons. It comes down to the extraordinary expertise that you have here to fill the gaps that there will be in the Commons.

The Earl of Courtown: In terms of weaknesses, you think there could be gaps post Brexit in committee work. I know thought is being put to that.

Dr Sarah Wollaston: It is about identifying those gaps. One of the things we as the Health and Social Care Committee called on the Government to do was to provide us with their inventory of what they are looking at. We are concerned about the apparent lack of contingency planning on issues that might arise if suddenly at the last minute we are forced into a cliff-edge, walk-away kind of Brexit. We are asking for their inventory of what they are planning for and it is not forthcoming. Since it is not forthcoming, there needs to be a very detailed piece of work looking at where those gaps are and making sure that we have detailed recommendations in place.

The Earl of Courtown: There are no doubt scrutiny gaps in the Commons as well. Are they covered by scrutiny in this House?

Dr Sarah Wollaston: Post-legislative scrutiny is not something that the Commons necessarily has the time to look at in depth. There is a particular role for the Lords in post-legislative scrutiny.

Paul Evans: There is universal admiration in the Commons—perhaps “universal” is putting it too strongly—for the Lords’ work on secondary legislation. That is a key area, and the Commons simply does not have the time or the attention span to give it the kind of attention that is needed. It is recognised as a scrutiny gap in the Commons, and it is recognised that the Lords does a lot to fill that gap.

Post Brexit, the other thing that is going to come up is treaties. According to some views of what will happen, we may have dozens, if not hundreds, of treaties to sign. There is a similar detailed and, at times, quite

legalistic approach to looking up these things and seeing whether they are going to work. The Commons always likes to have the politics and wants the Lords to have the technical, legal and other grip on things. Trying to balance those two off against each other is always a good aim.

Q12 Baroness Garden of Frognal: Thank you for your testimony. I am going to ask you about witnesses, but I note that here you are looking at statistics for the gender diversity of witnesses, which will be an interesting one. I was on a Digital Skills Committee at one stage and we kept crying out for women to come. Then suddenly we had an avalanche of women who were digital specialists, but it was very worrying at the beginning that they all seemed to be male.

Do you have difficulties in compelling reluctant witnesses to appear? The value of the sort of inquiries we do is heavily dependent on getting the expert witnesses who can give us that evidence. Would you favour stronger enforcement powers for committees to compel witnesses to come?

Dr Sarah Wollaston: Yes. This is something that the Committee for Privileges and Conduct is now picking up again, and the Liaison Committee supports that. There is an issue here about witnesses being reluctant to appear. It is not just outside witnesses. For example, the Defence Select Committee wanted the National Security Adviser to appear, and it took a very long time. We raised it with the Prime Minister directly at Liaison Committee and there was a refusal, but we had to press and that now has been conceded. Sometimes you have to keep asking and pressing the point, and being as flexible as you can be with external witnesses about their appearance, but the bottom line is what you do when, for example, Mike Ashley refuses to appear.

I am going to hand over to Paul Evans here, because he gave us a very useful presentation on this and it might be useful to have his expertise on this point.

Paul Evans: On diversity, we have a lot of statistics and work to show. On the separate issue of reluctant witnesses, following the News International fracas with the then Culture, Media and Sport Committee nearly a decade ago, the House of Commons eventually, in October 2016, admonished two witnesses who had lied to the committee, and referred the matter of the penal powers of committees to the committee for privileges. That inquiry was then interrupted by the general election and it is only just resuming.

As Commons committees begin to look much more at things that are happening outside government, partly because much of what used to be government work is done by private sector companies but also due to a culture change in committees themselves, there is an issue about reluctant witnesses who are not Ministers and civil servants, among whom there is not a huge problem. There is a feeling that at some point a crisis may come where a witness defies a committee and the powers that we have fail to resolve the situation.

It has not been an issue in a great many cases. Most times, after a lot of toing, froing and negotiating, witnesses finally turn up, as did Mike Ashley, Sir Philip Green and others. The Digital, Culture, Media and Sport Committee is currently looking at fake news, and the Cambridge Analytica brouhaha is quite central to that. The witnesses are reluctant to come. They have made public declarations that they have appeared, but they have appeared so far.

This is certainly preoccupying the committee for privileges in the House of Commons. We expect it to restart its inquiry shortly. It has collected some evidence and is looking at ways in which there can be a clear path to compulsion for persons, papers and records. It is a controversial topic. The question of involving the courts in the exercise of penal powers is something that many Members of Parliament feel doubtful about.

Baroness Garden of Frognal: There is no legal enforcement that you can call upon.

Paul Evans: There is no statutory enforcement.

