HOUSE OF LORDS

Constitution Committee

Corrected oral evidence: Role of the Lord Chancellor and the law officers

Wednesday 16 March 2022

10.10 am

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Falconer of Thoroton; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord King of Bridgwater; Lord Robertson of Port Ellen; Lord Sherbourne of Didsbury.

Evidence Session No. 2 Hybrid Proceeding Questions 20 - 28

Witnesses

I: Dr Conor Casey, Lecturer in Law at the School of Law and Social Justice, University of Liverpool; Dr Conor McCormick, Lecturer and Director of the Human Rights Centre at the School of Law, Queen's University Belfast.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Dr Conor Casey and Dr Conor McCormick.

Q20 **The Chair:** Welcome and thank you for joining us today. Thank you very much for coming in person. It is always nicer when you can meet people directly. You have both submitted very helpful written submissions, which we have read. For that, we are grateful because it allows us to reflect on what you have said. I particularly noted that, when considering the advantages and disadvantages entailed by the political/apolitical law officer model, you were both in favour of the status quo. Some of our colleagues may ask you about that further when we come to a question on those issues.

I will open with the first question. How is the rule of law being protected within the Government, and how do the law officers ensure this? You have both made written submissions. Obviously, a question like that can be an essay, but could you capture succinctly the important elements of your answer to it? Perhaps, Dr Casey, you would start.

Dr Conor Casey: First, thank you very much for the invitation. It is a real privilege to be here. I will not rehash the full extent of the submissions, which are already there, but it is important to stress the importance of the work of government lawyers—not just at the apex with the law officers but throughout the length and breadth of government. The thousands of lawyers employed by the Government Legal Department are the gatekeepers of the rule of law really. Within the Executive branch, they deal with hundreds, if not thousands, of queries every week, month, year. That role perhaps does not receive enough attention because of the focus on the law officers, but it is a critical role.

When it comes to Cabinet-level decisions, the law officers ensure that there is a suitably qualified individual with legal expertise at the heart of the most important policy decisions in the country.

More concrete examples include the fact that any departmental Bill, before it is introduced to Parliament, when it goes to the Parliamentary Business and Legislation Committee, must include a full and frank legal assessment. That includes concern for human rights issues and international law implications, and the Attorney-General must satisfy themselves as to its cogency. It is almost a double tier of review.

It is perhaps less well known that law officers also scrutinise Bills for rule of law value compliance. When it comes to things like legal certainty, they must grant consent, for example, before a Bill can be commenced before the two-month period given after Royal Assent elapses. They also have to give their consent if they think the Bill could have onerous retrospective effect.

More generally, any decision involving serious international law implications, such as the use of force, will go to the law officers. The most sensitive questions will be addressed with a concern for legality at

their heart. From the line department up to Cabinet, those are some of the ways in which the work of lawyers is an ever-present consideration.

Dr Conor McCormick: May I add my thanks for the invitation. I have the same starting point as Dr Casey, namely that government lawyers are at the forefront of delivering the rule of law within government. There are thousands of them—2,000-odd. Within the Government Legal Service there is obviously quite a formal hierarchy of junior lawyers and senior lawyers, and at the apex we have the law officers.

From within the written evidence I want to highlight the fact that the circumstances in which junior lawyers have to refer up particularly difficult questions are apparently well understood. I have to take that as read from the research of Ben Yong, basically. We know a bit more about when Ministers are required to refer questions to the law officers, because that is set out in the Ministerial Code, although of course it has been abbreviated quite considerably over the years. Again, I am told that is well understood.

The difficulty we have in assessing how well the law officers are doing in upholding the rule of law inside government is that most legal advice is confidential. We have that barrier in assessing the extent to which they stand up where there are policy proposals that may infringe the law, and the extent to which they stand in the way of the progression of policy proposals of that nature.

In the absence of a weakening of that convention, we will find it very difficult to know. What I have fleshed out, I suppose, in reflecting on your questions is what we can tell from the public pronouncements of recent Attorneys-General and what we can assess of their understanding, and the strength of their advocacy and persuasiveness. I think that is really the most that we can offer externally.

The Chair: I have a supplementary, but I think Lady Fookes wanted to come in.

Baroness Fookes: I had not realised the extent to which the law officers were supposed to comb through all the Bills that come forward, testing them for the various criteria that you have outlined. I do not see how they could possibly do that all by themselves, so must there not be a great support network for them? If so, how does that work?

Dr Conor Casey: That is a good question. There is a tendency, when we are talking about the law officers giving legal advice, to discuss that without reference to the fact that the vast majority of questions are not dealt with by the law officers. Sometimes a picture is painted that the law officers deal with all the questions in government, which is not even possible. Government lawyers in the Government Legal Department are a big part of that picture. They will do the heavy lifting with most memoranda that accompany Bills. The law officers may check for cogency. They are not coming cold at it.

It should also be noted that law officers, given the complexity of modern policy environments, and the different intersections of lots of sources of law, are more aware of their limitations as a single lawyer. They can draw on and mobilise an enormous array of legal sources to aid their deliberation and judgment. It is very common for them to get opinions from First Treasury Counsel, who are always an eminent public lawyer, from their own internal lawyers in the Attorney General's Office, a small coterie of around 20 lawyers, and I imagine they will inform themselves with the opinions that have come from below, because a lot of law officers' advice comes when there is interdepartmental disagreement on legal advice.

A good law officer should be suitably qualified and have expertise, but also know their limitations. Professor Edwards in his magisterial work on law officers pointed out that part of their strength is not that they are the biggest or brightest legal minds personally but that they are able to draw on a vast array of resources to aid their deliberations. That is part of what enables them to discharge that function. They do not do it all themselves. They know how to bring resources to bear.

The Chair: I will ask my supplementary and then Lord Falconer would like to come in with a question. Obviously, we are interested in how things have evolved in more recent periods. Have recent events demonstrated a shift in how the duty to protect the rule of law is being performed?

Dr Conor McCormick: I find this difficult because it depends on your definition of the rule of law and it also depends on which recent events you have in mind. I was able to isolate two issues that speak to this, which I can speak about at the moment at least, the first being the saga over the Internal Market Bill, and the law officers' decision or involvement in presenting before this Parliament a Bill that would have empowered the Executive to breach international law.

There are differing views about this. My view is that that should not have happened under any respectable law officer's watch because I think it is a problem to be indifferent to your international obligations as a member of the Executive. That view stems from the Ministerial Code and the prefacing part of it, which sets out the Government's acceptance of its obligations under international law. A number of years ago that was amended, as you are all aware, to remove explicit references to international law, but members of the Government have confirmed that nothing was to be made of that and the Court of Appeal endorsed that reading as well.

I find it very worrying as a point of the rule of law that we can have a law officer presenting an argument, if you can put it like that, to Parliament to the effect that sovereignty is enough of a justification to pass a provision of that nature. Effectively, I find the argument unpersuasive, but I know there are arguments the other way. I just do not find them persuasive.

The other episode I was going to mention stems from the research of a colleague, Dr James Hand. He has a piece coming out in *Legal Studies* very soon where he has looked at the credentials and background of officeholders over quite a long period of history. One of his key observations was that over very recent years officeholders have come to their office with much less experience than in previous years. He makes the point, and I agree with it, that that comes with a diminution in the authority of the advice that those officeholders can provide. I view that as a concern as well.

The episode over the Internal Market Bill, where a very senior member of the Government was recommending to Parliament a provision that would breach international law obligations, together with the fact that that officeholder, and some before her, do not have the same level of experience or necessarily the same level of authority, may be a cause for concern and justify some consideration for institutional reform about appointment.

Dr Conor Casey: I have slightly more optimistic points to make. I would be bold and slightly widen the temporal picture. We are talking about recent times, but if you look at the last two decades from 2000, there have been two developments that are not remarked on a lot but they are very salutary for the protection of the rule of law.

The first is that it has now reached a stage where it would be very implausible to say that the convention against disclosure is absolute. It is not. In the last two decades the frequency of disclosure, either of a précis or a full opinion, has increased—the Iraq war advice, the advice on the use of force in Syria, the use of force against British citizen foreign fighters with drones, the advice of Sir Geoffrey Cox on the protocol and the Internal Market Bill advice.

I am not suggesting for a moment that that was a conscious attempt out of the goodness of people's hearts to increase transparency. It was probably ad hoc reactions to political matters as they arose. However, I think there is increased willingness to discuss the contents. That should be read in light of the Government's response to the House of Commons committee's report in 2007. It recommended a lot of reforms and one of them was increased transparency. The Government of the day said, "We would be willing to consider this". There is perhaps not a greater openness but certainly it would be implausible to suggest that the convention is absolute. That increased transparency is a good thing, not in the vast run of cases, but in exceptional circumstances where the decision in issue could have nationwide ramifications. Increased willingness to discuss advice is a good thing, and it might be a good time now to consciously revisit the parameters of that convention. I think that would be good for rule of law promotion.

The second positive development is that the protocols between the law officers' departments—the CPS and the SFO—in 2009, and more recently in 2020, have made a lot clearer and more defined the superintendent relationship between the Attorney-General and those offices. I think that

is a positive development from the rule of law. It has been made very clear that the CPS and SFO have operational independence and autonomy, particularly of casework, save in a very small subset of cases pertaining to national security. The transparency and codification of that relationship is very important for rule of law protection and the perception that it is being upheld. Those are some positive developments.

I have the misfortune of disagreeing just slightly with my colleague, Dr McCormick. We should be cautious about using, for example, the post-nominal QC as a sort of heuristic for assessing fitness for the office. Everyone agrees that legal expertise, experience and education are important, but I think using that can be a crude metric, for a lot of reasons.

