



Liaison Committee

Corrected oral evidence: Review of Investigative and Scrutiny Committees

Tuesday 19 June 2018

11.20 am

Watch the meeting

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Lord Foulkes of Cumnock; Lord Low of Dalston; Lord Smith of Hindhead.

Evidence Session No. 11

Heard in Public

Questions 80 - 87

Witnesses

[I](#): Rt Hon Lord Blencathra; Rt Hon Lord Trefgarne.

Examination of witnesses

Lord Blencathra and Lord Trefgarne.

Q80 **The Chairman:** Good morning. Welcome to the second session for committee chairmen. Could you introduce yourselves, please, for the shorthand writer?

Lord Blencathra: I am chairman of the Delegated Powers and Regulatory Reform Committee, and I am guilty of sending you a 25-page, 100-paragraph magnum opus on some of my radical ideas for what we do post Brexit.

Lord Trefgarne: I am chairman of the Secondary Legislation Scrutiny Committee.

The Chairman: Lord Blencathra, I did justice to your paper. I read every paragraph. I highlighted it, as well, as I went along. That is the proof for you. I commend you on your effort. It was very helpful.

Can I put a general question? What is the purpose of the House of Lords committees, from your angle?

Lord Blencathra: First and foremost, it is to assist in holding the Government to account. Of course, we are a revising Chamber. Our specialist committees, supported by incredibly able clerks and staff, do detailed scrutiny work and report to the House. Lord Trefgarne and I share an excellent clerk. My committee has the benefit of four parliamentary counsel. Between them, they have about 100 years of experience as qualified barristers, so they are incredibly able.

The fact that we do not shadow House of Commons committees is another strength. We have our own particular niche, where we do specialised work. There is some complementarity as well. The Delegated Powers Committee, which has no counterpart in the House of Commons, took the unique step of reporting on the European Union (Withdrawal) Bill while it was still in the Commons. Normally we report on Bills only once they have had a Second Reading in the Lords. We also reported on the Taxation (Cross-Border) Bill. We pointed out that it had more Henry VIII clauses than about 10 European Union (Withdrawal) Bills.

Uniquely, we reported on those Bills while they were being considered in the Commons. That provoked Members in the House of Commons to say, "Goodness me. We didn't know that you people, doing this rather specialist work, existed in the Lords. Can you now report on some other Bills for us, please?" We have had to curtail our enthusiasm, in some ways. We cannot report on all House of Commons Bills, but where we can, we have assisted. We will consider in future whether or not we should do that as well.

Of course, the other role of committees is that we have an internal organisational structure. We have specialist committees here, such as the

Liaison Committee itself, that look after internal affairs: the work of the House and how the House functions.

I began by saying that we hold the Government to account. In some ways, we also hold Parliament to account. In my opinion, post-legislative scrutiny is very important. We had post-legislative scrutiny of the Equality Act 2010, an excellent report that was dismissed, or even dissed, by the Government. We had the excellent report by Lord Cameron on the Natural Environment and Rural Communities Act 2006. As I said in my submission, I believe that we should do more post-legislative scrutiny.

Lord Trefgarne: Our committees must support the work of the House. The purpose of committees must be to understand the context and the purpose of the House as a whole. This House is respected for its deliberative approach to legislation, its ability to bring to bear the expertise of its Members and their willingness to consider the technical detail of government proposals. That has been the experience and the achievement of the Secondary Legislation Scrutiny Committee over the 15 years since it was set up. The absence of similar committees in the House of Commons points to another characteristic of Lords committees: they should be complementary to activity in the Commons, not in competition with it. Other than that, I can only support what Lord Blencathra has just said.

Q81 **Lord Low of Dalston:** What do you think are the key strengths and weaknesses of House of Lords committees and, in particular, of their current structure?

