Seventh Report of the Committee on

Standards in Public Life

Chairman: Lord Neill of Bladen QC

Standards of Conduct in the House of Lords

Volume 1: Report

Volume 2: Evidence

Presented to Parliament by the Prime Minister

by Command of Her Majesty

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Committee on Standards in Public Life

Standards in Public Life

Chairman:
Lord Neill of Bladen QC

January 2000

Dear Prime Minister,

I am pleased to present the Sixth Report of the Committee on Standards in Public Life. It is unanimous.

The strength of this Committee is its ability to return to a subject and to review both progress in implementing recommendations and the effect of implementation. In this report, we have reviewed the recommendations of the Committee's First Report.

I believe that it is generally recognised that the Committee's First Report, produced under the chairmanship of Lord Nolan, was a seminal work which laid the foundations for current standards of ethical behaviour in public life. Its main recommendations related to Members of Parliament, Ministers, Civil Servants and Public Appointments to Quangos.

In the evidence which the Committee gathered for the present report we found general agreement that the process put in train by the First Report had been a success.

Our latest recommendations are designed to continue the momentum towards reform.

My colleagues and I commend this report to you.

Yours sincerely,

Patrick Neill

LORD NEILL OF BLADEN QC

comments

A Code of Conduct

R1. The House of Lords should adopt a short Code of Conduct.

R2. The Code should incorporate both the Seven Principles of Public Life and the principles adopted by the House of Lords in its 1995 Resolution, viz.

1. Members of the House should act always on their personal honour;
and
2. Members should never accept any financial inducement or reward for exercising parliamentary influence.

R3. The Code should also incorporate the principles which the House of Lords adopts concerning the registration of members' interests.

Declaration and Registration of Interests

Reference is made in the recommendations which follow to the three categories of the present Register of Lords' Interests. The categories are:

(1) Consultancies or similar arrangements, involving payment or other incentive or reward for providing parliamentary advice or services. *[Registration mandatory]*

(2) Financial interests in businesses involved in parliamentary lobbying on behalf of clients. *[Registration mandatory]*

(3) Other particulars relating to matters which members consider may affect the public perception of the way in which they discharge their parliamentary duties.
[Registration discretionary]

R4. The registration of all relevant interests should be made mandatory.

R5. The test of 'relevant interest' for registration under category (3) should be whether the interest may reasonably be thought to affect the public perception of the way in which a member of the House of Lords discharges his or her parliamentary duties.

R6. Category (3) should cover both financial and non-financial interests and such interests should be distinguished in the lay-out of the Register.

R7. The Register should be supplemented by brief written guidance setting out a list of those interests which clearly fall within the test of 'relevant interest'.

R8. A member of the House of Lords who registers a relevant financial interest under category (3) should not be required to disclose in the Register the remuneration derived from that interest.

R9. The mandatory Register should apply to all members of the House of Lords.[(A)]

R10. Rules on private financial interests akin to those in the Ministerial Code should not be applied to opposition spokesmen and women.

Lobbying and the Ban on Paid Advocacy

R11. Members of the House of Lords should continue to be allowed to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy.

R12. The guidance on the operation of category (2) should be amended. It should be made clear that the requirement to register is not confined only to those members with interests in lobbying firms, narrowly defined.

R13. The guidance on the operation of category (2) should also be amended so as to make it clear that members who register

under that category should refrain from participating in parliamentary business only when that business relates to their own personal clients.

R14. A member of the House of Lords who has an agreement for a consultancy or any similar arrangement under category (1) should deposit a copy of that agreement with the Registrar of Lords' Interests.

R15. The House of Lords should ensure that deposited agreements and details as to the remuneration derived from parliamentary services under category (1) be made available for public inspection.

Compliance

R16. The House of Lords should reconsider the existing induction arrangements for new members of the House with a view to providing more detailed guidance about the scope and operation of the conduct rules.

R17. The general advice of the Sub-Committee on Lords' Interests on the application of the guidance on the declaration and registration of interests should be reported, through the Committee for Privileges, to the House.

R18. Members should be encouraged to raise in the first instance any allegation about breaches of the rules in a private communication with the member about whom the complaint is made.

R19. Thereafter, if the complaining member chooses to pursue the matter, that member should, in accordance with the Griffiths Committee's recommendation, refer the allegation directly to the Sub-Committee on Lords' Interests, through its Chairman.

R20. The Committee sees no need for the appointment of a standing Parliamentary Commissioner for Standards in the House of Lords but recommends that the Sub-Committee on Lords' Interests should be able, in appropriate cases, to appoint an *ad hoc* investigator.

R21. The Sub-Committee on Lords' Interests should continue to be responsible for the adjudication of allegations relating to the conduct of members.

R22. In serious cases, the procedures adopted should meet the "*minimum requirements of fairness*" set out by the Nicholls Committee for such cases.

R23. A member of the House of Lords who receives an adverse ruling from the Sub-Committee on Lords' Interests should have a right of appeal to the Committee for Privileges.

(A) Save those members of the House of Lords who have taken Leave of Absence.

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Chapter 1 Introduction and Background

INTRODUCTION AND BACKGROUND

1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major MP. The Committee's Terms of Reference were then prescribed as follows:

> *To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*
>
> *For these purposes, public life should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.*[1]

1.2 These terms of reference were extended in November 1997 by the present Prime Minister, the Rt Hon Tony Blair MP, to enable the Committee to undertake an enquiry into the funding of political parties.

1.3 The present Chairman, Lord Neill of Bladen QC, succeeded the first Chairman, the Rt Hon Lord Nolan, in November 1997. The Committee has produced six reports. They are listed in Appendix F to this report. They cover not only standards of conduct in the House of Commons and the Executive, but also in the Civil Service, local government, local public spending bodies (such as higher and further education institutions, housing associations and training and enterprise councils) and quangos such as non-departmental public bodies and national health service trusts.

The purpose and scope of the present enquiry

1.4 Following publication in January 2000 of the Committee's Sixth Report, which included a review of the operation of the Commons' disciplinary procedures, the Committee decided to turn its attention to the arrangements in force in the House of Lords relating to conduct, registration of interests and related matters.

1.5 As explained in Chapter 4, the Committee had intended to conduct an enquiry in 1995 into these topics, but deferred consideration of them until the Griffiths Committee (appointed by the House of Lords in December 1994) had completed its work.[2]

1.6 In the event, this Committee further postponed its consideration of the House of Lords in order to make time for other pressing areas of study, such as local public spending bodies, local government and the funding of political parties.

1.7 This Committee's decision, taken in early 2000, to undertake an enquiry into the House of Lords was not prompted by any scandal or crisis. The House of Lords was, however, one of the remaining public bodies under the Committee's formal Terms of Reference, which had yet to be examined. The Committee concluded that an enquiry into the House of Lords would be timely and appropriate, having regard in particular to the changes in the membership of the House and its possibly higher public profile following those changes.

1.8 When on 13 March 2000 an announcement was made to the House of Lords as to our forthcoming inquiry the Rt Hon Viscount Cranborne questioned the power of the Committee to undertake any such inquiry.[3] Shortly afterwards, on 10 April, Lord Rees-Mogg published an article in *The Times* that also challenged the authority of the Committee. Correspondence followed.[4] Lord Rees-Mogg then tabled a motion in the following terms: *"To move to resolve, That the House asserts its responsibility for the conduct of its own affairs and that the Sub-Committee of the Committee for Privileges should investigate the effectiveness of the House of Lords' Register of Interests"*. [5] To the foregoing motion the Rt Hon Lord Archer of Sandwell tabled an amendment. The motion as amended read as follows: *"That the House welcomes the enquiry into Standards of Conduct in the House of Lords by the Committee on Standards in Public Life, and asserts the House's ultimate responsibility for*

the conduct of its own affairs." [6] After a debate in the House on 10 May 2000 the House passed the amended form of the Motion.[7]

1.9 Meanwhile, in April 2000, the Committee had published an Issues and Questions paper setting out the principal areas on which the Committee intended to focus and raising 16 questions relating to those areas. We asked whether the present arrangements governing the declaration and registration of peers'[8] financial and other interests in the House of Lords were satisfactory, bearing in mind the constitutional and political changes that have taken place since the debate on the Griffiths Report on 1 November 1995 and having regard also to the increase in expectations concerning standards of conduct of public office-holders. We also raised, more generally, questions about the rules relating to the conduct of peers (including those governing paid advocacy) and as to whether the House of Lords should adopt a Code of Conduct. Finally, we considered what sanctions the House of Lords can impose on those found to be in breach of any rule relating to conduct and whether the range of penalties should be extended.

1.10 The present composition of the House of Lords is an interim arrangement. We do not speculate on the possible future composition of the second chamber in the long term. Our aim is to make recommendations which we believe to be appropriate to the present chamber, and which will provide a framework for self-regulation that can be adjusted to meet the needs of a future reformed House.[9] The recommendations we make may need to be reviewed when the House of Lords is further reformed.

The Committee

1.11 This Committee is an advisory body. It is independent of Government. It has no legal powers. In particular, it has no powers of enforcement and has, therefore, no power to impose any of its recommendations.

1.12 We should draw attention to the fact that three members of the Committee are themselves members of the House of Lords - the Chairman, and Lords Shore and Goodhart QC. They have each been members of the House for three years. These members participated fully in the preparation of this report, which was agreed unanimously by all members.

Evidence gathering

Written evidence

1.13 Our consultation paper was circulated widely within both Houses of Parliament and to members of the Northern Ireland Assembly, to members of the Scottish Parliament and the National Assembly for Wales and to a wide range of organisations (including national libraries and national and local newspapers). The paper was also distributed to a number of academics and other political commentators as well as to members of the public who showed an interest in our work. In addition to making the consultation paper available on the Committee's website, the consultation paper was made available, free of charge, to anyone requesting a copy. Almost 100 written submissions were received.

1.14 All written submissions (save those which we were advised might be considered defamatory) can be found on the CD-Rom which is included in Volume 2 of this report. A list of those submitting written evidence is at Appendix A.

Research

1.15 The Committee commissioned preliminary research into the question of comparable second chambers but concluded that the House of Lords has unique characteristics as a public institution and that no real assistance can be derived from overseas comparisons.

Public hearings

1.16 Between 26 June and 17 July 2000 the Committee took evidence at six days of public hearings. A list of witnesses who gave oral evidence, either on their own behalf or in a representative capacity, is set out in Appendix B. The transcripts of evidence given at the public hearings are published in Volume 2 of this report (and in the CD-Rom accompanying Volume 2). References in this report to the transcript are in terms of the day of the public hearing and indicate whether the evidence was taken at the morning or the afternoon session (for example, 'Day 2 (pm)').[10]

Acknowledgements

1.17 We would like to record our thanks to those who took the time and trouble to make a written submission. In addition, we thank in particular those who appeared before us to give oral evidence. Committee members gained much knowledge and

enlightenment from these interchanges. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable.

[1] *Hansard* (HC) 25 October 1994, col 758.

[2] Paras 4.10 to 4.12. Although the Committee chaired by Lord Griffiths was technically a sub-committee, it has usually been referred to as 'the Griffiths Committee'. Its report is hereafter referred to as 'the Griffiths Report' (HL paper 90 (1994-95)).

[3] *Hansard* (HL) 13 March 2000, col WA 196; ibid., col 1285.

[4] Letters to *The Times* from Lord Grabiner QC, Mr Roderick Hall, Mr John A May and the Earl of Sandwich dated 11 April 2000; Lord Neill QC dated 12 April 2000; and the Rt Hon Viscount Cranborne dated 13 April 2000. These may be viewed on *The Times* website at www.thetimes.co.uk .

[5] *Hansard* (HL) 10 May 2000, col 1657.

[6] Ibid., cols 1659-1660.

[7] Ibid., cols 1657-1714.

[8] Throughout the report we use the term 'peer' and 'member of the House of Lords' interchangeably to denote a person who has a seat in the House of Lords.

[9] Issues relating to the future function, composition and mechanism of appointment of members of the House of Lords are not part of our present remit. These are matters about which the Wakeham Commission has made recommendations. It is now for the Government and for Parliament to take forward the work of the Wakeham Commission. The terms of reference of the Wakeham Commission were: "*Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act 1998 and developing relations with the European Union:*

- *to consider and make recommendations on the role and functions of the second chamber;*
- *to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions;*
- *to report by 31 December 1999*."

[10] On Day 3 and Day 4, the Committee took evidence only in the morning, so no sessions are named.

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PRINCIPLES OF PUBLIC LIFE

2.1 One of the key aims of the First Report was "*to rebuild public confidence*" in holders of public office.[1] Another was "*to restore some clarity and direction wherever moral uncertainty had crept in*".[2] The Committee felt that these aims would be assisted by a restatement of the general principles of conduct which underpin public life. They drew up the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. (We set them out fully on the inside front page of this Report.)

2.2 The Seven Principles were designed to ensure that everyone in public life knew what was expected of them. They also served to tell the public how they could expect public office holders to behave. To reinforce the Principles and to ensure that they were applied in practice, the Committee also proposed three mechanisms or 'Common Threads':[3]

- **Codes of Conduct.** These should be based on the Seven Principles but be drawn up within each organisation so that they were appropriate to their individual circumstances.
- **Independent Scrutiny.** Internal systems should be supported by independent scrutiny and monitoring as an additional safeguard to maintaining public confidence.
- **Guidance and Education.** More should be done to inculcate high ethical standards through guidance, education and training, particularly induction training.

2.3 The Seven Principles and the Common Threads were formulated as being relevant to all sectors of public life. However, the Committee recognised that, when applied to different organisations, some adaptations might be necessary to make them fit the individual organisation's circumstances and culture. In the context of public appointments to quangos, the Committee proposed an additional test of 'proportionality'.[4] This was primarily a reflection of the very different sizes and levels of responsibility within quangos. However, having regard to developments since the First Report, the Committee now sees proportionality as a test to be kept constantly in mind by any body drawing up rules for conduct. Such rules will command more respect and adherence if they are comprehensible, simple and proportionate.

2.4 The Seven Principles have come to be widely regarded as the touchstone for ethical standards in public life and have continued to inform every aspect of the Committee's thinking. Reports of the Committee have led to their being adopted, in complete or modified form, by the following public sector organisations:

- House of Commons (code of conduct)
- Executive Non-Departmental Public Bodies (model code of practice for board members)
- Advisory Non-Departmental Public Bodies (model code of practice for board members)
- Governing Bodies of Universities and Colleges in England, Wales and Northern Ireland (guide for members)
- Training and Education National Council Framework for Local Accountability
- Governing Bodies of Scottish Higher Education Institutions (guide for members)

There are also proposals for model codes of conduct for councillors and senior local government employees which will build on the Seven Principles.

2.5 In addition, the devolved institutions - the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly - have chosen to incorporate the Seven Principles into their Codes of Conduct, sometimes with additions or modifications related to their own requirements.

Developments in other sectors

2.6 As several of our witnesses pointed out, there have been similar developments in the setting of ethical standards in other sectors. Lord Simon of Highbury referred to his membership of the Hampel and Greenbury Committees and his involvement over the past seven or eight years with issues of standards and declaration in the private sector.[5] Lord Chadlington said: "*Up until very recently, it depended on how you felt you should behave: there was no compliance role. A series of initiatives over the past 10 years have come up with the notion of telling the chairman or director of a public company how to behave.*" [6]

2.7 The developments to which Lord Simon and Lord Chadlington referred arose from the growth of interest in corporate governance throughout the 1990s. The Cadbury Committee on 'The Financial Aspects of Corporate Governance' was set up in May 1991 because of *"the perceived low level of confidence both in financial reporting and in the ability of auditors to provide the safeguards which users of company reports sought and expected."* [7] Such concerns had been *"heightened by some unexpected failures of major companies and by criticisms of the lack of effective board accountability for such matters as directors' pay."* [8] The Cadbury Committee's Report, which was published in December 1992 was, in some senses, similar to our First Report in that it was commissioned as a response to several scandals and made recommendations which, had they been in place earlier, might have prevented such scandals occurring.[9] The principal recommendation was for a non-statutory Code of Best Practice on financial governance for all listed companies.[10]

2.8 The Cadbury Report was followed by another report in July 1995 by the Study Group on Directors' Remuneration chaired by Sir Richard Greenbury. Again the Study Group was set up in response to immediate concerns about *"unjustified compensation packages in the privatised utilities"*.[11] Its principal recommendation was for a Code of Best Practice based on the fundamental principles of accountability, transparency and linkage of rewards to performance.[12]

2.9 Both the Cadbury Committee and the Greenbury Group had called for their recommendations to be reviewed after a number of years. This task was carried out by the Hampel Committee which was established in November 1995 and reported in January 1998.[13] In reviewing the implementation of the prior two reports, the Hampel Committee also wanted to take a fresh look at the issues. Indeed the Committee saw its approach as being from a somewhat different perspective. It noted that the Cadbury and Greenbury reports *"were responses to things which were perceived to have gone wrong ... We are equally concerned with the positive contribution which good corporate governance can make"*.[14] With this in mind, the report emphasised that accountability to stakeholders was as much an objective as the prevention of malpractice and fraud.

2.10 The report also stated the need for principles as well as guidelines: the Committee felt that the Cadbury and Greenbury codes had been treated too often as *"sets of prescriptive rules"*, leading to the practice of *"box ticking"*, i.e. an observance of the letter, rather than the spirit, of the rules. In the Committee's view, box ticking could be *"seized upon as an easier option than the diligent pursuit of corporate governance objectives"*.[15] The Hampel Committee therefore recommended a set of principles and a code of practice which embraced the work of the Cadbury and Greenbury Committees as well as its own.[16] This Combined Code on Corporate Governance was published in June 1998 and is non-statutory, although some of the Greenbury recommendations on the disclosure of individual directors' remuneration have been implemented as formal requirements in the Stock Exchange's Listing Rules.[17]

2.11 We have gone into some detail in order to draw attention to some of the parallels with our Committee's work in the public sector. We particularly note the emphasis on principles such as accountability and transparency and the view that principles are required as well as guidelines. We also note that the Hampel Report was a review of conduct and disclosure requirements that did not arise from immediate instances of misconduct but from a wish to make a positive virtue of good governance.

2.12 There have been similar developments in professional bodies. For example, the preamble to the Royal Institution of Chartered Surveyors' rules of conduct and disciplinary procedures requires its members to *"adopt personal and professional standards ... by demonstrating the qualities of integrity, honesty, objectivity, openness and accountability"*. The rules *"provide a positive statement of professional values and standards of conduct against which members are accountable to the institution, to their clients and to the general public."* [18] Other examples can be cited.

Members of the legislature

2.13 These developments in public, professional and corporate life have led to a reinforcement of public expectations that holders of public office should set for themselves the highest possible standards of conduct. Nowhere is this more true than in connection with members of the legislature. As a submission from a member of the public put it:

> *Our democracy requires us to devolve our powers to a small number of people in the expectation, amongst other things, that they will behave honourably and not misuse their positions in their own interests.*[19]

2.14 In our Terms of Reference set out in Chapter 1 above, Members of Parliament are included within the definition of 'holders of public office'. The then Prime Minister, the Rt Hon John Major MP, made it clear that all members of the Westminster Parliament were included. In response to a Written Question, he stated:

> *It is open to the Committee to examine the standards of conduct to be observed by peers as parliamentarians, as Ministers and, indeed, as holders of other public offices.*[20]

2.15 This view was also expressed when the issue was raised in the House of Lords in 1994. Following the statement announcing the Committee, the Rt Hon Lord Richard, the then Leader of the Opposition in the House of Lords, indicated that he assumed that members of the House of Lords fell within the Committee's terms of reference. In reply, the Rt Hon Viscount Cranborne, then Lord Privy Seal and Leader of the House of Lords, said:

> *The noble Lord, Lord Richard ... asked whether peers would come within the scope of the Committee's activities. So far as I am aware, your Lordships are Members of Parliament. I therefore have to conclude that your Lordships are indeed within the scope of the investigations of the Committee. I am sure that your Lordships would not wish it to be any other way.* [21]

No dissent was expressed from that view.

2.16 Nevertheless, when our enquiry was announced, some qualifications were expressed. The Rt Hon Lord Strathclyde, the Leader of the Opposition, in his written evidence, quoted the remark in our consultation paper that the Committee's remit *"applies to the House of Lords as to other bodies in public life"*. He continued: *"This is a profound misconception. The Houses of Parliament are unlike other bodies. The Crown in Parliament is sovereign and has authority over all other bodies."* [22] In oral evidence to us, he drew a further distinction between the House of Lords specifically, as contrasted with the House of Commons and other public bodies which we have studied. Alluding to those studies, he said: *"it may look unusual but the House of Lords is an unusual body. Even in its current state, shorn of its hereditary peers, it is a very unusual body"*.[23]

2.17 It is certainly true that in many ways, even amongst other second chambers, the House of Lords is a unique body in terms of its composition and powers.[24] We draw attention to its unusual characteristics in Chapter 3. This point is of great relevance when considering the scope and detail of any rules that the House may wish to adopt. But we do not accept that the unusual nature of the House of Lords leads to the conclusion that it should be exempt from the general principles that should apply to public bodies, and particularly to the legislature.

2.18 The constitutional rights and privileges of members of the House of Lords are very considerable. The right to participate in the enactment of legislation by debating, amending and voting is one of the most important rights available to a public office holder. Peers also have a duty to hold the Executive to account, which they may do through membership of House of Lords Select Committees and by such procedures as tabling motions and Parliamentary Questions. As the Rt Hon Baroness Jay of Paddington, Leader of the House, said in a debate in the House: *"Let us not forget that ... this place is a working House of Parliament ... it is not a private club. We are parliamentarians: we have influence over matters of national and international importance"*.[25]

2.19 In the House of Commons, the duty upon Members of Parliament to act in the public interest is reinforced partly by electoral accountability and partly by a system of self-regulation which was significantly tightened following the recommendations in this Committee's First Report.

2.20 In the House of Lords, although electoral accountability does not apply, there is a proud tradition of self-regulation based on the central tenet of 'acting always on personal honour'. The origin of the principle of honour is so far back in time that the 1994 edition of the House's procedural guide referred to it simply as *"a long-standing custom"*.[26]

2.21 We were left in no doubt by our witnesses that the principle of honour is considered of fundamental importance by members of the House of Lords. The Rt Hon Lord Mayhew of Twysden, in quoting the evidence of the Rt Hon Lord Carr of Hadley to an earlier enquiry, suggested that there was *"no code of discipline that was more demanding or stringent than the code of personal honour"*.[27] The Rt Hon Earl Ferrers said that the House of Lords *"has always worked on the basis that a person's honour is sacrosanct"*.[28] Honour has been described as being *"the kernel"* of the House's procedures.[29] We describe more fully in Chapter 4 how honour is woven into the procedural rules governing disclosure of interests.

2.22 We share our witnesses' respect for the principle of 'acting always on personal honour'. The critical issue is whether the concept of honour on its own is sufficient today to maintain public confidence. In our view it would be a highly desirable development if the House of Lords were to build on the foundation of honour. Any resulting system of standards should be readily understood by the public and reflect the position of the House of Lords as one of the most important of public institutions. We set out in detail in Chapter 4 the case for this, but focus at this point on the concept of 'acting in the public interest' which is at the heart of the duty of any public office holder.

2.23 The phrase, 'public interest', recurs throughout the Seven Principles of Public Life. It may be useful to rehearse how the Seven Principles might be seen to apply to the House of Lords.

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

2.24 These principles already underlie the approach behind the House of Lords' regime for disclosure of interests. However, as we explore further in the chapters below, there are aspects of the procedural system that may require review in order to ensure that they provide a thorough safeguard.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

2.25 Many witnesses suggested that openness - or transparency - about the personal position and interests of the legislator was the key ethical requirement in the legislature. The importance of this principle is held to be so paramount when relevant to parliamentary proceedings that it outweighs arguments based on personal privacy.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

2.26 The decisions and actions taken by peers when acting as legislators are of the highest importance to the public. It is important that the public has access to information that enables them to understand the interests, financial and non-financial, that may inform those decisions and actions.

Leadership

Holders of public office should promote and support these principles by leadership and example.

2.27 Members of the legislature are amongst the holders of the highest form of public office. It is therefore all the more important that they operate at the highest level of ethical probity as currently perceived and indeed set an example throughout the public sector.

2.28 We now turn to examine in detail the present position in the House of Lords.

[1] Committee on Standards in Public Life, *Standards in Public Life,* Cm 2850 (May 1995), para 7. Referred

to hereafter as the '*First Report*'.

[2] Ibid.

[3] Ibid., paras 13-17.

[4] In the public appointments context, we have defined 'proportionality' as "*the principle that the length and complexity of an appointment procedure should be commensurate to the nature and responsibilities of the post being filled*" (Committee on Standards in Public Life, *Reinforcing Standards*, Cm 4557 (January 2000), para 9.3). referred to hereafter as '*Reinforcing Standards*'.

[5] Day 6 (pm).

[6] Day 4.

[7]*Report of the Committee on the Financial Aspects of Corporate Governance* (the Cadbury Committee), 1 December 1992, para 2.1.

[8] Ibid., para 2.2.

[9] Ibid., para 1.9.

[10] Ibid., chap 7 for summary of recommendations.

[11] Quoted by the Committee on Corporate Governance, *Final Report* (the Hampel Report), January 1998, para 1.7.

[12]*Report of the Study Group on Directors' Remuneration* (Greenbury Group) (July 1995).

[13] The Hampel Report, see fn.11.

[14] Ibid., para 1.7.

[15] Ibid., paras 1.12-1.14.

[16] Ibid., chap 7.

[17]For the latest developments and proposals see the DTI Company Law Review Consultation Paper "*Developing the Framework*", March 2000.

[18]*Professional Conduct - Rules of Conduct and Disciplinary Procedures*, Royal Institution of Chartered Surveyors, 2nd edn, 1998, p.vii.

[19] Written evidence of Edward J Armstrong (19/93)

[20] *Hansard* (HC) 31 October 1994, WA 913.

[21]*Hansard* (HL) 25 October 1994, col 471.

[22] Written evidence (19/68).

[23] Day 5 (pm).

[24]See oral evidence of Professor Robert Hazell and Meg Russell (Day 1 (am)).

[25] *Hansard* (HL) 10 May 2000, col 1709.

[26] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (1994), p 69. This edition has recently been superseded by the 18th edition (October 2000) and the phrase no longer appears.

[27] Day 5 (am).

[28] Day 6 (am).

[29] Unpublished Report of the Select Committee on Procedure of the House Sub-Committee on Registration of Interests (1974), para 28(5). The 1974 Report is more fully discussed in Chapter 4.

Official Documents

comments

THE HOUSE OF LORDS: COMPOSITION AND STRUCTURE

3.1 The House of Lords has undergone considerable institutional change in the past two years, and is widely regarded as being in a transitional state. This chapter describes the most significant recent developments in the composition and structure of the House, while the next chapter explores some of the possible implications for our study.

3.2 Despite recent developments, many of the House of Lords' chief characteristics have remained unaltered. Some of them serve to make the House a unique form of second chamber.[1]

3.3 Amongst these features are:

- A large number of members with no political allegiance (the cross-benchers, for example, made up 23.7 per cent of the House in September 2000).
- There is no fixed limit to the term of service (except for bishops, who leave the House on retirement).
- Members are almost all unsalaried.
- Members commonly have outside interests

Terms under which members of the House serve

3.4 Two main documents describe the terms under which a member of the House of Lords serves. The first are the Letters Patent, which, among other things, set out the peer's title and the grant of certain rights. The second is the Writ of Summons, which calls on the member to attend on the Sovereign in Parliament and carry out certain functions.

3.5 The Letters Patent state the Sovereign is:

> *Willing, and by these presents granting, for Us, Our heirs and successors, that he may have, hold, and possess a seat, place, and voice in the Parliaments and Public Assemblies and Councils of Us, Our heirs and successors, within Our United Kingdom amongst the Barons, and also that he may enjoy and use, all the rights, privileges, pre-eminences, immunities, and advantages to the degree of a Baron duly and of right belonging, which Barons of Our United Kingdom have heretofore used and enjoyed, or as they do at present use and enjoy.*

3.6 An excerpt from the text of the Writ of Summons reads thus:

> *Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:*
>
> *To our right trusty and well-beloved [name of peer], greeting: Whereas Our Parliament, for arduous and urgent affairs concerning Us, the state and defence of Our United Kingdom, and the Church, is now met at Our city of Westminster: We, strictly enjoining, command you upon the faith and allegiance by which you are bound to Us, that considering the difficulty of the said affairs and dangers impending (waiving all excuses), you be personally present at Our aforesaid Parliament with Us, and with the prelates, nobles, and peers of Our said Kingdom, to treat and give your counsel upon the affairs aforesaid: and this as you regard Us and Our honour, and the safety and defence of the said Kingdom and Church, and dispatch of the said affairs in nowise do you omit.*

3.7 These documents have different functions. The Letters Patent state the rights, privileges and other benefits being **granted** by the Sovereign to the new peer. The Writ of Summons is a **command** to attend and advise and "*give counsel*", and lists the services which the peer must provide to the Sovereign.

3.8 The references in the Letters Patent to "*rights, privileges, pre-eminences, immunities and advantages to the degree of a Baron duly and of right belonging*" need to be borne in mind in discussing what kind of penalties can properly be imposed by the House in case of a breach of its rules. In particular, there is an issue whether the suspension of a member from the House is

an infringement of any of these rights or privileges.[2]

3.9 Peers can be granted Leave of Absence. This is a provision that is used very infrequently, particularly with the departure of the hereditary peers.[3]

Reimbursement of members of the House of Lords

3.10 Members of the Lords are not paid; none of them receives a salary apart from a small number of members who are salaried by virtue of the office they hold. Nor do they receive an allowance: the principle behind the arrangements is that expenses such as travel, subsistence and secretarial costs should be met.

3.11 The claim for expenses is related to daily attendance in the Chamber, the voting lobbies or in committee rooms during meetings. This is consistent with the fact that many members attend on a part-time basis.

3.12 Apart from travelling expenses, peers are entitled to reimbursement of a number of other expenses. The Annual Report of the House sets out the position in this way:

> *Members of the House may also recover certain expenses certified by them as incurred for the purpose of parliamentary duties at sittings of the House or of Committees of the House within the following maxima for each day of attendance:*
>
> *(a)* ***Night Subsistence*** *- Members of the House who incur the expenses of overnight accommodation in London away from their only or main residence may claim for such expenses within a daily limit of £81.50* [recently increased to £84].
>
> *(b)* ***Day Subsistence and incidental travel*** *- Members of the House may claim day subsistence and travel costs not separately recoverable within a daily limit of £36* [recently increased to £37].
>
> *(c)* ***Secretarial costs, postage and certain additional expenses*** *- the cost of secretarial help and, where appropriate, the cost of providing necessary equipment may be claimed, together with the cost of postage and certain additional expenses (eg domestic costs, purchase of books and periodicals and professional subscription charges that arise out of parliamentary duties) may be claimed within a limit of £35* [recently increased to £36] *for each day of attendance*.[4]

Legislative changes

3.13 The last two years have seen significant change in the composition and status of the House of Lords. The 1997 Labour Manifesto contained the following proposal:

> *As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.*[5]

3.14 The Government published a White Paper on House of Lords' reform in January 1999 [6] and, at the same time, announced the establishment of a Royal Commission. On 8 February 1999 the Royal Commission, chaired by the Rt Hon Lord Wakeham, was appointed to consider the role and functions of the second chamber and the method or combination of methods of its composition. Its report, *A House For the Future* ,[7] was published on 20 January 2000. The Government has made an initial response to the report, welcoming it in principle,[8] but the exact form of their proposals has not been announced. The Government "*aim to establish a Joint Committee of both Houses to consider the parliamentary implications of the Royal Commission ... proposals for the composition of the second chamber*".[9]

3.15 The House of Lords Bill, which embodied the self-contained initial changes, received its Second Reading in the Lords on 30 March 1999. An amendment to except 92 hereditary peers from the exclusion provisions was accepted at Committee Stage on 11 May 1999.

3.16 The amendment provided for 75 hereditary peers to be elected from their own party or cross-bench groups (42 Conservatives, 28 cross-benchers, three Liberal Democrats and two Labour). Fifteen hereditary peers were also to be elected to act as Deputy Speakers or Committee Chairmen. Two hereditary royal appointments, the Earl Marshal and the Lord Great Chamberlain, were also retained. The elections took place in October and November 1999.

3.17 The House of Lords Act received Royal Assent on 11 November 1999 and came into effect and was implemented on the same day, the last day of the Session. On that day, 654 hereditary peers were removed from membership of the House.

Compositional changes

3.18 Since the Labour Government came to power in May 1997, 202 life peers have been created -- a larger number than in any equivalent period since 1958, when the first life peers were created (save for those granted under the Appellate Jurisdiction Act 1876 to Law Lords). This, together with the removal of all but 92 hereditary peers[10] has changed the composition of the House of Lords markedly.

The composition of the House of Lords in October 2000

Archbishops and bishops	26
Life peers under the Appellate Jurisdiction Act 1876	28
Life peers under the Life Peerages Act 1958	549
Peers under House of Lords Act 1999	92
TOTAL	**695**

3.19 Another development will to a certain degree alter the composition of the House - the House of Lords Appointments Commission, whose membership and remit were announced by the Prime Minister in May 2000.[11] This is a non-statutory advisory body which will make recommendations to Her Majesty the Queen on non-party-political life peers and also vet for propriety all future recommendations for peerages. It has advertised widely for nominations from the public.

A changed house - a changed ethos?

3.20 We heard a considerable range of views as to whether these changes in composition had altered the ethos and atmosphere of the House. Some felt that they had made little difference. Among those who took this view was the Rt Hon Lord Trefgarne, the Chairman of the Association of the Conservative Peers, who said of the new composition:

> *We do not think that has changed the ethos of the House. Peers were always guided by the Seven Principles of Public Life ... and we think they still are.*[12]

3.21 The Rt Hon Earl Ferrers, developing this thought, said:

> *One of the arguments that I think is a terrible one is that we ought to tighten up the regime because of the new influx of people who have come in the last few years. It is a most appalling slur on the people who have come in: that they are of such doubtful character that we have to alter all the rules. I think that is intolerable.*[13]

3.22 Baroness Turner of Camden saw little alteration as a result of the removal of most hereditary peers:

> *I do not think that the recent changes that have arisen as a result of the House of Lords Act 1999 have made that much difference - not from my perception anyway - for the simple reason that the 92 people who were elected from among the hereditary peers were mostly people who were active anyway.*[14]

3.23 Other witnesses perceived partial change only, or regarded the differences as transitional, and the result of a temporary upheaval. Among these was Lord Wakeham, who believed that:

> *We are in the middle of a transitional period. There is a high level of political fervour and activity, partly based on the size of the Government's majority. I do not look upon any of those as normal. Things are likely to settle down.* [15]

3.24 A number of witnesses felt on the contrary that change in the ethos of the House was both significant and irreversible. The Rt Hon Lord Richard QC, for example, described the House of Lords as " *moving from a wholly amateur House, as at one stage it was, to a House that is much more professional, and all sorts of problems will arise as a result of that*".[16] Lord Lipsey, in a *New Statesman* article describing his experiences as a new 'working' peer, said that earning a living outside was made " *practically impossible*" by the life of the House and "*the attentions of the Whips*".[17]

3.25 The impression of a House whose members are now expected to attend regularly is reinforced by very recent amendments to the wording of the passage on leave of absence in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, issued under the authority of the Procedure Committee. In this case, indeed, the changes apply to all members, whether or not they take a party whip. As we noted above,[18] the 18th edition of the *Companion*, published in October 2000, requires members to *"attend the sittings of the House"*. If they cannot attend, members should obtain leave of absence. The language of the previous, 1994, edition was noticeably less emphatic, requiring members only *"to attend the sittings of the House **if they reasonably can**"* (emphasis added). It could perhaps be said that the changed wording tracks, or at least foreshadows, the development of a more 'professional' House.

3.26 The Rt Hon Lord Rodgers of Quarry Bank said that *"the House has become a much more professional place. It always claimed to be very expert but its expertise was limited. It has been greatly broadened by the new people who have come into the House."* [19]

3.27 The changes in composition have led to claims on several sides that the decisions of the House have acquired greater legitimacy. The Rt Hon Baroness Jay of Paddington, writing in September 1999, said that: *"The House of Lords without the hereditary peers will be more legitimate, because its members have earned their places, and therefore more effective in playing its part in our bicameral constitution."*[20] In June 1999, the Rt Hon Lord Strathclyde, Leader of the Opposition in the House of Lords, referred to the *"authority [that] will be given to representative peers in respect of the Weatherill amendment"* (a reference to the amendment to the House of Lords Act 1999 that allowed for the election of hereditary peers). [21]

3.28 The effect of the party composition within the House is that the political balance of power lies with neither the Government nor with the main Opposition party but with the Liberal Democrats (9 per cent) and the independent cross-benchers (24 per cent).

Analysis of membership by party strength - 27 September 2000

PARTY	LIFE PEER (A)	HEREDITARY: ELECTED BY PARTY	HEREDITARY: ELECTED OFFICE HOLDER	HEREDITARY: APPOINTED ROYAL OFFICE HOLDER (B)	BISHOP	TOTAL
CONSERVATIVE	180	42	9	1		232
LABOUR	196	2	2			200
LIBERAL DEMOCRATS	58	3	2			63
CROSS BENCH	133	28	2	1		164
ARCHBISHOPS AND BISHOPS					26	26
OTHER	7					7
TOTAL	**574**	**75**	**15**	**2**	**26**	**692**

(A) Table excludes three life peers on leave of absence

(B) The two are the Duke of Norfolk, Earl Marshal (Conservative) and the Marquess of Cholmondeley, Lord Great Chamberlain (cross-bench)

Impact on political activity

3.29 We heard evidence that the level of party political activity and division had increased since the removal of the hereditary peers. The Rt Hon Lord Biffen judged that there had been *"some almost measurable change"* in this area since their exclusion. In what he considered *"perhaps ... an irony"*, he sensed that because of the removal, *"there has been more of a combative spirit*

in the House of Lords and more frequent defeats of the Government." [22]

3.30 Professor Robert Hazell developed this line of thinking, seeing the potential for such "*combative spirit*" on several sides. He felt that the Lords might become a more important House as it became more willing to vote down the Government, and that consequently, "*the Government, increasingly, may challenge or criticise the Lords for, in effect, daring to obstruct the will of the elected chamber. We have already seen the occasional remark of that kind by frustrated Ministers. That may lead in future to a more sophisticated analysis than in the past of a breakdown of votes in the Lords*." [23]

3.31 Peter Riddell saw recent changes as highly significant:

> *The central question is the position of the House of Lords as a legislative chamber of Parliament. The days when the House was a largely amateur body with an idiosyncratic membership and status are fast disappearing ... its constitutional position has altered. Leaving aside the bishops, all members are there out of choice, whether hereditaries or life peers. Moreover, the new House, albeit a transitional one for at least a few years, is, in the words of Baroness Jay, more 'legitimate' and is behaving accordingly by being willing to defeat the Government more regularly and pressing its objections. If the House is to become more assertive then, like the Commons, it must be seen to be more transparent and accountable.*[24]

3.32 Recently, there has also been the first defeat of a Statutory Instrument since 1968 - when the Lords voted down such an Instrument on the grounds that it did not provide a free mailing for candidates in the 2000 election for Mayor of London.[25]

3.33 Whether or not the House is more legitimate, evidence given to us suggests that its perceived entitlement to exercise its own independent judgement on the merits of Government legislative proposals, whether or not already approved by the Commons, is leading to a greater degree of journalistic interest and external observation. The votes of the House are likely to come under greater scrutiny, especially as the numbers of the two main parties become more equal and the possibility of closely-contested divisions increases. The effect of the highly publicised selection of candidates by the Appointments Commission may also be to strengthen public interest in the rules which govern the House, its members and their activities.

3.34 Although there has been no fundamental alteration in the powers of the House of Lords, the structural changes described in this chapter are potentially profound. In the light of them, the Committee believes that the time is right for an examination of the rules that govern the conduct of the House's members.

[1] Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000), details some of the differences between the House and other second chambers.

[2] See para 7.13 below.

[3] The latest edition of the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (18th edition, October 2000) contains this passage (para 1.26): "*Members of the House are to attend the sittings of the House. If they cannot attend, they should obtain leave of absence*". This compares with the wording of the requirement contained in the previous, 1994 edition of the Companion, which says: "*Lords are to attend the sittings of the House as often as they reasonably can*" (p 9). For a full discussion of this point, see para 3.25 below. Only three peers are currently on leave of absence.

[4] *House of Lords Annual Report and Accounts* 1999-2000, HL104 (1999-2000), pp 45-6.

[5] 1997 General Election Manifesto: *New Labour - Because Britain Deserves Better*, p 32.

[6] *Modernising Parliament: Reforming the House of Lords*, Cm 4183 (January 1999).

[7] Cm 4534 (January 2000).

[8] The Leader of the House of Lords, the Rt Hon Baroness Jay of Paddington, said in a Lords debate on the

Wakeham Report, *Hansard* (HL) 7 March 2000, col 912:

> *The Government accept the principles underlying the main elements of the Royal Commission's proposals on the future role and structure of this House, and will act on them. That is, we agree that the second Chamber should clearly be subordinate, largely nominated but with a minority elected element and with a particular responsibility to represent the regions. We agree that there should be a statutory appointments commission.*
>
> *The principles that underlie the Royal Commission's recommendations, and the Government's acceptance of them, are these. First, the second Chamber must be clearly that - a second Chamber, subordinate to the House of Commons. If both Houses were of equal authority that would be a recipe for gridlock. Secondly, it should have the powers and the authority to act as one of the checks and balances within the constitution. It should be equipped to make a significant and distinctive contribution to the legislative process. It should foster independent judgement. Thirdly, following devolution, it should provide a parliamentary voice for the nations and regions at the heart of the nation's affairs.*

[9] *Hansard* (HL) 3 July 2000, col WA122.

[10] There are provisions for filling vacancies.

[11] *Hansard* (HC) 4 May 2000, col 181W

[12] Day 5 (am).

[13] Day 6 (pm).

[14] Day 3.

[15] Day 4.

[16] Day 1 (am).

[17] *New Statesman*, 7 August, 2000, p 21.

[18] See footnote 3 to this chapter.