One is that, in addition to legal expertise, character traits are just as and perhaps more important than the length of time spent in the law, and being a QC is no guarantee of that. Moreover, law is so complex now, and so differentiated and specialised, that being a QC in an insolvency might not translate well to the kinds of functions you are doing as Attorney-General. Different roles require different traits. A good QC might not make a good judge. They may be temperamentally unfit for it. The same considerations apply here. Legal expertise is absolutely critical, but we should be careful how much we use that as a yardstick.

There is another disagreement. As a matter of political morality, I think you should always follow international law, but the rule of law as a concept is too contested when it comes to the question of whether you should prioritise domestic constitutional law or international law in adhering to it. It is too contested to say definitively that the AG failed to uphold the rule of law. Different AGs will take different positions on that incident. Lord Advocate Keen and the Treasury Solicitor obviously took an international law-centred view of the requirements of the rule of law, but the Attorney-General's advice in many ways was an orthodox articulation of parliamentary sovereignty and its relationship to international law. You can morally abhor that decision, but I think the concept is too contested at the margins to conclusively say that it is contrary to the rule of law.

Lord Falconer of Thoroton: Did the Attorney-General express a view about the Internal Market Bill? What did he or she say?

Dr Conor McCormick: It was Suella Braverman. I do not have the quotation to hand, but I have included in my written submission the reference in *Hansard* where she speaks to it. The point effectively was that parliamentary sovereignty means it is acceptable to pass the legislation. My response to that is that we have to have persuasive reasons for doing so, and, at that moment in time, Parliament was not being given an explanation as to why the agreement that had just been agreed at the international law level should be breached. It was empowering the Executive at some point in the future to breach if necessary, but to me that was unconvincing.

Lord Falconer of Thoroton: I completely accept what Dr Conor Casey

says that the rule of law is contested, but there are central parts to the rule of law that are not contested. If the Attorney-General says a particular act that the Government are envisaging is contrary to the rule of law, can the Government do that act?

Dr Conor McCormick: I think the Government can because all legal advice is advice at the end of the day, and it is actions of the Government that are lawful or unlawful. In those circumstances, my view is that the Attorney-General should resign if they have strong feelings and strong convictions as to the strength of their advice and their sureness about the unlawfulness in question. Often, as you know, it is a matter of interpretation, but, if it is not, I think the Attorney-General should resign. In circumstances where there is greater uncertainty, it is up to the Government to make a final decision.

Lord Falconer of Thoroton: What do you say to that, Dr Casey?

Dr Conor Casey: I agree entirely. Professor Edwards in his great work on the Attorney-General said the greatest safeguard of the office's boundaries is personal integrity and a personal belief in its independence in the public interest/rule of law-facing function. If they were convinced that it was against the rule of law and the Government wanted to proceed, it would be untenable to stay if they had integrity.

Lord Falconer of Thoroton: Do you think that our constitution is based on two propositions: democracy and the rule of law? That is what Bagehot says.

Dr Conor Casey: I should say I come at this as a comparative constitutional lawyer. I would not have the confidence to speak about constitutional—

Lord Falconer of Thoroton: Even a comparative constitutional lawyer must have some view about the UK constitution.

Dr Conor Casey: My sense from outside looking in is that the rule of law is a very important constitutional principle.

Dr Conor McCormick: I agree, although normally the constitutional principles are framed as the rule of law and parliamentary sovereignty, as a particular type of democracy. To that extent, yes. I am conscious that there are different ways in which systems can be democratic. In the UK system, I would say that parliamentary sovereignty and the rule of law are the two twin principles.

Lord Falconer of Thoroton: So you would probably agree that it would be unconstitutional for a Government to act where the Attorney-General is advising that what they are doing is contrary to the rule of law.

Dr Conor McCormick: I would.

Lord Falconer of Thoroton: The three areas where it comes up are, first, the criminal law, interfering in prosecutions, and if the Government

interfere in prosecutions that is contrary to the rule of law. An example is Sir Patrick Hastings and the first Labour Government, where the Prime Minister said to the Attorney-General, "Why are we prosecuting this war hero?" The Attorney-General was the greatest QC of all time, Sir Patrick Hastings QC, and he instantly went off and stopped the prosecution. The Labour Government fell because that was such a gross interference with prosecutions. If an Attorney-General allowed prosecutions or the conduct of criminal justice to be interfered with, that would be contrary to the rule of law.

Dr Conor McCormick: I am happy to take that first. In the context of the Hastings and Campbell case, it was not just that the Attorney-General had acceded to Cabinet pressure; it was also that the Prime Minister had misled Parliament and not admitted to the amount of pressure that had been applied, so that was part of the reason.

Lord Falconer of Thoroton: That was as bad as the breach of the rules.

Dr Conor McCormick: Precisely. But I agree effectively that the Attorney-General does have to be careful in relation to prosecutions. That is probably putting it too lightly. To cut a long story short, I think it is well regulated at the moment. I trace some of the historical developments in my written submissions where Campbell is the most controversial episode—

Lord Falconer of Thoroton: Was it controversial? The Prime Minister told the Attorney-General to stop the prosecution, and he did. That is completely uncontroversial, is it not? Ramsay MacDonald should not have done it and the Attorney-General should not have acceded to the pressure.

Dr Conor McCormick: I have read around the time and, actually, some of the before and after. My understanding is that in those days it was not as uncontroversial as it would be now, because prosecutions were more Executive driven. I certainly would say that nowadays it is non-controversial because we have come a very long way since Campbell. Campbell is the archetype of where it all went wrong. Since then, we have seen various developments. The Shawcross doctrine evolved into a 2009 protocol, which was then updated in 2019. That makes it crystal clear that the Attorney-General can consult Ministers in the Cabinet only in very exceptional circumstances about whether to prosecute—very limited circumstances—and even then it is up to the Attorney-General at the end of the day to decide what weight to give to those representations. To that extent, I think the constitutional position is very clear that the Attorney-General cannot be guided or pressurised. In the end, the decision is theirs, but they are allowed to ask for advice.

Lord Falconer of Thoroton: Connected with that, and it is in connection with Northern Ireland, there are the immunities and pardons that were being offered—the "on the runs"—where the Attorney-General said no to suggestions from government that further amnesties be given after the Good Friday agreement. The Attorney-General said no because that was

contrary to the rule of law. His view would be final on that, in your view, presumably. If the Attorney-General said, "We cannot give a particular amnesty because it is contrary to the rule of law", the Government would have to accept that.

Dr Conor Casey: Again, I would defer to my colleague on this, but if the Attorney-General did not give a direction to the CPS on those narrow national security grounds that the protocol between those departments envisages, then it would be for the CPS alone to talk to them.

Lord Falconer of Thoroton: I am talking in a wider context where amnesties, and they are reflected in the Good Friday agreement, were given as part of the Good Friday agreement, not on national security grounds, but on the grounds to promote peace in Northern Ireland. There were suggestions of further amnesties after the Good Friday agreement. Had the Attorney said, "That is contrary to the rule of law", then his or her view would have to prevail.

Dr Conor McCormick: I am reluctant to state a firm view on it because this predates the 2009 protocol and the 2019 update.

Lord Falconer of Thoroton: I am not talking about the protocol; I am talking about the rule of law.

Dr Conor McCormick: At that time the relevant constitutional rule would have been Shawcross. I do not think it was as clear then. I would need to double-check, and I can, if it would be helpful. I am reluctant to give a view about it now because I have not thought about it, and I have not read the details of this.

Dr Conor Casey: Are you offering a scenario where the Government are considering a legislative proposal to offer amnesties and the Attorney-General is saying that would be—

Lord Falconer of Thoroton: Without going into too much detail, after the Good Friday agreement, further discussions took place with the various groups, and various groups pressed particularly in relation to the "on the runs". These are well-known issues; they are public. In effect, elements in the nationalist community pressed for more amnesties in relation to "on the runs". If the Attorney-General had said no to that, even though the idea was that it would promote peace in Northern Ireland, his view should prevail.

Dr Conor McCormick: I suspect that is right, but I cannot say for sure. There is a book by Austen Morgan, a specialist on Northern Ireland law in this area, that deals very precisely with this. I would go and consult that before I would offer a view.

Lord Falconer of Thoroton: As a final aspect of this, the other area that comes up is international law, which you have all referred to. If the Attorney-General says no under international law, for example, in relation to the use of force, then the Government have to accept that, or they will break the rule of law. The fact that it is contested does not change that

because the Attorney-General’s view on law is the definitive view within the Government.

Dr Conor Casey: I would say that the—

Lord Falconer of Thoroton: That is contested. I notice Lord Howarth and Lord Faulks are contesting that. My understanding had always been that, to avoid a situation where you can always find a lawyer who will tell you something, you have to have a hierarchy of legal advice in government, and the Attorney-General’s view on the law trumps everybody else’s view.

Dr Conor Casey: To my understanding, the Attorney-General has been referred to as the final court of appeal within the Government on legal advice. Documented cases where advice has been disregarded, domestic or international, are rare. I cannot think of any big examples of that happening. For example, in the Chilcot inquiry, former Prime Minister Tony Blair said that, if the Attorney-General had said that the invasion without a new resolution was unlawful, that would have been the end of the matter—we would not have proceeded.

Lord Falconer of Thoroton: That was reflecting the conventional view.

