



Liaison Committee

Corrected oral evidence: Review of Investigative and Scrutiny Committees

Wednesday 13 June 2018

10.40 am

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Members present: Lord McFall of Alcluith (Chairman); The Earl of Courtown; Lord Foulkes of Cumnock; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Smith of Hindhead.

Evidence Session No. 8

Heard in Public

Questions 60 - 68

Witnesses

I: Michael Clancy, Director, Law Reform, Law Society of Scotland; Robert Khan, Executive Director of External Affairs, Law Society of England and Wales.

Examination of witnesses

Michael Clancy and Robert Khan.

Q60 **The Chairman:** Good morning. I detect a familiar face. However, for the sake of the record, can you please introduce yourselves?

Michael Clancy: I am director of law reform at the Law Society of Scotland. Good morning everyone.

Robert Khan: Good morning. I am executive director of external affairs at the Law Society of England and Wales.

Q61 **The Chairman:** Michael, you produced your report and, having looked at it, there are 12 to 14 areas which you have focused on for us and we hope to go through those. This is, however, the first review for 20 years. What should be uppermost in our minds in undertaking this review for the purposes of the Committee as we go forward?

Michael Clancy: That is a very interesting question, Lord Chairman. The first thing in my mind when I think of the review of 20 years ago is that life has changed since then and the world has changed. Some of these things are reflected in the comments the society made about issues concerning new technology, devolution and the incipient withdrawal of the United Kingdom from the European Union. All these will have bearing on the thoughts of the Committee as we go forward. The follow on from that, such as the impact on the economy and society in general, may be foremost in the Committee's mind. The other thing is that, although it is 20 years since there has been a broad review, there have been reviews in both the House of Lords and the House of Commons by various committees that have a bearing on some of the aspects, which you may want to consider as well.

Robert Khan: I would reiterate what Michael has said. It is worth reflecting that when the last review was carried out, technology was in a very different state. I do not think that the internet had been invented. I do not think we were using emails, and Twitter was only a glint in some inventor's eye. The onset of new technology must be considered. There is also the supervening issue that always comes up of Brexit. That is clearly going to have an effect and we will go on to some of those concomitant effects. Finally, things are different politically to how they were 20 years ago. If you look at the power of the Whips, certainly in the Commons, it seems to be rather less than it was. If you look at structural changes to Select Committees in that House, you now have the election of Select Committee chair people. There are certain trends which may be reflective in your Lordships' House as well that may be worth looking at.

The Chairman: Structure is important as well.

Baroness Hayter of Kentish Town: What do you think is the purpose of our committees?

Robert Khan: Self-evidently it is to provide robust scrutiny not just of government legislation but of government actions more generally. I also think there is a big role for the Lords committees in looking at those cross-cutting, big supervening issues such as technology. I know that there is a committee set up specifically to look at artificial intelligence. In the Lords there is also an opportunity to have a broader sweep of those bigger issues, whereas in the Commons it is very much looking at the work of individual departments and Ministers. Everyone in the House of Lords is here because they have expertise in a particular subject, which is very helpful in the scrutiny of legislation and government action.

Michael Clancy: Following on from what Robert has said, fundamentally one is looking at policy, examining legislation, looking at the way in which government is working and reporting to the House with recommendations before further action, debate or something like that. These are all important features of the way in which House of Lords committees work at the moment. Nothing in our paper would seek to take away from that. These are core elements in the business of the House of Lords committees, and it is important that the respect which is accorded to House of Lords committees reflects the expertise that Robert has identified as being inherent to the membership of the House. We can all be clear about that. The impetus is to build on that expertise and to make it more widely recognised. That is a clear objective that one would want to achieve.

Baroness Hayter of Kentish Town: I am inclined to say thank you because that is what I was hoping you were going to say. What other people have been saying is quite different—that we should be out there creating a public mood. You are saying that our expertise should be used to influence the Government or this House or the House of Commons. I wanted you to know what was behind my question. In a sense you are parliament-focused—as both of you have been; other people have a view that we should be doing more influencing. You do not have to comment on that, but I just wanted you to know what I was trying to tease out.

