



HOUSE OF LORDS

Select Committee on the Constitution

Corrected oral evidence: House of Lords Appointments Commission

Wednesday 28 November 2018

11.20 am

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Members present: Baroness Taylor of Bolton (Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord Morgan; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 1

Heard in Public

Questions 1 - 9

Witness

I: Rt Hon. Professor Lord Kakkar, Former Chairman of the House of Lords Appointments Commission.

Examination of witness

Lord Kakkar.

Q1 The Chairman: Lord Kakkar, thank you for coming to talk to us about your time chairing the Appointments Commission, which we all acknowledge has a very important role. We have a whole series of questions and you are familiar with everybody around this table. I have to declare an interest because I was on the Burns committee. That committee came up with some recommendations at the Lord Speaker's request about the size of the House. One of those recommendations gave a slightly different role to HOLAC than it has had in the past. What is your reaction to the feasibility of those suggestions in the Burns report as to how it perceives HOLAC developing?

Lord Kakkar: Thank you, Lord Chairman. I should say at the outset that the House of Lords Appointments Commission had discussed in detail over a period of time the recommendations of the Burns commission. HOLAC is strongly supportive, and wishes to be supportive, of the proposals made in that. On the position of HOLAC, the first thing to recognise is that we are an advisory committee to the Prime Minister. Therefore, our terms of reference have been set by successive Prime Ministers. HOLAC is not in a position to change what it does of its own will; it would need to be agreed with the Prime Minister of the day.

On the recommendations made—HOLAC being the keeper of the spreadsheet, if I may put it as it was put to me by Lord Burns; compiling a record of appointments or departures annually and doing calculations post a general election on the individual size of the different Benches, party political and independent—those are things it could easily and enthusiastically do.

The second major recommendation was with regard to all candidates coming forward for consideration for appointment to the House of Lords having the same understanding of the commitments involved in being a Member of the modern House of Lords—again, we think that a very useful suggestion. There is sensitivity: whether someone is willing or able to make the time commitment moves us away from the question of individual propriety towards suitability. When it comes to appointment to the House of Lords, for nominations to the Cross Benches—the traditional independent route—HOLAC has responsibility for looking at candidates both for propriety and for suitability, whereas when it comes to vetting political nominations, the role of HOLAC is simply to assess individual propriety. Successive Prime Ministers have guarded jealously the question whether candidates are suitable, that question being addressed by the individual party leaders as they make nominations through the Prime Minister of the day.

The route forward is something that I have suggested previously: it would be useful for the political parties to look at the criteria that HOLAC uses to assess suitability for independent Cross-Bench Peer nominations and to adopt those criteria generally in assessing whether the names put

forward for the political Benches meet those suitability requirements as laid out transparently in the criteria that HOLAC has used for some years. That could go at least some way to bringing a consistent standard across propriety—which is already the case—and suitability, but that suitability being judged by the political parties rather than by HOLAC for political Members.

Using the template that we would be prepared to prepare for them, they could outline how we would describe the time commitment and obligations of being a Peer and then be able to use that to judge the responses. It is important that the parties nominating somebody to sit in the House of Lords hear the response of the particular candidate when they are clearly presented with what the obligations will be. It would be difficult for HOLAC to hear the response and then have nothing to do with it. We could describe to the individual the obligation and have a conversation, but one has to listen to the other side of the conversation as well to determine whether it will be fulfilled. That is what we do at some great length when we look at independent Cross-Bench nominations. Therefore, the party political representatives would need to have that conversation and listen to the response.

Q2 Lord Norton of Louth: As you know, there has been an expectation in the past that the holders of certain posts will receive peerages on retirement. I do not know whether HOLAC has taken a view on that, but from the perspective of keeper of the spreadsheet, do you think that is problematic from the point of view of achieving the recommendations of the Lord Speaker's committee?

Lord Kakkar: There is a convention that in any given Parliament the Prime Minister of the day is able to make directly to the Cross Benches the nominations of 10 distinguished public servants. In general, Prime Ministers have taken up that opportunity. It is suggested in the Burns report that that be 10 nominations over a five-year period rather than the duration of a Parliament. That is clearly sensible in terms of the overall numbers—we might turn to that in a moment—that will be coming to the Cross Benches. Clearly, in this period of transition through this Parliament, the next and to 2034, there will be a pressure, given the number of departures and the arrivals at any of the Benches, including the Cross Benches.