Dr Conor Casey: Yes. The Internal Market Bill was a little more complicated because you are talking about the priority in respect of compliance with the rule of law and whether to look at that from a domestic constitutional prism of parliamentary sovereignty, or to say it should be caveated with international law. In a matter of pure international law where the Attorney-General advises that it is unlawful, I cannot imagine a Government proceeding. It would just be so politically damaging. The Iraq war advice is still controversial two decades on.

The Chair: Dr McCormick, I was just looking up your submissions. I think you were referring to the Attorney-General’s statement to the House on 24 September, where you say that she “publicly defended the relevant provisions of the UK Internal Market Bill by reference to the dualist nature of the UK’s system for giving effect to international law”. Is that the reference, just for the record?

Dr Conor McCormick: That is the one I have in mind.

The Chair: Thank you very much. Lord Sherbourne, you had a question.

Q21 **Lord Sherbourne of Didsbury:** Good morning. I would like to ask a double-barrelled question. First, could you tell us the extent to which you think the Constitutional Reform Act 2005 has changed and enhanced the role of the law officers in terms of upholding the rule of law, and, if that is the case, what exactly do you mean by that in practical terms?

The second part of my question is very practical. If there is a government reshuffle and a young Back-Bencher with a legal background becomes a law officer, I know there are various protocols around the department about how to relate to other organisations, but, in effect, would that law

officer be told or understand what his or her job spec was?

Dr Conor McCormick: On the first strand of the question and the effect of the 2005 Act, at one level you could say not much has changed because the Lord Chancellor, while legally qualified, could in one sense have been regarded as a potential legal adviser to the Cabinet in those days, but, in reality, my understanding is that that happened very seldomly in the past. Pre-2005, the Lord Chancellor would not regularly have been consulted by government departments for advice. That was the law officers' role.

On that reading of affairs, particularly given that all other senses of the rule of law have been preserved as responsibilities of the Lord Chancellor by the Reform Act—upholding the rule of law and judicial independence—perhaps not much has changed. The law officers have always had primary responsibility for giving government departments advice.

On another view, because they do still have to be legally qualified, the law officers are now potentially the only formal bridge between the Executive and the judiciary. As you all know, before the 2005 reforms, the Lord Chancellor would have been head of the judiciary and sat as a judge as well as being the Government's legal adviser on and off. That no longer happens because we have a cleaner separation between them. The law officers do still have a two-way focus in a certain sense, however, so, while they are advisers to the Cabinet and the Executive as a whole, they also have to appear before the courts and put the Government's case to the courts. In that sense they are still a conduit, or a bridge, or a hinge, whatever way you want to think of it. I would say that that has become more important now that the Lord Chancellor no longer occupies a similar space.

Having somebody there to represent the Government's position to the courts on the proper interpretation of the law, and likewise going back to the Government and relaying the courts' final view, is of higher significance now than perhaps in the past because we do not have the Lord Chancellor to sit in between the interstices.

As for the second strand of the question, there probably is a training pack or a briefing note of some sort that is conveyed to a lawyer appointed with less experience or less familiarity with the office of Attorney-General, but I imagine that what they are invited to do is read Professor Edwards's books, and I hope they will read mine too once it is published.

Dr Conor Casey: On the first point I agree entirely. In some ways not much has changed. The law officer's role continues to be to provide advice. To the extent that the Lord Chancellor may not be a qualified lawyer, and may not understand the rule of law implications of certain decisions, the substance and the perception of the Attorney-General being appropriately qualified, independent in thought, dedicated first and foremost to upholding the public interest and rule of law when those kinds of functions are implicated, are more important than ever if the

Attorney-General is going to be the only lawyer in the room where the most important decisions are made.

On the second, it is sort of hypothetical. A very respected commentator wrote very recently in a magazine that QCs can be independent of thought and opinion because they have a legal practice to fall back on. A young, hungry lawyer may not have the same safeguard. That might sell young lawyers short. I think all lawyers worth their salt will adhere to the professional norms and standards of the profession, and that requires that you do not let partisan considerations or party advantage factor into your professional considered judgement. I like to think that young lawyers could stand that test. To the extent they did not they would be in breach, not only of the boundaries of the Attorney General's Office but of the boundaries of the legal profession. They would be failing to live up to those as well.

Lord Sherbourne of Didsbury: Let me push both of you a little on the second question. I think what you just said, Dr Casey, is what you think should happen, which I agree with, but the reason I press the question is because of the peculiar status of the law officers within the Government. Hopefully, when a Minister is appointed by the Prime Minister, he or she will be told, "We are trying to pursue this broad policy in education or health", or whatever it is. I imagine that will not be coming from the Prime Minister to the law officers, so who will be telling the law officers not what their functions are, not the job they will have to undertake, but what their overall objective is? Who will be telling them that?

Dr Conor Casey: When it comes to the functions that are more ministerial such as the superintending functions, I think you will pick those up on the job, informed by the relevant protocols and the Attorney-General's department.

When it comes to the legal advice-giving function, or the public interest functions such as referring unduly lenient sentences, that will involve, first and foremost, the legal training and expertise that you have and the legal ethics to think like a lawyer. That means to give dispassionate, impartial advice to the best of your ability, or, in the case of the unduly lenient sentence, to make sure that you are complying with the relevant statutory criteria and the guidelines that are associated with it, and that you are giving them a fair construction. For a lawyer, that should be like breathing in some ways.

Lord Faulks: I do not know whether either of you have read Peter Rawlinson's memoires. When he was appointed a law officer for the first time, he was instructed by the then Prime Minister Harold Macmillan in considerable detail about the duties of a law officer, going into the history of the precise functions in a way that I think would have fulfilled anybody's idea of an induction process. Is it reasonable to expect that sort of thing nowadays?

Dr Conor McCormick: I think it is probably unrealistic. I remember it. *A Price Too High* is the book, and the Prime Minister's advice was

something to the effect of, "Put the law first", which is a very responsible thing to say. I am not sure it would be said now.

To circle back to Lord Sherbourne's earlier point, the law officer's job outside its criminal policy dimension is a largely responsive one. It depends on which issues call for advice, and that is outside their control.

On what Dr Casey said, I am reflecting off the cuff about competence. If it is a matter that is outside their competence, they will have to rely on the advice of their juniors, which poses difficulties, I suppose, to the extent that it is a professional obligation of a lawyer to decline instructions when it is outside their competence.

I have seen reports in relation to previous officeholders—I am thinking of Jeremy Wright's decision to appear in Miller 1, where it was characterised as taking a knife to a gunfight, because he was not a specialist in public law. Later, in his interview with the Institute for Government, he admitted that it would not have been proper for him to carry the full case. He just made an appearance at the beginning and then deferred to Treasury Counsel, I think.

Q22 **Lord Howarth of Newport:** Good morning. I would like to pursue fractionally further questions opened up by Lady Fookes and Lord Sherbourne. It is a distinctive feature of our system that the law officers, and I am thinking particularly of the Attorney-General, are not only lawyers but politicians. I do not think that is significantly controversial or contested. It seems to me that there are important advantages in it.

An observation was quoted that the Attorney-General has a vast array of resources at her or his disposal to support them in doing their job. On the technical legal side, that certainly appears to be the case. If there are 2,000 lawyers in the Government Legal Service, that is an awful lot of lawyers, and they can get advice from outside as well. But when it comes to exercising their broader responsibilities and the broader dimensions of their role, what is your view about the quality of support they have from their officials? We seem to have a department that is heavily legal in its culture. All Ministers benefit from having available to them wise advice from their senior officials. Is the culture and character of the Government Legal Department such that the law officers are well supported in that broader role?

Dr McCormick postulated a situation in which someone was appointed Attorney-General who was not only not an eminent lawyer themselves but not a very experienced politician, so the quality of advice available to them as they go about their job is very important. What is it like, in your view, in the present set-up?

Dr Conor McCormick: Thank you for the question. I am reminded of a point or an observation that Dr Hand makes in his *Legal Studies* paper to the effect that the current officeholder has less than half the average political experience as a parliamentarian than previous officeholders, which speaks directly to the point you have made. I think that justifies, to a certain extent, her decision to appoint a special adviser. That would be

my instinctive response to your question. It is true that, if you are at the head of a department that is comprised mostly of lawyers, you will probably not have people to speak to so often in relation to the policy political considerations relevant to the role. That is offset in the present circumstances, first, by the presence of a political adviser and, secondly, by the regular attendance of the Attorney-General at Cabinet, which is where those conversations will play out.

Dr Conor Casey: Famously, Attorneys-General in the past have described the office as what Sir Patrick Hastings called "my idea of hell", and Francis Bacon said it was "the painfullest task in the realm". I think part of that was the crushing workload. Back in the day, there was prosecution and a lot of advice work, and your staff were probably smaller.

Now, if you look at narrative accounts from former officeholders—usually after they finish their term, they talk to the Institute for Government in Ministers Reflect—you see that in those they talk quite positively about the support available to them. Part of that might be because the prosecution work has largely been hived off—99% of it—to an independent agency and their ministerial function is to superintend. They do not have a primary responsibility for criminal justice policy, so that is perhaps what justifies and allows them to have a small department because their main task is legal advice work. If you are following the narrative accounts of their own time in office, it seems that they are reasonably happy with the level of resources, but it is hard to know really.

Lord Howarth of Newport: Further help is at hand because modern officeholders will be able to read Dr McCormick's book, which he has been kind enough to recommend to us all.

The Chair: Have you finished the point you were developing, Lord Howarth?

Lord Howarth of Newport: Enough for now, thank you, Chair.

