

Written evidence from Eliot Wilson¹ (MHL22)

Public Administration and Constitutional Affairs Committee Membership of the House of Lords inquiry

Summary: Overall I believe the House of Lords, while a constitutional evolution and therefore representing strands and compromises of our history rather than having been designed from a blank sheet of paper, functions reasonably well as a second chamber, possessing a degree of independence, expertise and thoroughness not present in the House of Commons. Its size is a misleading “problem”, as in practical terms the active membership is smaller than that of the House of Commons. The most challenging weakness of the House as currently constituted is the method of appointment, which allows party leaders to nominate almost limitless peers and provides for only informal vetting with no veto for the House of Lords Appointment Committee. That last problem should be addressed as a matter of urgency.

I was a clerk in the House of Commons from 2005 to 2016, and a clerk in the House of Lords during 2017. During my time in the Commons, I served on a number of select committees, in the Legislation Service and as private secretary to the Chairman of Ways and Means. I was also one of the Commons clerks to the Joint Committee on the Draft House of Lords Reform Bill in 2011-12. Since 2018, I have been a freelance writer on politics, Parliament and the constitution, published in a number of national and international newspapers and journals. I have also appeared on television and radio as a commentator on Parliament. I would be very happy to expand on my views in person if the committee wished to call me as a witness for oral evidence.

Appointments to the House of Lords

The current arrangements for appointments to the House of Lords, with nominations from the party leaders and from the House of Lords Appointments Commission, which also scrutinises all nominations for propriety but has no power to veto them, have been the subject of intense public interest in recent years.

The shortcomings of the existing arrangements were thrown into sharpest relief by the nomination of Peter Cruddas as a life baron in 2020: HOLAC unanimously recommended to the prime minister, Boris Johnson, that Cruddas was not a suitable nominee. He had resigned as treasurer of the Conservative Party in 2012 after allegedly being found to be offering to sell access to the prime minister and the chancellor of the Exchequer, in exchange for money from a fund which was not eligible under electoral law to make donations to a UK political party. Cruddas subsequently sued the newspaper which had made the allegations for libel and won. On the grounds that he had won the libel action, Johnson disregarded HOLAC’s advice and nominated Cruddas anyway; he was introduced as Lord Cruddas in February 2021. It was the first time HOLAC’s advice had been overridden since it was established in 2000.

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There have been other high-profile nominations which have aroused controversy, including the recent elevation of Charlotte Owen, a former special adviser to Johnson. She had only recently turned 30 when nominated, and was introduced as Baroness Owen of Alderley Edge in July 2023. The brevity of her professional life and her young age were adduced by critics as evidence that she was ineligible for a peerage; she is the youngest person ever to be nominated for a life peerage since the Life Peerages Act 1958, and is currently the youngest member of the House of Lords. It has also recently come to light that eight other nominations by Johnson were rejected by HOLAC and subsequently withdrawn by him.

The current system no longer retains the support and confidence of the public, insofar as they have ever thought about it, and although this has been caused by a very small number of high-profile and controversial nominations, some kind of reform is vital if the House itself is not to become completely discredited. The prime minister and the party leaders should still be able to nominate candidates of their choosing, with HOLAC retaining its role in selecting nominees for non-party-political peerages, but a minimum change would be for HOLAC to have the ability to reject nominees without being overridden. Boris Johnson's absolute disregard for constitutional proprieties, conventions and norms has demonstrated that we can no longer rely on goodwill and good faith on all sides in operating the constitution. (This can also be demonstrated by Johnson's attempt to prorogue Parliament in August 2019, which was subsequently ruled unlawful by the Supreme Court.)

The simplest and most effective way to improve the vetting of nominees would be to place HOLAC on a statutory basis and thereby give it power under the law to reject nominees who were not fit and proper from receiving peerages. It would require carefully circumscribed grounds on which to reject nominees, so that there could be no suggestion of partisan or other political considerations; it might also be helpful if the advice were published as a matter of course, as, by comparison, is the advice of the (non-statutory) Advisory Committee on Business Appointments (ACOBA).

My own view is that there should not be very stringent rules on whom the prime minister and other party leaders may nominate, so long as they pass the "fit and proper" test. They are, in the main, after all, intended to be working peers, and I doubt that a credible and workable system could be devised and agreed to regulate nominations very strictly. However, it would be sensible, and another step towards improving the House's reputation, if numbers were capped. I have no particular suggestion as to the quantum, though I think it would be unwise to allow more than, say, 25 or 30 nominations overall each year, but it could perhaps be divided between the parties in proportion to the share of the vote at the most recent general election.