[19] Day 5 (am).

[20] *The House Magazine*, 27 September 1999 p 20.

[21] *Hansard* (HL) 15 June 1999, col 228.

[22] Day 6 (pm).
[23] Day 1 (am).
[24] Written evidence (19/87).
[25] *Hansard* (HL) 22 February 2000, col 136.

REGULATING CONDUCT IN THE HOUSE OF LORDS

4.1 This chapter outlines the history of recent developments in conduct issues in the House of Lords before considering whether any change in approach may be desirable.

Recent developments in the House of Lords

4.2 In 1974, the Sub-Committee on Registration of Interests was appointed by the House of Lords Procedure Committee following a decision in principle by the House of Commons to establish a compulsory register of interests for Members of Parliament. The Sub-Committee had a large and distinguished membership of 22 peers, including the then Lord Chancellor, Lord Elwyn-Jones.

4.3 The background to the action by both Houses was, as the Sub-Committee's report put it, "*the suspicion that all is not well in public life*", which must have been a reference to the Poulson scandal.[1] The Sub-Committee's report continued:

> *Both Houses have therefore decided to review their practice, in order to ensure that they do their business openly and honourably and to pursue the common aim of honest, wholesome government in which people can trust. For honest, wholesome government to be achieved the motives of the country's legislators must be overt; it must be possible to draw a line between the 'public interest' of members of Parliament and their 'personal interest'; and Parliament should make plain when the public actions of its members might be influenced by their personal interests.*[2]

4.4 In reading the 1974 Report, the Committee was struck by the similarities with the circumstances of our enquiry, and the arguments presented. As with our enquiry, the Sub-Committee's report was not stimulated by "*any fear of abuse within*" [3] but by a recognition that it was very important "*that the procedures of the House should be accepted as open and honest by the public as well as by Peers*". [4]

4.5 The 1974 Report reviewed the procedures for declaring an interest during a debate and the arguments for introducing a mandatory register of interests. We draw on the detail of the 1974 Report in the chapters below. However, we record here the principal arguments that were then adduced for and against a mandatory register. They bear many similarities to the evidence we heard:

Arguments in favour:

- It was wrong in principle for the House of Lords, as one half of the legislature, not to follow the Commons' lead and adopt a similar procedure. The (then) Leader of the Opposition, the Rt Hon Lord Windlesham, said in evidence: "*that would put the House in a position of exceptional privilege which I think it would be difficult to justify*". [5]
- It was important that the procedures of the House should be accepted as open and honest by the public as well as by peers.
- The major advantage to the House was to overcome the problem of voting with an undeclared interest.
- The major advantage to the public and press was that a register provided "*a checklist by which the impartiality of a Peer's action can be judged*". [6]

Arguments against:

- The differences between the two Houses, the most important of which was the House of Lords' unique tradition of managing its own affairs without recourse to rules of order: "*it relies and thrives on self-discipline, and the honour of its members is the kernel of its procedures*". [7]
- Following from that point, and because of the terms of the Writ of Summons, the House of Lords had no sanctions against a member who refused to abide by a compulsory register.[8]
- Many peers were members of the House 'involuntarily' (by virtue of heredity) and so could not choose "*to guard their privacy by remaining outside the House*". [9]

4.6 Having put the arguments for and against a compulsory register, the Report concluded:

*that a register is unnecessary for the **internal** requirements of the House and that a non-statutory compulsory register is not feasible. **External** considerations following on the decision of the House of Commons to institute a compulsory register must be weighed in the balance against this ... the decision is left to the House.* [10]

4.7 The Report also made various recommendations to improve the procedure on declaring interests during debates.

4.8 In the event, despite the eminent membership of the Sub-Committee responsible for the 1974 Report, it was neither published nor debated. So the House did not reach a conclusion on the arguments raised in the Report.[11] *De facto* the outcome was that no register, either compulsory or voluntary, was introduced at that stage. The emphasis continued to be on declaration during debate as the principal instrument of disclosure of interests, but without the improvements suggested in the 1974 Report.

4.9 It was to be another 16 years before the issues raised in the 1974 Report were considered by the House. In response to "*a series of incidents*" in the previous session,[12] in 1990 the Procedure Committee again addressed the issue of the practice of the House in relation to members' interests. Following the report of the Committee,[13] the House of Lords adopted revised guidance in relation to the declaration of interests.[14] This guidance followed very closely the text suggested in paragraph 23 of the 1974 Report. The opening sentence read: "*It is a long-standing custom of the House that Lords speak always on their personal honour*". The full text is set out in Appendix C to this Report.

Establishment of Committee on Standards in Public Life

4.10 This was how matters stood in the House of Lords when the Committee on Standards in Public Life was established in October 1994.[15] The Rt Hon Lord Nolan, the first Chairman of this Committee, had originally intended that the Committee's first enquiry should extend to the House of Lords and he wrote to the Leader of the House in November 1994 with that purpose in view. However, in December 1994, a sub-committee of the Procedure Committee of the House of Lords, under the chairmanship of the Rt Hon Lord Griffiths, was appointed by the House "*to consider the practice of the House in relation to financial and other interests of members, and in particular the case for a register of interests*". The sub-committee was called the Sub-Committee on Declaration and Registration of Interests.

4.11 Given the overlap between the work of this Committee and the Griffiths Committee, in February 1995, Lord Nolan wrote to Lord Griffiths suggesting that the Committee on Standards in Public Life should defer consideration of issues relating to the House of Lords until the Griffiths Committee had completed its work. Once the Griffiths Committee had reported, the Committee on Standards in Public Life could take its conclusions into account, before submitting any recommendations for the consideration of the House.[16]

4.12 The Griffiths Committee agreed with this course of action. The Committee on Standards in Public Life was the first to complete its task: its report (dealing *inter alia* with standards of conduct in the House of Commons) was published in May 1995.[17] The Griffiths Committee published its report two months later.[18]

The Griffiths Report

4.13 The Griffiths Committee considered issues relating to conduct in the Lords and a register of peers' interests. It also sought to address the concerns arising from the growth of parliamentary lobbying and of parliamentary consultancies. Their recommendations were based on the guiding principles that:

1. Lords should act always on their personal honour; and

2. Lords should never accept any financial inducement as an incentive or reward for exercising parliamentary influence.

4.14 The Report went on to recommend:

- The establishment of a register of interests containing three categories: two 'mandatory' and one 'discretionary'.
- Members who held paid parliamentary consultancies or who had financial interests in a business involved in parliamentary lobbying on behalf of clients would be subject to strict limits on how they could participate in parliamentary proceedings.[19]

4.15 The Report of the Griffiths Committee was debated in the House of Lords on 1 November 1995 [20] and its recommendations were accepted. These were expressed in Resolutions agreed to by the House on 7 November 1995 and have been incorporated into the 18th edition of the *Companion*.[21] We reproduce the text of the Resolutions in Appendix D.

4.16 These Resolutions currently constitute the code of conduct for the House in respect of disclosure of interests. The Resolutions make provisions for the investigation of allegations of failure to register by a sub-committee appointed by the Committee for Privileges. This sub-committee, entitled the Sub-Committee on Lords' Interests, includes a number of Lords of Appeal as does its parent committee.[22] To date, there have been no alleged failures to register and no allegations of any failure to abide by the rules governing peers' activities in the House following registration of their interests.

4.17 In fact the Sub-Committee has met only twice. These meetings took place soon after it was established in 1995 to provide advice on the operation of the register. At one of those meetings, in January 1996, the Sub-Committee considered a draft of the first edition of the register and the suggestion that "*some peers had made excessive use of category (3)*". It gave a ruling that "*though the Registrar should discourage [long] entries, the Resolution left each Lord free to enter in category (3) whatever he chose*".[23] The outcome of the meetings was not reported to the House but was reflected in the procedures adopted by the Registrar. [24]

The operation of the Griffiths Report

4.18 Lord Griffiths, who was Chairman of the 1995 Committee, gave us some of the background to the production of its report:

> *We had a very long-ranging debate ... it ranged from those who thought that there should be a compulsory Register ... and those who said 'I would go to the stake against such a Register'.... I was given clearly to understand ... that if we had attempted to introduce a compulsory registration system ... that a number of peers would have left the House rather than make their whole interests public ... I am pretty sure we went as far as we could, then.* [25]

4.19 It is clear from this evidence that the Griffiths Report matched the mood of the House at the time. Given that it introduced a register, albeit partly voluntary, for the first time, it was a major development in the procedural regime. Many members of the House of Lords told us that it had been successful. For example, the Rt Hon Lord Trefgarne, representing the Association of Conservative Peers, said:

> *it has worked very well. Those arrangements have been in place for several years and I know of no public disquiet that they have not been adequately observed. I know of no concern within the House that anybody has abused those arrangements and has not ... declared an appropriate interest.* [26]

4.20 As we have made clear from the beginning of our enquiry, we agree that there has been no general public disquiet concerning members of the House of Lords. The procedural mechanism to deal with allegations of individual misconduct has never been used. We also note that Mr Vallance White, the Registrar of Lords' Interests, was reported as saying that "*there is no interest in [the Register] whatever*".[27]

4.21 The maxim that was frequently put to us was 'if it ain't broke, don't fix it'. However, as the Attorney General, the Rt Hon Lord Williams of Mostyn, commented: "*I would say that we do not know whether it is broken or not*", adding that it is often only when a crisis emerges that a system appears to be faulty.[28] Lord Dixon-Smith pointed out the dangers of leaving remedies until after such a crisis: "*no purpose will be served if no mechanisms of public re-assurance are put in place until after damage is done by lax behaviour*". [29] A similar point was made by Lord Biffen: "*I think we still have something which is to be treasured. It is precisely because of that that one has to take the pre-emptive step ... and not be chivvied and chased by some miserable incident that is then blown up by those who have no faith, no interest and no affection for the institution*". [30]

The principle of honour

4.22 Lord Biffen also said: "*I plead that the House of Commons and the second chamber have long and very honourable reputations in public service and I contrast that with what happens in many neighbouring countries where there is a great deal of corruption*".[31] We ourselves commented in our last report on the high standards in public life in this country and on the resulting greater freedom from corruption and malpractice.[32] However, in the same report we also drew attention to another factor, namely "*the deep natural scepticism*" of the British public towards their politicians.[33]

4.23 Although we received few submissions from members of the public during our enquiry, [34] one spoke of the continuing need to counteract the "*low level of regard ... for politicians in general.*" [35] Another said "*that good men and women exist in the Houses of Parliament is not in dispute. The assumption that the members of the Houses of Parliament show a higher sense of morals and behaviour than the wider public is*". [36]

4.24 As outlined in Chapter 2, the test of personal honour is a longstanding and revered one in the House. The Rt Hon Lord Mackay of Ardbrecknish, Deputy Leader of the Opposition, said: "*peers are on their honour to make a disclosure if they take part [in a debate]. That may be an old-fashioned approach, but it seems to have worked*".[37] Indeed, some witnesses thought that reliance on the principle of honour could be harmed by the introduction of more detailed rules.[38] We see great force in the related point that too many rules interfere with the duty resting on an individual to exercise his or her own judgement. The Rt Hon Lord Owen, for example, suggested:

> *it is much better, in my experience in public life, to put people on notice of good behaviour, and I think they then exercise it, whereas if you have everything done by rules, they start getting away with it*.[39]

4.25 Other witnesses, while respecting the House's adherence to the code of personal honour, felt that it could be too subjective and imprecise a term on its own for regulating standards of conduct. It was suggested that other important principles needed stating explicitly. In particular, the key principle of transparency was mentioned. Baroness Young of Old Scone, for example, said: "*the issue of transparency is so important in allowing people to understand what informs what we say and what predispositions and interests might shape it*".[40]

4.26 The view that members of the House of Lords, as parliamentarians, are holders of public office cannot be gainsaid. We agree that the principle of openness is paramount in ensuring high standards of conduct in public life. We have also drawn attention in Chapter 2 to similar principles operating in the business and professional sectors. It is now everyday practice for codes of ethical conduct to be adopted in both public and private institutions. We would find it difficult to formulate any justification for the House of Lords today being different from such public and private bodies. As Lord Tugendhat put it: "*one has to ensure that one is operating according to the standards that are prevalent within society at a given time ... it would appear to me odd if standards of disclosure in the legislature of our country were based on significantly different principles than those required in a great many other walks of life*". [41]

4.27 As we said in Chapter 2, we respect the principle of 'acting always on personal honour'. At present, however, the 'honour' principle seems only to be expressed in the context of the rules governing Members' interests (in the form in which they were recommended by the Griffiths Committee and adopted by the House in 1995). Thus, in the House's procedural guide, the *Companion*, the term appears only in the chapter entitled 'Rules of Debate' and under the sub-heading 'Financial Interests' where the 1995 Resolutions are set out.[42] Our witnesses often spoke of 'honour' as part of the governing ethos of the House. We suggest it would be a logical extension for the principle of honour to provide the foundation for a somewhat more wide-ranging code of conduct, and, as Lord Simon of Highbury put it, "*it might be helpful to give people a little background on what is meant by 'honour'*".[43]

A code of conduct

4.28 In suggesting this, we return to the framework established by the First Report in setting out key principles and reinforcing them with mechanisms such as codes of conduct. There are two principal reasons for a code of conduct:

- To provide clarity for, and ensure consistency between, members of an institution as regards standards of conduct;
- To provide the openness and accountability necessary to ensure public confidence.

Clarity and consistency

4.29 The philosophical argument for clarity was put by the Archbishop of Canterbury in a speech in the House of Lords when the establishment of this Committee was debated in 1994:

> *But since the right motivation is not enough by itself, all of us need guidelines and codes to help us realise the good intentions in practice. Such codes are vital for institutions as well as individuals, mobilising authority and peer pressure behind ethical norms and translating general values into specific expectations*. [44]

4.30 In that context, it is noteworthy that many of our witnesses, including some senior and experienced peers, were concerned about the possible confusion and lack of clarity under the present system. Lord Plant of Highfield told us of a difference of interpretation that he had experienced over the need to register a grant from a charitable foundation. He said "*it seems to me ... a mistake that the criteria are sufficiently broad to allow something that seemed so obvious to me to be a matter of interpretation*". [45] Both Lord Tugendhat [46] and the Lord Bishop of Portsmouth[47] spoke of their uncertainty as to whether it was desirable to register their positions on university councils. The Rt Hon Lord Wakeham agreed that "*there should be some consistency. There is no reason for not achieving it and it would be an advantage*." [48]

4.31 The force of the call for consistency does not lie in a preference for bureaucratic tidiness. Its primary purpose is to ensure similar application of the rules by all members of the House and thereby to safeguard the reputation of the House. Witnesses were largely of the view that the reputation of the House was high. As we have asserted from the beginning of our enquiry, there has been no evidence of misconduct in the House of Lords. There were however some references made by witnesses to inadvertent slips or omissions in the past, particularly in the matter of declaration.[49] In a situation where an inadvertent mistake can arise from a lack of clarity in the guidance, it makes sense, as the Rt Hon Baroness Jay of Paddington put it, "*to get a more transparent and more precise system ... to enable people as individuals to feel more comfortable with their own situation and therefore not [to be] remotely exposed to any potential criticism that might arise*." [50]

Public confidence

4.32 The notion of twin audiences - externally the public and internally the members - for a code of conduct was foreshadowed by the introduction in the Griffiths Report of the formula concerning voluntary registration which reads: "*any other particulars which members of the House wish to register relating to matters which they consider may affect* the public perception *of the way in which they discharge their parliamentary duties*". [51]

4.33 It may be that the rules for disclosing interests have tended to become, in some members' minds, more a matter of internal perception and regulation than a part of the House's relationship with the public. Witnesses often spoke of their concern to let other peers 'know where I am coming from', particularly during debates. This is obviously of great importance. It is also true, as the Rt Hon Lord Mayhew of Twysden pointed out, that with televised proceedings and increased media coverage of Lords' debates, "*there is accountability to the public in the sense that they know what is going on*".[52]

4.34 Nevertheless, other witnesses argued that more explicit steps were required to reassure the public. For some peers, this was bound up with the concept of themselves as 'public servants': for example, the Rt Hon Lord Rodgers of Quarry Bank said: "*All members of the House of Lords are parliamentarians ... in this capacity they are public servants*".[53] The emphasis on the duty owed to the public was reiterated by Lord Williams.[54] Earl Russell suggested that even though the House of Lords' procedures may produce "*very good answers, the trouble is that it does not persuade the public that justice is seen to be done*".[55]

4.35 We suggest that a code of conduct provides just such a mechanism whereby those outside an institution - the wider public and the media - can judge how standards are met. The resolutions adopted by the House following the Griffiths Report constitute a form of code of conduct. They are available for public scrutiny inasmuch as the relevant paragraphs of the *Companion*[56] are on the House of Lords website and available in printed form. However, it would require quite detailed knowledge of procedure in the House of Lords to be able to find such paragraphs and recognise them for what they are.

4.36 As explained in Chapter 2, most public institutions have found it useful to make their Code of Conduct wide-ranging in its terms and accessible to the public by publishing a simple outline. The objective is to define principles and minimum standards, without becoming over-prescriptive. As Lord Simon put it:

> *I am in favour of codes of conduct that define territory but are not bureaucratic ... A code of conduct should give you principles by which you should operate, minimum standards you would like to see applied, but ... certainly a prescriptive document is not what is required*.[57]

The House of Commons Code of Conduct

4.37 Reference was made throughout the enquiry to the House of Commons *Code of Conduct*.[58] As noted in Chapter 2, this document, which is just over two pages long, incorporates the Seven Principles of Public Life and includes other aspects of conduct such as the ban on paid advocacy and compliance with the requirement to register interests. We reproduce the Code in Appendix E.

4.38 The Code is published with a Guide to the Rules which runs to 73 paragraphs. The operation of the rules is scrutinised by an Officer of the House, the Parliamentary Standards Commissioner, who reports to the House's Standards and Privileges Committee. The creation of the post of Parliamentary Standards Commissioner was one of the recommendations of our First Report. There has been a considerable increase in the Commissioner's workload over the past five years.

4.39 It is not the purpose of this report to review the operation of the Commons' conduct rules. We touched on aspects of this in *Reinforcing Standards*[59] and made several recommendations, some of which have been accepted by the Standards and Privileges Committee. Some of the evidence we received in the course of this enquiry did however suggest concerns about the volume and nature of the allegations that were being reported to the Parliamentary Commissioner and the Standards and

Privileges Committee. The Chairman of that committee, the Rt Hon Robert Sheldon MP, himself told us *"[it] is a very complicated code. Our task is to try to simplify it"*. He went on to speak of his concerns about *"the tit-for-tat situation - people are now looking for ways of tripping up a member from the other side of the House"*. [60]

4.40 He did, however, emphatically reiterate the important function of the Register (and thereby the Code). In answer to a question whether the Register existed for the benefit of the Members, the wider public, the media or all three, he said:

> *The public, undoubtedly, in my view, without question. It is the perception of high standards in Parliament. When I came in to Parliament ... people trusted each other ... people no longer have that sort of trust. The members themselves still have very high standards but that is not how it is perceived by the public and my task was to improve that perception.* [61]

4.41 This goes to the heart of the matter. Regrettable though the reduction in trust in public office holders may be, it is a common factor throughout public institutions and it is a perception that needs to be addressed. Although we accept the view of many of our witnesses that the public reputation of the Lords is high, we were persuaded by the view of those who urged that the same principles should apply to the Lords as to the Commons because members of both Houses are parliamentarians:

> Lord Blake: *"I have a clear view that the two Houses should be treated in the same way as regards Standards of Conduct. Differentiation would be incomprehensible to the public and impossible to defend"*. [62]
>
> The Rt Hon Lord Richard: *"I think that people are entitled to have similar standards, objectivity and transparency from each House, because the obligation to be open arises from the fact that you are a legislative chamber and not from anything else"*. [63]
>
> Baroness Jay: *"It is the first principles that we feel are applicable and should be applied to both Houses of Parliament"*. [64]
>
> Member of the public: *"I think it not only appropriate but essential that the rules regarding conduct in the House of Commons should apply similarly to the House of Lords. Moreover they should be seen to do so as honesty and transparency in government is highly esteemed"*. [65]

4.42 We revert to the House of Lords' 1974 Sub-Committee report, quoted in paragraph 4.3 above, which spoke of both Houses *"[pursuing] the **common** aim of honest, wholesome government in which people can trust"*. [66] This, in our view, remains the key objective. Tere is no requirement on either House to achieve the objective by the same mechanism: what is required is that the same **principles** of conduct should be discernible by the public. We believe this would be best achieved by the House adopting a short Code of Conduct as recommended below. We go on in Chapter 5 to consider how the code might be applied in a way appropriate to the traditions and standing of the House of Lords.

R1. ***The House of Lords should adopt a short Code of Conduct.***

R2. ***The Code should incorporate both the Seven Principles of Public Life and the principles adopted by the House of Lords in its 1995 Resolution, viz.***

1. ***Members of the House should act always on their personal honour; and***
2. ***Members should never accept any financial inducement or reward for exercising parliamentary influence***

R3. ***The Code should also incorporate the principles which the House of Lords adopts concerning the registration of***

members' interests.

[1] Mr Poulson was convicted on 11 February 1974. A full account of the Poulson Affair is given in the *Report of the Royal Commission on Standards of Conduct in Public Life* (the Salmon Report), Cm 6524 (July 1976), chap 2.

[2] Report of the Select Committee on Procedure of the House Sub-Committee on Registration of Interests (1974), para 8. The report is unpublished (see para 4.8 below).

[3] Ibid., para 7.

[4] Ibid., para 25.

[5] Ibid., para 25.

[6] Ibid., para 26.

[7] Ibid., para 28(5).

[8] Ibid., para 28(6).

[9] Ibid., para 28(3).

[10] Ibid., para 41(xii) (emphasis added).

[11] The Griffiths Report, para 8. The 1974 Sub-Committee agreed to leave further consideration of the Report "*until after it was known how the House of Commons were to deal with the problem*". It agreed that no reference to the Report should be made in the Procedure Committee's Report to the House.

[12] *Second Report from the Select Committee on Procedure of the House,* HL Paper 50 (1989-90), para 3. The incidents in question concerned the adequacy of declarations of interests during debates (*Hansard* (HL) 3 April 1989 cols. 964 and 972, 2 May 1989 cols. 58 and 61, 11 October 1989 cols. 403 - 406).

[13] Ibid.

[14] 10 May 1990.

[15] See para 1.1.

[16] Letter from Lord Nolan to Lord Griffiths dated 13 February 1995, and issued with a press notice dated 17 February 1995.

[17] First Report.

[18] The Griffiths Report was published on 5 July 1995.

[19] Ibid., para 60.

[20] *Hansard* (HL) 1 November 1995, cols. 1428 to 1488.

[21] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 18th edition

(October 2000), paras 4.60 - 4.71.

[22] The chairman of the Committee for Privileges is the Rt Hon Lord Griffiths. The chairman of the Sub-Committee is the Rt Hon Lord Nolan.

[23] Written evidence of Michael Davies, Clerk of the Parliaments (19/75).

[24] Day 2 (am).

[25] Day 2 (pm).

[26] Day 5 (am).

[27] Oral evidence from Lord Griffiths (Day 2 (pm)). The Clerk to the Parliaments provided some statistics showing access sought to the internet version of the Register (see his written evidence). For technical reasons common to all websites, it is difficult to make any inferences from these statistics.

[28] Day 6 (pm).

[29] Written evidence (19/19).

[30] Day 6 (pm).

[31] Ibid.

[32] *Reinforcing Standards* para 2.13. Cf. *Year 2000 Corruption Perceptions Index*, Transparency International, 21 September 2000.

[33] Ibid. para 2.6.

[34] Nine were received.

[35] Written evidence of Graham Wood (19/9).

[36] Written evidence of E J Armstrong (19/93).

[37] Day 5 (pm)

[38] For example, Lord Wakeham (Day 4).

[39] Day 1 (am).

[40] Day 6 (am).

[41] Day 4.

[42] See footnote 21 to this Chapter.

[43] Day 6 (pm).

[44] *Hansard* (HL) 22 November 1994, col 175.

[45] Day 3.

[46] Day 4.

[47] Day 6 (pm).

[48] Day 4.

[49] For example, Baroness Young of Old Scone (Day 6 (am)) and Earl Ferrers (Day 6 (pm)). As explained in para 4.9 above, there were also some incidents in 1989.

[50] Day 6 (pm).

[51] The Griffiths Report, para 60(4) (emphasis added).

[52] Day 5 (am).

[53] Day 5 (am).

[54] Day 6 (pm).

[55] Day 1 (pm)

[56] See footnote 21 to this chapter.

[57] Day 6 (pm).

[58] *The Code of Conduct together with the Guide to the Rules relating to the Conduct of Members*, House of Commons, 1997

[59] *Reinforcing Standards*, chap 3.

[60] Day 6 (am).

Official Documents

comments

DECLARATION AND REGISTRATION OF INTERESTS

5.1 Rules governing the declaration and registration of personal interests are central to any regulatory system designed to ensure high standards of propriety. In the present context, by '*registration*' we mean the recording of interests in the House of Lords Register of Interests, and by '*declaration*' we mean the disclosure of interests in the course of parliamentary proceedings and other circumstances where, in a communication, members of the House of Lords are using their influence as members of the House.[1]

5.2 Arrangements relating to the declaration and registration of interests have a direct bearing on the practical implementation of the Seven Principles of Public Life[2] - in particular, on the principles of Openness and Honesty. Effective disclosure of relevant interests also provides a mechanism for ensuring that the principles of Selflessness, Integrity and Accountability are being upheld.

5.3 One of the most important issues considered by the Committee has been whether the current rules in the House of Lords relating to the declaration and registration of interests are satisfactory as they stand or are capable of improvement.

Present rules on declaration and registration

Declaration

5.4 The practice in relation to the ***declaration*** of interests is based on a long-standing custom that members of the House of Lords speak on their personal honour and where a member has a ***direct*** pecuniary interest in a subject being debated in the House, he or she should declare it.

5.5 Subsequent guidance has extended the rule to include interests other than direct pecuniary interests. In the 1974 Report of the Lords' Sub-Committee on Registration of Interests, the Sub-Committee took the view that the original rule, limited to direct pecuniary interests, "*[did] not go far enough*".[3] The report stated:

> *the Sub-Committee are aware of many indirect or non-pecuniary interests which may act as a profound influence, e.g. hospitality received, gifts in kind, membership of an interested organisation, the promotion of a relation's interest, or assistance to a friend. A Peer's audience should know as much about these interests, if they influence his speech, as they should know about a small number of shares which he holds in a company concerned in the subject under discussion.*[4]

5.6 The 1974 Sub-Committee suggested that the House of Lords *Companion to the Standing Orders* should be redrafted to include the following statement:

> *If a Peer has a direct pecuniary interest in a subject on which he speaks he should declare it, and he should declare any kind of interest of which his audience should be aware in order to form a balanced judgement of his argument. Such interests may be indirect or non-pecuniary, e.g. the interest of a relation or friend, hospitality or gifts received, trusteeship, unpaid membership of an interested organisation etc., and they may include past and future interests.*[5]

5.7 No action was taken by the Procedure Committee on the Sub-Committee's report and, as noted in paragraph 4.8 above, it was never published or debated. In 1990, however, the Procedure Committee again considered the practice of the House in relation to interests and, following its report,[6] the guidance on the declaration of interests was revised and the rule extended to include indirect and non-pecuniary interests as well as direct pecuniary interests. These revisions closely followed the recommendation of the 1974 Report quoted in the paragraph above. The current Resolutions (adopted in 1995 on the recommendation of the Griffiths Report)[7] have retained the broad scope of the declaration rules:

> *Lords who have a direct financial interest in a subject on which they speak should declare it, making clear that it is a financial interest. They should also declare any non-financial interest of which their audience should be aware in order to form a balanced judgment of their arguments. Such interest may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or*

unpaid membership of an interested organisation, and they may include past and future interests.[8]

5.8 It is of interest to note that whereas paragraph 15 of the 1974 Report (quoted in paragraph 5.5 above) stated that many indirect or non-pecuniary interests "*may act as a profound influence*" and should be declared to a peer's audience "*if they influence his speech*", this language about potential and actual influence was omitted from the recommendation finally made by the 1974 Sub-Committee and from the formula adopted in 1990 and 1995.

5.9 The conclusion which may legitimately be drawn from this is that in the case of the indirect and non-pecuniary interests mentioned, it was thought to be vain to invite enquiry in an individual case into whether any such interest had the potential to exercise "*a profound influence*" or did in fact influence what the speaker said in the House. Instead, the test adopted has been: is the interest of such a character that the peer's audience needs to be aware of it in order to form a balanced judgement of the arguments advanced? This approach contemplates the possibility that a peer might have an indirect or non-pecuniary interest (such as, say, being an unpaid office-holder in an 'interested organisation') where the peer would say: "*This office has absolutely no effect on anything which I say in this debate or on how I vote*", but where none the less the audience (including those who have access to the record) needs to be put into the position of being made aware of this interest so that not only the listening peers but also other persons outside the House can themselves form "*a balanced judgement*" about the motivation of the speaker.

Registration

5.10 Rules relating to the *registration* of interests are relatively recent. They are the result of the recommendations of the Griffiths Committee and they were adopted in November 1995.

5.11 The 1974 Sub-Committee considered the arguments for and against a register and concluded that they did not "*feel able to advise that a register should or should not be adopted, and that this is a decision which must be left in the first place to the Procedure Committee and ultimately to the House*."[9] However, they took the view that "*in terms of practical necessity*", the case for a register had not been proved. They gave the following reasons:

- the present practice had worked satisfactorily without one;
- a register would be difficult to operate and keep up to date;
- its contents would be liable to misuse;
- its purpose would be easily avoided by anyone who wished to do so.[10]

5.12 The 1974 Sub-Committee also cited the 'involuntary' character (in most cases) of membership of the House of Lords:

> *To what extent a register is an invasion of privacy is hard to say, and as the Commons have demonstrated this may be the necessary price for being a legislator. But in a House where many Peers are not members by choice it could be undesirable to require them to reveal private financial concerns in a general register and not to leave them the alternative of remaining silent in a debate and thus remaining silent about the interest*.[11]

5.13 The Sub-Committee rejected the argument that the Lords should necessarily follow the practice of the House of Commons in introducing a register of interests:

> *So the question is this: do the practical difficulties of a register and the differences between the two Houses of Parliament outweigh the possible political desirability of a register and the need for the two Houses to keep in step? The Sub-Committee on the whole believe this to be the case, but they recognise that the decision is one for the judgement of the whole House*.[12]

5.14 The Griffiths Committee, in 1995, reviewed the case for and against introducing a register of interests. Whilst appreciating the force of the arguments against such a development, the Committee took the view that "*the time has come when the House should have a register*".[13] It did not, however, favour a comprehensive, mandatory register, on the grounds that:

> *for those members who attend the House infrequently, the burden of compliance with comprehensive registration requirements, and the consequential invasion of privacy, would not be counterbalanced by any comparable benefit to the public interest*.[14]

5.15 The Griffiths Committee drew a distinction between, on the one hand, parliamentary consultancies and financial interests in firms engaged in lobbying and, on the other, all other relevant interests. Whereas the view was taken that the latter should be registrable on a discretionary basis, the former were "*directly relevant to the manner in which Lords discharge their Parliamentary duties*" and should be subject to a mandatory registration requirement. The Committee therefore recommended that the Register of Lords' Interests should have three categories, two 'mandatory' and one 'discretionary':

- *Consultancies or similar arrangements, involving payment or other incentive or reward for providing parliamentary advice or services* [mandatory].
- *Financial interests in businesses involved in parliamentary lobbying on behalf of clients* [mandatory].
- *Other particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties* [discretionary].

5.16 This recommendation was embodied in a Resolution of the House of Lords in November 1995 which remains in effect.[15]

5.17 In addition to the rules on declaration of interests, this chapter will focus on category (3) of the Register. (Categories (1) and (2) are considered in the following chapter, Chapter 6, on lobbying and the ban on paid advocacy.)

Relationship between declaration and registration of interests

5.18 The Committee heard different opinions about the relative importance of declaration and registration. For example, the 1974 Sub-Committee took the view that: "*Registration can ... be contemplated as a supplement to declaration but not as an alternative to it*".[16] This view was endorsed by the Griffiths Committee: "*registration should be supplementary to declaration*".[17]

5.19 Mr Michael Davies, the Clerk of the Parliaments, took a similar view in his evidence to us:

> *Declaration of interest is in my opinion a more valuable safeguard than registration. The Register is inevitably a resource of last resort for ensuring compliance with the Resolution of the House.*[18]

And the Rt Hon Lord Wakeham told us that "*the most important thing is a declaration of interest at the time of debate*".[19]

5.20 Other witnesses, by contrast, argued that declaration and registration fulfilled different functions: whereas declaration is essentially inwardly focused, registration informs the external audience. For example, Lord Flowers said:

> *I am fairly content with the arrangements we have in the Lords already, for internal purposes. Each peer needs to know, when he listens to another peer speaking, whether or not there are hidden interests. On the whole, I think we deal with that fairly well. But I think that arrangement breaks down when one asks the public what they think.*[20]

And Baroness Young of Old Scone said:

> *There are a number of problems with declaration. It gives nobody any advance notice of where one is coming from ... It is useful to have a public record so that people can judge at times other than when we are standing on our feet, because we take part in a range of activities that do not involve formally recorded speeches.*[21]

5.21 Peter Riddell argued that registration was necessary because not every member of the House of Lords who participated in a vote would have had occasion to declare his or her interests prior to the vote: "*The point about declaring in speeches is all very well, but ... what matters as much is votes, and there you have to have a register*".[22]

Purpose of declaration and registration of interests

Purpose of disclosure of interests

5.22 Disclosure of interests - whether by declaration or registration - can be said to serve two broad purposes:

- to indicate those personal interests which might reasonably be thought by others to influence a member in his or her conduct in the House of Lords; and

- to indicate those personal interests which demonstrate a member's particular expertise or involvement in the subject being debated.

5.23 In the 1974 Report, emphasis is placed on the second of these purposes:

> *It is well recognised that many declarations of interest are given not as an apology for speaking, but in order to demonstrate the speaker's qualifications, and in these circumstances the only important condition for speaking is that the House should know the standpoint from which they are being addressed so that they are able to make a fair assessment of the Peer's argument.*[23]

5.24 Lord Marlesford, in his evidence to us, took a similar view: "*The value of declaration of interest is not just to prevent concealment but to emphasise the focus of views expressed*".[24]

Difference between declaration and registration of interests

5.25 The 1995 Resolution governing **declaration** describes the purpose of declaration in a way which encompasses both the elements identified above: members of the Lords are required to declare those interests "*of which their audience should be aware in order to form a balanced judgement of their arguments*".

5.26 Declaration, when made in the course of parliamentary proceedings, is oral and, by its nature, transitory and ad hoc. It informs those participating in, or observing, proceedings in the House[25] and the content of the declaration will be specific to the subject of debate.

5.27 It is self-evident that a declaration in Parliament can only be made by those who speak in proceedings and that members of the Lords who vote but do not speak cannot fall within the scope of the rules on declaration. It is interesting to note that prior to the 1995 Resolution on declaration, the House of Lords' guidance advised that:

> *If a Lord wishes to vote on a subject in which he has an interest that is direct, pecuniary and shared by few others, it is better that he should first have spoken in the debate so that his interest may be openly declared.*[26]

The Griffiths Report recommended, on practical grounds, that this advice should be discontinued:

> *While we support the principle underlying this, we do not recommend retaining this guidance in this form, because it will not always be practical for all Lords in this position to take part in a debate before voting.*[27]

We agree with the view of the Griffiths Committee.

5.28 **Registration**, in contrast to declaration, provides a consolidated public record of interests, available to members of the public and to the media. Under the present rubric of the voluntary part of the Register (category (3)), members are invited to register "*particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties*". Members therefore are required to make a judgement about which interests are sufficiently significant as to warrant including in a standing register (if they choose to make an entry under category (3)), that significance being determined by reference to what members "*consider*" (possibly 'speculate' would be a more appropriate word) would be the public perception of their conduct as legislators.

5.29 Unlike declared interests, registered interests will tend to be more general because a declaration of interest will be made in response to a specific issue before the House. The need to make a declaration may arise quite suddenly in the course of debate: as where, for example, an earlier speaker raises some new - possibly unexpected - point which a following speaker thinks that he can support or destroy (as the case may be) but needs to declare a relevant interest.

Key issues

5.30 The Committee has considered whether the present rules governing declaration and registration in the House of Lords are satisfactory, both in their practical operation and in the context of a developing culture of transparency and accountability throughout public life.

Declaration

5.31 The Leader of the Opposition, the Rt Hon Lord Strathclyde, described the rule on the mandatory declaration of interests as "*enormously powerful and strong ... a tough regime*".[28] We received few adverse comments about the declaration rules, save

that it was said that on occasions the extent of declaration could be distracting and time-consuming.[29] This latter issue is a procedural rather than a standards issue and a matter for the House itself. We make no recommendations for changes to the guidance on declaration of interests.

Registration

5.32 As regards registration and in particular the voluntary element (category (3)) of the Register, the key issue is whether that element should be mandatory and, if so, what sort of interests members of the House of Lords should be required to register.

Whether the Register should be mandatory or voluntary

5.33 We received evidence both for and against making category (3) a mandatory category.

Arguments for maintaining a voluntary register

5.34 The following arguments were advanced in favour of maintaining the current voluntary status of the Register:

(a) The current Register works well: there have been no complaints under the present system.

The current Register has been in effect since 1995 and no references have been made to the Sub-Committee on Lords' Interests alleging that an individual member of the House has breached the terms of the Resolution on declaration or registration.

(b) Given that members of the House of Lords are unsalaried and, therefore, part-time, it would be unduly burdensome and intrusive to require members - some of whom may only attend very infrequently - to participate in a comprehensive register of interests.

The Griffiths Committee found this argument persuasive when it was considering whether there should be a mandatory register.[30] The Rt Hon Lord Strathclyde, the Leader of the Opposition in the House of Lords, made a similar point in his written evidence:

> *Peers are not professional politicians, prepared to put personal ambition or membership in the House before all else. For most, membership of the House is a part-time duty, additional to other professional work. Many value their privacy for no reason more sinister than a reasonable belief that their personal affairs - and the private affairs of other citizens - are entirely that.*[31]

(c) Some members of the House of Lords will be deterred from participating in the House of Lords proceedings at all if required to register their interests, and, similarly, some potential candidates for peerages will be deterred from accepting a peerage.

Lord Strathclyde told us that he was aware that "*some existing members of the House - not many*" would not wish to continue in the House if the rules on the registration of interests were to change. Lord Griffiths recalled that this had been an issue in 1995 as well (see paragraph 4.18 above).[32]

(d) A mandatory register would make members less vigilant as regards the requirement to declare.

This argument was advanced by Lord Strathclyde. He took the view that "*a written register might well tempt peers to forget about giving a declaration during the course of the debate*".[33] Lord Wakeham agreed that a mandatory register could create such a risk: as to whether a peer ought to declare an interest, he said, "*If it is all registered, one would not necessarily think so carefully about it.*" [34]

(e) There is no enforcement mechanism for ensuring that members act in accordance with a mandatory register.

The 1974 Sub-Committee drew attention in its report to a significant distinction between the House of Commons and the House of Lords: the Commons, unlike the Lords, has power over its members to the point of expulsion whereas "*the scope for*

disciplining a recalcitrant peer is small".[35] The Sub-Committee took the view that this difference between the two Houses was "*of the first importance*" and fundamental to the argument against a compulsory register. The Clerk of the Parliaments, in his evidence to us, said that the absence of sanctions remained "*a fundamental difficulty*".[36]

(f) A mandatory register might encourage the development in the Lords of the concerns which now are alleged to exist or are perceived to exist in the House of Commons. These include extensive guidance on the operation of the Register and the making of politically-motivated 'tit-for-tat' allegations of failure to register.

The Chairman of the House of Commons Standards and Privileges Committee, the Rt Hon Robert Sheldon MP, expressed to us his concern about what he described as the "*tit-for-tat situation*" in the Commons. He said:

> *People are now looking for ways of tripping up a Member from the other side of the House. This is becoming serious ... What we are now seeing is trivial matters being put forward, some of which meet the requirements of the rules and some of which are doubtful.*[37]

Sir Archibald Hamilton MP said that he thought the Commons' regime was "*getting very intrusive*".[38] He urged that this Committee should "*not put their lordships in the same straitjacket which we [Members of Parliament] put ourselves in*".[39] Lord Strathclyde tentatively sounded a similar warning:

> *We do not presume to comment on internal affairs of the House of Commons, but note reports of some cross-party concerns over whether the present disciplinary system in that House is, in fact, working sensibly, or becoming excessively intrusive. If those concerns were widespread or substantiated, they would themselves argue against replication of the Commons' arrangements in the Lords.*[40]

Arguments for recommending that the Register should be mandatory

5.35 The following counter-arguments were advanced:

(a) There is a growing culture, and public expectation, of openness in public life; the House of Lords is a vital part of public life and its members perform an important and influential public function.

The 1974 Sub-Committee acknowledged that it was important "*that the procedures of the House should be accepted as open and honest by the public as well as by Peers*".[41] Speaking in the House of Lords, the Leader of the House, the Rt Hon Baroness Jay of Paddington, has also commented on the need for openness:

> *this place is a working House of Parliament ... It is right that we should be open about those matters which might affect or, it is true, be thought to affect the way in which we conduct ourselves.*[42]

Baroness Hilton of Eggardon in evidence to us expressed the same thought:

> *... one has a responsibility, if you are in the public world, to undertake certain responsibilities including revealing sources of your income.*[43]

(b) The House of Lords is one element of a bicameral legislature and, as such, should adopt principles of openness similar to those of its legislative partner and other public bodies.

A number of witnesses urged the view that the same principles governing standards of conduct should be applied in the two chambers. Comments about this issue by some of those witnesses are set out in paragraph 4.41 above.

The Griffiths Committee also recognised the force of this argument:

> *The public may not readily understand why the House of Lords, given its parallel responsibilities for legislation and other aspects of the democratic processes of Parliament, should assume that any lesser safeguard is appropriate.*[44]

(c) The very fact that the House of Lords is unsalaried reinforces the need for a register of interests since there is a greater

likelihood that members will have substantial outside interests.