Lord Blencathra: In relation to my committee, Delegated Powers, perhaps I can read into the record a quote from Ruth Fox of the Hansard Society, who has supplied evidence. She said, "strengths include the nature of the specialist expertise of the Members, the forensic and rigorous approach to the scrutiny, and the quality of the reports that consequently emerge. It is fair to say that a number, if not all, of the committees are important sources of persuasion and power, influencing both the views of Members of the House, for example through the Delegated Powers and Regulatory Reform Committee, Secondary Legislation Scrutiny Committee and the Constitution Committee, and the wider debate and views of stakeholders". I can do no better than that to quote the strengths.

Of course, as I mentioned earlier, there is also the collaborative work. The work of the Delegated Powers Committee informs the work of the SLSC. The SLSC referred to the DPRRC's report on the Digital Economy Bill, and so on.

As far as the weaknesses are concerned, I wish to withdraw the second sentence of the executive summary of my report, in which I said, "The weaknesses are that we write wonderful reports, but nobody pays a blind bit of attention to them, and there is nothing that we can do about it".

The Chairman: You repeated it throughout.

Lord Blencathra: Yes, I did. I said it a few times. However, after I got Lord Forsyth's note last night and read it, I deliberately came early today to listen to what he and Lord Gilbert had to say. I entirely endorse what they said about communications strategy. I had assumed that we would be incapable of improving our communications. It is our biggest weakness. If we implemented what Lord Forsyth and Lord Gilbert were suggesting, I think we would eliminate that major weakness.

The Chairman: That is terrific.

Lord Low of Dalston: Do you think we have the balance right between sessional and ad hoc committees?

Lord Blencathra: In paragraph 70 of my report, I say that I dislike the term "ad hoc committees". Although ad hoc means "for a specific purpose", my thesaurus suggests that it also means "slapdash" or "haphazard", something that pops up and is of little consequence. Therefore, I think the term "ad hoc" somehow diminishes what we do. I recommend that it be changed to "special investigative committee", or something like that.

Leaving that aside, I do not think that we should get hung up on the balance. The balance between sessional and ad hoc committees, or special investigative committees, does not matter. The important thing is that the Liaison Committee uses the criterion that it is current and relevant when deciding whether to set up a special investigative committee. If there are only two current and relevant subjects to review, we should do only two committees. If there are a dozen, and we have the staff, the secretariat and the clerk back-up and enough Peers to do them, we should do a dozen. We should not have the formula that, because we have six sessional committees, we should have only six ad hoc committees. We should have as many as there are relevant subjects to discuss, staff to people them and Peers to work on them.

Q82 **Earl of Courtown:** Lord Blencathra, in your submission, you talk about the future of EU Select Committees. We have this great resource of staff and Members. The European committees are always very popular with our colleagues. In your report, you recommend, "We should retain the EU Select Committee to do the same task for the EU as the International Relations Committee does for the rest of the world". You add that we may need a couple of more technical sub-committees. Is there anything you can add?

Lord Blencathra: If I may, I will deal with the thrust of some of the more radical suggestions in my report in response to your question 6, on other perspectives. At this point, I merely stress that there will not be a role for all six of those committees. Because we may stay in Euratom and some other EU institutions—on air safety, for example—there will certainly be a role for an EU Select Committee to monitor the work of the EU, in the same way as the International Relations Committee monitors the rest of the world. That is why I suggest that there may be a need for a couple of sub-committees to monitor air safety or technical aspects of

the things we will remain in. However, that will take up the role of one EU committee. The other six, and the main Select Committee, will be redundant. I have my own views on how that expertise is used. I will set them out in response to the last question, rather than take up the Committee's time now. I can also mention them in response to the question on treaties, which Lord Trefgarne will deal with.

Lord Trefgarne: A key strength of Lords committees is the contribution of their members, drawing on their wide range of expertise and their willingness to play a full role in committee deliberations. A weakness may be the low level of public recognition of the work of Lords committees, as Lord Blencathra suggested. Of course, the media pay far more attention to the Commons than to the Lords, but committees themselves could perhaps do more to encourage greater awareness.

