



Liaison Committee

Corrected oral evidence: Review of Investigative and Scrutiny Committees

Tuesday 4 September 2018

3.35 pm

Watch the meeting

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

Evidence Session No. 21

Heard in Public

Questions 149 – 156

Witness

[I](#): Baroness Fookes.

Examination of witness

Baroness Fookes.

Q149 **The Chairman:** Baroness Fookes, welcome to this evidence session, and thank you for your written submission as well. You have vast experience of committees and I have benefited in the House of Lords from your membership of committees. It is nice to have you back with us after your illness. My comments will be brief and I will hand over to Lord Lang.

Baroness Fookes: Thank you very much.

Q150 **Lord Lang of Monkton:** Lord Chairman, that was very brief. May I say how much I appreciated what you said in your written evidence? I thought it was full of good ideas, large and small. Even though we may not touch on some of them today, I hope we will not lose sight of them when we come to our report.

I want to raise the issue of the purpose of committees, which you touch on in an early paragraph. I welcome in particular your comment that you see no reason why the current committee structure should be changed fundamentally. There is always a danger on these occasions to get carried away and change too much too quickly.

I would like to ask you about the specific nature of some committees differing from the normal, sessional, departmental-covering ones. It seems to me that the committee with which I particularly associate you, the Delegated Powers Committee—Secondary Legislation Committee, rather—

Baroness Fookes: I was on the Delegated Powers Committee. I think you are thinking of Lord Trefgarne's committee.

Lord Lang of Monkton: Yes, indeed. Those two committees seem to be very narrowly focused and confined in that they cannot really do much more than what they are required to do by the documents that come in front of them. By contrast, the Constitutional Committee has to look at every piece of legislation that comes before it, but it also has time to open up new inquiries, sometimes quite substantial ones, which it chooses itself, and run them. Do you think that should be reflected in a different type of committee—in terms of membership, powers and its general position in the scheme of things—for the very technical and specifically focused matters?

Baroness Fookes: I think that the Delegated Powers Committee—to use the shortened form of its name—actually does a good, if narrow, job, but I think that it is sufficiently large to occupy the committee. If it were to look more widely and in general, it would probably fail at its purpose.

Lord Lang of Monkton: I am not suggesting that it should change; I am asking whether you think it should operate under slightly different general rules from the other committees, possibly with a different membership, duration of membership and so on.

Baroness Fookes: It is certainly one of the more technical ones, and we rely very heavily on the legal expertise that we have had and continue to have. Let me be frank: it could not operate without that expertise being made available to the committee. For a start, who would have time to go through every single passage of a Bill in detail and draw out from it the right conclusions as to whether the delegated matter should be delegated or what form parliamentary scrutiny should take? Therefore, we rely very heavily on that legal presence to assist us. I believe that there are still three of them, as there were in my time.

It might be useful if members could remain on the committee for longer, given the type of experience that is required. Not everyone takes to it, I have to say. You have to have a special kind of approach to find it tolerable. But for those who benefit from it, yes, I think a slightly longer term of office would be valuable. The important thing is that you do not get too many changes at the same time. That would also be true of other committees of a different nature.

Lord Lang of Monkton: You say that the sessional committees should last for the duration of a Parliament unless there are good reasons for not doing so. Does that mean that you dismiss the alternative view that there is such pressure for members to get on to one of these committees that the term should be shortened, rather than lengthened?

Baroness Fookes: Frankly, I think that the work of the committee is the most important thing, and although we certainly want to give members a feeling of being wanted and responsible and so forth, that should not be at the expense of the work of the committee. By the same token, some members slightly dip in and out, as I call it. I think that those who are going to be on a committee should reckon to be there as many times as they possibly can and for the duration of the committee's sitting.

Lord Lang of Monkton: Thank you. That is very helpful.

Q151 **Baroness Garden of Frognal:** I would like to ask you about ad hoc committees. Again, thank you very much for some really excellent ideas. There are two aspects. First, you mention requiring activity to be completed in one year. If there were flexibility on the length of time of the committees, would that have to be decided at the start of a committee, or might it be something where a committee applied for an extension and carried on?

The second question is about the topics and whether they should be selected by the whole House, which is one of the suggestions we have had, and even from outside. We had one suggestion that people who go into schools should ask schools to put forward ideas for committees. I am not quite sure how many accurate or eligible ideas we would have, but how do you see the topics and the length?

Baroness Fookes: On the length, it is more of a question of when the committee is set up. If I may give an example, I am currently serving on a committee—I did so this morning—looking specifically at the Bribery Act, a post-legislative review. We had our first meeting on 12 June. By 24

July we were away for six weeks. We are now back for two weeks and then we are away again. That is what lay behind it: not so much the length but how much you could get in in a given time, having regard to recesses. That was the background to my suggestion.