Having to take out 10 for exceptions, which is clearly the convention and therefore has to be respected, will mean that there are fewer numbers for independent Cross-Bench nominations. It is also suggested in the Burns report that Supreme Court Justices automatically come to sit on the Cross Benches for a shorter period of time. In steady state, that might not be a problem but as we work towards that steady state, there is potential for two of the three categories that comprise arrival on the Cross-Benches—the Prime Minister's exceptions and, potentially, Supreme Court nominations—to make it difficult to appoint any other candidates to the Cross Benches who do not fall in those two categories.

Q3 Lord Norton of Louth: As a consequence of that, do you have a view on

the Burns committee's recommendation on Supreme Court Justices? As you know, it has come up regularly ever since the Constitutional Reform Act as to whether those who have served on the Supreme Court but were not previously Law Lords should automatically receive peerages.

Lord Kakkar: It is certainly the recommendation of the Burns committee that they do that. The justification for that is that there are many roles, particularly committee roles, within the work of the House of Lords where having those with senior judicial and legal experience is invaluable. The HOLAC's original remit was to drive forward a process that cast the net widely in terms of the backgrounds, contributions and experiences of those who may come to the Cross Benches, to drive opportunities with regard to diversity—diversity of experience, background, geography, gender, ethnicity and so on. As I have said, there is a risk in this interim period, if large numbers have to arrive, that the ability of HOLAC to discharge that diversity function will become limited. The corollary of that is that the political parties will need to be more conscious of the needs of the House because in whatever formula is adopted, the larger number of appointments will always be political.

One useful thing that might be helpful to pursue—and something that was recommended in the House of Commons Public Administration and Constitutional Affairs Committee report—is the suggestion that there should be a regular meeting between the House of Lords Appointments Commission and representatives of the political parties to discuss the broader diversity question of appointment to the House of Lords. That should cover the analysis that we have done previously, and which I hope the future House of Lords Appointments Commission will continue to do, with regard to the expertise that populates the House and how that is deployed, not only in debating public policy issues but in bringing that expertise to bear in the scrutiny of legislation. It should also look at other diversity questions in terms of ethnicity, gender and, very importantly, geographical representation. That discussion, based on objective evidence that HOLAC could generate on an annual basis, would be a very helpful conversation with the political parties with regard to hoping that they might take up some of the opportunities to drive forward the diversity of the House.

Q4 **Lord Hunt of Wirral:** We have discussed diversity on previous occasions, including geographical diversity as well as that of gender and ethnicity. What have you been able to achieve so far on that question? What more do you think can be done in the future? Quite a lot of criticism is aimed at the second Chamber, given that diversity is one of the key issues that could be addressed by an appointed House of Lords.

Lord Kakkar: If you look at the objective data, in the past five years—the period that I have been chair of HOLAC—57% of our appointments have been women. That compares with a House with 26% women Members in general. Over the duration of HOLAC, 19% of nominations have been of people from BAME backgrounds, compared with 6% of the whole House. In those two aspects, or characteristics, where we have been able to make headway, we have done that.

Of course, the reality is that HOLAC has been restricted in the number of nominations it can make: in the last five years only seven Cross-Bench independent nominations have been granted by two successive Prime Ministers. Those small numbers, bearing in mind that the first principle of all appointment to public office has to be merit, mean that there is very little capacity to make major inroads or to drive programmes of engagement across the country to attract more people to seek appointment to the House of Lords through the Cross-Bench route. In reality, if one has only a very small number of appointments to make—potentially smaller in the few years until we get to steady state under the Burns formula—it seems unkind to go to lots of people and encourage them to make an application, which is a very demanding process, only to recognise that we may make no or a very small number of appointments in any given year. The reality is that the limited number who can come through the HOLAC route restricts the ability to achieve that objective of diversity. Where it has been possible to do something, I think that HOLAC has acted well and has made an important contribution to increasing diversity in the House.

Lord Wallace of Tankerness: What you said about BAME and gender is a very impressive set of figures. How successful do you feel you have been in terms of geographical diversity within the United Kingdom? Do you get any feedback from people who might be approached but then they realise the commitment—do they give any reasons why it might be difficult to attend from Scotland, the north of England, Wales or Northern Ireland?