Michael Clancy: I hope you will not mind if I do comment on that. The House does not exist in a vacuum. Although the focus which we have both described relates to the influence upon the Government and upon legislation and policy, nevertheless the public expect some kind of reaction from the House of Lords. In the last few years the House of Lords has been seen by the public as a counterbalance to government action. Therefore, I would not underestimate the ability of the House not necessarily to form the public mood but to reflect the public mood. In that sense, not cutting across the elected House, because the tone of the House of Lords is categorically different—but certainly soundings taken outwith Parliament would be a worthwhile thing to do. The Interparliamentary Forum on Brexit, which Lord McFall has chaired, is an instance where getting out and talking to people has resulted in deepening understanding of what is happening outside.

One might also push that forward because I remember when there was a discussion about the Bill of Rights. I think it was the Constitution Committee, probably about 10 years ago, which came to Edinburgh to take evidence from people in Edinburgh. I was one of those and I remember the late Lord Onslow asking me about Magna Carta and its application in Scotland, which I am afraid to say I was able to disappoint him about. However, it was important that that Committee came to Edinburgh and sought that kind of comment because if it had not done so, it may have produced a report which went down a different track.

Q62 Lord Lang of Monkton: It is good to see emerging already a clear distinction between the Select Committees in this House and the other House. I would summarise it as saying that in this House we are engaged in a search for truth, facts and evidence that can inform conclusions, whereas in the Commons there is inevitably a political undertone and a high profile for some of the Select Committees, and it seems that there is sometimes a search for victims rather than for truth. I think it is important that we keep to that and I hope you do too. I think you do but, Mr Clancy, you identified several key reasons why you thought the current House of Lords Committee structure should change. You mentioned devolution, Brexit and technology. How do you think that change should be implemented to make them more reactive and more flexible without losing the underlying search for truth that drives our inquiries?

Michael Clancy: That is a very engaging question, Lord Lang. If one were to take each of these in turn, the withdrawal from the EU will precipitate some kind of change in the nature of the activity of Parliament at large. As we deconstruct the supranational legal order and replace it with a national legal order, this place will have much more policy origination work to cope with. At the moment much of the policy of EU directives and regulations is made in the European institutions. That would become naturalised and therefore one could expect that there would be more work in those areas which are currently under EU competence. Looking at the nature of the committee structure, one might want to reorganise that to fit that kind of change.

I agree with Lord Boswell's evidence that change should not be precipitate, but we must be prudent about the change and that prudence would dictate that we must prepare for the UK to leave without an agreement on 29 March next year. The House has to be ready in the event that there is no agreement, and have a plan. You may call it plan B or plan X, but we need some kind of plan to take account of what might happen in the event of there being no agreement. With the possibility that there is an agreement and we have a transition or implementation period to 31 December 2020, that would necessitate a different kind of plan because we would still be receiving law from Europe and still be subject to those rules.

Lord Lang of Monkton: And devolution?

Michael Clancy: Devolution has been growing organically since 1998 and the significant changes of the Calman Commission, the Silk Commission for Wales, the Smith Commission for Scotland and the intervening legislation makes the relationship between the UK Parliament and the devolved legislatures and Administrations quite different from what it was in 1998. Who knows what the future may hold? There is no committee of the House of Lords which is charged specifically with dealing with devolution, although that may come under the Constitution Committee's remit. The Constitution Committee has lots of other things under its remit as well. It is a question of managing the relationships and making sure that the ratio of time to the issue is proper.

Lord Lang of Monkton: The Constitution Committee did produce a report a couple of years ago on intergovernmental relations between Scotland and the UK. I do not think it touched much on Wales at that time. That is a basis on which work could be developed. Do you think that the Governments need to get together? Are the Joint Ministerial Committee arrangements, for example, adequate or do you think that there should be developments there?

Michael Clancy: In all our submissions in connection with the EU withdrawal Bill, we have been at pains to reiterate, with modifications, what Bernard Jenkin said when he was chairman of the Public Administration and Constitutional Affairs Committee in the House of Commons: that this should be not just a whole of government exercise but a whole of governance exercise. We interpret that to mean a relationship between the United Kingdom Government and the devolved Administrations which is well founded and structurally sound; and to engage with civic society, the trades unions, churches, professional associations and universities so that a rounded picture of the relationship between Government and governed should be promoted.

Lord Lang of Monkton: How would a Select Committee fit into that arrangement?

