



# **The Poodle Bites Back**

**Select Committees and the revival of Parliament**

**ANDREW TYRIE MP**

**With a foreword by Alistair Darling**

## **THE AUTHOR**

Andrew Tyrie MP has been Conservative Member of Parliament for Chichester since 1997. He was Chair of the Treasury Select Committee, Chair of the Parliamentary Commission on Banking Standards and the founder and Chair of the All Party Parliamentary Group on Extraordinary Rendition in the 2010-15 Parliament. This publication reflects his personal views.

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## THE POODLE BITES BACK

In 1908, Henry Chapman MP claimed that the House of Lords was the “watchdog of the constitution”, to which Lloyd George replied, “You mean it is Mr Balfour’s poodle.”<sup>1</sup>

By the late 1990s, decades of executive dominance had left the House of Commons as the poodle of the then Prime Minister – Mr Blair’s poodle.<sup>2</sup>

However, the Commons has been reviving in recent years. It is more effective and assertive, especially through the work of Select Committees. The Poodle is biting back.

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<sup>1</sup> Quoted in *Phrase and Fable*, Cassell, 1997.

<sup>2</sup> See Andrew Tyrie, *Mr. Blair’s Poodle: An agenda for reviving the House of Commons*, Centre for Policy Studies, 2000; and Andrew Tyrie, *Mr. Blair’s Poodle goes to war*, Centre for Policy Studies, 2004.

## SUMMARY

- Nearly two decades ago, Parliament looked as if it would become the Prime Minister's poodle. Instead, Parliamentary scrutiny is reviving, with the Select Committee corridor – galvanised by the introduction of elections in 2010 – playing a leading role.
- The Government and the public sector are now much more often forced to explain their actions, in detail and in public. Powerful quangos and individuals can now expect to be challenged, and their decisions scrutinised.
- For the first time in a century Parliament has had the confidence to entrust itself with the task of investigating a major public scandal through a joint committee of both Houses, the Parliamentary Commission on Banking Standards (PCBS).
- Ground that has been taken can be lost again. ‘Government by explanation’ can and should be further entrenched in the new Parliament. Select Committees should not rest on their successes, but continue to innovate, bolster their investigative powers and follow up their recommendations vigorously.

- Drawing on the experience of the Treasury Committee (TSC), and the PCBS, the Liaison Committee and other Committees, a number of further measures and tools should be considered to bolster the effectiveness of Select Committees. These include:
  - a strengthening of Select Committees' role in approval and scrutiny of major public appointments, including vetoes on appointment and dismissal for some posts, building on the precedent established by the Treasury Committee with respect to the Office of Budget Responsibility (OBR);
  - the appointment by Select Committees of specialist advisors to conduct independent investigations into quangos, where necessary embedding them within the institutions, with powers to report to the relevant Committee – building on the experience of the TSC with respect to the failures of RBS and HBOS;
  - consideration by the Liaison Committee of the scope for more frequent hearings, and for the introduction of half an hour or more of topical questioning of the Prime Minister on any subject, following their regular hearings on subjects notified in advance;
  - scope for the adoption of a proportionate, useable sanction to ensure that witnesses comply with Committees' orders for evidence and papers;
  - the further use by Parliament, where appropriate, of Parliamentary Commissions of Inquiry into issues of major public concern, building on the precedent of the PCBS.

## **ACKNOWLEDGEMENTS**

Among other things, this paper records the work of the Treasury Select Committee and Parliamentary Commission on Banking Standards in the last Parliament; I am extremely fortunate to have had the opportunity to work with such dedicated and constructive colleagues. The memberships of each body are listed in Appendix 1.

A great deal is owed to Chris Stanton, not only for helping me assemble the material for this paper, but also for the tremendous practical and administrative support which he has provided to the Treasury Committee over the past four years. In the first year of the Parliament, Eve Samson also provided superb support and a number of ideas for the development of the Committee. The whole Treasury Committee support team did a great job. I would also like to thank Colin Lee, Adam Mellows-Facer and Lydia Menzies for their outstanding work for the Banking Commission.

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A number of outstanding parliamentary clerks, including the former Clerk of the House of Commons, Robert Rogers, and his successor David Natzler have supplied many of the ideas set out here. In an earlier publication, I said that the clerks 'have taught me much of what I know about Parliament and discovered a good deal of what I don't.' I still feel that way.

## FOREWORD

Three and a half decades on, the House of Commons Select Committees are now an established part of our largely unwritten constitution. They have proved to be effective in holding ministers and increasingly non-politicians to account.

In a world where too many people believe that the political system does not work, the Select Committees are proof positive that it can.

I write this with all the authority of one who never served on a Select Committee in my 28 year tenure as an MP. But in my 13 years as a cabinet minister, when faced with a critical decision, I would often ask myself 'what would the Select Committee make of this?'

A good minister should be able to survive an hour's tough questioning on the floor of the House of Commons. You need to know your stuff. But of course each questioner only gets one question and it is difficult to press home a point.

An appearance on the Today programme is certainly demanding and a bad performance can bring you down. But time your appearance right and you know that your interrogator has to stop in time for the weather forecast or Thought for the Day.

By contrast, an appearance before a Select Committee is very different. They can keep you there for two hours or even longer. The good Committee member should know how to ask a forensic series of questions and keep going until you answer.

Why have these Committees worked? There are a number of reasons. First and foremost they are usually bi-partisan and unafraid to criticise the Government of the day where it's justified. The fact that MPs in the same party as the Government are prepared to do that adds to the strength of the Committee's opinion.

The partisan approach in the US system undermines the effectiveness of their work. And having the courage to question the Government of the day is something the Scottish parliamentary system might learn from.

It is not just the Government and its agencies that are subject to rigorous cross-examination. In the last Parliament the Treasury Committee not only shone a bright light on the behaviour of some bankers but was also instrumental in helping to frame new legislation designed to strengthen the regulatory system.

The Public Accounts Committee did more than most to draw attention to those multi-national companies who made a lot of money in the UK but didn't seem to feel it necessary to pay tax on the profit.

The Home Affairs Committee did a good job in pointing up the failings in security at the Olympic Games by a private company.

Andrew Tyrie, who proved to be an extremely effective Chair of the Treasury Committee, has produced a paper which draws on experience of Select Committees and makes powerful suggestions for strengthening them.

The new House of Commons needs to build on what has been achieved. Governments need to realise that effective scrutiny makes for better and stronger government. Governments also need to remember that giving backbench MPs on their own side, as well as on the opposition benches, the opportunity to hold the executive to account must be part of the democratic process.

Strengthened Select Committees might just show the world that politics do matter and that politicians can change things for the better.

***Rt Hon Alistair Darling***

***June 2015***



# 1. INTRODUCTION

The machinery of parliamentary<sup>3</sup> scrutiny is being transformed. The ‘anti-politics’ mood in the country is strong. But the House of Commons is, and with some success, addressing this in the only way it can: by reforming itself into a more effective institution.

Both the Chamber of the House and Select Committees have improved. The Speaker has his critics, but his determination to enable more Members to make their points in debates and to ask questions, and to increase the relevance of the Commons by requiring ministers to come to the House to answer Urgent Questions on topical matters, have increased the relevance of the Chamber and improved (though only a little) the public’s perception of it. Prime Minister’s Questions may remain intractable to reform – locked in partisanship<sup>4</sup> – but much of

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<sup>3</sup> This is not a paper about the House of Lords. ‘Parliament’ can be taken to refer to the House of Commons unless stated otherwise. However, the Parliamentary Commission on Banking Standards, which plays a significant role in this paper, was a joint committee of both Houses.

<sup>4</sup> The electorate appear both to abhor (judged by polling data) and to want to see (judged by viewing figures) PMQs.

the rest of the working of the House of Commons is changing quite fast.

Most transformed of all has been the Select Committee corridor, galvanised by the introduction of elections by secret ballot to both chairmanships and Committee memberships in 2010. This paper examines that transformation and makes suggestions for further improvement, illustrated largely by reference to two Committees: the Treasury Committee and the Parliamentary Commission on Banking Standards.

Select Committees gained a lot of ground in the 2010-15 parliament. The cross-party proposals adopted by Parliament before the 2010 election, and implemented by the incoming Coalition Government, made them more effective and assertive in holding the executive to account.<sup>5</sup> The Treasury Select Committee played its part in forcing the executive to explain its actions in detail, whether it was the Chancellor of the Exchequer or some of the most powerful quangos in the land, such as the Bank of England or the Financial Conduct Authority. Many departmental Select Committees are also bolstering scrutiny of other powerful figures – whether individuals, multinational corporations or banks. In the 2010-15 Parliament, these Committees were often to be found posing the questions that the public wanted asked and answered.

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<sup>5</sup> Like the 1979 Thatcher-Pym-St John Stevas reforms which, for the first time, aligned Select Committees to shadow the major government departments – and whatever the intentions of the respective administrations – a seemingly relatively minor change is having far-reaching consequences. Nonetheless, the 1979 and the 2010 administrations deserve considerable credit for pushing the respective changes through.

Ground that has been taken can be lost again. Select Committees cannot afford to stand still. In the new Parliament, they will need to entrench the gains made and consider further innovative ways of working. Parliament will also need to resist any attempts to erode Committees' greater effectiveness or to water down the greater independence that has come with election. This paper sets out both the risks to what has been achieved and proposals for further strengthening of Parliament and the Select Committees.

## 2. GOVERNMENT BY EXPLANATION

Governments expect, and are expected, to be able to govern. Britain is a representative democracy. If Parliament is to delegate this power to Government, in return Parliament should be able to require explanation of the Government's actions – just as Members of Parliament should explain their actions to the voters.<sup>6</sup> In Arthur Balfour's words, 'democracy is government by explanation'.<sup>7</sup>

Over the last decade or so, Parliament has made much progress in requiring successive Governments to explain themselves, and reversing to some extent the trend towards ever greater executive dominance of preceding decades. This is reflected in an erosion of the executive's prerogative over the power to initiate hostilities, more rigorous parliamentary scrutiny of the Prime Minister, and greater assertiveness of backbenchers of all parties.

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<sup>6</sup> Kaare Strøm, Wolfgang C. Müller, and Torbjörn Bergman (eds), *Delegation and Accountability in Parliamentary Democracies*, Oxford University Press, 2003.

<sup>7</sup> The phrase is widely attributed to Balfour, though he was scarcely a leading exponent of this approach himself.

The commencement of armed hostilities, and the deployment of armed forces abroad, were both prerogative powers of government, delegated to it not by Parliament but by the Crown. No parliamentary approval, or even consultation, was required or expected. In addition, successive Governments had argued that it would be impractical to permit Parliament to play a role. Reasons given by Ministers included the need for speed and secrecy, diplomatic sensitivity, and the need to avoid undermining the UK's perceived reliability as an ally.

Parliament challenged these arguments. Executive dominance has now been qualified to some extent. In 2003 the Blair Government initially resisted calls for a vote on the deployment of troops to Iraq. However, following pressure from MPs, and from the public, it eventually permitted several votes. Those votes were, of course, won by the Government. But the Government had been forced publicly to explain its case for military involvement to Parliament and to seek its approval. This created a precedent.

The precedent would now appear to be well established for prior parliamentary approval where possible. Successive Governments have acknowledged the convention that the commitment of troops overseas should require a debate of the Commons and a voteable motion. The precedent was further entrenched in 2013. The Coalition Government did not proceed after failing to gain the support of the Commons for military action in Syria.<sup>8</sup> Prudently, Governments retain a good deal of flexibility. The Government

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<sup>8</sup> The Government's motion was defeated by 272 to 285. There were 650 MPs. The Speaker and the three deputies do not vote, and five Sinn Féin Members had not taken their seats. The two tellers on each side are also not included in the totals. This suggests that 80 Members abstained on that vote. Most of those will have been 'active' abstentions. I was one of them.

reserves the right not to hold a debate where there is ‘an emergency and such action would not be appropriate’.<sup>9</sup> In other words, the convention is widely accepted but, in the interests of flexibility, its terms have not been fully defined. This sits easily with Westminster constitutional practice and appears so far to be working well, even if it fails to satisfy those who demanded a statutory requirement entrenched in a War Powers Act.

Parliament has also established the convention that the Prime Minister should be held directly to account through regular appearances before the Liaison Committee. This is a step forward. Power should be scrutinised where it really lies. In recent decades, we have been living, not in the age of *primus inter pares*, but in an increasingly presidential age, one in which Prime Ministers seek to legitimise the actions of their Governments – often No. 10’s preferences – by mobilising national media directly, bypassing both Parliament and their own party.

The more frequent these appearances, the more rigorous the scrutiny is likely to become. In 2001, the Public Administration Committee made the modest recommendation of an annual meeting between the Prime Minister and the Liaison Committee (which is comprised of the Chairs of all select Committees).<sup>10</sup> Prime Ministers had long resisted attempts to secure their attendance at Select Committee hearings, and requests from the Liaison Committee, for him to appear annually had been

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<sup>9</sup> Cabinet Office, *The Cabinet Manual*, (October 2011), para. 5.38.

<sup>10</sup> Public Administration Committee, *The Ministerial Code: Improving the Rule Book*, Third Report of Session, 2000-01, 14 February 2001, HC 235, para 21.

rebuffed.<sup>11</sup> However, in April 2002, Tony Blair suddenly reversed this. He offered to appear before the Committee twice a year,<sup>12</sup> no doubt mindful of the likelihood that his presidential style could reap benefits in such a forum. So it proved. Another precedent was established for scrutiny.

Prime Ministerial hearings have now been increased to three times a year. That is still too infrequent; there is a case for holding the hearings monthly, with no Prime Minister's Question Time during the week of that meeting. The hearings are also, on occasion, justifiably criticised for their ineffectiveness, excessively deferential tone and much else. Still, they are a start, and quite a good one. Even if the sessions have not, on the whole, been as penetrative as many would like, there is much to build on.

There were further reforms in the course of the 2010-15 Parliament, with each meeting focusing on two topics and restricting the number of members present to the size of a normal Select Committee rather than the full complement of thirty or more Liaison Committee members.<sup>13</sup> In the new Parliament there is merit in more frequent hearings, and the Liaison Committee should also consider the introduction of half an hour or more of topical questions on any subject, to follow the regular hearing on specified subjects notified in advance. The benefits of such an

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<sup>11</sup> Liaison Committee, *Evidence from the Prime Minister*, 1<sup>st</sup> Special Report of Session 2001-02, HC 984, paras 1 to 2. The more radical suggestion for monthly Prime Ministerial meetings before a Select Committee (made in Andrew Tyrie, *Mr Blair's Poodle*, Centre for Policy Studies, 2000, p. 39-42) initially attracted little support.

<sup>12</sup> Official Report, HC Deb 26 April 2002, col 538w.

<sup>13</sup> Liaison Committee, *Legacy Report*, First Report of Session 2014-15, 24 March 2015, HC954, paragraph 6.

experiment would need to be weighed against whether it detracted from Prime Minister's Questions.

Prime Ministers may not look forward to the half-hour shoot-out of PMQs. They are also sometimes a valuable source of scrutiny. But a Prime Minister is more likely to be forced to explain his or her Government's policy in detail before the Liaison Committee than in Wednesday's 'High Noon'.

The House benefited from a particularly high quality intake of new Members at the 2010 election. They and the rest of the 2010-15 House were far from party lapdogs. MPs of both parties in the Coalition demonstrated a good deal of independence in casting their votes. The last Parliament was probably the most rebellious since 1945.<sup>14</sup> This reflected, not just the opportunities created by the parliamentary arithmetic, but also a trend towards more backbench assertiveness that began in the 1970s. Parliament over the past five years, as in the Blair years, was a far cry from the decades after 1945, when backbenchers placidly enjoyed their tipples through the night and then dutifully trooped through the lobbies at the behest of their respective whips.<sup>15</sup>

When Governments can no longer rely on the automatic support of their own backbenches, they are forced to pay more attention not just to their backbenchers, but also to Parliament as an

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<sup>14</sup> Philip Cowley and Mark Stuart, *The Four Year Itch*, University of Nottingham, 2014, p. 3.

