



Liaison Committee

Corrected oral evidence: Review of Investigative and Scrutiny Committees

Wednesday 31 October 2018

10.40 am

Watch the meeting

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

Evidence Session No. 22

Heard in Public

Questions 157 - 164

Witnesses

I: Mr Mick Antoniw AM, Chair, Constitutional and Legislative Affairs Committee, National Assembly for Wales.

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Examination of witness

Mr Mick Antoniw AM.

Q157 **The Chairman:** Good morning. It is lovely to see you, Mick. It is only a few days since we spoke so it is nice to reacquaint ourselves. May I start off by thanking you for giving us your time? Referring to the Interparliamentary Forum on Brexit, which convened in Cardiff last Thursday, what are your thoughts on that meeting?

Mick Antoniw: It was the fifth meeting in a year of meetings of the interparliamentary forum, so the shape of the forum had become, I think, more consistent. I thought it was very useful at this very crucial time in the Brexit negotiations to be able to meet and discuss exactly where all the parliamentary bodies are with regard to the constitutional changes, the scrutiny changes and the legislature issues that are common to us in dealing with legislation and statutory instruments, and in ensuring that there is a proper scrutiny of the exercise of power. The forum has become quite important, and one where those participating see the value of the exchange of information and the development of a slightly more common strategy and approach on these major constitutional issues that are challenging us.

The Chairman: I found the very same, Mick, and my colleagues were delighted with the press release that was produced at the end of the meeting. I will pass to Lord Lang; he has a few questions for you.

Q158 **Lord Lang of Monkton:** Good morning, Mr Antoniw. I am very interested in the way the committee structure works in Wales. I see that you are a member of a large number of committees and I suppose that is a concomitant of being a single-chamber parliament or Assembly, essentially. How many of those committees are concerned with the detailed scrutiny of parliamentary business in Wales and how many are of a more creative outward-looking context that might fit into an inter-parliamentary structure?

Mick Antoniw: I think I have got the gist but the sound is going in and out a little. The starting point is the fact that we are indeed a single-chamber legislature, and that provides its own challenges regarding how committees operate. Similar to Scotland, we operate on the basis that committees scrutinise legislation, scrutinise policy and government, and look at the development of policy in certain areas as well.

I chair the Constitutional and Legislative Affairs Committee and it has a very narrow and strict function. It is there to scrutinise the efficacy, effectiveness and quality of the legislation we are producing; the way in which it is drafted, and the way in which powers are balanced within that legislation. For other committees, and I am on another committee as well and have been on other committees in the past, there is a great challenge. I do not think we have any option with Welsh Assembly committees, because of the size of the Assembly and the growing areas

of devolved responsibility, but to have committees that carry out all those functions.

A very specific challenge that we face in not having a second chamber is how we ensure there is some external scrutiny; that there is some engagement with bodies such as the Law Commission, for example, regarding the development of legislation, and how the committee disciplines itself in the way it operates. They have a clear scrutiny function regarding legislation they are also there to challenge the policy direction itself. I think the committees have operated very effectively here, but it has been an enormous work strain. Committees work extremely hard, from early in the morning to very late. I know that is true in all parliaments, but, with a very small number, there is a significant work pressure on everyone. That is how we operate.

There have been some benefits, of course, to the way we operate. Training is available to members of committees. There is a clear definition of the functions of those committees, as far as is practicable. At the end of the day, you can only ask whether it is working. I think it is working, but with the number of Assembly Members we have, there is enormous pressure on the Members to ensure that the quality of the work of committees is maintained.

Lord Lang of Monkton: That is very helpful. How do you envisage manning the inter-parliamentary committee, if that is what develops? Would that be done by the Constitution and Legislative Affairs Committee that you chair, or would it be a new committee in the Welsh context with members drawn perhaps from somewhere else?

Mick Antoniw: Because of the challenges—to use that word—of Brexit, in both the constitutional area and the implications that it has for our various areas of devolved responsibility, the Constitution and Legislative Affairs Committee and our European committee both participate within the inter-parliamentary forum. I think that has worked well because there is a significant need to scrutinise the policy aspects of some of the legislation that has been coming through. Our European committee would do most of that work. For example, there were clear policy issues in the Trade Bill and in the coming Agriculture Bill, and so on, as there are in terms of how the powers of the Assembly will be affected. There is some overlap, but the committee I chair will focus far more strictly on the actual legislation as it is drafted and proposed, and look at the challenges of that.

Because of that overlap, from time to time we have met jointly as committees. If UK Government Ministers, for example, have given evidence, we have met jointly to carry out that scrutiny so as not to duplicate because we regard that evidence as being directly relevant to the work of both committees.