Michael Clancy: It would identify those areas which would need to be inquired into, such as whether the JMC relationship was a good, functioning relationship, whether the openness and transparency which one might want as a member of society was present and what results were available. That is where a Select Committee would serve a good task.

Robert Khan: I wanted to comment on the Brexit issue because I saw in some written submissions to this Committee saying that you could immediately abolish the European Union Select Committee and their six committees on exit day. In fact, there will be an enormous need for more scrutiny of what is happening in terms of our relationship as we depart. We all know, under the terms of the EU withdrawal Bill, the entire corpus of European law is being retained in UK law from exit day. Ministers have given themselves powers in the withdrawal Bill to amend, cut and paste and make sure that that is consistent, but I think there is a real role for

the Lords in making sure that Ministers are doing that correctly and putting their shoulder to the wheel.

Secondly, the slogan of some was to take back control and there may be an exercise in looking at which of those EU regulations we want to retain and those which we want to depart from.

Thirdly, there is the concept of what Lord Pannick calls zombie law, because EU law will continue to develop and move on and reform, while arguably the law that has been retained here will become frozen in aspic. There may be issues around that relationship for your Lordships to look at.

Finally, there is the point that Michael made about the withdrawal itself. We still have no real certainty about how that is going to be effectuated. We know that there is going to be a transition agreement, but the engagement of the UK with Europe is still going to be very intense and detailed and I think there will be a strong need for these committees to continue. The joint Law Societies of England, Wales, Scotland and Northern Ireland run a joint Brussels office and there was some thought that we could close that down. In fact, we have renewed the lease for six years.

The Chairman: The Committee is very much alive to that issue.

Lord Foulkes of Cumnock: That has been very helpful. I do not want to go into preparing for Brexit because if the Government are not prepared, as they are not, I am not sure that the House will be prepared. Can I ask another question about the purpose of committees because both of you have said that they should be robust and challenge Government? There is a tendency for Ministers sometimes not to understand the separation of powers—the difference between Government on the one hand and the legislature on the other and the way in which people are nominated to Select Committees. The House of Commons has moved towards election. We have not. Do you think that we should?

Robert Khan: I think you should.

The Chairman: We do not need to embellish that.

Michael Clancy: That is if you subscribe to the theory of the separation of powers. I am not entirely sure that we have separation of powers in this country. We may have distribution of powers, and Ministers sit in Parliament. We went through a process years ago of moving the judges out of Parliament. I am not entirely sure whether you want to go as far as to move Ministers out. We also reflected on recommendations from the commission on reform of the Scottish Parliament, which was recommending that there should be elected chairs of committees, or convenors of committees as they are termed in the Scottish Parliament. That is certainly under consideration. There are many recommendations from that commission and the Parliament is working through those

recommendations. I do not know when they will get to these provisions, but it is certainly worthy of consideration.

- Q63 **Lord Smith of Hindhead:** Do you believe there is an argument for a sessional committee dedicated solely to post-legislative scrutiny, or should this responsibility be built in to the thematic sessional and ad hoc committees in some form?

Michael Clancy: We believe that post-legislative scrutiny is a good thing. As I indicated in our paper, one post-legislative ad hoc committee was appointed in 2017/2018 to deal with one Bill. But if one looks at the number of Bills which are passed—I indicate those on page 9 of our submission—in Session 2016-2017, 33 Bills received Royal assent; in 2015-2016, 29 Bills; in 2014-2015, 36 Bills, and yet only one Bill is receiving post-legislative scrutiny as such. That means that there is an awful lot of legislation that is not receiving post-legislative scrutiny. Having a dedicated committee may make that an easier task. Maybe more than one Bill could be dealt with over a Session.

If we want to learn from legislation and its implementation, and if we want to learn not to make the mistakes of previous generations, it is essential that we find out if legislation which is passed by Parliament is working. In the previous Parliament the Political and Constitutional Reform Committee, under the chairmanship of Graham Allen MP, published a report for the House of Commons which supported post-legislative scrutiny quite clearly. It is instructive to see the extent to which that has been taken up.

Post-legislative scrutiny is not appropriate for every piece of legislation but it may be for quite a few, and it is in that kind of context that we are making these submissions.