This is the counter-argument to the argument for maintaining a voluntary register set out in paragraph 5.34(b) above. It was put by a number of witnesses. For example, Earl Russell took the view that the fact that members of the House of Lords will normally have other sources of income arguably made a case for more regulation rather than less.[45]

> Similarly, the Rt Hon Lord Rodgers of Quarry Bank said: "*If more members of the House of Lords rely on outside interests to pay their way, there is a strong reason for being wary of the possibility of conflict*".[46]

(d) It would overcome to some extent the problem of voting with an undeclared interest.

In the 1974 Report it was suggested that the "*major*" practical advantage of a register was that it overcame "*the problem of voting with an undeclared interest*".[47] We have already indicated that we share the view of the Griffiths Committee that this 'problem' cannot, for practical reasons, be surmounted by requiring peers with relevant interests to speak (and therefore be given an opportunity to declare) on any occasion on which they wished to vote.

A register would, of course, only meet the problem part way. This is because registrable and declarable interests are not always of the same character: there will be occasions on which a member votes on an issue about which he or she has a declarable interest (had that member spoken in the preceding debate), but the interest is not one which he or she would have been expected to register (see paragraph 5.27 above).

(e) It would remove the inconsistency and uncertainty created by the present Register where the absence of an entry can be construed as either an absence of interests or a decision not to disclose relevant interests.

The Clerk of the Parliaments' Foreword to the 2000 edition of the House of Lords' Register makes clear that the absence of an entry in the Register cannot be a basis for speculating about a peer's interests:

> *The absence of a declaration [in the Register] does not indicate the absence of any outside interest. For the same reason, the absence of an entry for a member with well-known interests is not a 'failure to declare', but a legitimate choice exercised by that member.*

Baroness Young of Old Scone found this situation unsatisfactory:

> *Nobody knows from reading the Register whether one has nothing to disclose, chosen to exercise one's discretion not to disclose, forgotten to register or misunderstood the principles of registering.*[48]

(f) It would provide a protection for members of the Lords.

Contrary to the view that a mandatory register would be an unwarranted intrusion, the argument was put to us that the register would protect members of the Lords and, indeed, the reputation of the institution itself, from allegations of secretiveness. For example, Lord Newby said:

> *We feel that we should be happier if there were disclosure, so that people could not make allegations about peers or generally insinuate that the House of Lords was a rather secretive place.*[49]

5.36 As we have already noted (in paragraphs 4.5 and 5.12 above), an argument against a mandatory register which was identified by the 1974 Sub-Committee was that many peers - the hereditary element of the House - were members of the House 'involuntarily'. This is no longer true. The House of Lords Act 1999 has removed all but 92 of the hereditary peers (and, of those 92, 90 have with their full consent been elected from their own political party or cross-bench group).[50]

5.37 The Committee has considered the countervailing arguments set out above with care. We have concluded that the balance is strongly in favour of a fully mandatory register. We take this view principally on the ground that the House of Lords, as a vital institution in public life (and one in which the public at large and the media are likely to show a growing interest), should adopt rules requiring greater transparency in order to reassure those outside the House that the highest standards of conduct are being maintained within.

5.38 We find unconvincing the argument that the absence of complaints demonstrates that the current system is working well: not only is a voluntary system unlikely, by its nature, to generate many complaints but, in our view, the absence of complaints

does not preclude the possibility that the system is capable of improvement.

5.39 We have no firm evidence about whether or how many members might be deterred by a mandatory register. In contrast to Lord Strathclyde's evidence, the Rt Hon Lord Williams of Mostyn, the Attorney General, said that he knew of no member who would be deterred (although he speculated that there might be *"one or two"*).[51] We have already noted (in paragraph 3.9) that peers who do not wish to attend the House may apply for Leave of Absence: those, therefore, who hold very strong views against complying with a mandatory register and, on that ground do not wish to attend the House, have that option available to them.

5.40 As for the risk that the House of Lords system might be exposed to the mischief of 'tit-for-tat' allegations, we believe that measures could be taken by the House to reduce the likelihood of such a development. We consider what these measures might be in Chapter 7 below. In the same chapter, we also consider the question of sanctions. We shall not therefore deal with the issue here, save to make the following points: first, that the rules on declaration and categories (1) and (2) of the Register have been mandatory for five years without any problems having arisen and, secondly, that the weight of the evidence we received was that the informal sanction of 'naming and shaming' is likely to be an effective one.

R4. The registration of all relevant interests should be made mandatory.

The content of the mandatory register

5.41 The Committee is aware that the issues relating to the content of a mandatory register are likely to be at least as contentious as the debate on whether or not the register should be mandatory or voluntary.

The importance of 'proportionality'

5.42 In Chapter 2, we emphasised the importance of 'proportionality' in drawing up rules for conduct.[52] As we have said already, in Chapter 4, during this enquiry we have considered the relevance of the *Code of Conduct and Guidance* for the House of Commons. In that context our attention was drawn to the increasing detail of the Commons' rules. Although we believe that the same *general principles* of conduct should be applied in both Houses of Parliament, we do not think that those principles need to be applied by the same mechanisms. In particular, we do not believe that it would be proportionate to suggest that the detail of the Commons' Register is, currently, necessary in the House of Lords.

5.43 The Rt Hon Lord Richard, former Leader of the House of Lords, shared this view. He said:

> *I think that the House of Commons has probably gone a bit too far ... To try and import something as draconian as that into a chamber whose ethos, in a sense, is based on self-regulation and personal honour would not fit.*[53]

5.44 Peter Riddell took a similar line:

> *If you required the same type of financial disclosure as in the Commons, it would deter people ... If everyone is supposed to behave with honour, I cannot see what the objection is to having a looser form of compulsory registration, provided that the requirements of the registration fit the nature of the House as it is, and, as I say, that should be different from the Commons.*[54]

5.45 The present Parliamentary Commissioner for Standards, Ms Elizabeth Filkin, agreed that the extensive guidance governing the House of Commons' Register would not necessarily be needed in the House of Lords.

The test and guidance

5.46 The current test set out in the rubric of category (3) of the Lords' Register is that members should register particulars relating to matters *"which they consider may affect the public perception of the way in which they discharge their Parliamentary duties"*. We received evidence suggesting that this rubric has caused some uncertainty. Lord Plant, for example, told us that the third category *"is, in my judgement, far too vague"*.[55] Lord Tugendhat said: *"Perhaps this is an example of misunderstanding but I have interpreted the interests that I should declare as being those from which I derive earnings"*.[56] Baroness Turner favoured more guidance: *"I think that there is a need to have some very clear guidance, particularly for new peers, about what one should or should not register,"*[57] and Lord Dubs, when asked about the same issue, said: *"If it is left to*

individual peers to decide, the danger is that we might all behave differently from the best of motives" .[58]

5.47 However, bearing in mind our concern about 'proportionality', the category (3) test is appealing in its simplicity. We also believe that its focus on "*public perception*" is right. Furthermore, retaining the test accords with our view that it is best to build on the firm foundation of the existing conduct rules.

5.48 We have one significant reservation, however, about the current category (3) test, and this concerns its subjectivity: whether an interest falls within the scope of category (3) is determined by whether or not it is an interest which *the member considers* may affect the public perception. The element of subjectivity has the effect of making the category (3) test a very loose and uncertain one. We believe that it should be amended so that it is a more objective test, measured against what could *reasonably be thought* to affect public perception. If this proposal were accepted, the rubric of category (3) would require the registration of "*other particulars relating to matters which may reasonably be thought to affect the public perception of the way in which they discharge their Parliamentary duties*."

5.49 In addition, we recommend that the general (category (3)) test should be supplemented by brief written guidance. The purpose of the guidance would be, *inter alia*, to list those interests which the House has decided are unequivocally registrable. It would be a matter for a member's discretion to decide whether to register a non-listed interest, applying the general test (and, if necessary assisted by guidance from the Clerk of the Parliaments and the Registrar).

The range of registrable interests: financial and non-financial

5.50 We now turn to the issue of what the list of clearly registrable interests might include. We begin by considering whether members of the Lords should be required to register financial interests only or both financial and non-financial interests. Some witnesses took the view that if non-financial interests were registered there would be a risk that members would clutter the Register with too much information. For example, Lord Dubs said:

> *What concerns me is that there is a pressure now to register every tiny voluntary organisation, trustee body on which one serves. The Register is devalued if one dilutes it in this way.*[59]

5.51 Others thought non-financial interests were relevant on the ground that they gave a more complete picture of the standpoint of a member. We found this argument more persuasive. As we have already said,[60] in our view, the purpose of the Register is two-fold. It enables a member of the Lords (1) to disclose personal interests which might be perceived as influential and (2) to demonstrate his or her source of expertise. This two-fold purpose would not be served if the Register were confined to financial interests only.

5.52 In order to ensure that only those non-financial interests which are relevant are registered, we suggest that, first, the guidance should clearly set out the two-fold purpose of the Register as regards non-financial interests . Secondly, on the specific issue of participation in voluntary organisations, we suggest that the guidance should state that although most[61] office-holders (including trustees) in voluntary organisations would be expected to register their interest in that organisation, those who are simply members of a voluntary organisation should consider carefully, before registering their membership, whether it does in fact constitute an interest which falls within the (revised) rubric of category (3). Although in some cases membership will be strongly indicative of a peer's position on an issue, we imagine that often it will not be necessary to register simple membership.

5.53 We believe that this approach to the **registration** of interests in voluntary organisations reflects our commitment to the principle of proportionality. We are aware that the guidance on **declaration** of interests (set out in the 1995 Resolutions and quoted in paragraph 5.7 above) refers to a range of declarable interests including "*unpaid membership of an interested organisation*". Our suggestion that it may not always be appropriate to register simple membership is not intended to derogate from that guidance.

5.54 In order to make the Register more easily understood, we suggest as a practical measure that the Register should be laid out in a format which distinguishes between financial and non-financial interests.

The list of interests which are clearly registrable

5.55 The detailed task of framing the list of those interests which are clearly registrable is, of course, a matter for the House of Lords itself to determine (assuming that it elects to adopt a mandatory register). Bearing in mind the general test proposed above, we would expect the list to include all significant financial interests (for example, remunerated directorships, remunerated employment, shareholdings amounting to a controlling interest, other significant shareholdings and substantial landholdings)[62] and, as we have mentioned above, relevant interests in voluntary organisations. We would not expect occasional income from remunerated speeches, lecturing and journalism to be registered.

5.56 A particular concern raised in the evidence we received was whether hospitality in the form of costs-paid overseas visits should be registered. Baroness Turner, for example, told us that she had not been sure whether she should register a visit to Gibraltar which had been at the invitation of the Gibraltar Government. She was advised by the Registrar that she should not.[63] In evidence, Lord Dubs referred to a visit to the United States to examine energy policy when he was on the Opposition benches. He thought that it was important that such visits should be disclosed because *"overseas visits are seen by the public as a great freebie, even if they involve hard work"*.[64] Lord Walton, however, suggested that not all overseas travel should be registered:

> *I was invited to give two guest lectures on neurology in Venezuela and to open a new Neurological Research Unit there. My hosts paid my travel and that of my wife, as well as paid for my accommodation. The benefit was, thereby, considerable, but it had no conceivable relevance to my work in the House of Lords*.[65]

5.57 Our general view is that hospitality and gifts which are received by a peer for a reason unconnected with his or her membership of the House of Lords should not normally be registered. On the specific issue of costs-paid travel, therefore, we suggest that costs-paid visits which are associated with a peer's parliamentary activities should be registered and those which are not so associated should not normally be registered.

5.58 In the House of Commons, MPs are not required to disclose the amount of outside income earned (unless derived from an employment agreement *"which involves the provision of services in his capacity as Member of Parliament"*.[66] We see no grounds on which to distinguish the House of Lords in regard to this issue. We, therefore, recommend that members of the Lords should not be required to disclose how much they earn from their outside interests (save, as we state in paragraphs 6.41 and 6.42 below, the income derived from parliamentary consultancies registrable under category (1) of the Register).

R5. The test of 'relevant interest' for registration under category (3) should be whether the interest may reasonably be thought to affect the public perception of the way in which a member of the House of Lords discharges his or her parliamentary duties.

R6. Category (3) should cover both financial and non-financial interests and such interests should be distinguished in the lay-out of the Register.

R7. The Register should be supplemented by brief written guidance setting out a list of those interests which clearly fall within the test of 'relevant interest'.

R8. A member of the House of Lords who registers a relevant financial interest under category (3) should not be required to disclose in the Register the remuneration derived from that interest.

Treating members of the House of Lords equally

5.59 The House of Lords is comprised of a number of distinct (although in some instances overlapping) groupings:

- Lords of Appeal[67]
- Lords Spiritual
- Ministers
- Opposition spokesmen and women
- back-benchers
- elected hereditary peers
- life peers
- members taking the whip of one of the political parties
- cross-bench (and other politically unaffiliated) members.

5.60 Given the purpose underlying disclosure of interests, it seems reasonable to us that there should be a presumption that all

members of the House of Lords should be subject to the same set of rules governing disclosure, unless an overriding reason to the contrary can be found. On this premise, we considered whether there was any justification for exempting any category of peer from the requirement to register relevant interests. We could find no convincing arguments for making any such distinction. We concur with the view of Lord Williams of Mostyn that no exceptions should be made[68] and we agree with Lord Strathclyde, who said:

> *I am a believer in the equality of peers and the only inequality that currently existed, which obviously should continue, is that between Ministers and non-Ministers ... All other peers should be treated the same, whether they are bishops, Law Lords or the rest of the peerage.*[69]

5.61 We envisaged that the position of the Lords of Appeal might require special consideration since the rules relating to them in their capacity as members of the House of Lords could possibly have some bearing on their activities as members of the judiciary and have a wider implication for the judiciary as a whole. We were also aware that in 1995, when the voluntary register was introduced in the House of Lords, the Lords of Appeal in Ordinary took a collective decision not to participate in the voluntary Register.[70] However, the Senior Law Lord, the Rt Hon Lord Bingham of Cornhill, told us that, subject to the specific requirements of a mandatory register, such a register would be unlikely to cause the Lords of Appeal in Ordinary any difficulties:

> *Our final response to any recommendations made by the Committee would of course depend on its content. We would, however, envisage that any rule accepted by the House as binding on its members should be accepted as binding upon us in our capacity as members of the House.*[71]

5.62 We received no collective view from the Lords Spiritual. The Bishop of Portsmouth, however, told us: *"I would not have any difficulty with a mandatory register, provided it does not get out of hand"*[72] and the Bishop of Guildford wrote:

> *I think that it would be a good idea for all of us to have to register the Boards and Bodies on which we sit and serve and for these to be publicly known, so that when we speak in the Lords on matters affecting their areas of interest, there can be no doubt about the connections to be made.*[73]

The Bishop of Wakefield, whilst not arguing for an exemption, stressed the importance of proportionality:

> *for members of the House of Lords, Bishops particularly, the registration of all travel, gifts as well as perhaps the need to register all the organisations or bodies of which they are Patrons, may be a significantly greater burden than their contribution to the House truly requires.*[74]

R9. The mandatory register should apply to all members of the House of Lords.[75]

The Addison Rules

5.63 In our consultation paper, we referred to the specific rules - known as the Addison Rules - which concern members of the House of Lords who are members of a public board. The rules provide guidance in respect of the general rule that:

> *A Lord who is a member of a public board, whether commercial or non-commercial in character, is not by reason of such membership debarred from exercising his right to speak in the House of Lords, even on matters affecting the board of which he is a member; and it is recognised that, in the last resort, only the Lord concerned can himself decide whether he can properly speak on a particular occasion.*

5.64 Similarly, a peer who is employed by a public board or a nationalised undertaking is not debarred from speaking in the House on a subject which affects the board or undertaking; but whether a member or employee of a public board, any peer intervening in a debate relating to the board is expected to declare his or her interest.

5.65 The Clerk of the Parliaments explained the origin and purpose of the Addison Rules:

> *They were drafted after all at a time of nationalised industries where the chairmen or the board members of the nationalised industries might be members of the House of Lords. It was to make clear that the responsibility for nationalised industries rested with the Minister and the Government as a whole rather than with the board members to answer to Parliament. There are very few nationalised concerns left now, but clearly there are other public boards where the members and chairmen are members of the House of Lords.*

5.66 A small number of witnesses referred to the Addison Rules. The Deputy Leader of the Opposition in the House of Lords,

the Rt Hon Lord Mackay of Ardbrecknish, for example, expressed his concern that members of the House of Lords who were also members of public boards should "*appreciate the distinction between taking part in a debate on the subject of the board and answering for the detailed work of the board*".[76] Similarly, the Rt Hon Lord Jenkin of Roding wrote that he was not aware of the general rules on declaration and registration being misapplied "*other than the failure of some Peers recently appointed to public bodies to understand or observe the Addison Rules*".[77]

5.67 Whilst not wishing to diminish the validity of the concerns raised by witnesses about the application of the Addison Rules, in our view these rules are not principally to do with the maintenance of standards but, rather, they are about ensuring clear lines of Ministerial accountability. For this reason, we do not consider them further in this report.

Opposition spokesmen and women

5.68 In our consultation paper, we also raised the issue whether there should be specific parliamentary rules governing opposition spokesmen and women and their financial interests.[78] Since the issue affected both Houses of Parliament, we posed the following question: "*Should the rules governing members of either House of Parliament make specific provision in relation to those who are opposition spokesmen and women for the divestment (or otherwise) of financial interests similar to that contained in the Ministerial Code?*"

5.69 The Ministerial Code advises that:

> *In order to avoid the danger of an actual or perceived conflict of interest, Ministers should be guided in relation to their financial interests by a general principle that they should either dispose of any financial interest giving rise to the actual or perceived conflict or take alternative steps to prevent it*.[79]

5.70 In raising the issue, we acknowledged that there is a significant difference between the roles of Ministers, who have executive functions, and opposition spokesmen and women, who do not. We were also aware, however, that opposition spokesmen and women are able to exercise influence over parliamentary matters and over the wider political debate as a result of the positions they hold on the opposition front benches.

5.71 We received a great deal of evidence on this issue. The preponderance, by far, was against introducing any special new rule. For example, the Rt Hon Sir George Young, Shadow Leader of the House of Commons, said:

> *I would be concerned if access to our front bench was constrained in a way that was suggested because I think that would mean that some individuals who are at the moment prepared to serve on the front bench leave the party. They might not feel they were able to serve if that meant giving up all their outside interests, including the income that went along with them*.[80]

Lady Saltoun said:

> *Opposition spokespersons are not only unpaid volunteers for the most part, but they may change fairly frequently and the inconvenience and possible financial loss ... would be intolerable and likely to lead to difficulty in finding Peers willing to take on the job*".[81]

5.72 Baroness Turner of Camden, a former opposition spokeswoman, said that had she been told that she would have to divest herself of her financial interests "*I would not have continued on the front bench*".[82]

5.73 Lord Dixon-Smith thought that opposition front-bench spokesmen and women had "*a margin of more interest in their work from the point of view of future policy*" but, in terms of the need to make a living, he saw no distinction between them and other members of the House.[83]

5.74 Sir George Young Bt MP made a similar point:

> *we are much closer to Members of Parliament than to Ministers ... We do not have an executive role. We are not running the country*.[84]

He feared that restrictions on the permissible outside interests of those on the opposition front benches would reduce the effectiveness of the opposition by narrowing the pool of people from which those on the front benches could be drawn.

5.75 We conclude that there should be no change in the rules governing opposition spokesmen and women. Our decision is based on two points. First, as a matter of principle we do not see why a restriction which is no doubt necessary in the case of

those with executive power, namely Ministers, should be extended to persons who have no executive power. Secondly, we are convinced that the proposed change is unworkable in practice, in particular because too many able men and women would be deterred from serving on opposition front benches.

R10. Rules on private financial interests akin to those in the Ministerial Code should not be applied to opposition spokesmen and women.

[1] The Select Committee on Procedure of the House Sub-Committee on Registration of Interests, in its (unpublished) 1974 Report , took the view - from which this Committee does not dissent - that declaration is not only relevant to proceedings in Parliament but also, for example, to a meeting with a Minister which a member of the House of Lords is able to obtain by virtue of that membership (para 12). Under the present Resolutions governing the House of Lords, the rule on declaration is described as applying additionally "*where Lords are using their influence as a member of the House in a communication with a Minister, Government department, local authority or other public body outside the House*". The extension of conduct rules to meetings between Ministers and Members of Parliament was recently raised in a report by the House of Commons Standards and Privileges Committee (published on 11 July 2000), in which it was recommended that the ban on paid advocacy should cover such meetings (*Fifteenth Report of the Committee on Standards and Privileges*, 710 (1999-2000), p ix, paras 25-26).

[2] These are set out in full in the inside front cover of this report.

[3] 1974 Report, para 15.

4. Ibid., para 15.

[5] 1974 Report, para 23.

[6] The relevant extract of the 1990 report is set out in Appendix C to this report.

[7] The Resolutions were adopted on 7 November 1995.

[8] The relevant Resolution is set out in full in Appendix D to this report.

9 1974 Report, para 24.

10 Ibid.,para 24.

11. Ibid.,para 33.

12 Ibid.,para 34.

[13] The Griffiths Report, para 44.

[14] Ibid., para 44.

[15] The relevant Resolution is set out in full in Appendix D to this Report.

[16] 1974 Report, para 9.

[17] The Griffiths Report, para 48.

[18] Day 2 (am) (quoted).

[19] Day 4.

[20] Day 3.

[21] Day 6 (am).

[22] Day 5 (am).

[23] 1974 Report, para 5.

[24] Day 2 (pm).

[25] And those who have access to the record.

[26] See para 5 of the Griffiths Report where the guidance, of which this is an extract, is set out.

[27] The Griffiths Report, p 9, para 29.

[28] Day 5 (pm).

[29] Lord Craig of Radley GCB OBE, Convenor of the Cross-Benches, for example, said: "*I think personally ... that if you could skip the declaration of interest at the beginning of each speech, it would speed things up*" (Day 1 (pm)).

[30] The Griffiths Report, para 44.

[31] Written evidence (19/68).

[32] Day 2 (pm).

[33] Day 5 (pm).

[34] Day 4.

[35] 1974 Report, para 28.6.

[36] Day 2 (am).

[37] Day 6 (am).

[38] Day 3.

[39] Day 3.

[40] Written evidence (19/68).

[41] 1974 Report, para 25.

[42] *Hansard* (HL) 10 May 2000, col 1709.

[43] Day 1 (pm).

[44] The Griffiths Report, p 13, para 43.

[45] Day 1 (pm).

[46] Day 5 (am).

[47] 1974 Report, para 26.

[48] Day 6 (am).

[49] Day 4.

[50] See paras 3.15 and 3.16 above.

[51] Day 6 (pm).

[52] Para 2.3.

[53] Day 1 (am).

[54] Day 5 (am).

[55] Day 3.

[56] Day 4.

[57] Day 3.

[58] Day 3.

[59] Day 3.

[60] See para 5.22 above.

[61] We envisage that there will be some circumstances in which it would not be necessary to register an office held in a voluntary organisation. For example, the organisation may be a local group and unlikely to be relevant to any parliamentary proceedings.

[62] In the Foreword by the Clerk of the Parliaments to the 2000 edition of the Lords' Register, it is indicated that, if asked, Clerks advise peers that it is recommended that they should not register shareholdings, although they may wish to indicate a controlling interest in a company.

[63] Day 3.

[64] Day 3.

[65] Day 2 (pm).

[66] *The Guide to the Rules Relating to the Conduct of Members*, p 14, para 34.

[67] The Lords of Appeal include a number of sub-categories: (1) the Lords of Appeal in Ordinary (the 'Law

Lords'), (2) retired Law Lords and other Lords of Appeal who are eligible to hear appeals and (3) retired Law Lords and other Lords of Appeal who, having attained the age of 75, are no longer eligible to hear appeals.

[68] Day 6 (pm).

[69] Day 5 (pm).

[70] Day 5 (pm).

[71] Written evidence (19/74). In making this statement, Lord Bingham was expressing the collective view of the Lords of Appeal in Ordinary (see fn 67 above). Lord Bingham made a similar point in oral evidence: "*one has a constitutional reluctance to sign a blank cheque and, therefore, until one knows what is proposed one does not give unreserved assent to it. But ... I cannot imagine that this Committee would propose or that the House would accept any rule that would be one that we could not happily comply with if we had to*."

[72] Day 6 (pm).

[73] Written evidence (19/72).

[74] Written evidence (19/81).

[75] Save those members of the House of Lords who have taken Leave of Absence.

[76] Day 5 (pm). Lord Mackay also provided a submission dealing with the Addison Rules (see Appendix 2 to the submission from the Leader of the Opposition in the House of Lords, the Rt Hon Lord Strathclyde (19/68)).

[77] Written evidence (19/62).

[78] See paras 3.29 to 3.33 of the Issues and Questions Paper, *Standards of Conduct in the House of Lords*. The issue was drawn to our attention by Mr Fraser Kemp MP. A copy of his letter, dated 14 February 2000, can be found on the CD-Rom in Vol 2 of this report..

[79] *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers* (July 1997), p 38, para 117.

[80] Day 5 (pm).

[81] Written evidence (19/16).

[82] Written evidence (19/34).

[83] Day 5 (am).

[84] Day 5 (pm).

LOBBYING AND THE BAN ON PAID ADVOCACY

6.1 The question whether Members of Parliament should be permitted to act as paid parliamentary consultants, advisers and lobbyists for outside clients has been one of the central, recurring themes in the work of this Committee. The First Report described this issue as the "*greatest current concern about the independence of the House [of Commons]*." [1] In the light of allegations that a small number of MPs were failing to uphold the public interest, while holding consultancies, the Report recommended to that House a number of rule changes, with the intention of confirming that "*paid advocacy*" -- promoting the interests of a client for a fee in the House -- was prohibited.[2] The House made significant changes to its rules following the Report, although it took a different approach from the Committee on certain aspects.[3]

6.2 Another recommendation of the First Report, aimed at increasing transparency, was that the House should "*require agreements and remuneration relating to Parliamentary services to be disclosed*".[4] The House agreed with this and resolved that Members should deposit with the Parliamentary Commissioner for Standards any such agreement, indicating, in a range of bands, the fees or benefits payable.

6.3 In our Sixth Report, published in January 2000, we concluded that the situation had improved in the House of Commons in the period since the implementation of the new rules.[5] The former Parliamentary Commissioner for Standards, Sir Gordon Downey, said in 1998: "*To the best of my knowledge the financial links with lobbyists have now been broken ... the spectre of cash for influence through this route has fallen away*".[6]

6.4 Our Sixth Report also set out two principles which have governed, and continue to govern, our approach to this question:

> *In ... the First Report ... we were concerned to avoid a situation in which MPs could be presented as participating in 'a hiring fair'. We retain that concern. On the other hand, we are anxious that the rules should not unnecessarily inhibit the ability of MPs to become well informed and to use their expertise and experience effectively.*[7]

6.5 This chapter examines the present rules in the House of Lords in the light of these considerations, while taking into account the differences between the two Houses. We bear especially in mind the need for rules that are proportionate to the circumstances of the House. Few members of the House of Lords hold paid consultancies by which they provide parliamentary advice or services, and even fewer have connections with parliamentary lobbying businesses.[8]

The current situation in the House of Lords

6.6 The House of Lords has long endorsed the principle that financial reward should not influence the activity of peers in the House. The Sub-Committee on Registration of Interests, for instance, reporting in 1974, found it

> *... inconsistent with the traditions or proper function of the House that any Peer should act in the House as a paid agent of someone or that he should continue to act in the House in any cause for which he has recently been a paid agent, whether or not his interest is declared.*
>
> *They therefore endorse the entry in the Companion: "It is, however, considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or subordinate legislation, in or for which he is or has been acting or concerned for any pecuniary fee or reward."* [9]

6.7 This basic principle was restated by the House in a Resolution on 7 November 1995 which followed the debate on the Griffiths Report. This Resolution stated that "*Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence*." The detail of the guidance is that "*Lords who accept payment or other incentive or reward for providing Parliamentary advice or services, or who have any financial interest in a business involved in Parliamentary lobbying on behalf of clients, should not speak, vote, lobby or otherwise take advantage of their position as members of the House on behalf of their clients*." It continues, "*This restriction does not extend to matters relating to Lords' outside employment or directorships, where the interest does not arise from membership of the House. Lords should, however, be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others*". [10]

6.8 Category (1) of the Register, which is mandatory, requires the registration of "*consultancies, or any similar arrangements, whereby members of the House accept payment or other incentive or reward for providing parliamentary advice or services*." Category (2) of the Register (which is also mandatory) requires the registration of: "*any financial interests of members of the House in businesses involved in parliamentary lobbying on behalf of clients*."

6.9 The general prohibition on the exercise of "*Parliamentary influence*" in return for "*financial inducement*" applies to all members of the House of Lords. The more specific prohibition set out in the guidance, however, only applies to that small number of members of the House who include themselves under categories (1) and (2) of the Register. There is no requirement on peers with consultancy agreements to deposit a copy of the agreement with staff of the House or disclose them publicly.

6.10 The Clerks of the House of Lords, who administer the current system and advise on how the rules should be applied, make a clear distinction between the giving of advice by members acting as consultants (permitted) and paid advocacy (not permitted). The Clerk of the Parliaments explained it thus:

> *A parliamentary consultancy is an arrangement reflecting a two-way relationship. On the one hand the client/firm* ***receives*** *information from the employee/peer (A); and on the other hand, the peer* ***is given*** *instructions to undertake certain activities in Parliament in the interests of the client (B).*

(A) The information which the client might expect to receive would include:

- *information about the progress of legislation*
- *information about debates and opinions expressed in the House which might be of interest to the client*
- *information as to which members of the House might be sympathetic to the interests of the client*
- *indications as to which are the appropriate Ministers to approach for purposes of furthering the interests of the client and how such approaches might be made.*

(B) The services which the peer might be expected to perform on behalf of the clients might include:

- *speaking in debates*
- *tabling, supporting and moving amendments*
- *asking Parliamentary Questions*
- *lobbying Ministers and other members of the House*
- *acting as host at functions in the Palace of Westminster.*

> *The effect of the Resolution of November 1995 requiring registration of such arrangements is that a peer may continue to give advice at (A); but he is debarred from carrying out the services set out in (B).*
>
> *In addition, while the ad hoc performance of such services set out at (B) do not require to be registered in Category 1, the provision of such services for money or for money's worth is not permitted under the terms of the Resolution.*[11]

6.11 The Committee, in its First Report, considered that there was some risk that the distinction between advice and paid advocacy would be difficult to sustain in the House of Commons. It believed that agreements to provide parliamentary advice could cause problems: "*the impression can easily be gained, however unfair this may be in individual cases, that not only advice but also advocacy have been bought by the client*".[12]

Evidence about the operation of the current rules

Evidence in favour

6.12 The Committee recognises the force of the comment by Lord Griffiths that the Lords' ban on paid advocacy is a "*bright line*" rule, clear in theory and exerting a definite pressure in favour of the public interest.[13] Peers accept that they should not act as a result of a financial inducement from an outsider.

6.13 A particularly clear statement in favour of the current rules was made by the Rt Hon Lord Archer of Sandwell QC. He referred to the principle which prohibits financial inducements for the exercise of parliamentary influence as

> *... absolute, and pretty clear. I would have thought that any member of either House would understand that he ought not to act in a particular way in relation to debates or voting or the conduct of the House in expectation of a specific reward for doing that. I would not have thought that much more guidance than that was needed: everybody should recognise that situation when it arises.*[14]

6.14 This view was echoed by the Rt Hon Lord Jenkin of Roding, who said:

> *I believe the Griffiths Committee got it absolutely plumb bang right and had these two sections of the register where it was compulsory with very firm rules as to what people may do in relation to those interests.*[15]

6.15 The Rt Hon Lord Griffiths explained the operation of the rule as he saw it:

> *There is no reason why you should not have a consultancy. However, if you have taken a position as a consultant, you cannot speak for your clients; you cannot lobby on behalf of your clients, nor can you act politically for your clients ...You can say, 'Well, I think we might get that amendment through'. But, what you cannot do is take any part in helping to get the amendment through.*[16]

Evidence of actual or potential disadvantages

6.16 In contrast, we heard evidence to suggest that there were practical shortcomings in the working of the rules. While the wording of category (2) is clear in itself, it is possible that the net is not cast widely enough. An examination of the Register shows that in almost every case, it is only peers associated with commercial lobbying companies who are actually registered as having financial interests in businesses involved in parliamentary lobbying on behalf of clients. Yet we heard it argued that this does not accurately reflect the full range of peers who are connected with parliamentary lobbying (sometimes known as "*public affairs*" or "*political consultancy*"), which is often also carried out by other types of professional firms. These include some law, accountancy and management consultancy firms. The Association of Professional Political Consultants (APPC) said:

> *lobbying, in the true sense of the term, is carried out by an enormous range of organisations and individuals. As well as the APPC's member companies, political consultancy is offered on a paid-for basis by legal firms; and by in-house teams from trade associations, companies, charities and voluntary sector organisations, trades unions, and so on.*[17]

6.17 One peer, Lord Clement-Jones, told us that he was "*by profession, a practising solicitor and a public affairs lobbyist, running the public affairs practice of a major UK law firm*" [18] - a fact which he fully registers in category (2) of the Register.

6.18 Lord McNally urged that it should be made clear that those registering under category (2) should include peers with connections with **all** firms offering lobbying facilities:

> *I think lawyers and accountancy firms, which increasingly offer lobbying facilities, should be encompassed in the declaration. When the register was first put forward, because it was public relations firms that had been perceived as the wrongdoers, I think that public relations was unfairly put on the spot.*[19]

6.19 Another strand of evidence claimed that the rules were too restrictive and were jeopardising the contribution of knowledgeable and experienced people to the deliberations of the House. A distinguished career in a significant field of endeavour, leading to a seat in the House of Lords, brings with it expert knowledge and judgement of a very high order. Especially when the member maintains a paid position after elevation, he or she is in an excellent position to contribute up-to-date expertise and information to debate and the discussion of legislation. Several witnesses were concerned that the current rules could be interpreted in such a way that this could be lost.

6.20 Mr Michael Davies, Clerk of the Parliaments, was among them. He said "*I think perhaps the rigour of the present rule has diminished the way in which certain quite clearly bona fide organisations can get their views across to Parliament*".[20] Mr James Vallance White, Registrar of Lords' Interests, gave the example of a member who was a paid adviser to the Police Federation, and who wished to continue to represent that body in the House of Lords after the introduction of the rules recommended in the Griffiths Report. The member brought the matter to the Sub-Committee on Lords' Interests, and, according to Mr Vallance White,

> *...felt very strongly that he should be allowed to continue the role which he had been fulfilling for quite some considerable time ... The Sub-Committee reached a compromise whereby he was to be permitted to continue to speak on general matters of law enforcement in the House, but he was to keep off any matter which was to do specifically with what he actually advised the Police Federation on.*[21]

6.21 Lord Newby, who advised the Prince's Trust on a number of issues, including a youth employment initiative, saw the Lords' rules as unfairly restrictive. His interpretation of the rule was extremely and unusually strict:

> *No aspect of my work for this client relates to parliamentary lobbying, yet I am debarred under the rules from*

speaking in any debate on youth unemployment. This seems to me to be unnecessarily strict and inconsistent with the rule which would apply if I did exactly the same work in an individual consultancy capacity or, say, as a partner in a firm of lawyers or accountants, in which case I would simply have to declare an interest.[22]

6.22 There was also another confusion about the operation of category (2). Witnesses differed in their views about whether peers who are directors or employees of parliamentary lobbying companies should refrain from intervening only in matters related to those clients with whom they had **direct** professional relationships, or whether the prohibition covered matters related to **all** the firm's clients. Advice from the Clerks appeared to be that, where no direct professional relationship existed between a peer and a client, speaking, voting and other participation were allowed. But Lord Newby said "*there are always borderline issues.*"[23] Michael Burrell of the APPC believed that the current rule "*places too great a burden on the judgement of the individual.*" [24]

6.23 Thus, a number of witnesses felt that, straightforward though it was in theory, the actual operation of the rule had not shown it to be entirely clear and satisfactory. We believe that there is a strong case for some clarification of the rules, to allow the House to benefit from the expertise of members without a direct interest in a matter.

A ban on consultancies

6.24 One suggestion for change was that there should be a ban on parliamentary consultancy agreements involving members of the House of Lords.

6.25 Earl Russell argued for a ban on "*all payment for parliamentary services, including consultancy together with advocacy*". His view was that "*the taking of outside payment for parliamentary services must carry a permanent risk of conflict of interest*" [25] Taken literally this would prevent peers from acting not only as lobbyists but also as advisers for companies, charities and other organisations, wherever payment was involved. The Rt Hon Lord Naseby expressed support for a ban on members having an association with a public affairs consultancy.[26]

6.26 The lobbyists' organisation, the APPC, urged that the Committee should reiterate for the Lords its original recommendation for the House of Commons to prohibit consultancy agreements with multi-client organisations. Michael Burrell, Chairman of the APPC, said:

Legislators have a different role [from lobbyists]. They have a duty to listen, but they also have a duty to work out what is the best thing to do. Those two jobs are quite distinct and should be seen to be distinct. I have never understood how anyone can be a lobbyist and a legislator simultaneously. [27]

6.27 Lord Dubs said that "*My instinct is to say that nobody who is a member of either House should be a lobbyist*". He continued:

One does not want to get to the position where every organisation that wants a voice in Parliament pays somebody to give effect to it. That undermines the point of Parliament. Members of the Commons should represent their constituencies and members of the Lords should take a broad view based on their knowledge, judgement and experience - not because they are paid to do so.[28]

6.28 Supporting this line in general terms, the Rt Hon Lord Owen said that:

Parliamentarians expect to be lobbied: that is part of your democratic responsibilities, but you should not line yourself up with the lobbyists. There should be a clear-cut and absolute distinction.[29]

6.29 Professor Dawn Oliver recommended that it should no longer be possible for members to disqualify themselves from participating in the House by entering into such agreements. Her perspective was that "*such arrangements deprive the House of the benefit of the contributions of members.*" She continued:

In my view such arrangements should be prohibited, so that the House can have the benefit of the contributions of all its members should they wish to contribute and they should all be in a position to exercise their judgments on these matters independently. [30]

6.30 A number of witnesses, however, gave evidence pointing to the conclusion that a complete ban on consultancies is not needed. For instance, those peers who were connected with lobbying appeared to see the force of the present rules and to act on them.

6.31 Lord McNally was acutely conscious of the need to uphold the rules:

> *I sometimes feel frustrated in that I have been for eight years the adviser to the Corporation of London. As a result, I stay out entirely of debates about London - not just about the Corporation but about London ... But if it became possible for an interest to, as it were, hire a peer and brief him up and for that peer then to participate in debates in the House, I think that does cause problems. Even though the House is undoubtedly denied my wisdom on these matters, I think it is safer to keep it as it is.*[31]

6.32 Another peer who referred to the limitations on participation was Lord Naseby. As a consultant to the Council for Responsible Nutrition, he said he could not speak on nutrition issues:

> *I can honestly claim to be one of the best briefed legislators on the topic, but I may not - and do not - speak on it; nor do I vote on it. There was great excitement about a year ago on B6 and I was not able to take any public part in that, possibly to the detriment of the House's consideration of the issue. Having said that, I do not argue against the ban. I accept it along with the rules that others have laid down. I would not challenge them at this point.* [32]

6.33 The Rt Hon Lord Wakeham argued that consultancy arrangements were in any case ineffective and would tend to die out:

> *Observations have been made over many years about paid consultancies. The truth is that overwhelmingly the people who are 'swindled' over paid consultancies are the companies that are foolish enough to pay these people and think they are effective. They are simply not effective. In my experience, other parliamentarians see them coming a mile off. They are not very good at getting anything for their clients. It will die and become more realistic.* [33]

6.34 Among the arguments **in favour** of a complete ban on members of the House holding consultancies are these:

- a ban would draw a clear line between lobbying in support of special interests and the promotion and protection of the wider public interest;
- it would increase public confidence in the House's decisions, because there would be no chance of undue influence via lobbying.

6.35 Among the arguments **against** such a ban are:

- a ban on consultancies would need to be drafted very carefully to avoid disqualifying those with expert knowledge and expertise, who might also be acting as consultants for outside organisations;
- in an unpaid House, it would be unfair to deprive peers of an opportunity of employment;
- the current rules clearly draw a line between the correct and incorrect operation of consultancies. There is no evidence that peers are abusing consultancy agreements to engage in paid advocacy;
- only small numbers of peers are involved with consultancies at present. A total ban would be disproportionate.

6.36 The Committee concludes that the balance of argument is against a ban on consultancies. To prohibit them completely would be disproportionate to the potential problem. The rules on paid advocacy are generally satisfactory.

R11. Members of the House of Lords should continue to be allowed to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy.

Ensuring public confidence in the propriety of consultancies

6.37 However, there are some steps that could be taken by the House to ensure that public confidence in the propriety of consultancies is maintained. Some of the potential weaknesses and failures of clarity identified above could be rectified with modest changes to administrative arrangements and an increase in openness.

6.38 We believe, firstly, that the guidance on the operation of category (2) of the Register should be redrafted. It should be made

clear that all peers with a financial interest in parliamentary lobbying businesses must register.

6.39 The opportunity should also be taken by the House to make clear whether or not members who are involved with organisations who lobby on behalf of clients should refrain from participating in Lords' business for **all** clients of that organisation, or only for those clients with whom they are personally working. We conclude that the House authorities should make clear that peers should only refrain from participating in business relating to their direct personal clients.

6.40 We also see merit in one change to provide greater clarity and transparency in the operation of the rules on parliamentary services. We recommend that the relevant agreements should be deposited with the Registrar of Lords' Interests, who would make them publicly available on request. It is important that the public should be aware of the nature of these obligations, and that there is confidence that peers' independence is not fettered by them.