Q23 **Lord Faulks:** The Attorney-General and the Solicitor-General are political appointments. An assessment will no doubt be made as to the sort of advice that they might give, although their adherence, of course, is to the rule of law. The advice may not always be welcome; one hopes almost that it is not. It is possible, and it happens quite regularly, that a Prime Minister will dispense with the services of one of his or her law officers. You discuss in your papers the Office of the Attorney General for Northern Ireland, which is rather different. It was borne out of the particular history of Northern Ireland. There is a degree of security of tenure in the position of the Attorney-General that means they cannot be dismissed on the whim of the Prime Minister. Ought there to be some quasi-security of tenure that places them in a different position and perhaps reinforces their independence?

Dr Conor McCormick: I will flesh out the Northern Ireland position a little bit. In Northern Ireland, you are absolutely right that the Attorney-General has security, in two senses. There is normally a fixed term of appointment, which is subject to a statutory maximum of either four or five years; I cannot remember. Then there is the specific Section 22(5) of the Justice (Northern Ireland) Act 2002, which says that all functions have to be carried out independently.

As regards security of tenure, in so far as the fixed term applies, that is true, but beyond that it is not. For instance, the practice in relation to the first appointee has been that they were appointed for the full length initially and then the fixed term of appointment started to get smaller and smaller, so that the First and Deputy First Ministers in that sense retained the ability to review whether to extend the appointment further on expiry.

Even with a power like that, in practice it can be deployed strategically. In principle, I would be in favour of some sense of security for law officers. One of the recommendations embedded somewhere in my paper is that Parliament should have a greater role, because I think that, too, would strengthen the authority of the appointment.

The problem for present officeholders, as you sort of suggested or at least implied, is that they are there at the behest of the Prime Minister. If the officeholder in their own right was present in Cabinet with the confidence of the Commons, as signified by a vote, I think that would do an awful lot to enhance their legitimacy and authority.

Dr Conor Casey: In my comparative study of government lawyers, their terms of appointment come in all shapes and sizes. In common-law systems, it would be an outlier to have a statutory term if the conditions of removal were onerous. Israel is an example, and it has six years across Administrations.

I do not have a priori preferences on this matter, but I would say that the model in the UK seems to be working reasonably well as is. Even the strongest proponents of reform such as Sir Jeffrey Jowell and very respected commentators base it on the perception of politicisation being a bad thing, but no one has suggested that actual politicisation has occurred. I wonder if perception is a thin reed on which to introduce a kind of change that would fundamentally change the relationship between the law officer and the Government. Without more, I do not know what the consequences of that kind of change would be.

Successive Attorneys-General, government Ministers and academics have spoken about the political status of the Attorney-General being a source of weight with their advice. If it was a fixed term, I do not know if they would remain a political actor and how that would work. If the Prime Minister appoints you but cannot remove you, would that encourage trust or lead to a breakdown in trust, or would that lead to circumvention of the Attorney-General in favour of external legal advice? It would demand careful consideration and it definitely would not be without its problems.

Dr Conor McCormick: You have reminded me that built into that package in Northern Ireland, where there is security of tenure, there is also power—I cannot remember who initiates it—for a tribunal to be convened to decide that the Attorney-General should be removed from office, and that is chaired by a judge. There is a safeguard, I suppose, built in that would speak to Dr Casey's point about flagrant misuse of office, or something like that. I thought I would mention that as well.

Q24 **Lord Howell of Guildford:** My question really follows the theme we have been discussing already and that Lord Sherbourne opened up a moment ago. Would it improve public perception of law officers' impartiality if they were not serving in government, to which I would add the obvious codicil, if they were not sackable by the Prime Minister, in the way famously Harold Macmillan sacked Lord David Kilmuir? I put this question with some hesitation because it raises so many other deeper ones.

Who judges the impartiality and what is meant by it? Is it tangled up with the—I think—completely erroneous idea that being a member of a party is therefore partisan and somehow stains your character, which is an absurdity that the media might pursue but one hopes reasonably clear legal minds would be above?

Dr Conor Casey: That is a very interesting question. I think the perception concern has a point. In the abstract, if you got a reasonably informed observer and said, "On the one hand, you have a politician lawyer appointed by their political boss, the Prime Minister, and they are going to advise their colleagues on what they can or cannot do legally, and, on the other hand, you have a top QC appointed and they have a statutory fixed term and they are not removable. Who would be more structurally prone to be less independent?", they might say the politician lawyer, but it complicates things if you then added context and said, "What if I told you that for the Attorney General's Office the evidence of actual politicisation when it comes to legal advice is vanishingly small and there are strong norms around the office?" When you get into the context and the history of the office, that might complicate the picture, but I think in an intuitive sense, yes, the perception point is a legitimate concern.

You have not asked this, but I think it follows on naturally. You have to ask yourself: the perception of politicisation might be a bad thing, but without more, is that enough to justify fundamental reform? Are there not things we could do short of making the office an apolitical, technocratic office? Could we codify the independent functions of the Attorney-General? Is there any way to make the office seem less odd and arcane in the public eye? Are there measures that we can take that fall far short of radical reform? I would say, yes, the person in the street might think that there is more likely to be some level of politicisation, but context would clear up a lot, and I think the perception point does not justify, without more, considerable reform.

Dr Conor McCormick: I think it is a very good point. It reminds me of Professor Neil Walker's warning not to fall into the trap of confusing impartiality with independence, in the sense that you can be both a lawyer and a politician, who is either someone who leans towards the public interest and a broad rule of law and an independent conception-driven view of your role, or someone who is about advancing personal politics and, in the lawyer sense, taking an activist perspective on advancing their client's interests. In some senses, he reminds us, or reminds me at least, to be careful about expecting lawyers to be too adrift from the goals of their clients. At the end of the day, that is what they are for and one of their obligations is to advance their client's interests to the best of their ability. Often, having a strong understanding of the political context in which their clients are working is said to be an advantage rather than a disadvantage.

Dr Conor Casey: Just to follow on Conor's point, I think it would be a mistake to think that just because a lawyer comes from private practice and is well credentialled they will not be susceptible to politicisation. It depends a lot on the political culture.

In the United States, the advisory work of the Attorney-General is in practice handed over to a body called the Office of Legal Counsel. This body is staffed by the most highly credentialled, young and ambitious law graduates, all Harvard and Yale and top clerkships. However, they not only have top credentials but they often come into the office with a strong ideological alignment with the incumbent President. Their opinions have been criticised. The OLC was the author of the infamous torture memos that said there was a legal justification for it, and people have said it is a very politicised office that usually gives very Executive-empowering opinions. Those lawyers are the elite of their country and they are from private practice, but the culture skews the work they do.

It is just a narrow point that not being political in a politician sense is no guarantee that you will not bring inappropriate or political considerations. You need more.

Lord Howell of Guildford: I agree with that totally, but do you think possibly, given that there is a general dislike in this digital age of MPs and Parliament, and particularly of political parties, which seem to have lost their ideological basis, it might be better always to appoint law officers by bringing them in through the House of Lords route? There you can take the most distinguished legal figure, make them a Peer, and, hey presto, they are in office. Might that be a way round this rather strange habit of having to choose your law officers from among MPs, who are a pretty random lot?

Dr Conor McCormick: I have no objections to that happening, I have to say. It depends obviously on the pool within the House of Commons and the judgement of the Prime Minister. The issue as it is at the moment is that the discretion is completely his or hers. In principle, I would say yes. If you have doubts about the authority that a lawyer from the Commons

will bring to the office, do not appoint them. Find someone else and ennoble them so that they can take office and carry out the relevant responsibilities properly.

Dr Conor Casey: Dr McCormick mentioned this. Dr James Hand's piece on the Attorney-General said that even proponents of the office might have to face up to the fact that the combination of work-life balance and the increasing specialisation of both law and politics means there may be vanishingly small numbers of barristers eventually. What are you going to do then? If you want to keep the political dimension as a Minister, you may have to rely on peerages to get your politically accountable Attorney-General. That might just come as a matter of sheer logistics at the end of the day.

Lord Hope of Craighead: Good morning. I would like to follow up Lord Howell's very interesting question because it raises perhaps two points. The first is on the pool from which you can draw your law officers. If you are relying on House of Commons elected politicians, some of whom do indeed have a legal background, the pool is rather concentrated on people who are probably not at the higher level of practice but have a good deal of legal background. On the other hand, if you are thinking of appointed law officers coming through the House of Lords, you can offer somebody who is in practice the reward, if you like, of becoming a Member of the House of Lords and being able to contribute in that way, and that may mean that it is a better pool from which you can draw. Do you think the pool from which you can draw has a bearing on the authority that the law officer can command?

Dr Conor Casey: I do, but, in my opinion, using the years in service up to a point is useful, but after a point it is not, because a good Attorney-General is not simply an excellent legal mind. It should combine competence in the technical aspects of legal analysis and reasoning with having a political antenna. This is a point stressed by successive officeholders and by academics. Interestingly, in his report for the Constitution Unit, Professor Ben Yong interviewed senior Civil Service lawyers from the Government Legal Department, and they did not want reform. They said that the political status was important.

It was important partly for Ministers in translating the law to their colleagues, but it was also important because an Attorney-General from the House of Commons, who is a much more politically engaged actor than perhaps someone who is appointed from the Lords, who may not have as many years in politics, will have an intimate and tacit knowledge of the policy environment, the concerns of their colleagues, the priorities in the short, long and medium term, and how those concerns map out across government departments. That allows them to marry that expertise with a constructive capacity to say, "Here are the constraints you face, but think about it this way. If you tweak this policy in this way, this might be a lawful and proper alternative". That kind of political antenna might give them a special status that a more eminent lawyer in the House of Lords with no or little political experience might not have.