Dr Sarah Wollaston: May I comment on the point about witness diversity? When we send out the letter to people from the Health Committee, we ask them to consider diversity and its importance, and we are recording it. We are now formally looking at the gender diversity of discretionary witnesses. Naturally, just thinking about it makes a difference.

Baroness Garden of Frognal: Are you doing it with ethnic minorities?

Dr Sarah Wollaston: We will be following up and doing that piece of work next.

Paul Evans: The difficulty with other forms of diversity than gender is that they depend on self-reporting. It is quite hard to get witnesses to do that, so we are focused on gender diversity for the time being, but we are looking at the others.

Q13 **The Chairman:** Some have suggested to us in evidence that it may be the usual suspects who are asked along to give evidence. Have you done anything to widen that area and investigate it more?

Dr Sarah Wollaston: It is about being mindful of it and going back to people to ask, "Is there somebody else who could come?" so that you do not always hear from the same people. Wider engagement is important. The Select Committee that I chaired jointly with the Housing, Communities and Local Government Committee is holding an inquiry into social care. For the first time, we are using a citizens' assembly, which is a larger form of citizens' jury. Increasingly, we use Parliament's own resources to conduct outreach. We try to get out of the building, which is very important. We try to get around the country, rather than holding all our hearings in this building.

Q14 **Lord Smith of Hindhead:** I know, from my relatively short time on this

particular Committee, that we go to some lengths to avoid choosing subjects for ad hoc committees that might be being dealt with in the other place. I wonder whether you could let us know how important you think it is to avoid an overlap between the Commons and the Lords when selecting committees, and whether there are any benefits to a greater joint working relationship between both Houses to discuss certain matters. If there are benefits to that, what barriers might there be that prevent that from happening?

Dr Sarah Wollaston: First, if I can use the example of the ad hoc committee on the long-term sustainability of the NHS and social care, that was a superb committee that added real value by looking at both issues together: health and social care. It started off saying that it was going to look at the NHS and very rapidly realised that the two are joined at the hip, and it had the flexibility to expand its remit. You could argue that this was looking at an NHS issue and that that would be duplicating, but it was not at all.

As an example of how committees can work together across the Commons and the Lords, in the Commons, we called the committee in to give us evidence and to present its findings, so it gave it an extra boost. We have repeatedly raised the findings of the Lords Committee with Ministers. It was really important to meet Naren Patel personally and think about how we can get the most from it, rather than seeing the fantastic committee report that they had produced disappearing. We need to keep it in the public domain.

One of the disadvantages of the ad hoc committees is that they finish their work and that is the end of it. The advantage of the model of Andrew Tyrie's banking commission, which was set up with both Houses of Parliament, was that the findings could be repeatedly raised in the Commons. It did not just finish, because there were Members within the Commons who could follow up what was happening there. Joint working is definitely in the public interest and we should see more of it. The limiting factors are resource and time: the resource that there is for committees and the time that Members have. I know Paul would like to come in as well.

Paul Evans: We discussed earlier the opportunities for joint meetings of the two Liaison Committees when you are deciding your forward programme, because the Commons does not have that kind of flexibility. We have a fairly rigid committee system, and each committee decides for itself what it is going to do. None the less, when you are in the process of choosing your ad hoc committees, joint meetings might be of value. There is relatively little dialogue, at least at a member level, between the two committee systems of the House, and anything we could do to encourage that and put it on a slightly more formal basis might help.

Lord Smith of Hindhead: The liaisons need to liaise.

Dr Sarah Wollaston: One idea might be, if the Liaison Committee was thinking of holding future ad hoc committees, to involve liaison and see how we could add value with committees in the Commons.

The Chairman: As one who presents the findings of ad hoc committees on the Floor of the House of Lords, I am aware of the criticism and the shortcomings of the ad hoc committees, so we will be looking at that.

In terms of the Liaison Committee's meeting, that is a very good idea, particularly in the context of parliamentary scrutiny and taking it forward. You would find a receptive audience here on that issue.

Q15 **Baroness Hayter of Kentish Town:** To some extent, between you, Mr Evans and Sarah, you have answered what I was going to raise. On at the post-leg scrutiny, which is one of the things that we can do, it is quite difficult for us to choose which bits to look at. In a sense, I was going to ask whether it would be useful to talk to your Liaison Committee about that, and I think you are already saying yes.

Looking further forward, you mentioned Brexit for future work. It is a personal view, but I am slightly worried that the way we choose our ad hocs at the moment is based on a member with a particular interest putting something forward. That is the truth of how we choose them, which, in the great scheme of things, may not pick out the issues of biggest public interest or, indeed, interest to you. Given that we can do this longer-term bit of work, I was going to ask, although you are already answering it, whether we could have some guidance from you on what might be most useful. You are probably both already saying yes to that question, are you not?