6.41 There is also the question whether the **amount of fees** earned under an agreement should be made public. Lord Tugendhat argued that it was necessary to make public the fees earned from activities "*that arise wholly or largely as a result of being a member of the House*". He put this in a separate category from amounts received for "*professional business and other earnings derived from activities carried on outside the House,*" where Lord Tugendhat felt that there should be no requirement to divulge income. [34] Baroness Young of Old Scone, on the contrary, said that, although parliamentary services agreements should be lodged with an officer of the House, the quantum of fees was "*immaterial*" and did not need to be made public.[35]

6.42 Since transparency should apply in particular to remuneration received in respect of Parliamentary services, the Committee concludes that such fees should be made public. Some consultancy agreements state the actual fee to be paid annually. Others may provide simply for payment of 'such fees as may be agreed annually', or may provide for payment on a 'time spent' basis. In the latter two instances, peers should be required to make public their earnings when the agreement has operated for more than one year.

R12. The guidance on the operation of category (2) should be amended. It should be made clear that the requirement to register is not confined only to those members with interests in lobbying firms, narrowly defined.

R13. The guidance on the operation of category (2) should also be amended so as to make it clear that members who register under that category should refrain from participating in parliamentary business only when that business relates to their own personal clients.

R14. A member of the House of Lords who has an agreement for a consultancy or any similar arrangement under category (1) should deposit a copy of that agreement with the Registrar of Lords' Interests.

R15. The House of Lords should ensure that deposited agreements and details as to the remuneration derived from parliamentary services under category (1) be made available for public inspection.

[1] First Report, Vol 1, p 24, para 22.

[2] First Report, Recommendations 2 and 3.

[3] One recommendation would have banned Members of Parliament from entering into any parliamentary consultancy agreements with organisations that provide paid parliamentary services to multiple clients. A House of Commons Select Committee did not accept that recommendation, on the ground that it was not the **type of outside body** paying a Member of Parliament that was critical, but rather the **actions** of a Member pursuant to the paid relationship (*Second Report of the Select Committee on Standards in Public Life*, HC 816 (1994-95). The Select Committee therefore recommended that a distinction should be drawn between paid advocacy (which was banned) and paid advice (which was acceptable so long as it was registered and

declared). The House of Commons accepted the Select Committee's recommendation in drawing up its new rules of conduct in 1995 (*The Guide to the Rules Relating to the Conduct of Members*, paras 53-64).

[4] First Report, Recommendation 5.

[5] Sixth Report, p 18, paras 3.3-3.7.

[6] Appendix to the *Nineteenth Report of the House of Commons Select Committee on Standards and Privileges,* (HC 1147 (1997-98)).

[7] Sixth Report, p 39, para 3.96.

[8] The August 2000 Register of Lords' Interests lists 12 peers in category (1) ("*Consultancies, or similar arrangements involving payment or other incentive or reward for providing parliamentary advice or services*") and 10 peers in category (2) ("*Financial interests in businesses involved in parliamentary lobbying on behalf of clients*").

[9] (Unpublished) Report of the Select Committee on Procedure of the House, Sub-Committee on Registration of Interests (1974), para 21. See para 4.8.

[10] The full text of the Resolutions relating to declaration and registration of interests passed by the House of Lords on 7 November 1995 is reproduced in Appendix D. The 1990 *Second Report of the Select Committee on Procedure of the House* (reproduced in part in Appendix C and which made recommendations adopted at that time) contains similar language on the undesirability of paid advocacy. See para 4.9 above.

[11] Supplementary written evidence.

[12] First Report, p 29, para 49.

[13] Day 2 (pm).

[14] Day 1 (am).

[15] Day 1 (am).

[16] Day 2 (pm).

[17] Written evidence (19/69).

[18] Written evidence (19/56).

[19] Day 3.

[20] Day 2 (am).

[21] Ibid.

[22] Written evidence (19/61).

[23] Day 4.

[24] Day 6 (am).

[25] Written evidence (19/21).

[26] Day 6 (am).

[27] Day 6 (am).

[28] Day 3.

[29] Day 1 (am).

[30] Written evidence (19/84).

[31] Day 3.

[32] Day 6 (am). There was controversy in 1998 and succeeding years about claims that vitamin B6, a dietary supplement, could be injurious to health in certain circumstances.

[33] Day 4.

[34] Written evidence (19/51).

[35] Written evidence (19/64).

Official Documents

comments

COMPLIANCE

7.1 A successful regulatory system depends, in part, upon the existence of adequate compliance mechanisms. These may include: (1) effective induction procedures explaining the rules; (2) the provision of an authoritative source of advice on their application; (3) machinery for the investigation of alleged breaches; (4) a fair adjudication and appeals procedure, and (5) the availability, when appropriate, of effective sanctions.

Current procedures governing induction, advice and enforcement in the House of Lords

Induction

7.2 New peers are aware of the Register from the outset. Mr Michael Davies, the Clerk of the Parliaments, told us that "when the Clerk of the Crown in Chancery writes to a new peer, he includes a form for the registration of interests and draws attention to its importance in his letter".[1] New peers may meet the Clerk of the Parliaments before their formal introduction into the House and if they require further advice about the Register, they can seek it on that occasion: "At that meeting, the Clerk of the Parliaments draws particular attention to the need for registration, indicates in general terms what other peers have registered and stresses the need for declaration of interest when speaking in the House, even when an interest is registered".[2] The new peer is also given an information sheet about the Register and a copy of the Companion to Standing Orders. Not all new peers attend the meeting with the Clerk of the Parliaments, but a meeting with the Registrar can be sought to provide more detailed guidance on the Register.[3]

7.3 In addition, new members of the House of Lords are given the opportunity to attend an induction course about the House and its procedures. It lasts about two hours but, according to Mr Davies, such courses "do not generally have time to touch on the register", although they do cover the rules on declaration.[4] Not all new members attend the induction course.

Provision of advice

7.4 The 1995 Resolution of the House of Lords governing the declaration of interests provides expressly that the Clerk of the Parliaments is available to advise on the interpretation of the guidance "in a case of uncertainty".[5] The Registrar is also available to offer detailed guidance on the application of the rules on registration.[6] The Registrar, in performing that task, is able to draw assistance from three sources: the advice of the Sub-Committee on Lords' Interests; the advice of the Chairman of the Sub-Committee;[7] and the example of what members of the Lords have chosen to register since the inception of the Register in 1995.[8]

Investigative and disciplinary machinery

7.5 The present enforcement arrangements in relation to the investigation and hearing of a complaint have never been put into practice: to date, there have been no allegations of a failure to register nor of a failure to declare causing the disciplinary machinery to be brought into operation. Lord Wigoder QC, a member of the Committee for Privileges for 20 years and a member of the Sub-Committee on Lords' Interests, observed in his written evidence that, during his time on the Committee, "no allegation of financial impropriety (in its widest sense) has been made against any Peer relating to his Parliamentary conduct".[9]

7.6 The 1995 Resolution governing the registration of interests outlines the procedure that would be adopted in the event of an allegation being made against a member of the House:

> *The Committee for Privileges shall investigate, and report to the House on, any allegation of failure to register interests within categories (1) and (2) [of the Register]; provided that the Committee shall first satisfy itself that an allegation has sufficient substance to warrant investigation.*
>
> *The Committee may remit any or all of the matters covered by this order to a sub-committee.*
>
> *In considering any allegation of failure to register interests, the Committee and any sub-committee shall not sit unless three Lords of Appeal be present.*[10]

7.7 The Resolution set out above was passed on 7 November 1995. On 29 November 1995, the Committee for Privileges appointed a sub-committee, the Sub-Committee on Lords' Interests, with the following terms of reference:[11]

> *To investigate any allegation of failure to register interests under categories (1) and (2) [of the Register]; to investigate any allegation of failure to abide by the new rules concerning declaration of interests, and the impact of interests on Lords' activities in Parliament, to which the House agreed on 7 November; and to deal with any general question concerning the application of the new guidance on declaration and registration of interests which might arise after this meeting, reporting to the full Committee as appropriate.*

7.8 In the Lords' debate on the Griffiths Report on 1 November 1995, Lord Griffiths had described in more detail the investigative and disciplinary machinery envisaged:

> *If there was a complaint that a Lord failed to declare an interest or failed to register when he should have done, it would go to the sub-committee which would investigate it; first of all in private to see if a prima facie case could be made out, as a lot of damage could be done by purely mischievous allegations. If, however, the committee was satisfied that there was a prima facie case, the matter would be investigated in public[12] and the noble Lord would have the opportunity of defending himself or of being professionally defended if he so chose. We thought that that would be the most satisfactory way of handling procedures.[13]*

7.9 The procedure would conclude with the Committee for Privileges reporting to the House of Lords the facts as found and the Committee's conclusion as to whether the allegations were proved. The Griffiths Committee commented: "Normally there would be no need for the report to be debated in the House; its publication would conclude the proceedings".[14]

7.10 Under the present arrangements, the allegation would initially be referred to the Sub-Committee on Lords' Interests following a motion in the House. (We shall refer later (in paragraph 7.33 below) to the recommendation of the Griffiths Report that allegations should be referred directly to the Sub-Committee, rather than raised on the floor of the House, in order to reduce the risk of unsubstantiated allegations being made in order to cause embarrassment.)

Sanctions

7.11 The Joint Committee on Parliamentary Privilege, chaired by the Rt Hon Lord Nicholls of Birkenhead,[15] published a report in March 1999,[16] in which it asserted that the House of Lords retains the power to imprison indefinitely.[17] It said the following about the availability of other penalties:

> *The House of Lords still retains the power to fine, but it is open to doubt whether, in practice, the means exist to enforce payment ... The House of Lords does not have the power to suspend a member permanently. A writ of summons, which entitles a peer to 'a seat, place and voice' in Parliament, cannot be withheld from a peer. A peer can be disqualified temporarily either by statute or at common law, for reasons such as bankruptcy or being under age. Whether a peer can otherwise be suspended within the life of a single Parliament is not clear.[18]*

7.12 The Clerk of the Parliaments, in a memorandum to the Nicholls Committee, suggested that since the power to imprison had not been exercised during the twentieth century and since the power to fine had not been exercised for nearly 200 years, "it must be questionable how far in practice either penalty could be invoked today".[19] Of the absence of the power to suspend, the Clerk of the Parliaments commented:

> *This seems surprising given that they have power to imprison a member, but the Lords have never purported to suspend a member and a committee of the House concluded in 1956 that it had no power to do so.[20]*

7.13 The Griffiths Committee, relying on the report of the Swinton Committee on Leave of Absence published in 1956,[21] thought it doubtful that the House of Lords had the power either to suspend or expel a member.

7.14 'Naming and shaming' by the publication of the name of the member in the report of the Committee for Privileges to the House may be regarded as a further - informal - sanction. A similar, but harsher, sanction would be formal admonishment following a motion in the House,[22] although we know of no instance when this form of sanction has been used.

Our approach

7.15 In considering whether the present enforcement system is satisfactory, we have taken into account:

- the importance of self-regulation in the House of Lords;
- the fact that the present investigative and disciplinary systems have never been applied;
- the weight of evidence in favour of building on the present system; and
- the fact that the House of Lords has already resolved that at **all** stages in the process the 'accused' will have the benefit of the presence of not less than three Lords of Appeal.

Key issues

7.16 In our view, the key issues in relation to compliance in the House of Lords are:

(a) whether the present **induction arrangements** are capable of improvement;

(b) whether the present arrangements for the **provision of advice** are satisfactory or should be replaced by an independent adviser;

(c) whether rules about the **initiation of a complaint** should be in place to reduce the possibility of politically-motivated, unsubstantiated allegations;

(d) whether the present machinery for the **investigation of allegations** is satisfactory or should be supplemented by the appointment of an independent investigator;

(e) whether the **adjudication procedure** requires modification;

(f) whether there should be an **appeals** procedure and, if so, what form it should take, and

(g) whether a wider range of **sanctions** is necessary.

Induction and advice

7.17 As we argued in Chapter 4, the quality of advice, whether at the induction stage or subsequently, about the interpretation of guidance is important to ensure consistency, transparency and fairness. It is also important in that it may play a part in drawing the boundary between conduct which is internally regulated and conduct which falls within the scope of the criminal law.

7.18 In June 2000, the Home Secretary published proposals for the reform of the criminal law of corruption which included a proposal that members of both Houses of Parliament should be subject to the criminal law of bribery.[23] The Home Secretary emphasised the role of the code of conduct and, implicitly, guidance on the interpretation of that code:

> *The intention is not to catch ... those Members who receive payments or benefits which are entirely legitimate and open and in accordance with the rules of the House. These rules, like codes of conduct in other professions, give guidelines as to what is and is not acceptable.*[24]

7.19 The Leader of the House, the Rt Hon Baroness Jay of Paddington, suggested to us that where there were breaches, they were normally inadvertent because of uncertainty about the present conduct rules: "a good deal of this ... is about inadvertence or a failure to understand ... I emphasise again that what we are looking for is clarity and transparency".[25]

7.20 The risk of 'inadvertent' breaching can be reduced not only by the formulation of clearly framed rules, but also by effective induction arrangements and the provision of authoritative advice on the application of the rules.

Induction

7.21 We received evidence from a number of witnesses that more detailed advice about the declaration and registration of interests would be helpful as part of the induction procedure for new members. Baroness Hilton, for example, said that generally "a rather more elaborate induction system" was needed. She referred in her evidence to a report of the Group on Procedure in the Chamber, of which she was chairman, which included detailed proposals for a more extensive induction programme for new peers.[26] Baroness Hilton suggested to us that the report's proposed two-stage induction course could include issues relating to standards of conduct.[27]

7.22 Lord Chadlington similarly supported more formal induction,[28] and Baroness Turner said that "it would be useful to have

a clear induction process".[29] Baroness Jay, when asked about the issue, said: "I feel strongly about that. It is something that one has to look at very clearly again in terms of the administration of the House."[30] She went on to explain how the Labour Party in the Lords dealt with familiarising new Labour peers with the Lords' practices and procedures:

> *We try as a Government group of Ministers and as a political party within the House to help new members. We have, for example, a system of mentors for individual newcomers so that they are taken through some of the more arcane practices within the Lords, both on the floor of the House and in relation to its activities in general.*[31]

7.23 Arrangements for the induction of new members is a matter of internal administration and it is for the House of Lords itself to decide on the detail of such arrangements. We would encourage the House, however, to consider whether new induction arrangements should be devised which would provide more detailed guidance on the resolutions governing the declaration and registration of interests and on any other rules relating to standards of conduct. There will be a particular need for this if this Committee's recommendation for a fully mandatory register is adopted.

R16. The House of Lords should reconsider the existing induction arrangements for new members of the House with a view to providing more detailed guidance about the scope and operation of the conduct rules.

Advice

7.24 We have already noted (in paragraph 7.4) that advice is provided by the Clerk of the Parliaments and the Registrar, supported by the Sub-Committee on Lords' Interests and the chairman of the Sub-Committee and informed by precedent. Peter Riddell argued that, contrary to present practice, the adviser needed to be "someone who is outside the Lords hierarchy".[32] Baroness Young of Old Scone, however, took the view that although "it is slightly unsatisfactory" that the Registrar was, at present, "placed in a position where he has to negotiate or discuss with peers what goes on and what goes off", it did not matter who gave the advice "provided that they, like us, work within a clear framework that the public understand".[33]

7.25 We have considered whether we should recommend the appointment of an independent adviser in the House of Lords. We are not persuaded that it is necessary to create such a post. We have no reason to doubt that the Clerk of the Parliaments and the Registrar are able to provide objective and clear advice when it is requested, bearing in mind that in cases where the enquiry is unusual or complex they are able to seek the opinion of the Sub-Committee on Lords' Interests and its Chairman. Should registration become fully mandatory, as this Committee recommends, then it should be part of the task of the Registrar to issue a reminder to peers from time to time of the need to ensure that their entries are up to date.

7.26 It is, of course, the case that advice to individual members about matters relating to the declaration and registration of interests and other conduct issues should be confidential. Part of the remit of the Sub-Committee on Lords' Interests, however, is "to deal with any ***general*** question concerning the application of the new guidance on declaration and registration of interests ... reporting to the full Committee as appropriate".[34] We received evidence that the Sub-Committee has taken on this role on two occasions, although on neither occasion were the conclusions of the Sub-Committee published as a report or debated in the House. We recommend, on grounds of transparency, that when the Sub-Committee has given **general** advice on the interpretation of the guidance on the declaration and registration of interests, that advice should be formally reported, through the Committee for Privileges, to the House. Not only would this enable the advice to be publicised, it would give the House an opportunity to debate it. This action would not be appropriate where it would be obvious which peer had sought advice and in respect of what problem.

R17. The general advice of the Sub-Committee on Lords' Interests on the application of the guidance on the declaration and registration of interests should be reported, through the Committee for Privileges, to the House.

Initiation of a complaint, its investigation and adjudication

7.27 Select Committees in the House of Lords and House of Commons fall into three broad categories: legislative, domestic and investigative.[35] Although the Lords' Committee for Privileges and the Sub-Committee on Lords' Interests are 'domestic' committees,[36] they are analogous to 'investigative' committees in the sense that their function is to "examine issues ...within

their orders of reference and make reports on the basis of the evidence received." [37] As we have noted the Committee for Privileges and the Sub-Committee on Lords' Interests are empowered to investigate, and to report to the House on, any allegation of failure by a member of the Lords to declare or register an interest.

7.28 We have considered whether the traditional function of the 'investigative' select committee - encompassing both the amassing of facts relating to an issue and drawing conclusions on the basis of those facts - is appropriate where the committee is performing a quasi-judicial function such as the investigation and adjudication of complaints. We have borne in mind, in particular, the view expressed in the Nicholls Report in relation to fairness in disciplinary procedures that:

> *In dealing with specially serious cases ... it is essential that committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies.*[38]

7.29 The Nicholls Report went on to identify the "minimum requirements of fairness" for the accused member in serious cases. These were: (1) a prompt and clear statement of the precise allegations against the member; (2) adequate opportunity to take legal advice and have legal assistance throughout; (3) the opportunity to be heard in person; (4) the opportunity to call relevant witnesses at the appropriate time; (5) the opportunity to examine other witnesses; and (6) the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.[39] In addition, we take the view that, on grounds of procedural fairness, it is undesirable for the same individuals to participate in both the investigative stages and the adjudication of a complaint; for the same reason, the same individuals should not participate in both the first instance adjudication and the appeal hearing (if there is one).

7.30 We have similarly borne in mind the view of the Nicholls Committee that although proceedings in Parliament are excluded from the Human Rights Act 1998,[40] the fact that they may be within the jurisdiction of the European Court of Human Rights

> *is a salutary reminder that, if the proceedings adopted by Parliament when exercising its disciplinary powers are not fair, the proceedings may be challenged by those prejudiced. It is in the interests of Parliament as well as justice that Parliament should adopt at least the minimum requirements of fairness.*[41]

7.31 In light of the above, we believe that the mechanism for the investigation and adjudication of complaints envisaged in the Lords' 1995 Resolution needs to be looked at afresh with a view to considering how it might be developed to meet the requirements of fairness.

Stages of a disciplinary process

7.32 Our starting point is to distinguish between what we regard as the basic stages of a disciplinary process. Once a complaint has been lodged, the **first stage** will be a preliminary investigation to determine whether the complaint should be taken forward.[42] If it is decided that it should, then the **second stage** will be the investigation of the complaint, and by 'investigation' we mean the amassing of evidence. If the evidence reveals a prima facie case, the **third stage** will then be the adjudication of the complaint by a tribunal which decides both questions of fact and law. The third stage may include both a first instance hearing and an appeal hearing. The **final stage** might be on the floor of the House where the report of the tribunal could be considered together with the appropriateness of any further action.

Initiation of a complaint

7.33 The beginning of the disciplinary procedure is the lodging of a complaint. As we have noted (in paragraph 5.34(f)), we received evidence that in the House of Commons there is a concern about the rise in 'tit-for-tat' allegations. The risk of politically-motivated, unsubstantiated allegations of failure to register was also foreseen by the Griffiths Committee:

> *There is a danger that unsubstantiated allegations could be unfairly used as a means of seeking to cause embarrassment and accordingly we recommend that allegations (whether made by members of the House or by others) should be referred directly to the Sub-Committee, through its Chairman, rather than raised on the floor of the House and referred to the Sub-Committee by the House. The Sub-Committee should satisfy itself that the allegations have sufficient substance to warrant investigation before proceeding further.*[43]

7.34 We think it would be prudent if the House of Lords were to establish measures which would pre-empt the risk envisaged by the Griffiths Committee.

7.35 It is a matter for the House of Lords to decide what measures should be taken. We heard much evidence, however, as to the strength of the culture of personal honour in the Lords and, building on that, would endorse the development of a convention by

which each member of the House would be expected initially to raise any question of non-registration of an allegedly relevant interest or other breach of the conduct rules in a private communication with the other member concerned. If the complaining member thereafter still wished to pursue the complaint, this should in our view - as the Griffiths Report suggested - be referred directly to the Chairman of the Sub-Committee on Lords' Interests rather than raised on the floor of the House for referral to the Sub-Committee. We are aware that this proposal can only apply to complaints raised by members and cannot extend to non-members.

R18. Members should be encouraged to raise in the first instance any allegation about breaches of the rules in a private communication with the member about whom the complaint is made.

R19. Thereafter, if the complaining member chooses to pursue the matter, that member should, in accordance with the Griffiths Committee's recommendation, refer the allegation directly to the Sub-Committee on Lords' Interests, through its Chairman.

Investigation

7.36 At present, if an allegation of failure to declare or register an interest were made, the Sub-Committee on Lords' Interests would be responsible for its investigation and adjudication. In straightforward cases, we see no difficulty in that arrangement remaining in place (subject to the qualification that those members involved in the investigation should not participate in the adjudication of the case).

7.37 However, if an allegation of serious misconduct were to be made against a peer and the complexity or sensitivity of it involved a detailed investigation into the underlying facts, then in such a situation the Sub-Committee on Lords' Interests might well wish to consider the appointment of an ad hoc independent investigator. This would have the practical advantage of easing the workload of the members of the Sub-Committee. More importantly, however, it would place the impartiality of the adjudicating tribunal beyond doubt.

7.38 We do not believe that it would be necessary to appoint a standing investigatory officer. It is difficult to predict such matters, but the 'track record' so far in the House of Lords does not suggest that there is any need for such an arrangement at this stage. Instead, we envisage the appointment of an investigator on an ad hoc basis only.

7.39 We have considered whether the remit of the House of Commons' Parliamentary Commissioner should be extended to include acting as investigator for the House of Lords as well as the Commons. We have concluded against this extension. During the enquiry we heard a great deal of evidence about the very different ethos of the two Houses and we believe that preserving that difference would be best served by enabling the Sub-Committee on Lords' Interests to determine for itself whether to appoint an ad hoc investigator and, if so, whom to appoint.

7.40 As in the House of Commons, we would imagine that if the Sub-Committee on Lords' Interests were to be assisted by an ad hoc investigator, he or she would be supported in any investigation by formal powers to send for persons and papers conferred by the House on the Committee for Privileges and its Sub-Committee.[44]

7.41 Whether an investigation is conducted by members of the Sub-Committee itself or by the independent investigator, we agree with the view expressed by Lord Griffiths (quoted in paragraph 7.8 above) that the proceedings to ascertain whether or not there is a prima facie case should be held in private.

R20. The Committee sees no need for the appointment of a standing Parliamentary Commissioner for Standards in the House of Lords but recommends that the Sub-Committee on Lords' Interests should be able, in appropriate cases, to appoint an* ad hoc *investigator.

Adjudication at first instance

7.42 Of those complaints for which there is found to be a prima facie case, some will be resolvable by either a written or oral dialogue between the Sub-Committee on Lords' Interests and the member concerned. Other cases will require a more formal procedure. As we have noted, the Sub-Committee on Lords' Interests includes three Lords of Appeal and we received no

evidence to suggest that that Sub-Committee would be unable or unwilling to hear cases should they arise. The degree of formality of the procedures applied in a particular case and their proximity to court-like procedures will depend on the seriousness, complexity and sensitivity of the case. Given the presence of the Lords of Appeal, we have no doubt that the procedure appropriate to the nature of the case will be adopted.

R21. The Sub-Committee on Lords' Interests should continue to be responsible for the adjudication of allegations relating to the conduct of members.

R22. In serious cases, the procedures adopted should meet the "minimum requirements of fairness" set out by the Nicholls Committee for such cases.

Appeals

7.43 In our Sixth Report we concluded that an accused MP who received an adverse ruling from the first instance tribunal should have a right of appeal.[45] We are unable to see any grounds on which to distinguish the House of Lords in this regard. We suggest that the appellate tribunal should be the full Committee for Privileges excluding those members (if any) who participated in the adjudication at first instance.

R23. A member of the House of Lords who receives an adverse ruling from the Sub-Committee on Lords' Interests should have a right of appeal to the Committee for Privileges.

Sanctions

7.44 The Nicholls Committee recommended:

- that the power of the House of Lords to fine should be confirmed (noting that "we expect the occasions calling for the exercise of the power to fine by either House will be few and far between");
- that its power to suspend should be clarified and confirmed (the justification being that "the House of Commons has power to suspend its members, and it would be anomalous and undesirable if this were not the position in the House of Lords"); but
- that the power to imprison should be abolished ("we believe this extreme form of punishment is no longer needed or appropriate in either House").[46]

7.45 As we have noted in paragraph 7.13,[47] the Griffiths Committee thought it doubtful that the House of Lords had either the power to suspend or expel a member but was not inclined to recommend that such powers should be established:

> *There are already many instances where the firm practice of the House is not backed up by formal sanctions, but in a House which operates largely by self-regulation such sanctions are rarely necessary. Moreover, we consider that the publicity attendant upon any finding that a Lord had failed to register would provide a sanction sufficient to ensure compliance.*[48]

7.46 The weight of evidence we received endorsed the Griffiths Committee's view that 'naming and shaming' would be sufficient sanction:

- the Rt Hon Lord Archer of Sandwell QC suggested that "public exposure and peer group ... criticism" would be an effective sanction;[49]
- the Rt Hon Lord Jenkin of Roding referred to the House of Lords having "the quality of a self-regulating body with the atmosphere of disapproval as being the strongest sanction";[50]

- Lord Dubs said: "The humiliation of being named and shamed, certainly in the Lords, would be so appalling that if it happened to me, I would not dare show my face there again";[51]
- the Rt Hon Lord Rodgers of Quarry Bank said: "I do not think that there are any ultimate sanctions ... If peers do not respect the rules, their colleagues will know. Peer disapproval is quite a considerable factor";[52]
- the Rt Hon Lord Strathclyde said: "It is right that since you cannot remove peers without an Act of Parliament or suspend members, it is difficult to see how you can create something that is enforceable. The answer goes back to an old-fashioned view of life, in other words, the shame of being caught out. In the House of Lords, if you were seen to have broken the rules in this way, you immediately would lose any authority";[53] and
- Baroness Jay referred to a requirement to make an apology on the floor of the House as a "weighty sanction".[54]

7.47 For members of the House of Lords, in a culture rooted in the concept of 'personal honour', the informal sanction of 'naming and shaming' by the publication of the report of the Privileges Committee to the House (with the further possibility of its being debated on the floor of the House) appears to be effective and adequate sanction. Furthermore, in serious cases, it appears that the House could pass a resolution admonishing a member.[55] For this reason the Committee makes no recommendation in relation to extending the range of penalties.

[1] Written evidence (19/75).

[2] Written evidence (19/75).

[3] Day 3.

[4] Day 2 (am).

[5] The relevant Resolution is set out in Appendix D to this report.

[6] Day 2 (am).

[7] See fn 21, Chapter 4, above.

[8] Written evidence (19/75).

[9] Written evidence (19/53).

[10] See Appendix D to this report.

[11] See paras 4.15 and 4.17 above.

[12] The Griffiths Report (p 15, para 57) suggests that although the proceedings in relation to an allegation, in respect of which a prima facie case has been made out, should be in public, the investigating sub-committee should have a discretion to conduct hearings in private.

[13] Hansard (HL) 1 November 1995, col 1435. The remit of the Committee for Privileges also covers questions regarding the privileges of the House and claims of peerage and of precedence. We were told by the Clerk of the Parliaments that, in dealing with these questions, the Committee had no difficulty in obtaining the authorisation (of the House) to hear Counsel in appropriate cases (written evidence (19/75), fn 10).

[14] The Griffiths Report, p 16, para 57.

[15] Hereafter referred to as the Nicholls Committee.

[16] Hereafter referred to as the Nicholls Report (HL Paper 43, HC 214 (1998-99)).

[17] The Nicholls Report, p 73, paras 271-2.

[18] Ibid., p 73, para 272 (footnotes omitted).

[19] Ibid., vol 2, p 58, para 19 (footnotes omitted). See also vol 1, p 72, para 276: "The House of Lords has not found the need to impose any punishment on a member this century".

[20] Ibid., vol 2, p 19, fn 20. The report to which reference is made is the Report by the Select Committee on the Powers of the House in Relation to the Attendance of its Members, HL 66 (1955-56).

[21] See fn 20 above.

[22] The Nicholls Report, p 73, para 272. We have been advised by the Clerk of the Parliaments that 'naming and shaming' could take a number of forms. It appears that the most lenient form would be for the name of the 'accused' peer to appear in the report of the Committee for Privileges, laid before the House but not debated. The Griffiths Committee envisaged that this would be the normal procedure (see para 7.9 above). A harsher sanction would be for the report to be debated on the floor of the House and formally agreed by the House. A yet harsher sanction would be for the report to recommend a formal penalty and for the House to resolve accordingly.

[23] Raising Standards and Upholding Integrity: The Prevention of Corruption, Cm 4759 (June 2000).

[24] Ibid., p 15, para 3.3.

[25] Day 6 (pm).

[26] Freedom and Function, First Report of the Select Committee on Procedure of the House (1998-99), paras 71-78.

[27] Day 1 (pm).

[28] Day 4.

[29] Day 3.

[30] Day 6 (pm).

[31] Day 6 (pm).

[32] Day 5 (am).

[33] Day 6 (am).

[34] See para 7.8 above.

[35] Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 22nd edn (London,1997; hereafter referred to as 'Erskine May'), p 623.

[36] Falling within the general definition of such committees, namely, "monitor[ing] and mak[ing] recommendations about procedures and internal administration of the House": Erskine May, p 623.

[37] Erskine May, p 623.

[38] The Nicholls Report, p 75, para 281.

[39] Ibid.

[40] Section 6(3) of the Human Rights Act 1998 excludes the Houses of Parliament from the provisions of the Act.

[41] The Nicholls Report, p 76, para 284.

[42] The grounds on which a complaint may not be pursued may include the following: that it is ultra vires; that it involves an allegation of criminal conduct and should be referred to the police; that it is clearly unfounded, or that it is frivolous or malicious.

[43] The Griffiths Report, p 15, para 57.

[44] All House of Lords' Committees are able to call evidence as required and, according to the House of Lords' *Companion to Standing Orders*, "*ordinarily witnesses attend and documents are produced voluntarily*"; the *Companion* continues, however, that "*should it be necessary to compel the attendance of witnesses or the production of papers, an order of the House would be required*" (Companion to Standing Orders and Guide to the Proceedings of the House of Lords, (18th edition, 2000), p 191, para 9.18). See also House of Lords SO 66: "*A Select Committee shall call such evidence as it may require, but shall not hear parties by Counsel unless so authorised by Order of the House*". See also fn 13 above.

45 Paras 3.46 - 3.50.

46 The Nicholls Report, p 74, para 279.

47 See also para 3.8, fn 2, above.

48 The Griffiths Report, p 15, para 55 (footnotes omitted).

[49] Day 1 (am).

[50] Day 1 (am).

[51] Day 3.

[52] Day 5 (am).

[53] Day 5 (pm).

[54] Day 6 (pm).

[55] See para 7.14 and fn 22 above.

Official Documents

comments

List of submissions

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all the submissions can be found on the CD-Rom which is included in Volume 2 of this report. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

Parliamentarians

Rt Hon Lord Archer of Sandwell QC
Baroness Ashton of Upholland
Rt Hon Lord Baker of Dorking CH
Nigel Beard MP
Rt Hon Lord Biffen
Rt Hon Lord Bingham of Cornhill TD
Lord Blake
Lord Bradshaw
John Butterfill MP
Lord Campbell of Alloway QC
Lord Chadlington of Dean
Lord Clement-Jones CBE
Lord Craig of Radley GCB OBE
Rt Hon Lord Crickhowell
Baroness David
Lord Dearing CB
Lord Dixon-Smith
Rt Hon Lord Eden of Winton
Lord Ezra MBE
Rt Hon Lord Fellowes GCB GCVO
Rt Hon Earl Ferrers
Lord Flowers FRS
Baroness Goudie
Rt Hon Lord Griffiths MC
Guildford, Rt Rev Lord Bishop of
Rt Hon Sir Archibald Hamilton MP
Lord Haskel
Baroness Hilton of Eggardon QPM
Baroness Hogg
Rt Hon Lord Holme of Cheltenham CBE
Earl of Home CVO CBE
Lord Hooson QC
Rt Hon Lord Howe of Aberavon CH QC
Lord Hylton
Rt Hon Lord Lawson of Blaby
Rt Hon Robert Maclennan MP
Lord Marlesford
Rt Hon Lord Merlyn-Rees
Baroness Miller of Chilthorne Domer
Baroness Miller of Hendon MBE
Rt Hon Lord Naseby
Lord Newby OBE
Baroness Nicol
Lord Oakeshott of Seagrove Bay
Rt Hon Lord Owen CH
Oxford, Rt Rev Lord Bishop of
Lord Pearson of Rannoch
Baroness Platt of Writtle CBE
Portsmouth, Rt Rev Lord Bishop of
Lord Rix CBE
Rt Hon Lord Rodgers of Quarry Bank
Earl Russell FBA
Lady Saltoun of Abernethy
Lord Sandberg CBE
Rt Hon Lord Selkirk of Douglas
Baroness Sharples
Rt Hon Robert Sheldon MP
Lord Simon of Highbury
Rt Hon Lord Stewartby RD FBA
Rt Hon Lord Strathclyde
Lord Tombs
Lord Tugendhat
Baroness Turner of Camden
Lord Vinson LVO
Wakefield, Rt Rev Lord Bishop of
Rt Hon Lord Wakeham
Lord Walton of Detchant TD
Lord Wigoder QC

Rt Hon Lord Irvine of Lairg
Rt Hon Baroness Jay of Paddington
Rt Hon Lord Jenkin of Roding
Lord Judd
Fraser Kemp MP
Lord Williams of Elvel CBE
Lord Wright of Richmond GCMG
Rt Hon Baroness Young
Baroness Young of Old Scone

Organisations

Association of Conservative Peers
Association of Professional Political Consultants
Conservative Front Bench in the House of Commons
Conservative Party in the House of Lords
Transparency International (UK)

Others

G Andrews
Edward J Armstrong
Michael Davies, Clerk of the Parliaments
Richard Heller
David Hencke
Pamela J Kennedy
Lt Commander Duncan Macdonald RN (Rtd)
Donnachadh McCarthy
Professor Dawn Oliver
Peter Riddell
Corinne Souza
Damien Welfare
Graham Wood

comments

List of witnesses who gave oral evidence

Rt Hon Lord Archer of Sandwell QC (Day 1, am)

Association of Conservative Peers, Rt Hon Lord Trefgarne
and Rt Hon Lord Mayhew of Twysden QC (Day 5, am)

Association of Professional Political Consultants, Michael Burrell, Chairman
and Martin Le Jeune, member of the Managing Committee (Day 6, am)

Rt Hon Lord Biffen (Day 6, pm)

Rt Hon Lord Bingham of Cornhill TD, Senior Law Lord (Day 5, pm)

Lord Campbell of Alloway QC (Day 2, pm)

Lord Chadlington of Dean (Day 4)

Lord Craig of Radley GCB OBE, Convenor of the Cross Bench Peers (Day 1, pm)

Rt Hon Lord Crickhowell (Day 3)

Michael Davies, Clerk of the Parliaments (Day 2, am)

Lord Dixon-Smith (Day 5, am)

Lord Dubs (Day 3)

Rt Hon Earl Ferrers (Day 6, pm)

Elizabeth Filkin, Parliamentary Commissioner for Standards (Day 4)

Lord Flowers FRS (Day 3)

Rt Hon Lord Griffiths MC (Day 2, pm)

Rt Hon Archibald Hamilton MP (Day 3)

Lord Haskel (Day 5, am)

Professor Robert Hazell, Director, Constitution Unit, University College, London (Day 1, am)

David Hencke, Westminster Correspondent, *The Guardian* (Day 2, pm)

Baroness Hilton of Eggardon QPM (Day 1, pm)

Rt Hon Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords (Day 6, pm)

Rt Hon Lord Jenkin of Roding (Day 1, am)

Rt Hon Lord Mackay of Ardbrecknish, Deputy Leader of the Opposition in the House of Lords (Day 5, pm)

Rt Hon Robert Maclennan MP, Principal spokesman for Constitution, Culture and Sport, Liberal Democrat Party in the House of Commons (Day 6, am)

Lord Marlesford (Day 2, pm)

Lord McNally (Day 3)

Rt Hon Lord Merlyn-Rees (Day 2, am)

Rt Hon Lord Naseby (Day 6, am)

Lord Newby OBE (Day 4)

Dawn Oliver, Professor of Constitution Law, University College, London (Day 1, pm)

Rt Hon Lord Owen CH (Day 1, am)

Lord Plant of Highfield (Day 3)

Portsmouth, Rt Rev Lord Bishop of (Day 6, pm)

Lord Rees-Mogg (Day 5, pm)

Rt Hon Lord Richard QC (Day 1, am)

Peter Riddell, *The Times* (Day 5, am)

Rt Hon Lord Rodgers of Quarry Bank, Leader of the Liberal Democrats (Day 5, am)

Earl Russell FBA (Day 1, pm)

Meg Russell, Senior Research Fellow, Constitution Unit, University College, London

(Day 1, am)

Rt Hon Robert Sheldon MP, Chairman, House of Commons Standards and Privileges Select Committee (Day 6, am)

Lord Simon of Highbury (Day 6, pm)

Rt Hon Lord Strathclyde, Leader of the Opposition in the House of Lords (Day 5, pm)

Nicholas True, Private Secretary to the Leader of the Opposition in the House of Lords
(Day 5, pm)

Lord Tugendhat (Day 4)

Baroness Turner of Camden (Day 3)

James Vallance White CB, Registrar of Lords' Interests (Day 2, am)

Rt Hon Lord Wakeham (Day 4)

Lord Walton of Detchant TD (Day 2, pm)

Rt Hon Lord Williams of Mostyn QC, Attorney General and Deputy Leader in the House of Lords (Day 6, pm)

Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons (Day 5, pm)

Baroness Young of Old Scone (Day 6, am)

Official Documents

comments

Second Report from the Select Committee on Procedure of the House

Tuesday, the 24th April 1990

By The Select Committee on Procedure of the House

Ordered to Report:-

Declaration of Pecuniary Interest

1. The Committee have concluded their annual review of procedural difficulties in the preceding session to which the attention of the House should be called, by considering at two meetings the issue of Declaration of Pecuniary Interest.

2. Rule (xiv) of the Rules of Debate in the *Companion* (p.44) is as follows:

> It is a long-standing custom of the House that Lords speak always on their personal honour. It follows from this that if a Lord decides that it is proper for him to take part in a debate on a subject in which he has a direct pecuniary interest, he should declare it.
>
> Subject to this, and to the guidance to members or employees of public Boards (the Addison Rules) set out below, there is no reason why a Lord with an interest to declare should not take part in debate. It is however considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or subordinate legislation, in or for which he is or has been acting or concerned for any pecuniary fee or reward.

3. A series of incidents last session suggested that the last sentence of this guidance is widely misunderstood (H.L.Deb. 3rd April 1989 cols. 964 and 972, H.L.Deb. 2nd May 1989 cols. 58 and 61, H.L.Deb. 11th October 1989 cols. 403-406). The point at issue in each case was the meaning of "acting or concerned for any pecuniary fee or reward" and whether it applies to a general salary or retainer or only to a specific pecuniary fee or reward in a particular case, and whether "concerned" is to be construed broadly or narrowly. From an examination of the history of the matter, it appears that the rule was originally aimed at two potential abuses, namely a Lord gaining pecuniary advantage from his membership of Parliament or using it to further his professional career, and a person outside Parliament gaining unfair advantage through a fortuitous connection with a member of the House. It
was not intended to prohibit professionally qualified Lords from speaking on matters connected with their profession, which would deprive the House of the views of members with a direct knowledge of the subjects under discussion.

4. In the light of these recent experiences, the Committee consider that the rule as currently phrased fails to express the original intentions of the House, and accordingly they have agreed a new form of guidance which they hope will express the conventions of the House more clearly.

5. The Committee recommend the following new guidance on the Declaration of Interest, for eventual inclusion in the *Companion:*

> "It is a long-standing custom of the House that Lords speak always on their personal honour. The decision whether it is proper to take part in a debate or a vote in which a Lord has a personal interest therefore rests with the Lord himself; but it is considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or subordinate legislation if he is acting or has acted personally in direct connection with it for a specific fee or reward, or to vote on a Private Bill in which he has a direct pecuniary interest. Subject to these exceptions and to the guidance to Members or Employees of Public Boards (the "Addison Rules") a Lord is free to take part in a debate or a vote in which he has a personal interest.
>
> If a Lord has a direct pecuniary interest in a subject on which he speaks, he should declare it, and he should also declare any kind of interest of which his audience should be aware in order to form a balanced judgement of his argument. Such interests may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or unpaid membership of an interested

organisation, and they may include past and future interests. This rule also applies where a Lord is using his influence as a member of the House in communication with a Minister, Government Department, local authority or other public body outside the House. If a Lord wishes to vote on a subject in which he has an interest that is direct, pecuniary and shared by few others, it is better that he should first have spoken in the debate so that his interest may be openly declared.

On certain occasions such as Starred Questions and the various stages of a bill following Second Reading, it may be for the convenience of the House that Lords should not take up time by repeating declarations of interest but a Lord should make a declaration whenever he is in doubt. The Clerks at the Table are available to advise on the interpretation of this guidance in a case of uncertainty."

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Resolutions of the House of Lords relating to the declaration and registration of interests (7 November 1995)

Procedure of the House-Resolved, That the practice of the House in relation to Lords' interests should be governed by the following principles:

(1) **Lords should act always on their personal honour**; and

(2) **Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence.**

Thus Lords who accept payment or other incentive or reward for providing Parliamentary advice or services, or who have any financial interest in a business involved in
Parliamentary lobbying on behalf of clients, should not speak, vote, lobby or otherwise take advantage of their position as members of the House on behalf of their clients. This restriction does not extend to matters relating to Lords' outside employment or directorships, where the interest does not arise from membership of the House. Lords should, however, be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.

