

LORD TYRIE – WRITTEN EVIDENCE (QE10022)

QUANTITATIVE EASING INQUIRY

Bank of England independence, transparency and Parliamentary accountability, some observations and a proposal

During my evidence to the committee on 13 April, I was asked to set out in writing my proposal that a specialist body of expertise be created in Parliament to scrutinise the regulated and financial sectors.¹ What follows does so, setting it in the context of what might be done to entrench the independence, and improve the Parliamentary scrutiny of the major regulators, by particular reference to the Bank of England, the subject of the EAC's current inquiry.²

Section 1 makes some initial observations about the state of Bank of England independence since 1997.

Section 2 examines independence in the light of the emergency decisions of the Bank to return to QE, taken in March 2020, and in the context of a deterioration of public confidence in a number of regulators now evident.

Section 3 suggests some actions that the Bank of England may take, in their case mostly pre-emptively, in response.

Section 4 examines Parliament's current response.

Section 5 makes proposals for the creation of an expert body of Parliament to bolster its practical capacity to scrutinise the regulated sector, by particular reference to the Bank of England and the FCA.

Section 1: Bank of England independence since 1997: some initial observations

The Bank – and its statutory independence – have both shown themselves to be useful to the Government in successive crises. Recently, it has contributed to the stabilization of financial markets during the Covid crisis and it has probably reduced borrowing costs. But the Bank has a relatively short dated tenancy on independence; certainly not a freehold. Independence will last only as long as the political class remains convinced that it delivers some clear benefits for

¹ In what follows "regulator" is used loosely to describe the functions of the Bank of England; it performs a number of other major functions including supervision and responsibility for the conduct of monetary policy and aspects of overall financial policy.

² No attempt is made here to weigh the merits of independence of any of these regulators, nor for dilution of the Bank's independence.

them. These may be economic or political. Economic benefits may be reaped in the narrow sense that the decisions themselves might be of higher quality. They may also be quasi political and include distance, and hence protection, for the political class from decisions which might otherwise provoke criticism of them, or wider benefits in the form of greater public acceptance of unpopular decisions explained by technocrats than could be achieved by politicians. Both may bolster market confidence and reduce debt service costs.

In weighing the merits of independence the political class in the UK will be sensitive to the electorate's expectations. Central bank independence in this country has no protection from a written constitution. It is not underpinned by a deeper consensus about the dangers of any alternative as was the Bundesbank. Nor is there any wider political project to support independence, trumping other objectives, as has been the case with the ECB.

At the time of the legislation, and going back nearly a decade before 1997, the benefits of independence were seen by many to be twofold. First, to secure price stability within an institutional framework with a life longer than the electoral cycle. Secondly, by doing so, to reduce the vulnerability of the country to the very corrosive social consequences of inflation, which rewarded union power and brought deep unfairness with the taxation of savings. It is important to bear in mind those original purposes when thinking about the future of independence.

The impression of these benefits has been somewhat eroded over time. First of all, a large proportion of the population don't remember inflation and its ghastly consequences.

Second, the Bank has needed an indemnity to run an anti-deflationary policy, and that means that the Treasury and the Bank are locked together in policy making. They will remain so while the indemnity remains.

Third, while people have forgotten the distributional consequences of inflation, politicians and others are now very aware about the distributional consequences of the policies to deal with deflation: QE and all that has come with it. Some blame already attaches to the Bank for that. It is probably growing.

Fourth, the further statutory responsibilities given to the Bank since 2012 add to the areas for which the Bank may be blamed. Power over aspects of housing policy and mortgage lending – given to the Bank in 2015 – is a prominent candidate, among others.

Fifth, the Bank of England's independence was underpinned for a decade after 1997 by a wider consensus about how to run the economy. It wasn't just stable prices that became part of the consensus, but much else besides: the wider

benefits of free trade, the development of trade in services, capital market liberalisation, competition policy put at arm's length from politicians, and so on. This was the era of globalisation and technocratic governance proceeding on many fronts. That progress has stalled. In some cases, it has gone into reverse. It is also under political attack in many Western societies, increasingly blamed for a number of social and economic ills.

Sixth, central banks can easily be caricatured as living in ivory towers and behind marble walls. They are therefore particularly vulnerable to the decline in deference and erosion of trust now apparent in most institutions. This is now evident in public discourse right across the board: it is harder to think of institutions that haven't suffered that erosion than to think of ones that have.

Populist nationalism and highly interventionist socialism now both have room to breathe in many Western societies, particularly the former. Both have been part of recent political discourse in the UK. Neither sit easily with central bank independence and the visible and formal separation of fiscal and monetary policy – at an operational level – which was part of the intellectual framework in the first place.

This is quite a long list. None of the points are decisive. What protection is available for independence against these risks, and in addition to the perceived benefits outlined at the start?

First, it is widely held that the passage of time tends to entrench Bank of England independence year by year. In principle, I agree: the mere speculation that an incoming government might remove independence could severely damage market confidence and economic confidence, thereby prejudicing its electoral prospects. Still, while the removal of formal statutory independence itself might be unlikely, some change in the remit that could, in practice, greatly compromise independence is certainly not implausible. 'People's QE' fell into this category.³ So might a number of policy responses which may be required to handle any substantial increase in interest rates. George Osborne's raid on the Asset Purchase Facility (APF) had already greatly exacerbated this risk, even prior to the doubling of QE in response to Covid 19.

It is the scale of QE, now 40 per cent of GDP, which makes such a compromise of independence much more likely. It could possibly come as a frontal assault, with suspension of independence under existing legislation.⁴ Far more attractive to politicians might be the retention of notional central bank independence, as cover for its loss.

³ Although, arguably, it might have necessitated legislation.

⁴ Section 19, Bank of England Act 1998.

The longer that the indemnity remains, and the more that fiscal and monetary policy are seen to come together in QE, the more the sense is created that the Treasury has a role, possibly a major role, in monetary policy. Allegations of 'nods and winks' by the Treasury will grow. The Committee has heard several in evidence.⁵ There is, of course, an attempt to provide visible separation in the APF. But that wouldn't fool anybody, least of all Parliament, were the Chancellor required to raise taxes or cut spending – and on a huge scale – to indemnify the Bank.