Sessional committees retain an infrastructure to follow up recommendations affecting government and others, but ad hoc committees tend to struggle with follow-up procedures. My committee, the SLSC, already scrutinises certain treaties laid under the Constitutional Reform and Governance Act 2010, but only at the point of ratification. We have seen about 20 of those each year. There is now a lot of discussion about what should happen to the next, much bigger, batch of treaties, which I do not think will be a matter for my committee, not in its present form, in any event.

Lord Low of Dalston: Several witnesses giving evidence for the current review have called for a dedicated House of Lords committee to scrutinise treaties. Would you welcome that?

Lord Trefgarne: I think that is what will happen. I would not oppose that.

Lord Blencathra: I would support that as well. It is largely a matter for Lord Trefgarne's committee at the moment. I think there was a subtext in the suggestion that that could occupy half a dozen Lords committees—that the current EU scrutiny committees would all be devoted to treaties. It is a job for one committee only. If we had an EU committee and a treaties committee, that would still leave four redundant EU committees, in my opinion.

Lord Trefgarne: We are told that there are likely to be about 200 such treaties in the next few months or years. That would fully occupy one committee, I guess. The important thing is that at the moment we see treaties only after they have been ratified. We are very much in favour of a procedure that has earlier input into the discussion.

Q83 **Lord Foulkes of Cumnock:** First, I think that Lord Blencathra's submission is one of the best that we have had. He has obviously been thinking very carefully about this. It is very helpful. I agree with him that "ad hoc committee" is not a good name and that "special inquiry committee" or "special investigative committee" would be better.

Can I ask specifically about the idea, which is a new suggestion, of

inquiry panels of five to seven Peers, or Peers and MPs, conducting inquiries where a public inquiry might not be necessary or appropriate? There are always calls for public inquiries, which are very expensive and, very often, necessary. Can you suggest the kinds of topics or subjects that might be appropriate for such inquiry panels?

Lord Blencathra: This is a more radical suggestion. I was guided by the Hillsborough special panel, which was chaired by the Bishop of Liverpool.

The Chairman: Yes, James Jones.

Lord Blencathra: That reported quite speedily, was non-partisan and was highly respected. I will be very careful in my choice of words here. It would not work for something like Grenfell, which is far too high profile and highly contentious. I cannot come up with a list, but there may be a range of things at a lower level where you do not need a full public inquiry, but you need something like a Hillsborough-type panel. That could relieve some of the demand from the public and others that there has to be a public inquiry into something.

I can see the upsides of my suggestion. The downside is that it could be very tedious for Peers to do. It would probably need to be a joint thing, and MPs might not want to serve on it. It is like doing a private or hybrid Bill for HS2: you dedicate a large part of your life, day in, day out, to doing something that might not be politically sexy. In the Lords, there are Peers who would be very able to do it. There would not be many such inquiries per annum. I merely flag it up, because something may come along and the suggestion that we have a special panel, doing a public inquiry-type thing, might fit the bill.

Lord Foulkes of Cumnock: Could it be done under the present Standing Orders and constitution, or would there need to be a change?

Lord Blencathra: I am not aware of that, but it would probably need some change. All I will say on this and on some of my other radical suggestions is that I am doing the easy bit by flagging up the idea. I leave it to the clerks and the House authorities to sort out the detail.

The Chairman: I have been informed by the clerks that not much change is required.

Lord Blencathra: Really?

Lord Foulkes of Cumnock: Good.

Lord Blencathra: It is another option. It is another little string to our bow of other things we can do. In the same way, I am surprised and disappointed that the Law Commission manages to do only one consolidation Bill every seven years. I know lawyers go rather slowly, but that is appallingly slow.

Lord Foulkes of Cumnock: They gave us evidence. They are unhappy about it themselves, are they not?