In relation to private bills, Lords should not speak or vote on bills in which they have a direct pecuniary interest.

The above guidance cannot cover all eventualities, and therefore the decision ultimately rests with Lords themselves whether it is proper to take part in a debate or a vote in which they have a personal interest.

Lords who have a direct financial interest in a subject on which they speak should declare it, making clear that it is a financial interest. They should also declare any non-financial interest of which their audience should be aware in order to form a balanced judgment of their arguments. Such interests may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or unpaid membership of an interested organization, and they may include past and future interests. This rule also applies where Lords are using their influence as a member of the House in communication with a Minister, Government Department, local authority or other public body outside the House.

On certain occasions such as Starred Questions and the various stages of a bill following Second Reading, it may be for the convenience of the House that Lords should not take up time by repeating declarations of interest but Lords should make a declaration whenever they are in doubt. The nature of the interest should be made clear notwithstanding that it may be well known to most other Lords present in the Chamber.

Similar principles apply to proceedings in committees off the floor of the House.

The Clerk of the Parliaments is available to advise on the interpretation of this guidance in a case of uncertainty.

Registration of Interests-Resolved, That there shall be established a register of:

(1) consultancies, or any similar arrangements, whereby members of the House accept payment or other incentive or reward for providing Parliamentary advice or services;

(2) any financial interests of members of the House in businesses involved in Parliamentary lobbying on behalf of clients; and

(3) any other particulars which members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their Parliamentary duties.

The register shall be maintained under the authority of the Clerk of the Parliaments by a Registrar appointed by him.

Existing arrangements falling within categories (1) and (2) above shall be registered within one month of the register being established. Subsequent arrangements falling within those categories shall be registered within one month of their being made.

The register shall be available for public inspection in accordance with arrangements to be made by the Registrar. The register shall also be published annually. The annual edition shall include all arrangements registered since the previous edition; and all continuing arrangements unless their termination has been notified to the Registrar.

The operation of the register shall be overseen by the Committee for Privileges.

The Committee for Privileges shall investigate, and report to the House on, any allegation of failure to register interests within categories (1) and (2); provided that the Committee shall first satisfy itself that an allegation has sufficient substance to warrant investigation.

The Committee may remit any or all of the matters covered by this order to a sub-committee.

In considering any allegation of failure to register interests, the Committee and any sub-committee shall not sit unless three Lords of Appeal be present.

The Code of Conduct for Members of Parliament

Prepared pursuant to the Resolution of the House of 19th July 1995

I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life[1] as applying to holders of public office:-

"***Selflessness***

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the

public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

No Member shall act as a paid advocate in any proceeding of the House.

No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

[1] Cm 2850, p 14.

comments

Previous Reports by the Committee on Standards in Public Life

1. The Committee has published reports on the following subjects:

- Members of Parliament, Ministers, civil servants and quangos (First Report (Cm 2850), May 1995)
- Local public spending bodies (Second Report (Cm 3270), June 1996)
- Local government in England, Scotland and Wales (Third Report (Cm 3702), July 1997)
- The funding of political parties in the United Kingdom (Fifth Report (Cm 4057), October 1998).

2. The Committee is a standing committee. It can, therefore, not only conduct enquiries into new areas of concern about standards in public life but also, having reported its recommendations following an enquiry, it can later revisit that area and monitor whether and how well its recommendations have been put into effect. The Committee has so far conducted two reviews:

- a review of recommendations contained in the First and Second Reports relating to standards of conduct in executive non-departmental public bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report, November 1997)[1]
- a review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and 'proportionality' in the public appointments system (Sixth Report entitled *Reinforcing Standards* (Cm 4557), January 2000).

[1] This report was not published as a command paper.

Official Documents

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LIST OF ABBREVIATIONS AND ACRONYMS

APPC	Association of Professional Political Consultants
Bt	Baronet
CB	Order of the Bath
CBE	Commander (of the Order) of the British Empire
CH	Companion of Honour
Cm	Command Paper
CVO	Commander of the Royal Victorian Order
Deb	Debates
DTI	Department of Trade and Industry
FBA	Fellow of the British Academy
FRS	Fellow of the Royal Society
FRSL	Fellow of the Royal Society of Literature
GCB	Knight Grand Cross, Order of the Bath
GCMG	Knight Grand Cross, Order of St Michael and St George
GCVO	Knight Grand Cross, Royal Victorian Order
HC	House of Commons
HL	House of Lords
LVO	Lieutenant, Royal Victorian Order
MBE	Member, Order of the British Empire
MC	Military Cross
MP	Member of Parliament
NDPB	Non-Departmental Public Body
NHS	National Health Service
OBE	Officer of the Order of the British Empire
QC	Queen's Counsel
QPM	Queen's Police Medal
RD	Royal Navy Reserve Decoration
RN	Royal Navy
Rt Hon	The Right Honourable
SO	Standing Orders
TD	Territorial Efficiency Decoration
UK	United Kingdom
UKCC	United Kingdom Central Council
WA	Written Answer

ABOUT THE COMMITTEE

Terms of Reference

The then Prime Minister, the Rt Hon John Major MP, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 25 October 1994 with the following terms of reference:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.
(Hansard (HC) 25 October 1994, col 758)

Mr Major made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the Prime Minister, the Rt Hon Tony Blair MP: "*To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements*".

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for renewable periods of up to three years. Lord Neill succeeded the Rt Hon Lord Nolan as Chairman on 10 November 1997.

Lord Neill of Bladen QC
(Chairman)

Ann Abraham
Professor Alice Brown
Lord Goodhart QC
Rt Hon John MacGregor OBE MP
Sir William Utting CB

Sir Clifford Boulton GCB
Sir Anthony Cleaver
Frances Heaton
Rt Hon Lord Shore of Stepney

The Committee is assisted by a small secretariat:

Sarah Tyerman *(Secretary)*, Christine Salmon *(Assistant Secretary)*, Andrew Brewster, Nassar Hameed (to 30 April 2000), Harsha Pitrola (to 27 October 2000), Neil Simpson (from 28 February to 27 October 2000), Rani Dhamu, Ann-Marie Lugay (to 28 September 2000), Philip Aylett *(Press Secretary)*.

Advice and assistance to the Committee for this study was also provided by:

Ailsa Henderson, Researcher (from August 2000), Hamish Dibley, Research Assistant (from 7 August to 22 September 2000), Radio Technical Services Ltd for the provision of sound recording, Palantype Services Ltd for the provision of transcription services during the public hearings; and Heather Bliss for editing the draft report.

Expenditure

The estimated gross expenditure of the Committee on this study to the end of October 2000 is £378,231. This includes staff costs; the cost of printing and distributing (in April 2000) 4,500 copies of a paper setting out the key issues and questions which the Committee would address; costs associated with public hearings which were held at One Great George Street, London from 26 June to 17 July 2000; and estimated costs of printing, publishing and distributing this report.

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Lord Flowers FRS

Lord Dubs

Rt Hon Sir Archibald Hamilton MP

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Lord Tugendhat

Rt Hon Lord Wakeham

Elizabeth Filkin, Parliamentary Commissioner for Standards

Lord Newby OBE

Lord Chadlington of Dean

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Lord Bishop of Portsmouth, the Rt Rev Dr Kenneth Stevenson

LIST OF SUPPLEMENTARY MEMORANDA RELATING TO TRANSCRIPTS OF ORAL EVIDENCE VOLUME 2

The principal documents necessary to understand evidence given by witnesses in the transcripts of oral evidence are included at the end of this volume. Copies of other submissions received by the Committee, relating to the study on the House of Lords, are published on CD-Rom, and may be consulted at the Public Records Office in Kew, the Public Record Office in Northern Ireland in Belfast, the Scottish Public Record Office in Edinburgh and the National Library of Wales in Aberystwyth.

1. Supplementary Memoranda from Professor Dawn Oliver
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LIST OF INDIVIDUALS AND ORGANISATIONS SUBMITTING WRITTEN EVIDENCE

The list includes Members of the House of Lords, representative bodies, individuals and members of the public who contributed written submissions. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

LIST OF ABBREVIATIONS AND ACRONYMS

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Seventh Report of the Committee on

Standards in Public Life

Chairman: Lord Neill of Bladen QC

Standards of Conduct in the House of Lords

Volume 2: Evidence

Presented to Parliament by the Prime Minister

by Command of Her Majesty

November 2000

Cm 4903-II

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The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 26 June 2000 (Morning Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham
Sir Clifford Boulton GCB
Sir Anthony Cleaver
Lord Goodhart QC
Professor Alice Brown
Frances Heaton
Rt Hon John MacGregor OBE MP
Rt Hon Lord Shore of Stepney
Sir William Utting CB

Witnesses:

Rt Hon Lord Richard QC
Rt Hon Lord Owen CH
Professor Robert Hazell, Director and Meg Russell, Senior Research Fellow, Constitution Unit, University College, London
Rt Hon Lord Archer of Sandwell QC
Rt Hon Lord Jenkin of Roding

1. **Lord Neill:** Welcome, everyone, to this first public hearing of the Committee's enquiry into the rules governing conduct in the House of Lords. This is the seventh major enquiry undertaken by the Committee, which, as you know, has already examined arrangements in the House of Commons, the Civil Service, local government and a wide variety of public bodies.

We come to this study five years after the subject was discussed in a House of Lords debate in November 1995 on a report by a Sub-Committee of the Procedure Committee under Lord Griffiths. The House accepted a number of recommendations for changes to the arrangements governing conduct. In the debate, it was noted by several speakers that this Committee was planning to consider the Griffiths Report within a matter of months, but other pressing subjects arose and the Committee postponed its review of Griffiths. I am therefore glad that the opportunity now presents itself to study these important issues, especially because of the considerable changes to the composition of the House that have followed the removal of hereditary peers and the wide debate associated with the publication of the report of the Royal Commission on the Reform of the House of Lords - the Wakeham Report.

Our study is concentrated on issues such as registration and declaration of interests, paid advocacy, a possible code of conduct, disciplinary procedure, enforcement and penalties. We will not attempt to reopen any of the questions considered by the Royal Commission.

There have already been many useful contributions to the debate. Since we published our Issues and Questions paper in April we have received more than 70 submissions, many of them from members of the House of Lords. In the six days of public hearings that will now take place - today, on 29 and 30 June and on 7, 10 and 17 July - we will hear evidence from approximately 50 witnesses, many of whom have also submitted written evidence. Senior members of both Houses of Parliament, distinguished academics and a variety of expert commentators will be coming. We are very grateful to all those who have helped the Committee in its work.

This morning we have some six witnesses. Our first is the Rt Hon Lord Richard QC, a former Leader of the House of Lords and a European Commissioner from 1981 to 1984. Following him will be the Rt Hon Lord Owen CH, a former Foreign Secretary

and a founder member of the Social Democratic Party. To give us an academic perspective, we have Professor Robert Hazell and Ms Meg Russell of the Constitution Unit at University College, London. The unit carried out much of the research supporting the work of the Wakeham Commission, and Ms Russell has published a book comparing the Lords with second chambers in other countries.

Next will come the Rt Hon Lord Archer of Sandwell, Solicitor General in Labour Administrations from 1974 to 1979, who gained considerable front-bench experience in the House of Commons. The Rt Hon Lord Jenkin of Roding, who follows him, was a Conservative Cabinet Minister in the 1980s, holding a number of portfolios including Industry and environment.

Our afternoon session will begin at 2pm, and at that point I will say a word of introduction about our afternoon witnesses. They will be Lord Craig of Radley, Professor Dawn Oliver, Earl Russell and Baroness Hilton of Eggardon.

Before we begin, I would like to say a few words about our working methods. Each witness or pair of witnesses will be questioned initially by two members of the Committee, after which other members will be able to ask any questions that they wish. The uncorrected transcripts will be placed on the Committee's website as soon as possible after the close of the day's proceedings, probably within 48 hours. We will publish all the evidence, including submissions, together with the report, which we hope will be out by October.

In conclusion, I wish to stress again, as I did in our Issues and Questions paper in April, that our enquiry has not been prompted by any scandal or crisis. This Committee has no power, nor does it seek any power, to investigate individual allegations of misconduct, and none are before us.

With that prelude, I would like to welcome our first witness, Lord Richard. Good morning, Lord Richard.

RT HON LORD RICHARD QC

2. **Rt Hon Lord Richard QC:** Good morning.

3. **Lord Neill:** I shall ask William Utting to begin the questioning, followed by Sir Anthony Cleaver, unless there are any opening observations that you would like to make.

4. **Lord Richard:** Could I just make two very brief points? First of all, dealing with the first point that you made, Chairman, I have no doubt at all in my mind that this enquiry is timely and arises directly out of the exchanges that took place in the House of Lords at the time that the Nolan Committee was set up. Indeed, I seem to remember specifically asking the then Leader of the House, Lord Cranborne, whether the Nolan Committee would be looking into the affairs of the House of Lords and getting an affirmative answer, so I have no problem with what you are trying to do, if I may state that at the outset.

5. Secondly, the interesting thing about the House of Lords at the moment is that it is very much in a period of transition. It is moving from a wholly amateur House, as at one stage it was, to a House that is much more professional, and all sorts of problems will arise as a result of that. One is that the House will become more restive. Inevitably, I suppose, the aristocratic reticence of the old hereditary peerage has gone, as the old hereditary peerage has now been removed from the House of Lords, so it is a much more workmanlike House, but we are not there yet. It is not yet a professional House; it is in a period of transition. While, therefore, we need to look at the arrangements in the House of Lords, it would be very simplistic to assume that, if something runs in the House of Commons, it will run equally well in the upper House, and I do not think that is necessarily true.

6. **Lord Neill:** Thank you very much for those observations.

7. **William Utting:** Thank you, Lord Richard, for that opening statement. Perhaps we could explore some of those points in a little more detail. You say that a good deal has happened to the House of Lords since the Griffiths reforms in 1995, in particular in relation to its composition and the growing professionalisation of its political members. Do you have any general thoughts about the implications of the changes that have taken place for the current regulatory system? Does it indicate that there are things in the present system that need to be changed or tightened up?

8. **Lord Richard:** Yes, I think there is a need for greater transparency and openness in the way in which some of the affairs of the House are conducted. I think that is true. But I would be unhappy if the result of the changes in the composition of the House so far meant that we went right over to the regime that they have in the Commons and tried to import that into the Lords. I, frankly, do not think that you can do that at the moment; it would be too much for their Lordships to digest.

9. **William Utting:** While emphasising the difference between the two Houses, you said yourself that the public have a right to expect similar standards of objectivity and transparency. One can work to similar standards perhaps through different structures.

I am not starting with a supposition that what works in the House of Commons is necessarily appropriate to the House of Lords, but do you think that any of the innovations in the House of Commons are relevant to the current condition of the Lords? We have a code of conduct, for example, for Members of Parliament, a Parliamentary Commissioner for Standards and revised, tougher disciplinary procedures. Are any of those matters that we should be considering recommending to be introduced into the House of Lords?

10. **Lord Richard:** I think that people are entitled to have similar standards, objectivity and transparency from each House, because the obligation to be open arises from the fact that you are a legislative chamber and not from anything else. Therefore, it is important that people should know what is happening. But I think that the mechanisms that apply to each House could be very different. I would not be happy, for example, to have a Parliamentary Commissioner for Standards doing to the House of Lords in its present state what the functions of that official are in the House of Commons. A situation that would work in the Lords would be if you had fairly strong declarations of what you expected from peers. I personally would make the second half of the Griffiths register a compulsory register rather than a voluntary one, but in terms of enforcement they are difficult waters in the House of Lords. It is very difficult to discipline a peer. What can you do to a peer? You can shame them and name them, and indeed that is probably the best way of dealing with it, but I do not think that it is possible to impose sanctions against peers in the same way as you can impose sanctions against MPs.

11. **William Utting:** Not necessarily in the same way, but if the argument is that the House of Lords is becoming a more professional part of the legislature, there may then be an accompanying argument that there should be stronger sanctions on members of the House of Lords who misbehave.

12. **Lord Richard:** I think it is a difficult line to draw. I think you might lose a great deal of the self-governance of the House of Lords, which on the whole is a distinct plus as far as that chamber is concerned. There are very few rules of order. As you know, we do not even talk about something being out of order in the Lords: we talk about it being undesirable. Everybody knows that, if it is undesirable in the House of Lords, it would be totally ruled out of order in the House of Commons.

13. The self-regulation that we have in the House is on the whole, worth keeping. It produces less frenetic debates, it produces a blunting of the party confrontation, which, when you are doing what the House of Lords is doing - namely, looking at Bills in detail - is on the whole a plus rather than a minus. I do not think I would like to see that aggravated, because the danger is that, if you have a system of parliamentary discipline in the way that the Commons does, that itself becomes a bit politically over-tainted, and the result is all too often seen in terms of the party confrontation rather than in terms of an individual MPs discipline.

14. **William Utting:** I think many of us would wish to see codes based on personal honour, continuing to succeed but if the composition of the House is to continue to change - it already has changed radically from over 1,000 members, I think, to now fewer than 700, and many of those who subscribed to that code of personal honour and were not deeply involved in the business of politics have departed. In the future we may have a House that is made up much more of men and women of affairs, so to speak, with many and diverse interests. Do you think that it will be possible to continue to maintain that ethic in the light of those changes and the changes that are perhaps still to come?

15. **Lord Richard:** I think you can maintain the ethic. Whether you can maintain the mechanism is another matter. Whether you can in the future rely totally on individual peers to behave properly without any further disclosure is an interesting point. My own view is that you should deal with it by disclosure. I would make the second part of the Griffiths recommendations mandatory rather than voluntary. I think that, if you did that, you could perhaps maintain the existing thrust of the structures in the Lords.

16. Having said that, can I just say one other thing? If we move, as I would like us to move, to a House which is two-thirds directly elected and one-third nominated, I think you are in different waters. That is another matter. Then you have a direct contract with the electorate; the electorate can throw you out. All sorts of issues and pressures then arise which do not arise at the moment. It seems to me that in a House that is transitional, which is what we are in at the moment, to go too far down the road of democratic accountability, which is presumably what the Commons structure is meant to achieve, would be going too far too quickly.

17. **William Utting:** The fact that members of the House of Lords are unpaid is something that in a sense you have put on one side as irrelevant to these considerations.

18. **Lord Richard:** I do not think it is irrelevant, but I do not think it is determining. It is a fact that the House of Lords is unpaid; it is a fact that facilities for working peers are abysmal, just in terms of basic things like offices. So you start off with the extraordinary mix that we have got at the moment, particularly after the creations of the last two or three years, of a House that is structured as an amateur House, but which is becoming increasingly professional and increasingly a working House. We

are in the middle of the process at the moment, and that makes life difficult.

19. **William Utting:** Finally, could I ask you if matters that have caused concern in the House of Commons, like lobbying, the taking on of political consultancies and the advocacy of causes, cause you any concern now in the House of Lords?

20. **Lord Richard:** I do not think so. I think on the whole it is known when people are being paid advocates or not being paid advocates. I am not against people being paid advocates, but it is important that people know that they are. I remember that just before I went into the House of Commons a very long time ago, the then Mr Callaghan was the spokesman for the Police Federation, and nobody raised an eyebrow. Indeed, it was really rather helpful to the Police Federation and to parliament to have that type of advocacy in the House. I remember that for a short time after I first went in I was asked to do the same sort of job for the Pharmaceutical Society of Great Britain, which did not have a chemist in the House of Commons. It had a voice that needed to be heard because of legislation that was going through. I am bound to say that I did not see anything wrong in doing that, provided that everybody knew about it. I suppose that, if it gets over-professionalised and the lobbyist could act on behalf of anybody for any cause at any time, it is undesirable clearly that he or she should use their parliamentary position to advocate a cause that they do not necessarily believe in. But my impression is that in the Lords the known lobbyists are known, so there is no problem.

21. Where there is a problem is on the margin, and I am bound to say I do not know how to deal with it. You might have a professional man - a lawyer, for example - who has a large number of clients who are big leaseholders. Under the existing rules, because he has no direct interest in his clients' affairs, he can advocate that a certain Bill on leasehold, for example, should pass in a certain way that would benefit the clients. He would do that, I suppose, without necessarily having to do anything except get up and declare that one or two of his clients were prominent leaseholders. So there is an element at the margin where people with interests can advocate those interests without the House necessarily being able to deal with it.

22. **William Utting:** What we do not want to do is deprive the House of the professional knowledge and expertise of its members by any crude rules about advocacy.

23. **Lord Richard:** That is the danger. The danger is that the person who knows most about the particular issue may find himself or herself in a situation where they cannot talk about it, and that, frankly, would be absurd.

24. **William Utting:** Yes. Thank you, Lord Richard.

25. **Anthony Cleaver:** Lord Richard, could I take you back to the debate on the Griffiths Report? I appreciate that it is some five years ago. At the time you said that there were some matters that you felt were not addressed by the report. I wonder whether you remember what they were.

26. **Lord Richard:** The one that I just indicated was probably the one that I had in mind. I remember that there was a very good example about the time of the Griffiths Report - I think it was referred to in somebody else's speech - where there was some legislation going through. Somebody prominent in the waste industry -
I have no idea who it was - put down an immense number of amendments to the Bill, perfectly properly. They were all reasonable amendments, but there was no doubt that their origin came from the industry rather than the individual's own conviction. Quite how you deal with that I do not know, nor am I wholly convinced that it is desirable for you to want to deal with it, provided that you know that that is what is going on.

27. **Anthony Cleaver:** I think you have already said that you think that transparency is perhaps the best way of looking at some of these things. I suppose that naturally leads to the question of the current Register of Interests. Do you feel that the Category 3 there, which is currently voluntary, should be made mandatory, and would that be helpful?

28. **Lord Richard:** Yes, I think it would be helpful. I think that there should be an obligation on members of the House to declare matters that might influence the way in which people perceive them performing their parliamentary duties. I think that should be a mandatory duty rather than a discretionary one.

29. **Anthony Cleaver:** I suppose that, in a sense again, that could fall into two areas. You again refer to one of them in your comment on the Griffiths Report, feeling that it did not look

> "closely enough at those who are employed as directors of companies who may be able to participate in matters that affect the interest of those companies."

Obviously there is there, in a sense, a pecuniary interest. But do you feel that the register should also extend to non-pecuniary interests - membership of non-governmental organisations that have views on things and so on?

30. **Lord Richard:** If it is relevant, yes, it should. If somebody is a member of an NGO which is concerned with overseas aid or poverty in Africa, it is quite important that if he or she takes part in debates on aid policy towards Africa, people should know that they are part of the NGO. On the other hand, I cannot imagine that they would not declare it. The chances are that anybody who was taking part in that sort of debate would get up right at the beginning and say that they had to declare an interest.

31. **Anthony Cleaver:** In fact, as I understand it, that is the convention anyway: they should declare it at the time.

32. **Lord Richard:** Yes.

33. **Anthony Cleaver:** But some people feel that to continually to have to do that it is a little onerous.

34. **Lord Richard:** I do not think it is onerous to do it in a debate. If you have to do it every time at Question Time, I suppose, that might be a bit onerous, but even then I am not sure whether it is not necessary. I think there is a tendency on the part of some members of the House to believe that, once they have declared an interest and everybody knows of the interest and has it at the forefront of their mind, they need not bother to declare it again. I do not think that that is very helpful.

35. **Anthony Cleaver:** Just out of interest, have you in any other capacity in the public or voluntary sector been required to register interests?

36. **Lord Richard:** I was supposed to do it as a Commissioner. They were trying to safeguard against the negative interest, as they saw it, which was that you would be leant upon too much by your own national Government, so you had to take an oath before the parliament and declare that you would not do it. So to that extent I suppose it was a code of conduct, yes. Actually declaring interests, no, I do not think so. I do not think one does as a civil servant, except that you do not really have interests as a civil servant: you are not allowed to have interests as a civil servant.

37. **Anthony Cleaver:** When in the last enquiry we were talking to the Home Secretary, he suggested that a modern offence of corruption would include members of both Houses of Parliament. Would this change your view on the disciplinary procedures appropriate to the House of Lords?

38. **Lord Richard:** No, I am not against an offence of corruption extending to the Lords. It seems to me that that goes right to the root of one's function as a legislative chamber. That makes a great deal of sense.

39. **Anthony Cleaver:** Thank you very much.

40. **Lord Neill:** Could I ask you one question, Lord Richard, before giving my colleagues a chance? Could you expand a little on what you meant by saying that the House of Lords has become a more professional body or professional part of the legislature? I understand that the composition has changed, but if one were to compare a typical day's Hansard with one of five or 10 years ago, how would you say it was now more professional than it was?

41. **Lord Richard:** I think that some of the debates are better informed. I think you have more experts coming in on individual subjects, who were not there in that way, say, 10 or 15 years ago. If one looks at the recent creations - on our side certainly - you have a lot of people coming in with specific knowledge and specific expertise. They seem to me to be in a very different category and different group from the hereditary peers who were there a few years ago. I am not attacking the hereditary peerage for the purposes of this argument, but it does seem to me that there is a difference in kind between people coming in from, say, an NGO or having been a Member of Parliament as working peers and somebody who has inherited a peerage.

42. **Lord Neill:** Thank you.

43. **John MacGregor:** Can I ask you one question about the Parliamentary Commissioner for Standards. You were against that being applied to the House of Lords. Is that because there have been no complaints, either to this Committee or, as I understand it, in the House of Lords itself about any individual non-declaration of interest, or are there other reasons?

44. **Lord Richard:** There certainly have not been any complaints. I think the House of Commons has probably gone a bit too far. That is really my gut feeling. The idea that you have to declare whether you get a free air ticket to go to a conference in Istanbul - I feel uncomfortable with that. Perhaps it is one's own history, because certainly when I went into the House of Commons you did not have to do that sort of thing to anything like that extent. I suppose MPs were more on their honour then than they are perceived to be now. I think that is a bit of a pity. Therefore, to try and import something as draconian as that into a chamber whose ethos, in a sense, is based on self-regulation and personal honour would not fit.

45. **Lord Goodhart:** Following up on John MacGregor's question, the guidance notes for the House of Commons are very detailed. There are 10 categories of which you have to register your interests. How far do you think compulsory registration

should go? Are we looking at shareholdings as well as directorships?

46. **Lord Richard:** Suppose you are the majority shareholder in a large private company operating in the UK and legislation directly affecting it is going through the House, you should declare it. I think that is right. I think you should be under an obligation to declare interests that would enable people to judge the quality of your parliamentary contribution - in other words, to judge whether you are being genuinely objective in what you are saying. I certainly do not think that it should extend to income. Apart from anything else, if you have got an unpaid House, it is a bit strong to ask people to declare what incomes they are getting from outside jobs. And I am not sure whether it should go as far as shareholders. It depends on the extent to which the shareholding is influential in the shares of a particular company.

47. **Lord Shore:** My question is very close to the one asked by John MacGregor. The Griffiths Report recommended that, if there were any complaints, they would be heard by, I think, a Sub-Committee of the Committee for Privileges. Have there been any complaints during the four or more years since the Griffiths Report was published and, if there was to be a complaint, to whom would it be directed?

48. **Lord Richard:** I do not think that there has been any complaint at all, as far as I know. The complaint would be directed initially, I suppose, to the Registrar in the House of Lords. It would then go to the Chairman of Committees. I imagine that the Chairman of Committees would then call a meeting of the Committee for Privileges, which would set up a Sub-Committee to look into it. There is a provision that Law Lords have to sit on the Committee for Privileges. I think there would also have to be a number of Law Lords sitting on the Sub-Committee that looked at the particular complaint.

49. **Lord Shore:** That would -

50. **Lord Richard:** Can I just finish it through, as I see it? It has never happened, as far as I know, but I imagine this is what would happen. The Sub-Committee would report back to the main Committee for Privileges, which would report back to the House, which would have a debate
on it.

51. **Lord Shore:** Thank you.

52. **Frances Heaton:** You referred to the evolution of the House of Lords. Do you think there has been an evolution in public expectations of matters relating to disclosure and regulation?

53. **Lord Richard:** In the second chamber or generally?

54. **Frances Heaton:** In the second chamber.

55. **Lord Richard:** It is very difficult to be objective about this, because one is a member of the institution, but my impression, and it is only an impression, is that the Lords seems to have been performing a more significant role in the legislative process in the last few years than it has done for some time past. If that is right and it is to be looked at more closely, people will demand higher standards from it. If the institution is irrelevant, it does not particularly matter what its standards are. So, yes, I think there has been a change and I think, on the whole, justifiable.

56. If you believe that the House of Lords should be a fully functioning legislative chamber and not the pet of the British constitution - "Good for the tourists and all the colour, but really we do not need to bother about it", these things are inevitable.

57. **Frances Heaton:** Secondly, you gave us the example of somebody who was a majority shareholder in a large private company operating in the UK when relevant legislation going through the House and said that he should declare his interest. That would be as and when the debate took place. Are you distinguishing that from the need to register or are you suggesting that the registration should take place only when there was relevant legislation, because on the whole, registration is for all time?

58. **Lord Richard:** I think it is a very difficult line to draw and I think a lot depends on the size and importance of the individual company. The largest private company in the UK, I gather, is still Mars. It is basically an American company. On the assumption that Mr Mars became Lord Mars and was sitting in the House of Lords, I think I would expect the Register of Interests to include a declaration that he was a major shareholder in that company, because of the size and importance of the company. Obviously this changes. I would also expect him, when something came up on the Floor of the House, to declare that interest at the beginning of the debate, so I would be expecting him to do them both.

59. **Alice Brown:** Can I follow up a previous question about the evolution of expectations and take it slightly further? One could argue that public perception plays quite a strong role in these matters and that the public might feel to some extent that, if

there were not to be changes, the Lords was in a sense out of line with other public bodies, and indeed legislative bodies.

60. **Lord Richard:** The Lords is out of line with other public bodies; it is a very strange organism. However you look at it, it does not fit into any of the public bodies that one normally has to deal with: it is not elected, it is non-democratic and, until very recently, its composition has largely been determined by birth. Indeed, 92 hereditary peers are still members of it. It is very difficult to explain, for example to an audience of Americans, precisely how it comes to be in the state that it is. So it is sui generis and has, at the moment at any rate, to be treated as such. If you want the Lords to be treated like any other body that we were talking about - the local authority, the Welsh Assembly, the Scottish Parliament or indeed even the House of Commons - you have got an awful lot to do on the composition and the way in which people get there, before you get to that stage.

61. **Lord Neill:** Thank you very much indeed, Lord Richard for your very interesting observations and thank you for your help. We are very grateful.

62. Good morning, Lord Owen.

RT HON LORD OWEN CH

63. **Rt Hon Lord Owen CH:** Good morning.

64. **Lord Neill:** Thank you for coming and for giving us the benefit of your help. We have had two things from you - a letter dated 9 May, in which you have made some answers to our Issues and Questions paper and, more recently, on 19 June you wrote me a letter in which you enclosed an extract from your book Face the Future. Perhaps when I have put a few questions we can come to that.

65. I would like to begin with the answers that you sent to us, unless there are any opening observations that you would like to make. Please feel free, if there are.

66. **Lord Owen:** No.

67. **Lord Neill:** The first point was directed to the question: should there be a presumption, when we look at the Lords, that we will find the same set of rules in place as in the Commons? You answer that in the negative, but you go on to say that you detect "a worrying development", which is essentially that the House of Lords is being made to ape what goes on in the House of Commons. That leads to your conclusion in answer to question 1 that it would be wise for the House of Lords "to define a distinctive position". I would like to give you an opportunity to expand a little bit on what that distinctive position should be.

68. **Lord Owen:** I think that there are certain areas where the House of Lords should follow the House of Commons. Your question 9 asks whether those who are involved in parliamentary lobbying should declare their consultancy arrangements in their contract and also give an indication of the size of money that they get. I believe that should now be followed in the House of Lords, and as soon as possible, as I think that this is an area of legitimate public concern and that the House of Lords is not as stringent as the House of Commons.

69. Now that we are in a transitional period, there is also a case for the voluntary part of the code of conduct - the declaration of major sources of income, appointments and, I would include, very large shareholdings that are a substantial amount of income - to be declared in the Lords. But I do not think that it should be an obligation of any member of the House of Lords to indicate what their salary arrangements are, because we are not a paid legislature in the sense of having salaries, and also we are not comparable in power or effectiveness to the House of Commons. Those are the two areas where I would not, therefore, go as far as the code of conduct in the House of Commons, where, for example, you have to put foreign travel and things like that. I think that it would be tiresome and irritating and would give quite the wrong message. I actually think that it is only being required in the Commons because of abuses. I do not detect those in the House of Lords and I do not think that we should follow House of Commons procedures in every aspect.

70. **Lord Neill:** One of the phrases that you used was "public interest" in this matter or "public concern". Can you give us any evidence about what people in ordinary life think about standards of conduct in the House of Lords? Do they have any thoughts about it or do they assume it is the same set of rules as in the Commons, or is it very difficult to say what people think?

71. **Lord Owen:** I do not think that the House of Lords is a very high element in most people's public concern. I think that, broadly speaking, they are glad it is there, they see it as a sort of long-stop and they feel that it can at times make the House of Commons think again, and I think they are right. That is what it fundamentally does, and I think it has a purpose, even in its present limited form. As you know, I personally have always believed that there is a very strong case for an elected second chamber of voting members, and I think there is a strong case also for the presence of some people who are providing a voice and who would not be voting members, but nevertheless have influence.

72. **Lord Neill:** Supposing there were to be a fully elected House, would that alter your view about the rules of conduct in the House of Lords?

73. **Lord Owen:** Yes.

74. **Lord Neill:** Would the argument then be that it should be very much the same as the Commons?

75. **Lord Owen:** Yes. It would still have different powers, and you may make a distinction on some of the very intrusive elements of the new code of conduct in the House of Commons, which again I think has arisen because of a lapse of standards that we should not have allowed to happen and should not then be taken as indicative of every aspect of somebody's public life. Your predecessor's Committee had to take action and, broadly speaking, it has had some beneficial effects. I read your Sixth Report and Sir Gordon Downey's comments that the quite grotesque growth of lobbying - it had taken place in the House of Commons while I sat there, so I must take some responsibility for it - has to some extent been curbed, and I think that this Committee and the concept of establishing it has been well justified on that ground alone. I certainly would not want to see that same abuse move into the House of Lords.

76. I have to admit that I am not a tremendous attender. I say that unapologetically. I did not join the House of Lords in order to be a regular attender. I attend, broadly, for international affairs, I vote extremely rarely, I am not convinced in my own mind that I have great legitimacy in voting, but I still think that there are two elements in a democracy, and indeed in a legislative chamber - the voice and a vote. I attach great importance to the vote being elected, but the voice can have an indication and a value, and I certainly think that the debates in the House of Lords are worth listening to within the structures of Government and Whitehall. We can all argue whether they are read or not.

77. **Lord Neill:** Could I ask you a question about the absence of pay? The House of Lords is an unpaid, unremunerated chamber. In 1974 a Sub-Committee of the House of Lords Select Committee on Procedure - the Sub-Committee on Registration of Interests - produced a report, one passage in which is of interest to me. It said:

> "There are considerable differences between the Lords and the Commons. The first is that the Lords are not paid; but the Sub-Committee regard this as irrelevant for, as some witnesses have pointed out, responsibility and registration of interests should go with power and not with the payment of salaries."

It is an issue that our Committee has to focus on. It is important factor of differentiation. Where does it lead one to?

78. **Lord Owen:** I would not take that remark too seriously, frankly. I think that it has only a certain truth. One of the reasons why the House of Lords is not paid is that it does have different powers; it is a different chamber. But you cannot ignore the fact that if you take your money from the public, effectively, as a paid member of the House of Commons, there are obligations that go with that. I happen to believe that it is sensible that members of the House of Commons can, if they so choose, do other activities; they do not have to be full time in their activities in parliament. Whether or not you should receive payment for those other activities is an open question. Parliament has decided that you should be allowed to do so. Therefore, it becomes very important that you indicate to your constituents how much money you are getting from those other activities, which should be open and public. I do not think that the same thing applies to the House of Lords, but were you to move, as I would like, to a substantially elected House of Lords, I believe that it should follow the same procedure as in the House of Commons, even though they are less powerful.

79. **Lord Neill:** Could I take you on, please, to consultancies, which you have already mentioned, and to lobbying? I think your view is that Nolan was right to recommend the prohibition, in the case of the House of Commons, of consultancy agreements.

80. **Lord Owen:** Yes.

81. **Lord Neill:** That has not happened in the Lords, has it? It should be registered in part 1 or 2 - I forget which - but there is no prohibition on a consultancy.

82. **Lord Owen:** I think it was a pity that the House of Commons did not take that recommendation of Nolan. I think it is a perfectly legitimate and correct one. There is a role for parliamentary lobbying. It is not a disreputable profession in any respect. Parliamentarians expect to be lobbied: that is part of your democratic responsibilities, but you should not line yourself up with the lobbyists. There should be a clear-cut and absolute distinction.

83. I very much hope that, if we are going on with appointed mechanisms in the House of Lords, which I must say I treat with some scepticism, Lord Stevenson, when he makes his recommendation, will be very wary of appointing anybody to the House of Lords who has a major parliamentary lobbying role as part of their life. Maybe he should even be prepared to ask somebody

whose appointment is being considered "Are you prepared to step back from this when you go into the second chamber?" I personally think they should step back from it. I take a very tough line on this and I have always done so. As I have made it clear, I grew increasingly angry at the growth and the tentacles of the lobbying industry in parliament through money. It is perfectly legitimate to have lobbying. I am not against that at all as part of an open democracy.

84. **Lord Neill:** What is your impression of the amount of lobbying on peers today? Has it increased since you became a member of the House?

85. **Lord Owen:** It is not fair to ask me. I am not sufficient an attender. For the first three years of my appointment I was mainly in Yugoslavia. I simply do not attend sufficiently to give you sensible comments on that.

86. **Lord Neill:** The last question I am going to ask you relates to the extract from your book Face the Future, which was published in 1981. There you are advocating an elected House, are you not, with some additional membership of non-voting, as I understand it, people who have special interests, and who know about particular professions and so on. Is there anything you wanted to draw attention to in that book that is not covered by the questions I have already put to you, because I think you are saying that anyone who has been elected should be subject to a regime more or less identical to that in the House of Commons? What about the extra people you would have in - the non-voting people representing the law, medicine and so on?

87. **Lord Owen:** It is a difficult question. You hear often that it is a club and everybody must be the same, but we are not the same at the moment. If you are a so-called working peer, you undertake to follow the party Whip broadly. Obviously you are not mandated, but you turn up for a fair amount of the legislation of the House of Lords. Personally I think the House of Lords votes far too much, but that is just a personal observation as I watch it. A lot of it seems to me the same sort of ritualised voting that one saw in the House of Commons. It is necessary in the House of Commons; it seems to me completely absurd to have it in the House of Lords. But I do think that you need the legislative power of delay, which must be exercised by the vote, so I am not against that mechanism.

88. A view that I hold very strongly is that you need second chambers and that the vote - the power to check - should be exercised by people who are elected. Therefore, I find the Royal Commission remark that it is an error to suppose that the second chamber's authority can only stem from democratic elections is one of the most extraordinary remarks I have ever read in a so-called Royal Commission. It seems to me that, if you believe in democracy, you cannot "half ass it" as Americans would say. I heard Lord Richard saying that he could not explain the House of Lords in America. I quite agree.

89. I also think that the idea that you cannot have two chambers running together that are elected is wrong. Of course you must have a clear-cut distribution of powers, and, broadly speaking, I think the present distribution of powers is correct. I am in favour of a primary legislative chamber, and that should be the House of Commons. I think that all major powers should reside with them and that you only have a brake in the second chamber, but the application of the brake is very important. I believe personally that it should be done by elected members.

90. I also think it is extraordinary that the so-called Royal Commission produced a remark that the House of Lords should not be a second chamber for devolved institutions. How do you argue for a bicameral parliament when you have devolved, as I strongly support and have always supported, a Scottish legislative Parliament, and now a Northern Ireland one? Why on earth are they to be unicameral? I cannot see any logic. The Royal Commission said that there were problems in Cardiff and Edinburgh when it raised that point. I would expect that. People in a unicameral parliament by and large do not want a second-guessing or brake mechanism. If you want a
United Kingdom, and this has always been one of the biggest arguments against devolution, you need to buttress in every constitutional way the overall authority of the United Kingdom.

91. I believe that people will see the absurdity of this and there will come a time when the House of Lords, as a second chamber, has a legislative brake on the devolved legislatures. Again, I think it would be very hard to do that in a modern world unless the people who were putting on that brake were elected, so I feel strongly on that. If the Royal Commission report sees the light of day, which I doubt it will, you may find that you have 65 elected members - that seems to be the minimalist position - or 195. Personally I think we need a model D, going up to 261 and, what is more, going up to it straight away, so you have 87 in three tranches, but the first tranche would be a full 261 elected.

92. This is your own difficulty in reporting on a House that is in transition: nobody knows what will be done. But if I had to bet, when Members of Parliament are seriously asked about this Royal Commission, there will be a cross-party majority voting for a substantial elected element. I would be deeply shocked if they came out with anything else. This Royal Commission is composed of people who have an established interest in the existing system. Five of them are members of the House of Lords; one of them will be one if he wants to; some of the others may become members of it. It is quite a useful indicator of the sort of choices that will face us over the next few years, but, given that your remit is to look at the House of Commons as it is, I

suppose -

93. **Lord Neill:** House of Lords.

94. **Lord Owen:** Sorry, House of Lords, as it is.

95. **Lord Neill:** We have looked twice at the Commons.

96. **Lord Owen:** Yes. You have had a go at the House of Commons. If you look at the House of Lords as it is, I suppose you will have make a judgement if there is going to be a portion, however small, elected and salaried. My recommendation is that they should follow the House of Commons on all the issues you followed, and if they become a majority, those who accept any other appointed status should probably go with the majority, because otherwise I think it would be slightly invidious.

97. **Lord Neill:** I am going to hand over to Sir Clifford Boulton to question you.