Lord Hope of Craighead: Are you really saying there is a risk that they will be sidelined, because in the Cabinet sitting around the table of almost all MPs, they will say, "He or she is not really one of us and doesn't really understand the political atmosphere"? Is that what you are really putting across?

Dr Conor Casey: This is a hard question. Some of the academic scholarship and the commentary that you get from the interviews done by academics might suggest that. I do not know what to think. I am thinking of my own jurisdiction in Ireland. The Attorney-General is appointed by the Prime Minister but is not a member of government and usually not a Member of Parliament; they can be, but nine out of 10 times they are not. They are always someone with eminent legal experience, a leading Silk, and they usually go on to serve in the senior judiciary. Our Attorney-General wields enormous authority. There is a kind of disjunct there. In our system it seems to be that they would carry a lot of heft, but in the UK everyone—academics, Attorneys-General and officials—seems to think it would dilute the impact. Perhaps it is cultural. It is hard to know from the outside. There is a balance to be struck between needing legal, technocratic expertise and the political antenna that allows you to be constructive in your advice-giving.

Lord Hope of Craighead: Before I come to Dr McCormick, there is a third possibility that you have touched on, that the Attorney-General is not in either House, has no political function and is simply there as an experienced lawyer offering advice. In some ways, might that be a better solution than coming through being appointed in the House of Lords? They are somebody who is recognised as a lawyer of high authority and are simply offering legal advice as an adviser.

Dr Conor Casey: I would tend to the view that the law officer deals with questions of such importance, with such ramifications for the country, that those decisions should be made by someone in the last with an element of democratic accountability. The Attorney-General is accountable to Parliament for their decisions in a way that a technocratic, apolitical figure would not be. By deliberate design it would vest a lawyer who is unelected with enormous power over public policy, with no recourse.

That has caused problems in Ireland. There have been commentators, and I should say I am one of them, who have argued that the Irish Attorney-General is too risk averse and plays too much of a role as a veto player over policy, because their advice is seen as binding—not advice but almost like quasi-law. If they say this policy is too risky, the Government will not even try to engage with the courts on the boundaries. There are pathologies that can develop in a very technocratic system and there is nothing you can do really in that situation. The Prime Minister can fire the Attorney-General, but that would be politically explosive.

I can see the advantages, obviously. It would dispel entirely any perception of political bias. It would ensure that the pool problem does

not materialise. In many cases it could be a safeguard against Executive overreach, but there are trade-offs. That is the point I make.

Dr Conor McCormick: The only point I would add to your first question would be that if we reached the stage where the pool of authoritative lawyers, first, from the Commons and, secondly, from the Lords, is so small that we have to resort to an external appointment, to me that might represent—and this might be putting it slightly too highly—a dereliction of responsibility of the party that has entered government. I think parties have a responsibility, if they are serious about preparing for government, to have a shadow law officer in place who is developing the combination of legal and political skill necessary to discharge the role responsibly.

That is one way of addressing this, so we do not find ourselves forming a Government and searching wildly for an appropriate lawyer to take office as Attorney-General. It should be in the mind of someone serious about entering government long before we reach that stage. My preference would be for an appointment from the Commons, and an appointment from the Lords if the pool is too small there. On an apolitical appointment, I share Dr Casey's views. I do not think I would add much more.

Lord Hope of Craighead: I wonder if I can raise a particular function that the Attorney-General has under the devolution statutes where, as you know, a presiding officer will allow a Bill to go through that the Attorney-General might think raises issues about compatibility with the legislative authority of the Parliament in Scotland, the Senedd in Wales, or the Northern Ireland Assembly, under the devolution statutes. If there is an issue raised about compatibility, it can go to the Supreme Court only if somebody refers it to the Supreme Court. The Attorney-General might find himself or herself in the position that the presiding officer does not want to refer, the law officer in Scotland, the Lord-Advocate, does not want to refer, but there is a real issue as to whether the question should be tested.

The glaring example is a referendum Bill or, indeed, a Bill that is simply putting forward the possibility of a referendum—a light-touch Bill, which raises really delicate issues. Does it matter where the Attorney-General comes from? Is it better that there is a political element in the appointment or is it enough that there is simply a legal mind looking at it detached from politics?

Dr Conor McCormick: That is a difficult question. I do not think it matters as much because the view that a law officer reaches on competence in relation to Bills is guided to a large extent by the devolution statutes. It is quite a clear framework, and I do not see there is much room for interpretive manoeuvre in relation to what is reserved, what is devolved, and what is excepted.

None the less, if you are both a lawyer of authority and an active politician, perhaps it adds a degree of authority to the advice. But the

more I reflect on it, sitting in this chair off the cuff, I think no. I think that is an example perhaps of quite a clear-cut legal question where political considerations really should stay out of it.

Lord Hope of Craighead: Do you have anything to contribute, Dr Casey?

Dr Conor Casey: No, I would be getting into deep water as a comparative lawyer. I should say, and it is not idle flattery, it is in safe hands. It will go to the Supreme Court and it will make the final decision. If there was a very poorly-thought-out reference, it can tell them off in some obiter comments probably.

The Chair: I am conscious we still have quite a few questions, and all Lords have questions. Lord Faulks, do you want to put the issue you wanted to ask?

Q25 **Lord Faulks:** My question leads on from some of the answers you gave to Lord Hope about accountability to Parliament. Of course, that would not be the case if somebody was not a Member of either of the Houses. The circumstances in which a Government do or do not disclose advice from the law officers, or disclose the fact that there has even been advice taken, have always been slightly mysterious to some of us. You have already given examples of where they have. Do you think there is or should be any clarity about the circumstances in which advice is disclosed, and to what extent does that mean, or should it mean, that law officers are accountable to Parliament?

Dr Conor Casey: That is a really good and very complicated question. I have mentioned that there is no evidence of politicisation, but an objector to the status quo could say, "Well, of course there is no evidence. You can't see the legal advice. How can you scrutinise what you can't see? You are taking it on trust". I think there is an element of legitimate concern there.

The need for confidentiality is critical, but absolute confidentiality does not exist in practice, and I think that absolute prohibition on disclosure inhibits excessively parliamentary scrutiny, and any kind of accountability check for that aspect of the function. Revisiting it consciously and hammering out when it might be permissible in exceptional circumstances would be very worth while.

As to the mechanism by which you do that in practice, whether it should be triggered by Parliament, or whether it should be ex gratia by the Government adhering to some sort of guidelines that you can codify, I have no position on that. It would be very complicated, because there are very weighty concerns at stake on each side. There is no absolute convention any more. There are too many holes in it. I also think it is intolerable to have an ad hoc situation where the Government feel confident that they can say, "There is a convention against disclosure", but on another occasion they might say, "This is legal. Here's our advice". You cannot have your cake and eat it. There should be some idea of

when it is constitutionally proper and, at a minimum, it should be codified. The mechanisms and how to do that practically would take a lot of thought.

Dr Conor McCormick: My thoughts on this, I suppose, centre on the most recent incident. When Geoffrey Cox was the Attorney-General, it took a finding of contempt of Parliament to get the advice disclosed. I completely understand the resistance and the reasons for the resistance, because the convention has historically been so strong. You are probably familiar with the reasons already, but the most important is that as the senior legal adviser to the Government they are receiving a lot of what would otherwise be considered confidential information, and no other lawyer in the Executive would in any circumstances be permitted to disclose the advice or to waive privilege if the client refused. The law officer in this sense has a special discretion, if indeed they can release it without the consent of the relevant department, which I am not sure about.

I understand the reasons why it took something as compelling as a finding of contempt to get the advice disclosed in those circumstances, but it was regrettable that it had to go that far. If there was some way of cleaning this up and making it clear when it should be disclosed, that would be great, but the problem is that it would be very hard to define.

Professor Gabrielle Appleby has made a few suggestions. She says that there are two circumstances where legal advice should really be disclosed to Parliament in the Australian context, one where the law officer admits to themselves that there is uncertainty about the constitutional validity of a Bill. She says in those circumstances, if you are not sure, you should disclose that. The other is cast quite broadly. It is where Parliament has to exercise its constitutional function of holding the Government to account on a matter of national importance.

I see merit in her suggestions, but, on the other hand, I worry that they may be drawn too broadly. I imagine the Executive would push back very heavily, because even when Geoffrey Cox did disclose that advice in the end, it was heavily caveated to the effect that it did not form a precedent and that it was only under the very clearly expressed views of Parliament that he decided to do it in the end.

Dr Conor Casey: There are a lot of practical examples from comparative jurisdictions where it has been done, and that shows a couple of things. One is that the sky does not fall down whenever you are a bit more transparent. The second is that there are many ways to disclose. You do not need to disclose external counsel's opinion and the back-and-forths; you can disclose a précis. In Canada, when a Bill implicates the Canadian charter, the Government disclose what is called a charter statement, a brief synopsis of what the Bill does, what rights it engages and why the Government think it is none the less compatible with the charter. In the United States, the Office of Legal Counsel is dedicated to publishing volumes of its opinions, subject to national security redaction and things like that. It can be done.

One consideration to bear in mind is that it is a very complicated issue and there can be unintended consequences that need attending to. There was one unintended consequence in the United States. Professor Jack Goldsmith from Harvard Law School, who once was head of OLC, pointed out that if you have too much transparency what can happen is that the paper trail vanishes. Advice is then given down the phone, it is given informally, and when push comes to shove, it is just not there; people circle the wagons. So it a very delicate balance to strike.