<sup>15</sup> 'From 1945 to 1970 no government was defeated as a result of dissenting votes by its own backbenchers.' Tyrie, *Mr Blair's Poodle*, p. 22, citing Philip Norton, *Dissension in the House of Commons*, Macmillan, 1975. An upsurge in rebelliousness began in the 1970-74 parliament. Philip Norton, *Conservative Dissidents: Dissent within the Parliamentary Conservative Party 1970-74*, Temple Smith, 1978.

institution. I lost count of the number of occasions that I heard whips – mainly Government whips – mumbling ‘what’s wrong with the 2010 intake?’ in the first year of the 2010-15 Parliament.

The whips’ affliction may be part of Parliament’s cure: some of the rebelliousness has political grass-roots. It reflects an appreciation by many MPs that independence of mind these days may be noticed and welcomed by their local electorates. It also reflects other developments. Deference to the party hierarchy, as to so many institutions, is in decline. Independence of mind is also more often rewarded by balanced or positive national media coverage than, as was all too often the case, ritually dismissed as the actions of a maverick or a ‘wrecker’.

This leaves major parties with a massive headache. The electorate penalises divided parties but it may reward backbench independence. Many, perhaps a majority, of MPs will continue to seek preferment and a position on the Government benches by the well-trodden path of unswerving loyalty and by attempting to catch the attention of the whips. But some backbenchers – an increasing number – may try, from time to time, to make a contribution to parliamentary life without recourse to Prime Ministerial or whips’ patronage. As a result, the parties’ carrots and sticks are both less effective, certainly in the Conservative Party. The implications of all of this for parties, Parliament and political discourse are a huge subject – inadequately (as far as I am aware) researched and understood – and not the subject of this paper. Nevertheless, it is worth bearing in mind that changes in the complex triangular relationship between parties, the electorate and Parliament lie behind much of Parliament’s recent recovery.

The depressing fact remains that all these positive developments have not significantly improved Parliament’s standing with the

public.<sup>16</sup> Trust in Parliament has scarcely recovered since the expenses scandal. Neither expenses nor the collapse of trust can be addressed by gimmickry; nor, probably, by the reflex response to adverse media comment of the establishment of an extra-parliamentary watchdog.<sup>17</sup> These may create as many problems as they solve – but that, too, is beyond the scope of this paper.

Parliament's best hope is that, by getting on with its institutional and constitutional job – by better fulfilling the crucial functions of ensuring public explanation for executive action – it can provide something which the electorate comes to value. Select Committees can play a crucial role in securing it.

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<sup>16</sup> The Hansard Society's most recent *Audit of Political Engagement* found that, 'where MPs are concerned, the public are also sceptical about their conduct and accountability... Only 21 per cent think that politicians are behaving in a more professional way than they were a few years ago; two-thirds (67 per cent) of the public think that politicians are out of touch and don't understand the daily lives of people like themselves; and only 45 per cent of the public agree that politicians go into politics because they want to make a positive difference in their community.' Hansard Society, *Audit of Political Engagement 11: The 2014 Report*, p. 29.

<sup>17</sup> Alongside the relatively venerable Committee on Standards in Public Life (established 1994) and the Parliamentary Commissioner for Standards (1995), the expenses scandal saw the creation of the Independent Parliamentary Standards Authority (IPSA, 2009).

### **3. SELECT COMMITTEES**

Select Committees have few of the formal powers usually associated with powerful parliamentary committees in many countries. In particular, they cannot amend or block legislation. Nor can they veto departmental budgets. Their main power, the enforceability of which is rarely tested, is to send for ‘persons, papers and records’: requiring the appearance of people before them or the presentation of documents. Nonetheless, Committees are increasingly Parliament’s most effective means of forcing Ministers, and the rest of the executive, to explain their actions and decisions.

Committees are also now more assertive in their cross-examination of those in positions of responsibility and power from outside government; Rupert Murdoch, Bob Diamond and the Rev. Paul Flowers spring to mind. In scrutinising both the executive and others beyond, Committee hearings – by providing the opportunity to ask some of the questions that the wider public want asked – are increasingly reported and are attracting the interest of the electorate. Their discursive style, and the opportunities provided by detailed cross-examination, appears to be in step with how an increasing proportion of the electorate prefers to take its politics.

Much power and responsibility is now delegated to quangos, at arm's length from direct ministerial, and often any others', control. Quangos are in practice often answerable to nobody, unless a Select Committee bestirs itself, or an alert backbencher asks pertinent questions in the Chamber.

The independence – and effectiveness in challenging the Government – of Select Committees has been strengthened by a major recent reform in the 2010-15 Parliament. Until 2010, appointments to Select Committees were in the hands of the whips. Appointment was, and was seen to be a tool for rewarding loyalty and punishing disloyalty. Chairmanships, in particular, were an important part of whips' patronage.<sup>18</sup> Since 2010, the whips have lost this patronage for departmental Select Committees. Their Chairs are now elected by the whole House and require cross-party support as a result. Committee members are elected by their own parliamentary party. Both Chairs and members now know that they are accountable to parliamentary colleagues, albeit from different 'constituencies'.

Election to Select Committees had been proposed as a counterweight to executive dominance of Parliament in the early

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<sup>18</sup> Parliament did resist one notorious attempt to use this power. In 2001, Labour whips tried to remove Gwyneth Dunwoody from the chair of the Transport Committee, which had frequently criticised her own party's government; they also sought to remove Donald Anderson as Chairman of the Foreign Affairs Committee. There was a backlash and both were relieved. But this was the exception that proved the rule. Under the old system, Standing Orders required Committees to elect their Chairs. However, the influence of the whips was strong – it was very rare for them to fail to secure the election of their preferred candidate.

years of the 1997-2010 Labour administrations.<sup>19</sup> In 2002, Robin Cook as Leader of the House championed proposals to establish an independent selection panel to choose the members of Select Committees; however, this was defeated by the scarcely disguised co-operation of Government and Opposition whips. Some reforms did take place. Committee resources were enhanced. The Prime Minister made biannual appearances before the Liaison Committee. Gordon Brown instituted pre-appointment hearings for a range of public appointments. However, election was embraced only in the aftermath of the expenses scandal, partly as a consequence of the creation of the ad hoc Select Committee on the Reform of the House of Commons (the Wright Committee).<sup>20</sup> Its proposals were adopted by Parliament on a cross-party basis before the 2010 election, and implemented by the Coalition Government after it.

Election appears to have encouraged many of those with specialist expertise and experience to volunteer to serve on Select Committees. For example, the Treasury Committee in the last Parliament included members with first-hand experience of the financial services industry and the Inland Revenue, a former Minister of State in the Department of Business, Innovation and Skills, and several others with extensive board level commercial

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<sup>19</sup> Andrew Tyrie, *Mr. Blair's Poodle*, CPS, 2000 and *Mr. Blair's Poodle goes to war*, CPS, 2004; the idea was also championed in 2007 by Kenneth Clarke QC MP and the Conservative Party's Democracy Task Force.

<sup>20</sup> This met between July 2009 and March 2010. A curiosity of its composition was that its members were elected by their respective party cohorts but its Chairman was appointed by a Resolution on the recommendation of the executive. Tony Wright deserves much credit, not just for having the idea of 'the Wright Committee' but for succeeding in obtaining agreement for elections from his Committee colleagues.

experience. This increased the Committee's effectiveness, both in its cross-examination of witnesses and in its reports.

Many Select Committees largely avoided partisanship.<sup>21</sup> On the whole, Committees are much more likely to be noticed when their recommendations are demonstrably those of a cross-party group.

Partisanship is the life blood of politics. Democracy needs parties. They are the primary means by which the electorate can be offered meaningful choices. There is plenty of partisanship in Westminster and in wider political discourse in the UK, and much of it is not just valuable but essential. Nonetheless, Parliament also needs tools for reflecting the electorate's apparently increasing appetite for a less adversarial form of discourse and for remedies to problems that can attract a measure of support across parties. Select Committees can and do play a role in satisfying that appetite.

Although their wings have been clipped, the whips are still active when it comes to Select Committee appointments. This should not come as a surprise; it reflects the fact that the appointments matter to the parties, and probably more than before. The parties have a legitimate interest in the outcome. Nor is it necessarily concerning. With a secret ballot in place MPs can decide for themselves whether to take any advice offered before voting. Nonetheless, once established Committees need to be aware of the persuasive power of patronage – for example, promises to members from both sides of the House in return for 'good behaviour': in the case of the Government, keeping the Committee off its lawn; and in the case of the opposition, bashing the Government. Both need to be resisted.

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<sup>21</sup> The Treasury Committee produced all its 65 reports by unanimity.

The shift to election, both of Chairs and of members of Select Committees, is widely held to have been a success. It has accelerated the strengthening of their role and standing. The 2010-15 Parliament saw many of the Committees pursue high-profile inquiries that had significant external impact, such as the examination by the Home Affairs Select Committee (chaired by Keith Vaz) of the G4S contract for security for the Olympics. Committees were also able to have a decisive impact in ensuring a rethink of Government proposals, as the Education Select Committee did over plans to replace GCSEs with English Baccalaureate certificates.

The Health Select Committee, chaired by Stephen Dorrell, was a significant and authoritative player in the tortuous parliamentary passage of the 2012 Health and Social Care Act. Its reports provided a challenge to the Government's initial plans, and with its April 2011 analysis 'the idea that GPs alone would run commissioning to their own design had effectively died.'<sup>22</sup>

In its legacy report at the end of the 2010-15 parliament, the Liaison Committee could point to a broad base of evidence, drawing on the activities of almost every Select Committee, of the impact of the Committees on public debate and on legislation.<sup>23</sup>

Another consequence of election to Select Committee chairmanships has been that fellow MPs who do not sit on the

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<sup>22</sup> Nicholas Timmins, *Never Again? The Inside Story of the Health and Social Care Act 2012: A study in coalition government and policy making*, The King's Fund and the Institute for Government, 2012, p. 99. Timmins' account (pp. 73-74, 84-85, 98-99) makes clear both the significance of Dorrell's role and that of Dr Sarah Wollaston, his eventual successor in chairing the Committee.

<sup>23</sup> Liaison Committee, *Legacy Report*, especially paragraph 24.

Committee have seen suggestions for Committee investigations taken up. Elections have made Select Committees more responsive to the demands of colleagues across the House.<sup>24</sup>

Media interest in the work of Select Committees has increased significantly. Four Committees – Home Affairs; Public Accounts; Treasury; and Culture, Media and Sport – were the most frequently reported and showed a sharp increase in coverage between 2008 and 2012, while another seven showed significant, often still bigger percentage increases.<sup>25</sup>

The next two Chapters attempt to draw some initial conclusions about improvements to parliamentary scrutiny in the Committee corridor. Each Committee will have its own story to tell. Inevitably, these Chapters draw heavily on the experience of the Treasury Committee and the PCBS.

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<sup>24</sup> For the Treasury Committee in the 2010-15 Parliament, topics raised in this way included interest rate swap mis-selling, Royal Bank of Scotland's restructuring unit GRG, the FCA's Retail Distribution Review (RDR), HMRC's customer service performance and the future of cheques. None of these were recondite issues. The first two, for example, involved the maltreatment of small, often very small, businesses by large banks. The respective investigations exposed some shocking malpractice. In addition, millions of people will now still have cheque books because the Committee intervened to stop their abolition. Of course, many of these issues may well have been investigated anyway in response to suggestions by Committee members; but the interest of parliamentary colleagues undoubtedly played a part.

<sup>25</sup> Patrick Dunleavy and Dominic Muir, *Parliament bounces back – how Select Committees have become a power in the land*, Democratic Audit Blog, 18 July 2013. The seven Committees with a sharp increase in press coverage were Transport; Public Administration; Energy and Climate Change; International Development; Scottish Affairs; Education; and Business, Innovation and Skills.

## 4. SCRUTINISING THE QUANGOCRACY

Committees have customarily focused on scrutiny of Government policy. But responsibility for many important areas of policy, and particularly the delivery of services, now lies in the hands of non-departmental public bodies. It is in the nature of modern politics and government that such bodies will proliferate. Governments often see benefits in offloading responsibilities. Sometimes there is a case for it, for example by distancing a Government from decisions, at least in the short run. The argument for a measure of central bank independence in monetary policy is usually put in these terms.

Once created, it is also in the nature of quangos first to preserve themselves and then to seek to expand their powers and budgets. Select Committees can and should provide this burgeoning quango state with systematic oversight.<sup>26</sup> They should also consider whether parts of the quango state ought to be cut back.

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<sup>26</sup> The Institute for Government estimates that there are some 600 Arm's Length Bodies (ALBs – an alternative term for Quangos) responsible for tens of billions of pounds of public money and significant regulatory functions. Institute for Government, *Making quangos an asset not a liability*, March 2015.

Quangos are often created, or their remit expanded, to address abuses by the private sector, or shortcomings in its behaviour. But quangos are not necessarily disinterested 'guardians' of the public interest. They can be just as vulnerable to self-interest and myopia as commercial firms. These forces can be more pernicious in quangos – the profit motive and, in public companies, market discipline, can at least give businesses a clear objective and set of expectations.

With quangos the 'public interest' can often be invoked for self-interested objectives. The scrutiny of Select Committees may be all that there is to protect the wider public interest from poor decisions or low standards of quangos' behaviour.

To do the quango scrutiny job, the Treasury Committee began to develop a number of new tools. In the 2010-15 Parliament, the Committee:

- 1) appointed specialist advisers, with full access to all persons and papers, to ensure that regulators' reviews are a fair and balanced account of the evidence;
- 2) ensured that external reviews commissioned by the regulators into their own conduct are truly independent, and are seen to be so;
- 3) secured fundamental reform of the Bank of England's system of governance and accountability to Parliament;
- 4) greatly increased scrutiny of the private sector, where the actions of firms have direct bearing on the public interest; and
- 5) demanded and secured statutory power for the Treasury Committee that safeguards the independence of the new Office for Budget Responsibility (OBR).

Taken together, these have the capacity to transform the way Parliament, from the Select Committee corridor, can on behalf of the electorate force the quango state to explain itself. The techniques certainly seem to be having some effect on economic and financial matters. Each is examined in turn.

#### **4.1 Regulatory reviews**

When the then Financial Services Authority (FSA)<sup>27</sup> concluded its investigation into the collapse of the RBS in 2010, the public and Parliament were initially expected by the regulator to be satisfied with a one page press release. On the basis of this threadbare communication, the public was assured that there was no need to draw any conclusions about regulatory failure during the crisis. There could be no clearer demonstration of the regulator's lack of any sense of accountability to Parliament or to the public.

This 'nil return' by the FSA should not have been a surprise. The regulator had been investigating itself. Its main conclusion – and the conclusion of the one page press release – was that no further regulatory reform or action was required. When asked by the Committee for an explanation of its apparent self-exoneration, the FSA excused itself on the grounds that its inquiry was for 'internal purposes', and that some of the evidence acquired had been passed on in confidence.

The Treasury Committee viewed these explanations as entirely inadequate. It concluded that Parliament and the public required a full explanation for the collapse of this major financial institution, which had required the injection of nearly £46 billion of public

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<sup>27</sup> In 2013 the responsibilities of the FSA passed to the new Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), which were created by the Financial Services Act 2012.

money to keep it afloat. Those responsible, in the bank itself or within the regulators, needed to be identified, and their explanations examined.

After pressure from the Treasury Committee, the FSA conceded that it should, after all, publish a full report on the failure of RBS. However, any half plausible investigation would need to cover not only events at RBS but also the adequacy of the FSA's own regulatory oversight. The latter, in particular, would mean that the quango was marking its own work.

In response, the Treasury Committee adopted a novel approach. It appointed its own independent reviewers – Committee specialist advisers – to ensure that the FSA's report was a fair and balanced reflection of all the available evidence. It asked for the FSA's full co-operation in their work.

The Committee went further. It set the terms of reference for the review, appointing two high quality Committee specialist advisers – one a former Chair of Morgan Stanley International, the other the Chair of the Financial Reporting Review Council – to conduct it. By appointing high quality investigative advisers, the Committee sought to give the public confidence that they would, where necessary, challenge the FSA. Furthermore, at the Committee's insistence, its advisers were based inside the FSA. The Committee also required that they be given access to all the relevant papers and staff. Taken together, these were major extensions of parliamentary scrutiny powers.