Lord Smith of Hindhead: We need to go back to your point that the Lords is all about expertise. If you have just one committee looking at post-legislative scrutiny, you do not get every bit of expertise which might deal with each different Act which comes through. I sat on the Select Committee on the Licensing Act ad hoc committee, which I have a particular interest in, and that was really useful but if it was a standard committee that might be difficult. That is my view. Do you want to come back on that?

Michael Clancy: It is not preclusive of taking evidence from those who do have expertise, either in the House or outside the House. Therefore, even if there were one committee dedicated to post-legislative scrutiny, the techniques of post-legislative scrutiny would be effectively universal. It is the detail of whether something is working which would depend upon the evidence which that committee took.

Robert Khan: I agree that it is important for both ad hoc and thematic committees to have the opportunity to carry out post-legislative scrutiny. We believe that post-legislative scrutiny is incredibly important and we do not do nearly enough of it in this country. One example dear to the Law

Society's heart is the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which Ministers said at the time would radically increase the rates of mediation and reduce court cases. In fact, we now know that mediation has dropped by a third because that failed to take into account the role of solicitors in pointing people towards mediation rather than litigation. It is about looking at the claims that are made by Ministers and subjecting them to that scrutiny so that we can avoid those types of mistakes in the future. To their credit, the Ministry of Justice and Lord Chancellor have announced a post-legislative scrutiny of that Act. The issue is that the review will be carried out by the Ministry of Justice, which brought in the proposals. Putting it politely, they might be seen to be marking their own homework. This is where I think that the Lords could do a better job.

Michael Clancy: One of the changes which has happened in the Scottish Parliament is that the Public Audit Committee has taken on a legislative scrutiny role, but that does not preclude the other subject committees in Parliament, such as the Justice Committee, the Health and Support Committee or other committees, from undertaking post-legislative scrutiny of Bills which they have dealt with during their scrutiny in the initial sense. I do not think that having a post-legislative scrutiny committee as such would preclude other committees from undertaking scrutiny if they so desired.

Q64 **Lord Smith of Hindhead:** I have another question on this general theme. Some of the previous witnesses on this review have advocated a legislative standards committee and I would be interested to know your views on it.

Robert Khan: We saw that proposal and think that there is some merit to that. We also have a Delegated Powers and Regulatory Reform Committee, which has played an effective role. Having a committee that analyses Bills and makes sure that they comply more with technical and procedural criteria, rather than looking at matters of principle, would be useful.

Michael Clancy: I had the pleasure of reading Professor Dawn Oliver's lecture to the Statute Law Society from 2015 about this very topic and I would commend it to the Committee.

Lord Smith of Hindhead: I missed that one.

Michael Clancy: Next time you should come along. Let me know when you are coming. It is important for us to have some concept of legislative standards, and committees already established, such as the Constitution Committee, the Delegated Powers and Regulatory Reform Committee and the Joint Committee on Human Rights, have certain standards against which they test legislation. Therefore, it is not new territory as such. One would have to contend with the reluctance of government to have such a committee because government might see a legislative standards committee as cutting across the freedom of movement of government.

It is difficult to separate criticism of the policy from criticism of the standards of the legislation. Sometimes when people cry out, "This is a very bad Bill", they mean that the policy behind the Bill is very bad policy and the Bill is simply a proxy for criticism of the policy. Carefully constructed legislative standards would be worth looking at. That has already been looked at by the House of Commons, which one might reflect upon in a report.

Q65 The Earl of Courtown: You have both mentioned post-legislative scrutiny. What do you mean by good scrutiny? People talk about the House of Lords, where exact scrutiny is carried out of legislation, both in the Chamber and in committees, but does that scrutiny mean in the end that we get good law? That is debatable, as you alluded to earlier. How can we improve the scrutiny in any future committee system that we have here?

Robert Khan: Michael has drawn the distinction regarding legislation that is reflective of good public policy, and I was talking about post-legislative scrutiny in that sense, but there is also the second sense as to what makes good law. The Office of the Parliamentary Counsel, as I am sure you will know, defines good law as law that is necessary, clear, coherent, effective and accessible. I am not sure when we look at the morass of legislation that we have seen in the last three years that those metrics are always abided by. There have been great steps in the technical quality of legislation. Lord Lang looked at this in his Constitution Committee inquiry, where we both gave evidence.