98. **Clifford Boulton:** I would like to pursue a little, if I may, this question of forbidden interests and permitted interests and the sub-division of permitted interests into those that leave you free to do anything you like in the House, so long as it is registered and declared, and those that inhibit you doing certain things in the House.

99. The forbidden area for centuries included being forbidden to undertake any obligation that obliged you to vote or speak in a certain way. It did not have to wait for the Nolan Committee for that to be out of court. But, as you say, the Nolan Committee also said that it is unreasonable and thoroughly undesirable for members to put themselves out for hire to multi-client agencies and to speak for them, acting like a taxi who takes the first person who comes along, so we felt that that ought to be banned. But, after that, I think we felt diffident about saying that Members should have permitted interests that stop them then doing certain things in the House, such as speaking on certain issues or initiating debates, and, as you know, the House of Commons has gone down that line. We identified one area where we thought specifically it had gone too far.

100. Do you think that the mandatory part of the Lords' register should make some kinds of consultancy forbidden? Should it forbid certain obligations that peers are currently allowed to have in acting for multi-client agencies? Once you have got into the permitted area, should that subsequently restrict the sort of things a peer can do or, once he has a permitted interest, should he be allowed to take full part in all the proceedings of the House?

101. **Lord Owen:** I have said that I agree with the original Nolan recommendation, but I think that, the House of Commons having rejected it, it is pretty difficult to insist that it is now done by the House of Lords. If I was a member of the Committee, I would reiterate my earlier recommendation, and it is then up to the House of Lords to determine whether they wish to follow it. But I think the House of Commons made a mistake over this.

102. **Clifford Boulton:** But do you think there are certain interests that peers can currently have in relation to consultancies which you personally think are improper?

103. **Lord Owen:** I have no knowledge.

104. **Clifford Boulton:** I see, so because they are not fully defined and explained and registered, it is not possible to know the kind of contract that they are under.

105. **Lord Owen:** No. They are under an obligation of honour and decency, and I am sure that most, if not all, of them follow that, but I do not think there should be any doubt about that element of parliamentary lobbying. There is always a question of judgement on these financial questions, and there I think there are dangers in drawing too tight a regulation anywhere. In the House of Commons you have this person who is responsible for monitoring the whole thing, and that, I think, helps them, because they are dealing with it as a very serious question. I would not personally extend that person's remit to the House of Lords or create another one for the House of Lords. Because of the lack of power, basically, in the House of Lords, and not least the fact that they do not get involved in financial matters - Treasury matters - I would leave that to their judgement, and they, by and large, justify that confidence. You had to go into the House of Commons because they had not justified your confidence. I think the House of Lords can reasonably be given the benefits of any doubts. They have conducted themselves broadly, over the years, reasonably well in this particular area, it appears.

106. **Clifford Boulton:** You are very dismissive of the sum total of the House of Lords' power, but is not the personal right to vote on legislation as it is going through a significant power that is given to an individual peer? One does not have to cite instances such as the War Crimes Bill to realise that the House of Lords, as far as the House of Commons is concerned, has made a great nuisance of itself. It is a very serious right, as you say, and it is almost impossible to explain internationally that there is this difference. Should there not, therefore, be at least openness about all peers and their interests?

107. **Lord Owen:** I personally fill in the form that declares all my interests and I would have no objection to your recommending, and I would personally vote in the House of Lords, that we should all do the same. I have done it in the House of Commons all my life; I have no reason to stop doing it now. If you decide that we should say how much we are paid, I do not particularly mind. Most of my appointments are public appointments. You can just look up the company and see how much I am paid by the various companies and places I am involved in. But youwould be starting down this road of thinking that you have to order everything, that there have to be rules for everything, which in my view is part of the intrusiveness of the state: you do it when you have to do it. You do not have to do it in the House of Lords at the moment and I do not think that there is a strong enough case to do so.

108. Pure uniformity for its own sake seems to me not wise. They are different chambers, and they would be different chambers even if it was an elected chamber. Nevertheless, for reasons that I do not want to go on about, I think you then deal with it in the same way. But I personally think that, in public standards, you can get to a stage where too many rules interfere with people's judgement, and a lot of these questions are a judgement. It is much better, in my experience in public life, to put people on notice of good behaviour, and I think they then exercise it, whereas if you have everything done by rules, they start getting away with it.

109. I know it is a very difficult thing. I am not arguing against the Committee either being established or its record. I think you have achieved quite a lot in a short time, and it was necessary to do so.

110. **Clifford Boulton:** You are quite right in saying that we are anxious about proportionality being applied to many of the areas in which we make recommendations.

111. Can I talk a little bit about sanctions, which are seen to be very few in the House of Lords and fortunately, also, at the moment very few cases appear to call for draconian reaction? I take it that you are in favour of the introduction of a criminal offence of bribery and corruption as far as parliament is concerned -

112. **Lord Owen:** Yes.

113. **Clifford Boulton:** - which of course is a tremendous invasion of the ancient obligation of privilege of both Houses to attend to such matters and discipline their own members. Will there then not be the most enormous gap between a member of the House of Lords appearing in the courts and being subject to imprisonment and what have you, and all the other potential offences that fall short of the standards that the House is entitled to expect, which cannot be proceeded against in any way?

114. **Lord Owen:** The House of Lords does have a mechanism for questioning anybody. If a breach of its code of conduct, or any other obvious breach, came before it, they would be called by their peers in the Committee. I know it is arguable - I gather that "questionable" is the wording - whether you have the power to suspend. I would not seek legislative power to exclude them from the House of Lords, but whether or not to suspend them I am not sure. I assume that you do have the power; let somebody challenge you, it seems to me. If I was on a Committee and somebody had done something very dire, I would not hesitate to vote to suspend them from the House of Lords, and then let that person challenge it: they are not going to. You may feel that you should tidy this issue up and make it clear beyond peradventure that you have the power of suspension. It is up to you. Personally, I think that the House of Lords is responsible for its own rules and would effectively suspend somebody, and nobody would question it. I think that one can get too detailed and legalistic on a lot of these things.

115. **Clifford Boulton:** Yes, but in principle you are not against there being a power to discipline members who have let the House down sufficiently seriously?

116. **Lord Owen:** Yes, I think suspension is a very sensible mechanism. It has worked quite well in the House of Commons and should be available in the House of Lords, if needed.

117. **Ann Abraham:** Lord Owen, you were very helpful in your written submission by giving us some straight and clear answers to our question. You said

> "A generalised Code of Conduct would be in keeping with the times",

but you were also very clear that there should be no Parliamentary Commissioner with investigative powers in the House of Lords. I am just trying to understand what mechanisms you see in place for upholding standards, as set out in the code of conduct.

118. **Lord Owen:** It is a pretty public place. You have only to see what has happened over the last 24 hours. The judges interpret membership of the House of Lords as carrying certain obligations. Therefore, you cannot hide behind normal privacy

laws and the normal rights of privacy. I think that is right. You are to that extent in the public line, but in my judgement, not quite as much as in the House of Commons.

119. **Ann Abraham:** So no structural arrangements or different arrangements from previously?

120. **Lord Owen:** No, I would not personally. If you were to get into a situation like we got into in the middle-80s, you might well come back on this recommendation, but I would not do it at this juncture. My presumption would be that it would not be necessary.

121. **Ann Abraham:** Thank you.

122. **Lord Neill:** Thank you, Lord Owen, for answering all our questions. We are grateful to you for coming.

123. **Lord Owen:** Thank you.

124. **Lord Neill:** Our next witnesses are Professor Robert Hazell and Ms Meg Russell. Thank you for coming. We are grateful to you. Is there anything you would like to say by way of an opening statement?

PROFESSOR ROBERT HAZELL AND MEG RUSSELL

125. **Professor Robert Hazell (Director, Constitution Unit, University College, London):** Very briefly, if I may, Chairman and members of the Committee.

126. I start with an important disclaimer. We are not experts on ethics or codes of conduct, regulatory frameworks and the like, and I hope that the Committee understands that. We do have an interest in the transitional chamber and indeed we are planning to do research on the transitional chamber, so we have come to answer questions about the wider context. In connection with that research project, which is still at the planning stage, it would be very helpful to us if the Committee, during your enquiry, identified things that you think should be monitored in the transitional chamber, either by collecting statistics or to be explored in the interviews that we are hoping to conduct as part of that project, because that research has not properly begun: we are still defining the agenda. To that end, we held a private seminar three months ago, on 30 March, to discuss with peers and a few of the small band of academic experts who take an interest in the House of Lords what we should be studying in the transitional chamber. I think, Lord Goodhart, that you were present at that seminar.

127. **Lord Goodhart** nodded.

128. **Robert Hazell:** Yes. So very briefly, just to conclude my opening remarks, may I mention four of the key points that emerged from that seminar?

129. First, the Government will probably never have a majority in the House of Lords - in the transitional chamber - so long as the convention that has been developed by Labour about the party balance continues
to be observed.

130. Second, as a corollary of that, the swing vote in the House of Lords now belongs with the cross benchers, currently some 24 per cent of the total number of peers, and with the Liberal Democrats, currently some 9 per cent. Their votes in effect will determine, on every vote, whether the Government wins or loses. One part of the research that we are planning to conduct will focus in particular on the cross benchers.

131. Third, the transitional chamber is already showing signs that it feels itself to be more legitimate than the old House of Lords and that it may be more prepared to vote down the Government. One instance of the transitional chamber flexing its muscles was when it voted down a statutory instrument - the Greater London Authority (Election Expenses) Order - in February of this year. As you will know, there had been a belief on some benches in the Lords that, although the Lords has power to vote down statutory instruments, by convention the power was never exercised. But it was, just four months ago, and it was the first time that a statutory instrument had been defeated in that way since 1968.

132. Lastly, on the dynamics of the chamber - here I am straying more into comment that is not yet based on any firm evidence - it is our speculation that the House of Lords is becoming more tightly whipped, and in future will be more tightly whipped, because of the party balance that I have described. Flowing from that, we believe there is, and will be, growing pressure on peers to attend. The part-time House is becoming, gradually, more of a full-time House. We can see that also in that we believe a higher proportion of new appointments is likely to be working peers and will be asked by the parties who nominate them to give undertakings, which may not be enforceable in practice, about attendance.

133. Those are just some of the features that I wanted to bring out about the characteristics of the transitional chamber.

134. **Meg Russell (Senior Research Fellow, Constitution Unit, University College, London):** Could I add a few words to that? I hope to be involved in the research on the transitional chamber and was the organiser of that seminar. Dependent on funding, I hope that I will be the lead researcher on the project. But my work to date has been comparative, looking at second chambers overseas and how they compare to the current House of Lords and should inform future reform. I believe that you have been copied a chapter from my book.

135. **Lord Neill:** Yes. We have got it. We have read it.

136. **Meg Russell:** That is the overview chapter, which looks at chambers all round the world. Most of the book focused on seven second chambers - in Australia, Canada, Germany, France, Spain, Italy and Ireland - and it might be worth pointing out a few of the characteristics that make the House of Lords unique in comparison to second chambers in other places.

137. It is very unusual, at least in Western democracies, in that it is largely appointed. The Canadian Senate is the only wholly appointed second chamber in a Western democracy. It is very unusual in that its members serve for life rather than for a fixed term, although there are a small number of life members in some chambers. The one that I looked at was Italy. It is very unusual for having a large number of independent members. Some chambers have a handful of independent members, but, as Robert said, the fact that the cross benchers, together with the Liberal Democrats, now hold the political balance of power is a very important factor. A comparison of a kind can be made with Australia, where independent members hold the balance, but there tend to be two or three of them, rather than about 200, as we have here. Also relevant to this investigation is that it is unusual in that members of the House of Lords tend to have links to outside bodies. They are often put in the chamber for their expertise outside the party system, although many of them represent parties. The only useful comparison there is the Irish Senate, which is supposed to be based on a corporatist model.

138. Crucial to this investigation, the House of Lords is very unusual in not paying its members a salary. All seven of the chambers that I looked at had salaried members. The members of the German Bundesrat, who are Ministers from the states, are paid salaries in their states, but in the remaining cases the members are paid parliamentary salaries, and in all but one of them the salary is identical to that in the lower House. Alongside salaries go other benefits, such as pensions when people retire from the House, as they do in other places but not here. There are allowances for staff and allowances to party groups, which in some cases are quite generous. I outline those arrangements in chapter 5 of the book.

139. None the less, some features of the House of Lords are common to second chambers. It is quite usual for the upper House to be seen as more expert than the lower House. Upper Houses tend to work shorter hours than lower Houses, and their members tend to have less or no responsibility for constituency work. These two factors mean that often members of the upper House have more outside interests than members of the lower House.

140. To back up what Robert said, while I am not an expert on regulations at Westminster, I hope that I will be able to help by giving your investigation some international context and also by contributing some well-informed guess-work about how the chamber might develop.

141. **Lord Neill:** Thank you very much.

142. **John MacGregor:** Good morning. You mentioned that you are not experts in ethics, but it is inevitable, given the thrust of our enquiry, that that is the angle that we are looking at. The other preliminary comment that I would make is that we are looking at the House of Lords as it now is, not as it might develop, although your comments on how you think the transitional chamber will be are very interesting. I shall leave to Lord Goodhart the issues of overseas experience and anything that we can learn from that.

143. Could I start with the differences between the House of Commons and the House of Lords as they now are? We are getting quite a lot of evidence, in response to the written evidence, drawing attention to these differences and saying that therefore it has a big impact on the way in which you look at the Register of Members Interests and all the issues that we are concerned with - unpaid, the point that you raise, nothing like the same power or effectiveness over the Administration, no constituency link, no direct contact with the electorate, so not the same accountability, and also the importance of having the wide range of expertise and wider interests, to which you referred, in the second chamber. Those are the sort of issues that are being put to us. Do you think that they lead to taking a different approach to standards, the register and all those sort of issues?

144. **Robert Hazell:** In terms of the fundamental difference between the Lords and the Commons, formally the Lords is the subordinate chamber. It is the second chamber, and rightly so called, but its formal powers are not that dissimilar from those of some of the second chambers that Meg studied in her comparative study of second chambers overseas. What is very striking

about the Lords as was is how rarely it was willing to use its formal powers because of its sense of its own lack of legitimacy. I readily understand that you are now studying the Lords as is. The difficulty for you and for us is that the Lords as is is only nine months old, and it is still early days to say what the dynamics of the new transitional chamber will be and how willing it will be more fully to exercise its formal powers. I mention that because, in the past, votes in the Lords have not been politically that important. They may become more important if the Lords is willing more frequently to exercise its power and to vote down Government proposals. Formally, the Commons in effect has the power to override the Lords, ultimately by using the Parliament Acts. Again, we do not know what the dynamics will be between the two chambers. It will be interesting to see towards the end of this session how some of the Government Bills fare.

145. Of course it is right that the Lords has no constituency interests. I have a sense that on some issues - the voluntary sector and charities may be a good example - because of the greater expertise that is seen to lie in the House of Lords, it might be more intensively lobbied by outside groups than might the Commons. That may not be the only example where the Lords may be a more likely target of lobbying than the Commons.

146. **John MacGregor:** Does that lead you to any views about the issues of ethics - the register and so on - as to whether there should be changes in the House of Lords?

147. **Robert Hazell:** It is very difficult for us. We are really not expert on this. In the light of what I have said so far, I would not expect a register or set of rules in the Lords to be that much looser than what applies in the Commons, but I say that very tentatively, not being expert on the rules in either House.

148. **Meg Russell:** I am not sure to what extent your conclusions about the Lords will want to be different from your conclusions about the Commons. Unquestionably, the House of Lords is different. Crucial issues include the lack of salary and allowances, the fact that there are a large number of cross-benchers in there and the fact that people are in there for life and cannot retire, and therefore are dependent on outside income, not just for a short period but over a lifetime. I think that the party balance in the Lords, where, as Robert says, the outcome of votes will now be less predictable, will put members of the Lords under an increasing spotlight. We are already seeing more media interest in the Lords and, if the Government suffers many defeats, we will see members of the press unpicking votes that have occurred and asking who these individuals were, particularly on the cross benches, so questioning their motives for voting in particular ways.

149. Another important difference between the Lords and the Commons is that members of the Lords have very little formal accountability and there is very little way of sanctioning them. They are not subject to party control in the way that members of the lower House are and they are not subject to sanction from constituents, who can vote them out if they behave in inappropriate ways. Therefore, you are certainly operating in a very different environment here. As to the conclusions, that is a lot more difficult.

150. **John MacGregor:** Can I just take up that point? If the Lords does develop in the way that you are suggesting and there is more willingness, particularly by the cross bench element, to vote against the Government, possibly successfully, and if also there is increased lobbying activity on the charitable side or elsewhere, would that lead you to the view that the Lords should have a mandatory register of interests in that sector which is voluntary at the moment? You know that the register is split into a part that is mandatory, which is mainly to do with lobbying, and the rest is, on the whole, voluntary.

151. **Meg Russell:** My tendency would be to say yes. I think there are different issues here. There is the issue of Members' paid outside interests, and it is difficult perhaps to police that as harshly as you could in the Commons, because Members are not paid a salary. Personally, I would pay them a salary. I think that would be a big part of the answer, but maybe that is outside your remit. Then there is also the pure issue of transparency. I would have thought that part of the answer is to make it more transparent which interests Members may be representing when they carry out their parliamentary duties.

152. **Robert Hazell:** I agree with that. The bottom line, surely, is that peers in the House of Lords are legislators, and therefore I think it is in the public interest to know, when they cast a vote on any issue, whether they may be pursuing interests of a private kind that might influence that vote.

153. **John MacGregor:** Does that lead you to agree with the House of Lords Sub-Committee on Registration of Interests in 1974, which said that the fact that the members of the House of Lords were unpaid was irrelevant because

> "responsibility and registration of interests should go with power and not with the payment of salaries"?

154. **Robert Hazell:** Yes, I think it follows. I am not an expert on the 1974 report, but I think that your conclusion is correct.

155. **John MacGregor:** Looking at the way in which the House of Lords has developed, particularly since the changes, do you detect an increase in lobbying activity?

156. **Robert Hazell:** Forgive me, I have to say "Pass".
We do not know enough about it. Do you, Meg?

157. **Meg Russell:** No. I would say that members of the House of Lords are in a far better position than we are to comment on that.

158. **John MacGregor:** You may say the same about the next question. How do you feel the current code is operating - the code of conduct and the registration - and are there any recommendations, beyond those that we have briefly discussed, that you would wish to make?

159. **Robert Hazell:** Again, I am sorry. We really should not try and answer, or bluff our way through, questions where we have no evidence or information.

160. **Lord Goodhart:** We are clearly in an interim stage now. We have a transitional chamber, which might last for some years to come, and we have uncertainty as to what will follow it. That gives rise to two important issues. Will there be elected members of the House of Lords? If so, how many? Will members of the House of Lords, or some of them, be paid? If so, how much? Would it be valuable for us to speculate about what the rules might be in those new conditions or do you think it is so uncertain that we should look only at the House as it now is?

161. **Robert Hazell:** If the proposals that you have mentioned from the Wakeham Report were to be implemented, possibly in the next parliament, they would simply strengthen some of the tendencies that we have already described in the transitional chamber. If a proportion of the House of Lords were elected, the
starting presumption must be that they would be elected to be full-time members of the House of Lords.

162. **Lord Goodhart:** And paid.

163. **Robert Hazell:** And paid. So they would be a cohort of full-time working peers. They would add to the tendency that I described on pressure to attend and the House gradually becoming more of a full-time rather than a part-time chamber.

164. **Lord Goodhart:** So you would see our proposals for this transitional House as a possible stepping stone on the way to something more detailed in the future?

165. **Meg Russell:** I would suggest that you will have to re-examine the matter when any reformed chamber is put in place, because it is very difficult to speculate even what form that chamber will take at the moment, isn't it?
There are such a huge number of factors in the Wakeham Report, and potentially outside the Wakeham Report - recommendations that may be adopted but were not made by Wakeham - that it is really hard to call.

166. **Lord Goodhart:** Could I pick up one point that I think Professor Hazell made earlier, and that is whether the House of Lords, as it now is, could in some circumstances be a more attractive target to lobbyists than the House of Commons? Do you think that is the case?

167. **Meg Russell:** Some members of the House of Lords can give more time to their true parliamentary duties than members of the House of Commons. We know that members of the House of Commons are very much tied up with constituency work, media work and so on. In that sense I think the House of Lords is perhaps attractive in terms of the individuals in it. Given that we now have a new party balance and a growing sense of legitimacy in the chamber, I think that, over time, lobbyists will feel that members of the House of Lords are perhaps more inclined to stand up and intervene in legislation in a way that they have not done in the past, so I think that the pressure will grow.

168. **Lord Goodhart:** One question that may be a bit unfair is that one of the differences between the two Houses is that if a back-bench peer puts down an amendment to legislation going through the House of Lords, that amendment is certain to be called and the peer will certainly have a right to speak on it and, if he or she wishes, to divide the House on it, which of course is very different from the House of Commons. How far do you think that might be a relevant factor?

169. **Robert Hazell:** It is very relevant, and of course there is this very big difference between the two Houses in terms of the outcome of Divisions. I believe that, as of this week, there have been some 930 Divisions in this parliament in the House of Commons. Every single one of those has been won by the Government, with a majority of never less than 40. The Committee, I am sure, will have the useful little set of vital statistics that the Commons Library issued last week. From memory, those say that roughly 30 per cent of all Divisions in the Lords lead to a Government defeat. Therefore, if you are a lobbyist and you want

to vote down the Government on any particular issue, clearly the chances of success are very much higher in one chamber than in the other.

170. **Lord Goodhart:** Have you looked at, for instance, the Commons' rules of conduct? The code of conduct and the guidance on it are really quite elaborate. How far do you think anything of that nature would be appropriateto an interim House, or do we want to look at something which, as people have said, involves a lighter touch?

171. **Robert Hazell:** Forgive us, we really are not experts on this, and, I am sorry, we have not done any homework on the rules of conduct, because we thought it would be wrong to mug up on it and pretend to be experts when we simply are not.

172. **Lord Goodhart:** Is there any guidance from the rules about disclosure in other second chambers?

173. **Meg Russell:** I am afraid I do not know an awful lot about that either. It is not a feature of second chambers that I looked at when I was conducting my study. The only example that I know about in any detail on that is Canada, where, as I said, the second chamber is appointed and is perhaps the best comparator to the transitional House here. I know that the Senate is less regulated than the House of Commons in Canada, although I do not know the details of how either is regulated, but I know that that has been a bone of contention in Canada. TheSenate is held in very low esteem, I think it is fair to say, for a number of reasons.

174. One thing that has added to that to some extent, although I do not think it is the predominant reason by any means, is that there has been an allegation that the Senate is a lobby from within. A book by a Canadian scholar published in 1978 suggested that it was a lobby from within for primarily business interests, and I think that that has been quite damaging to its standing. Perhaps that is something which, through your work, you will be able to ensure that we avoid here.

175. I think that it would be worth speaking to the authorities in the Canadian Senate about the debates in recent years on regulation of the upper House, because the model there is quite similar to here, and they are certainly very helpful in providing information.

176. **Lord Goodhart:** One thing that a lot of witnesses have said to us in their written submissions is that self-regulation in the House of Lords works well, has worked well in recent years and is something that we should aim to keep. Do you see it coming under any pressure, either at this stage of the transitional House, or in a future, perhaps partly elected House?

177. **Robert Hazell:** Yes, I think it will come under greater pressure as the Lords comes a little more under the spotlight. One of the characteristics of second chambers in terms of their being the subordinate chamber is that they operate much more away from the media spotlight than does the first chamber. The Lords, again, is fairly typical in that respect. But if we are right that votes in the Lords will become more important as it becomes more willing to vote down the Government, the Government, increasingly, may challenge or criticise the Lords for, in effect, daring to obstruct the will of the elected chamber. We have already seen the occasional remark of that kind by frustrated Ministers. That may lead in future to a more sophisticated analysis than in the past of a breakdown of votes in the Lords.

178. I was intrigued to see that the only breakdown of votes that the House of Commons paper on vital statistics offered was the breakdown between hereditaries and lifers, which I thought was rather backward-looking. I think that in the transitional chamber the debate and the controversy will move on and that when people focus on "How come the Government lost that vote?", they will look in particular look at the swing group of voters that we mentioned - the cross benchers and the Liberal Democrats - and how they voted. I think that there the distinction between hereditaries and lifers becomes rather immaterial

179. **Lord Goodhart:** It might also be important to look not only at the swing voters but at the level of turn-out on whip from each party.

180. **Robert Hazell:** Yes.

181. **Meg Russell:** Of course one of the things that the House of Lords has been known for is its greater degree of cross-voting, even among members who sit on the party benches. I absolutely agree with what Robert said, particularly in relation to the cross benchers, as I have said, but, where people break their Whips, there may be closer scrutiny of why they did so.

182. Basically, the bottom line is that, following this recent reform, the House of Lords matters more. The party balance has entirely changed the dynamic, even if that has not fully fed through yet. The change to the party balance, so that neither of the main parties has overall control, and the consequent growth in the legitimacy of the chamber mean that it will be under far greater scrutiny, and its individual members will be under far greater scrutiny for their individual behaviour.

183. **Lord Goodhart:** If I can go down a slight historical bypass, I suppose you could say that, originally, the idea was that the House of Lords represented their own interests as the magnates of the kingdom. That is something that has modified steadily, and, with the disappearance of most of the hereditaries, we have now ended up with a situation completely different from what it was a century ago. Is that something that justifies a higher degree of public interest in what the members of the House of Lords stand for, where they come from, what their backgrounds are?

184. **Robert Hazell:** If your historical reference means that the archetype of the hereditary peers was a group of major landowners who could always be expected to turn out and debate deer hunting or fishing and people knew - or, rightly or wrong, thought they knew - what interests those landowners were then representing and defending, now it is much harder to know what interests the present peers are representing and defending, because they come from much more varied backgrounds. As Meg has been saying throughout, because they are unpaid for their work in the Lords, many of them rely on other sources of income.

185. **Meg Russell:** The House of Lords is a chamber where members are largely appointed for their expertise in particular fields outside the world of politics, although many of them obviously are active in their parties as well, and that is one of the things that people value about the chamber to a large extent.

186. But there are two primary problems which make this a very complicated matter for you to investigate and for one to make conclusions about. One is the fact that members are not paid, and therefore many members are forced to retain paid interests outside the House simply to pay their mortgages. The other is that the House of Lords to some extent, in an informal way, is a kind of corporatist chamber. There is an understanding that the professions are represented in the chamber - lawyers, doctors, the scientific profession and so on - but there is a lack of transparency and a lack of regulation of how those different interests are balanced and what each individual is there for.

187. I think that one of the good things in the Wakeham Report is the proposal for far more regulated appointments and an appointments commission, which would have the responsibility for ensuring that there was a balance between these different groups. I think that it would be beneficial to make it far more explicit why individuals have been appointed, what expertise they are there to represent. One of the things that I imagine you might be able to look at is to what extent different interest groups are represented and what the balance is.

188. **Lord Goodhart:** One final question: it could be said that a voluntary register of interests presents the worst of both worlds: it gives an impression of disclosure when in fact enabling those who do not want to disclose their interests to conceal them perfectly legitimately. Is that a fair comment or is that going too far?

189. **Robert Hazell:** Again, I suppose we should not volunteer a comment, because we do not know enough about how effective the voluntary register of interests is. By definition, because it is voluntary, no one knows how big the unknown side of the equation is.

190. **Lord Neill:** Can I ask a historical question, to which I ought to know the answer but do not? It is about the use of the Parliament Act. If one took it from 1911 to today, has its use increased recently?

191. **Robert Hazell:** Its use is so infrequent. Was it used for the Parliament Act 1949 itself?

192. **Meg Russell:** Yes, and then for the War Crimes Bill.

193. **Robert Hazell:** And then for the War Crimes Bill in 1990 and then, most recently, for the European Parliamentary Elections Bill in 1998 - well, 1999 was when the Bill was introduced in the second session - and it has come close to being used a couple of times under the Labour Government of the 1970s. One issue was aircraft and shipbuilding nationalisation. In the event it was not. But it is very rare.

194. **Lord Goodhart:** It is in the process of being used now, I think, on the Sexual Offences (Amendment) Bill to reduce the age of consent.

195. **Robert Hazell:** Yes.

196. **Lord Neill:** The thought that I had in my mind was that, once you have a House of Lords that regards itself as more legitimate than before, for the reasons that you gave, and given the voting figures and the document to which you referred, is there a possibility of much more frequent invocation of the Parliament Act and that factor leading to a very awkward relationship between the two Houses if it is used quite frequently?

197. **Robert Hazell:** I think there is a possibility of its more frequent use. Meg has done quite a lot of work in other countries

on ways in which houses resolve their differences. I do not know whether you want to add anything about that.

198. **Meg Russell:** I do not know whether you need to know, to be honest. If you want to know, I am happy to go into it. This is the first session in which the transitional chamber is operating. We are already seeing a large number of Bills stacking up. The parliamentary programme, as many of you know, is very crowded, and there have been some controversial defeats, so I think the autumn will be very sticky and that may set the tone for future years, but it is a bit early to say.

199. **Lord Neill:** You have written something about what you call dispute resolution, haven't you, where you get a conflict between the two Houses?

200. **Meg Russell:** That is right, where many second chambers have joint committees between the two chambers, for example, to negotiate, but at the same time in many countries the lower House can override the upper House much more easily. There is a range of models.

201. **Alice Brown:** I have two questions. The first one relates to a number of points that have come back again, and I want to clarify for my own mind some of the things that you have been saying.

202. The first one is in connection with the various factors that we have identified that distinguish the House of Commons from the House of Lords. It was my impression from discussion, as it evolved, that the closer we get to convergence between the two Houses, the closer you feel that the regulations with regard to standards in the House should also be closer. Would that be a correct assumption?

203. **Robert Hazell:** For my part, yes.

204. **Meg Russell:** I think so. I hope the two Houses are not converging too much; it is very important that they remain distinct, but yes.

205. **Alice Brown:** But the clear criteria that you identified in terms of powers, legitimacy, element of election and so forth, so as we move closer in that direction, we can make certain parallels.

206. The second one relates to the point that you made about principles. When you were talking about general reforms of the House of Lords, I was struck by the fact that you referred a number of times to the principles of transparency and accountability. If those principles apply to reforming a chamber, should they also apply to the regulation of standards in that chamber? If not, what principles should underpin the regulation of standards?

207. **Robert Hazell:** Again, I think they should.

208. **Alice Brown:** Would you like to add any others?

209. **Robert Hazell:** None come to mind. The points you have been making I think summarise very well the general gist of the evidence we have been giving, which is that the Lords is becoming more effective, it is exercising greater political power. We do not know, in the transitional chamber, how much greater its sense of legitimacy is, but it undoubtedly is greater. The more the Lords is a place that exercises effective political power, the more it follows that in everything that it does and in everything that its members do as members of the House of Lords - as legislators - their actions should be transparent and accountable.

210. **Meg Russell:** I think that is right. I would make the point that, while we have spoken about the legitimacy of the chamber having grown since the hereditary-dominated chamber, that legitimacy is very delicate. Because the chamber is appointed and people have problems about the way in which it is appointed, I think that that legitimacy could be shot down quite easily. The point that I made about Canada was that if members of the public feel that things are going on in the chamber that they do not trust and that people are representing interests that are inappropriate and are being driven by financial motives, the chamber's legitimacy may quickly be on the decline, and I do not think that that is a healthy thing for parliament.

211. **Alice Brown:** So public confidence is a crucial factor for you.

212. **Meg Russell:** In any chamber, I think, but particularly in one which is appointed, public confidence is critical. Otherwise there is every possibility that the chamber will simply not be taken seriously and will not be able to carry out its parliamentary role effectively.

213. **William Utting:** One of the questions for the Committee is whether, in the light of the changes that you have described and the substantial change in the composition of the House of Lords, a system based on personal honour is likely to be sustained. Is that now something that we can no longer depend on in the major institutions of our society?

214. **Robert Hazell:** Picking up on the points that Meg was making about public confidence in the institution, sadly the answer probably is no. It would only take one breach that received a lot of publicity for the whole institution, possibly unfairly, to be tarnished.

215. **William Utting:** On the more positive side, I think you said earlier that people who are participating in the business of legislating for the rest of us should make it clear where they are coming from, so to speak, on most of the issues with which they are dealing. Do you think that that is the central argument for transparency and disclosure? Are there any arguments that people might set against that - any considerations about personal privacy, for example?

216. **Robert Hazell:** If a legislator is speaking and voting in a debate, he or she must declare, either through the register or in the debate, whether they have any interests that might affect the views that they are putting before the House or the way that they vote. I think that personal privacy must give way to that stronger public interest.

217. **Meg Russell:** I think that is right, but I do think there is a difficulty - it was highlighted in your consultation paper and I think was a comment made by the 1974 Sub-Committee report - that many members of the
House of Lords were there involuntarily. You say in the paper that this situation has changed, but it has only changed to some extent, because once you have been appointed, you are then there involuntarily: there is no opportunity to retire. If you stand for the House of Commons, for the period that you are there you will be expected to disclose fully. Once you are in the House of Lords, you are there for life, and that is perhaps a little more difficult to police, although I think that these are two of the things that you will have to marry up, because at the same time I completely agree with Robert that full transparency is necessary if people are to have confidence in the Chamber.

218. **William Utting:** Declaration of interests is now such a common feature of the majority of public institutions that it seems extraordinary, in a sense, that it should not apply to this part of the legislature as well as to all the others.

219. **Meg Russell:** Personally, I think that the chamber would be very much improved if people were paid some form of salary that did not make them dependent on outside interests and also if they served fixed terms, so that certain behaviour could be required of them while they were there, but then they could get on with their lives at some point afterwards if they chose.

220. **Clifford Boulton:** Do you have any information about the sanctions that second chambers enjoy around the world in the process of self-regulation and their members' rules of conduct?

221. **Meg Russell:** I am terribly sorry, I do not. It really was not a feature of second chambers that I investigated.

222. **Clifford Boulton:** Thank you.

223. **Lord Neill:** Thank you very much, Professor Hazell and Ms Russell. Thank you for coming. It has been very helpful and very interesting, and I hope you do not think we have asked unfair questions.

224. **Robert Hazell:** Please forgive us for ducking so many of them about regulation.

225. Can I just mention, in closing, that we are hoping to do this piece of research on the transitional chamber for some years to come? I know that the Committee is becoming much more interested in research, so if there are issues that you feel it would be useful systematically to have monitored or explored after your inquiry is concluded, because, as came out in the exchanges with Lord Goodhart and John MacGregor, this may be something that you want to revisit in years to come, I hope you will convey to us what you think those issues are, and we will try to include them in our research.

226. **Lord Neill:** Thank you very much. We would be very willing to do that.

227. **Meg Russell:** Thank you very much, and the best of luck with your investigation. It is a very knotty problem that you have to deal with.

228. **Lord Neill:** That is a wise remark. Thank you.

229. **Lord Neill:** Good morning, Lord Archer. It is nice to see you and thank you for coming. You have written a paper answering the Issues and Questions paper, and that will form the basis of what we want to ask about.

230. Our procedure is that two members of the committee put questions, but before we start in on that I should like to give you the chance to say anything by way of an opening statement if you would like to do that - anything that has come up since you wrote what you did.

231. **Rt Hon Lord Archer of Sandwell QC:** I do not believe that any introduction from me would be particularly helpful, my Lord, but I am happy to answer questions.

232. **Frances Heaton:** Looking at the letter that you sent in, the first main point to which you have drawn our attention is the importance of the fact that the members of the House of Lords are unpaid. Can I ask you to comment, therefore, on the finding of the 1974 report on registration of interests which said that the fact that members of the House of Lords were unpaid was irrelevant?

233. **Lord Archer:** I wholly agree that the purpose of the whole exercise is concerned with people modifying their contributions or their vote or their conduct because of an expectation of some benefit. In that sense, of course, it does not matter where the benefit comes from. I believe that there are two distinctions.

234. If I may deal with what you may think is that of lesser importance first, a requirement to register interests is necessarily intrusive. It may still be necessary to introduce it, but it is bound to be intrusive to some extent. People who are paid a salary for what they are doing may accept that rather more readily than people who, at least in their own perception - and I think in fact - are there simply voluntarily to assist in the public interest.

235. There is this difference, too. Most members of the House of Commons these days do not earn livings outside because they are pretty full time in the Commons. Many members of the Lords necessarily have to earn a living outside if they are in that age group. And so the disclosures that they would make would be substantially more lengthy than the disclosures that are normally found in the Register of Interests of the House of Commons.

236. There are those two distinctions as to the impact that it would make. What is perhaps most important - and I made this point in my final sentence - is that what is vital is that members of the House of Lords should accept cheerfully and co-operate in the necessity for some standards of disclosure. It seems to me that the worst of all possible outcomes would be if you were to make a recommendation which the Lords then rejected. For that reason it is important that the presentation, at least, and possibly the content should try to ensure that there is not too wide an alienation among some of those who perhaps are less ready to accept change. So those who see themselves as simply volunteering their services in the public interest should not be too readily told that they must then suffer substantial intrusions into what they regard as their own business.

237. **Frances Heaton:** There is a sort of spectrum of people from those who come from the more traditional end through to the working peers and then those who actually hold Government office. Do you think there is any scope for distinction in requirements for the different categories?

238. **Lord Archer:** For other reasons I personally would oppose having distinct classes or categories of peers. When we are there our powers and the expectations and standards we are expected to observe should be the same for everyone.

239. **Frances Heaton:** There has been a suggestion made that, in the event of increased disclosure requirements, if a peer did not want to disclose he should be permitted not to do so, provided that he or she did not speak on that matter. Do you think something along those lines would he helpful?

240. **Lord Archer:** I certainly would not oppose that. I would assume that any peers who were speaking on a particular matter would disclose orally then and there any specific interests that they might have, and so it could be argued that unless they were speaking repeatedly on a particular subject, disclosure in a register would be perhaps less important.

241. **Frances Heaton:** Do you think there is any need for us to take into account the point to which you referred about the public mood as to what is required in the way of disclosure? Do you think that is changing and becoming more demanding?

242. **Lord Archer:** I believe it is. The important aspect in which it is changing is perhaps not so much that people are more suspicious of the House of Lords. In my experience, there is no great suspicion out there of major corruption in the Lords. I believe there is a feeling that where there may be some reason to suspect an undisclosed scandal, people are more ready to believe the worst. At one period they would give the benefit of the doubt to politicians in either House; now there is a feeling that if there is something that generally produces smoke we should look very hard to see what the fire is. For that reason, where there is doubt as to whether something should be disclosed, it would be wiser to disclose it at the outset.

243. **Frances Heaton:** Does that lead you to a preference for having a more formal requirement on the third category of disclosures, which at the moment are voluntary?

244. **Lord Archer:** On reflection, I probably would prefer rather more detailed rules than we have now, but, in my experience, they give rise to some concern among members of the Lords.

245. May I seize this opportunity to say that what I said about Mr Vallance White was certainly not intended as criticism of him or his staff. They are extremely helpful, they are always available and they make it clear that what they are saying on part 3 of the register depends in the final resort on what the member wants to say. There was a feeling at one stage that what some members would want to disclose was said by Mr Vallance White to be something that it is not really necessary to disclose. The more I think about it, particularly having heard Mr Vallance White about the precedents that he has seen in the Commons and so on, I think probably that we were simply a little too fussy.

246. If I may give an example, I once received a presentation from a group of people for whom I once put a case in the Lords. Obviously it was not solicited, but I thought it would probably hurt their feelings if I did not take it. I rang up and asked whether I should disclose it. It was a clock, the value of which was about £25, I was advised. I was a little surprised when I was told no, it was quite unnecessary to disclose it. It is only afterwards that I have appreciated what I had overlooked before: that the cut-off point in the Commons seems to be £125. I am certainly not criticising Mr Vallance White, but it might be helpful if we had a little more in the way of guidance.

247. **Frances Heaton:** Does the fact that peers, once appointed, are there for life lead you to think that there is any special consideration we should take into account in our inquiry from that point?

248. **Lord Archer:** I suppose it might be argued that if there are other sanctions such as the loss of confidence in one's local party or the loss of confidence in one's local electorate, there might be a need to replace those sanctions when they do not apply in the Lords. I am not sure that I would be very impressed by that argument. First, public displeasure depends upon full disclosure anyway: there can be no public displeasure if people do not know the facts. Secondly, I do not believe that it invalidates the other considerations.

249. **Frances Heaton:** You have emphasised the importance of the culture and ethos of the House of self regulation, so your view is that a sanction that will work will be the one of public exposure?

250. **Lord Archer:** Public exposure and peer group - literally peer group - criticism. That is right. I am not suggesting that we should depend entirely on self regulation. We do not now; we have some rules. But it is probably true that if we intruded too far into that culture of self regulation there might be resentment, and that would be a very bad thing.

251. **Frances Heaton:** May I pick up on the point you made about the distinction between speaking and voting. Would you actually suggest that people who have a special interest should not vote on issues? They would declare them but then they would not vote?

252. **Lord Archer:** An argument could be put up for that. I am not sure that I would come down firmly on either side, but an argument could be made. If people are discouraged from speaking on subjects on which they are experts, we might be deprived of a whole range of expertise. That does not apply to voting where clearly they have an interest in the outcome. It could be argued that they should not have a vote on the matter.

253. **Frances Heaton:** That would be a very novel suggestion.

254. **Lord Archer:** It would indeed.

255. **Frances Heaton:** Do you think that there should be any distinction between what is registered in the way of interests and what is disclosed during debates?

256. **Lord Archer:** Yes, that is an important distinction, and the more we discuss it in the House, the more it appears to be important. If someone is only likely to contribute on a particular topic once in a session or once in two or three years, having it on the register seems a little unnecessary, provided that it is disclosed when that person actually speaks on the subject. If there is someone who is repeatedly making a contribution on a certain subject, I would have thought it would be better if everyone knew what that person's interest was and it did not depend on a specific disclosure on each occasion. It is not quite the distinction we have now, but it is the sort of distinction that we might sensibly have in mind.

257. **Lord Shore:** Lord Archer, it is a pleasure to be able to interrogate you. You were a member of the Nicholls Committee. Assuming that the Home Secretary produces his Bill roughly along the lines recommended and it becomes law, how big a contribution do you think that would make to the whole question of possible wrongdoing in the Houses of Parliament?