Second, there could be scope for creating constitutional protection in the UK for independence: some sort of legislative obstacle to new legislation compromising it. A second chamber, which might not have a government majority could, in principle, fulfil this role.⁶ Parliament could, in theory, put on the statute book something that would give the Lords an explicit role with respect to Bank independence. Constitutional protection is provided in a number of other countries. But the UK won't have a written constitution with a body of higher law any time soon.⁷ It would probably be of very limited value. The Lords, worthy though it is, and adding value, lacks the moral authority – as an appointed House – to exercise even the powers it currently possesses.

The above points – many of which have long been recognised – suggest that robust Bank independence is more fragile in the UK than outward appearances indicate. This leads me to several conclusions. First of all, the Bank should, publicly if necessary, resist overload of responsibilities. The Bank is very vulnerable to politicians with a problem handing it over to someone else: the offload of the hot potato. The FCA, and FSA before it, were victims of that political culture.⁸ The Bank might become so; in some respects offload has already begun.

Second, there is no substitute for the Bank carrying on with whatever is required to build and entrench decision making by explanation.⁹ It is why the verbatim

⁵ For example, Paul Tucker at p. 16, <https://committees.parliament.uk/oralevidence/1653/pdf/> and Lord Turner at p. 9, <https://committees.parliament.uk/oralevidence/1920/pdf/> . See also Mr Cummings' evidence to the Health and Social Care and the Science and Technology Committees ([Q 1023](#)) at footnote 18 below.

⁶ Under the Parliament Acts, the extension of the life of a Parliament is in this category: an extension can still be vetoed by the Lords indefinitely, unlike other legislation.

⁷ I'd be a sceptic of the wider benefits – and sensitive to the risks – in any case.

⁸ Arguably 'offload' has already brought 'overload': more responsibilities handed to the FCA, with consumerately unrealistically high expectations among the political class about what is achievable.

⁹ When I took over Chairmanship of the Treasury Select Committee over a decade ago, I suggested to colleagues that the TSC launch a major inquiry into the accountability of the Bank of England. This was partly aimed at securing better explanations and greater transparency. Many of the proposals made at that time in the TSC's report, and some subsequent proposals of the Commission on Banking Standards which I chaired as well, have now been implemented; Mark Carney in particular, deserves a good deal of credit for picking those up when he came in, and

minutes of the emergency MPC meeting of 19 March 2020 should be made available to Parliament. The objections can readily be met.¹⁰ The benefits could be considerable in terms of transparency in decision-making and accountability. Still, this needs to be seen in context: the Bank has been very forthcoming in a number of important respects. There is already a great deal of public material available for scrutiny, and of high quality, too. And senior Bank staff, including the Governor, have been before parliamentary Committees on several occasions.

Box - Verbatim minutes: their origins and the restrictions on their disclosure

In 2013, it came to the TSC's attention that MPC meetings were recorded and the recordings subsequently destroyed. On behalf of the Committee, I suggested that they be retained for historical purposes and for availability in exceptional circumstances. This was discussed in a TSC hearing, in public session.¹¹ In response, the Bank of England engaged the former US Federal Reserve Governor Kevin Warsh, to advise on the issue.¹² The Warsh Report suggested that the tapes be turned into verbatim transcripts and then the recordings destroyed, and that the transcripts should be made available after a deferral period (of between 5 and 10 years).¹³ In response to the Warsh Report, the Bank of England adopted an 8 year delay on publication of the transcripts of that part of the MPC meeting at which policy is decided (though less detailed minutes with

making sure they were. Nonetheless, the substance and spirit of some of them were not. The shortcomings of the cherry picking are now in evidence. The need for this inquiry is arguably a reflection of it: much of the information being gleaned could and should already be in the public domain (or at least made available to Parliament under controlled conditions) and might well have been, had the reforms been fully implemented. See also section 4, particularly footnote 25.

¹⁰ In a nutshell, these are: that to do so would create a precedent, leading to more frequent such requests; that it would influence and erode the quality of the MPC's deliberations, with participants weighing their contributions against how they would be perceived if given an early public airing. It is exceptional circumstances like those created by QE that Parliament's Committees exist to address. Arguably, publication might be deleterious to the public interest on several grounds: unfair treatment of individuals/officials, especially junior staff; effects on markets; a breach of commercial confidentiality (leading to greater difficulty in securing information in the first place), among them. But reassurance can be obtained by Parliament without the need for publication. Numerous precedents for doing so were established by the Treasury Select Committee and by the Parliamentary Commission on Banking Standards a decade ago (a number of these are set out in *'The Poodle Bites Back'*, Centre for Policy Studies, 2015). All of these efforts to secure reassurance were opposed at the time by the leaderships of the Bank of England and the FCA. The sky didn't fall in a consequence of any of it. See also Box.

¹¹ TSC meeting of 11 March 2014:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/bank-of-england-inflation-report-hearings/oral/7444.pdf>

¹² His appointment was press released here:
<https://www.bankofengland.co.uk/-/media/boe/files/news/2014/april/transcripts-of-monetary-policy-committee-meetings.pdf?la=en&hash=626AA027A146E1466AD3EBB95A5F5D93C0851CAA>

¹³ The report is available at:
https://www.hoover.org/sites/default/files/transparency_and_the_bank_of_englands_monetary_policy_committee.pdf

votes have been published since 1997).¹⁴ The MPC believed: “*that an 8-year delay for transcript publication would strike the right balance between preserving (...) a “safe space” for Committee deliberation and bolstering the transparency and accountability of its policy decisions. The choice of this delay (...) balances the length of business and financial cycles with increased accountability, while also ensuring that MPC members are not constrained in their ability to make sound policy decisions. (...) The Bank will also publish, alongside those written transcripts, key staff inputs that informed the policy decision.*”

In my view QE, and particularly this latest round in response to Covid-19, are exceptional circumstances demanding earlier availability for scrutiny, albeit probably in controlled conditions short of publication, to Parliament.¹⁵

Reluctance to supply information, even in controlled conditions short of publication, may fuel suspicion that there is something to hide when, as I have suggested is likely to be the case in oral evidence, there is nothing. It is true that an early examination of the minutes even under controlled conditions might influence the behaviour of participants when taking future decisions. But it is not at all clear that the influence would necessarily lead to poorer outcomes. The knowledge that such scrutiny could come might improve them. For example, and in the case of emergency QE, it might bolster the determination of members of the MPC to demonstrate their independence.