Turning to the other point about the selection of topics, this will always be a point of conflict where there are different views. Certainly, it could well be opened up for Members of the House to be encouraged to put forward suggestions. If you wanted to extend it to the general public, I suppose that would be possible, but the more you do that, the more you then have to sift what is going to be possible, given the restraints of people's time—and money. Each one costs: the committee clerks, specialist adviser, and so on. I doubt whether there would be the possibility of more than, say, four new reports a year. That is probably about right—three to four. By all means open it up, but you must have a sieving system that works accurately, and not just any old thing thrown in and we do it.

- Q152 **The Earl of Courtown:** Baroness Fookes, you mentioned post-legislative scrutiny of the Bribery Act. How much further do you think post-legislative scrutiny should be taken? A number of the witnesses who have appeared before the Committee have emphasised that there should be many more opportunities for post-legislative scrutiny to take place, to question the Government and the validity of the legislation and whether it is doing what it is supposed to do. How much further do you think we should take this? Do you think that every Bill should have post-legislative scrutiny? I know there are logistical problems with this, but how much further should this be taken?

Baroness Fookes: In principle, it would be excellent to widen it out to include more Bills, but you would then have the practical problems of implementing that. It might be more important to place greater stress on pre-legislative scrutiny so that you do not make the mistakes in the first place that require you to scrutinise them afterwards.

The Earl of Courtown: That is a fair point, but, as we know, some of these Bills are not always ready in time to be given proper pre-legislative scrutiny. But you make a good point.

Baroness Fookes: Governments often try to undertake too much. If they did less better, it might be better all round.

The Chairman: That is a good lesson for us.

- Q153 **Lord Smith of Hindhead:** I rather hastily volunteered to ask about the membership of committees, which is probably the subject that has the most differing views. I see in your written evidence that you are fairly happy with the way everything is done with regard to appointing Peers, but you would like new Peers in particular to be a bit more aware of the Select Committees and the ad hoc committees so that they might be able to put themselves forward if they have a specialist interest. I suppose the counterargument is that the Whips in the House of Lords do not have

much power, but having that little bit of power to appoint people can help them.

You also mentioned the appointment of the chairmen, saying that it seemed to work well and that you recognised that there were differing views on whether or not they should be elected. Perhaps you could expand on the subject of the rotation rule, which you seem less happy about.

Baroness Fookes: My feelings on this grew rather tense when at one point in the cycle it was decided that in order to give more Peers a chance of serving on a committee, the length of tenure should be shortened. As a result, the Communications Committee, which I was coming off, found itself not only with a new chairman but with a majority of new members. That was partly because of the way it was handled, but it was a lesson to me that you need some continuity and that that is probably better served by allowing people to serve for longer. Very often you need to go back to subjects, and if you have such a clear-out of Committee members, the likelihood is that that will get lost.

Lord Smith of Hindhead: I suppose the chairmanship skills might need to be less for an ad hoc committee, which is just for one year. I have served on three of those now.

Baroness Fookes: That, of course, is different.

Lord Smith of Hindhead: Exactly, but the chairman of each has been very good; one who was not as good soon caught up and realised just how much work is involved with it.

I have a point that relates to this but is not in your report. It comes from some previous evidence that we have had, suggesting that there may be merit for ad hoc committees in particular in having Members from the other House join a House of Lords committee and perhaps Members of this House with a specialist interest in or knowledge of a subject joining committees of the other place. What do you think of that?

Baroness Fookes: We already have an arrangement for Joint Committees. I served on a Joint Committee on the Mental Capacity Bill many years ago—I think we are having another look at it—but that was pre-legislative scrutiny. That was joint between the Members of the House of Commons and the House of Lords. The principle is there and it can be very effective. You have to face the prospect, though, that MPs with constituency interests and constituents are sometimes less regular attenders. I have served in both Houses and I know there have been occasions when embarrassment has been caused because you needed a quorum from both sides and there was one from the Lords and not from the Commons. In principle, I think it is absolutely fine. In practice, you may have a few difficulties.

Lord Smith of Hindhead: There may be more merit perhaps in a Commons Select Committee having spaces available for Members of this House with specialist knowledge or background to add to its expertise,

which of course is what this House and our Select Committees are known for more than anything—expertise.

Baroness Fookes: Indeed. I have no objection to that, provided that the House of Commons was happy with it being slightly one-sided.