Lord Faulks: Let me give you a more recent example where the advice might have been helpful. This week Parliament passed an urgent piece of legislation about economic crimes, enabling the Government to sanction various oligarchs, among others, arising out of the Ukraine invasion. If you look at the Bill, there is a two-page Explanatory Memorandum going into immense detail about the difficulties that face the Government in complying in particular with the European Convention on Human Rights. We have the rather strange scenario where the Foreign Secretary in interview says that this is all the fault of the House of Lords, who put in an amendment making it difficult to sanction. Certain Members of the House of Lords have been criticised.

I do not agree with the advice that is given in the Explanatory Memorandum, but it is very defensive, technical advice. That seems to be a circumstance in which an Attorney-General might take a lead and advise the Government, "There are risks but …", yet we have an Explanatory Memorandum but not really the advice from the Attorney-General. Do you think in the situation of an urgent piece of legislation that would be rather helpful?

Dr Conor Casey: I am someone who is in favour of increased transparency in my own jurisdiction and as a general rule. Whether this would meet the threshold of exceptional circumstances, I would not have a hard and fast position on that, but I think that transparency in this context, if it did meet the threshold, gives a classic focal case example of why it would be a good thing. You can see the advice, you can see the tenor of it, and you can say that that seems overly cautious or that seems too loose. If it was confidential, you simply cannot make that judgment. You have to take it on faith.

Let us say this Bill and this crisis meets the threshold of exceptional circumstances. You can see straightaway what advantages disclosure would have for aiding scrutiny. It might turn out that the advice is too cautious, and you can say that the convention proportionality assessment gives us far more leeway than that. I think that is a good example.

Dr Conor McCormick: In relation to Bills generally, and again this is Gabrielle Appleby's view, there should be a stronger expectation and willingness to disclose where Parliament is taking a very strong interest in whatever the Bill concerns, because once it becomes an Act the modes of challenge narrow quite considerably. We all know that challenging an Act in the courts is largely off bounds. If the shape of a Bill is being determined largely by a contestable interpretation of the law, I think that

should be aired so that Parliament can debate on the cogency of the advice, basically. I would accept in those circumstances that there is an argument to be made that it should be disclosed.

The Chair: Lord Hennessy, you wanted to develop this point.

Lord Hennessy of Nympsfield: Do you accept the argument that on the weightiest decision a British Government can take, which is the deployment of UK Armed Forces in action abroad, the client for the Attorney-General's advice should be seen as Parliament and the public, and not the Government?

Dr Conor McCormick: I am aware that is Lord Bingham's view. He makes that point in his article on the rule of law, I think reflecting on the Iraq war saga.

Lord Hennessy of Nympsfield: Do you agree with him?

Dr Conor McCormick: That is what I am asking myself.

Lord Hennessy of Nympsfield: Do both of you agree with him?

Dr Conor Casey: I am going to invoke my comparative lawyer veto, but what I would say is, regardless of whether you think the client is the Government, public or Parliament, in that kind of situation where we are talking about the commitment of the risk to life and such a drastic act as war, the Government, if they are the client, should disclose to aid deliberation. If you are talking about the only thing standing in the way of parliamentarians saying yes or no is the legality of a conflict, I cannot see any justification for not disclosing at least the heart of the matter in a précis or something, regardless of who the client is. That is a classic example of where disclosure would be warranted.

Dr Conor McCormick: I have had time to think and, in effect, my answer turns on how you receive instructions from the client if your client is the public, because the public in the UK is a pluralist body, which may take different views on the propriety of going to war. If you were to say that your client is the public, in effect, what you are doing is bypassing the electoral representatives whom the public have elected to take those decisions as members of the Executive. On that basis, I would say no, because I think it would open the possibility of a law officer or Attorney-General saying that they are taking a decision that is the decision of the public, but, in reality, the public is divided on it, so they therefore absolve themselves of personal responsibility for taking a decision on a divisive issue.

Lord Hennessy of Nympsfield: May I ask for your thoughts on the accountability of Prime Ministers in particular instances? We have talked about the Campbell case, which is still a fascinating case today, but I have been thinking about three instances since the Second World War where Attorney-General's opinions could have been premiership-wrecking events. One we know about because of Chilcot, which is the Iraq war, of course. The other is Westland, where Mrs Thatcher, if I remember in her

memoires and elsewhere, said she was not at all sure that she was going to be able to survive that debate as Prime Minister.

We had to wait for the other one for 30 years or longer, in fact, because it was among the Suez files that came out very late indeed. It was the Attorney-General Sir Reggie Manningham-Buller writing to Eden on behalf of himself and Sir Harry Hylton-Foster, the Solicitor-General, saying, "We disagree with Lord Kilmuir, the Lord Chancellor, that we can use Article 51 of the UN charter in the Suez self-defence case". They said, "We disagree and we are not going to make this public, but if somebody asks us in the House of Commons, we are going to tell them what we think". Nobody asked them in the House of Commons. There was no Chilcot into Suez, so we discovered this only many, many years later. I am struck in these cases, which are potentially premiership-wrecking cases, by the delicacy of these questions. The whole issue could turn on whether the advice is published or not, or a letter in the case in 1956.

The Chair: Do you want to add a further comment?

Dr Conor Casey: Just that transparency is not an unqualified good; neither is confidentiality. It is probably more important that confidentiality is maintained in this domain than not, but in premiership-wrecking types of cases, where the decisions involve issues of import to nearly everyone on the island, that is an example where transparency would be warranted. Those examples such as the Suez crisis—and I am not familiar with the Thatcher incident—and the Iraq war would seem to meet the threshold no doubt.

Lord Hennessy of Nympsfield: Who should set the threshold? Would it be useful if this committee did, or if it suggested a threshold? Would you help us?

Dr Conor Casey: It would obviously be a very wise threshold if it was set by this committee.

Lord Hennessy of Nympsfield: How kind.

Dr Conor Casey: I have said a couple of times in this hearing that now is the time to self-consciously revisit the parameters. I think the work of this committee could usefully serve kick-starting that debate. In 2009, the Government in their response to the House of Commons calling for reform in respect of the Attorney-General said, "We want to keep the convention for the most part, but we are open to considering exceptions to disclosure in exceptional circumstances". That was dropped probably because at the time, in 2009-10, the financial crisis hit and it was sort of forgotten, but I think it would be very useful for this committee and the Commons committee to kick-start this debate again.

Baroness Fookes: If we are going to revisit this and perhaps come to some conclusions, do you have any succinct advice for us, because it seems to me that we have gone round the point rather and not reached it?

Dr Conor McCormick: On disclosure, my view is that a resolution of the House of Commons should lead to disclosure. I view that as quite a serious measure. If it has taken a resolution, and the House is in favour, I find it difficult to see how that could be outweighed by the trust between the law officer and the Prime Minister, or the Cabinet, or whomever it is they have been giving advice to. At the end of the day the Prime Minister is only in office because they command the confidence of the Commons. If there is a resolution of the Commons to say, "We want to see that advice", that should outweigh the other considerations, if that is helpful. It took two, of course, in relation to the withdrawal agreement advice.

Dr Conor Casey: Off the cuff, I do not. As I said in our exchange earlier, the institutional mechanism is very tricky to design. My gut instinct is to leave it with the client, the Government, to disclose. Perhaps you could have a system where it is a non-binding resolution and the Government have to make a statement as to why. I suppose, if it was a weighted majority, that could be a way to make sure it does not become just as a matter of course—there is a vague controversy, "Let's see the advice. Pony up". That might be counterproductive and could lead to them being cagey, not even giving full opinions, giving advice over the phone and things like that. How you design the mechanism to disclose advice is very tricky.

I think the Attorney-General's functions could do with a restatement along the lines of a Ministerial Code-type document. You could have a constructive ambiguity kind of statement. Perhaps you could say, "A law officer's advice may be disclosed in exceptional circumstances", and then just throw it into the political arena and let them hammer out what that might mean.

Baroness Fookes: You might resort to the general British principle of muddling through.

Dr Conor Casey: Exactly right.

The Chair: Dr Casey, you said that the need for confidentiality is absolutely critical. Does that not mean that you have to leave it with the Government, because you cannot honour that principle if you do not?

Dr Conor Casey: I think so. The Government should be able to get full and frank advice on any matter, knowing that 99% of times it will be confidential. It is such an important principle for the frank formulation of policy, but I do not think that entitles them to absolute full confidentiality because there are a lot of concerns in the crunch times where it is a moment of national importance. Defining that line of national importance is perhaps something that only muddling through might reveal.

Lord Faulks: Does the Speaker have a role?

Dr Conor Casey: I am not brave enough to make a suggestion there.

The Chair: Perhaps we will move on to the next question, which I think

is yours, Lord Hope.

Q26 **Lord Hope of Craighead:** I would like to come back to the question of prosecution, which was touched on earlier. We are looking particularly at the Attorney-General for England and Wales. I am afraid I am not absolutely certain what the position is in Northern Ireland, but the extreme position in Scotland is that the prosecution system is entirely under the control of the Lord Advocate. All prosecutions proceed under his or her name.

In England and Wales we have a position where some cases may proceed only with the consent of the Attorney-General, and then there is a general supervisory function over various branches of the prosecution service. Is it appropriate for a member of the Government to have these functions in regard to prosecutions? Dr McCormick, it is a question for you really.

Dr Conor McCormick: I am not against a member of the Government having some residual role over prosecution decisions. I know the Scottish system has given rise to particular problems over the past year, and I understand they are going to consult on that. I will leave that to one side for now.