The first verbatim minutes of meetings (of those held in 2014) should be released at the latest by December 2022, under the eight year rule.

Third, Parliament also needs to maximise the current scope for securing good and full explanations. The decisions taken on Covid have suggested that Parliament needs more tools for the job, the merits of which are examined in later sections.

Fourth, greater powers or tools to secure explanation in the hands of Select Committees requires some discipline on their part. If the Bank is to proceed by explanation, Parliament needs to show responsibility in how it goes about requiring it. The patsy exchanges between the Treasury Committee and the Bank in early years of independence subsequently developed into some robust and informative exchanges. As a result, the credibility and authority of the Bank has been greatly enhanced. But it is also the responsibility of the Treasury

¹⁴ The Bank’s response can be found here:

<https://www.bankofengland.co.uk/-/media/boe/files/news/2014/december/transparency-and-the-boes-mpc-response>

¹⁵ Since April 2013, the Bank has published the minutes of its Court meetings six weeks after the meeting to which they relate or, if there is no further meeting within that period, two weeks after the date of the next Court meeting. Nonetheless, pursuant to the 1998 Act, the Court may decide to omit information from its published record in the public interest, as well as information which is legally sensitive or commercially confidential. With a view to enabling Parliament to hold the Bank to account, the latter – after sustained pressure from TSC – decided to publish also the minutes of the historical Court meetings. The 2007-2008 Court minutes were published at the time of the transparency report in 2014. Though the minutes of the meetings of the MPC and FPC have been published since 2014, the minutes of the PRA meetings are not disclosed.

Committee and Parliament generally to give the Bank a chance: to avoid grandstanding, to accept 'I don't know' as an answer, to accept subsequent detailed written explanations as a substitute for oral questions. All of those are reasonable things for the Bank to hope for from Parliament.

Fifth, and right at the heart of the need for constant pressure to explain, is a crucial lesson from the crash. The Bank initially failed the country when the crash came in 2007-8. It was not fleet of thought enough to grasp the need to act as a lender of last resort. There was group think. The Bank were part of the same group think as everybody else. Likewise, group think played a major role in preventing the full scale of the risks inherent in asset backed securities/slicing and dicing from being identified. It is Parliament's job, above all, to make sure that group think, ever present in any organisation, does not take root and dominate again. MPs and Peers need to do everything that they can to hack away at it when they see it. Committee members – and all of us in Parliament – need to remind ourselves that we are not immune. It may become evident as a proposed response to the huge challenges that any reversal of QE will pose. Transparency's primary objective may be the bolstering of the Bank's legitimacy, the focus of this evidence. Scarcely less important is its capacity to stimulate better policy, as a response to constructive challenges.

With the impression of the benefits and the credibility of independence now at risk of erosion, and given the paucity of further protections available in the UK to bolster it, more rigorous and systematic Parliamentary scrutiny and higher levels of transparency may now offer the best prospect of buttressing it. Credibility is difficult to construct and easy to destroy: the ladders are short, the snakes long. The explanations now being demanded, and the EAC's and the TSC's respective enquiries, should be seen in that context.

Section 2: What is the new problem the Economic Affairs Committee are seeking to address?

Notwithstanding the longer term challenges to independence identified in section 1, I expect that the immediate trigger for this enquiry has been the second wave of QE in the wake of the Covid crisis and, in particular, the allegation that the Bank of England might have been engaged in monetary financing – possibly as a result of pressure from the Treasury – in order to fund the Covid lockdowns.¹⁶ The Committee may also have had in mind new permanent powers, to be conferred on the Bank by Parliament as a consequence of Brexit, as well as its use of existing temporary transitional powers.¹⁷

¹⁶ A good way of accelerating the investigation would be to allow Parliament access to the verbatim minutes. See Box for the origins of the minutes and the controversy involved in getting to the point where they were retained and also footnote 10 for an examination of the case for allowing Parliament access to them.

Important decisions were taken in March last year. The MPC's initial £200 billion of QE in March 2020 was intended to restore market functioning (a 'liquidity channel'), without which - the Bank suggests in its written evidence to the Committee of 26 February 2021 - "an unwarranted tightening of monetary and financial conditions could have led to an even sharper contraction in UK GDP". The MPC expanded its programme of asset purchases by a further £150 billion in November 2020. However, these decisions may also come with costs in terms of mispriced private sector risks and large public sector balance sheets; Lord Turner in oral evidence talked about 'lubricating the fiscal expansion'.¹⁸

The way that these decisions have been explained is an illustration of the risks associated with the delegation of major decisions, affecting millions of people, to unelected experts – despite their best efforts.

Among the adverse consequences of these specific decisions could be:

- i. Confusion about who really took the decision, or merely a lack of public understanding, the effect of which could be an erosion of consent from the electorate for those decisions and therefore their legitimacy. We are a long way from that point at the moment. But these things are non-linear and subject to tipping points.
- ii. Risks to the perception of the Bank of England's independence, whether justified or not ('backdoor mischief').
- iii. Reputational risk to the Bank were it to find itself blamed for the consequences of subsequent interest rate rises (higher taxes/public expenditure cuts etc.).

¹⁷ The Temporary Transitional Powers permit UK regulators to delay, or phase in the 'onshoring' changes to UK regulatory requirements that arose at the end of the Brexit transition period, for up to two years from the end of transition. Regulatory powers previously exercised by EU bodies have been reassigned to UK regulators, including the Bank. In addition the Bank now has powers with respect to UK central counterparties and central securities depositories, previously exercised by the European Securities and Market Authority. The scrutiny of these new functions represent a significant additional burden for Parliament, primarily for the TSC, and mainly technical in nature. Parliament will need to adapt and develop the necessary expertise to perform this job.