When it comes to the inter-parliamentary forum, some of you will have seen that as between myself and David Rees, who is the chair of our European committee, we tend to come at it from slightly different angles

and we have explored the issues in slightly different ways. The European committee will have explored the policy aspects far more deeply, and explored relations with Brussels and post-Brexit relationships in far more detail, whereas my committee will have focused on the minutiae and, often, conducted a line-by-line scrutiny of the legislation and the constitutional changes that might be coming through Europe. It is a working partnership that has worked very well.

Q159 The Chairman: As you know, we are undertaking a review of our committees and one of the big issues is devolution. What are your thoughts on a potential House of Lords Committee on devolution? What are the benefits and drawbacks of that? What do we have to do to get it right in terms of recognising devolution as a whole and the role of the Welsh Assembly and the Scottish Parliament?

Mick Antoniw: It is an interesting question that you put in the context of the developing role of the House of Lords as almost a defender of the constitution. Its function includes oversight of the constitutional relationships and the protection of what Parliament as a whole has done in respect of decentralising and devolving powers across the UK, not just the parliamentary devolutions of Scotland and Wales but in Northern Ireland and London and other cities. The question is what we mean by devolution and what its function would be.

The downside is that it may end up, I suppose, being seen as some sort of supervisory body in respect of devolution, which has already been defined by statute. I would prefer it to go down the road of a formalisation of the functions of the inter-parliamentary forum. It is helpful that there has been very good scrutiny of devolution in the House of Lords, because I do not think scrutiny has taken place in the House of Commons to the same degree. That might reflect the role that the House of Lords has increasingly taken on board as a constitutional overseer. I would need to clear about the purpose of such a committee, what its function would be and what its relationship with the Welsh Government and Welsh Assembly would be, and how that would relate overall to the constitutional changes that I think will take place within the UK in the post-Brexit environment.

The Chairman: You are talking about defending the constitution. Lord Lang is the immediate past chair of the Constitution Committee and there were a number of influential reports produced during his chairmanship. Do you have any comments on that, Lord Lang?

Lord Lang of Monkton: I would say that Mr Antoniw asks what its function would be. It would be to try to hold the Westminster Government, the Executive, to account. We produced reports, one of which was ignored for over two years, which was an absolute disgrace, and extremely unwise on the Government's part, and which has led to other difficulties. I am not saying that it is the gospel truth and had to be implemented in full, but there was a lot of sound advice in it. We had a lot of support from the Welsh Assembly, the Scottish Parliament and the Northern Ireland Assembly on the general approach. A chorus would

possibly have a better effect on central government than a solo performer, and, therefore, harmony between us all on devolution issues would probably be a great asset. Would you agree?

Mick Antoniw: I think that approach would certainly be received quite warmly. There needs to be a lot more flesh on the bones as to how it would do that. Certainly it seems to be the case that within the House of Lords there has been a greater understanding of devolution. It remains of considerable concern to us that, at the UK governmental level and within the civil service structures, and so on, and you will have seen this reflected in the reports that we have produced, and I think it has been commented on elsewhere, there is a lack understanding of what devolution is and how it impacts on governmental responsibilities. I think that approach would be very useful.

There is, of course, a very important function that has been given as a result of the inter-parliamentary agreement that has been reached between the Welsh Government and the UK Government regarding the regulations coming out of the withdrawal Bill because, effectively, where regulations do not have the consent of the Welsh Government, the House of Lords almost has a veto power as a result of that agreement regarding regulations. The role of the House of Lords within the devolution area has become more important and more significant. That is partly as a result of the fact that the constitution within the UK has been changing in a fairly dysfunctional way and Brexit has speeded up that dysfunction. There is certainly a lot of attraction to the role as Lord Lang has described it, but there would need to be a lot more detail on it to see how the engagement might operate in practice. It would also have to be seen very carefully within the context of proposals for the reform of the Joint Ministerial Committee as well.

The Chairman: That was emphasised. Lord Smith.

Q160 **Lord Smith of Hindhead:** On that theme, could we ask for your views on meetings between the Welsh Assembly and Westminster committees and whether these should be held more frequently and on a more formal basis?

Mick Antoniw: What the inter-parliamentary forum has taught us is that there is a considerable need for far greater co-ordination and co-operation between committees. There are three legislatures operating in the UK now: Scotland, Westminster and Wales. All three are passing legislation that can impact on the others, in one way or another. We all have a direct common interest. The issues of common frameworks and so on that are being discussed at the moment directly affect all that. There is greater scope where scrutiny and policy work has taken place in committees—and that is quite common—and a growing justification for saying we ought to look at our own procedures to enable far greater working together on that.