Lord Blencathra: I do not understand why they are unhappy or what the motivation behind it is. It is not as if we are short of lawyers downstairs, my Lords. I know when we have a consolidation Bill it is a joint Commons and Lords Bill, but if the Law Commission is incapable of doing it or, for whatever reason, cannot do it, surely we could have lawyers from downstairs and others working on the draft, pulling it all together and doing one a year. We should do one consolidation Bill a year. The statute book is a mess. It is a perfect job for the Lords.

The Chairman: Last week, we got evidence on the sentencing Bill. They did a consolidation. Accompanying it was a paragraph in the submission stating that, as a result of the consolidation, it was found that 30% of cases were unlawful. It also stated that there would be a saving of £250 million. There is a public policy issue. If 30% of cases are unlawful, because they are not consolidating, that is an issue for us to be interested in.

Lord Blencathra: I agree entirely. We call ourselves a revising Chamber. Okay, we revise Bills coming from the Commons, but we should be revising the statute book as well, for laws that have fallen into desuetude or that are out of date. That is a rather worrying figure.

With the expertise downstairs, we can easily do it. My committee has four lawyers and three top counsel. JCSI has the same thing. If they had nothing else to do, those lawyers could do it in a matter of weeks, because they are so able. Of course, they are absolutely chock-a-block at the moment with other legislation, but in a couple of years' time, when we are through all the Brexit stuff, there may be flexibility for some of our in-house counsel to take charge of doing consolidation.

Q84 **Lord Smith of Hindhead:** It is no surprise that the House is expecting a substantial amount of secondary legislation in relation to Brexit. Can you explain briefly how each of your respective committees is preparing for that?

Lord Trefgarne: The first thing we needed to do was to increase the resources we have available for this purpose. Additional advisers have recently joined us and will help us to do that.

The process by which we examine and comment on secondary legislation will be broadly the same as it is now. We will examine each and every statutory instrument as it comes forward. Some of them we will report to the House. Most of them we will regard as routine, and they will go through to the statute book. Once the sifting process becomes live, there will be that additional process to be conducted. That depends on the passage of the Bill, of course. That is when it will start. At that point, we will be ready to divide ourselves into two sub-committees, which we are already authorised to do. We will not need to do that until the volume of secondary legislation reaches a certain level.

Lord Smith of Hindhead: You do not foresee changes to the structure of the committees to deal with this, apart from dividing into two sub-

committees.

Lord Trefgarne: No, not at the moment.

Lord Smith of Hindhead: You just need a bit more resource, and to follow your existing plan.

Lord Trefgarne: Yes.

Lord Blencathra: This is largely a matter for Lord Trefgarne and the SLSC. The Delegated Powers Committee stands ready to deal with other Brexit-related Bills when they come along: a farming Bill, a fishing Bill, an immigration Bill, or whatever. We will apply the same rigour to them as we apply to the withdrawal Bill and other Bills.

I want to make it clear: politically, the EU withdrawal Bill is one of the most important that we will have in this Session, perhaps in this Parliament; we have not changed our criteria one iota to deal with it. We have not made any exceptions because it is a special Bill and the Government obviously need some Henry VIII powers; nor have we come in more harshly regarding criticism of the Henry VIII powers, the necessity test or whatever. We have followed exactly the same criteria that the committee has exercised since it was set up in the 1990s.

I have a note here, which I will not read out to the Committee, of some of the successes of the Delegated Powers and Regulatory Reform Committee. We are quoted extensively in the House by Peers. On many occasions in the last couple of years, the Government have accepted the committee's recommendations. They have moved things from the negative to the affirmative procedure, and so on. Perhaps I can submit that in evidence to you, as an annexe.

The Chairman: Absolutely. That would be great. We want to keep this discussion going.

Q85 **Lord Smith of Hindhead:** I have not been in the House of Lords for a particularly long time, but there seem to be many mysteries about what the House does, what the committees do, and all the different aspects of it. I am sure that only Lord Trefgarne knows all the ins and outs and where all the secrets are hidden, because of his long standing in the House. Are there any aspects of the work of your respective committees we may not already be aware of that you would like to bring to the attention of the Liaison Committee?