¹⁸And Mr Cummings told the Health and Social Care Committee and the Science and Technology Committee ([Q 1023](#)):

"It was the case that the Bank of England, the senior officials in the Treasury and senior officials in the Cabinet Office were saying, "We have to think about the consequences. If we do this lockdown, we will have to borrow huge amounts of money. What if the bond markets suddenly spike, go crazy and refuse to lend to us? We will then have to find emergency powers to tell the Bank of England to buy the debt etc, etc." So there were conversations going on at the time about that possible problem—what if we have a financial crisis, a bond market crisis and sterling crisis on top of the whole health crisis? There were conversations about that and meetings with the Prime Minister, the Chancellor, the Cabinet Secretary and me to discuss it."

The gilt purchases, and the massive expansion of the Bank's balance sheet appear, at the moment, to be a free lunch – as was the raid on the APF, made possible by further falls in interest rates after the first rounds of QE. The legitimacy of these decisions may be challenged when QE, in one form or another, needs to be unravelled, halted or indemnified. On the basis of the evidence so far provided to the Committee on the issue, there is a strong case for publication of the "Deed of Indemnity".¹⁹ High levels of public explanation and clear lines of accountability will be at a premium at that time. It would be prudent to prepare for that moment now. Arguably, publication might create a precedent, one that the Treasury would be reluctant to cede. But QE has created grounds for treating publication as a response to exceptional circumstances.

Many people argue that there is already a crisis in confidence in a number of public institutions. Parliament can ill afford to allow the Bank to join them.

To its credit, the Bank of England has already done a great deal to improve the quality and variety of its explanations.²⁰ It is a leader among quangos in this respect.²¹ The need to keep Bank of England accountability in the best possible shape will be taking place against the backdrop of a deterioration in confidence, some argue a crisis, in a good number of quangos/public institutions.²² There has certainly been a deterioration, which shows up in numerous surveys (trust barometers etc). And it has probably been going on for a long while.

Some plausible explanations:

¹⁹ Others appear to agree. For example, Will Bateman stated in his written submission to this inquiry: "The Deed of Indemnity is a contractual document between two governmental institutions [the Bank and HMT] which commits the UK's taxpayers to potentially enormous liability and appears to authorise QE in the UK. It should be published." The Deed of Indemnity executed by HMT and the Bank in 2009 provides for the indemnification of QE with fiscal receipts and the transmission to the UK's Consolidated Fund of the accumulated profits of the APF. It appears that the requirement for the Bank to seek the Chancellor of the Exchequer's consent before any expansion of QE stems from the Deed of Indemnity. The Treasury is probably the main opponent.

²⁰ The Bank now has a substantial cadre of very senior policy committee members who get "stuck in" to the task of communicating and explaining what the Bank does, not just to Parliament but all around the country, too. In this sense, the Bank has transformed itself. From the start of 2018 to late 2020, the Bank held 138 events with businesses and the public around the country, and appeared before a Commons Select Committee 20 times (these numbers would presumably be higher absent Coronavirus).

²¹ Andrew Bailey, the Governor of the Bank of England, has already appeared nine times since he became Governor on 16 March 2020.

²² Evidence supporting a general deterioration can be found among other places in the Edelman Trust Barometer UK 2021 at <https://www.edelman.co.uk/sites/g/files/aatuss301/files/2021-02/2021%20Edelman%20Trust%20Barometer%20-%20UK%20Media%20Deck.pdf>, the IPSOS-Mori polls <https://www.ipsos.com/ipsos-mori/en-uk/trust-public-institutions> and the British Social Attitudes survey.

- i. Since the financial crash, intervention by public bodies, especially central banks, has had massive distributional consequences, between socio-economic groups and regions.
- ii. This reinforced an already growing discontent with some of the wider economic consequences of globalisation.
- iii. The expectations and demands of the public from unelected bodies have increased.
- iv. Regulatory bodies, in a number of cases, have started underperforming. Among other things, there is evidence of: capture by their respective regulated communities; complacency; the development of group think; an ever greater distance opening up between them and their final customers (the electorate), and inadequate, sometimes scarcely any, effort to narrow it; insufficient challenge by Parliament. The so-called scepticism towards experts has a great deal to do with this last – if the experts aren't forced to explain they become even more anonymous and the appearance of elitism is further entrenched.²³
- v. This is probably associated with a decline in deference and an increase in the level of higher education in the population, to which I already alluded (a much higher proportion of which has now been to university), among other things.
- vi. Social media platforms have rendered it easier to express, and to broadcast, discontent.

A major task for policy makers now is to find ways of ensuring that this scepticism and discontent does not develop into a revolt capable of discrediting the free enterprise settlement on which our society is built. Bank of England independence is widely held to form a significant part of that settlement.

So some conclusions in response to 'What is the new problem the Economic Affairs Committee are seeking to address?' might be:

1. There is scope for improving scrutiny of the Bank. In any case, like gardening, it needs constant attention.
2. Shortcomings in scrutiny may well be a symptom of much wider problems with the accountability of quangos, exacerbated by deep seated changes in attitude towards delegation by parliaments and their electorates in many Western societies.

²³ The Covid crisis has done something to redress the balance of opinion on 'experts'.

3. Far from being a laggard, the Bank is a leader in having tried to create the conditions for high quality scrutiny.
4. The consequences of the Bank falling short are probably greater than for any other quango. Improvements to Bank of England scrutiny, and the buttressing of its legitimacy, should therefore be a constant priority.
5. Those improvements can serve as a beacon for the scrutiny of other parts of the regulated sector. It is worth bearing this in mind, particularly when framing any structural reform proposals.

Section 3: Doing something about it: the Bank of England

Public authorities and regulators can already adapt, or signal to Parliament that they need legislation to assist them with it. They shouldn't be waiting for a parliamentary shove, although many do so. As already suggested, the Bank has been doing much more than most unelected bodies to explain itself, not just to Parliament but to a wider section of the public. It has already come a long way from the secretive and relatively uncommunicative institution of the 80s and 90s. There are still some problems to address: the apparent elitism; the very hierarchical structure among them (recent remarks from the new Governor suggest that he is determined to remedy these); but overall the Bank is in a dramatically better place now than it was at the time of independence.