Dr Sarah Wollaston: It would have a great deal of benefit, as would thinking about who would be best to lead such an inquiry, rather than having an individual coming forward to say, "This is something that I have a personal interest in".

Baroness Hayter of Kentish Town: I apologise to my colleagues, but, as you mentioned it, I will mention it: Brexit. They know that I am a bit obsessed by it.

Baroness Garden of Frognal: You are leading on it, so you are entitled to be obsessed.

Baroness Hayter of Kentish Town: What you say about looking at the bits that the Government are not doing, which is always the hardest thing to identify, is really interesting. You can identify when the Government are doing something that you think is rotten, but identifying the gaps is quite hard. How does one go about that?

Dr Sarah Wollaston: It is very difficult if they are not publishing a list of their contingency planning, because we need to be very proactive in looking at what the gaps would be. In the area of health and social care, we have raised concerns about what would happen to supply chains, not just for medicines but for medical devices and radioisotopes, if there are hold-ups at the channel.

What is going to happen about qualified persons, for example—the ones who are doing the batch checking? When we call the Minister, we are reassured that they have it all covered, but we would like to see their list of where they see the risks might be, so that there can be expertise in both Houses looking at what we need to be preparing for, in all scenarios. As Mr Evans has pointed out, given the huge amount of statutory instruments that will be coming our way, the expertise of the Lords will be crucial in that.

Baroness Hayter of Kentish Town: When we were doing—some time ago, in relation to the health Bill or whatever it was called—we kept asking for the risk register. Have you asked for the risk register in your area on Brexit and health?

Dr Sarah Wollaston: We were all able to see the documents in the secret reading room.

Baroness Hayter of Kentish Town: I saw you there.

Dr Sarah Wollaston: Yes, of course. What surprised me most about that register was how quickly I was able to read it. I thought I was going to spend at least two weeks in a dark room and, in fact, it was a few sides of A4 in not particularly small print. Through being able to see that, you can see the amount of planning that is going in.

Q16 **Lord Low of Dalston:** Good morning. Thank you very much for your written submission. It was very helpful. The area I would like to explore with you is the question of follow-up of committees' reports. This is an area where we have had problems in securing adequate follow-up of committee reports. We have had a problem from at least two angles. On our side, there is the problem of availability of staff resources to follow things up. On the government side, we have encountered problems over the Government's response. It has sometimes been late and rather grudging. We have had to use what resources we have to chase the Government for a response. Are these problems that resonate with you at all? Have you encountered them? If so, what suggestions would you have for dealing with them?

Dr Sarah Wollaston: It is sometimes difficult, because you do not necessarily get the response you wanted. That is the main problem: very often, the purpose of your inquiry is to change the direction of policy or try to persuade the Government to do something they are not currently doing. That is the most common frustration on a practical level: that sometimes very few parts of your recommendations will be accepted.

Going back to the excellent ad hoc committee in the Lords, it struck me that there was not a sufficient response to that, and that is where, working together with the Commons, we can add value, to give them more wings.

Lord Low of Dalston: That is helpful. We would have more clout if we followed up together, you think.

Dr Sarah Wollaston: Indeed, and that may work both ways. There is a case for Members in the Commons identifying somebody in the Lords who would like to take up an inquiry report, so that it gets an airing in the Lords as well. There is much more we can do to amplify the work that we are both doing on behalf of the public.

Paul Evans: The Commons committees do not generally receive late replies but frequently feel dissatisfied with what they receive. They are getting more assertive and imaginative in challenging the Government on the quality of their replies, including on one occasion putting the Government's response out to consultation and inviting the public to criticise it as well, which they very merrily did—so forcefully, indeed, that the Government were persuaded to withdraw their original response and come up with something better. It is an issue, but the committees are finding ways to challenge those inadequacies.

Dr Sarah Wollaston: A relatively recent development is that we can present a committee report on the Floor of the House, so it is, if you like, question time for the committee. It is about finding ways to have a wider audience for what you are doing. I do not know whether that is something you routinely do: have Question Time in the Lords when you are presenting a report.

Q17 **The Chairman:** You mentioned the Parliamentary Commission on Banking Standards and the amplification of issues in the Lords. There was no doubt that when the Parliamentary Commission on Banking Standards, of which I was a member, reported, the Government did not take up all the recommendations. Andrew Tyrie, as Chair, was in regular contact with us on the amendments that we wished to get passed. In fact, we got those amendments passed in the House of Lords, but it was the close link between the House of Commons and the House of Lords that ensured that. That is a model for the future, if we can get it.