Lord Kakkar: I think that people find it difficult. We are very strict in discussions in HOLAC about emphasising the need to make a proper commitment to attend the House, to participate not only in the Chamber but in committees and the broader scrutiny of legislation. When individuals understand that but are still active professionally well outside London, I think they find it difficult to make that kind of commitment. There is always a tension, therefore, in ensuring that in pursuing one particular objective—to reflect a much more working House—we do not cut off the opportunity to draw from a broad range of backgrounds or a broad geography. The House needs to get to a comfortable position on balancing those different tensions and not cut off what I consider to be very important questions of geographical diversity, as well as professional and other walks of life experience and diversity. Our debates need to be informed by as broad a base as possible. When we scrutinise legislation it must be as broadly as possible in terms of bringing those with real experience to identify pitfalls and flaws that those who are far removed from that experience or have no experience at all in those areas may otherwise miss.

Lord Morgan: Can I ask one question about geographical diversity? One of the problems or issues is the extreme reluctance of the nationalist parties to nominate anybody. I see in your report that none came from the Scottish National Party or Plaid Cymru, which means when we discuss Scottish and Welsh legislation, as we do quite often, a very important

part of the dialogue in those nations is not heard here. Have you worried about this and discussed it with them?

Lord Kakkar: I have had no discussions with the leaders of the nationalist parties. Personally, I think it is very worrying. The House of Lords should reflect as well as it can the broadness of political thinking in our country. For important segments that enjoy a democratic mandate in the other place not to be represented in the House of Lords is very unsatisfactory with regard to the way we go about our business, but also potentially very unsatisfactory in terms of the relationship between the two Houses and the ability for the conventions that govern our relationships to be properly and fully respected.

Q5 **Lord Dunlop:** To some extent, you have covered this issue. It is really about the expertise in the House in the under-represented areas. Given what you have said, and constraint on numbers, what specific steps can HOLAC take to try to address the deficit in policy expertise?

Lord Kakkar: The first thing is to continue to analyse information and understand, as colleagues leave the House and new colleagues arrive, where the expertise lies and to understand—as we did some time ago in terms of HOLAC nominations to the Cross Benches—how that expertise has been deployed since arrival in the House. It would be useful to do that more broadly across the House.

There is a lot of focus on Cross-Bench expertise but there is a huge amount of expertise across all the Benches. It is a very interesting observation, which I have made to Prime Ministers previously, that when the names of political Peers are announced, they are announced with a single sentence, whereas when we announce the names of those coming to the Cross Benches, we provide at least a paragraph, if not more, explaining the background and why we felt those individuals merited appointment to the House of Lords.

There is so much in the political nominees that is never described that the focus usually is just on the numbers, rather than on the remarkable contributions that those individuals will be able to make because of their previous experience and what they have done in their lives. It is important for the standing of this Parliament and the House of Lords that more information is provided. Indeed, the House of Lords Appointments Commission, in doing the vetting of the political nominees, receives a very full citation from each of the party leaders. So it would not be difficult to turn that into a fuller description for public consumption.

On the question of what HOLAC could do in the future, as I have said, it is about being fair to individuals. That fairness has to be reflected in understanding the number of appointments that can be made. In any given period, HOLAC may decide to bunch its quota so that rather than doing two in a year, it might do four in two years, and, under those circumstances, have a slightly broader base to appoint from. Based on HOLAC's understanding of what is required, it could target specific disciplines and areas of expertise through writing in the professional

journals, local newspapers or whatever. The secretariat for HOLAC is provided through the Cabinet Office, quite independently through the Honours and Appointments Secretariat. The honours secretariat has experience in outreach to ensure that there is a broader base of nominations for honours. Some of that stakeholder engagement and the experience it has had over a number of years of doing that could be called upon as well. I should declare an interest: I chair one of the honours committees. I have seen how that process works and it is quite effective. It could be modified and adopted by HOLAC.

However, again, I have to be careful to emphasise—bearing in mind that without doing any of that, HOLAC has had nearly 6,000 nominations since it was established and has made just 70 nominations in total—that we disappoint an awful lot of people already. It would be quite difficult to encourage more people to come and thus increase the numbers that we are going to disappoint, with that also being driven by knowledge that we cannot make any appointments anyway.