The Bank could make a contribution to finding solutions now. Among other ideas it could propose: a much more substantive and direct line of responsibility from the Court²⁴ to Parliament for regular detailed briefings, bringing the work of the Court fully into line with the recommendations of the 2011 TSC report on 'The accountability of the Bank of England'.²⁵ Although the reformed Court has done much good work, it has fallen short of expectations outlined in the 2011 report. *Quis custodiet ipsos custodes* has not been adequately answered. Probably alongside the above, the Independent Evaluation Office could be turned into a more powerful and independent body, also with a direct line of accountability to Parliament.²⁶

²⁴ The Court consists of five full time members – the Governor and four deputy governors – and seven non-executive directors, appointed by the Government.

²⁵ The 2011 TSC report on 'The accountability of the Bank of England' is available at <https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/874/874.pdf> See in particular recommendations 1, 8-9 and 12 at pages 58-59 of this 2011 TSC Report. It is clear that neither the letter nor the spirit of the report have been fully implemented. According to recommendation 9: "[T]he ... Board [should] conduct ex-post reviews of the Bank's performance in the prudential and monetary policy fields normally not less than a year after the period to be reviewed. This would be consistent with avoiding second guessing at the time of the policy decision. The reviews should among other things enable lessons for the future to be learnt. They should strengthen the Bank's collective memory. There should be no presumption that the commissioning of a review implied that the episode or function in question had been badly managed: successes and failures should be reviewed alike. It would be a matter for the Board itself to determine when and how such reviews would be conducted, and into which issues." The evidence gathering that the Economic Affairs Committee is currently required to undertake would not have been needed had the recommendations of that 2011 TSC report been fully implemented.

²⁶ The Independent Evaluation Office (IEO) was established in 2014 to assess the Bank of England's performance and, as a result, to increase public trust in the Bank and to improve its openness, learning culture and public accountability. The IEO is an independent unit that sits within the Bank. It operates at arm's length from other areas so as not to compromise the independence of the Bank's policy-making. The Court of Directors has a statutory obligation to keep the Bank's performance under review, and the IEO supports this through its in-depth evaluations. When necessary, the IEO also supports reviews carried out by independent third parties. The IEO reports directly to the Chair of Court, who sets the IEO's remit and work programme, typically in consultation with other Court Directors. See <https://www.bankofengland.co.uk/independent-evaluation-office> Though both the NAO and the

Section 4 – Doing something about it: Parliament

It is up to Parliament as a whole to do the lion's share of the heavy lifting to remedy problems with accountability suggested above. The regulators themselves can't be expected to do all of the work, though they should at least contribute, and the Bank has certainly done that.

One of the consequences of the massive interventions that have come with the Covid crisis has been that it has legitimised much higher levels of state intervention to remedy perceived ills. This reinforces a change in mood which began with the interventions after the financial crash. Politicians, reflecting the public mood, are increasingly ill at ease with leaving decisions to unelected bodies.

This change of mood is gathering pace on many fronts. As I write this, I have just read a description of Boris Johnson's 'levelling up' agenda as "a historic rejection of free market economics".²⁷ The current debate, in Parliament and elsewhere, about Bank of England independence is a small part of a much bigger shift in attitudes towards greater intervention among the political class. This is partly reflected in a reversal of the delegation of responsibility to unelected bodies and greater scepticism about whether it secures higher quality outcomes.

Parliament has already reacted in a number of ways. In several areas it is taking back a measure of control:

- i. The scrutiny of this Committee could be interpreted as a reflection of a greater parliamentary determination to bring more sunlight to bear; in this case, on the allegations of a 'behind the scenes' compromise of independence (a view which I don't share on the basis of the available evidence).
- ii. In other areas, Parliament has substituted its judgement for that of the regulators, by legislating directly. For example, when the CMA and Ofgem were unwilling or unable to act on rising energy costs through a price cap, Parliament required Ofgem to implement one.²⁸
- iii. There has been a growing cross-party consensus that greater political control is needed over mergers than was originally envisaged when the Enterprise Act was passed in 2002. "Public interest" tests have been added to enable Ministers to intervene in mergers affecting media plurality (2003), financial stability (2008) and public health (2020); and a new

IEO provide input for subsequent Parliamentary scrutiny, they are no substitute for such scrutiny.

²⁷ *Boris Johnson: I'll stop brain drain to the cities*, The Sunday Times, 9 May 2021.

²⁸ Domestic Gas and Electricity (Tariff Cap) Act 2018

regime has recently been enacted giving far greater ministerial control over mergers that could pose a risk to national security.

- iv. Committees have been prepared to use novel means to intensify scrutiny of regulators that are failing, or at risk of failure. For example, from 2014-17, the Treasury Committee deemed the FCA to be in “special measures”. Among other steps, it required that the FCA routinely submit its internal audit reports for scrutiny during this period, a deeply controversial intervention by the TSC at the time.
- v. Acting under the authority of Parliament, Ministers have sought to provide closer strategic direction to the regulators. In financial services, “remit letters” – setting out aspects of economic policy to which the regulators must have regard – have been the principal instrument by which this has been achieved, and they have grown in number.²⁹

The remainder of my evidence develops a proposal to create a body to improve scrutiny and accountability of the Bank to Parliament. In doing so, I have borne in mind that it could and probably should form the nucleus for a more powerful scrutiny tool encompassing other parts of the regulated sector which currently supervises/regulates about 25 per cent of UK GDP.

²⁹ Remit letters were introduced for the FCA in 2016, and for the Prudential Regulation Committee in 2017

Section 5 – Doing something about it: a specialist parliamentary body of expertise

I am increasingly drawn to the conclusion that the complexity and salience of the decisions that the Bank of England is now taking, and the extent to which they have been brought into areas of public policy usually considered the preserve of Parliament, now requires a reconsideration of the accountability mechanisms largely constructed at the time of independence in 1997. With expanded mandates comes enhanced accountability. And accountability requires knowledge.³⁰

Any improvement is likely to come only by mobilising greater expertise. Parliament would greatly benefit from access to a specialist body of experts to scrutinise the Bank's decisions. Their work might, from the start, also examine other financial services regulators³¹ - such as the FCA (including the Payment Systems Regulator). In time, and if successful, the body could, and probably should, serve as the basis for improving scrutiny of other parts of the regulatory state. Not only is the work of a number of these regulatory bodies extremely complex, and their decision making processes impenetrable; the extent to which a number increasingly appear captured by vested interests, and the apparent remoteness of their executives from adequate challenge and scrutiny, both point to the need for a much more vigorous response from Parliament. The need is growing. What follows has been drafted with these wider purposes in mind.