Dr Sarah Wollaston: Yes, it is a very good model. In fact, we have asked for No. 10 to consider setting up a similar inquiry for health and social care because we feel that in a hung Parliament it is very difficult to get difficult decisions through. Building in consensus right from the start and in both Houses of Parliament is a very important way of getting things across the line in the public interest.

The Chairman: Lastly, you mentioned engaging with a wider and more diverse audience. We have had submissions saying that the House of Lords should be reaching out more, making Parliament more like society and engaging it. The House of Lords, it has been suggested, has an opportunity to do this on long-term and cross-cutting public policy issues. Is that a route that the House of Lords should be taking?

Dr Sarah Wollaston: Yes. Engaging more with people from outside this place is essential for both Houses of Parliament.

Paul Evans: I have two "any other business" points to add. To go back to the witness diversity question, the Liaison Committee in the Commons

will be producing a report shortly, probably next month, on the results of our efforts to increase witness diversity. It is important. That will emphasise that we have approached that by dividing witnesses into two categories: discretionary and non-discretionary. In terms of non-discretionary, if you are inviting the BBC, you get whoever is sent. When reaching out to a wider group, as you are talking about, we are putting our efforts into getting the greatest diversity where we have more choice. That is an important point.

The Commons Liaison Committee produced a report a few weeks ago about some standing order changes, which Dr Wollaston referred to a little earlier, concerning the capacity to invite individual Members to join committees. I can see, for example, on an ad hoc committee, it might add value for a rapporteur from one of the Commons committees to be able to join. Rather than having the rather cumbersome joint meetings, it would be a swifter and more light-footed way of doing it, but it would require standing order changes, I presume, on the part of the House of Lords to achieve that.

Q18 The Chairman: The issue of rapporteurs has been brought up with me, to give people more freedom and, in a sense, make it more enjoyable, as someone mentioned in a submission to us. I have a couple of points just before we leave. Dealing with devolved issues is going to be much more important now, post Brexit. Are the present terms of reference sufficient for dealing with them? How would you imagine us going about our business there?

Paul Evans: The nationally based committees in the House of Commons—Northern Ireland Affairs, Welsh Affairs and Scottish Affairs—interpret their terms of reference very freely. They are not overzealous in respecting the boundaries of devolution, broadly in the agreement of the devolved bodies. Each of them works reasonably well with the relevant legislature. What is missing is that it is quite difficult to get devolution looked at in the round.

Another post-Brexit issue, which I am sure Lady Hayter is well aware of, is that it seems that the joint ministerial committees will become more significant in trying to manage the more complex devolved European matters of legislative competence. That is a missing element. As you are well aware, the Brexit liaison group that meets informally is beginning to address these issues and think about them.

The Chairman: Are you talking about the inter-parliamentary forum on Brexit that we have established with the House of Lords and the House of Commons?

Paul Evans: Yes. The gap is looking at devolution in the round, rather than the individual nations.

The Chairman: Having chaired that forum and been to the Scottish Parliament, I feel it has been successful in a social sense. It has brought people together and there is face-to-face engagement. When you get

face-to-face engagement, it really helps. One of the big issues that we looked at was Clause 11. We have yet to find out if that is a total success, but there has been partial success in that. It is because we have established the channels at the political level and at the officer level. That has been very helpful.

Paul Evans: I am going to take the opportunity to push one of my hobbyhorses around, which is the lack of a structured, UK-wide committee forum for inter-parliamentary debate. We have the beginnings, but there is a long way to go.

The Chairman: That is a very good point and we really need to work on that together. Do you have any other comments or any golden messages that you want to leave us with?

Dr Sarah Wollaston: The key point is to focus on the value we add for the public. Does joint working across both Houses add value for the public? I think it does, and there is a very strong case for saying that both Liaison Committees could meet, even if only twice a year, to look at our forward planning and how we can complement each other's work. I would certainly welcome that.

Q19 **The Chairman:** It is an excellent idea. Maybe I will end the session on a radical note and ask whether you think the House of Lords should be becoming more democratic, with elected Chairs?

Dr Sarah Wollaston: That is not controversial at all, is it? It is somewhat ironic that those who are now complaining about the Lords are the people who blocked reform last time round, but there we are.

The Chairman: We are very grateful for your evidence this morning, but particularly for you contacting us at the beginning. We really need to keep in contact with each other on this issue.

Dr Sarah Wollaston: I would really welcome that, and thank you very much for giving me the opportunity to be here.

The Chairman: It has been hugely helpful, and thank you, Paul.

Paul Evans: Thank you very much.