As you say, the list of consent provisions extends to about 60 offences, perhaps more now, and around the time that this committee and the committee in the other place last reviewed the role of the Attorney-General, there was agreement that that list of offences would be reviewed and, if possible, trimmed. I think that is a very sensible exercise. I am surprised it has not taken place, because it creates a lot of work, for one thing. As I said, in principle I am not against it, but there are probably quite a few anomalous responsibilities in that workstream.

Beyond that, as I said earlier, I think the position is now quite clear and quite limited in respect of when the Attorney-General will issue directions to the prosecution services. This is obviously now all regulated by the framework agreements in respect of the Serious Fraud Office, the Crown Prosecution Service and indeed the Inspectorate that oversees them, which has its own framework agreement. Within that, it is reassuring, to me at least, to see that the power to issue directions generally has gone. Casework in most circumstances has to be left to the discretion of the director, in whichever organisation. It is only in cases of national security, according to the framework agreements, that the Attorney-General retains the ability to intervene and issue a direction.

Overall, I am not concerned really because, while it would be helpful to review that list of consents, I presume there is no great objection. I have not read any particular controversies around it. It would be a useful exercise, but I do not think it is necessarily a priority. Beyond that, the Attorney-General’s role is now so limited that I am not worried about it.

Lord Hope of Craighead: Dr Casey, do you have anything to offer here?

Dr Conor Casey: I agree with everything Conor said. I would just add that the residual political relationship is designed to, and I think does, help to ensure the independence of the prosecution services, because the Attorney-General is expected to go to bat for the agency when it comes to securing resources and making sure it is adequately funded, ensuring it has what it needs to be operationally autonomous. It is not often that you get the director criticised on political grounds, but there was an instance in 2013 around criticism of the director's decision. The then Attorney-General, Dominic Grieve, was the person answering that in the Commons saying, "This is for them to decide. They have reached a decision and I am here to affirm that", to protect them against unwarranted politicisation. It is a political oversight role that can protect you against bad politicisation and I think that is a good residual role for the Attorney-General to play.

Lord Hope of Craighead: So the clarity of the role is rather important—the extent to which the authority extends in performing the role.

Dr Conor Casey: Absolutely. The 2009 and 2020 framework protocols flew under the radar, and nobody talks about them, but I think they have been a very salutary development.

Lord Hope of Craighead: Dr McCormick, you wanted to come back in.

Dr Conor McCormick: One point I noticed in the framework agreements, which, as Dr Casey says, have appeared without much comment, is a reference to sponsorship being one of the law officers' responsibilities. It is no longer that they superintend the prosecution service; they now have a responsibility to superintend and sponsor. The Attorney-General made reference to it in her evidence to the Justice Committee and appeared to conflate the two. I do not think that is right. I think sponsorship speaks to the considerations that Dr Casey mentioned a few seconds ago, about standing up for the prosecution's needs in relation to adequate resourcing in order to fulfil their duties. I wonder if it would be helpful to amend the relevant statutory language to reflect what is now the language used in the agreements so that it would now say not just that they superintend but they also sponsor.

The Chair: Lord Robertson, you had a question.

Q27 **Lord Robertson of Port Ellen:** This is the opportunity for our great legal witnesses to change the course of history. The question is about what reforms you think should be made to the role of the Attorney-General. Could you give us your view on that?

Perhaps I could direct you specifically—because I hope you will give us a broader answer—to 2014, when this committee made a recommendation that the Attorney-General should attend all Cabinet meetings. He or she is taken for a member of the Cabinet but attends on request, and we suggested that they should be there all the time. That recommendation was not taken up. Is that a recommendation you would make, and what other recommendations would you make to reform the role of the

Attorney-General?

Dr Conor Casey: As I said, I think the current model is broadly defensible. There are modest to moderate reforms I would make. I have them listed here and I will rattle through them: an increased measure of transparency over the disclosure of advice in exceptional circumstances; a reformulation of the oath. The current oath is arcane, to put it mildly. In that oath more reference should be made to your independent duties to uphold the rule of law. Perhaps put in the statute the basic criteria, the minimal criteria to be an Attorney-General—legal experience and training—and then a codification in something akin to ministerial guidelines. This is to guide Attorneys-General and politicians in understanding the Attorney-General's roles, but also for public perception to really hammer home that, yes, this is a politician/lawyer, but this is an ancient office with very weighty expectations on how you perform that role. I think that might clear up some of the perception concerns.

Lord Robertson of Port Ellen: What about attending Cabinet meetings?

Dr Conor Casey: This issue has been in flux for the last century. The Attorney-General was a member of the Cabinet from 1912 to 1928. Then they got rid of it and there was a debate between law officers that you should be independent and aloof and attend infrequently, or—and I think this is the view that has really dominated—be intimate but independent, so, effectively, you attend quite regularly but you are not a member. Now they attend as a matter of course. In the last couple of years it seems that the Attorney-General just attends all the time.

I hope I do not remember this incorrectly, but at the House of Commons committee meeting in January I think the Attorney-General said, "I am a member of Cabinet", or something along those lines. It could have been misspeaking, but it speaks perhaps to how intimately they are involved in Cabinet meetings.

I do not have a position on whether they should be a member of the Cabinet, but I tend to think they should attend frequently. I think Dominic Grieve was correct when he said they should not pontificate and comment on all aspects of policy they could be advising on, but they should be in the room to make people aware of rule of law implications at an early stage, and to absorb the policy concerns and pressures of their colleagues. I think that helps in giving constructive advice. I do not have a position on being a member of Cabinet, but I think they should attend regularly.

Dr Conor McCormick: I agree. They certainly should attend and, slightly more boldly, I think they should be considered members. I am not at all convinced that the arguments against it stand up. I would begin with something I looked at this morning when I was preparing. I had a look at last year's annual report for the Attorney General's Office. There is a count there as regards written engagements carried out: 103 Parliamentary Questions responded to; 236 MPs' letters dealt with; and 682 Cabinet write-rounds. That alone speaks to the extent to which the

Attorney-General spends quite a considerable proportion of his or her time dealing with Cabinet business. In real life, I think they act largely as though they are members.

The arguments that go against being a member of Cabinet or a regular attendee normally centre on the concerns that collective responsibility would carry in that context. If you have given advice that the Government should not do something, but the Government reject your advice and decide to do it anyway, you should not be collectively bound to defend that position.

I point to the Lord Advocate's position in Scotland where the statute makes clear that there are certain functions that are retained and in relation to those functions collective responsibility does not apply. I think the same sort of framework could be established in relation to the Cabinet.

Because I am in favour of a political law officer model, I am deeply unsatisfied with dancing around labels in respect of being an attendee but not a member, when they can read the minutes at the end of the day and understand through them the preferences of their colleagues anyway. I would prefer to do away with that and instead clarify which of their functions should be immune from collective responsibility, and to spell that out.

The Chair: Did you want to come back on that, Lord Robertson?

Lord Robertson of Port Ellen: I wondered whether Dr Casey might want to add to the list that was already given by Dr McCormick.

Dr Conor McCormick: It is the other way round. We have mixed up the Conors, but that is perfectly understandable. Beyond Dr Casey's recommendations, I had some thoughts which stemmed from your initial question about the Lord Chancellor and the loss of a legally qualified figure. I wondered whether there would be a case to be made, if we retain that political law officer model, for expanding the justice policy remit of the Attorney-General to the extent that they are going to be somebody with a proper working understanding of the legal system. Why restrict their policy remit to only criminal justice policy? Why not civil justice policy as well? I say that with some trepidation in the context of my concerns about the experience and the levels of workload that are already vested in the office.

Beyond that, I thought I would suggest that the non-statutory prosecuting authorities that the Attorney-General oversees could be regulated in a similar way. Frameworks such as those that apply in relation to the CPS, the SFO and the Inspectorate could equally be set up in relation to the services authority and the other non-statutory prosecuting authorities, just for consistency as much as anything else.

My other main recommendation has already been expressed, which was about involving Parliament in the appointment process.

Lord Robertson of Port Ellen: That is fine.

The Chair: Do you want to come back to Dr Casey at all?

Lord Robertson of Port Ellen: No.

The Chair: We will move on to the question Lord Falconer wanted to put.

Q28 **Lord Falconer of Thoroton:** You have given very good answers already. The questions are really about what the constitutional boundaries within the current arrangement are. You both support the current basic structure, which is a politician appointed with some legal expertise and the obligation to act independently in a whole range of things.

I am very interested first in the issue of transparency. Do you think a point has now been reached where there is a convention that the Attorney-General has to set out what the legal basis for the use of force is, apart from cases where national security concerns prevent any disclosure of what is going on?

Dr Conor Casey: I do not know if I would call it a convention. That is not being quarrelsome; it is just a matter of domestic constitutional law. It follows now. Prime Minister David Cameron and Prime Minister Theresa May both invoked the Attorney-General's advice. They did not disclose the full opinion, but in the context of the drone strike example against British citizens in Syria, Prime Minister Cameron expressly said the Attorney-General had said there was a lawful basis under the charter, Article 51, and Theresa May said the same thing. She released a summary of the advice in a couple of paragraphs. It seems to go hand in hand now. I cannot think of an instance post the Iraq war controversy where some element of the Attorney-General's advice has not been disclosed, which goes against the convention as it was originally understood, which is not only that you do not disclose the substance but that you do not disclose that the Attorney-General has advised either. It is well past that point, it seems, in the use of force.

Dr Conor McCormick: I agree, and if it is not a convention, I think it should be.

Lord Falconer of Thoroton: Secondly, on the reformulation of the oath, which sounded to me a very sensible idea, what would you both put into the oath, not in drafting it, but what are the key features of the role that the Attorney-General has to promise to comply with?