Baroness Garden of Frognal: On the assumption that the Whips make the appointments, I think that is exclusive to the Conservatives. I do not know whether Labour does it. The Liberal Democrat Whips certainly do not appoint people to committees. We always ask for volunteers and we talk to new Peers to see how we can get them on to committees. The assumption that that is standard throughout, that it is used as a political gesture—

The Earl of Courtown: Perhaps we could clarify that.

Baroness Fookes: I have never been a Whip, so it is a mysterious world.

The Earl of Courtown: We ask our colleagues: who wants to go on a committee? They come to us and very often there are a lot more people asking to go on committees than we have places for. So in essence you have to make a decision.

Baroness Garden of Frognal: I think the concern came when you took people off committees because they voted against the Government.

The Earl of Courtown: No, it was not—

Baroness Garden of Frognal: I think that was raised in the House at one stage. There were three or four people.

The Earl of Courtown: It was. There was one issue, but there were other issues relating to attendance on committees.

Baroness Garden of Frognal: That is fair enough.

The Chairman: Internal discussion, Baroness Fookes.

Baroness Fookes: I was not listening.

Q154 **Baroness Hayter of Kentish Town:** There are two things you have said that I really appreciate. I think you are the first person to talk about money and how much things cost. Everyone just says, "More, more". I really welcome that. I also welcome your point about the work being more important than finding jobs for—not idle hands but, you know.

I am keen to look at the purpose of committees, which we have already touched on. If you were asked to prioritise more widely—perhaps not the Delegated Powers Committee, because it is so specific and so important; it is different and an essential part of how we legislate—would you prioritise committees' work as being to help the House of Lords to do its work or more broadly to help Parliament and the Government do better? If there was a balance, which do you think we should concentrate on?

Baroness Fookes: My initial reaction is that we need to probe deeply into subjects of political importance. That may be useful for the House of Lords, but I look at it not so much in terms of the House of Lords or House of Commons but in doing a job that will be helpful to the body politic generally and the Government in particular. Sometimes I think it is necessary to have a subject investigated thoroughly as a means of, shall we say, putting some pressure on a Government where they need to take action; or, at the very least, if Ministers and civil servants have to give evidence, they have to give considerable thought to what they are going to say.

On the other hand, it can sometimes be helpful to a Government if the probing comes for something they may already be interested in doing, but it is helpful to them if information comes from the expertise of the committee and people who give evidence to it. So it can work as a prod and as an encouragement. That is how I see it primarily. I think the House of Lords has a particular expertise, so I would certainly put that forward as a particular reason for our doing this work, but it is not for the benefit of the House of Lords as such; it is for the broader public benefit.

Baroness Hayter of Kentish Town: I like your words “probing”, “prod”, “thorough”, “thought” and “expertise”.

Lord Foulkes of Cumnock: On the subject of attendance, my recollection is that in the House of Commons we used to publish every year a record of attendance at committees—the number of committee sittings and the number attended by each Member. First, is my recollection correct, and, secondly, do you think we should do that for the House of Lords?

Baroness Fookes: If I am strictly honest, I cannot remember whether we did or did not, but if we did—and I am happy to take your word for it that we did—the key thing is that you can attend for five or 10 minutes, or for the two hours that the whole thing lasted, and the attendance record does not reflect that, which is why I said earlier that it is important that people understand that they are expected to be there for the duration.

Lord Foulkes of Cumnock: That is a very good point. The main point I wanted to raise was that you have made some very interesting comments about the European Union Select Committee continuing with its sub-committees during any transition period—if we do come out of the European Union—and then morphing, as it were, into the International Relations Committee with a European Union sub-committee. Please could you expand on that?

Baroness Fookes: I simply felt that when we were fully no longer members of the European Union, having the sub-committees would seem obsolete and out of date but that clearly you would need—because Europe was still there—to have a committee that would look at relationships with the European Union. You could set up a separate committee or you could subsume it within the International Relations

Committee. I did not have any strong views on that. I just felt that we needed to have a committee that dealt with that. Precisely how it would work I was a little reticent on, because we do not know precisely how it will work out in practice beyond the great date.

Lord Foulkes of Cumnock: Even if we are going?

Baroness Fookes: That is above my pay grade.

Q155 **Lord Low of Dalston:** Baroness Fookes, I very much appreciated the remarks you made in your introduction about the potentially more long-range and strategic role of the House of Lords committees as opposed to the more short-run considerations of House of Commons committees. This is not a hard and fast distinction, of course. One could not say that the House of Commons never thinks strategically or long-range—or, indeed, that the House of Lords always does. Nevertheless, it is a distinction worth pointing to and could very well be of help to the Committee in drafting its report.