There should also remain provision, outwith any set number, for ministers to be granted peerages in order to perform their governmental duties. This is not often done (David Cameron appointed 10 people directly to ministerial posts for which they required peerages and Theresa May four, for example). It is a useful mechanism for bringing in outside expertise to government from time to time, and is not so frequent that it makes much of an impact on the overall size of the House (to which I will return). I also do not agree, with respect, with this committee's predecessor that ministers appointed directly to the Lords

should resign once they conclude their ministerial career. Not only would this deprive the House of some extremely valuable experience of government, but it would create a new 'class' of peer whose tenure was not for life but at the pleasure of the prime minister, which would be a deeply unwelcome development.

House of Lords Appointments Commission (HOLAC)

As far as I am aware, HOLAC performs its current duties adequately and to the standard required. The quality of the vetting and the nominations to non-party peerages is not a problem nor has it caused difficulty. As I stated above, I believe HOLAC should be placed on a statutory basis; it may be that the criteria which it is to apply in vetting nominees might be better contained in secondary legislation rather than on the face of the bill (though the latter course of action would have the benefit of transparency and prominence).

I am aware that this committee's predecessor has recommended that nominees provide some form of 'manifesto' for what they intend to bring to the House, and that those nominating them should provide an explanation of their suitability. I am somewhat sceptical of the utility of this: political parties would pick their opponents' statements apart if it suited them just as they attack the lack of such statements now, and it has the potential to undermine the whole process. If the Opposition were to cast doubt on a candidate's professed qualifications and ambitions, this could be interpreted as an attack on HOLAC and its impartiality and/or competence, which seems to me dangerous and harmful.

HOLAC has had four chairmen since its creation in 2000: Lord Stevenson of Coddanham, Lord Jay of Ewelme, Lord Kakkar and the incumbent Lord Bew. A new chairman is currently being appointed, and will presumably be subject to a pre-appointment hearing by this committee. This practice should be normalised as much as is possible without dictating to future committees how they should arrange their work. Perhaps there could be a provision in a bill to enshrine HOLAC in statute that the chairman may only assume his or her position after the approval of a select committee of the House of Commons.

In general, the work of HOLAC is not a serious problem for the reputation of the House of Lords. What has been damaging is its lack of authority, which would be solved by the proposals above.

Size and Membership

In my opinion, one of the most popular and misleading canards about reform of the House of Lords is that its size is one of the most pressing problems. In functional terms, that is not the case, nor is it true in terms of the House's reputation, except insofar as would-be reformers repeatedly cite it as a problem.

As of July 2023, the total size of the House of Lords stood at 827, of whom 784 are eligible to participate in the House's proceedings. The largest group (though not a majority) comprises the Conservative peers, with the crossbenchers in second place. The argument usually advanced by reformers is that the Lords is the largest upper chamber in the world,

and second in size only to the National People's Congress of the People's Republic of China, a unicameral body which numbers 2,980. This is alleged to be outrageous and indefensible.

Firstly, I do not believe that the size of the House of Lords is even a fleeting thought in the minds of most voters. Secondly, the figure of 784 is misleading (and 827 even more so). The Lords has many members who do not attend regularly, which is perfectly permissible, given the role and composition of the House. But the average attendance of the House of Lords, measured by session, has *never* exceeded 500, which is noticeably smaller than the House of Commons at full attendance. Until the past decade, average attendance was rather closer to 400. Compare this to the Commons, or to the Bundestag (736 members), or the Assemblée nationale (577 members), or the Grand National Assembly of Turkey (600 members). This puts the size of the House of Lords in a more realistic context and shows it to be far less remarkable than some would have you believe.

It may be that the overall size of the House puts pressure on facilities outside the chamber, such as office space and catering facilities, which understandably will dismay existing members. However, that is not in any way a valid driver of reducing the numbers by itself. In any event, if the House were reduced to, say, 600, as some have suggested, there is no guarantee that that would reduce the average attendance, if that were even a desirable end.

One last misconception should be put to bed. The Lord Speaker's committee on the size of the House, chaired by Lord Burns and reporting in 2017 (the so-called "Burns Report"), is often cited as the Platonic ideal of at least a first stage of reform. It recommended a target size of 600. It is often said, including last November by the former lord speaker, Lord Fowler, in a letter to *The Times*, that the proposals of the report were "overwhelmingly accepted" by the House. This is not quite accurate. The report was debated on 19 December 2017, but there was no division on it. The motion was agreed without dividing the House, but this was not a formal endorsement of the report, because it was a motion to take note. One could try to construct an informal sense from the spoken contributions, most of which were supportive, but it simply is not accurate to say that the House has endorsed the Burns Report in any official way.