258. **Lord Archer:** I do not believe that there is a major extensive problem already. In my experience, wrongdoing is fairly infrequent as an occurrence. What it would help to deal with is the problem of either House being seen to pass judgement on its own members. The public would probably ask why there should be a distinction between a member and a non-member. It would also deal with the problem of the House either having to debate something or at least to consider the report of a committee, which does give rise to problems from time to time. I would have thought it was much more satisfactory to do what the Home Secretary has suggested, which is to allow the courts to deal with the matter. There would be a few problems such as double jeopardy and making sure that a matter is not discussed in the House before it is dealt with in the courts, but those problems are not insuperable.

259. **Lord Shore:** You have the advantage of having been trained in the law and being a former law officer. Is there a problem of establishing exactly what is bribery and corruption and what falls short of it but clearly reflects an improper or too easy accessibility to the pressures that come with financial reward?

260. **Lord Archer:** At one stage in my life I was the law officer who authorised all prosecutions for corruption and it was a fairly time-consuming business. Obviously there are borderline cases, but there is an important difference between a corrupt bargain - somebody actually being told, "If you do a certain thing I will reward you" - and someone expecting hopefully to receive a benefit "because we got one last time", something of that kind. Those offences that would be prosecuted in the criminal courts would only be part of the problem with which we are dealing. There is a distinction, too, between that situation where people make a contribution or do something in relation to the House because they expect remuneration or benefit for that particular intervention, and the general position where one has an interest in agriculture or whatever and so will obviously have a general interest in the wellbeing of agriculture. That is a distinction we would do well to keep in mind.

261. **Lord Shore:** I cannot quite remember whether you were in the Lords when the Griffiths Report was published? Were you there then?

262. **Lord Archer:** My recollection is that I was although I do not think I intervened n the debate on the subject.

263. **Lord Shore:** Have you had a chance of looking at his report?

264. **Lord Archer:** I have re-read a number of reports but I confess that I did not read Lord Griffith's report. Perhaps I should have done.

265. **Lord Shore:** I thought it was a very interesting one and it was included among the documents circulated to us. He makes a number of recommendations and observations but there are two things on which he really homes in. One is that peers always act upon their honour; the second is that it is quite improper and forbidden for peers to receive payment for doing things in the House of Lords. That, I suppose, reflects a long tradition not only in the House of Lords but also in the Commons. I have a question leading from that. There are always questions of how strongly honour determines conduct - it does much more in public life than a great many people today suggest - and that second guideline it is a pretty wide and very clear prohibition about accepting rewards. What in addition to those two major recommendations would you feel in today's circumstance is required?

266. **Lord Archer:** The second one I would have thought was absolute, and pretty clear. I would have thought that any member of either House would understand that he ought not to act in a particular way in relation to debates or voting or the conduct of the House in expectation of a specific reward for doing that. I would not have thought that much more guidance than that was needed: everybody should recognise that situation when it arises.

267. The acting on one's honour - yes, it goes without saying, I would have thought, but we would all benefit from a little guidance as to what that entails on some occasions. For example, declaring something that we received not for a specific service on a specific occasion and certainly not in response to a bargain, but because somebody afterwards said, "Well, we are very grateful for what you did. Would you let us take you out to lunch or something?" Guidance about that kind of borderline situation would be helpful, honour or no honour.

268. **Lord Shore:** Would you not say that reasonably adult and mature men and women in the House of Lords really do not need to be guided as to what is proper and improper in accepting hospitality?

269. **Lord Archer:** I was tempted to take that line. In my initial replies I was distinguishing between a code of conduct and the rules about disclosure, but the code of conduct in the Commons seemed to me to be a statement of the obvious. I cannot imagine anyone saying, "If it didn't say it here I wouldn't have thought that I had to keep the public interest in mind, or I wouldn't have thought that I had to behave honestly." So a code of conduct of that kind probably does not add very much. But I have had discussions with colleagues in the Lords where there were borderline cases. For example, if someone went abroad on

committee business, perhaps, it might be said that that was something that should be disclosed, and under the Commons regulations I imagine that it is. I am bound to say that many of us regard the necessity of a trip abroad not as a junket to be welcomed but as a burden to be avoided, if possible.

270. **Lord Shore:** My last question is about the whole business of how to enforce anything in the House of Lords. Presumably, given the fact that members are appointed for life, one has to rely upon - I would have thought myself that it was a very strong discipline - simply exposure and publicity of misconduct.

271. **Lord Archer:** I would have thought that peer group displeasure is by far the most important sanction. We do have some powers, as the Nicholls Committee pointed out. We can fine, although I do not believe it has arisen this century, if I am right, and we have some power to suspend, although it is somewhat blurred at the edges. We suggested that it ought to be clarified. But the major one is by far peer group criticism.

272. **Lord Neill:** I have a question just arising out of your dialogue with Frances Heaton about the corruption statute which is now promised and which will apply to both Houses. The sifting of the case - in your experience, what would be the process by which it would be decided that this is a case that ought to go forward for prosecution as opposed to being something that the House itself might wish to consider through the Privileges Committee or whatever the appropriate procedure was? An allegation is received by the Officers of the House,
let's say.

273. **Lord Archer:** I follow the problem. There are two possible approaches. One is to say that there should be no prosecution without the leave of the House, or something of that kind, in which case the Committee of Privileges or some other committee would need to consider the matter. The other is simply to say that if there is a likelihood that the criminal law has been infringed, the matter should be reported to the police or the prosecution service. That would be my preferred choice.

274. **Lord Neill:** I have a second question. Suppose that there is a prosecution and it leads to an acquittal, but what emerges during the course of the trial is some rather bad parliamentary conduct or conduct which would be thought not the way to behave in the House of Lords. Could you contemplate that there might be a subsequent proceeding following the acquittal in which the House would look at the matter?

275. **Lord Archer:** That is what we said in the Nicholls Report. We did not say that if there were a prosecution there should be no disciplinary proceedings in the House. We said that disciplinary proceedings should be suspended until the result of the prosecution were known. I do not shudder at the thought of double jeopardy in that situation. As you say, probably the criteria would be different.

276. **Lord Neill:** They are different sorts of jeopardy. It is not quite the normal usage of the term. The normal usage of the term "double jeopardy" means that you could go to prison on a charge twice.

277. **Lord Goodhart:** I want to take up with you one point that was raised by Lord Shore, that it was reasonable to expect members of the House of Lords to be adults who can form their own views about what is something that should be disclosed or not. Is not one of the reasons for guidance to achieve consistency? For instance, you yourself gave the example of a gift worth £25. Some people might, unadvised, have very different views from others on the sort of level of gift that ought to be disclosed. Would it not be reasonable to have guidance that they could seek?

278. **Lord Archer:** Yes, I very much agree with that. One does not want pages and pages of guidance, but
some guidance on that kind of situation would probably be welcome.

279. **Lord Shore:** My point was directed to the receipt of hospitality rather than to gifts of value.

280. **Lord Archer:** Although I suppose one might have that kind of difficulty. No one would expect being taken out to lunch to be disclosed, but being taken on someone's boat for a week could be in a different category. I am inclined to agree that most of us would recognise what should and what should not be disclosed, but it might be helpful to have some kind of guidance.

281. **Lord Goodhart:** Should one draw the line between an evening at the Royal Opera House and an evening at the ENO?

282. **Lord Archer:** I will not pursue that one, in public at least! Perhaps in private afterwards.

283. **John MacGregor:** You said in your letter to us that you knew of no evidence that the present register is insufficiently specific, and you went on to say:

> "an interest should be clearly recognisable to any member, without setting out in detail, as in the Commons

Register, the various categories of advantage which would be included."

A point of view was expressed to us earlier today that even in this transitional period in the House of Lords, the dynamics mean that the House of Lords is going to matter a good deal more than previously if the Government are to be defeated more frequently. The other view expressed was that the cross-benchers and Liberal Democrats will therefore matter more, so there will be more scrutiny in the media and elsewhere of the way in which people vote and why they do so. If that is a development, do you believe that would lead to the need to a more specific register? There will be quite a lot of media attention on individuals' motivations and so on.

284. **Lord Archer:** The suggestion is that that would be less a matter of scrutinising the conduct of members than of giving them an element of protection presumably, so that it would not be said that the Liberal Democrats did so-and-so because they stood to gain a benefit from it. I can see that argument. As I said a few moment ago, I would not shy away from a little more detailed guidance than we have now. The idea that people should always be looking over their shoulders in case it might just be thought that they had stepped slightly over the mark would be a bad thing. We conduct our debates in a slightly more relaxed way than in the Commons and we do not have someone to call us to order. Unless we change that culture completely, I would have thought that it would be better not to have too much of a jungle through which we have to find our way.

285. **John MacGregor:** I suppose it is possible, if the dynamics do work this way and there is a greater media focus on the House of Lords than there has been to date, particularly because of the risks of the Government being defeated, that members of the House of Lords who did not even think to put something in the voluntary part of the register could then be criticised afterwards, when some journalist tried to look at who voted where and why, for not doing so.

286. **Lord Archer:** I can envisage such a situation if someone were the chairman of a city bank and intervened on regulation of financial interests - without declaring his interest. That would be open to criticism. It might be said to be better for everyone if he registered it at the outset and everyone knew what his interest was. I can see that kind of situation.

287. **John MacGregor:** One other question. On the suggestion that has been made that front-bench spokesmen should not be able to have particular interests relevant to their front-bench responsibilities, you replied that you believed that there should be some specific provision in the rules. You clearly did not want to go as far as the Minister for obvious reasons. Could you explain a little more what you meant?

288. **Lord Archer:** There is a difference between a back-bencher, who probably intervenes on a variety of debates and questions and on any particular occasion could probably be relied upon to make a declaration of interest, and a front-bencher who would normally be concerned with the same topic all the time. I would have thought that it was much better to register an interest that he had there. I would not normally want to go as far as to say that he should not take a portfolio that related to his interest. We would all be the poorer if a farmer was not allowed to be a front-bencher on agriculture.

289. **John MacGregor:** Your point was specifically on registration?

290. **Lord Archer:** Yes, it was. If he had a very specific interest I think that certainly ought to be registered. If, for example, he had a dairy farm in the Severn Valley, he might have all kinds of interests about the regularity of milk trains and so on. That is a matter where some guidance might just be helpful.

291. **Ann Abraham:** I want to understand a little more about what you describe as "the well-established ethos" in the House of Lords of self regulation. What do you mean by that? You said earlier that what the House of Lords has is not entirely self regulation because "we do have some rules". The area about which I know most is professional self regulation of lawyers. It is self regulation. They have a rule book of 850 pages and a panoply of committees and tribunals to police those rules, so for me self regulation is about being allowed to do it oneself rather than having an independent statutory framework to do it, but I suspect that what you describe as self regulation is something different?

292. **Lord Archer:** I see that distinction. The distinction that I was making was a little different. The culture in the Lords is not only self regulation - and it is difficult to see what other regulation there could be - but it is more laid back. People do not normally jump up and say well, rule 27, sub-rule 4 in the rule book says so-and-so. An invasion of that might be a bad thing: it may actually discourage people from acting on their honour. More importantly, perhaps, from our point of view, it may discourage the House of Lords from accepting and co-operating in your recommendations.

293. **Ann Abraham:** Is there anybody who could jump up and say that?

294. **Lord Archer:** None of us is terribly sure. I have seen people get up in the Lords and ask whether they can require the Clerk to read out rule whatever it is - it is not rule, it is guidance - because the most severe condemnation of any conduct in the

Lords is that it is undesirable. I have heard them have something read out in that way.

295. **Anthony Cleaver:** Most of the references to declarations of interest are to do with pecuniary benefit or potential pecuniary benefit, but a number of the issues arise from concerns that may be on behalf of an NGO, for example. Is this an area where interests should be registered? Do you believe it is covered by the current rules? Does the Registrar given any guidance in this context?

296. **Lord Archer:** I would certainly declare an interest if I were intervening in a debate where some NGO with which I was connected was directly concerned. If the question is directed to some financial aspect of this, I am not quite sure how it would work.

297. **Anthony Cleaver:** I was not thinking of that. I was thinking more that if one is taking an interest on behalf of an NGO or committed to an NGO which takes an interest in a particular area, do you feel that membership of that should be registered?

298. **Lord Archer:** I must confess that I have never registered my own. I am president of a number of NGOs and concerned with others. Now that you have raised it, perhaps I should consider this. However, I cannot say that it troubles me greatly because at a very clear stage of my intervention it would be known which hat I was wearing. But perhaps a little guidance on that would be welcome.

299. **William Utting:** You said earlier, Lord Archer, that some peers believe that their status virtually as unpaid volunteers in the public service should provide their privacy with greater protection than might be enjoyed by a salaried person. I cannot quite square that with what a previous witness said, to the effect that if one participates in a legislature one should be prepared to disclose all relevant interests at all times. Do you believe that that overrides the point you were making about your colleagues' feelings?

300. **Lord Archer:** Yes. The point that I was making was less whether members of the Lords should be prepared to make disclosures where they are appropriate than what would be the effect of a detailed recommendation that they should. As I said, I believe that the worst of all possible outcomes would be if a recommendation were to be made and the House of Lords then rejected it. It would be easier for some of our colleagues to accept it if you made the point that, of course, what they are doing is voluntary and we should not impose on them something that is too burdensome.

301. **William Utting:** That is very helpful. In that context, we would also say that there are many thousands of unpaid volunteers in the public service who disclose their interests as a matter of course every day, so this would not be an unusual request that was being made to the House of Lords.

302. **Lord Archer:** No, it would not be unusual. Certainly, the mischief we are aiming at all through this is that people should not vote or act in a particular way in the expectation of some benefit. And if there is an expectation of some benefit that should be made known.

303. **Lord Neill:** Thank you very much indeed, Lord Archer, for answering all those questions.

304. **Lord Jenkin** is our last witness before lunch. The position here is that you have submitted a written response to us, Lord Jenkin, which the Committee has, in which you deal with the Issues and Questions paper.

305. Is there anything you would like to say before I ask our two questioners, who in your case will be Lord Goodhart and Frances Heaton, to start putting questions to you?

RT HON LORD JENKIN OF RODING

306. **Rt Hon Lord Jenkin of Roding:** I am perfectly happy to go straight into questions. Bearing in mind that lunch looms, I would not want to waste any time.

307. **Lord Neill:** Anything you have written will, of course, be published in the evidence. Your views will be there.

308. **Lord Goodhart:** Lord Jenkin, you said in your response that there are very great differences in the roles and memberships of the two Houses which require a wholly different approach to the issue of rules of conduct. Would you like to outline what you see the relevant differences as being?

309. **Lord Jenkin:** Indeed. I should perhaps explain that, as many members of the Committee will be aware, I had 23 years in the House of Commons before I was appointed to the House of Lords. In the Commons I had every job - back-bench

Opposition, front-bench Opposition, front-bench Government in both the Heath and Thatcher Administrations, and at the end, back-bench Government. So one has seen most aspects there.

310. It is well known that the Commons is dominated by the party political battle. One only has to sit and listen to Question Time, or almost all debates, to realise that. MPs fight elections at regular intervals. Indeed, their presence in the House depends on their being elected; it gives you an enormous sense of achievement when you arrive there, having had the votes of some tens of thousands of your constituents. The consequence of this is that the debates tend to be confrontational, combative, competitive, frequently noisy, occasionally - one has to say - badly behaved; the champions tend to be those who can arouse the loudest cheers from their supporters. I have taken part in many such debates, particularly winding up at the end of a contentious Second Reading or something with a three-line Whip; and that is very much the style of Commons' debates.

311. In all this the role of the Speaker - Madam Speaker as she now is - is absolutely crucial. The well-known phrase "Order, order" now rings regularly across the air waves. It would be frankly impossible to imagine the House of Commons functioning without the Speaker. The House of Commons is a culture where order is imposed. Of course, it is accepted by MPs for the most part; if it is not they get suspended. Order is imposed.

312. In November 1987 I took my seat in the Lords and was immediately aware, as I am ashamed to say I had not been before, of what a totally different style pervades the Upper House. Indeed, as I became more familiar with the work of the Lords, I realised that it was not just the style;
it was a wholly different culture. This was not merely because of the absence of what I might describe as verbal fisticuffs or what one often feels is silly political point scoring, with Members being called to order; that is very obvious and it is on the surface. It is something very much more fundamental which underlies that profound - I used the word in my evidence and Lord Goodhart has picked it up - difference of culture, because what underlies it is the principle of self discipline. I recognise that I am picking up what the previous witness may have said.

313. There is a quiet but very firm pressure on peers to observe the conventions, and attempts to introduce some of the cruder political posturings with which one became totally familiar in the Commons are actually frowned on in a mild but very effective way. The murmur of disapproval is often followed by a diminished reputation which may take the peer some while to recover. In my view, this whole culture owes a great deal to the presence, first, of the cross benchers, who are there very much as an independent element in the Lords on which great stress has been laid; but also because of a tradition, particularly of the hereditary peers, that there is an attitude of considerable independence from the party. They do not owe the party the same allegiance, even if they take the Whip, as an elected member does who has fought an election under a party banner.

314. This combination, therefore, of the cross-benchers and the more detached members, particularly the hereditaries - which is why it is so important that we have had the interim compromise - gives the House of Lords the quality of a self-regulating body with the atmosphere of disapproval as being the strongest sanction. It is a powerful influence and it exercises itself. One is conscious of it all the time. If you do not win the approval of these members, you probably lose the argument and you may indeed lose the vote. It is not the same as the Commons.

315. You asked the question particularly about the impact of this on regulation. This is very important and I did not spell it out in my paper. This culture has engendered over the years a culture of self regulation, self discipline, which becomes very apparent to and is quickly recognised and accepted by new peers, who for the most part do their best from the beginning. Sometimes it is rather engaging, the determination of the new peers to follow the culture that the House has established.

316. In the Commons, MPs bent on disruption find ways of circumventing the rules; in the House of Lords, nobody would ever contemplate doing such a thing, certainly not in my experience. To my mind, my Lord, these are profound differences. We are a very effective self-regulating House. The Griffiths rules are a manifestation of that and have worked well, as I have said in my paper. I know of no breach and none has been mentioned to me, so that I do not believe that we need to be regulated by a specific code. We have shown ourselves well capable of regulating ourselves.

317. **Lord Goodhart:** As Ann Abraham pointed out to the previous witness, self regulation is not inconsistent with a code, perhaps even a quite detailed code in some circumstances.

318. **Lord Jenkin:** I understand that, but I made the point at the end of my paper that the more detailed your code becomes, the more those outside are going to say, "Oh, gosh! There must have been something going on, otherwise they would not have done it like this". There has been no hint of that. I shall have something to say about the guidance; as I said in my paper, I am happy to enlarge on that. But the existing rules do in fact provide quite a good background against which this process of self discipline and self regulation is exercised.

319. **Lord Goodhart:** May I take you to one specific point which is the question of the Register of Interests which, apart from

the first two categories which apply only to a very few members of the House of Lords, is voluntary. What, in your view, is the point of having a voluntary register?

320. **Lord Jenkin:** The point of a voluntary register is that many peers see themselves as part-time members of the House, and that coloured the whole weight of the Griffiths Report: people do not turn up in the same way as they do in the Commons, it is not the same system. To have a compulsory register would have the impact that there might well be people who would say, "Look, I have a whole lot of things. Do I have to disclose all these publicly? They are nothing to do with my position in the House." One only has to look at the House of Commons Register to see how much of the nonsense that finds its way on to the register is simply because there is an atmosphere of witch hunting there. To leave it as a voluntary register, which is what I recommended to Lord Griffiths' committee in 1995, seems to me to get the best of both worlds. Those things - to use the words in his report - that affect members' or the public's view as to how the peer is conducting himself should be registered.

321. To pick up a point that Lord Archer of Sandwell made, I never had any hesitation in registering all my voluntary involvements, which at one time were quite considerable; as I get older they tend to be shed. There is no question about it: it is not a difficult test. Do my colleagues need to know that I am involved in this or that business? If they do, you register. If somebody has something that it turns out later they perhaps ought to have registered, they have not necessarily been well advised. I agree with those who argue that perhaps the guidance could be a little more detailed, but I would be very much opposed to a compulsory register. If you look at the proposal I have made, you will see that it becomes impossibly difficult to draft, and to draw the distinctions if you have a compulsory register, as to what should or should not be there. If you have a general phrase, guidance on a voluntary register, most people have enough common sense to recognise whether or not it should be registered.

322. **Lord Goodhart:** You clearly take the view that there are some things that your colleagues in the House of Lords need to know, which you therefore have voluntarily registered. Is not the problem of having a voluntary register that other people who prefer to keep those things to themselves are not committing any breach of the rules of the House and cannot therefore be reprimanded?

323. **Lord Jenkin:** Of course, that is right. It is inherent in the process of a voluntary register. But the fact of the matter is that I know of no case - later on I am asked the question, do I know of any difficulties with what I have suggested is a specific matter for guidance. I say no, I know of no difficulties. It is just a matter that if one has the kind of interest that I have described in my paper it is better that one should have put it on the register than that some investigative journalist should come ferreting it out and pinning it up. One only has to look at yesterday's press to see what can happen. It is embarrassing for everybody.

324. **Lord Goodhart:** Do you think that that is likely to become something that is more of a problem as the nature of the House changes, as it clearly is changing?

325. **Lord Jenkin:** I do not see the nature of the House having changed as dramatically under Stage 1 and the interim House as it would do if we found ourselves with a significant elected element. If you were to ask me whether your Committee should be making proposals for what may eventually emerge as a Stage 2 House, I would not quarrel with that. However, I do not believe there has been a sufficient change. Indeed, those who watch the House at work feel sometimes that very little has changed as a result of the House of Lords Act.

326. **Lord Goodhart:** My questioning time is up. I will hand you over to Frances Heaton.

327. **Frances Heaton:** Continuing on that point about whether the House of Lords has changed much already, we have certainly heard from some of the new peers that they have been going in in large batches and it is quite difficult to pick up the culture of the place, and there is already evidence of greater politicisation. However, at this stage we should perhaps not get too involved in looking at where it will end up. Clearly one side of it is the House changing. The other side is the public perception of what the House of Lords members should do in terms of registration and disclosure. Do you think there is any change in the public attitude that they think would be right?

328. **Lord Jenkin:** I have not detected any at all. If you remember, my Lord Chairman, I think I asked you a question when you addressed a group over the road as to whether the Committee had any evidence that the public were looking for a stiffer form of regulation, and I think you told me, "no". So I have heard nothing, I have also been of the view that neither has the Committee, but I may be wrong on that.

329. **Frances Heaton:** When you referred to the occasional lapses that there have been, what has happened about those?

330. **Lord Jenkin:** I had a talk the other day with the Clerk of the Parliaments about something entirely outside the scope of this Committee. As one does, one passes the time of day and I said to him, "You must be having a very difficult time with so

many new introductions." I remember the time that his predecessor spent with me when I arrived from the other place. He said yes, sometimes three or four a day had to pass through his office, be shown the ropes and given the guidance and documents to read. It would not in the least have surprised me that the sheer "torrent" - he used that word - of new peers in the last two or three years had put some strain on the process of induction so that people come through without necessarily having their attention drawn to some of the rules. There was a peer the other day who was reprimanded because he was using the House of Lords as a business address. Everybody has known that one does not do that.

331. In the appendix to my party's evidence to your Committee there is the question of the Addison Rules about people who are chairmen of public bodies. I just do not believe that any of the people concerned had really given their attention to those very clear rules; otherwise they would not have done what they have done. This is a question of familiarity with the rules. It makes no difference whether you start putting them in a written code. In a sense, the Addison Rules are a written code; they are not a code with sanctions.

332. **Frances Heaton:** But it is quite important for the protection of the new peers that they do get -

333. **Lord Jenkin:** Yes, the new peers need to be made aware of what the culture is, what the guidance is and what the rules are. I am not sure that that has always happened, but I am not sure that it would necessarily be any different if one started with a detailed written code. I had a detailed written code when I was a Minister. Anybody who is a Minister gets a green paper. It has been changed quite dramatically since I first saw it as Financial Secretary to the Treasury in 1970, but it is there. I would not pretend that in the hurly-burly of taking over a new job in a new Department in a new Government one studied that document cover to cover and could have answered a questionnaire on it. I knew what I had to do as a Minister; and I knew what I had to do when I came to the House of Lords. If it was going to spell everything out, a code would probably have to be quite lengthy, and I am not sure that that would do other than create the impression that there has been malpractice and therefore we need a much more detailed code. And there has not. There have been one or two people who have not known the existing guidance and they need to have it drawn to their attention, then they will not do it again.

334. **Frances Heaton:** I am not sure whether I follow you. I do not want to put words in your mouth, but is it your basic approach that it is much better to rely on the individual's innate sense of what is right and wrong rather than codifying it and then the individual having to comply with the code?

335. **Lord Jenkin:** That is right. Apart from anything else, if you have a detailed code people will always try to find ways in which it does not apply to them, whereas if you leave it to people's common sense - let me give you a personal example, not in this House but in the other House: it picks up something that Lord Archer of Sandwell was saying a new moments ago.

336. I was the shadow energy spokesman for my party in 1974-75. I was approached by a pharmaceutical company whether I would be interested in joining their board. It was a very attractive offer, a very prestigious, top-flight, world-class company and it would have been a very attractive addition to my quiver, as it were. I put a PS at the end of my letter of acceptance saying that if Mr Heath then Leader of the Opposition appointed me as a shadow spokesman on health, I would probably have to resign. Before I took up the appointment that is precisely what happened, so I never became a director. I did not need any rules; it was just clear to me that as a shadow spokesman on health I could not hold what was even by those standards quite a highly-paid non-executive job in a pharmaceutical company. There were no rules in those days: one just recognised that that would not have fitted. So why have a code? People know - unless you are saying that there is a whole influx of new people who do not have a sense of honour and who do not understand, and that I most emphatically refute.

337. **Frances Heaton:** Drawing on another example from your own activities, you are a consultant to the Thames Estuary Airport Company Ltd.

338. **Lord Jenkin:** Yes.

339. **Frances Heaton:** And you have disclosed it. Whether or not you disclosed it, in fact, there it is. How does that restrict what you do in your capacity as a member of the House of Lords?

340. **Lord Jenkin:** That part of the register is absolutely clear. I cannot lobby my colleagues, I cannot lobby Ministers, I cannot lobby civil servants, I am there as the company's eyes and ears if and when, as in this case, they call on me. There can be no form of lobbying at all. I recommended in my evidence to Griffiths that that kind of thing should be compulsory, but before that I was making representations to Ministers - always, as the records in the Departments will no doubt show, very firmly declaring my interest. I asked at one point - was I overstepping the mark? Not according to the rules. That is why I said in my evidence to Griffiths that that kind of interest where one is a consultant to a company - and originally my title was "Parliamentary Consultant" but I persuaded them that that was not what it should be and now it appears in the annual report as "Consultant" - should be registered and that one should in those circumstances be precluded from lobbying. I have not found any difficulty

with that at all. It came up the other day in the Select Committee Inquiry on Air Cabin Environment when I treated one witness fairly hostilely, and his friends said that perhaps I should not be on the Committee because I had a connection with the Thames Estuary Airport Company. The Clerks were able to deal with that.

341. **Frances Heaton:** Has the House of Lords been deprived of your expert knowledge in that area of activity because you cannot speak on it?

342. **Lord Jenkin:** The last thing that I would claim is any expert knowledge. At the moment, let me make it clear, there is no money, no airport and no consents; it is a dream. If it ever became a reality there would be so much in the public prints that anything that I might add would be neither here nor there.

343. **Frances Heaton:** That is a bad example from that point of view.

344. **Lord Jenkin:** I have never had a penny from it.

345. **Frances Heaton:** I am currently less interested in the financial implications, because if one goes too far in the direction of stopping experts who hold positions which give them expertise from enabling the House of Lords to draw on that expertise.

346. **Lord Jenkin:** I draw a very clear distinction between, as it were, an ordinary financial interest and something that is of the nature of a PR or political or parliamentary consultancy. That is why I believe the Griffiths Committee got it absolutely plumb bang right and had these two sections of the register where it was compulsory with very firm rules as to what people may do in relation to those interests. But as I say in my paper in relation to the suggestion that front bench spokesman should divest themselves of their interests, one will end up with people talking in a debate and the only ones that will be free to talk will be those who know nothing about it. I totally agree with you on that. You will hear this afternoon in the House on the Second Reading of the Countryside and Rights of Way Bill a number of extremely eloquent people on both sides of the argument who have all sorts of interests. Long may they continue to be able to do so. They will declare them, many will have registered them. But if you start going down the road of saying that people may not speak on a subject, you castrate parliament.

347. **Frances Heaton:** I feel we are running short of time, so I will stop there.

348. **Lord Jenkin:** I am sorry, I go on too long.

349. **Lord Neill:** On consultancies, we had the view put this morning by Lord Owen that the House of Commons had it right in saying no consultancies at all: there is a ban. In the House of Lords the rule is in part 1 of the register - compulsory to register. Lord Owen would say that is not good enough. What would your view be on that

350. **Lord Jenkin:** I have not thought about that. I have only thought of it in relation to my own position. As I say, I have received not a penny piece and I have felt more comfortable with my name in that part of the register, to be able to point to why I cannot lobby rather than getting all prissy and saying that it is not a proper thing to do. Bearing in mind that we are a part-time House, I do not believe that we should take the extreme step of banning any member from having a consultancy of any sort. That would seem to me to be extreme.

351. **Lord Neill:** Going too far?

352. **Lord Jenkin:** Yes, much too far.

353. **Lord Shore:** First, I must thank you for your very perceptive and interesting analysis of the cultural differences between the House of Commons and the House of Lords. That is a very useful start. It is also helpful that you were yourself familiar with and gave evidence to the Griffiths Committee.

354. **Lord Jenkin:** Only written evidence.

355. **Lord Shore:** What I would like to ask you immediately following from that is this. Now, four or five years after Griffiths, is there anything that you would have liked or you now say should be added to the Griffiths approach?

356. **Lord Jenkin:** As I have said in my written paper, I believe that there is a case for rather more detailed guidance. It is an excellent phrase that is used - putting anything that might affect the perception of the way in which a peer carries out his duties - and that gives one a very clear steer as to the sort of thing that should go in. But I have identified one particular feature, though I have to say it has caused no difficulties, where if a peer has an interest which may depend substantially on grants from the public purse or some form of consent - airports would be an obvious example - he might well think it wise to register that, simply in order to protect himself against malicious claims. There may be other areas in the guidance about which you will

have heard evidence. But guidance is one thing; a code would be quite different.

357. **Lord Shore:** Leaving that aside, what I am surprised at is your insistence on a purely voluntary register. The fact that the register should be, as it were, an exercise in self government - yes, by all means. But is it not the case that today a very substantial number of peers do not register?

358. **Lord Jenkin:** Do not register anything? I am afraid I have never looked at that.

359. **Lord Shore:** I believe I am right.

360. **Lord Jenkin:** It is a pretty lengthy document. There has been a whole lot of new peers since the last one in February 2000.

361. **Lord Shore:** In July, something like 200 of the 600-odd peers - I hope my colleagues will contradict me if I have the figure wrong - have not registered. I do not say there is necessarily anything sinister about that, but when taking part in a debate or oral questions, I am helped by knowing something about the background, the authority, the expertise or the interest of those with whom I am debating. Without being able to refer to a register, it is difficult, frankly, to acquire that knowledge, and it is something that can so easily be contributed.

362. **Lord Jenkin:** Lord Shore may have handled himself differently in that from me. I am not conscious that I have ever carried a copy of the register into the debating chamber.

363. **Lord Shore:** No, before the debate generally. You are quite right.

364. **Lord Jenkin:** As soon as one gets the list, should one go through it all? Do you do that? That would be astonishing. When a new register comes out one glances through it to see in particular whether people with whom one works closely have registered anything else. One looks at it first to see whether they have spelt one's own name right! We all have that problem. My feeling is that it is essentially a defence. It is to say, "look, I do have an interest and if I speak on it I shall declare it, but here it is". It is for the information of one's fellows but also for the press and anybody else who wants to look.

365. Let me give another example. After I left the Government in 1985, I had a consultancy with Arthur Andersen. It was a very minor consultancy - "Don't' call us, we'll call you". But in the first few years I did a few things for them. One of them involved talking to the chairman of a regional health authority whom I had
some years earlier appointed, to tell him that there was a disaster looming in his patch and unless he took a grip on it it would create a major national scandal. That was on information given to me by Andersen. It was the Wessex Regional Health Authority computer procurement. I heard nothing more about it for about three years, when it burst upon the press. Then, of course, I was accused of having cost the taxpayer £60 million. I received apologies from the newspapers. In your previous guise, Lord Chairman, I think you may have been there. But the second sentence of the article in The Independent was that I had registered my interest with Andersen. If I had not, there really would have been a major problem. It was defensive.

366. As I have said in relation to the guidance that I have suggested, one should always have in mind: would you rather that you had put it in the register or that it should be ferreted out by a malicious journalist? To my mind, that is what is really behind this: you are in the clear, your colleagues can see what you have done, the public can see where you are coming from. If they really want to know they do not go to the register, they go to Who's Who or the other reference books. We do not put past interests into the register. That may well be right, I do not have a view on it.

367. **Anthony Cleaver:** I am pursuing something that you have now talked about for some time but I am still slightly puzzled as to why you feel so strongly that this has to be voluntary. Your analogies are first of all with the Commons, but there are hordes of people in all sorts of public areas who are obliged to register interests, and this seems to be acceptable to them. There is no suggestion - again, as you have also suggested - that this is impugning their honour in some way. It is simply something that has come to be seen to be valuable so that people can understand. You yourself have just illustrated perfectly the benefit that comes from having registered an interest, and I am still slightly puzzled as to why you feel that in this one case it should specifically be voluntary.

368. **Lord Jenkin:** The places where one has registered interests outside is if one is a director of a company and one has to fill in the forms for all the other companies on whose board one has been in the past five years, and one registers those. I am not aware that in that register anything much else has to be registered. An issue may come up at a board meeting about which an interest may be relevant - for example, if the company is considering making a substantial charitable donation to a charity in which you may have an interest. For example, I was deputy chairman of the Imperial Cancer Research Fund, and I supported the Guide Dogs for the Blind, which of course my colleagues knew; I would make sure that they did. I was involved in both those charities. I have no other experience of a compulsory register. There may be other examples. One difference surely is that

peers are not paid, and I feel that there is a risk of a disincentive to somebody who could make a very god contribution.

369. **Anthony Cleaver:** If I may interrupt you, exactly the same requirements are incumbent on somebody like me, for example, as a director of English National Opera where I am not paid, and on many of the other voluntary organisations on which I serve one has had exactly the same registration obligation. So whether one is paid or not paid seems to me not to be relevant. As was said in the Griffiths Committee, surely the fact is that if one is in a position to exercise influence in some sense, the presence of potential influences on oneself should be registered.

370. **Lord Jenkin:** One would need to compare what one would be expected to register. I was registered, of course, because both Imperial Cancer Research and the Guide Dogs and the British Urban Regeneration Association and all the other bodies with which I was involved were all companies limited by guarantee, and suspect ENO is the same. Therefore you are bound by the Companies Registration. That does not require the registration of other interests which may affect the way in which the public perceive that you are doing your job, does it? It is different.

371. **Anthony Cleaver:** I am not sure that I understand you, but perhaps I should leave it at that.

372. **Lord Neill:** Thank you very much indeed, Lord Jenkin, for that long session. We have benefited from it.

373. **Lord Jenkin:** I spoke too long, but thank you very much.

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 26 June 2000 (Afternoon Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Lord Goodhart QC
Sir Clifford Boulton GCB	Frances Heaton
Professor Alice Brown	Rt Hon John MacGregor OBE MP
Sir Anthony Cleaver	Sir William Utting CB

Witnesses:

Lord Craig of Radley GCB OBE, Convenor of the Cross Bench Peers

Dawn Oliver, Professor of Constitution Law, University College, London

Earl Russell FBA

Baroness Hilton of Eggardon QPM

374. **Lord Neill:** This afternoon, we will hear from four witnesses. The first is Lord Craig of Radley, a Marshal of the Royal Air Force and a former Chief of Defence Staff, 1988-1991. Lord Craig is Convenor of the Cross Bench members of the House of Lords. The next witness will be Professor Dawn Oliver, Professor of Constitutional Law at University College London since 1993, and a member of the Royal Commission on the Reform of the House of Lords, the Wakeham Commission, which reported earlier this year.

The third witness will be Earl Russell, a Liberal Democrat and Professor British History at King's College London. Earl Russell has written extensively on the history of parliament. The fourth and last witness of the day is Baroness Hilton of Eggardon, who had a distinguished career in the Police before becoming a life peeress in 1991. Lady Hilton was formerly an Opposition Whip and Spokesman on theEnvironment, and served on the Griffiths Sub-Committee which examined the rules governing conduct in the Lords in 1995.

375. So with that prelude may we now come to the first witness of the afternoon. Lord Craig would you be kind enough to move forward and take a seat there. If I could just say this, the way we operate is two members of the Committee put questions to you. This will be Sir Anthony Cleaver and myself this afternoon, and any other members of the Committee join in with any additional questions, but we always give an opportunity to a witness to make any opening remarks that he would like to make. The letter you have written to us, or the submission, that will go into the published testimony, so it will be in the public record, what you have said, but please feel free to say anything, if only just to underline the position that you are speaking for yourself and not for the cross bench peers.

LORD CRAIG OF RADLEY GCB OBE

376. **Lord Craig of Radley GCB OBE (Convenor of the Cross Bench Peers):** Well thank you my Lord Chairman. It is a privilege to be in front of you and your colleagues, although I did not actually originally volunteer, but thank you very much for inviting me. I did, and perhaps for the record, would like to underline the point that you have just referred to, and that is although I am the Convenor of the Cross Bench Peers, I speak here entirely as an individual, and not on behalf of that independent and disparate group.

377. **Lord Neill:** Right, well then Sir Anthony would you like to open the bowling?

378. **Anthony Cleaver:** Well thank you Lord Craig. Having read your initial statement, you obviously recognise in there the fact that there have been a number of changes, and in fact there is a continuing process of change as far as the House of Lords is concerned. I wonder if you could start simply by giving us any views you have on how it has changed since Griffiths, and in particular whether you feel that those changes have specific implications for the regulatory approach.

379. **Lord Craig:** Well thank you Sir Anthony, as far as using Griffiths as a bench marker from here on, of course there have been a number of changes in the Lords about which we are all very familiar. It is now a smaller House, there is a greater percentage of working peers, and the average age I think is up, but all of those changes, and there are many others, I do not think actually they impact directly on Griffiths. Griffiths was about regulation and declaration of interest. This enquiry, I note, talks about conduct, and I think there is an important distinction between the word conduct and between the phrase registration and declaration of interest.

380. **Anthony Cleaver:** One of the witnesses that we heard this morning, suggested that in fact one was already seeing a change in the House and its feeling of influence, if you like, that it was much more willing to take issue with the Government on various points. Is that something which you would recognise?

381. **Lord Craig:** I certainly recognise it as a view of some parts of the House that as a result of those hereditaries that now remain, they remain following an election process, and that is deemed to give greater legitimacy to their individual and collective contributions. I find it difficult as an individual independent to take up the point that the House itself is more determined to, as it were, carry out its responsibilities. Certainly I think there is an indication that that is a feeling. I myself am aware of that, but as far as an independent is concerned, I do not think it is that significant.

382. **Anthony Cleaver:** But one might suggest that that very fact makes it timely perhaps to look at the question of the regulatory situation and whether it is still appropriate.

383. **Lord Craig:** Yes I accept that the Committee is looking into something which, although I regret it, I believe in the context of a revised House of Lords and the existence of this Committee, that it would be unreasonable to argue that you should not look at it. As I indicated in an earlier remark, I do distinguish between looking at conduct and looking at registration of interest and declaration of interest. Clearly the latter has got something to do with the former, but the former can be read to be very much wider, and the implications of the use of the word conduct, I think need very careful addressing. As I indicated in my opening remarks, and as Lord Neill himself said, your enquiry has not been prompted by any scandal or crisis, and I think that that is a very important point of departure for this enquiry, because it is a distinction between the point of departure for the other place, and the point of departure for this enquiry.

384. **Anthony Cleaver:** I think we probably would not take issue with that. The question of conduct, if we could start however with that, what is your view of the current arrangements in the House of Lords on issues of conduct?

385. **Lord Craig:** In the sense that the way Griffiths requires us to report our interests and declare them, register them, I think that is perfectly acceptable and reasonable. I have no difficulty with that, and I believe five years or so experience of it has not, as far as I am aware, indicated any great difficulty with that. The point which is referred to once or twice in the various bits of paper coming from your Committee, particularly in relation to conduct, talk about discipline, or disciplinary code, and I do not know if that is what you are leading onto.

386. **Anthony Cleaver:** Well it is obviously one aspect of it. I suppose one might start by asking whether you feel there should actually be a code of conduct as such in the House of Lords?

387. **Lord Craig:** Well, like all those sorts of questions, it all really depends I think on what you mean by a code of conduct. I mean are we talking about registration and declaration of interest fine. Are we talking about some sort of disciplinary process, then I would have much greater difficulty with that because I think the House of Lords should be looked upon as parliament, very much as a sovereign entity, and it should be responsible for its own behaviour as far as is possible. Clearly if somebody in the House of Lords is accused of a criminal act, then that needs to be dealt with under the normal legal processes.

388. **Anthony Cleaver:** Perhaps we could start with the register of interests and so on.

389. **Lord Craig:** Yes.

390. **Anthony Cleaver:** As you know, at the moment the recommendations were that there should be three categories, and the third of those in fact is voluntary.

391. **Lord Craig:** Yes.

392. **Anthony Cleaver:** Which is a significant distinction from what happens in the other place, and I just wonder what you feeling are on that. Do you feel that that is important, or something that might be changed with benefit?

393. **Lord Craig:** I think if I could start by taking the general point about declaration of interest. We are talking about financial interest particularly, just how onerous would that declaration be for a House which has many part timers, particularly in the case of cross-benchers, who are very much part time participants, much more than somebody who is whipped. Whether the latter speak or not they will be in the House as a result of a Party Whip, perhaps rather more than an individual cross-bencher. So, I think any regime has got to be viewed, not only from the point of view of public confidence, but also from the point of view of whether it discourages an individual from becoming a cross-bencher if he is lucky enough to be selected by the Independent Appointments Commission, because it is something he must take into account. What are the codes of conduct to which he will obviously sign up if he accepts preferment and a peerage, and so I think that side of it needs to be borne in mind as well as what we normally accept as the transparency of declaration.