Objectives

The Parliamentary body's objective, which need not be statutory, would be framed in terms of providing support to the relevant Committees to carry out their functions under the Standing Orders. This would distinguish it from the NAO, which has a statutory objective to examine value for money (with the "merits of policy objectives" explicitly carved out of its remit), and independent authority to carry out such examinations without seeking the approval of PAC. With a simple objective to provide relevant Committees with support, the proposed body would have less autonomy than the NAO to determine its own work programme; but it would be more flexible and responsive, in that it would

³⁰ See Lastra on Accountability at https://www.europarl.europa.eu/cmsdata/211623/1_LASTRA-final.pdf at p. 29: "The issue of technical expertise can be a double-edged sword, as politicians and MPs (as well as judges) need not be trained in monetary affairs. But holding to account an independent central bank requires such technical expertise (as well as adequate resources). It has been observed that the change of public perception towards central banks might put their independence at risk. Thus, the discussion about legitimacy and accountability is ever more relevant." See also Goodhart and Lastra on Populism and Central Bank Independence at <https://link.springer.com/article/10.1007/s11079-017-9447-y>

³¹ The financial services sector is roughly 25 per cent of the services sector; the latter forms approximately 80 per cent of UK GDP. In 2019, the financial services sector contributed £132 billion to the UK economy, 6.9 per cent of total economic output. See <https://commonslibrary.parliament.uk/research-briefings/sn06193/>

be able to examine the merits of decisions taken (and not taken) by the regulators (if that is what the Committees wanted it to do), and it would be able to carry out its work in whichever way the Committees considered appropriate. This system of scrutiny would thereby avoid some of the shortcomings commonly identified (somewhat formalised, mechanical, standardised, backward-looking) of the NAO's value-for-money reporting and subsequent PAC scrutiny, as currently structured. Identification of the shortcomings – which partly derives from statutory base – should not be misinterpreted as a criticism of the NAO's role: it does excellent work in fulfilling core functions, as does the PAC.

Work and accountability

The scope and substance of its work would be a matter for the Committees to determine; a body set up exclusively with the Bank of England in mind should probably report to the TSC. Were it developed into a scrutiny body for other major regulators, the main relevant Committees would need to be involved, including BEIS, DCMS and HCLG among others. A small decision making Committee of Chairmen of these Committees could be charged with the responsibility for allocating the resources of this new body among themselves, perhaps led by the Chairman of the TSC, or possibly elected from among their number.

The body's work would probably consist of proactive and reactive elements. The former would entail "standing scrutiny" of the financial/other regulators: as part of this it could brief, and make recommendations to, Committees on where best to focus their scarce attention. The latter would entail responding to requests from Committees: these could range from ad hoc informal requests, to formal commissions more akin to an NAO study. Such a body might be called the 'Parliamentary Regulatory Oversight Panel' (PROP), a mouthful, but whose acronym would at least suggest its role!

Staffing and leadership

Crucially, it would have a life independent of any existing Committee support team, as does the NAO now but, unlike the NAO, it would be a Parliamentary body and non-statutory. The body would be staffed and led by full time subject-matter experts – that is, those who have, or can develop, a deep understanding and experience of regulatory practice and decision-making. A mix of permanent and seconded-in staff might be appropriate. It would enable knowledge of regulatory practice to be kept up-to-date, stimulate creativity and provide the sort of career opportunities that would attract the highest quality people.³² Unlike the Comptroller and Auditor-General, the authority of the leadership, and the body itself, would be derived from the Treasury Committee/Committees

³² All three were in evidence among the staff of the Parliamentary Banking Commission and the TSC. But this cadre of considerable expertise was dissolved – along with the Commission – on the final day of its final report, a year after its creation.

themselves, not statute. There is a strong case for giving 'the Director' (whatever his/her title) of such a body enough independence to enable the body to obtain information and evidence on its own initiative. It might need to do this on a confidential basis, with the Director responsible and accountable for deploying PPR powers under Standing Orders, subject to overall direction of the TSC/panel of Chairmen.³³

Funding

The above would require at least a dozen staff, considerably more if other regulators were included. This might cost £1m per year for a body with a narrower remit, perhaps up to £5m per year for something with the capacity to provide scrutiny support across the major financial services and economic regulators. As a point of comparison, I am told that the Commons currently spends £18.5 million (270 staff) on staffing its Committees.³⁴ The Bank of England has a budget of £640m;³⁵ its expenditure on monetary analysis to support the MPC alone costs £37m. Were the body's remit widened to enable it to examine other regulators, a useful point of comparison might be the total cost (either through levies or from the Exchequer) of the current major economic regulators. This currently stands at £1.8bn.³⁶ Set in the context of the growing vulnerability of current lines of accountability and scrutiny to challenge, both within and beyond Parliament, such an increase in parliamentary costs might not be so concerning, particularly given the complexity of the regulatory state.

What benefits could such a body bring?

Much of the time, and despite their best efforts, their reliance on limited initial information often means that Committees struggle to identify the issues for scrutiny which would yield most. Ambulance chasing can be the consequence by default. From this, and much of the foregoing analysis, many of the benefits should already be clear:

³³There is already one related precedent. For example, paragraph 154 of the Guide to the Code of Conduct (<https://www.parliament.uk/globalassets/documents/lords-commissioner-for-standards/hl-code-of-conduct.pdf>) provides that the Lords' Conduct Committee may exercise its PPR power on behalf of the Commissioner for Standards. The privileges committee in the House of Commons has put out for consultation a report <https://committees.parliament.uk/publications/5742/documents/56932/default/> which proposes a statutory power to fine or even imprison those who fail to supply people in papers. The intention is to stiffen the capacity of Parliament to obtain what it really needs to do its job in a meaningful way.

³⁴ I obtained a number of these figures by ringing senior staff and ex-staff, having found the House of Commons' annual report difficult to navigate, and certainly less than a model of transparency!