All of that being said, I do not think the size of the House is a major factor in its effectiveness, nor do I think it should be limited. I also do not think there should be term limits: peerages should continue to be for life. The most effective contribution the House of Lords can make to the legislative process is if it acts as a "pool" of legislators, from which there is drawn a core of regular attenders—ministers, opposition spokesmen and working peers—around whom there is a wider circle of eminent, experienced and able men and women from across the spectrum of public life, who will contribute when they feel they have some particular reason to do so. While I have no particular commitment to specific numbers, a core of between 400 and 500, with another 250 to 300 occasional attenders, as is the state of play now, seems a very reasonable balance.

Under these circumstances, I would not recommend any requirement for attendance or participation. One of the reasons that peers receive a *per diem* payment rather than a salary is that it has always been understood that attendance may be irregular. This is one of the

great advantages of the composition of the House: an extremely eminent doctor, for example, or engineer, or physicist, or historian, can be granted a peerage at minimal cost, but will join this pool of experts and may then attend those debates, committees or other proceedings to which their specialism is hugely valuable. That may only be once or twice a session, but that is built into the system, with no year-round payment or minimum attendance.

In terms of removing peers permanently or temporarily, the House of Lords (Expulsion and Suspension) Act 2015 was clearly a major step forward in regularising the membership of the House. One unintended consequence is that under section 4 of the House of Lords Reform Act 2014, a peer who is expelled thereby becomes eligible to stand for election to the House of Commons; this lacuna might reasonably be eradicated, as it seems nonsensical that someone who is not fit to be a member of one house should be fit to seek election to the other. But that is a matter of legislative housekeeping.

The current system seems robust. There is one challenging issue, which arose in 2018 when the former Committee for Privileges and Conduct recommended that Lord Lester of Herne Hill be suspended from the House of the sexual harassment of a women's rights campaigner. Lord Pannick tabled an amendment to the motion to send the matter back to the committee on the grounds that it had not acted "in accordance with the principles of natural justice and fairness", and after a debate the motion was passed by 101 to 78. The complainant objected that "the old boy network"—Lester's friends and supports in the House—had effectively acted to get him off the hook, and had been able to discuss her allegations and conduct freely without her having any right of reply.

It is obvious that this looks very bad. But I cannot see a way to change the process without making it unfair. Clearly, if the sanction is suspension or expulsion, it would be invidious for the Conduct Committee to adjudicate on a member on its own, and the approval of the House must be sought. If the House must approve the sanction, there must, surely, be the opportunity to debate it, otherwise the House's hands are being tied. If all of those propositions are sound, then it is unfortunate but inevitable that a member facing expulsion or suspension is able to use his or her rights to participate in the debate and put the case for the defence. This may result in proceedings which are unedifying and unpleasant, and from one point of view unfair (as the complainant will have no voice), but I cannot see a solution without radical alteration of the way the House works.

Role of the House of Lords and relationship to the House of Commons

The relationship between the two houses is the most vexed and delicate issue when considering any significant changes to the House of Lords. At the moment, the balance between the elected and the unelected houses, while delicate and an expression of accreted practice and convention, generally works well. Both houses understand their roles and their rights, and the House of Lords knows how far it can assert itself over the Commons, and the line beyond which it cannot go.

In October 2015, the Lords broke with convention and rejected a statutory instrument, which many interpreted as challenging both the primacy and the financial privilege of the

Commons. Lord Strathclyde, leader of the Conservative peers from 1998 to 2013, was asked by the government to review the way in which the Lords considered statutory instruments and produced a report with several options, one of which was that the government legislate to enshrine the Commons' primacy. The government declined to do so at that point but reserved the right to return to the matter.

The idea of the House of Lords as a "revising chamber" is often bandied about but too frequently without any clarity over what it actually means. In a fundamental sense, it is a revising chamber in that it cannot stop or veto legislation because of the provisions of the Parliament Acts 1911 and 1949, and may now only delay a bill for a year. That is buttressed by the Salisbury-Addison Convention. So in that sense it revises legislation because it cannot stop it altogether. It may only try to make it better.

In a broader sense, we might propose that the Lords is a "revising chamber" in that it conducts much more detailed scrutiny of the text of a bill than the House of Commons. Its role in this respect is especially important now that almost all government bills are subject to programming in the Commons, and often have relatively little time to work through clauses and amendments in any depth. This complementarity works reasonably well: bills are (in theory) subject to a life-and-death battle in the elected chamber, then are amended, revised and improved in the unelected house, thereby in part justifying its unelected status by the wide range of expertise it provides. This may be done at a more stately pace if required, since the Lords can take as long as it likes: as the Parliament website notes pithily, "The government cannot restrict the subjects under discussion or impose a time limit".

Your call for evidence asks "Is the House of Lords still effectively carrying out its role as the 'Revising Chamber'?" The claims of the upper house rest fundamentally on three supposed qualities: generosity of time; independence from party whips; and expertise. The answer to the question must carry faint echoes of Evelyn Waugh: "Up to a point, Lord Copper".