The Committee's advisers examined drafts of the report and engaged closely with the FSA review teams. They knew that, under the Terms of Reference, they could turn to the Committee if they met any obstructions. The FSA knew that, too. Perhaps partly as a result the FSA co-operated fully with them.

At the time of the FSA's publication of this 450 page review, the Committee's advisers sent the Committee an independent report of what they had found, and the extent to which the draft presented to them had, in the light of their findings, required amendments to satisfy them. The Committee held a hearing to examine the advisers' conclusions and published their report.

The advisers' work gave the Committee and the public greater confidence that the FSA's full report was accurate and that it had not pulled its punches. The resulting document described in considerable detail the failures not just of RBS itself but also of the FSA.

Among other things, the report painted a picture of a regulator that was unbalanced and insufficiently focused on prudential issues in the run up to the crisis; in short, not on top of the job. Some of its conclusions are still informing the reconstruction of the regulatory framework for financial services that began more than five years ago.

The Treasury Committee made clear that it would require a similarly thorough report to be prepared in the case of HBOS. This bank's failure had been the subject of a substantial piece of work by the Parliamentary Commission on Banking Standards<sup>28</sup> in 2013. This set out a number of the questions that the regulators' report (conducted by the successor bodies of the FSA, the Financial Conduct Authority and the Prudential Regulation Authority) would have to answer.

As a result, in March 2013 the Committee announced the appointment, for the second time, of two specialist advisers to

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<sup>28</sup> For further information about the PCBS, see section 4 below.

examine the regulators' investigation into the failure of a bank – in this case HBOS.

At the time of writing, it is already clear that their appointment has radically altered the way the investigation is being conducted. A direct outcome of the work of the Treasury Committee's advisers has been that, on their advice, the regulators have commissioned a wholly independent review by a QC specifically of the enforcement decisions taken by the regulator.

One apparently extraordinary aspect of the regulators' actions with respect to the HBOS failure – highlighted by the PCBS's report<sup>29</sup> – was that the FSA took action against only one individual (the bank's former head of corporate lending) as a consequence of the collapse of the bank. The scrutiny of the enforcement decisions was held by the Committee's advisers to require an added degree of independence – hence the appointment of Andrew Green QC to do the job.

The Treasury Committee also worked hard to ensure that the terms of reference and the procedural arrangements of that additional review by Andrew Green, safeguarded the independence of the QC and his report. Owing to delays apparently caused by the Maxwellisation process,<sup>30</sup> both the regulators' report and the report by Mr Green have yet to be published.

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<sup>29</sup> Parliamentary Commission on Banking Standards, *An accident waiting to happen: the failure of HBOS*, Fourth Report of Session 2012-13, 4 April 2013, HL Paper 144/HC 705, paragraphs 129-34.

<sup>30</sup> The process under which those due to be criticised in an official report are sent the relevant sections of the report and given an opportunity to respond.

The decision of a Select Committee to send specialist advisers into a quango – to act as parliamentary watchdogs from within – has created a new and powerful investigative tool for Parliament.

It has the potential greatly to increase the effectiveness of parliamentary scrutiny. Although not appropriate in all cases, it creates a practical means of challenging powerful quangos. Furthermore, the specific approach used – of an internally produced report with oversight from independent experts appointed by the Treasury Committee – is pragmatic and cost-effective. It increases transparency. It offers a means of clamping down on quangos which may be tempted to cover up their mistakes, particularly when they have been required to conduct retrospective reviews.

Furthermore, the use of independent specialist advisers can change the terms of trade between the regulator and Parliament. The mere prospect of such detailed scrutiny is likely to change both behaviour of the regulators from within, and the treatment of Parliament by regulators, for the better.

The Committee was also very active in ensuring the independence of the two other inquiries recently conducted at the behest of the regulators themselves into issues of concern that had emerged within their own organisations. The first was by Lord Grabiner QC, into the role of Bank officials in relation to conduct issues in the foreign exchange market; the second was by Simon Davis of Clifford Chance, into a partial release of market sensitive information by the FCA. In both cases the Treasury Committee took steps to satisfy itself that the independent reviewers would have untrammelled freedom to be able to examine any matter, and make any recommendations, that they saw fit.

It is important to bear in mind that such inquiries are commissioned by the organisations themselves. They still take ultimate responsibility for their terms of reference and operating rules. Their findings remain the responsibility of the independent person conducting them. Nonetheless, the Treasury Committee did what it reasonably could – by working with the commissioning organisations and the independent reviewers at the time of the creation of such inquiries – to ensure that their terms of reference, and the rules governing the way they were conducted, enabled them to be comprehensive and wholly independent. The Committee also brought pressure to bear to ensure that their reports were published in full.

In each case the Committee met the independent reviewers in private before the commencement of their work. This provided the opportunity to ask the reviewers what they expected to examine and for the Committee to satisfy itself that the reviewers were content both that their terms of reference allowed them to do their job as they saw fit, and that the practical arrangements governing their work (resources, access to people and papers etc.) provided for complete independence. In the case of Lord Grabiner, the Committee asked for his assurance that he considered himself free to examine and report on any matter that he saw fit, and then obtained a written assurance from the Chairman of the Court that this would be the case.

Similarly, in the case of the Simon Davis review of the FCA, there was extensive correspondence by the Chair on behalf of the Treasury Committee to ensure the full independence of the inquiry.<sup>31</sup>

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<sup>31</sup> Treasury Select Committee, *Press briefing of the FCA's Business Plan for 2014/15*, 13<sup>th</sup> Report of Session 2014-15, 27 March 2015, HC881, paras 22-35.

## 4.2 Bank of England governance

The biggest quango in the land is the Bank of England. It was already powerful prior to 2010, but those powers have become still more wide-ranging in the aftermath of the financial crisis. Governors have always held private discussions with the Bank's sole shareholder, the Chancellor, creating a form of accountability, although statute limits the Chancellor's leverage. In practice, the only body that can require the Bank to provide a detailed public explanation of its policies and actions is the Treasury Committee.<sup>32</sup> The Committee identified the importance of this in 2011 when it reported on the *Accountability of the Bank of England*.<sup>33</sup>

That report described a very hierarchical body. The Governor was therefore in a particularly powerful position – a single point of systemic risk. Indeed, such was the dominance of the Governor, Sir Mervyn King (as Lord King of Lothbury was then), within the Bank that he was known as the 'Sun King'. It was consequently, the Committee concluded, an institution vulnerable to 'groupthink', and one in which there was inadequate internal challenge to its leaders. Furthermore, the piecemeal accumulation of new responsibilities after 2010 had resulted in an incoherent organisational structure. Its quaintly named governing body, the 'Court', was incapable of performing the functions of a board, something that was evident from its non-executive members' highly unconvincing appearance before the Treasury Committee in 2011.

The Committee's report made wide-ranging recommendations for reform, particularly of the Court and the Bank's policy committees.

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<sup>32</sup> Since 1998 the Committee has taken regular public evidence from the Monetary Policy Committee of the Bank.

<sup>33</sup> Treasury Select Committee, *Accountability of the Bank of England*, 21<sup>st</sup> Report of Session 2010-12, 8 November 2011, HC 874.

It concluded that more power and responsibility should be given to external members. The Court and the policy committees also both needed greater transparency. These recommendations were, in large part, resisted by both the Government and the Bank. The Government rejected them by arguing – absurdly for a body that is established by statute – that the governance of the Bank should be a matter for the Bank itself.<sup>34</sup>

Some proposals, such as the introduction of a single eight year term of office for the Governor in place of a renewable five year term, nonetheless met with agreement from both the Bank and the Government. The Bank also accepted that new responsibilities should be accompanied by stronger mechanisms for accountability and governance. But it proposed only the creation of an ‘Oversight Committee’, a sub-committee of non-executive members of the Court to conduct retrospective reviews of very limited scope: initially, it proposed that this body should only be able to assess whether the processes employed in making financial stability policy decisions had considered a full range of options and views. In other words, it should not be permitted, even retrospectively, to examine the merits of the Bank’s strategic approach to an issue – any issue. Worse still, under the Bank’s original proposals, the composition of the Court would have been left largely unreformed – scarcely a board fit to assume governance responsibility over an extremely powerful quango.

The Committee persisted. Concessions came in piecemeal fashion. The Governor accepted that the Oversight Committee might look at areas other than financial stability policy. Members

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<sup>34</sup> HM Treasury, *A new approach to financial regulation: securing stability, protecting consumers*, Cm 8268, January 2012, paragraph B.2 (Annex B).

then tabled amendments to the Financial Services Bill in 2012. The Committee continued to press the senior hierarchy of the Bank, both in public and private.

In June 2012 the Treasury Committee took the highly unusual step of issuing a report on the Bill, setting out its concerns, designed specifically to inform and influence members of the House of Lords during their examination of the legislation.<sup>35</sup> This produced some progress. The Bank and the Treasury (which also appeared to be dragging its feet on this) eventually conceded a half-way house, to increase the scope of the Oversight Committee's powers, enabling it to review the Bank's policy and performance.

Changes were also made to crisis management arrangements. When it is necessary to deploy public funds at a time of crisis, it is the Chancellor of the Exchequer alone who can authorise it. The Treasury Committee recommended, and the Government accepted, that the Chancellor should be provided with a discretionary power to direct the Bank where public funds were at risk.

This discretionary power would not be enough to deal with the risk of a Chancellor being 'bounced' by the Bank of England, or just by events, leaving him or her little or no practical discretion. The Treasury Committee heard evidence to this effect.<sup>36</sup>

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<sup>35</sup> The lion's share of the Committee's proposals had in the meantime been examined and found support from both the PCBS and from the Joint Committee on the Draft Financial Services Bill, chaired by Peter Lilley MP.

<sup>36</sup> The Committee was aware that during the Johnson Mathey crisis in 1984 the then Chancellor, Nigel Lawson, was notified of a risk to public funds by the Governor only hours before the crisis struck and felt that he was faced with a *fait accompli*. Alistair Darling had only a few hours in 2008 in which to reach his decision to commit vast sums of public money to

The Government believed, however, that the new Memorandum of Understanding on crisis management would ensure that there were “no surprises” for either institution. Memoranda of Understanding between the Treasury, Bank of England and the (now superseded) Financial Services Authority have a mixed record of success, to put it mildly. The Treasury Committee will need to do what it reasonably can to ensure that the current MOU is not providing false comfort.

All of these improvements derived directly from the Committee’s recommendations and subsequent pressure during the passage of the legislation.

In the final two years of the last Parliament members of the Committee continued to press the new Governor and the new Chairman of Court on the argument for much of the rest of its original proposals. Persistence has paid off.

In December 2014 the Bank of England announced its acceptance of many of the proposals initially made by the Treasury Committee in 2011. As a consequence, the Bank will now develop an organisational structure more recognisably that of a modern institution, in keeping with its greatly expanded powers and responsibilities. It will also have a body – a board in all but name – unambiguously in charge of managing its business. The pointlessly confused structures of the Bank’s committees will be rationalised. Encouragingly, in December 2014 the Chancellor

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support failing banks. Nigel Lawson, *The View from No. 11*, Bantam Press, 1992; Alistair Darling, *Back from the Brink*, Atlantic Books, 2012.

also welcomed the reforms and indicated his willingness to consider legislation to give effect to them in the new Parliament.<sup>37</sup>

This story illustrates two straightforward but important points. First to have influence a Committee needs to invest a good deal of time in taking evidence on, and then thinking through, what needs to be done. Force of argument counts for a lot. Secondly, if they want to be effective, Committees need to work hard to follow up their most important recommendations. In the case of reform of Bank governance, it is unlikely that so much progress could have been made without a new Governor and a new Chairman of the Court. Both were eager to take a fresh look at the Bank's accountability.

Underlying the subsequent change of heart was a recognition at the top of the Bank that the legitimacy of their actions could be entrenched by greater transparency and demonstrable accountability to Parliament and the Committee. In other words, such changes would be of benefit to the Bank itself, particularly in the exercise of its new powers and responsibilities for financial stability.<sup>38</sup>

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<sup>37</sup> HM Treasury, *Bank of England proposals to bolster transparency and accountability welcomed by Chancellor*, 11 December 2014.

<sup>38</sup> The attitude of the Bank's new leadership is demonstrated in evidence from Andy Haldane, Executive Director for Financial Stability, to the Parliamentary Commission on Banking Standards, 7 November 2012; Treasury Select Committee, *Appointment of Dr Mark Carney as Governor of the Bank of England*, Eighth Report of Session 2012-13, 19 April 2013, HC44; Mark Carney's response to Treasury Select Committee questionnaire, Ev 32 and Ev 58; and House of Lords Select Committee on Economic Affairs, *Annual Evidence Session with the Governor of the Bank of England*, 10 March 2015, pp. 3-4, though the focus here is more on transparency than governance structures.

### 4.3 Scrutiny of the private sector

Select Committees also need to be prepared to scrutinise the private sector, particularly those parts of it providing regulated or essential public services, or with public policy responsibilities. The Treasury Committee has been active on this for many years. In the 2005-10 Parliament under the chairmanship of John (now Lord) McFall, the Committee did an outstanding job by examining the failure of Northern Rock in 2007, and then the further crisis in the banking industry in 2008-09.

In the 2010-15 Parliament, the Committee acted decisively in 2011 in response to an attempt by the high street banks – acting through their own umbrella organisation, the Payments Council – to abolish cheques. In its initial 2009 press release announcing the proposed timetable for the abolition of cheques, the Payments Council had presented itself as acting in the interests of consumers.<sup>39</sup> The Committee concluded the opposite. This had been proposed in the self-interest of the banks. It issued a report strongly criticising the proposal.

The Government supported the Committee. The Payments Council's proposal was withdrawn. The Committee found that the Payments Council amounted to little more than a payments cartel, run for the benefit of the banks. It recommended radical reform and suggested that the payments system be brought within the sphere of financial regulation. Regulation is not necessarily the solution to such problems but, in this case, somebody – other than the banks – probably has to hold the ring in order to protect consumers. The

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<sup>39</sup> *2018 target date set for closure of central cheque clearing*, Payments Council press release, 18 December 2009. The Treasury Committee took evidence on the issue early in 2010, and returned to it with an inquiry in the 2010-15 parliament.

Government accepted this argument and responded to the Committee's suggestion by creating a new Payment Systems Regulator.

#### **4.4 Select Committees as guarantors of independence: the case of the OBR**

The enhanced credibility of Select Committees in scrutinising the executive also benefits the executive. Over the past five years the Government has sometimes made a point of referring to Treasury Committee endorsement of one of its measures, citing the Committee's independence. The Treasury itself has also benefited from the responsibilities that the Treasury Committee obtained in 2010 to bolster the independence of the new Office for Budget Responsibility.

Since 2010, the OBR has been responsible for producing the economic forecasts upon which the Budget and Autumn Statement depend. These had until then been produced by the Treasury's in-house forecasting team. Allegations of political interference in their judgements were commonplace.<sup>40</sup> In 2010 the new Coalition Government decided to delegate this role to an arm's length body in order to put beyond doubt the forecasts' independence from politicians. Demonstrable impartiality and professional competence in the leadership of the OBR were both therefore essential.

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<sup>40</sup> Such allegations were frequent during Gordon Brown's long tenure at the Treasury, as well as under a succession of Conservative Chancellors. See, for example, Liam Halligan, 'Budget 2010: history will be kinder to Darling if he resists Brown's urge to spend', *Daily Telegraph*, 20 March 2010, and Peter Marsh, 'Treasury projections play second fiddle to party politics: How Norman Lamont asked economists to "massage" PSBR figures', *Financial Times*, 12 October 1992.

As a means of underpinning their independence and impartiality, and uniquely among Select Committees – as far as I am aware – the Committee now exercises a statutory veto over the appointment and dismissal of the OBR’s leadership, that is, the three members of the Budget Responsibility Committee (BRC).