Things are improving but there is still much to be done. For example, in situations where statutory instruments amend statutory instruments it is hard to see that being accessible. There are changes in tax law recently that are so complex that Lord Justice Jackson said that the technical complexity would be the envy of Byzantine emperors. There is some way to go, and there is a role for the Lords in upholding those high standards in the technical sense as well as the public policy sense which we touched on earlier.

Michael Clancy: I think Byzantine emperors get a bad deal out of this. The Emperor Justinian promulgated a code of law which I was tested on at university. Some of the law which Byzantine emperors produced was clear, accessible and quite readable and applicable even in 21st century.

Lord Foulkes of Cumnock: It sounds as though you helped him draft it.

Michael Clancy: No, his commission was headed by a man called Tribonian, but that is another story for another day, Lord Foulkes. When I was at university we were taught about Lon Fuller's "The Morality of Law" and the eight ways to make bad law—not making law which is accessible or public or prospective rather than retrospective, and things like that. Good law and good scrutiny should go hand in hand. What is the nature of good scrutiny? Does it mean that every point which is made is then adopted in some kind of Damascene revelation to government Ministers? I am not sure.

Given that, in the process of scrutiny Ministers may have to answer the points about interpretation of amendments which are proposed, whether they are accepted or rejected, these can, in terms of *Pepper v Hart*, be produced in court later as aids to interpretation. Therefore, even if the scrutiny does not result in a change to the actual measure, it is not wasted. We sometimes forget how important references to the parliamentary process and to *Hansard*, or the *Official Report*, are when dealing with litigation which emerges out of these pieces of law.

Q66 Lord Lang of Monkton: Can I bring the discussion back from Justinian to a rather more transient timescale of ad hoc committees? You had something to say on this, Mr Clancy, in your paper, which is helpful. What should be the ideal duration of an ad hoc committee? Can you expand on your suggestion of how the Liaison Committee could improve the follow-up of ad hoc reports, which is always a sensitive issue?

Michael Clancy: Ad hoc committees are appointed only for one year under the current arrangements. "How ad hoc is ad hoc?" is the question. One year, at the moment. One could conceive of circumstances where an issue which an ad hoc committee is seized with may extend beyond one year. Therefore, there has to be something which allows a little flexibility. I do not think one could get into a situation of saying that there is any fixed, determinate time for an ad hoc committee. It may be as long as it takes and no more to be able to produce a report. That would probably be where I would rest on that.

Lord Lang of Monkton: The parliamentary cycle tends to affect the work of these committees.

Michael Clancy: It does, and therefore the Liaison Committee, which I have suggested should be able to consider on a biennial basis, could also take into account some form of legacy consideration. If an ad hoc committee which is coming up to the end of the parliamentary cycle finds itself not yet in a position to produce its final report, it could issue an interim report which is then placed in a legacy file which the Liaison Committee could carry forward to the next Parliament.

Lord Lang of Monkton: Do you think that would improve the follow-up process?

Michael Clancy: Having legacy arrangements would, because there would be less danger of items getting lost or forgotten about and we would have a greater sense of continuity.

Robert Khan: On ad hoc committees, there is a case for them being slightly longer than one year, particularly on those big, cross-cutting, powerful issues that might be debated. The issue is that if ad hoc committees start to run and run, they start to turn into sessional committees. That is something else, with regard to resource implications, that the House will want to think about.

Lord Foulkes of Cumnock: Can I ask about an example from the Scottish Parliament that Michael might know? As you know, I spent four

frustrating years in the Scottish Parliament. There are two Acts of the Scottish Parliament which have gone into disrepute. One is the named person legislation and the other concerns religious bigotry at football matches. People say that anything could have been dealt with under existing legislation. Do you think that those got through the Scottish Parliament because it is a unicameral Parliament and there is no second chamber to give scrutiny, or is there another reason why these Bills, which have some disrepute, went through?