Line-by-line scrutiny in committee in the Lords is certainly painstaking and on the whole carried out in more detail than the time available to public bill committees in the House of Commons allows. This relies on the understanding by the House as a whole that it cannot be instructed to adhere to a timetable but that, under the interpretation of the Salisbury-Addison Convention, the government has a right to expect that its business, appropriately amended, will be passed in a timely manner. There is no doubt that a great deal of clarification, elucidation and improvement goes on by amendment in the Lords, and the government will often use committee and report stages to refine its own draft legislation and to accommodate concerns expressed by others.

Is the House of Lords more independent than the House of Commons? In one basic sense, yes, of course, since no party has a majority: the government currently has 268 peers, with the Official Opposition having 172 and the Liberal Democrats 83, while there are 180 crossbenchers. Plainly the government cannot rely simply on weight of numbers to secure the passage of its legislation. It is by no means unknown for the government to suffer defeats, as the table below shows.

Session	Number of government defeats
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2016-17	38
2017-19	62
2019	1
2019-21	114
2021-22	128
2022-23 (as of 13 September 2023)	117

The Lords is becoming more independently minded, by the admittedly crude measurement of government defeats. Of course this is not solely a function of the institutional dynamics of the House of Lords, as party politics, both between and within parties, play a significant part: the government of Boris Johnson (2019-22) pursued a number of policies, on issues such as immigration, online safety and law and order, which did not enjoy the support of the broad mass of Conservative peers. Indeed, some ministers have seemed to relish the opportunity of a conflict with the upper house. Nevertheless, on independence, the House of Lords must be adjudged to be performing well as a scrutineer of legislation.

The final pillar on which the House of Lords's function as a revising chamber stands is its supposed expertise. Supporters of the current composition like to praise it as a "house of experts" and point to scientists, soldiers, civil servants and so on, and this contains a measure of truth. On the other hand, almost a third of the House is made up of people who are or were essentially professional politicians, including nearly 170 former MPs. One cannot argue that an MP who is moved from one house to the other somehow acquires "expertise" along with ermine. The House of Lords is, and has been from its very earliest days, a mixed economy, and that has implications for its scrutiny role. While working peers and former MPs, no longer beholden to anyone for further advancement, may exhibit a greater independence of mind than sitting MPs, they are usually reliable lobby fodder for their parties. That is, after all, why they have been put there.

Despite all the changes since 1996, most notably the House of Lords Act 1999, it is still fair to characterise the Lords generally as did Lord Strathclyde, then government chief whip, when he gave a lecture to the think tank Politeia in December of that year:

What it can be is like a trusted independent advisor to the headstrong head of a family. The adviser cannot prevent him ruining himself but he can warn and once at least ask him to reconsider.

Your final question is what other roles the House of Lords should perform in the UK constitutional arrangements. One must rule out adjudication on matters of devolution, as these are now well established as matters for the Supreme Court which was established in 2009 under the provisions of the Constitutional Reform Act 2005.

On the model of the United States Senate, the House of Lords could be given the function of ratifying treaties. However, much of this role is performed by the House's International Agreements Committee which was established in 2021 to "consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and

Governance Act 2010". It would seem unnecessary, therefore, to extend connected functions to the House as a whole.

It is my view that the House of Lords has quite enough to do in scrutinising legislation and carrying out the work of its committees. I realise I am in a minority in regarding the form, functions and operation of the House of Lords as broadly satisfactory. As I have explained above, I strongly refute the hypothesis that the House is in practice too large, or that its size is an issue in terms of its image or credibility. The overwhelming weakness, which has become particularly acute in the last five years, is the nature of nominations to the peerage and the exposure of the supposed safeguards as effectively toothless. If the powers of HOLAC were strengthened, and perhaps limits placed upon the number of peers a prime minister might nominate, that would make an enormous difference to the credibility and authority of the House of Lords.

One last observation: unless wholesale reform of the House of Lords in terms of powers and composition can be agreed and achieved in the near future—and the fact that the House of Lords Act 1999 was the first stage of reform, the second stage still being awaited a quarter of a century later, suggests that this is unlikely—it will do the House of Lords no good at all in public esteem if its members spent so much time telling the electorate how deficient it is, how illegitimate, how unsatisfactory and how unwieldy. If this message is constantly preached, by members, let alone by current or former lord speakers, the House of Lords should not be surprised if the public takes it to heart. My view is that I think the House operates reasonably well, represents no substantial mischief and has no immediate prospect of being reformed on sensible and consensual lines. It would be more helpful than anything if peers would get on with their legislative role rather than decrying the comfortable and privileged position in which they find themselves.

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