Lord Trefgarne: I have nothing hidden behind my back, ready to surprise you.

Lord Smith of Hindhead: Indeed, but is there any aspect of your work you think we might be interested in?

Lord Trefgarne: Our important task now is to prepare ourselves for the increased volume of work that will come with the passage of the EU Bill and then, of course, the additional Bills to which Lord Blencathra has just

referred. At the right moment, we will divide ourselves into two sub-committees, for which we have already been given authority by the Procedure Committee. Both sub-committees will have the authority to report directly to the House. It will not need to go back to the main committee. All those arrangements are now standing by, ready to be used.

We are told that about 1,000 additional statutory instruments will come forward. I have made it clear to the authorities that we stand ready to deal with that volume. We think that the volume of routine secondary legislation will probably drop off a bit while the volume of EU-related or Brexit-related legislation comes forward, but we can do it.

Lord Blencathra: The Delegated Powers Committee has had high standing since its inception in 1992. As a new chairman, I have no responsibility for the committee's high standing in the past. When I finish my chairmanship, I hope that the standing of the committee will be just as high and that I will not have lowered it in any way. It is refreshing to sit in the Chamber and hear Ministers and Peers say, "We have the excellent report from the Delegated Powers Committee. We accept the recommendation", or Ministers having to justify in detail why they do not accept our recommendation to go from negative to affirmative.

The committee does influential work. I quoted Ruth Fox's comments on that. There is procedural innovation; we are reporting on Bills still in the Commons, and the Commons are gagging to get more reports from us. We will be very careful. The Brexit situation is quite unique. We are not going to get into the business of reporting on all House of Commons Bills, but it is an interesting innovation.

There is the value of the committee's comments on delegated powers memoranda. For example, in 2014 the DPRRC undertook an inquiry into the quality of delegated powers memoranda. The First Parliamentary Counsel and Permanent Secretary to the Cabinet Office at the time, Richard Heaton, said in evidence to the inquiry that the DPRRC had created a culture in departments where "people think quite carefully now about delegated powers". He also suggested that, similarly, the fact that the memoranda were circulated to the PBL Committee had "a good internal-discipline effect". As Lord Forsyth said earlier, the fact that our committees do this work enables the Government, the draftsmen and the civil servants to think carefully about what they are doing.

Q86 **Lord Foulkes of Cumnock:** Can I ask about engagement with the public and the media? I think that Lord Blencathra is saying that he now pulls back from what he was saying about "middle-aged men ... with grey, unshaven stubble" and "a mature Parliament trying to be hip and failing". He now agrees that we should be looking at how we can get coverage on Instagram and so on.

Lord Blencathra: Not necessarily, Lord Foulkes. What I was pulling back from was my initial comment that the Lords do wonderful work and produce excellent committee reports, but no one pays a blind bit of

attention, and there is nothing that we can do about it. If we implement what Lord Forsyth was suggesting, we might get more media attention.

I am still very nervous. I do not share Lord Forsyth's new conversion to Twittering, tweeting, Flickr and all that sort of stuff. I do not touch that myself, because my personal view is that Facebook and Twitter are enormously damaging to young people. The mental health of young people is suffering because of them. I merely suggest in my report—I still stick with this—that we should do careful research to see whether, if the Lords is on Twitter and Facebook, it is actually helping our cause, or whether it is adding to the fake news thing.

If we discover by careful focus group research that young people, or older people, are now treating the Lords with more enthusiasm and respect, and admiring what we do because we are on those social media things, we should continue to do it, or increase it. If the response is, "You are just in there with all the other nutters who are doing Facebook and Twitter", we should very carefully—

Lord Foulkes of Cumnock: We are not all nutters on Twitter. I am on Twitter.

Lord Blencathra: That is the exception that proves the rule.