To give you one or two examples that have occurred to me recently, we have been scrutinising legislation on the childcare provisions being

implemented in Wales. These are the provisions for 30 hours of free childcare. Similar legislation has been going through Westminster. Both scrutiny processes have identified a number of serious flaws in the drafting of that legislation and produced, in many ways, quite similar points. That was an area where I would have thought there would be merit in greater working together. We have learned from your reports, and perhaps you from ours, but at the early stages of such legislation, common interests and themes emerge at a parliamentary level that are worth looking at together.

We introduced presumed consent in organ transplant legislation, and that raises a whole number of very important ethical issues. We have been through that and, of course, we know that Westminster is looking at the same issue. There is a baseload of learning from the experience we have had of attempting to resolve some fundamental ethical issues, and I think we have produced successful legislation at the end of that that has broad support. There would be areas there, for example, that would benefit from this.

From a constitutional dimension, the inter-parliamentary forum has partly done that, but I can see areas where there might have been scope for working together on particular aspects of legislation. We have spent time looking at the process of sifting and so on and reviewing each other's reports. In a post-Brexit environment, I would hope we would move towards a more co-operative parliamentary process regarding the common constitutional interests of devolution. Of course, something we have raised several times, and it came up again at the inter-parliamentary forum on Thursday, is the issue of a speakers' conference, to start exploring some of these issues. With everything that is happening in the political context at the moment, it seems to be quite difficult for Parliament to step back and look at what is a very important area of constitutional reform. Constitutional reform is almost seen as a distraction, whereas, in many ways, certainly in my view, it should be at the core of our thinking about how we move ahead.

Q161 The Earl of Courtown: You mentioned in your opening remarks the pressure of work on Assembly Members with all these committees to man, but there is also the question of continuing professional development. Of course you realise that we have no CPD for our committees. What particular areas of CPD that you carry out do Assembly Members find most useful?

Mick Antoniw: I have lost the sound.

The Earl of Courtown: Shall I repeat what I said? You have continuing professional development for your committee members, and this is particularly important because of the pressure of work you were highlighting earlier relating to committee work. Are there any particular areas of continuing professional development that your colleagues in the Assembly find most useful and that we could perhaps look at adopting here in Westminster?

Mick Antoniw: First, I think continuing professional development is very important. As the saying goes, it is never too late to learn. In the context of our Assembly, we have 60 Members of the Assembly; 15 hold government ministerial positions, so, effectively, we have 45 Members to service all the committees we have. Every five years, when we have an election, we have an influx of new Assembly Members and, often, the skills and experience base within the Assembly changes. There will be those who have considerable experience in particular areas, some who have experience of the third sector, others from business, others from the trade unions, others from the legal sector, and so on.

The first issue is the structure of our committees. The function and roles of those committees are determined early on by our Business Committee, which is a cross-party representation of all the political groups. Is continuing professional development important? I think it is and it is important in two particular areas. First, new chairs of important committees may have gaps in their own expertise that they want filled, either to give them confidence or greater knowledge in the areas they will be exploring in committee, and in respect of how the committees work, how the Assembly works, the parliamentary function and the resources that are available. All those things have to be learned very quickly.

The other is professional development in respect of particular areas of policy. Individuals have really wanted to understand the subject matter in much more detail before they start exploring with witnesses their views on particular policy changes. Committee members might not have a base knowledge, and they do not necessarily learn it just from having expert witnesses coming in to tell them what their thinking is. That has been very important.

The other area is how you engage with witnesses and citizens groups, where I think we have been quite successful in developing the skills of engagement and promoting inclusivity with people and with bodies. That is not perhaps something you train for specifically, but you need to provide a framework within which people can gain a certain amount of experience of that. It varies from individual to individual, but that resource is available, and individuals have been attending courses. Some of the support staff have also been engaged with that continuing professional development. Sometimes we ignore the importance of the support staff in our work. I believe that in modern society, and in a modern democratic parliamentary system, ongoing training is of considerable value and benefit.

The downside of course is we all only have so much time. Everyone is intensely busy, and sometimes making the time to do that sort of development is very difficult. People start off with very good intentions of attending and participating, but, as the years roll on, and as the pressures of committee and parliamentary work increase, that becomes increasingly difficult. It seems to me that within our structures we have to somehow seek ways of allowing for that development to become part

and parcel of the way we operate. We experience some difficulty with that.

The Earl of Courtown: Are you saying for those who have no experience in a certain area that pre-briefing, for example, is arranged prior to evidence-gathering sessions on the particular subject that the individual might not have much knowledge of?