³⁵ 2019/20 figure

³⁶ This comprises the Bank (including the PRA) (£633m), the FCA (including the PSR) (£633m), Ofcom (£124m), the CMA (£113m), Ofgem (£100m), the Civil Aviation Authority (£153m), the Office of Rail and Road (£35m) and Ofwat (32m). 2019/20 accounts.

- Identification of targets for investigation, based on far more detailed initial knowledge.
- A substantial increase in the firepower of Committees to scrutinise the regulatory state, without significantly adding to the burdens of their already time-pressed Members. Of course, more scrutiny is not an end in itself. It is a means to better decisions; to openness, transparency and accountability; and to public confidence in, and consent for, unelected power. Parliamentary accountability requires adequate funding, expertise and time.
- An improvement in the terms of trade between Parliament and regulators, enabling staff on the new body to brief Parliamentary committees on the basis of a clearer and fuller understanding of the challenges facing regulators and intended regulatory responses, based as a matter of routine access to considerably more information. The effect could and probably should be to reduce the frequency, and increase the effectiveness and depth of the oral exchanges between the Bank and the TSC, and to an increase in the quality in the substantive scrutiny of other regulators.
- Committees, by drawing on a body of expertise, fleet of foot enough to scrutinise crucial issues in a timely manner, unlike the NAO which, while producing worthy – and sometimes first rate – VFM reports, operates entirely through a rear-view mirror, sometimes two years in arrears. An effective body of expertise might be able to identify areas of concern at a much earlier stage before they developed into full blown crises.
- Continuity of staffing and, over time, institutional memory, and the development of expertise in regulatory scrutiny, itself a specialist skill. It would be for consideration by the relevant Select Committee whether the body could also appoint specialist advisers akin to those currently assisting Select Committees. If formed into a panel, they could assist with the development of institutional memory, provide ‘quality control’ and help the staff write high quality reports in a language that the public can understand.
- Much greater career opportunities for those in the regulated sector to work for a time in Parliament, providing advice on the basis of their relevant experience. Likewise, regulators would benefit from more staff with recent Parliamentary experience. Among other things, this could assist with the development of a cadre of staff more sensitive to the demands of the final consumer, and of Parliament, addressing the remoteness of these bodies.

Other possible routes to improving scrutiny based on expertise

Before concluding that such a body would be needed it is important to consider other possible ways of addressing the lacunae identified. What follows provides only the briefest of commentary of a non-exhaustive list, on which the Committee might want to reflect:

- i. Ask the existing Committees and staff to work harder! I don't recommend this. They are already stretched. When major events/crises come, much important (some might argue, essential) work is left undone already; and it is often routine scrutiny of the regulators that is the first to suffer.³⁷
- ii. Allow Select Committees to call on NAO resources. The PAC may well object, and their objections might be well founded: it might confuse lines of NAO accountability to Parliament and weaken the PAC. Deployment of the NAO is unlikely to provide the flexibility and timeliness required by Committees' needs. In any case, although the NAO undoubtedly has intelligent and hard-working staff, it does not currently have the expertise necessary to scrutinise the inner workings of the regulatory state. In principle, the NAO already responds to requests to Committees other than the PAC.³⁸ But it decides for itself the extent to which it may accede to such requests. In practice, the NAO would probably, and understandably, continue to put guidance from the PAC at a higher priority than that from other Committees.³⁹
- iii. The House of Lords Economic Affairs Committee could spend a little more money on its own staff, or it could recommend that the TSC do the same.

³⁷ When I was elected to the Chairmanship of the Treasury Committee, it was immediately clear to me that the scale of the demands being made on the Committee by the crash vastly exceeded the capacity of the staff to support it. I attempted to steer the Committee through this period by securing a large increase in secondments (including from the Bank of England). By doing so I trebled the staff complement, at virtually no cost to Parliament and expanded the team of specialist advisers. I tried, hopefully successfully, to raise their quality. I also greatly increased the workload of the members of the Committee, some of whom complained! But all of the above was just a stopgap, somewhat dependent on personal relationships that I had built up prior to the Chairmanship, and the good will of a number of people in agreeing to secondments, among other things. It is not a sound basis for lasting improvement in the work of Parliament.

³⁸The NAO supports Parliament as a whole and the Public Accounts Committee (PAC) and can provide information and analysis to support inquiries on specific issues in which the NAO has expertise. This discretionary support of other select committees from both houses and individual MPs does not assess the merits of government policies but only the value for money with which bodies implement those policies. The NAO has an audit perspective. Audit control provides a basis and input for subsequent Parliamentary scrutiny, as long as it is strong, accurate and independent. See <https://www.nao.org.uk/support-to-parliament/> (Key reports and briefings can be found on their [Resources for Parliament](#) page).

³⁹ Following the Bank's transparency and accountability report of 2014, the Bank of England and Financial Services Act 2016 brought the Bank within the purview of the National Audit Office (NAO) value for money studies.

If the above analysis is correct, the creation of institutional memory and therefore some long term continuity of staffing – from one Parliament to the next – is now highly desirable. For a variety of reasons the current approach to staffing, while it has many merits, would be unlikely to supply this. The current institutional memory of the TSC, at staff level, as far as I can recall, consists of one highly unusual and extremely able survivor (the Mikoyan of the Select Committee Advisory team).⁴⁰

- iv. The Commons Liaison Committee could be asked to reallocate resources between Committees to secure substantially more within the existing budget for the TSC. But this would be robbing Peter to pay Paul and would go down like a lead balloon in the somewhat unwieldy Liaison Committee of more than 30 Chairmen.
- v. A new Select Committee for financial services. In practice, this would mean splitting the TSC in two, another lead balloon, this time with the TSC. The risk here would be, at least in the short to medium term, of weakening one of the Commons' best Committees. In any case, a split would confuse lines of accountability. Though they are independent (to varying degrees), the regulators are closely connected with their parent Departments, who set the policy frameworks, and often the remits, within which they operate, sometimes based on "reserve" powers to direct their work. Questions about who is accountable for which decisions – questions at the heart of this inquiry – would scarcely be better addressed were the scrutiny of Departments severed from that of the regulators for which they are currently accountable. One of the better principles established by the 1979 reforms was that departmental Select Committees should, as far as possible, scrutinise all of their counterpart departments' work.
- vi. A beefing up, and extension of the remit, of the so-called Scrutiny Unit in the House of Commons. It currently employs around 14 staff, according to the House of Commons website. A reflection of its shortcomings might be that I doubt if the majority of MPs and Peers even knows of its existence. This may be because its field of specialism – supply and estimates – is recondite. In any case, it produces some good, and much necessary, work. Few economies of scale or scope would be available were its field of