Q6 Lord Morgan: Can I ask you a question about what you were just saying? It was very interesting. You talk—absolutely rightly—about the need to get expertise and background from a range of areas. You identify that in your report. One problem is that, very often, such expertise comes from people in a rather superior role. Turning to my own experience, the higher education sector is represented in the House of Lords by a sprinkling of ex-vice chancellors—indeed, including me—who have a very different perspective from that of what you might call rank and file lecturers, members of the academic staff, who are of a quite different and, in many universities, opposed point of view to that of their vice chancellor; you could replicate that in a large number of other professions. Is it worth trying to redress that?

Lord Kakkar: We do. Over time, HOLAC has made appointments of some individuals who are younger in their professions and have not achieved the most senior positions. The question for those individuals when they are mid-career is whether they will be able to make the time commitment to be able to contribute here. Very frequently they find that that is quite difficult, particularly if they come from outside London. But it is a good point. These are the tensions that HOLAC continues to address. There are often calls for something to happen in the House of Lords—to appoint these and not to appoint those, and so on—but that often misses the point that actually appointment to the House of Lords is a hugely sensitive business, where one is trying to ensure that there is a proper balance between those who can make an active contribution and those whose contribution may not be so present all the time but who have really important things to contribute; and, for everybody, the capacity also to be good generalists. The House does not want only pockets of expertise that turn up for a moment in time but those who are prepared to give their time and contribute more broadly to the huge number of functions in the House that must be discharged effectively for the House to retain its credibility and to play its constitutional role.

It is something that we consider, but, very frequently, some of the types of candidates that you have described—if we use the academic example, those at lecturer or senior lecturer level—find that their commitments are so very great in their university jobs that it is difficult to come and make a contribution here. But if there were those who wanted to do that and could establish that they would be able to make the appropriate contribution to the work of the House, there would be no impediment.

Q7 Lord Pannick: When you vet for propriety, HOLAC relies, as I understand it, on information from regulatory authorities, HMRC, the police and so on. I have two questions. First, are you satisfied that you have enough resources to deal with the information that you receive? Secondly, what do you do if the Revenue says, “Mr Pannick has not paid his VAT”, or the police tell you that someone has made a criminal complaint against me which is on the file? Do you go back to the individual and ask for their comments?

Lord Kakkar: Propriety vetting is one of the most important functions of the House of Lords Appointments Commission. In the last five years, we have not been able to support some 10% of names that have been sent to us for consideration on the political Benches in terms of establishing the individual propriety necessary to reassure the Prime Minister of the day that the nomination should proceed. You are right, of course: we go to the public authorities, the police, the security services, HMRC and regulators. The issue is that in certain circumstances that information is provided to us confidentially and we are not in a position to share it with anybody else. That is the basis of the provision of that information.

We do not get involved in direct discussion with individual nominees. We perform our function and we write to the Prime Minister of the day informing them whether or not we have been able to establish what we need to establish. We do not get into a discussion with the political parties about our decisions. We do our work, we complete our work, and we inform the political party.

With regard to nominations to the Cross Benches, we do all of that, and in addition we make an assessment about suitability.

Lord Pannick: It could cause unfairness. You can imagine circumstances in which the security services or the police might just have made a mistake.

Lord Hunt of Wirral: You will recall that we had quite an exchange about this when you last gave evidence. You were nervous about the fact that you were doing all this behind closed doors and that you were not able to check with the individual concerned whether or not something might easily be disproved. A number of allegations have been made in the recent past which have subsequently been disproved—not that Paul Gambaccini was ever before you. How can you avoid that happening?

Lord Kakkar: It is not a simple binary process. The commission and the commission board members put a huge amount of effort into looking at

any information that is provided. The reality of the situation is that there is usually absolute clarity in the information that is provided to HOLAC, certainly in the past five years. In areas where there may be some doubt, we take the view that we might delay things until further information is made available. We are not as brutal as it might sound but at the end of the day, we have a responsibility to protect the nominating Prime Minister, the Crown, this Parliament and the House of Lords in ensuring that only those who should rightly come here, in terms of individual propriety, end up sitting on these Benches. It would be quite a shocking thing for confidence in the House of Lords if it were found that those individuals who for some reason should not be here had come through the system and ended up on these Benches. But I take your point. We do this very sensitively and very carefully. But at the moment—not with all the sources of information but with some of them—there is a very strict agreement of confidentiality that needs to be respected.