The Government realised that scrutiny of these appointments, if allied to a power of rejection, and by a non-partisan parliamentary committee, would contribute greatly to the perceived integrity and independence of the OBR. The Treasury was, initially at least, less enthusiastic about giving the Committee a veto on the BRC membership’s dismissal, as well as appointment – some ‘to-ing and fro-ing’ was required to secure it. Nonetheless, the Committee persisted for a good reason: this veto protects BRC members from removal by the Treasury for inappropriate reasons – for example, the political awkwardness of a forecast. The Treasury Committee has taken evidence from the BRC members both at their appointment and their subsequent individual reappointments, not least in order to buttress their independence.<sup>41</sup>

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<sup>41</sup> The Committee also has a general obligation to support the OBR’s independence in minor ways. For example, in early 2012 the Government was attempting to force the OBR to use a ‘dot gov’ internet address as part of a Whitehall-wide initiative. The OBR objected on the grounds that it had to demonstrate its independence of government, and that such an address would undermine it. When the OBR’s objections were rejected by the Government, it fell to the Treasury Committee to take up the argument on its behalf. The Government changed its mind. The OBR now uses a ‘dot org’ address.

## 5. THE PARLIAMENTARY COMMISSION ON BANKING STANDARDS

Select Committees are now much more effective scrutineers and investigators than they were even five years ago. They have done something to make Parliament as a whole more effective. Nonetheless, when a crisis or scandal breaks, particularly those which trigger widespread public concern, Governments have usually continued to reach for a public inquiry – often judge-led – to investigate and make proposals for remedy.

For a hundred years, parliamentary committees have largely been excluded from such work. This partly reflects executive dominance in Parliament for much of the post-war era. It was also a product of the dismal experience of the catastrophically partisan Select Committee set up to examine the Marconi scandal of 1912. This experience led to the Tribunals of Inquiry (Evidence) Act 1921 whose explicit purpose was to replace such parliamentary inquiries.<sup>42</sup>

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<sup>42</sup> *Investigatory inquiries and the Tribunals of Inquiry (Evidence) Act 1921*, House of Commons Library Standard Note SN/PC/02599, 3 September 2012.

The creation of the Parliamentary Commission on Banking Standards (PCBS) in 2012 suggests that Parliament may now be recovering. Parliament may be able to offer, in certain circumstances, a faster, cheaper and more effective investigative body than a judge-led or other outside inquiry. Even more important, it seems that Parliament may be able to do the job with sufficient rigour and independence for its conclusions to command public confidence.

The Commission – an enquiry into serious lapses in banking standards – broke new ground. This was the first time in a century that Parliament – at the behest of the major parties’ leaderships – has entrusted such an undertaking to itself rather than hand it to judges or other outsiders.<sup>43</sup>

The PCBS was established in July 2012, at the outbreak of the Libor scandal, to examine the culture and professional standards of British banking and to make recommendations. The credibility and effectiveness of the Treasury Committee, built up over many years under successive Chairs, and especially since the 2007-08 crisis, created the environment in which the Prime Minister and the Chancellor apparently concluded that Parliament could and should perform this role, rather than assemble a judge-led inquiry or reconstitute Sir John Vickers’ Independent Commission on Banking, or something similar.

The Libor scandal, where traders colluded to fiddle benchmark interest rates for private gain, was a shocking indictment of banking practices. From the outset, the Treasury Committee

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<sup>43</sup> The Motion creating the Commission was signed by David Cameron, Ed Miliband, Nick Clegg, George Osborne, Ed Balls and Danny Alexander among others.

examined the specific wrongdoing that had been found with respect to Barclays, and the role of regulators. But a wider examination of what had gone wrong in the banking industry and how to put it right was clearly needed.

The Opposition wanted a judge-led public inquiry. The Government argued that such an inquiry would take a long time – as so many judge-led inquiries tend to do – and so would delay the very legislation needed to deal with the problem. Over the weekend of 30 June to 1 July, I was approached by the Chancellor, after consultation with the Prime Minister, to chair a Parliamentary Commission: a joint Select Committee of both Houses with specific powers and terms of reference.

For the Commission to function effectively, certain conditions would need to be met. First and foremost, it would need the full support of the major parties. A few partisan exchanges between the two front benches before the Commission was established were not a good augury of what could happen. The Commission needed not just cross-party support; it needed endorsement by the party leaderships.<sup>44</sup> Its terms of reference would have to be forward-looking. It would need to focus on making proposals for reform. It certainly could not be allowed to become a witch hunt, part of the party-political blame game. Nor could it be permitted to become a platform for parliamentary grandstanding about banks and bankers.

The Commons appointees – Mark Garnier, Andy Love, Pat McFadden and John Thurso – were all volunteers from the Treasury Committee. There was as much Treasury Committee overlap as was reasonably possible, and all four brought highly

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<sup>44</sup> Official Report, HC Deb, 2 July 2012, col 618.

relevant experience: Mark as a former investment banker and fund manager; Andy as a long-serving and knowledgeable member of the Treasury Select Committee; Pat as a former BIS minister; and John as a former company director and chief executive. It is arguable that the Treasury Committee, if given the resources, could and should have been allowed to do the job. Nonetheless, the addition of Lords members added valuable weight: they brought expertise, commitment and considerable experience. The Peers included a former Chancellor of the Exchequer, Nigel Lawson; a former head of the civil service, Andrew Turnbull; the previous Chair of the Treasury Committee, John McFall; a former Vice President of Citibank, Susan Kramer; and Justin Welby, the Bishop of Durham and subsequently the Archbishop of Canterbury – also someone with considerable financial experience.

It was clear that the Commission would need more resources than those usually available to a Select Committee. The two Houses were creating a body to examine a highly complex and technical subject on which Parliament had relatively little in-house expertise. The wider implications of this serious parliamentary weakness, and possible solutions to it, were for another day;<sup>45</sup> the immediate priority was to gather high quality staff support, and in short order. The suggestion that a technically expert outsider (a financial lawyer, for example, or someone from the Bank of England) might head the staff side rather than a career parliamentary clerk, excellent though they mostly are, was rebuffed by a senior clerk. But the clerk appointed to be the Commission's chief of staff, Colin Lee, did an outstanding job, not just by getting the Commission up and running but throughout

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<sup>45</sup> They are still unresolved; see pages 63 to 64.

the life of the Committee. His analytical and drafting skills were in constant and heavy demand.<sup>46</sup>

### **5.1 PCBS innovations: panels, use of counsel, reporting methods, follow up of recommendations**

The creation of the PCBS was – given the hundred year lag since the last Parliamentary Commission – an innovation in itself. Much of its effectiveness would also depend on innovative use of parliamentary procedures.

#### ***Panels***

Given the need to gather a huge amount of information in a short space of time, it was agreed that the Commission's terms of reference should permit the creation of investigative 'panels'. The panels' purpose was purely to take evidence, not to draw conclusions or develop policy proposals. This could only be done in the full Commission, with the panels feeding evidence into its work. The panels achieved this, enabling the Commission to pursue multiple lines of evidence-gathering simultaneously. Panels were not Commission sub-committees in the traditional sense, as they had no power to report. The risk of traditional sub-committees was that they could have become mini-committees,

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<sup>46</sup> The PCBS eventually employed more than 30 staff, although at any one time the team consisted of around 20. Those from outside Parliament were recruited on a variety of terms including unpaid loan, secondment and short-term contract. This allowed the Commission to carry out its work at a fraction of the cost of a judge-led or outside inquiry. The Commission's staff performed magnificently, enabling the PCBS to get through a huge amount of work in its year of existence. It held 76 oral evidence sessions, 171 hours' worth in total. The Commission provided pre-legislative scrutiny on the Banking Reform Act and produced five reports, including one on the collapse of HBOS. The Commission's fifth report was a thousand paragraphs long. More time to conclude the Commission's work would, no doubt, have enabled a shorter final report to have been produced!

developing their own agendas independently of the main Committee. This could have made securing agreement to reports by the main Commission much more difficult, particularly given the need to report back to the House quickly.<sup>47</sup>

### ***Use of counsel***

Select Committees have almost always operated in public session, working through their Members: staff and advisers provide briefing but it is customarily the Members who question the witnesses. The Banking Commission took the unusual step of employing counsel to question witnesses directly rather than simply advise the Members and staff. Initially, use of counsel was confined to just one of the panels. But this was later extended to the associated hearings of the Commission and to other panels, too.

The use of counsel – strongly urged by several commissioners – was held to have been a success. In particular, questioning by counsel, as well as a probing response to the initial answers given, was helpful in establishing facts and for picking up on inconsistencies in the evidence presented. Counsel's support in sifting written evidence and identifying the most appropriate lines of questioning was also at times very useful. The Commission demonstrated that this can add something to parliamentary scrutiny.

Nonetheless, the use of counsel has its limits. The MPs and Peers on the Commission, like many Select Committee members, were adept at cross-examination. Commissioners were also, on the

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<sup>47</sup> Nonetheless, the panels were formally created as sub-committees. The determination of some senior clerks to use existing mechanisms for the creation of panels led, as feared, to calls from some Commissioners for the use of panels to draw conclusions as well as collect evidence, as equivalent sub-committees would want to do. However, this was successfully resisted.

whole, more alert to lines of questioning designed to identify policy recommendations, not least because they often had some in mind.

The use of counsel was certainly a worthwhile innovation. It is a tool that future Parliamentary Commissions, and departmental Select Committees too, should have in their locker.

### ***Reporting to the House***

The Commission was able to break free of some of the absurdities of existing Committee procedure. The Chair was given the power ‘to report to the House an order, resolution or Special Report as an order, resolution or Special Report of the Commission which has not been agreed at a meeting of the Commission if he is satisfied that he has consulted all members of the Commission about the terms of the order, resolution or Special Report and that it represents a decision of the majority of the Commission’. This allowed the Chair to authorise the publication of written evidence, for example, without needing to hold a meeting with Members present. This power ought to be available to all Select Committees.

Select Committees should, by prior agreement, also be able to discuss and agree second order issues by telephone conference. Decades after other bodies, major and minor, public and private, accepted this working method, Parliament is still dragging its feet. The Liaison Committee has, however, recently recommended that: ‘Standing Orders be amended to enable Committees to make all decisions other than consideration of reports, which they could properly make at quorate deliberative meetings through any form of communication provided that all members have been given sufficient notice and any decision is supported by a majority of the Committee.’<sup>48</sup>

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<sup>48</sup> Liaison Committee, *Legacy Report*, paragraph 98.

### ***Follow up of recommendations***

The Commission produced five reports. It recommended wide-ranging reform of both the regulation and conduct of the banking industry in the UK. Often very detailed, its recommendations were based on a thorough examination of the evidence it had received. Although demanding for the Members serving on both bodies, the link between the Treasury Committee and the Commission proved valuable. In addition to the knowledge and contacts that they were able to bring to the Commission as Treasury Committee members, the overlapping membership facilitated the Treasury Committee's task of picking up the baton on banking reform following the conclusion of the Commission.

This was all the more important because, although the Commission had foreseen the need to continue its work after it had concluded its major report, under the Resolution creating it the Commission formally ceased to exist on completion of its main report. Its staff team was immediately dissolved. This was a serious mistake. In future, Parliament will need to consider the merits of allocating resources to enable implementation of Commission recommendations to be monitored more easily.

Commissioners, as legislators themselves, can play a unique role in any legislative follow-up work. This should be put to good effect. Unlike members of non-parliamentary investigative bodies, all the members of Parliamentary Commissions can contribute directly to each stage of the parliamentary scrutiny of their own proposals. They can attempt to influence and amend any legislation to implement it.

Notwithstanding the obstacles put in their path to doing so, members of the PCBS did follow up their work – as former Commissioners – in this case with respect to the Financial Services (Banking Reform) Bill. Nevertheless, the Banking Commission claimed no monopoly on wisdom: some of its

recommendations – accepted in principle by the Government and regulators – were helpfully, occasionally extensively, modified by them. Likewise, further consultation led to substantial changes to a number of proposals.<sup>49</sup>

Vigilance was needed by Commissioners. Most of the Commission's recommendations had been given a public welcome by the Government and the regulators but, when it came to putting them into practice, the response was initially inadequate. For instance, the Commission recommended the 'electrification' of the ring fencing of banks' retail operations. The purpose was to give the regulators the power to restructure or split up a bank entirely if it tried to 'game' the ring fence proposed by Sir John Vickers' Independent Commission on Banking in 2011. The Government said that it accepted this proposal. But the manner in which it originally proposed to amend the Financial Services (Banking Reform) Bill to implement this – in July 2013 – would have rendered it virtually useless. It would have required the regulator to undertake such a lengthy and repetitive process, and so highly reliant on Treasury consent, before acting against a bank, that the ring fence would have contained no electric current at all. Former members of the Commission warned against the damaging effects of the Government's amendments.<sup>50</sup>

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<sup>49</sup> For example, rather than a review of regulatory enforcement processes to take place in 2018, as the Commission recommended, the Government agreed in the Lords to conduct a review once the legislation had passed. The PCBS also recommended that regulators should be required by statute to meet with the auditors of banks at least once a year. The Government implemented this recommendation, but made it perhaps more proportionate by applying the requirement only to deposit-takers and investment firms judged by the PRA to be 'important to the stability of the UK financial system'.

<sup>50</sup> Official Report, HC Deb, 8 July 2013, col 75-70.

After considerable criticism of the proposals in the Commons, the Government conceded some ground, undertaking to improve it in the Lords. It did so: electrification now requires only one preliminary notice from the regulator, and requires Treasury consent only once (in relation to the Warning Notice). The minimum period from preliminary to final notice is now only four months, and the regulator has discretion over how long to allow for a divestment or forced separation to be completed, rather than there being a minimum of five years. As a result, electrification has been made meaningful. The regulator is much better empowered to operate the ring fence and, as a consequence, the revised provisions are now much more likely to be an effective deterrent to banks tempted to 'game' it.<sup>51</sup>

This pattern of public acceptance but unsatisfactory implementation repeated itself. Commissioners remained vigilant in following up their work. Staff support was needed for this. Although the staff of the Commission had dispersed, a new team was assembled using Treasury Committee staff and the House's central Scrutiny Unit to support the former Commissioners.<sup>52</sup> Former parliamentary counsel were employed to draft government-quality amendments. Both the assembly of a staff team dedicated specifically to 'follow-up' work and the use of

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<sup>51</sup> Whether ring-fencing was preferable to full separation on the one hand, or other forms of protection of core banking services while retaining universal banking on the other, was extensively discussed by the Committee and to some degree by the PCBS. Their respective merits are not for this paper.

<sup>52</sup> The Commissioners are particularly grateful to the outstanding work done by Treasury Committee staff – a considerable extra burden on them.

former parliamentary counsel were highly unusual.<sup>53</sup> The latter ensured the preparation of amendments of the highest quality. As a result, the Government could not brush Commissioners off merely by alluding to shortcomings of the Commission's drafting.

Not surprisingly – given that they had been examining the relevant issues intensively for a year – the Commissioners were persuasive to their colleagues in both Houses, especially in the Lords. The Government was obliged to accept a series of very substantial changes to the Financial Services (Banking Reform) Bill, bringing it much closer to the Commission's original recommendations. Some significant examples are listed in Appendix 4.

The Banking Commissioners continued to meet. At the end of 2014 former members published a detailed statement on progress with implementation. This too was novel for enquiries – whether judged or otherwise. This statement – a supplementary report in all but name – contained a number of warning shots, mainly to the regulators. For example, Commissioners reminded them that ring-fencing was vulnerable to dilution from bank lobbying, particularly as memories of the crisis faded and given that full implementation is still nearly half a decade away.

The Commissioners argued that any attempts to game the rules, once in place, should be met with strong action by the regulators. Commissioners also reminded regulators:

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<sup>53</sup> The practice of employing professional draftsmen to draft amendments for Parliament rather than solely for the government – the equivalent of Parliamentary Counsel – is well-established in other parliaments. There is merit in Parliament exploring the scope for the development of such a team rather than relying on Clerks.

- to target reforms on what really matters: to have in mind that regulation needed to focus on those who could do serious harm to a firm, its customers, or markets;
- that individuals' rewards should be more closely aligned to the maturity of the risk, which might require longer periods of deferral than the five or seven years proposed for Certified Persons or Senior Managers;
- that competition considerations should be integral to every aspect of regulatory behaviour.<sup>54</sup>

## **5.2 PCBS: a template for other Parliamentary Commissions?**

After an interval of a hundred years, a Parliamentary Commission has been shown to work. Can and should it be repeated?