Michael Clancy: That is a timely question because, as you know, the Offensive Behaviour at Football and Threatening Communications (Scotland) Act legislation has recently been repealed by the Scottish Parliament, and a judge-led review was commissioned which has just produced Lord Bracadale's report on hate crime. On the named person question, for members of the Committee who are not up to date with Scottish legislation, this is about the Government identifying a named person to look after every child. It fell down on being outside the competence of Parliament because it contravened data protection legislation. We had commented on it being likely to be unsuccessful as legislation. The Scottish Government are attempting to make changes to that which they hope will correct the situation and allow the legislation to function. That is still a work in progress.

On these two pieces of legislation and the question whether they got through because it is a unicameral Parliament, I do not think it is about being unicameral; it is about the relationship of the Government to the Opposition in the Parliament and the role of committees. The role of committees in the Scottish Parliament was designed to effectively deal with the sort of scrutiny elements which a second chamber would allow for. A strong committee structure was therefore envisaged in the original legislation and in the Standing Orders, but that is subject to the political will and that depends on the electorate. The legislation to which you refer was probably passed at a time when there was an overall majority for the SNP Government in the Scottish Parliament and the Opposition parties did not have the numbers to oppose that effectively.

Lord Foulkes of Cumnock: The committees, such as standing committees, did not carry out the kind of scrutiny of legislation that it was originally envisaged that they were supposed to do?

Michael Clancy: I would be less with you on that. The original Offensive Behaviour at Football and Threatening Communications (Scotland) Act was intended to be emergency legislation, and the Justice Committee rolled back from that so that the Bill received proper scrutiny according to the Scottish Parliament's rules. It is not the case that the committees were weak; it is that the Chamber was strong.

Q67 **Baroness Hayter of Kentish Town:** In your answer to Lord Lang you talked about the Select Committees looking at the governance—whether the JMC or whatever worked. We are quite interested in how the Parliaments or the assemblies might have a role. Robert, we have talked about the Welsh Assembly and Scottish Parliament, but we have an

assembly in London for 10 million people. Do you have thoughts about, going forward—whether assembly to assembly rather than government to government?

Robert Khan: That is useful to explore in two ways. We have had devolution in England and Wales for some time now, certainly in terms of the mayoralty of London since 2000. There is a well-developed sense of scrutiny in terms of the assembly and assembly committees scrutinising the work. It may be less developed in other assemblies and in local government more widely. As we all know, there are well developed overview and scrutiny arrangements which this Committee might wish to draw lessons from.

On the more structural question, there may be advantages in committees of the Lords scrutinising what is going on regionally. I know that Andy Burnham gave evidence recently to one of the committees in Parliament on the effects of Brexit. I also think it will be helpful in moving away from what we sometimes call the Westminster bubble. For example, if the Lords were to do an inquiry on the effect of Brexit on legal services, the evidence that you might get from firms in the City of London might be different from the perspective that you got from Manchester.

Lord Foulkes of Cumnock: Can I follow up that interesting question? It was raised earlier that we should meet more often outwith Westminster and take evidence outwith Westminster. Some people say, "We can get it online; get the video conferencing". I am not sure that you can get the same kind of feel using video conferencing as we are getting from talking to you directly now. What do you think?

Robert Khan: I agree.

Michael Clancy: I have been in committees in the Scottish Parliament where there is some form of video conferencing and it works quite effectively when you are looking for an answer to a question. If it is a more nuanced kind of evidence session, however, personal appearance is better.

Q68 **Lord Lang of Monkton:** The Law Society of Scotland suggested that the terminology that we use in our Select Committees is off-putting, including phrases such as "taking evidence" or words like "witnesses". To change that will be an uphill struggle. It is a little like changing the King James Bible. There will be a lot of reverberations. Why do you think it is a good idea, and how do you think things could be improved? Before you answer, I understand that you want us to communicate with a wider network and penetrate people's resistance to taking anything that comes out of Parliament, but that is only partly true. Select Committees also exist to inform the House of Lords, and through them to inform Ministers in government, in the hope of improving their reaction. It is quite a big issue when you open it up; it is not just a matter of a few changes of words.

Michael Clancy: No, indeed. It is good that you raise that, Lord Lang, because I have been thinking about it a little and what sort of

substitution one could use—"invitee", "consultee"? Instead of evidence one could say "views" or "opinions". What I am giving today is not my evidence, in the sense of something which could be corroborated, but rather a set of views about the topics which have been raised.