There is one area that you could help us by enlarging on. Could you say a bit more about the follow-up action that committees can take to ensure that the recommendations of their reports are properly addressed by government?

Baroness Fookes: It means that committees have to take a conscious decision—

Lord Low of Dalston: Forgive me, I need to add one point: this is something in which the Liaison Committee itself might have a role.

Baroness Fookes: I was thinking more about where Governments fail to answer reports in a timely fashion or answer them in such a way that it is thoroughly unsatisfactory.

Lord Low of Dalston: Is that not a long-stop function of the Liaison Committee?

Baroness Fookes: That is what I put in my evidence to you. It was simply to give the committee that is dissatisfied the backing of the main Liaison Committee, so that you would have a two-pronged attack if a Government either failed to answer a report in a timely fashion or answered it in a wholly unsatisfactory fashion. That is slightly different from my other point, which is that committees need to build into their structure the idea that they will go back to previous reports to see how they are faring. It is not necessarily to criticise the Government, but just as with post-legislative scrutiny you would do the same thing with the general committee reports.

I will give an illustration. Many years ago now—back in the 1970s, heaven help us—I chaired a committee of the House of Commons that looked at prison and alternatives to imprisonment. One of the key findings of the report was that there were many people in prison with mental health problems who really should not be there or who should

have specialist help. Forty years later, what are we talking about? The number of people in prison with mental health problems. Perhaps if we had had a system that followed it up more thoroughly, we might not be in that position today.

Lord Low of Dalston: So you see the sessional committee as having the first point of attack but the Liaison Committee having a sort of oversight role?

Baroness Fookes: I was thinking of the Liaison Committee only in terms of the response to a particular report not being forthcoming readily or its contents being wholly unsatisfactory. I had not foreseen a role for the Liaison Committee in insisting that individual committees should follow things up themselves as part of a process—not a criticism of government but a general process.

However, committee chairmen, or the whole committee, might wonder whether their independence was being undermined if the Liaison Committee said, “Why are you not doing this or that?” I was assuming that the initiative would come from the committees themselves.

Lord Low of Dalston: Perhaps I should have said that the Liaison Committee should have a back-up role rather than oversight.

Baroness Fookes: Back-up, for sure.

The Chairman: The lack of follow-up has been mentioned to us before. The way a number of witnesses have put it is that you need to build a constituency for change, so rather than the report lying on the table we have to follow that up with wider engagement to ensure that the report’s recommendations are fulfilled. Publishing a report on its own is insufficient. Is that constituency for change element attractive to you?

Baroness Fookes: If the report comes out with its recommendations, the Government answer it and the whole thing gets forgotten, that is what I am trying to guard against.

Q156 **The Chairman:** Earlier you mentioned House of Commons and House of Lords engagement. We have looked at that under the umbrella of parliamentary engagement. It has been suggested that the twin themes on that are parliamentary scrutiny and complementarity. Is that a proposition that finds favour with you?

Baroness Fookes: Are you referring to the fact that it is better if the two Houses, with their various Select Committees, do not immediately overlap one another at the same time?

The Chairman: We heard evidence from the chairman of the House of Commons Health Select Committee, Sarah Wollaston, and she said that we could be doing more together to help.

To follow up Lord Smith’s point, Frank Field said that he was looking at the issue of Carillion and pensions and he realised that there are a lot of

individuals in the House of Lords who have great experience in that, and that his committee, on a temporary basis, could bring a number of people on to provide that expertise. It is about working more closely together so that we function as a Parliament when it comes to parliamentary scrutiny and parliamentary engagement and that the reports we undertake complement one another rather than vie with one another.

Baroness Fookes: My remarks were about each one undertaking something similar, to no good purpose, because we were using civil servants' time and the time of experts to do two separate evidence-taking sessions prior to a report. What you are describing sounds absolutely excellent. In fact, the Delegated Powers Committee was very pleased when one of the committees in the House of Commons actually asked us to provide evidence to help it. That was absolutely excellent, and that kind of liaison is very much to be cherished, welcomed and encouraged.

The Chairman: Sarah Wollaston has actually suggested that the respective Liaison Committees should meet, say, twice a year to look at their present work and forward planning, just to understand what is going on with each other.

Baroness Fookes: That would be a very good practical way forward so that you did not fall over one another in the unnecessary way I have described but, on the contrary, used both Houses together on certain issues, which I am sure would be for the greater benefit of all.

The Chairman: Thank you very much for your evidence. It is very helpful to us. I say again that it is great to see you back.

Baroness Fookes: Thank you, Lord Chairman.