The Commission operated quickly. It demonstrated a good deal of flexibility – not least in response to the disclosure of further scandals while it was at work. At a cost of less than a million pounds, a comparison with the list of other recent inquiries listed in Appendix 3 suggests that it was good value. The fact that the Commission was composed of legislators made it particularly well suited to considering something that required primary legislation.

In the UK, political crisis management often produces an inquiry of some sort, but the form varies a lot, and rightly so. The experience of the PCBS suggests that the following are necessary for the creation of a Parliamentary Commission to be worth attempting, and for such a Commission to be a success:

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<sup>54</sup> *Statement by former Members of the Parliamentary Commission on Banking Standards*, 4 November 2014.

- there needs to be a clear and identifiable problem with a high level of public concern and salience;
- this problem needs to be amenable to proposals for change;
- there should be all-party agreement to the idea of a Parliamentary Commission – party divisions would have been fatal to the PCBS;
- the problem in question needs to be one that cannot readily be dealt with by an existing Select Committee;
- there should be agreement to the Parliamentary Commission approach in both the House of Commons and the House of Lords; and
- the Commission approach is likely to be quicker and cheaper than a judge-led inquiry or a committee of experts.

Parliamentary Commissions are therefore unlikely frequently to be the best choice. In the case of the PCBS, the Treasury Committee could also, as was earlier pointed out, have been a suitable vehicle to perform the task. But the intensity and detail required would have required the Committee, for a while, to curtail other work. It would have made the performance of its own essential duties (and the Committee has more than its share of these, such as scrutiny of the Bank of England, the Autumn Statement, the Budget and many major public appointments) more difficult. The creation of a separate PCBS enabled the Committee to maintain its overall level of customary work, and at a volume comparable to that of the 2005-10 Parliament, even though some of its Members and some of its staff were also working on the Banking Commission. This was tough on the individuals concerned, who found themselves working unceasingly hard, but good for parliamentary scrutiny.

## 6. NEXT STEPS

As Chapter 4 argued, partly in response to the ‘shot in the arm’ produced by election, most would agree that Select Committees are now a much more rigorous and effective part of parliamentary scrutiny. Nonetheless, much more can be done further to improve the Committee system. In particular, Parliament needs to consider Committees’ formal powers, their resources, and how Members work together – the latter is a function both of the size of the Committee and of whether Members are able to work by unanimity.

### 6.1 Committee powers

Select Committees’ formal powers are largely limited to sending for persons, papers and records. They can be hard to enforce. In 1992, the Maxwell brothers refused to appear and, when they finally conceded, refused to answer any of the questions put to them. In 2011, Irene Rosenfeld, CEO of Kraft Foods, refused to appear at all before the Business, Innovation and Skills Committee looking into the takeover of Cadbury.<sup>55</sup>

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<sup>55</sup> See Business, Innovation and Skills Select Committee, *Is Kraft Working for Cadbury?*, 6<sup>th</sup> Report of Session 2010-12, 23 May 2011, HC 871.

In addition, House of Commons Committees have no power formally to summon Members of Parliament of either House to give evidence. It is unacceptable that Committees of the elected House should not be able to require members of the Lords in positions of public responsibility to appear before them.

Even when witnesses consent to appear, and answer questions, there is no guarantee as to the adequacy of their evidence. In 2014 the Treasury Committee took oral evidence from senior figures in the state-owned RBS about its business restructuring division, GRG. They denied repeatedly that it had operated as a profit centre, in defiance of the view of a former deputy Governor of the Bank of England who had examined it in detail and whose report had been reviewed before publication by RBS itself. Some weeks later, RBS admitted that GRG had indeed been a profit centre. Since then, the Chair of RBS has apologised, and the bank has announced that GRG will be shut down. The two people from RBS who gave evidence to the Treasury Committee – one of them the head of GRG – are leaving their jobs.

Papers and records can occasionally be very difficult to obtain, even from public bodies in the UK, whose principals should know better. They should realise that they owe an overriding duty of accountability to Parliament. Nonetheless, reasonable explanations, for example personal or commercial sensitivity, may lie behind a reluctance to hand over documents to a Committee. Committees have untrammelled authority to publish them but need to accommodate genuine requirements for confidentiality.<sup>56</sup>

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<sup>56</sup> Restraint may be needed on the part of Committees every bit as much as a broader understanding by a public body of its accountability role to Parliament.

In 2011 the Treasury Committee requested that the Bank of England provide the minutes of the Bank's Court during the 2007/08 financial crisis. This was originally refused for poor reasons. The Court argued that it needed 'private space', apparently in perpetuity, for 'deliberation'. It also implied that publication, even many years later, could amount to a breach of faith with its members: they would not have expected publication at the time of the meetings. The Bank also tried to assert the relevance of FOI exemptions, apparently labouring under the misguided impression that it believed itself to owe no more duty of accountability to Parliament than it did to an FOI request.<sup>57</sup>

The new Governor and the new Chair of Court have now accepted the case for publication, and the minutes were released at the beginning of 2015. This has been a breath of fresh air. Some redactions were needed: the minutes contained details of security matters, personal data and commercially sensitive information. But the redactions were shared with the Committee in advance: the Clerk of the Committee spent many hours in an office in the Bank reviewing the redactions to satisfy himself on behalf of the Committee about their appropriateness. Had the Clerk any doubts, he was under instructions to bring them to the Chair and, if necessary, the Committee's attention.

The Bank of England now better understands its duty to be open with Parliament – it has recently given a specific undertaking to satisfy reasonable requests from Parliament for information.<sup>58</sup> It has also realised that this has benefits for the Bank of England:

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<sup>57</sup> *Letter from the Chairman of the Court of the Bank of England to the Chairman of the Treasury Committee, 21 July 2011.*

<sup>58</sup> This was a recommendation of the Treasury Committee report, *Accountability of the Bank of England, 2011.*

high levels of scrutiny and opportunities for explanation bolster the legitimacy of the Bank, now operating with vastly increased powers, and using economic and financial tools formerly considered the preserve of the Chancellor.<sup>59</sup> The Monetary Policy Committee, which has the statutory duty to conduct monetary policy and whose objective is to maintain price stability, is the clearest example of this. It needs the legitimacy that only parliamentary scrutiny can confer if it is to wield its powers effectively. The same principle holds for the recently-created Financial Policy Committee, which can, among other things, enable or effectively withhold the availability of credit to millions of individuals and businesses.

Not all public or private bodies have grasped this, however. As Select Committees increase their effectiveness, and examine more closely the conduct and performance of organisations and firms, those bodies may be tempted to try to evade Committees' scrutiny. This might take the form of reluctance, or even refusal, to give written or oral evidence.

Committees can summon witnesses and demand documents, formally if necessary. This almost always works. But Committees have no power to enforce such requirements. If defied, they can report the matter to the House and ask it to take action. But even if the House agreed with the Committee that the third party was in contempt of the House, the House lacks effective penal sanctions, other than criticism in a resolution. 'Admonishment' at the bar of the House was once Parliament's preferred instrument of torture. But its revival might degenerate into a damaging

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<sup>59</sup> Unless accompanied by high levels of Committee scrutiny, the delegation of powers and responsibilities to quangos by Secretaries of State diminishes Parliament and democratic accountability.

pantomime, resembling something from *Wolf Hall*. The Commons has not imposed a fine since 1666, nor imprisoned anyone since 1880. Any attempt to do so today would – for better or worse – probably fall foul of the Human Rights Act.

Neither a critical resolution agreed by the House itself, nor a critical report from a Select Committee, are penal sanctions. But such criticism, and the embarrassment and reputational damage from it, can nevertheless be a powerful sanction. As witnesses are usually in high profile positions of public responsibility, the reputational damage of such public criticism may be enough. But in some instances, it will not.

Does there perhaps now need to be an effective, rather than a theoretical, sanction when a Committee meets unjustified and persistent resistance to reasonable requests for information or for the attendance of a particular witness?

The Joint Committee on Parliamentary Privilege reported in 2013 on the penal powers of the House as part of a wider report on privilege. It concluded that 'it is in the public interest to ensure that Committees have the powers they need to function effectively'. Drawing on written evidence by the then Clerk of the House to the Liaison Committee of the House of Commons, it set out the options as:

- doing nothing;
- legislation;
- internal measures, such as amending Standing Orders or agreeing resolutions – in effect, parliamentary re-assertion of existing powers.

All three options, the Committee believed, carried significant risk. It concluded against legislating either to confirm Parliament's penal powers or to criminalise contempts, but also rejected doing nothing to clarify Parliament's penal powers. Its recommendation was that the two Houses set out clearly the powers that they reserve the right to exercise, what was expected of witnesses, and the means by which they would consider allegations of contempt, including procedural safeguards to ensure that witnesses were treated fairly.<sup>60</sup> The Government's response to the report agreed that legislation was not the right course. It agreed that instead both Houses should set out how their powers should and would be exercised.<sup>61</sup>

Much of the reluctance to give statutory backing to Committee powers stems from the understandable concern that it would involve the courts in Parliament's affairs. Those expressing these concerns argue that, in judging any contempt cases, the courts would be drawn into judging such things as whether a particular witness was pertinent to the Committee's inquiry, whether the Committee was acting within its terms of reference, whether witnesses unable to appear at a particular time were offered reasonable alternatives, the relevance of the line of questioning a witness faced, or the tone in which the Committee asked its questions.<sup>62</sup> In short, the argument runs, statutory backing for

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<sup>60</sup> Joint Committee on Parliamentary Privilege, *Parliamentary Privilege*, Report of Session 2013-14, 3 July 2013, HL Paper 30/ HC 100, especially Section 3.

<sup>61</sup> *Government Response to the Joint Committee on Parliamentary Privilege*, December 2013, page 3.

<sup>62</sup> Liaison Committee, *Select Committee Resources, Effectiveness and Powers Vol. II*, 2<sup>nd</sup> Report of Session 2012-13, 8 November 2012, HC 697 Ev w79-80.

Select Committee powers would imply that the courts could and would judge the legitimacy of their day-to-day work. Even if all Committees conducted themselves in an exemplary way at all times, Committees might well find themselves more, rather than less, constrained in their work than they are at present, it is argued. As a result, in recent examinations of Committee powers, such considerations have tended to trump those pointing to a statutory power for Committees.

Parliament has always rightly guarded its power to regulate itself against incursions by the courts. However, the arguments against statutory backing no longer seem so persuasive. Select Committees have ceased to be dignified parliamentary window-dressing. Over the past 30 years, they have been developing into an efficient part of the constitution, increasingly noticed by a wider public. If the House's hand of cards is weak, sooner or later its bluff may be called. At that point there could be the risk of serious reputational damage to the House, or a hasty and ill-considered remedy. Knowledge that its hand is weak may also be restraining legitimate demands by Parliament. Some Committees may, on occasion, not ask for evidence, or decide not to act, for fear of their bluff being called. The Joint Committee's proposal of a restatement by Parliament of what it believes its powers to be and how they should be exercised is sensible. But it could make the emperor's lack of clothing more evident.<sup>63</sup>

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<sup>63</sup> Some things cannot be solved by increased formal powers. For example, Rupert and James Murdoch were, while in the UK on business, formally ordered to attend to give evidence on phone hacking by the Culture, Media and Sport Committee on phone hacking. They complied; but if they had refused to appear, there was very little more that the Committee could have done, especially if they had left the UK, and therefore the jurisdiction of Parliament, again.

A more self-confident House is taking its own effectiveness more seriously, and in many ways. It may be better to think through a proportionate system of sanctions now rather than wait for a crisis.

Other legislatures have stronger forms of sanction available to them, from which Parliament might have something to learn, notwithstanding very different constitutional arrangements. In the USA, Congress can turn to the civil courts to enforce subpoenas to witnesses to give testimony or produce documents, and also to the criminal courts to punish continued refusal.<sup>64</sup>

The Scottish Parliament can impose a fine of up to 'level 5' on the standard scale (currently £5,000) or imprisonment of up to three months for refusal to appear, answer a question, or produce a document when called to do so.<sup>65</sup> In Australia, the Commonwealth Parliament can impose a prison sentence of up to six months and fines up to AU\$5,000 on individuals or AU\$25,000 on corporations.<sup>66</sup> In 2006, the New Zealand Parliament imposed a fine of NZ\$1,000 on TV New Zealand.<sup>67</sup>

A small fine may mean nothing to a large institution but nor would it inevitably involve the sacrifice of Parliament's autonomy to the courts. The brief summary here does little justice to the many complex arguments on both sides of this issue. There is merit in revisiting them. As part of that work, Parliament should at least

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<sup>64</sup> Todd Garvey and Alissa M. Dolan, *Congress's Contempt Powers and the Enforcement of Official Subpoenas*, Congressional Research Service, 2014.

<sup>65</sup> *Scotland Act 1998* s25(4).

<sup>66</sup> *Parliament and Privileges Act 1997 (Aus. Cth)* s7. It has yet to use this power.

<sup>67</sup> This New Zealand case is notable as the fine was imposed without statute, with powers derived from the House of Commons. See Standards and Privileges Committee, *Privilege: John Hemming and Withers LLP*, 9<sup>th</sup> report of Session 2009-10, Ev.4.

consider the adoption of a proportionate, useable power. This could be specifically designed to address egregious cases of failure to respond to Committees' orders for persons or papers. The existence of such a power may well make its use unnecessary, or very rare.

## **6.2 Civil servants and the Osmotherly Rules**

It is one thing for Committees to be able to summon individuals; there is a separate question as to the terms under which those individuals, and in particular civil servants, give evidence.

The evidence of civil servants remains governed by a convention, known as the 'Osmotherly Rules'. These date back to 1980. In giving evidence to Select Committees, civil servants do so 'on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee.' To some degree, the Rules can act to protect officials from scrutiny, and have been a cause for frustration when officials are felt to be 'sticking tightly to the ministerial line, even when the objective of the hearing was to explore the reasons for operational and implementation failings, rather than to prise open the policy-making process itself.' They also provide that ministers can decide who can best represent them on a particular matter. This can, in principle, overrule a Committee's demand for a named civil servant to appear. Ministers may even decide to appear in their stead.<sup>68</sup> Parliament has never accepted the Osmotherly Rules. Yet these internal Whitehall guidelines still carry weight.

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<sup>68</sup> Cabinet Office, *Giving Evidence to Select Committees: Guidance for Civil Servants*, October 2014, paragraphs 9-12; Pepita Barlow, *Revising the Osmotherly Rules: a cure for ailing accountability?*, Institute for Government Blog, 4 September 2013.

In its 2012 report, the Liaison Committee set out its concerns about outmoded constitutional doctrines and their operation through conventions such as the Osmotherly Rules: 'The old doctrine of ministerial accountability... is being stretched to implausibility by the complexity of modern government and by the increasing devolution of responsibility to civil servants and arm's length bodies. It is important that Parliament should be able to hold to account those who are in reality responsible.'<sup>69</sup> It urged the Government to work with the Committee on new guidelines. Reporting at around the same time, the House of Lords Constitution Committee came to similar conclusions.<sup>70</sup>

The Cabinet Office responded by agreeing to a review of the 'rules'. It eventually produced a revision of the Rules in October 2014.<sup>71</sup> Its main innovation was to establish the accountability to Committees of so-called Senior Responsible Owners (SROs) of major projects. This was a useful step forward, though in other respects the new Rules restated the old doctrine. As the Director of the Institute for Government Peter Riddell pointed out, 'The line between policy and implementation is often uncertain and imprecise, and offers opportunities for obfuscation and evasion.'<sup>72</sup>

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<sup>69</sup> House of Commons Liaison Committee, *Select Committee effectiveness, resources and powers*, paragraph 114.

<sup>70</sup> House of Lords Select Committee on the Constitution, *The Accountability of Civil Servants*, 6<sup>th</sup> Report of Session 2012-2013, 20 November 2012, HL Paper 61, paragraph 71.

<sup>71</sup> Cabinet Office, *Giving Evidence to Select Committees: Guidance for Civil Servants*, October 2014.