Q8 Lord Wallace of Tankerness: You have talked several times today about the time commitment, not just in the Chamber but to committees and the general work of the House. You have reflected on that in previous evidence sessions. I think last year you said that you could not formally monitor it and there would be nothing you could do if you did because people are appointed for life. Generally, do you keep an eye on people who have made commitments to see whether or not they live up to them, and have a quiet word if you think they do not? Is there any other way you can hold people to the commitments they have made?

Lord Kakkar: Certainly, with HOLAC nominees, we keep an eye on how people are doing. They have made a personal commitment to the chair of HOLAC; that is a discussion that takes place on at least three occasions. It is not unreasonable to follow up gently to determine whether that commitment has been fulfilled. If it has not, in terms of those nominated to the Cross Benches through HOLAC, it is certainly possible for the chair of HOLAC to just mention that a commitment was made and it does not appear to have been fulfilled. Again, that concerns only a very small proportion of those who come to the House of Lords. It is not possible, for instance, to say that to those who have come through the route of Prime Minister's exceptions because they have come as distinguished public servants on the direct nomination of the Prime Minister, without any discussion about making a commitment. If Supreme Court Justices came for a seven-year term when standing down from the Supreme Court, as is proposed, would there be a conversation with them before they came, to discuss some kind of time commitment and obligation? Indeed, would there be the opportunity to put them through vetting? If there was automatic confirmation of a seat in the House of Lords to be taken up at the time of demitting from Supreme Court office, how would one vet those individuals?

There is vetting for the distinguished public servants, I hasten to add. There are only two categories that do not. As we have heard in debate on Lord Grocott's Bill, hereditary Peers do not come through any vetting process; nor do the Lords spiritual. But all other categories are subjected

to the same process, whether they are political nominations, ministerial nominations or come via the HOLAC route. There are questions that would need to be considered by a future commission. In general it is a good thing. In HOLAC we take this discussion about commitment very seriously. But it would need to be done more broadly across the House for it to be considered a serious part of the way that people come to the House of Lords.

Q9 Lord Judge: You have been asked about this before but perhaps your thinking has developed since the last time you spoke about it. Should your commission be put on a statutory basis and, if so, what basis?

Lord Kakkar: When I took up the position of the chair of HOLAC, I was helped to understand very clearly that our role was advisory to the Prime Minister and that we were established on an interim basis until House of Lords reform was complete. We are now nearly 20 years down the line and we remain an interim, advisory commission to the Prime Minister.

Ultimately, a statutory House of Lords Appointments Commission would be a good thing. It should relate to the House of Lords. It is very important that the chair of HOLAC has the opportunity to appear before the Constitution Committee of the House of Lords—that is the right place for HOLAC's work to be scrutinised.

In terms of when we should establish a statutory commission, we need to be clear about where we are moving on reform of the House. Unless we are clear about that and about what we are really looking for in the appointments we make, and we are able to set very clearly and confidently statutory criteria that will be applied and therefore will ultimately be challenged, it does not seem quite right to establish a statutory commission now when we have not done so much of the other work on reform. However, now we have some developing momentum behind the Lord Speaker's Committee's recommendations on reducing the size of the House, we will get to a position where some of these questions can start to be answered.

As part of the policy work, the next commission should—and we have set the ground for it to—look at these questions, with a view to contributing more definitively to the question of whether or not we should go on to a statutory footing. The reality is that, at the moment, the most important thing that the House of Lords Appointments Commission can do is set a good example in exercising restraint and respecting the figures and approach that Lord Burns has set out. The moment any individual group goes for special pleading—that is why the earlier discussion we had about numbers and different groups coming to the Cross Benches is so sensitive—and breaks the consensus, the whole thing will fall to pieces, and I certainly would not want HOLAC to be responsible for that in any way.

The Chairman: Thank you very much indeed. That was very interesting. I think we covered the recent developments that have taken place since you last came. That ends our public session.