On reflection, however—and this is nothing to do with recent events in Parliament—there is a distinction to be made between this kind of session, where a Committee is seeking views about matters of importance to the House, and where there is a more contentious or tense element, where getting to the truth of the matter, which you mentioned in the first question you raised, is the point of the issue. There, I agree that there is an uphill struggle because if a committee is trying to get to the truth of the matter against a hostile or uncooperative witness, it is truly a witness-and-evidence situation.

Work has already been carried out on a joint committee basis and also in the House of Commons on what one does regarding the Committee of Privileges and the privilege of Parliament in calling witnesses, putting them on oath and compelling witnesses in those instances where it is a contentious matter. Therefore, I agree with you. It is not the case that the language has to change in every instance, but there might be more of a modification and a sensitivity to the listener and to the reader when one is looking for evidence in the round.

The Chairman: I had an informal conversation with a former Lord Chief Justice on this issue of evidence, and he said that we should not be too hung up. He agreed with my proposition that evidence is a reported conversation.

Robert Khan: There is a clear analogy with the legal structure because in court you have witnesses who give evidence. It is important to have a degree of formality so that people prepare properly, respect the court and treat it with the seriousness that it demands. I agree with Michael that some of the language could be made more accessible. We all remember the Woolf reforms that turned "plaintiffs" into "claimants". I quite like "plaintiffs" but I can see that it was slightly archaic.

The Chairman: Perhaps we can come back to you for some assistance on that because your submission has been helpful. Maybe I could look at three points in your submission. You mentioned that any reform has got to be evidence-based. Perhaps you could elaborate on that. You also mentioned that we should be professionalised in our committees. You mentioned the effectiveness and efficiency of committees, a written role description for members and chairs, a communication strategy embedded at the beginning with broader outreach, the objectives of the inquiry being established, the context politically and socially and the methods available. That, too, maximised the impact both within and outwith Parliament. On the structure, in passing you mentioned the flexibility to look at long-term public policy but also to respond to live events as we go along. That change of structure will be important to us. On that—evidence-based, the professionalism, the communications strategy, the structure—could you give us your final comments?

Michael Clancy: The evidence is part of this process. Rather than simply saying, for example, that we have got to change the committees without deliberately taking views from people and those who are interested in these kinds of topics across a wide spectrum of professional organisations like ours, academic interests and parliamentary interests as well, it might be interesting to find out what members of the other legislatures think within the UK. That could mean that you get the best evidence for change which would inform the House when it comes to consider your report.

In terms of professionalisation, there is an increasing demand in any organisation that has many committees—the Law Society of Scotland is one—for more focus on the roles of committee members and chairs and the existence of a code of conduct, which we recently published. If you like, I can send that to you. The arrangements for time limitation of holding office in a committee are important.

Communications strategy depends on what you are investigating, what scrutiny is being undertaken and where one would go with that, but if you do not have a communications strategy you may find yourself falling short in informing government stakeholders and the public. It is difficult sometimes, unless one is alert to what is going on in Parliament, to find out that some committees are undertaking some investigations at all. Why is that the case? What is it about the information that has been put out, which is ignored by the media outlets or by social media? It is not being tweeted on, or it is not being reflected in other forms of media. These are the kinds of things which we have been thinking about in Edinburgh and I hope they are of use to you.

The Chairman: Good. And the structure?

Michael Clancy: One might think that the structure might be pyramidal, in a sense, but looking at the list of committees in the consultation document, you have helpfully put it in a linear form. It is linear if you look at it that way, but if you look at it another way it is pyramidal, with the various European Union committees, the non-EU sessional committees, the ad hoc committees and the joint committees, and the apex of that is the House. The structure has to be sufficiently fixed to do the job but sufficiently flexible to take account of changes as time goes on. That is why the work of this Committee may need to be a rolling programme of almost constant review.

The Chairman: We have time because this is a two-term Session and that is important for us. We need to take time on this in light of the comments earlier about the EU and whatever else, and we are conscious of that. Given the evidence you have provided for us, particularly the Law Society of Scotland, and the areas we have still to work on, perhaps we will come back to you on these issues and you can help us as we progress on this rolling programme.

Michael Clancy: Delighted to help if we can.

The Chairman: I am really pleased and grateful for your evidence this

morning. It has been very helpful to us. Thank you very much.