Mick Antoniw: Absolutely. We always have written pre-briefings which set out the scene. Written evidence also comes in. I will give you an example where I was involved in an energy inquiry into issues of community energy, the grid, how it operates in other European countries and so on, and having advanced briefings on how those systems operated, having the opportunity to meet with experts or even to go abroad and meet with people as part of that process and gain an understanding of different systems was very important in being able to scrutinise the specific evidence that was given. Continuing professional development cannot just consist of external courses and so on; it has to be about the way in which the committee engages with experts who act as specialist advisers in a particular area. That has been very effective in particular areas committees that I have been involved in.

Q162 **Lord Williams of Elvel:** You talked about the burden of work on Assembly Members, particularly members of committees. Does the use of both languages *pari passu* add to that burden?

Mick Antoniw: No, it does not. We have developed a system where people speak naturally in whichever language they feel most comfortable with. The translation service that is provided is of a very high quality. It is very clear. We are able to use headphones and people flit in and out. A bilingual committee operates very normally. To be honest, we do not even notice it. People flit in and out of Welsh and English. Depending on an individual's particular knowledge of Welsh, they will use the headphones or they will not. Some people understand Welsh well and do not need to use headphones, but might choose to speak in English because of their level of ability. Within the National Assembly for Wales we have developed a system of fairly seamless bilingualism.

Lord Williams of Elvel: Is there ever a discrepancy between the version in Welsh and the version in English? If so, how is that resolved?

Mick Antoniw: You raise a very important point. We have equality of status of the languages and legislation is drafted in Welsh and in English. We are seeking to resolve this issue now through our own Interpretation Act. As you know, there is an Interpretation Act which covers terms and phrases in legislation in Westminster and that, of course, applies to Wales as well. We have never updated that legislation to take on board the issue of the interpretation of phrases and clauses between Welsh and English. Legislation will be brought before the Assembly and we will be scrutinising it. It is being brought forward by the Counsel General and it seeks to update the Interpretation Act to accommodate that, and to raise the other conflict regarding the interpretation of statutory instruments

that emerge from pre-devolution primary legislation, which may have been amended subsequently by Welsh legislation, and the potential conflicts of interpretation there. This will be resolved constitutionally through an Interpretation Act, which will specify the mechanism through which such conflicts are resolved and what priority is given. A dictionary of legislative terminology will also be built up, because there are phrases that emerge from legislation that, traditionally, have not had a standard common Welsh interpretation. The purpose of the Interpretation Act is to resolve that.

Q163 Lord Low of Dalston: Good morning, Mr Antoniwi. I hope you are able to hear me all right. In the Welsh Assembly you have formally documented the responsibilities of committee chairs. Could you tell us what benefits have accrued to the Welsh Assembly as a result of formally documenting the role of committee chairs?

Mick Antoniwi: The first point to make is that this session is the first where we have done it in that particular way. Chairs of committees have received letters—letters of appointment in a way—outlining their broad responsibilities. The functions and the way in which chairs should operate are set out, and include issues of inclusivity, of respect and how one should engage with committee members to ensure maximum participation and so on—modern committee chairpersonship, if that is the right phrase.

Of course, another important area that has been defined, and, of course, it can only be done each time we meet, is the particular responsibilities of committees, which tend to align with the various responsibilities that exist in government ministerial portfolios. That is important because the committee needs to be focused on which Ministers it may be holding to account. Sometimes, of course, there is overlap.

What is the benefit? It helps to clarify the way in which committees should operate and their function. Beyond that, there is a high degree of flexibility. There is merit to doing it, but, of course, it is only one step in the process. The quality of the committee system is dependent on many other factors.

Lord Low of Dalston: Do you feel that it has made the committees work more efficiently?

Mick Antoniwi: I think they do because they are more focused. There is a tendency with committees to begin to stray into other areas and to duplicate the work of other committees. Having a certain degree of delineation is helpful.

I will give you an example, the Culture, Welsh Language and Communications Committee, on which I sit, is looking at the growth of the media industry within Wales: the skills, the training and employment issues around that. That could overlap into inquiries by government into how efficiently money is being used, investment in that area and so on. It is important that the committee stays focused on the industry, initiatives

to develop that industry and to create more opportunities, the obstacles that industry faces, and not stray unduly into the area of the financial accountability, which would be the responsibility of the Finance Committee. Having some delineation there is quite important.