⁴⁰ The long term problems with staffing of and scope for improvement of the staffing of Select Committees in the Commons is a big subject of itself, involving complex issues about pay grades; the relationship between clerks and the permanent cadre of Committee specialists; the ad-hoc advisers appointed on a daily rate to deal with specific enquiries; the scope for secondments and so on. The Commons struggles to recruit and retain high-quality Committee specialists largely because of an institutional reluctance to create a career path that would enable even the most senior and experienced among them to significantly "outrank" the Committee clerks. Creating such a career path would require a cultural shift: in particular, a recognition that, for effective Select Committee scrutiny, analytical and subject matter expertise is as important as procedural knowledge, perhaps more so.

scrutiny increased to include the Bank or wider parts of the regulated sector.

- vii. The creation of a subcommittee of the TSC. The main shortcoming with this proposal is that under current Commons' standing orders, subcommittees have no life independent of the main Committee. In other words, a subcommittee's recommendations need to be cleared by the main Committee, who ultimately carry the can for them, led by an already overworked Chairman of the main Committee. A reform to enable a much more independent US style of subcommittee to develop at Westminster might have merit. But it would (despite appearances) be a major change and touch on the interests – to put it mildly – of the current main Committees.
- viii. A joint subcommittee of the Lords and Commons, possibly of the TSC and the EAC. This could possibly have some merit, but it would suffer from the objections similar to those already set out in (v) and in (vii). In any case, placing parliamentarians, however well respected, in different configurations, does not, on its own, adequately address the underlying problem: namely, the need for access to high-quality full time expertise supported by institutional memory.
- ix. Reliance on the creation of direct and robust reporting lines by the Independent Evaluation Office or the Court, or both, to, say, the TSC or the EAC, or both. Were this achievable in a content laden form, this proposal would probably be the best substitute for the new Parliamentary staff body proposed. It might have considerable merit, but only if Parliament was empowered, in certain circumstances, to direct the work of these bodies. I can't imagine the Bank acquiescing. They would probably find an ally in the Treasury, too. Window dressing would be worse than doing nothing.

Precedents for a Parliamentary Regulatory Scrutiny Body

There are plenty. None are a perfect fit;⁴¹ several are relevant: it might be of interest to the Committee that the proposal set out above, and, even more so, an explanation of the problems requiring attention, bears a similarity to the analysis of and proposals of the Select Committee on the Constitution's sixth report of the 2003-4 session, chapter 10. In a nutshell, this proposed that a dedicated Parliamentary Committee should be created to scrutinise the regulatory state, itself an idea partly derived from the legacy of the, by then, defunct Select Committee on the Nationalised Industries.⁴² The 2004 Lords

⁴¹ See note 29 above regarding the Parliamentary Commission on Banking Standards.

⁴² According to p220 of this report ([link](#)), the Nationalised Industries Committee was lost in the

Committee appeared to be sympathetic to evidence proposing 'a regulatory committee something like the PAC – something with real teeth that can carry out investigations...'.⁴³ It was accepted by the Committee that the creation of such a body may 'entail the recruitment of a small number of specialists in the field. Providing such resources will add, though not dramatically, to the cost of Parliament, but the cost will be modest in relation to the likely returns.' I agree.

1979 reforms to select committees: "[T]he main post-1979 'loss' in terms of meeting numbers came with the abolition of the Nationalised Industries Committee, the Race Relations and Immigration Committee, the Science and Technology Committee and the Overseas Development Committee." According to *British Political Facts 1900-1985* by David Butler, the Select Committee on Nationalised Industries ceased to exist in 1979.

⁴³ Ann Robinson in oral evidence. Q 487 and Q 492.

Main conclusions

In a nutshell, these are:

- i. There is a growing, and in some respects serious, problem of accountability and legitimacy of the decisions taken by a number of regulators. The Bank has been 'a leader' in responding to the problem. It needs to remain so. Its decisions are more salient and important than those of other regulators. The Bank's new regulatory powers, conferred on it as a consequence of Brexit, are likely to increase the challenge for parliamentary scrutiny, as will powers similarly conferred on other regulators. This challenge, independent of any purported threat to independence, may well require a bolstering of scrutiny powers.
- ii. Don't blame the Bank. Parliament needs to sort this out.
- iii. Don't look at Bank accountability issues and wider legitimacy problems in a silo but in the context of the regulated sector as a whole.
- iv. Don't look at the problem of scrutiny, legitimacy, accountability and the securing of consent as something that might fade away with the Covid crisis, or further distance from the banking crisis. Parliament needs to adapt to what amounts to a long-term transformation of the demands that the public are increasingly making with respect to the regulated sector.⁴⁴
- v. Don't underestimate the need for Parliament to adapt: the transformation of public attitudes taking place and their increasing scepticism of the degree to which the regulated sector is really working in their interests may well spill over into dissatisfaction with politicians, Parliament, and by implication, the latter's work to scrutinise these bodies on their behalf.
- vi. Parliament has been struggling to adapt to the growth of the quango state for a long while. The limits of its scrutiny tools were exposed at the time of the financial crash. This was partly shored up by stop gap measures and the fortuitous coincidence of enhanced legitimacy afforded by election of Committee Chairmen. Over a decade on, further adaptation is now required. The body that I propose can supply much of it.

Overall the wider public are unaware of, and even Parliament itself underestimates, the extraordinary success of Select Committees in producing so many bricks with so little straw. But the time has come, it is probably overdue, to provide them with some more, hence the foregoing proposal.

10 June 2021

⁴⁴ Whether energy prices, struggles with Openreach, 'rip offs' in financial sector products, housing costs and Bank decisions, or whatever.