Dr Conor Casey: Public interest functions and rule of law-facing functions such as legal advice, to give advice to the best of their ability, consistent with the ethics of the profession and the traditions of the office—something along those lines. Make it very clear that, yes, they are a political animal, they share philosophical sympathy with the Government, but in those functions, they take off the party hat entirely. There should be something that grasps that.

Dr Conor McCormick: In the course of my research for the book, what emerged for me from reading quite a lot of material around previous controversial episodes were three values: independence, accountability and trust. I think they are central to the legitimacy of the law officers, and how they are weighed up in different contexts is the measure of a good or bad Attorney-General. I would work those into it and flesh out what I mean, in the sense that much of what we have discussed so far today has really been about how independent you allow them to be, which means how little accountability you can put up with. My answer to that is that you need to decide for yourself how much you can trust these people to discharge their obligations in the absence of accountability.

I think we need to impress on them in the strongest possible terms the significance of those independent functions. If we are not going to impose strong accountability oversight in respect of the way they are discharged, we need to be sure that there is enough trust to sustain that particular model.

Lord Falconer of Thoroton: Dr Casey said, and I think you agreed, that it is also worth thinking about whether you have a series of criteria, perhaps expressed in a statute, for whom the Prime Minister can appoint as a law officer. This may reflect what you have already answered in relation to the oath, but what would be your formulation of those criteria?

Dr Conor Casey: As a minimum it would be a legal education, legal qualification possibly and relevant legal experience of a number of years. As I said earlier, I would not make it conditional on having certain post-nominals. If you have experience in practice—and I would say this as an academic—or in researching deeply in an area of law relevant to the work of the Attorney-General, I think that would suffice. It would be mainly to sieve out clearly comically bad choices that should not be entertained. There would be a really hard limit on that, but I would not be too specific about years served and things like that.

Lord Falconer of Thoroton: Would you not also want criteria of personal characteristics making one capable of, as it were, complying with the oath? You have to be sufficiently independent. If I have written saying, "Whatever the Prime Minister asks me to do I will do, irrespective of the law. I am one of the cleverest lawyers in the country", I do not look like somebody who is fit to be a law officer, because I am going to break the promise. Would you not require something in the criteria, as was tried but perhaps failed in the Constitutional Reform Act, to say you need somebody who has the ability to be independent?

Dr Conor McCormick: I am not sure, because it reminds me of the system and the rules for appointment to the office of Attorney General for Northern Ireland, where there is a requisite number of years' experience. I think it is 10 years; it is equivalent to a judicial appointment. That is designed and envisaged to secure an independent mind through legal practice. Alongside that, there is the statutory obligation to do everything independently. It is framed as an obligation while in office rather than a criterion for appointment. The problem with it, from my perspective at

least, is that it has been practised in a way that has meant cutting off other points of view and taking a very individualistic view of your responsibilities, which runs against all the points we discussed earlier about the circumstances in which it is appropriate and proper to consult your ministerial colleagues and to get a broader view of what public interest is.

It takes me back to my core proposal, which is that independence is really important, but you must not be so independent that you drown out important voices. Accountability is important, too.

Baroness Fookes: You are looking for personal qualities that it is not easy to embody in a statute.

Dr Conor Casey: Yes, absolutely. I think the oath would imply certain traits of independence of mind and adherence to the ethics of the profession as well. If you did not put it in statute, the oath implicitly speaks to it.

Lord Falconer of Thoroton: Is the oath from somewhere?

Dr Conor Casey: The Attorney-General's oath is ancient—

Lord Falconer of Thoroton: Is it statutory or what?

Dr Conor Casey: No, I do not think so. I think it is customary and it clearly has not been revisited since the 1300s or 1400s. It is of the time when the Attorney-General was the sovereign's lawyer and they were charged with fighting tooth and nail for their interests. It does not map on to the current Attorney-General, who is understood to have public interest/rule of law-facing functions. Baroness Scotland's speeches were where we found it.

Dr Conor McCormick: Yes. It is quoted in my written submission, if you would like to have a look. It is paragraph 37, and it is quite obscure. I am not 100% sure it has not been at all tweaked since 2008. It was one of the recommendations of the Government in 2008 that they would modernise the language used. I do not think that happened, to the best of my knowledge.

Lord Falconer of Thoroton: Obviously we do not want to rush into change. We have had it for 800 years. Pause for thought.

The Chair: I am looking round my colleagues to see if there are any more questions. Is there anything else you would like to say that if we had asked you slightly different questions, or other questions, you would have wanted to say? It is an opportunity now to make any observations you feel you have not had the chance to make.

Dr Conor Casey: If the committee was minded to advocate for more far-reaching reform, I would encourage it to consider the experience of other jurisdictions with more independent models. I say that because in these debates I often see commentators saying that we need an apolitical

Attorney-General, and it is thrown around as a panacea, “Wouldn’t everything be sorted if we had an apolitical Attorney-General?” But that is what you call a Nirvana fallacy. You are comparing a warts-and-all picture of what you have with an idealised version of what you could have. If you look at other countries, you see that every model has drawbacks. Taking some experience from other countries would be worth while to see whether this would work here in our particular constitutional setting. Perhaps it would, but it is definitely worth looking abroad for some examples.

The Chair: Where should we look first then?

Dr Conor Casey: If you want examples of very apolitical models, the most technocratic you can get are Israel and Japan. If you want an intermediate example, where you are usually appointing someone who is very eminent and apolitical but it is a discretionary appointment with removal, Ireland is a good example. If you want a, frankly, weird system where you are appointing from private practice but the Attorneys-General are very political, almost partisan to some extent, in practice, the United States is an interesting example. They come in all shapes and sizes.

Baroness Fookes: Perhaps we can forget the last one.

Dr Conor Casey: We can forget the last one, yes.

The Chair: I think your submissions give us some indication of where to look on these issues as well, do they not?

Dr Conor Casey: I briefly discussed Ireland, Japan and Israel.

Dr Conor McCormick: I would add on the back of that that there is a great book called *Public Sentinels,* which is an edited collection by Gabrielle Appleby and some colleagues. It is an overview of a whole range of different systems as regards their law officer models. I would recommend that.

Is there anything else I have not said that I would like to plug? I am not going to say what you think I am going to say. I would have mentioned, I think, the experience in the devolved regions of using apolitical law officer models. There is some more detail on this in my written submissions, but, effectively, I just wanted to flag the point that it has been experimented with elsewhere, and in most cases so far it has ended in failure or at least abandonment. Alex Salmond is one example. He declared that he was depoliticising the office of Lord Advocate by no longer regularly bringing them to Cabinet, but a number of years later it emerged that they had in fact been attending the Cabinet most of the time.

I have read recently disclosed National Archive papers which show that, when the office of Advocate-General for Scotland was being established in the run-up to the devolution reforms of 1998, the Civil Service was saying, “We could just bring in some Scots law experience” and that would deal with the gap that would otherwise be created by letting the

Lord Advocate and Solicitor-General go to the Scottish Government. That was resisted quite strongly by the Lord Chancellor of the day, who said, "No, our colleagues are going to expect a ministerial legal adviser, and so that is what we must have". In the end, the Advocate-General's office was therefore added to the list of ministerial offices. I would just be wary of going down that path, based on the fact that experience shows that the Executive do not tend to favour it in the long run.

Lord Hope of Craighead: They are looking at the relationship now. There is an inquiry going on in Scotland to examine the situation there.

Dr Conor McCormick: Indeed. I am awaiting with great excitement the consultation paper on whether the Lord Advocate's functions should be separated, particularly the prosecutorial functions. I look forward to seeing what proposals they have, and if I can be of any help I hope to appear before them, too.

Lord Falconer of Thoroton: May I pick up one thing? Do you have any view about whether the Attorney-General and the Solicitor-General should have a different relationship from that which they currently have with the Government Legal Service, or with the Bar, or with the Law Society?

Dr Conor McCormick: There is a difficulty. There is a great piece by Catherine Baksi, a barrister turned journalist.

Lord Falconer of Thoroton: It is in our papers.

Dr Conor McCormick: So you have seen that. She queries whether the automatic label of the titular head of the Bar should go with the appointment, I think. There are concerns around that at a number of levels. The first is where it sits alongside the chair these days, who commands the actual authority of the Bar in the sense that they are elected from it. It also sits uncomfortably, to an extent, with the solicitors' profession, given the expanded rights of audience there. Something could perhaps be done there, but I have not given it a great deal of thought.

Lord Falconer of Thoroton: I was thinking the more you have some relationship with the legal profession as the law officers, the more you have obligations to the law, which can counteract the pressure that comes from being in the political maelstrom.

Dr Conor Casey: I do not have any strong opinions on this point, but I found it interesting to note, doing some research on it, that the Attorneys-General regularly attend the meetings of the Bar Council, perhaps not as frequently as they previously did, but they still make time for it. I think that is interesting.

The Chair: I will bring things to a close. Thank you very much for your measured and thoughtful responses to quite searching questions. It is much appreciated. Whatever view the committee comes to on these questions, you have clearly given us food for thought in our weighing of

the arguments. Thank you for that. Sometimes we did not give you much thinking time, but that is the nature of this committee.

Dr Conor Casey: I watched last week's session, so I was well prepared for coming in.

The Chair: I did notice, actually. I read your stuff thoroughly. If you have any afterthoughts, particularly on questions where you may have more detail, please let us know. We have appreciated your contributions today and certainly the style in which you addressed them. Thank you very much indeed.