We had a situation where a committee carried out a preliminary investigation and subsequently referred the matter to the Finance Committee. I think that was the correct way of doing it. In the past it might have been the case that it would have overlapped and gone off on an exercise of its own, exploring areas that were much more within the expertise of another committee. Having that delineation is important. It is probably even more important in a body such as the Welsh Assembly, where, as I say, we have, effectively, 45 working Members at the committee level in an Assembly where responsibilities have doubled, if not trebled, since 1999, or certainly since the Assembly became a legislature. The pressures have become greater and the need to maintain efficient committees within a one-chamber legislature is even more challenging.

The size of the Assembly is being looked at, as to whether it should be increased, and how that might happen. That is an ongoing discussion and may or may not result in legislation at some time in the future. It reflects the fact that the committee structure is the powerhouse, the engine of any parliament. That is where the real work is done and if the committee structures are not working to maximum effect, it is a bit like having an engine that is not firing on all cylinders; you do not get the maximum efficiency and product out of it. It is an important area and part and parcel of all those additional pieces.

Q164 Lord Foulkes of Cumnock: First, apologies that I was not here when we started. I had another meeting that overran. Like you, I am a Labour/Co-op Member, so please take that into account with the question I am about to ask you. In the Scottish Parliament, of which I was a Member for four years, when the SNP had a majority, it also had majorities on the investigative committees, as a result of which they were not the best investigators; they were a bit like lapdogs. What is the balance of membership of the committees in the Welsh Assembly and is there any suggestion that Labour dominates and they are not as questioning of the Labour Administration as they might be?

Mick Antoniw: You raise a very important issue. It is an issue that we often have within my political group, and I am sure it happens in others, and that is the importance of committees being able to act independently. That has become a much more important issue since we became a legislature. One of the functions of myself as a Labour/Co-operative Member is to scrutinise my own Government's legislation independently, and to ensure that where there are flaws and weaknesses, we highlight them.

Our committees are politically balanced, as they are within all Parliaments, and that is a challenge because, first, it means the pressure is on the majority party to get its legislative programme through but, at

the same time, as I say, our committees undertake legislative scrutiny as well as policy scrutiny, and those two things can sometimes play against one another.

Lord Foulkes of Cumnock: What is the actual balance of Members on your committee, for example?

Mick Antoniw: The Constitutional and Legislative Affairs Committee, up until now, has been a unique committee. It has been a committee that had consisted of one person from each of the groups, so political balance has not been an issue. We have worked independently regarding our scrutiny function. Where we have needed to be critical, we have been very critical. We raise issues of concern in the way legislation is drafted, about the flexibility of drafting in terms of the balance of powers between the Executive and Parliament and so on, and, particularly recently, issues around the so-called Henry VIII powers. The Constitutional and Legislative Affairs Committee has been uniquely different. However, it has just changed because it has become a sifting committee. The view was taken that it should be compatible with sifting committees at Westminster and that it should be politically balanced in the same way they are. How that will operate, we shall have to wait and see. I have not been to a single Constitutional and Legislative Affairs Committee meeting where there has been a vote on any issue. Consensus has always been capable of being achieved. It has also been the case that individuals have exercised their function very independently of government and of party. That is because of the very specific nature of that particular committee.

On other committees, it is more partisan. I should of course say that we have very rarely had a Government with a majority in the Assembly. We have always had to depend upon coalitions. At one stage, we were in coalition with the Welsh Nationalists. At the moment, within government there is an Independent and a Lib Dem Cabinet Secretary of Education. The nature of politics within the Assembly has always been slightly different because we have never had a majority Government. The make-up of the Assembly is 40 constituency Members, with a top-up of 20 Members on a proportional basis. It has operated politically very differently.

There has been, by and large, a lot of consensus within committees, but there can be a breakdown of consensus, particularly regarding legislation and legislative amendments. Those are the areas where political balance becomes more important, but I think it has worked reasonably well. We have an arrangement regarding the distribution of committee chairs. The chairs of committees, although they may be allocated from a particular political grouping, are, nevertheless, appointed by the Assembly itself, so it is possible for more than one person from a group to put themselves forward and be elected. How that will work remains to be seen, but it is a reflection of the view that, in a one-chamber legislature, maintaining the independence of our committees from government, to enable them to carry out their role independently, is seen to be extremely important. Are we satisfied that we have achieved that? I am not completely satisfied

that has been the case. There is probably room for some improvement in that area, but we are very conscious of it.

Lord Foulkes of Cumnock: That is very helpful. Thank you very much indeed.

The Chairman: Thank you for your evidence this morning. We apologise for the session overrunning, but it was very helpful to us, and we look forward to continuing engagement in the inter-parliamentary forum as it develops. You will be coming to Westminster in January for that and I look forward to seeing you then. Thank you.

Mick Antoniw: I look forward to meeting you again. Thank you very much.