<sup>72</sup> Peter Riddell, *The updated guidance on the Osmotherly Rules*, Institute for Government Blog, 20 October 2014. Peter Riddell did nonetheless consider the new Rules 'unquestionably an advance'.

Summing up 'progress' at the end of the parliament, the Liaison Committee noted that the Government had taken a long time to produce new Rules and had finally done so while providing 'little radical change'. However, the Committee contented itself with observing that Parliament continued not to be bound by the Osmotherly Rules, and that in practice Select Committees had constructive relationships with government departments.<sup>73</sup> In 2012, the Liaison Committee had proposed a joint review with Government of the wider relationship between Departments and Select Committees. That proposal was to have explicitly committed both parties to producing jointly agreed guidelines. The Liaison Committee's proposals should be revisited in this Parliament.

### **6.3 Committees' approach to cross-examination**

Any such joint review would be reliant on a relationship of reasonable trust between Committees and departments, which would in turn be in part dependent on how Select Committees conduct themselves. Similarly, any new formal powers for the House in respect of Select Committees would need to be used with self-restraint. It is not difficult for a Committee to 'chase headlines' or indulge in exaggerated criticism and contrived outrage. In most cases neither Parliament nor public policy benefit in the long run. Constructive criticism is more difficult.<sup>74</sup>

As for the examination of witnesses, most witnesses have good intent. There will be a minority who arrive determined to be uncooperative. In these cases, it may be necessary to be robust, but

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<sup>73</sup> Liaison Committee, *Legacy Report*, paragraphs 15-16.

<sup>74</sup> At the beginning of the last Parliament, the Treasury Committee discussed this, concluding that unanimity, an avoidance of 'grandstanding' and public support for reports once agreed should inform its work.

that can and should fall short of browbeating. Straightforward questions are more likely to be effective in dismantling weaknesses in a witness's case than querulous cross-examination. While the Treasury Committee may not invariably have adhered to this standard, it has certainly tried to do so. Both the press and, particularly, the public have remarked upon its apparent restraint.

An unnecessarily aggressive style may also, counterproductively, reduce the morale and effectiveness of the organisations that are on the other end of such treatment. And it will be easier for a Committee to win wider support across the House for its concerns if it can be shown to have acted reasonably and proportionately.

It is undoubtedly a problem that Committees are all too often assessed purely on the quantity of media coverage they attract. There are good and less good sorts of coverage. Committees accumulate credibility in small increments, but can lose much of it with one false step. There is no complete answer to this problem; much of it will rest on the good sense and self-restraint of Committees.

#### **6.4 Public appointments and the OBR precedent**

In the last Parliament the Treasury Committee secured a veto over both the appointment and the dismissal of the members of the Budget Responsibility Committee of the OBR.<sup>75</sup> The Government has repeatedly asserted that this does not establish a precedent.<sup>76</sup> It may, nonetheless, reasonably be held by

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<sup>75</sup> Described in more detail on pp. 32-4.

<sup>76</sup> See, for example, Liaison Committee, *Select Committees and Public Appointments*, First Report of Session 2010-12, 4 September 2011, HC 1230,

Parliament to create one. Were it to do so it could provide a powerful tool for the restoration of a measure of accountability to parts of the so-called 'quango state'.

Pre-appointment hearings, of one type or another, are now well established. Under the chairmanship of Giles, now Lord, Radice, the Treasury Committee began the process in response to the 1997 Bank of England Act. The Act granted operational independence over the conduct of monetary policy to the Monetary Policy Committee (MPC). Without securing Government approval, the Committee invited the members of the newly formed Committee for 'confirmation hearings'. This established a firm precedent: the views and suitability of the MPC members were legitimate areas of parliamentary enquiry.

By 2007, as part of Gordon Brown's early efforts at constitutional reform, the Government had decided to formalise the Treasury Select Committee interviews as pre-commencement hearings.<sup>77</sup> The Green Paper, *The Governance of Britain*, also proposed pre-appointment hearings for a wider range of posts. However, neither of these gave Select Committees a veto over appointments. On one occasion in 2007-10 ministers disregarded Select Committee reservations about appointees.<sup>78</sup>

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Ev 12, evidence session with Francis Maude MP, then Minister for the Cabinet Office, especially Qs 84 to 88, 16 June 2011.

<sup>77</sup> Written statement by the Chancellor of the Exchequer, Alistair Darling MP, 3 July 2007, Official Record, HC Deb, c43WS.

<sup>78</sup> This was the appointment of Dr Maggie Atkinson as the Children's Commissioner in October 2009.

So far, the Government has successfully resisted attempts to extend the OBR precedent.<sup>79</sup> In 2011, the Institute for Government, following a discussion with a number of Select Committee Chairs, brought forward proposals for wide-ranging change.<sup>80</sup> The Institute proposed that the Liaison Committee and the Cabinet Office agree a revised list of major public appointments that would require parliamentary scrutiny based on clear criteria.<sup>81</sup>

In a nutshell, the Institute for Government proposal was for an 'A List' of around 25 major appointments, for which Select Committee approval of both appointments and dismissals would be required, following the example of the OBR. For a second tier, there would be a requirement for pre-appointment hearings and for ministers to have to appear before the Committee if they chose to disregard its recommendations. The Committee would not, however, have a final veto in these latter cases. There should also be the scope for pre-appointment hearings with those chairing major public inquiries.

However, when the Liaison Committee brought forward proposals along these lines, the Government – after dragging its feet for a

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<sup>79</sup> Nonetheless, in February 2011, the then Justice Secretary, Ken Clarke, agreed that he would accept the Justice Select Committee's verdict on the proposed appointment of the next Information Commissioner: HC Deb, 16 February 2011, cc 87-88WS.

<sup>80</sup> Akash Paun and David Atkinson, *Balancing Act: The Right Role for Parliament in Public Appointments*, Institute for Government, 2011.

<sup>81</sup> The criteria for inclusion would include: the extent to which independence from government is essential to the operation and credibility of the body concerned; the extent to which the body represents the public in its dealings with the government; the extent to which there is strong public interest in the vision and priorities of the appointee and in the performance of the organisation; the degree to which the post is central to the functioning of Parliament.

while – rejected them in June 2012. Admittedly, the Cabinet Office did issue updated guidance, giving a revised and expanded list of posts for which pre-appointment hearings would be required. It also sought to increase information-sharing with Committees regarding appointment processes. However, it remained immovable on the question of extending the OBR precedent: ‘It is for Ministers to decide whether or not to accept a Committee’s recommendations relating to an appointment.’<sup>82</sup>

In practice the line is already somewhat more blurred than this rebuff of the Liaison Committee’s report would suggest. There are cases of candidates who have withdrawn their applications after (and apparently because of) unfavourable Committee hearings. Of the 73 pre-appointment hearings in the 2010-15 parliament, in four cases the Committee recommended against the appointment. In two of these cases, the appointment did not proceed; in two, it did.<sup>83</sup> However, such an approach, while suggesting that Select Committees can be influential in public appointments, is unsatisfactory. It lacks both consistency and transparency. The Government should rethink its opposition to the IfG/Liaison Committee proposals.

## **6.5 Committee resources: secondments, specialist advisers and in-house staff**

Committees do not necessarily need more money; what they often need is more expertise upon which to draw. This comes in three forms: secondments, specialist advisers and in-house staff.

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<sup>82</sup> Cabinet Office, *Cabinet Office Guidance: pre-appointment scrutiny by House of Commons Select Committees*, November 2013, paragraph 6.

<sup>83</sup> Liaison Committee, *Legacy Report*, First Report of Session 2010-15, March 2015, paragraph 51.

Making the best use of each can greatly enhance Select Committee capability.

### ***Secondments***

In the last Parliament the Treasury Committee greatly expanded its secondment arrangements. It also experimented with new ways of obtaining high quality support. Much of the Treasury Committee's output, and 'quality control' of it, now derives from the work and advice of these – often young and highly motivated – secondees, and also from specialist staff. Their numbers, quality and direct engagement in the Committee's work have increased to an unprecedented degree.

In the last Parliament, the Treasury Committee usually had three secondees.<sup>84</sup> However, the Committee – and other Select Committees – could consider bringing on board more secondees from other public and private sector organisations. The potential conflicts of interest should be manageable, at least in some cases.

### ***Specialist advisers***

Committees can appoint expert specialist advisers to work part-time on specific Committee inquiries. The Treasury Committee has doubled the number of specialist advisers over the past decade.

However, it is not just a question of numbers. Specialist advisers work in an integrated way with the permanent staff team; the

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<sup>84</sup> Typically, the Committee might have one secondee from each of the NAO, the Bank of England and the Financial Conduct Authority. Secondees remain employees of their loaning organisation, and are paid for by them. Secondments typically last between 6 and 18 months. They are identified as secondees in the list of staff in each Committee report. Secondees do not manage inquiries focused upon their donor organisation.

latter's access to their expertise – for example, the ability to get guidance from a specialist, particularly during the early stages of an inquiry – is a valuable resource for the Committee.

In the 2010-15 Parliament the Committee was able to draw on the expertise of some the leading experts in their fields: for example, Bill Winters, former co-CEO of JP Morgan Investment Bank and a former member of Sir John Vickers' Independent Commission on Banking, and now Group Chief Executive of Standard Chartered; Roger Bootle, one of the UK's best known economists; Professor Stephen Glaister, an internationally regarded transport economist, who was a specialist adviser on the Committee's inquiry into the economics of High Speed 2. There are many others.<sup>85</sup> While there is some history of highly regarded technical experts being willing to support Committees for very modest payments, the expanded use of such experts has been one of the most positive developments of recent years, and it is likely to grow in step with the rising effectiveness of the Select Committee corridor.

### ***Permanent staff***

At present, a group of specialists work with more generalist Commons staff. Among the latter, there is a need for both greater continuity and the development of specialist skills and experience.

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<sup>85</sup> A full list of advisers used by the Treasury Committee can be found at <http://www.publications.parliament.uk/pa/cm201415/csession/1/112.htm#a87>; those used by the PCBS can be found at <http://www.publications.parliament.uk/pa/cm201314/csession/1/112.htm#a43>

Committee secretariats may be quite small: the Treasury Committee is supported by two clerks (one a less senior, and unfortunately frequently rotating, post) and three economists.

The present Clerk of the Treasury Committee took up the post in 2011. He has been outstanding. Nonetheless, he was, amazingly, the fourth holder of that post in the preceding three years. Mercifully, there has been no further change since then, but there were three Second Clerks on the Committee in the 2010-15 Parliament. Soon after they reach full effectiveness, it seems, they move on to another post in the House. Staff should not be expected to stay in the same job indefinitely, and they should be encouraged to seek promotion and career advancement. But Select Committees should not be seen as training camps, either. There is merit in much greater stability among the permanent staff teams. Committee Chairs may need to consider the issue in the new parliament, possibly acting collectively.

Parliament also needs to do much more to develop specialist skills among the clerks, who lead the committee teams. A cadre of staff with substantial financial and economic skills in the Department of Chamber and Committee Services (the current name for what is largely the old Clerks' department) is almost completely lacking and is now essential. This does not require the recruitment of a flock of econometricians. But it does require recruitment and placement of generalists who, over the course of their careers, will expect to find their 'career anchor' mainly in financial- or economics-related posts: for example in the Treasury, Public Accounts, Work and Pensions, Business or Transport Committees, in House Committees which may require financial acumen and on financially-orientated Public Bill Committees, or in work with the Library on issues such as

international financial institutions.<sup>86</sup> This development of expertise will over time create a group of senior Commons staff at ease with financial and economic subjects, and more effective in leading the work of expert secondees and advisers.

## **6.6 Committee size**

Whips want to keep backbenchers occupied. They prefer larger Committees. It is sometimes argued that a larger Committee can include a wider range of expertise and experience. The Wright Committee examined this question. It concluded that Committees should be no larger than eleven. Some on that Committee favoured a maximum size of nine.<sup>87</sup> The greater effectiveness and cohesiveness of a smaller group of nine to eleven is worth a lot. A small number of highly motivated Members will make the time and effort to attend more meetings. They will bond better and faster. This also makes maintaining consensus easier. The Liaison Committee has recently reiterated that the maximum size of a departmental Select Committee should be eleven. The Liaison Committee may need to stick together to ensure that – in contrast to the last Parliament – this is implemented.

## **6.7 Other options for the future**

One possible area for future work is to assess the role and influence of international bodies which can have a significant impact on policy. In particular, the Treasury Committee might

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<sup>86</sup> This might have wider benefits. For example, at least two Committees in recent years have needed advice on the possible market sensitivity of their reports, as did Parliament as a whole. They lacked an authoritative in-house source of such advice.

<sup>87</sup> House of Commons Reform Committee (the Wright Committee), *Rebuilding the House*, First Report of Session 2008-09, 12 November 2009, HC 1117, paragraphs 54-55.

attempt to bring some public accountability to the global economic organisations whose influence and decisions largely elude parliamentary scrutiny. The IMF, the World Bank, and the OECD spring to mind.<sup>88</sup> There are others. The relative weakness in the accountability of these institutions contrasts with that of other international bodies. For example, inter-parliamentary assemblies sit alongside the Council of Europe, NATO and the Organisation for Security and Co-operation in Europe. Something as elaborate or expensive as those bodies is certainly not needed – and would probably be undesirable. A joint working group of relevant parliamentary committees of the key member countries might suffice. It is certainly an approach that could be explored.

There are also opportunities for Select Committees to work together more. The House's rules do not make formal joint inquiries particularly easy, but on occasion there has been successful co-operation. For example, the European Scrutiny Committee, the Home Affairs Committee and the Justice Committee made a joint statement in November 2014 criticising the Government's engagement with Parliament over its decision to opt out of 110 EU justice and home affairs measures, and to opt back into 35 of them.<sup>89</sup> There has also recently been a joint inquiry by the Scottish Affairs and BIS Committees into the demise of the City Link delivery firm. Such joint work could be expanded.

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<sup>88</sup> The OECD does have a global parliamentary network, as well as an annual debate devoted to its work at the Council of Europe Parliamentary Assembly; however, neither of these is a means of regular parliamentary scrutiny and accountability.

<sup>89</sup> *UK's 2014 block opt-out decision: joint committee statement*, 7 November 2014.

## 7. CONCLUSION: RISKS TO SELECT COMMITTEES

A recovery of Parliament is under way. Parliament does a better job of holding the executive to account than it did even five years ago. This paper records some examples but there are many others on the Committee corridor. Many committees have also been pushing the boundaries, greatly to Parliament's benefit. The Select Committee revival has been a collective effort.

None of these past or prospective developments on the Committee corridor fundamentally alter the model of British parliamentary government. Government will continue to introduce almost all legislation, for instance, and can be expected to pass almost all of it. But the *quid pro quo* of this delegation of executive authority should be that the executive as a whole be required better to explain its actions. Select Committees will increasingly be the main, often the only, mechanism by which this can, in practice, be secured.

Select Committees have reduced the distance between Parliament and public. But Committees should resist the temptation to see public engagement as an end in itself: Committees' focus should remain on improving their own effectiveness.

As Committees cease to be a diversion for the politically dispossessed, and progress from the agreeable but sometimes variable efforts of decades ago, as they succeed more often in holding the executive relentlessly to its duty to explain itself, the growth of their influence will provoke a response from the executive, discussed below. Vigilance will be needed to ensure that their effectiveness is not thwarted.