Lord Foulkes of Cumnock: Advertisers see social media as a very important way of getting their message over. The mainstream media are suffering because advertisers are moving to social media. We older people really have to come to terms with that if we want to get our message over. Do you not agree that the House of Lords needs to come to terms with it as well?

Lord Blencathra: I agree that we need to come to terms with it, but I stick to my suggestion that we should analyse carefully whether it is doing us any good. It may be that, on balance, being on Twitter, Facebook, Flickr and so on improves our standing.

The Chairman: The Lords is not on Facebook.

Lord Foulkes of Cumnock: We are on Twitter.

The Chairman: Committees are not on Facebook.

Lord Blencathra: Whatever social media we are on, we need to analyse whether it is doing us any good or enhancing our reputation.

The Chairman: Point taken. I am taken by that. We need to analyse it.

Lord Blencathra: We must not just assume that, because everyone is doing it, it must be a good thing.

The Chairman: There are many ways of engaging. The staff have already demonstrated to me that the printed document may be becoming disadvantageous now. We could go to infographics and other things to put the message over. With that in mind, I am delighted to hear your

comments about how we communicate. We will undertake that analysis.

Lord Trefgarne: We already have an excellent website, which is beginning to serve that purpose.

Lord Blencathra: I did not see Lord Forsyth's YouTube bits, but I got his email a few days ago and I must admit that I thought it was excellent. For the first time ever, I looked at a report. I do not go around the place in complete blind ignorance, but when reports are published I do not have a clue that they have happened, and I find them weeks later. This is one that I saw in advance.

Q87 **The Chairman:** Good. Do I detect a sinner repenting? Not at all. Thank you for your attendance this morning. It has been excellent.

Lord Blencathra: If we have a few minutes, may I end by responding to question 6, which asks whether we have any observations that have not already been covered? Can I stress how strongly I believe that we need to do something radical as far as statutory instruments are concerned?

This is the key thrust of what I mean. I was interested in Lord Neuberger's point that primary legislation gets a First Reading, a Second Reading, a Committee Report and a Third Reading in both Houses. It is completely judicial review-proof. Because of the shortened procedure, statutory instruments are judicially reviewed all the time. Lord Neuberger says that it is quite legitimate for the courts to overturn them, because they do not get adequate scrutiny.

This is merely a suggestion. If we do more scrutiny of statutory instruments, closer to the scrutiny that Bills get, will we make them more judicially review-proof, or more resistant to being overturned in the courts? I find it reprehensible that courts are overturning the work of Parliament. If the justification is that Parliament is not doing the job properly, we should do the job more thoroughly. When we are out of the EU, those committees will have a role to play.

I also believe—this is the radical part—that we and the Commons should get together in specialist committees to help with the drafting of statutory instruments. We keep Chinese walls. Just because Peers may be on a committee that is helping to draft an instrument, it does not mean that we cannot vote or speak against it when it comes here. I put that in detail in my report, ad nauseam. It is rather boring, but it is a key thing that we have to address.

The Chairman: You made the very good point that statutory instruments are secondary legislation and that there is no judicial review for primary legislation. We will look at that and take it up.

Lord Blencathra: Thank you very much.

The Chairman: Your comments have been very helpful to us this morning. As I mentioned to the previous witnesses, we will be happy to continue this discussion with you. We may even have you back at some

stage. Thanks very much. It has been very helpful. Lord Trefgarne, do you want a final cheerio?

Lord Trefgarne: I do not have much more to say. I do not disagree with the proposition that secondary legislation needs more careful scrutiny. Inevitably, that will lead to procedures for amending secondary legislation. I can see Governments resisting that a long way into the future.

The Chairman: David's point was about judicial review. You want to ensure that there is limited room for judicial review. Is that correct?

Lord Blencathra: It is.

Lord Trefgarne: I do not disagree with that.

The Chairman: Good. Thanks very much. That was very helpful.