### **7.1 Increased partisanship?**

Select Committees, in the public mind, are probably the least rebarbative corner of the parliamentary landscape. Bipolar politics has much less appeal these days – if it ever was so appealing.<sup>90</sup> One of the reasons that Select Committees can make progress is because they are a forum for discussion and exchange more akin to what the public experience in daily life. Partisanship will continue to characterise most of Parliament's activities, and probably rightly. It provides the electorate with clear choices – a crucial merit of an adversarial political system

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<sup>90</sup> I remain deeply sceptical about the existence of a parliamentary 'golden age', or the public's respect for it. Each generation seems to look back with rose-tinted spectacles at 'better' or 'nobler' parliamentary times. For example, in 1936 Sir Robert Ensor in his *History of England 1870-1914* wrote that: 'In the seventies of the last century, there were no film stars, no football stars, no speed supermen, no male or female aviators, no tennis heroes or heroines... The people's daily fluctuations of excitement, of expectancy, of hero-worship, which are dissipated now over these and many other fields, were concentrated then upon the House of Commons... parliamentary speeches were reported prominently and at length in all the newspapers; they were read aloud and discussed in homes and public houses. Points scored or lost in debate across the floor of the House of Commons were not merely noted by members present, but followed with rapt attention throughout the country. Working men canvassed the form and prospects of parliamentary leaders much as they do now of dirt track racers.' Believe that if you will.

which, deep in the British democratic (and judicial) bloodstream, is well understood, accepted, and probably welcomed, notwithstanding all the complaints about it.<sup>91</sup> We may live in a less adversarial age, but it is unlikely fundamentally to alter the House of Commons Chamber any time soon.

Select Committees are distinguished by their efforts at consensus. As small groups working face-to-face, focussed on the evidence they receive, party boundaries are significantly weakened. Select Committees have a majority of backbenchers from the governing party (or parties), but have demonstrated that they have, and should have, no compunction about issuing reports critical of the Government where supported by evidence. As cross-party Committees, their conclusions cannot be dismissed as partisan. But as their importance increases, there is a risk that Select Committees may become more politicised and partisan, as the stakes get higher.

The US experience suggests that this could undermine their effectiveness. It is superficially tempting to look to the US as a model to which Select Committees ought to aspire. Congressional committees wield enormous power and influence. They have staff and resources that dwarf the UK's modest Select Committee secretariats. And they have more robust powers to summon witnesses or demand papers. In short, they would appear far better equipped to interrogate the executive.

Yet all Congressional chairmanships go to the majority party and most members of their sizeable secretariats are appointed by,

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<sup>91</sup> In 2014 the Hansard Society found that 54 per cent of people claimed to have seen or heard PMQs (in full or excerpt) in the previous 12 months. 68 per cent of those 65 or older had seen it, but only 35 per cent of those aged 18 to 24.

and work to, the majority party.<sup>92</sup> Partisan conflict breaks out at every stage of their work, over inquiry remits, the selection of witnesses, and much else. Unsurprisingly, as a result, reports are frequently demonstrably partisan and, in spite of their enviable resources and powers, too often, 'rigorous scrutiny has been compromised by the promotion of partisan advantage'.<sup>93</sup> A recent study of the scrutiny of monetary policy by committees of both houses of the US Congress and by the House of Commons concluded favourably for the latter.<sup>94</sup>

One way of mitigating the risk of executive-led partisanship – and acting in the spirit of Robin Cook's original reform proposals –

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<sup>92</sup> The minority party would typically get around a third.

<sup>93</sup> Andrew Tyrie, *Mr Blair's Poodle Goes to War*, Centre for Policy Studies, 2004, p. 39. This was an attempt to compare the efforts of Congress with those of Parliament in scrutinising the same decision, and set of subsequent events: the Iraq War.

<sup>94</sup> See Cheryl Schonhardt-Bailey *Monetary Policy Oversight in Comparative Perspective: Britain and America during the Financial Crisis*, London School of Economics, 2014: 'In contrast to expectations, the parliamentary committee better appears to deliver a reciprocal and interactive deliberative forum than the congressional committees. Relative to the discourse on monetary policy oversight in the UK, congressional committees devote more attention to process and less to substance; and, particularly in the HFSC, they also tend toward populist rhetoric. Previous work provides strong evidence that members of the HFSC and SBC 'grandstand' or direct their comments to audiences outside the hearings (constituents, interest groups, public opinion more generally) [...]. Here, the evidence shows a clear contrast between this tendency in congressional committees and the absence of it in the parliamentary committee. Finally, the TSC members focus predominantly on monetary policy and the policy of the central bank in the oversight hearing, as opposed to introducing other issues areas (income inequality, international competitiveness, healthcare, and so on).'

would be to build on the model of election of Select Committee Chairs by secret ballot of the whole House, and elect Committee members in the same way. This has merit. It could certainly act as a counterweight to the risk of increased partisanship. However, such a change is probably not for now. Any reconsideration would have to address the problem of its complex and potentially cumbersome nature, which is what led the Wright Committee to reject it.<sup>95</sup>

## **7.2 Trust and confidence**

Select Committees are reasonably watertight. Private meetings almost always stay private, quite a contrast with Cabinet over the past 30 years. In the event of lapses, members of Select Committees usually have a shrewd idea of who any miscreants may be. But as the power and importance of Select Committees increase, so will the incentive to leak. Committees lack effective means to deal with Members who breach confidences or pass information or papers to front benchers.<sup>96</sup>

Arguably Select Committees should have internal investigatory powers.<sup>97</sup> But it is hard to see how such a power would secure co-operation from Members, unless they were also given the power

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<sup>95</sup> House of Commons Reform Committee, *Rebuilding the House*, 2009, Annex section, pp. 29-30.

<sup>96</sup> Direct evidence was received of a few leaks – of private proceedings and of a draft report – which might have been damaging, both from the Banking Commission and from the Treasury Committee. But in neither case was a tool available to deal with it, other than making a special report to the House – which would itself be public and potentially damaging to the work of the Commission or Committee.

<sup>97</sup> That is, the power to call in an investigator to examine, and report on, a breach of Committee privacy.

to suspend one of their number from participation in Committee business. This, in turn, could degenerate into partisanship: at worst, a Government-led majority imposing 'discipline' on opposition Committee members. The obstacles to making such a system work are large. Nor has any workable idea for a change in the rules been proposed. But something in this area may yet be needed. A committee of elected departmental Select Committee Chairs (a sub-committee of the Liaison Committee) might want to consider this issue.

### **7.3 Media focus**

Committees get a good deal more coverage in the media these days. This is partly because they are more effective, but it is also because the 24/7 news industry has an insatiable appetite. Some argue that the media has had a damaging effect, overall, on the ability of Governments to think and act with deliberation in the long term interests of the country. Others, including me, believe that any fault largely lies with government and the politicians. But Committees must resist pressure to obtain press coverage for its own sake. The Committee may make a name for itself, but 'ambulance chasing' may also erode their long term effectiveness. As already explained, Committees, and this is easier said than done, need to build a reputation over a longer time frame and on the basis of an agreed agenda of work – even if it will need frequent amendment to adapt to events.<sup>98</sup>

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<sup>98</sup> The Treasury Committee sought to do this by inquiring into the reform of banking regulation, the Libor scandal, the collapse of the Co-op Bank's bid for Lloyds' Verde branches, and SME lending. It did so without disrupting its core work of regular Bank of England MPC and FPC hearings, scrutiny of other powerful quangos (among them the FCA, appointment hearings), and scrutiny of each Autumn Statement and Budget.

## 7.4 Executive recidivism

Signs of a negative reaction to a more effective parliamentary committee system over the past five years is now in evidence. The experience of the Backbench Business Committee provides an example. In 2010, as a result of a commitment by the Coalition Government to implement the Wright Committee reforms, the Backbench Business Committee became responsible for the allocation of backbench time – a task which had previously been in the hands of the Government whips. It was initially a body upon which both the Chair and, separately, the other Members were elected by the whole House by secret ballot. This greatly reduced the capacity of the whips to exert influence.

The Government and Opposition front benches had a shared interest in curbing the Committee. On 12 March 2012, under the pretext of bringing the Committee into line with the departmental Select Committees, the Government, with the support of the Opposition front bench, proposed ending what it called the ‘anomaly’ whereby the members were elected by the whole House. The Wright Committee had believed that Members of the House should take responsibility for backbench business through a committee of their elected colleagues. The main argument from the front benches (both of them) was that whole House election was undesirable because it would allow the biggest party to decide who the other parties’ members were. The House agreed the change on a division. So now only the Chair is elected by the whole House. The other members are elected within their party groups.<sup>99</sup>

This change was, perhaps conveniently, made ahead of a report by the Procedure Committee into the Backbench Business Committee. That Committee was not persuaded that the change

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<sup>99</sup> HC Deb, 12 March 2012, c35-c68.

had been necessary, but did not recommend reversing it so soon after making it.<sup>100</sup> The reform has removed the only case of a Committee's composition (Chair and members) elected by secret ballot of the whole House. This is a step in the wrong direction. As already mentioned, there is a good case, in time, for extending whole House election to Select Committee memberships as well as that of the Chair.

Party leaderships, whether of the governing party or of those who aspire to become the governing party, have an understandable common interest in limiting Parliament's capacity to require Governments to explain themselves. It is probable that Robin Cook's promise in 2002 of a free vote on the proposal that Select Committee members be nominated by a new 'Committee of Nominations' was undermined by the co-ordinated operations of the whips, leading to the proposal being narrowly defeated.

There have been rumours of attempts to undermine the Backbench Business Committee's role even further.<sup>101</sup> An attempt, some years hence, to get rid of the Backbench Business Committee would not altogether surprise me. The creation of such a Committee was a recommendation of the Conservative Party's Democracy Task Force.<sup>102</sup> The outstanding work of Members of the Committee and particularly its Chair, Natascha Engel, have fully justified the recommendations of the Task Force, and of the Wright Committee, to create it.

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<sup>100</sup> Procedure Committee, *Review of the Backbench Business Committee*, Second Report of Session 2012-13, 22 November 2012, HC 168.

<sup>101</sup> Mark D'Arcy, *Unfixed Term*, 13 October 2014.

<sup>102</sup> Conservative Democracy Task Force, *Power to the People: Rebuilding Parliament*, 2007.

It has also been rumoured that the greatly enhanced independence and autonomy of Select Committee Chairs that has come with election by the whole House may sooner or later be reversed.<sup>103</sup> There may be some regret among party managers that the Select Committees have become more independent. Electing chairs from within the party groups would give the whips much more scope to influence the result. But it would be a step back for the Select Committee system, and could also be a step towards greater partisanship on the Committee corridor.

## 7.5 Conclusion

The traditional adversarial system is deeply ingrained in this country, and as discussed on page 14, very valuable to our democratic health. Nonetheless, and whether intentionally or not, the architects of the 1979 Select Committee reforms sent the House on a long journey into uncharted, and less partisan, territory. Twenty years ago a Secretary of State told me that there was no point in spending time preparing for an appearance before a Select Committee, as only the floor of the House mattered and nothing in a Committee hearing ever required subsequent attention. That person's contemporary counterpart probably would not be so relaxed about his or her preparation. Select Committees now contribute to leading the news and influence decisions on many fronts.

Parliament has shown that its Committee system can be used to require explanation from Government, to keep a close watch on the quango state, and make some contribution to remedying policy and legislative failures. It has also been of some assistance to the executive, helping defuse difficult issues on banking reform and buttressing the visible independence of bodies such as the

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<sup>103</sup> Mark D'Arcy, *Unfixed Term*, 13 October 2014.

OBR. This is why any defence of Select Committees against executive encroachment should rely not only on public pressure – though that will be important – but also on force of argument: an appeal to shared interests of the executive and legislative arms of government.

Notwithstanding the mutual benefits of more effective Select Committees, the short-sighted view might sway Ministers. There may be an attempt to domesticate Parliament again. If that happens, it should be vigorously resisted.

## **APPENDIX 1:**

### **Memberships of the Treasury Select Committee and the Parliamentary Commission on Banking Standards**

#### **Treasury Select Committee – membership at end of 2015 Parliament**

Andrew Tyrie MP (Chairman)

Rushanara Ali MP

Steve Baker MP

Mark Garnier MP

Stewart Hosie MP

Mike Kane MP

Andrew Love MP

John Mann MP

Jesse Norman MP

Teresa Pearce MP

David Ruffley MP

Alok Sharma MP

Rt Hon John Thurso MP

## **Treasury Select Committee: former members**

Tom Blenkinsop MP

John Cryer MP

Michael Fallon MP

Andrea Leadsom MP

Rt Hon Pat McFadden MP

George Mudie MP

Brooks Newmark MP

David Rutley MP

Chuka Umunna MP

## **Parliamentary Commission on Banking Standards**

Andrew Tyrie MP (Chairman)

The Most Rev and the Rt Hon the Archbishop of Canterbury

Mark Garnier MP

Baroness Kramer

Rt Hon Lord Lawson of Blaby

Andrew Love MP

Rt Hon Pat McFadden MP

Rt Hon Lord McFall of Alcluith

Rt Hon John Thurso MP

Lord Turnbull KCB CVO

## **APPENDIX 2:**

### **Note to the Liaison Committee on the Parliamentary Commission on Banking Standards, July 2014**

#### **Introduction**

1. This paper draws on extensive exchanges with colleagues on the Parliamentary Commission on Banking Standards. It also reflects a large number of suggestions from the senior members of staff of the Commission. It addresses two issues:

How a Commission might work to best effect if it is selected as the method to be used.

2. The advantages of the Parliamentary Commission approach are:
  - Flexibility;
  - speed;
  - the chance to assemble Parliamentarians with expertise in a subject; and
  - cost.

The fact that a Commission will be composed of legislators makes it particularly suitable in cases where it will be necessary to translate its conclusions into legislation.

3. Each Commission will be unique and will have its own requirements for success, so they will need to be structured and to operate in different ways. There is no one-size-fits-all model.

### **Criteria for a Parliamentary Commission**

4. Before deciding how to structure any inquiry body, it is important to decide what the problem is that it will be asked to solve, and over what timescale.
5. The experience of the PCBS suggests that the following are necessary for a Parliamentary Commission to be the best choice of method and for such a Commission to be a success:
  - There needs to be a clear and identifiable problem with a high level of public concern and salience
  - This problem needs to be amenable to proposals for change
  - There should be all-party agreement to the idea of a Parliamentary Commission – party divisions would have been fatal to the PCBS
  - The problem cannot readily be dealt with by an existing Select Committee, and the Commission approach is likely to be quicker and cheaper than a judge-led inquiry or a committee of experts.

6. The narrow space that this combination of features allows will mean that Parliamentary Commissions are likely to be infrequent. In the case of the PCBS, the Treasury Committee could also have been a suitable vehicle to perform the task, but it would have meant the TSC doing little else and made performing its necessary duties (such as scrutiny of the Bank of England, the Autumn Statement, the Budget and public appointments) difficult. The creation of the PCBS meant that the TSC was able to continue work at almost its normal level.
7. If a Commission is decided upon, I would make the following observations.

### **Membership**

8. The membership of 10 was at the top end of what is manageable. Certainly for technical subjects, and probably for most other subjects, the smaller the membership, the better – 6 would be ideal, unless more are required to balance a lot of different views. But in that case, a different sort of body might be preferable – perhaps one that is a debating forum rather than an inquisitorial body – and so a Parliamentary Commission is less likely to be appropriate.
9. The PCBS had considerable Commissioner expertise. This meant that it was able to acquire credibility quickly, and that the Members were already up to speed with a good deal of the often highly technical subject matter.
10. The membership was also a considerable advantage when considering subsequent legislation, as the peers from the PCBS were able to persuade their colleagues in the upper House, and therefore the Government, of the merits of a number of its key recommendations.

11. The five Commons Members were drawn from existing Members of the Treasury Committee. While the consequent heavy workload for the five of us was a distinct disadvantage, it had the advantage that we were used to working together, had knowledge in the subject area and could maintain contact with the rest of the Committee during the inquiry and subsequently. Nonetheless, the workload of the Treasury Committee scarcely dipped from the very high level of the first two years of the Parliament; its work during the PCBS was still comparable to that of the more active years of the Committee in the previous Parliament.
12. It should be borne in mind that some Members on the relevant departmental Committee may feel aggrieved that their Committee is not examining the subject of the Commission's inquiry unless they themselves are on the Commission. In the case of the TSC, this was assuaged somewhat by the fact that the need for the PCBS had been triggered by the TSC's own inquiry into the Libor scandal.

### **Setting up**

13. The summer recess began very soon after the PCBS was created. This made it much more difficult to recruit staff. Many people in outside organisations were away in August, unable to be interviewed or unwilling to focus on the issue when approached.
14. The Commission held several meetings at the start to plan our work. These gave an essential sense of direction and, importantly, some limit to what we were trying to achieve. There was considerable input from Members, with valuable proposals on how to conduct the work and what to examine.

## Staffing

15. It would be a mistake to assume that future Commissions should necessarily follow the staffing model of the PCBS. The model we used, based around a fairly traditional core of Committee staff, may not suit all circumstances.<sup>104</sup> It will always be necessary to deploy some House staff as their experience of Committees, Members, procedure and the House will be relevant. We were fortunate in obtaining the services of an outstanding clerk as chief of staff who was made available at very short notice. He did an excellent job in putting together and leading a staff team under severe time pressures. High quality clerk support will certainly be necessary for any future Commission. But although it would be the least risky choice to follow the well understood practice of employing a clerk to be the chief of staff, this may not be the best option. The PCBS was covering a technical area where the Commission might have benefited from a technically expert outsider (a financial lawyer, for example, or someone from the Bank of England) as chief of staff. A trained project manager would also be helpful as part of the team, not least for cost control.
16. The technical nature of the PCBS's work meant that the PCBS required staff from outside Parliament, some of whom had to be paid for – although several were offered free of charge.

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<sup>104</sup> A Clerk/Chief of Staff at SCS level; a Library specialist in the subject area temporarily promoted to SCS level; 50–75 per cent of a senior specialist in the subject area at band A2; a second clerk at band A2; two Committee assistants at band B2; a Committee assistant at band C; a Committee support assistant at band D1; and a media officer at band B1.

17. The PCBS eventually employed around 25 staff in all, although at any one time the team had at most about 20 staff. The outsiders were recruited on a variety of terms including unpaid loan, secondment and short-term contract. This allowed the Commission to carry out its work at a fraction of the cost of a judge-led inquiry. I identified most of the organisations from whom we drew secondees and contacted their leaders to request high quality staff – the chief of staff followed up, usually with an interview. Given the substantial personal engagement between Members and staff on the Commission, there is a case for even closer involvement by the Chair of a future Commission in the recruitment of secondees and external staff. In the cases of most seconded staff, we took the first choice offered, given the speed required for the work to be done. We would have been able to ask an organisation for someone else, but at the cost of time lost. The Treasury undertaking to refund the costs enabled decisions to be made more quickly. This flexibility worked well. Having all its staff in one place was very helpful, and likely to be so in future cases.
18. The House of Lords contribution to the staffing of the Commission was nugatory: it provided only half the time of a single clerk. The Lords does of course have a smaller staff than the Commons, but even so it appears that it is not capable of providing staff support to joint Commissions on an equivalent basis. The Commons will need to be prepared to provide the bulk of the parliamentary staff for future Commissions. The notion that the Lords take the lead in most Joint Committees, and that they should be run with Lords procedures, should end.

19. Other House staff elsewhere in DCCS (in particular the Treasury Committee and the Scrutiny Unit) and in the Library were also called upon from time to time to help with specific tasks. The support was often outstanding. I would also particularly like to record my appreciation of the imaginative suggestions made by some of the most senior Commons Clerks.
20. The staff recruited from elsewhere adjusted with varying success to the requirements of the Commission. Some became indispensable members of the team; some failed to adapt; some were better placed to contribute ideas than to produce briefings or drafts; and a few promoted their own hobbyhorses too much. None of these behaviours had much to do with seniority. Commissions should be prepared to send people back if they consume too much management or colleague time for the benefit they contribute.
21. Staff interests were declared and conflicts of interests were vetted – this was essential to promote the credibility of the Commission.

## **Funding**

22. The Treasury agreed to refund the cost of the PCBS. But if the Government agrees to fund a future Commission, it is important not to kill the goose that is laying the House's golden egg. The House should charge the Government the marginal, not the average, cost of the resources it commits. The House could ask the NAO to allocate someone who could reassure the Government about the costs that are charged and who could work alongside the project manager (see para 15). I needed to devote more time to cost control, and to ensuring that only the marginal cost was charged, than I would have liked.

23. The Treasury initially resisted the notion of direct repayment, suggesting that the House should pass a supplementary estimate to cover the cost. This would have appeared as the House increasing its budget without the Treasury incurring any extra cost. I intervened to resolve this and the Treasury made a direct transfer to the House.
24. It is impossible to estimate the cost of a future Parliamentary Commission without knowing the subject matter: each will have its own demands, and it may be possible to have a Commission without needing to call on any additional Government funding if it is on a subject where the House had expert staff available. There will, however, always be non-financial effects on other Committees or departments of the House from the redeployment of staff. If Commissions were to become regular events the House may need to budget for them as it already does Joint Committees on draft legislation.
25. The appendix gives the costs of a number of other recent inquiries. It also compares in more detail the costs of the Commission with that of the Salz review commissioned by Barclays to provide a plan for cultural change following the Libor scandal – a related but more limited subject. These figures suggest that the cost of the PCBS was comparatively modest.
26. Commissions should therefore be capable of offering significant attractions for the executive. They can report more quickly, and at a fraction of the cost. These attractions will, however, depend on the exercise of self-discipline by any future commission.

## **Use of counsel, etc**

27. The Commission was given the power to appoint counsel as specialist advisers to question witnesses. This happened in a few full Commission meetings and in some of the panels, and was generally a success. I would recommend giving this power to any future Commission. I agree with some on the Liaison Committee that Select Committees should have this power, too.

## **Operation of panels**

28. The PCBS was given the power to appoint sub-committees ('panels'), with a quorum of only one. Their purpose was to take formal evidence. These were useful on occasion, as they enabled much more evidence to be gathered on a wider range of subjects than would have been possible by the Commission on its own. They also allowed evidence to be gathered in unusual ways, for example through a visit to the home of a seriously ill witness. However, their drawback is that a newly formed group of Members may – for party political or personal reasons – lack the trust in each other necessary to delegate important work to a small group or a single Member with a particular interest or apparent hobbyhorse. There is also the risk that Members may attach less importance to evidence they have not personally heard while emphasising evidence only they have heard: these could cause difficulty in agreeing the Report or Reports.

29. It was probably a mistake that the Commission's panels piggy-backed on existing sub-committee arrangements. Although the panels did not have a power to report, the differences from normal sub-committees in purpose and organisation were not sufficiently clear. Future Commissions should be given the power to create panels for evidence-

taking only. These panels must nevertheless give witnesses the full protection of parliamentary privilege. Their powers will need to be defined in the resolution creating any future Commission. This should not prevent a Commission creating conventional sub-committees, should it wish to do so.

### **Powers to obtain documents and witnesses**

30. The PCBS was given the normal powers to send for persons, papers and records. It was able to secure the witnesses and documents it wanted, after a few exchanges on occasion. Future Commissions should have these powers.

### **Virtual meetings**

31. The Commission was given the novel power for the Chairman to report to the House orders, resolutions or special reports on behalf of the Commission, having consulted other Members and obtained a majority. This was designed to speed the work of the Commission, especially during recesses. In the event, this precise power was not used, although the Commission made use of telephone conferences to discuss matters among Members. We might have used them more, but the House's ICT systems remain inadequate. I would nevertheless recommend giving this power to any future Commission. Indeed, I think that 'virtual meetings' should become part of parliamentary work, reflecting practice in most other walks of life these days. I believe that Committees should be able to decide for themselves those things which need to be agreed at a physical meeting (Reports are one clear example).

### **Timetable**

32. The initial timetable of the Commission – as set by the House at the instigation of the Government – was wholly unrealistic:

it envisaged completing legislative scrutiny by Christmas and the report on banking standards shortly thereafter! Governments will often want instant responses. A Commission needs to be set up with a realistic time allowed for its work, so that it can be planned properly. The Commission issued five Reports, but the very large fifth and final one would have been shorter and crisper with more time.

33. During the nine months of the inquiry, some staff and Commissioners worked very long hours during the working week and at weekends. Nonetheless, there was a risk at some stages that the final report would not be delivered on time. The technical nature of some of the report drafting, combined with the need to translate such technical material into an accessible House style, was an enduring problem – technical experts who could contribute to this drafting were always at a premium, as were House staff with a full grip on the subject matter.
34. As already noted, the PCBS produced five Reports culminating in a long final one. All the reports were drafted in conventional Committee style with analysis of evidence leading to conclusions. Commissions should consider adopting different styles of reports to suit their subject – for example those of the Franks report into the loss of the Falkland Islands in 1982 or, in particular, the Vickers report into banking. The reporting style may partly be consequent on the choice of chief of staff (see para 15), as well as on the preferences of Members.

### **Follow-up**

35. A Commission has one unique advantage over any other form of inquiry: it consists of legislators, who will be motivated to secure, and capable of securing, any legislation consequent

upon a Commission recommendation. This is the main reason why it was a great mistake that the PCBS – and its staff – was dissolved when it made its fifth report in June 2013. It should have been kept in being longer to do the follow up necessary in order to capitalise on its work and, in particular, to ensure that its recommendations were incorporated in legislation. In the absence of a Commission, responsibility for the subject areas of its work lies with the Treasury Committee and the Lords Economic Affairs Committee.

36. Commission Members decided that they wanted to continue to operate informally even if the Commission could no longer make formal reports. But scattering the staff meant an immediate and irrevocable loss of collective memory. This has handicapped follow up work ever since, reducing Parliament's effectiveness.
37. Support for follow up work had to be reassembled. Former Commissioners had the assistance of House legal advisers to draft amendments and one (excellent) person part time from the Scrutiny Unit, but otherwise the follow up on the Bill was done by TSC staff who were also doing other things. Only one of these staff had worked for any time at all on the PCBS, so the team had to get up to speed with a vast and complex subject almost from scratch in some areas.
38. It is in any case a risk to assume that the relevant departmental or Lords Committees will want, and be able, to do the follow up work. As it happened, the Lords members of the PCBS were assiduous and committed in working with the Chairman to press the Government to move a very long way on a number of key issues. That the legislative follow up was largely successful should not, however, give any false comfort about how parliamentary resources were allocated to this

work in the months after reporting. The allocation of these resources was inadequate.

39. Commissions should be aware that follow up may be necessary even after any relevant bill has received Royal Assent: secondary legislation and non-statutory implementation will need continuing scrutiny and pressure to ensure that the executive delivers on its promises.

Andrew Tyrie MP  
July 2014

## APPENDIX 3:

### Costs

In November 2012, Chloe Smith, Parliamentary Secretary, Cabinet Office, provided details of the costs of public inquiries held in the last ten years:

**John Stevenson:** *To ask the Minister for the Cabinet Office (1) what the (a) highest and (b) lowest cost was of a public inquiry held in the last 10 years; [119573]*

*(2) what the average cost was of public inquiries held in each of the last 10 years; [119574]*

*(3) how many public inquiries there have been in each of the last 10 years; [119575]*

*(4) what the average length of time taken was for a public inquiry between 2002 and 2012 to date; and what the (a) longest and (b) shortest such inquiry has been. [119576]*

**Miss Chloe Smith:** *I refer the hon. Member to the following table:*

<b>Inquiry</b>	<b>Chair</b>	<b>Legislation</b>	<b>Duration</b>	<b>Costs (£ million)</b>
<b><i>Bloody Sunday Inquiry</i></b>	Lord Saville	Tribunals of Inquiry (Evidence) Act 1921	January 1998 to June 2010	<sup>(1)</sup> 191.5
<b><i>Shipman Inquiry</i></b>	Dame Janet Smith	Tribunals of Inquiry (Evidence) Act 1921	January 2001 to January 2005	<sup>(1)</sup> 21
<b><i>Investigation surrounding the death of Dr David Kelly</i></b>	Lord Hutton	Non-statutory	July 2003 to January 2004	1.68
<b><i>Soham Murders Inquiry</i></b>	Sir Michael Bichard	Non-statutory	December 2003 to June 2004	1.9
<b><i>Zahid Mubarek Inquiry</i></b>	Mr Justice Keith	Non-statutory	April 2004 to June 2006	4.2
<b><i>The Billy Wright Inquiry</i></b>	Lord MacLean	Section 7 of the Prison Act (Northern Ireland) 1953. Converted to inquiry under Inquiries Act 2005	November 2004 to October 2010	30.5

<b>Inquiry</b>	<b>Chair</b>	<b>Legislation</b>	<b>Duration</b>	<b>Costs (£ million)</b>
<b><i>Rosemary Nelson Inquiry</i></b>	Sir Michael Morland	Section 44 of the Police (Northern Ireland) Act 1998	November 2004 to May 2011	46.46
<b><i>The Robert Hamill Inquiry</i></b>	Sir Edwin Jowett	Section 44 of the Police (Northern Ireland) Act 1998. Converted to inquiry under Inquiries Act 2005	November 2004 to present. (Although the RHI report has been completed and the Inquiry fulfilled its terms of reference, the Inquiry report will not be published until the conclusion of related legal proceedings)	33
<b><i>The ICL Inquiry</i></b>	Lord Gill	Inquiries Act 2005	January 2008 to July 2009	1.91
<b><i>The Baha Mousa Inquiry</i></b>	Sir William Gage	Inquiries Act 2005	May 2008 to September 2011	12.99
<b><i>Outbreak of Clostridium difficile infection</i></b>	Dame Deirdre Hine	Inquiries Act 2005	October 2008 to March 2011	2
<b><i>Iraq Inquiry</i></b>	Sir John Chilcot	Non-statutory	June 2009 to present	<sup>(2)</sup> 6.1

<b>Inquiry</b>	<b>Chair</b>	<b>Legislation</b>	<b>Duration</b>	<b>Costs (£ million)</b>
<b><i>The Al Sweady Inquiry</i></b>	Sir Thayne Forbes	Inquiries Act 2005	November 2009 to present	<sup>(3)</sup> 12.5
<b><i>The Azelle Rodney Inquiry</i></b>	Sir Christopher Holland	Inquiries Act 2005	March 2010 to present	<sup>(4)</sup> 1.435
<b><i>Mid-Staffordshire NHS Foundation Trust Inquiry</i></b>	Robert Francis QC	Inquiries Act 2005	June 2010 to present (following on from earlier inquiry from January 2005-March 2009)	<sup>(5)</sup> 11.75
<b><i>The Detainee Inquiry</i></b>	Sir Peter Gibson	Non-statutory	July 2010 to present	<sup>(6)</sup> 1.70
<b><i>The Leveson Inquiry</i></b>	Lord Justice Leveson	Inquiries Act 2005	July 2011 to present	<sup>(7)</sup> 3.9

(1) Inquiry commenced more than 10 years ago but ended within the timeframe requested.

(2) To end March 2012.

(3) As at 31 July 2012.

(4) As at 30 September 2012.

(5) As at 5 September 2012.

(6) To end March 2012.

(7) As at 30 June 2012.

## **APPENDIX 4:**

### **Examples of changes made to the Banking Reform Bill<sup>105</sup> as a result of PCBS Members' follow-up work**

Commissioners ensured that there will be an independent, statutory review of ring-fencing, which will be able to consider full separation across the industry, not just individual firms – this was crucial to ensure that ring-fencing, as an experimental reform, was reviewed after a suitable period to ensure that it was working. It also acts as a further deterrent to banks seeking to game the ring-fence.

The Government's initial Bill failed to implement the 'licensing' regime recommended in the final PCBS report for bank staff who were not the most senior leaders but who might be able to do serious harm to the bank or its customers. Pressure from Commissioners led to the inclusion of clauses in the Bill which implemented this system and so ensured a much higher level of personal responsibility in banking.

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<sup>105</sup> Enacted as *The Financial Services (Banking reform) Act, 2013*.

The Government had previously refused to grant the Financial Policy Committee a power of direction over the so-called 'leverage ratio' (which promotes banks' resilience by making them hold a certain level of capital) before 2018; the PCBS said it should be given the power by Spring 2013. Following pressure from former Commissioners in the Lords, and the Treasury Committee in the Commons, the Chancellor agreed to hand the FPC the power following an FPC-led review. Following that review, the Government introduced secondary legislation to give that power to the FPC.

The Bill was amended to require the PRA to conduct a comprehensive review of the extent of, and risks associated with, banks' proprietary trading, to begin within 12 months of ring-fencing coming into effect.

The Bill originally defined a bank in a way that would have excluded some major investment banks. This was corrected thanks to the intervention of former Commissioners.

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