394. **Anthony Cleaver:** I think a lot of people would feel that one of the major classes of the House of Lords is the presence of the cross benchers and the experience that they bring to bear on various issues, and that inevitably means that many of them will have interests, and the last thing one would want is people not to be able to speak on the areas where they have expertise. On the other hand, I think it probably would also be considered very important that those interests should be understood and in the public domain, and obviously one way of doing that is through having them registered in a standard fashion. Is that something that you think would prove difficult?

395. **Lord Craig:** I think like all of these things, it depends on how far you press for a declaration. What about somebody who has been in public or private life for many years, 40 years perhaps, before he becomes a Member of the House of Lords, worked in more than one regime or one area of business, but still has some remuneration, whether it is from a publication which he wrote many years ago and is still bringing in some royalty, or what they did at the most important and remunerative phase of their working, professional life. So if you are asking me to draw the line on this, I find it extremely difficult. I think that is why Lord Neill and the rest of you are here, to draw a line for us, but I think you have got to take account, not only of the public perception here, but also the individual's perception, and how it may impact on them, because at the end if you are going to discourage a lot of people who would otherwise wish to make use of their expertise and speak in the Lords, if you are going to discourage them then I think the public would also lose that way.

396. **Anthony Cleaver:** Yes I think I understand that. On the other hand, there are many areas of public life far less prestigious, if you like, in which declaration of interest is normal and registration of interest and so on, and although from time to time this is expressed as a concern, I think on the whole there has been no evidence of people failing to come forward in large numbers because of that, and it would seem in the case of a peerage that probably there is sufficient opportunity there that people would come forward.

397. **Lord Craig:** Of course you are entitled to draw that conclusion, but I think there are other factors to be borne in mind, before you arrive at it. You know, is it a job that its remuneration has a prestige to it and so on. There are all sorts of ancillary arguments. I do not think you can generalise to the extent of saying that it is alright or it is not alright, it falls somewhere in between the two as so often happens.

398. **Anthony Cleaver:** As far as the current rules are concerned, do you think they are clear and well understood?

399. **Lord Craig:** Personally I have no difficulty with them, but maybe that is because I do not have a Category 1, or Category 2 interest to declare, so it does not affect me personally. But I have not had any representations, or heard anybody say that it is all very difficult and it is wrong, and it must be changed. I would hope that the departure point for your Committee is how has Griffiths worked? Is it still working? How different is it from the other place? Are those differences where they exist, acceptable or unacceptable. I think the fact that your Committee is looking at all of this is important and healthy from the point of view of satisfying public opinion that the two parts of the Houses of Parliament are being subject to a similar form of scrutiny, but it does not necessarily follow that it is only right if both end up with exactly the same code and detail of conduct right down to discipline, and to whether things are mandatory or not.

400. **Anthony Cleaver:** Just a last question. I mean you have raised that question of comparison with the House of Commons, what is it that makes the Lords so different? Is it the fact that Members are unpaid, is it the fact that they are there for life, is it the fact that they are not answerable to constituents, which of those factors are particularly significant in this context of

registration?

401. **Lord Craig:** I have accepted, I think, in what I wrote, that although there are such differences, one can select a lot more. For example the House of Lords has a lot of independents; the House of Commons does not, and the sorts of things that you mentioned too. The fact that one is having a look at this, I think is acceptable, but I do not think it necessarily follows that it must therefore be changed root and branch. I think you have to be very confident, I am sorry; that is perhaps personal, but I think one has got to be very confident that the reasons for change here, from what we have got, are so overwhelming that they must be introduced, and I do not think the arguments are about the differences between the two places. I think they are much more about how has Griffiths worked. The point that you have very carefully made that there is no scandal or crisis, is a difference from what happened at the other end. So I think those points need to be taken account of as well.

402. **Anthony Cleaver:** Thank you very much.

403. **Lord Neill:** If I could just ask you a few questions, and I am sure my colleagues will have questions after me. In your statement you say towards the foot of the first page, the second paragraph, five or six lines from the end, that approach at the time was right meaning Griffiths I think, but in a reformed House of Lords greater emphasis on parity of treatment between the two Houses is inevitable, and then you said to us five minutes ago that our point of departure should be, is Griffiths working. I just wonder whether there is a possible tension between those two statements, one your written statement seemed to recognise that some sort of movement is required in view of what has been happening since 1995, and then your other statement, I think would mean this, if Griffiths is working, you do not need to do anything at all.

404. **Lord Craig:** Parity of treatment My Lord is that you are looking at us.

405. **Lord Neill:** Yes I understand that.

406. **Lord Craig:** I accept that parity, reluctantly, but I accept that parity of treatment. When Griffiths was done that parity of treatment was not so acceptable, and hence Griffiths, and your predecessor had a number of other important enquiries to look into, so I look up on it as the way in which we are treated by you, not necessarily that we have got to end up with a parity of outcome.

407. **Lord Neill:** That is my stupidity, I had not done -

408. **Lord Craig:** No I do not think it is. I am sorry, mine was ambiguous perhaps, I beg your pardon.

409. **Lord Neill:** No, you have made it crystal clear what you meant. Could I then go on overleaf to deal with your first and second points. You first point I think raises something that I do not recall any other witness having mentioned so far, and that is that the practice of announcing an interest. As I understand it the current practice is, for example, at question time, starred questions, it is not the habit for everybody to remind the House of their interest, simply because it takes up too much time, but on a second reading debate it would be conventional to do so. Now, is your point this, that if there is a register and there is an entry in the register, it should not be necessary for that peer, at the beginning of his or her speech to make an announcement?

410. **Lord Craig:** I maybe in the minority of one on this.

411. **Lord Neill:** No I am not saying you are wrong, I think it is a novel point.

412. **Lord Craig:** I just think that if you have a register, and it is a very accepted register in the sense that it was produced by Griffiths, it is reviewed and endorsed by you, and those Lords who must register have done that, that register is widely available. Originally Griffiths was new and the register was new, and indeed I accept that many speakers want to register their interest, and there are some who argue that it helps the listener to know that Lord X or Baroness Y is speaking because of their particular expertise. Maybe in a bigger House as we were, that was perfectly right and proper, but now we are a much small House people do know each other that much better. A 600, or thereabouts, total is within one span of knowledge, much more than a House of double or more that size. I think personally anyway that if you could skip the declaration of interest at the beginning of each speech, it would speed things up without detracting from the point that saying it at the beginning is meant to do, which is to advise the listeners where you are coming from.

413. **Lord Neill:** Would this depend upon the register being compulsory. I am not talking about Part A and B which are essentially consultancies and lobbying interests, C is just anything else that might be thought relevant for Members of the House to know in relation to that particular peer. If that was compulsory then I suppose you could have a system when declarations were deemed already to have been made by virtue of the registration. If it remained voluntary, you would have some who registered and some you did not, and then those who did not would have to make their declaration.

414. **Lord Craig:** Yes. Please do not mis-read me. I am not saying that no Lord should make a declaration at the beginning of a speech, but of course that option should still be there, particularly if you had not registered or you had only just recently registered something, whether it is mandatory or voluntary. You yourself might feel it was appropriate to draw the House's attention to it, but I am talking about the sort of routine, where you have been on the register for some time and it is well known that that is a particular interest of yours, whether it is on health or defence or whatever it is. It is just a small plea, I do not push it very strongly, but I just thought it was worth registering as a point of interest.

415. **Lord Neill:** But you actually say the practice has become intrusive and distracting.

416. **Lord Craig:** Well, that is my personal view.

417. **Lord Neill:** Now can I go on to your second point and here I think you talk about, in about line five, those with executive function, are we essentially talking here about Ministers who will be governed by the Minister's Code.

418. **Lord Craig:** Yes.

419. **Lord Neill:** So they are already covered by that document are they not, we do not have to do anything about them unless there is something wrong with the code as applied to Ministers and other Lords?

420. **Lord Craig:** Yes, reading that I think there were two aspects there. One is the one you have rightly touched on, Ministers. There are others who are close to Government but not within Government who might be perceived to have a very particular influence, I suppose the spin doctor type, or somebody who is perceived and known to be working on behalf of Government very closely, although he is not of Government. I think that, maybe executive function is a bit too strong to cover that, but that is what I was thinking of.

421. **Lord Neill:** Yes, and in their case the ones with the executive functions in the sense you just explained should be equated rather more with Ministers.

422. **Lord Craig:** I think yes. If you were going to go for a gradated system then you may well argue amongst yourselves and agree that a gradated system is not appropriate. I am just flagging up that if you did think it was appropriate, there are several gradations rather than just Ministers and all others.

423. **Lord Neill:** I understand that. Your next gradation is then those who take the party whip, who might be more tightly regulated than the cross benchers.

424. **Lord Craig:** Perceived to be. I am not necessarily suggesting that they will always take the whip, but from the public perception, the fact that you have taken a whip, it is perceived that you will vote as your party wishes you to.

425. **Lord Neill:** It just strikes me as a possibility that it could introduce an added complication if you have a sort of tiered system. You have Ministers over here, a very clear set of rules and a Ministers code, and everybody else on whatever the other rules are, this is rather simpler to administer or think about perhaps than four tiers, that is a narrow approach to what you are saying.

426. **Lord Craig:** I just felt it was worth your Committee giving some thought to this without necessarily at the end agreeing with me, but I feel particularly for the cross benchers who are entirely independent, and are part timers, very much more than others. If there is any way in which they can be treated less restrictively, that would be worth considering. At the end of the day it may be the argument that everyone is all of one House, but then I believe you will run into problems with the Law Lords, with the Spiritual Bishops, are we all of one House in this as well. So it was really to flag up that as a line of thought rather than arguing very strongly that this must the only right one.

427. **Lord Neill:** So the Law Lords and the Lord Spiritual might require special treatment as well.

428. **Lord Craig:** My point is if they do, and I think the Law Lords see themselves as being different, and we had Lord Bingham pronounce on it last week. Fine, but if that is a precedent, can you build on that precedent sensibly.

429. **Lord Neill:** Thank you for that. My last question is going to be this. In your final paragraph I wonder whether there was a message for us here: As much to commend the principle, you write, that parliament is sovereign including over its own internal affairs and its discipline, it detracts from that principle as an excess of outside proposed regulations even if endorsed by the House. That is slightly saying, is it not, that it would not necessarily be the best thing that could happen, if this Committee were to make a series of recommendations which the House of Lords would be invited to adopt

430. **Lord Craig:** I hope I have not been in any way discourteous of your Committee. It really goes back to my first paragraph where I make the point that rules and codes of conduct on the one hand do contribute to confidence, but they also have a down side. I do not need to spell that out, I am sure it is very familiar to you. The more that the House of Lords under this enquiry finds itself being circumscribed by many rules and many codes of conduct, the more inimicable it will be to the broad feeling of trustworthiness about the House of Lords and about parliament. I think there is a very careful balance to be struck there, because I would hate to see in your efforts to do the right thing, that what you might call the law of unintended consequences emerges, and we find that parliament as a whole, the Lords in particular, is viewed as less trustworthy than traditionally it has been. I think that would be a great loss.

431. **Lord Neill:** Thank you for that answer. Now other members of the Committee, John MacGregor.

432. **John MacGregor:** Could I first of all follow up on a point when you said you had to strike the balance between, on the one hand one thing, and on the other hand, not discouraging people from presumably entering the House of Lords or other organisations. Is that a point of conversation among the cross benchers at the moment or is it mainly a hunch on your part?

433. **Lord Craig:** Well I have heard it mentioned by a number of people, not necessarily just cross-benchers, both inside and outside parliament, so it is not unique to me, although I do sense it, and we the cross benchers are entering very unchartered waters with the new Independent Appointments Commission. Who they will come up with to meet the 8-10 or whatever the number is of appointments per year, which the Prime Minister lays down, who they come up with, whether the sort of people they do come up with are going to be over concerned or not. Taking it from a personal point of view, well in fact I am slightly different anyway in that I am actually in the House of Lords as an award for the Gulf conflict. I did not come in through a Birthday or a New Year's Honours List, so I am a complete one off from that point of view, and nobody asked me whether I wanted to be a cross-bencher or not. I think it was presumed that I would be, and certainly I had no intention of being anything else. But going back to the Independent Appointments Commission, when they approach people, they have clearly now got to approach them to find out whether they are going to sit as a cross-bencher or be an independent. On top of that undertaking, the individual has also got to think about rules and regulations and codes of conduct and so on. I would hope that none of them would be put off by them, whatever they are, but that has still got to be borne in mind.

434. **John MacGregor:** The other question I wanted to ask you was following on from the last sentence in your paper which you have also just been discussing with Lord Neill, and you make this reference to excessively detailed rules and codes and you referred to that earlier when you said just giving the down side. I think we understand your point about scoring political points in the House of Commons and making this becoming part of the political football match, if you like, and also probably engenders much more interest in the media in any individual incident. The question I wanted to ask you was, just to explore a little further whether that would really have its impact in the House of Lords, the same impact, do you think if you had detailed rules, say along the lines of the House of Commons register, that it really would lead to the same sort of consequences as you think as happened in the House of Commons?

435. **Lord Craig:** Well I heard you Mr MacGregor on the radio not so long ago dealing in part with this very point.

436. **John MacGregor:** You get up very early.

437. **Lord Craig:** I do not have to be up to listen to you. You mention the media, apart from any party political point scoring, you can argue whether the media are doing it on behalf of or in spite of party political interest, but clearly there is a climate out there, I do not think you can shut your eyes to it, where what I call the law of unintended consequences in that perfectly proper approach to behaviour and codes of conduct are twisted or used in a way which, apart from any individual which may be involved in this, tends to, or can tend to create a climate of unease. One or two of these incidents tend to read across to the whole institution, and I think that is something which I would very much hope that you will bear in mind, and that we do not find ourselves becoming less and less creditable and worthy, as viewed by the public. They must trust us.

438. **Lord Goodhart:** Sticking with the question of the need for disclosure, what the House of Lords resolved in 1995 following the Griffiths Committee, was that what is now part 3 of the Register should contain any other particulars which members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties. Would you agree that that is a very vague formulation which gives a lot of scope for different people to interpret it different ways?

439. **Lord Craig:** Yes, but I would imagine it was purposely not to precise. The more precise you try to be, the more, maybe speaking to you you would not agree with me, but I think the more precise you try to be, the more scope there becomes for the clever evasion or the clever twist. If something is of Category 3, as opposed to Category 1, I think a bit of imprecision is not a heinous crime, and you are able to get advice from the Clerk of the Parliaments and so on.

440. **Lord Goodhart:** Without going into too much detail, do you think there is a case for saying that there ought to be rather more guidance, first of all to assist new peers to know what they might be expected by their colleagues to do or not to do, and also to ensure some degree of consistent practice among the members of the House?

441. **Lord Craig:** I would have thought the experience of Griffiths in practice over five years, would be a good basis for looking at how Category 3 has worked, whether there are very wide discrepancies between people who declare and others who do not declare, but have a comparable interest, a related interest. There may be scope for something like that, but I would hope that it is not going to end up with rules 1 to 50, you know, you have got to tick everyone of those, and then 51 catches you out.

442. **Lord Neill:** Thank you very much indeed Lord Craig for coming, it was a very interesting exchange and we will ponder your answers when we have them in written form. I am sure there is some pretty good advice you have given to us this afternoon. Thank you so much for coming.

443. **Lord Craig:** Thank you very much Lord Chairman, thank you gentlemen, and ladies.

444. **Lord Neill:** Professor Oliver. Good afternoon, thank you Professor Oliver for coming to see us. You have very kindly let us have a written submission, which we have had the chance to study. At the beginning of that there is a little summary, I was going to give you the opportunity if you want to make any opening statement, but you do not have to do that if you feel the summary is enough. This will be published and put on the public records.

PROFESSOR DAWN OLIVER

445. **Dawn Oliver (Professor of Constitution Law, University College, London):** Given that I have provided a paper, and I apologise that I did not have time to shorten the paper, and a summary, I do not feel I need to say anything further.

446. **Lord Neill:** Well that being the case I am going to ask Professor Alice Brown and then Sir Clifford Boulton to put the questions before the rest of the Committee come in.

447. **Alice Brown:** Thank you very much and good afternoon. I am sure I speak on behalf of all the Committee when I say I found the paper exceptionally helpful, and it clarifies a lot of points and takes us through the discussion, and we read that in conjunction with a previous article that you had written for Political Studies, and those papers were very helpful indeed. Can we start by looking at the summary of your paper and the point that you made at the very beginning about the guiding principle of any system. Can I ask you to clarify why you think this guiding principle is so important, could you take us through it and just give us the key reasons?

448. **Dawn Oliver:** Another way of putting it would have been that this guiding principle is actually a shorter version of the Seven Principles of Public Life really. I think that reading into the various resolutions of both Houses over the years, and concerns amongst the press about various matters, particularly, in the Commons, cash for questions etc, what is behind them is the idea that members of both Houses must be exercising their functions in the general public interest. I think perhaps the test of that is, supposing a member of the House of Lords was saying: I have got no particular interest in anything, no one has paid me to do anything, so I am going to toss a coin and vote in that way. People would say well, that is wrong, you are meant to be making your own decision and exercising your own independent judgement in what you do. I think it is important because first of all it protects the weak who might not be able to buy advocacy or persuade people to speak on their behalf, it furthers the general welfare by protecting, the public interest and general welfare. I know these are vague concepts, but protecting the country as a whole from the powerful capturing, if you like, Government and the legislature, is necessary.

449. **Alice Brown:** So you think that that particular principle then adds substantially to the two principles that we are operating with at the moment for the House of Lords in terms of personal honour, and the non acceptance of financial inducement.

450. **Dawn Oliver:** Yes I do, I think it is more precise than personal honour and more convincing.

451. **Alice Brown:** You draw also in your paper comparisons with the House of Commons, and of course this is a very controversial area as you know, because clearly comparisons can be drawn, but there is also large differences between the two Chambers. Could you summarise the key factors that you think are important, and the extent to which you think these factors should influence the criteria for any system of regulating standards, so it is a connection between the factors and the influence of these factors on our judgement about particular system.

452. **Dawn Oliver:** Yes, well I think the basic principle applies to both Houses equally. There are obviously differences between the two Houses, but I think that many of those are not actually particularly relevant to the question of what standards of conduct should be and how they should be enforced, if you like, or actually made to happen. One distinction which one could look at, but at the end of the day I do not think it is that important, is that members of the Commons are elected, whereas

members of the House of Lords are not. In a sense one could say that the fact of election is an additional safeguard against misconduct, to use a crude word, and if you thought that was convincing, there would be an argument for having more regulation in the House of Lords than in the House of Commons, because there is not the electoral control. Frankly I do not think that is a very strong reason. I think it is quite exceptional for one to have to rely on election to remove someone, and I think the Hamilton affair was exceptional. So I do not honestly think that electors are very often concerned about misconduct, because there is not that much misconduct. So that is a difference between the two Houses, but it does not seem to me to be a relevant one. I do not either really think that the fact that MPs receive salaries and members of the Second Chamber are not paid really makes a difference.

453. **Alice Brown:** Are you arguing that there are other ways to hold people accountable?

454. **Dawn Oliver:** For conduct?

455. **Alice Brown:** Yes.

456. **Dawn Oliver:** Well yes there are other ways. I am not evading the question when I say that, given that one is quite likely to stay with self-regulation in some form or another, the method of self-regulation and how light touch or heavy touch it is, depends on what external pressures there are on each House. We are talking about the House of Lords, so if light touch regulation turns out not to be working, one needs to be confident that the House will be responsive to public concern about that, and that in turn does mean one has to answer the question, is there some kind of external body which will make sure that difficulties as they arise will be responded to and improvements made?

457. **Alice Brown:** So in a sense you are giving quite a scope there for the external body to be, if you like, the voice of public opinion.

458. **Dawn Oliver:** Yes.

459. **Alice Brown:** I might come back to that later. I would just like to go on to again looking at your summary. You make specific recommendations, which are quite strong recommendations that go some way towards the practice in the House of Commons, and may indeed be slightly further. For example you say we should have the Seven Principles of Public Life besides the House of Commons and a code, we should ban parliamentary consultancies, and that there should be a criminal offence for bribery. You make that very clear indeed, but you go on to say that we should not go as far as the full disciplinary system of the House of Commons. When I first read that I could understand what you were arguing, but I had a problem in that I thought once you have set a code, do you not inevitably get into a mechanism and procedures that fall quite short of the criminal offence. There seems to be a big jump between setting the code, and then not very much happening in between, and then a criminal offence at the other end. Can you help narrow the gap for me?

460. **Dawn Oliver:** Well I appreciate it probably does look like a gap, it probably is a gap. I suppose I would like there to be ways of dealing with possible breaches of a code or failure to come up to the seven principles and so on, which did not require anything equivalent to the Parliamentary Commissioner for Standards and elaborate procedures. I think you do need fair procedures and they have to be elaborate if there is a disciplinary process going on, and so my preference would be to clarify the standards by adoption of the seven principles plus a code, and in due course elaboration of the code by guidance as and when difficulties crop up and have to be resolved, and to leave it to the Committee for Privileges and the ethos of the House and peer pressure, if you like, to try to make a light touch system work; but it is risky I know.

461. **Alice Brown:** Yes, and it is still a bit imprecise, is it not?

462. **Dawn Oliver:** Yes.

463. **Alice Brown:** Also, where would sanctions fit into that model?

464. **Dawn Oliver:** Well as I understand it, the Committee for Privileges has the power to fine and to admonish. It does not have power, as I understand it, to suspend or expel. Now that actually takes one off to a slightly different point I think, which is if the Wakeham proposals are implemented and people are appointed, not as life peers but as appointed members, it might become necessary for provision for expulsion and suspension to be made perhaps by statute. I think it would be premature to suggest doing anything about that unless and until the Wakeham Reforms are introduced. I am probably a naÔve optimist, but I would like to think that the sort of thing that I recommended would work, and I note that for hundreds of years it has more or less worked. I cannot imagine that adopting the seven principles and a code would make things worse than they have been for the last however long one looks back.

465. **Alice Brown:** I suppose one of the key issues there though is would it be seen to be working, because that is one of the

key other points, there is perception as well that is important.

466. **Dawn Oliver:** Yes.

467. **Alice Brown:** Can I take you on. You make reference also to the point of self-regulation, but we have heard different witnesses today, in a sense give different accounts of what they understand self-regulation to mean. Could you just clarify your own particular slant in that?

468. **Dawn Oliver:** I think there are various degrees of self-regulation, and I think many of the liberal professions for example, consider themselves to be self-regulating, but actually there are external bodies involved in that regulation. So self-regulation does not mean that no outsider can ever have any role to play at all in what the so-called self-regulating body is doing. So I suppose self-regulating suggests that the body in question sets its own standards, and administers them, and runs its own procedures for dealing with difficulties; but I do not think it is inconsistent with that concept of self-regulation, looking at the liberal professions for example, and regulatory bodies in sport and so on, for there to be the possibility of external involvement. Of course with some professions, and the bodies in sport the Courts have a role through for example judicial review, or application to the Court if it is suggested that the Managing Committee or whatever the body is has done something that it should not have done: that is clearly not available for either House. So that form of external mechanism is not available, and I think that points towards some compensating or other mechanism that would bring pressure to bear on the House to make sure that it was operating fairly and so on.

469. **Alice Brown:** You lead me into a point that you made. I hate to take you back to an article that was published in 1997, because I know I tend to forget things that I have written that long ago, but you set out three requirements for the successful operation of parliamentary self-regulation, and just to remind you those were, external involvement, which we have just discussed, responsiveness to change, and I think that is a critical one when you think about the situation we now find ourselves in, and effective public accountability. I have two questions really. To what extent does the current system of regulation in the Lords meet these requirements, and given the kind of changes in evolution that is taking place at the moment, would you add to your list if you were writing that article now?

470. **Dawn Oliver:** Well, on your first question, I do not think the current system meets any of those requirements at all, except to the extent that this Committee has the power to have some kind of external involvement although I appreciate that is not very welcome in some quarters. I do not think I could say that the present system meets those requirements. The second part of your question was, sorry?

471. **Alice Brown:** If you were writing the article now, would you add any other requirements, those were three requirements, which you add four or five?

472. **Dawn Oliver:** I do not think so; no, not that I can recall. I think the various points I make in my paper about how these sorts of criteria for a good self-regulatory systems to work, tend to overlap rather. I think the continued existence of this Committee and their interest could provide some of the guarantees that are otherwise missing.

473. **Alice Brown:** It was in particular the responsiveness to change point that I was really pressing, because we find ourselves with a transitional House at the moment, and we have our current enquiry, but of course further down the road, none of us know exactly what the House of Lords might look like, and how do you set a system that actually meets that process of change, I think, is quite challenging.

474. **Dawn Oliver:** The only mechanism for securing responsiveness to change that comes to my mind really is the continued interest of this Committee or some other similar body.

475. **Alice Brown:** I have got to give you an opportunity to say something about sovereignty because having read your paper and having heard the last witness, would you like to say something about your own perception or your own analysis for what it means in this context?

476. **Dawn Oliver:** Sovereignty means what you want it to mean really, but certainly to lawyers when you talk about the Sovereignty of Parliament, we mean the fact that the Queen in Parliament can legislate on any subject matter, except to do with European law, and this idea that it is somehow or other an infringement of sovereignty for this Committee or any other outside body even to discuss and look at and examine and report on the House of Lords, seems to me to have nothing to do with sovereignty. It could be claimed, but I think without any persuasiveness, that it was an infringement of the privileges of the House, but I do not think that argument washes either myself.

477. **Alice Brown:** A last question. Again this morning we heard from other witnesses who had conducted research into second

chambers in other countries. Now unfortunately when they were carrying out that research, they were not looking specifically at regulation on ethics and standards. Can you throw any light on experiences or any lessons that we might learn from elsewhere, how recognising clearly a completely different context may apply?

478. **Dawn Oliver:** I do not think I can, not when it comes to the regulation of conduct. I believe that there are codes adopted in other countries, but I am afraid I cannot help you on what supporting mechanisms there are.

479. **Alice Brown:** Thank you, you have been most helpful. I will hand over to my colleague.

480. **Clifford Boulton:** I find your paper splendidly clear and it has answered many of the points that we would otherwise be needing to ask you, but can I just seek to fill in a couple of points. Am I right in saying that when it comes to financial interests, you think that there are certain interests which are such that a parliamentarian, or someone wishing to exercise parliamentary rights, should really give that kind of interest up, and that it is inconsistent with an active membership, but that once we are off that kind of prohibited interest, we move into the realms of permitted interests for which there can be many grades, but once you have a permitted interest, then you should be able to take a full part in the proceedings of the House and there should not be first and second class members who have limited themselves in some of the things that they are able to do because of their interest, is that a correct understanding?

481. **Dawn Oliver:** Yes I think it is. I mean defining what the permitted interest and the not-permitted interest is might be difficult, but I can see a very strong case for those who have permitted interests declaring them at the time of the debate or whatever the contribution is, but yes I think a permitted interest should entitle the person to participate fully and a non-permitted interest should be prohibited, and that is that.

482. **Clifford Boulton:** Does it follow from if you support our seven principles, and accountability is one of them, that when you have a permitted interest, you should be required to register it. The present voluntary register is not really satisfactory to meet the needs of accountability, would you agree with that?

483. **Dawn Oliver:** I must say I think this is a difficult one. It depends really what the reason for registration is. Part of the reason is, I think, openness so that people can listen to whatever the member is saying knowing full well that they have a large number of shares in some affected company or whatever it is. That is one reason. I do not think that it is necessarily the case that that is a reason for all interests to be registered. Another one might be that one simply does not believe that people can bring their own judgements to bear on a matter where they have any
kind of an interest, and we have to generate due scepticism about everybody by registering the interest. Again, I think I am a rather naïve person. I like to imagine that given the right atmosphere and the right rules about declaration and so on, people can be expected to exercise their judgements independently and not in their own interests, even if they have a permitted interest in the matter at hand.

484. **Clifford Boulton:** But if we were able, and I am not indicating we shall be able to, if we were able to hone down the list of things which ought to be registered, to something that really was appropriate for their office, which is the words we actually use in our seven principles so that they were not unnecessarily intrusive and did not require the revelation of private matters which do not bear automatically on, or at least does not have right of access, could we not then just have something that would not be all that forbidding as far as members of the House of Lords are concerned, because they would see at a glance that it is the sort of thing that is relevant to the general public. Peers are not just talking to themselves in debate, they are on the record for everyone, and they are trying to address Government and the public at large. Do you think that if we were able to produce such a list, then that is something which they ought equally to take part in?

485. **Dawn Oliver:** I find it difficult to imagine what the list would look like. I mean in principle it sounds a good way out, but I think one of the difficulties is, that members may find themselves wishing to contribute on a matter which they never realised they had an interest in, but suddenly an unexpected matter has arisen in which they want to say something. The other difficulty about formulating, and making fairly tight formulations is that it tempts people to get round them or to give a narrow or literal reading in order to evade the spirit. I mean, you often lose the spirit when you put things into words.

486. **Clifford Boulton:** So you would agree, or you would feel, that the Commons Register goes too far, certainly too far for the Lords, would you?

487. **Dawn Oliver:** I suspect it does go too far, yes.

488. **Clifford Boulton:** Just one more, and that is on this question of parliamentary privilege, because it is of course an enormous invasion of privilege to contemplate making bribery and corruption susceptible to the criminal law, is it not, and there is a grave danger of there then being, as Professor Brown referred to, an enormous hiatus between that and what the House of

Lords can actually do for cases which do not measure up to that standard. If we were to move to a compulsory register, we might get more cases arising of apparent failure to comply with the Rules of the House. Do you not think that some attention ought to be given to the possibility of having a standing arrangement for looking at problem cases which do not come within the reach of the criminal offence?

489. **Dawn Oliver:** I do not know whether you are talking about bribery and corruption, or about failure to register?

490. **Clifford Boulton:** I was saying that the allegation of failure to register is one that is likely to come up, but it is only as an example of someone who is falling short of the standards that the House would require, but which in fact falls short of an offence against the criminal law.

491. **Dawn Oliver:** Yes, so I would hope that that sort of thing could be dealt with inside the House.

492. **Clifford Boulton:** But despite you feeling that the Commons are quite incapable of really doing this, you say that the party system has made it impossible for them to act in a quasi judicial way.

493. **Dawn Oliver:** Yes, but there are no independents in the House of Commons, and it is a very highly politicised House, which the Lords is not.

494. **Clifford Boulton:** Thank you.

495. **Lord Goodhart:** Can I just take up one point. It rather follows on from what Sir Clifford has been saying, that you say that when discussing an internal disciplinary system, only members of the House not taking the party Whip should participate. My impression is that, that is a suggestion that would go down pretty badly in the House of Lords. Can you say why you think that is important?

496. **Dawn Oliver:** Well, I read what I call "the Willetts saga". I do not know if members of the Committee recall this. About three years ago when the Committee of Standards and Privileges in the House of Commons was looking into part of the Hamilton affair, a member, a Whip approached the Chairman of the Committee and it looked as if pressure was being brought to bear. Now my feeling is that it it is expecting too much for the party aligned members, people who take the Whip in either House, completely to set aside any party interest that there may be in the outcome of an investigation of some allegation against a member. So I think it would be very difficult for an investigation to be carried out fairly if there were party members involved, added to which it would look bad, whereas I would think that independents and cross-benchers could be relied upon, particularly if there were lawyers or judges among them, to act judicially in dealing with any complaints.

497. **Ann Abraham:** I am interested in your light touch self-regulatory scheme. I am trying to fill in the gap I think that Alice was trying to fill in earlier, and how you envisage what would presumably be a fairly brief code of conduct would be administered, and what sort of mechanisms might be in place, particularly in relation to what you called external involvement and the prerogative of outsiders. I have in mind the Bar Council which has a Complaints Commissioner who is a lay person, who is part of their self-regulatory framework, but is independent from the self-regulatory scheme. Whether you envisaged any kind of specific mechanisms that were going to enable the House to uphold the standards in the code of conduct, or whether it would sort of come out right, as somebody was suggesting.

498. **Dawn Oliver:** For myself, I would hope that a system could work without that sort of a person, let's say an equivalent of a Parliamentary Commissioner for Standards or some kind of a Complaints Commissioner. I would hope that it could work by the fact that the possible breaches were known about and there might be informal words had, and if it came to it the Committee for Privileges could look at it. Now that I think would not work if there was a large workload, I mean if there were many, many complaints. It would not work if it became a part of the political game to accuse members of one or other of the parties of breaching the code; this is where I think the fact that the House is not as aggressively political as the House of Commons makes a difference. So really what I am saying is that I hope that it could be dealt with in that kind of way, but if it did not, then it might become necessary to reconsider the matter and perhaps go in for a Complaints Commissioner or some such officer. That is where we come back to the fact that it is important for the House to be responsive to concerns, and we come back to this Committee, or some equivalent, which could revisit the matter in three or four years and raise any difficulties that needed to be resolved.

499. **Ann Abraham:** I am interested really in how, if there is no mechanism, and I am not suggesting it cannot happen because a number of witnesses have suggested that it would, that an issue, a concern, would somehow find its way to the Committee. That seems to be what you are saying.

500. **Dawn Oliver:** Yes I am. I am afraid I do not know enough specifically about the procedure in the House to know how

things get to the Committee but I am assuming that would happen.[1]

501. **Lord Neill:** Well Professor Oliver, I think you have answered all the questions that we had to put to you. Once again can I express on behalf of Committee our thanks for the very careful paper you prepared for us, I am most grateful for that, thank you very much.

We shall now hear from Earl Russell.

You have been kind enough to write a paper on 23 April, received on 26 April, in answer to the Issues and Questions paper which we published. What I am proposing to do is that we will follow our usual procedure: a couple of the members of the committee put questions. Before we start on that, is there anything that you would like to say by way of an opening statement. Some months have gone by, is there anything that has occurred to you since you wrote what you wrote in April, that you would like to state, before we start?

EARL RUSSELL FBA

502. **Earl Russell FBA:** No, I do not think I want to offer an opening statement. I think the paper still expresses my opinion.

503. **Lord Neill:** Thank you. I will ask William Utting, followed by Ann Abraham.

504. **William Utting:** Thank you Chairman. Lord Russell, today we have had a number of witnesses who have already talked to us about the considerable changes that have occurred in the House of Lords since the Griffiths Report of 1995. I would be interested in your perception of those changes and in particular whether there were any regulatory powers of the House.

505. **Earl Russell:** I think my perception of the changes changes from day to day and moment to moment, depending on the place from which I am perceiving. One sees much less difference inside the chamber than one does in the bar or in the library. I think that the biggest one is that most people who take part in the House now take part on a fairly frequent and regular basis. There are many fewer peers who put in an occasional attendance.

506. The other one is that contested party votes are likely to be a great deal closer than they were. If you look at the last really key contested vote, it was settled by a majority of five. In this sort of situation, a very few votes can shift it. The question of whether any peers in that majority of five had a material interest does get a good deal more interesting.

507. **William Utting:** It has been put to us that the House is in the process of becoming much more professionalised in the sense of being manned by people who are much more interested in the political situation.

508. **Earl Russell:** In that sense of 'professionalised', certainly. In the sense of 'professionalised' which means being paid, of course it is not. It is still necessary for any peer who is not of independent means to have employment if they are under the age of retirement. So, we expect people to have employment outside the House. We expect this to constitute a material interest in a lot of cases. One cannot think of prohibiting it. The point is that the House should know it.

509. **William Utting:** Do you think that given the age and experience of most members of the House of Lords that they are therefore likely to have a kind of portfolio of interests which makes the situation rather more complex for them than it might do for an individual who is in the middle of working life and has only one career to declare.

510. **Earl Russell:** I think that this has always been the strength of the House, but whatever subject we are discussing, there is usually a number of people there who know more about it than the relevant minister. I do not think that we want to be without that relevant expertise. The point is that I think a lot of us would like to be able to recognise it for what it is when we hear it.

511. **William Utting:** The general point that has been put to us on that score, is that people who participate in the legislative process ought to be prepared to make a full declaration of all relevant interests and that that takes precedence over considerations of intrusions into personal privacy.

512. **Earl Russell:** That is a view that I would entirely share. There is nothing improper about having a view, speaking or voting on something on which you do have a material interest. The point is that the House does need to be able to discount your view for that reason, if it sees fit.

513. **William Utting:** You said in your paper, which I read with a great deal of interest and if I may say so, admiration, that:

> "there should be a rebuttable presumption that rules of conduct in the House of Lords should be similar to those in the House of Commons".

So far today, we have had agreement that the standards that are aspired to, or ought to be aspired to, should be the same. But, there has been a degree of disagreement that the actual rules should be similar. The argument has been that even with the changes that have taken place, the House of Lords is so different from the House of Commons that it would be unreasonable to assume that the same rules should apply to them.

514. **Earl Russell:** I think that this depends on rules on what question. If it is rules on declaration of a material interest, I can see no reason why those should not be the same. If a vote can be altered by two or three people, I think that ought to be known. However, if the question we are discussing is the attitude to outside earnings, then that cannot be the same until such time as members of the Lords have salaries. You cannot do anything which says that outside earnings are improper until there are inside earnings, which I understand is outside the remit of the committee.

515. I do not see any reason why there should not be the same sort of rules on declaration as there are in the Commons. After all, if you get a vote after dinner, you may get something settled by a very narrow majority, in a very thin House, and a dozen people with a financial interest may make a very considerable difference.

516. **William Utting:** What about the other pillars of the regulatory system in the House of Commons? There is a code of conduct for members of the House of Commons. For example: there is a disciplinary process which is backed by sanctions and there is a parliamentary commissioner for standards. Do you see any of these as being desirable precedents for the House of Lords?

517. **Earl Russell:** I do not really see, through most of that, any very strong reason for any difference. 'Disciplinary sanctions' is the one I think we need to think twice about. Whether there is a power for the Lords to require somebody not to attend is a question that we would need to get historians working on at some length and I would need to do some research on it myself.

518. On the other hand, there are plenty of precedents for Lords applying for leave of absence. There are precedents for Lords applying for leave of absence on a voluntary basis because it is felt that their presence, for the time being, would not be appreciated and a period of silence on their part would be appreciated. The sanction for that is of course that the motion that the noble Lord be no more heard. That is a nuclear deterrent; it does not actually need to be used. I think that there would be no difficulty in persuading a Lord in most normal cases to stay away.

519. **William Utting:** One does not want to get into the business of creating unnecessary bureaucratic monuments in this area, do you think that there is any point in a code of conduct for members of the House of Lords, albeit one that is still expressed in fairly generalised terms, or do you think that the present injunction to act always on a sense of personal honour is sufficient?

520. **Earl Russell:** I would instinctively welcome a code of conduct, in principle. In practice, I would want to know what it was going to say, but I see no reason to feel particularly apprehensive about one; it would save us from a great many times when we pick up the telephone to ask advice on this that and the other. You do not want to multiply those cases any more than you have to.

521. **William Utting:** On the question of an officer of the House whose duty it is to investigate allegations of misconduct, today we have had it put to us that that is superfluous because there are in fact no allegations, or few allegations of misconduct, and if there are, they are certainly without substance in the House of Lords. We have had an almost universal declaration that the business in the House of Lords is carried on with a very high level of probity. Do you think that that puts the end to the case for a paid official whose job it is to investigate and report to the House?

522. **Earl Russell:** No, I do not think it does. High treason is an extremely rare crime; no prosecution has been brought for it for a large number of years. It does not mean that I think it is safe to dispense with that law from the statute book.

523. There are cases which raise questions. I will mention one in such a way firstly that the peer cannot be identified, and secondly that nothing said would be in any way damaging if he were identified. An amendment moved very late at night after dinner carried by a small majority in a very thin House went down to the Commons and was reversed. Then the story started to go around that the peer concerned was likely to put a six or seven figure sum into his pocket through the carriage of the amendment. The peer concerned tried to insist on the amendment when the Commons had reversed it, and got an absolutely derisory vote.

524. Either the allegation was true, in which case I think that the House was misled, or it was not true, in which case the peer was maligned. In either case, if we had had a register, we would have known which case it was, and I would have liked to because it did influence my vote.

525. **William Utting:** You quoted the Wakeham Commission in your note to us that the Lords is now regarded as:

> "a more attractive and receptive target for lobbying than the House of Commons".

Is that still your personal experience and perception of the Lords?

526. **Earl Russell:** The point is that the Lords occasionally alter the law; maybe about three or four times a year. The Commons actually alter the law about three or four times a decade. Clearly, if you are putting good money into trying to change the law, if you are making a sensible investment you will put it into trying to do it in the Lords rather than the Commons.

527. As for personal experience, lobbying obviously takes place much more in areas where there is money to be made than areas where there is not. I am a specialist in social security with a particular interest in the area of means-tested benefits. There is not very much money at present to be made out of means-tested benefits, though if some purely speculative reports were to become true, this could in the next twenty or thirty years, turn out otherwise. I do notice that when I get onto the part of the brief which includes pensions (which is actually someone else's responsibility most of the time, but I get the post), a good many more things come in from people who are in business for profit and who do have an interest in the outcome. I think if I were operating in an area like trade and industry, I would be getting a very great deal more of this than I am. It certainly makes sense that they should do it in the Lords and I find the Wakeham Committee's assertion entirely credible and it makes sense. I do not have very much personal experience of people lobbying me for profit.

528. **William Utting:** It is perfectly in order for them to do that. The problem occurs if it comes accompanied with brown envelopes with cash in it or promises of future benefits to you if you follow a particular line.

529. **Earl Russell:** Promises or understandings, but it
must be in order for any citizen to lobby any member of either House of Parliament. You cannot have that otherwise.

530. **William Utting:** Thank you chairman.

531. **Ann Abraham:** In the past, in another organisation,
I used to lobby you for all kinds of things, but not for profit.

532. **Earl Russell:** Not for profit, but for great interest and great benefit.

533. **Ann Abraham:** Indeed. I wanted to try and knock on the head some of the differences that have been discussed today in terms of their relevance to standards. I would be interested in your view as regards these two major differences that keep coming through in submissions about the differences between members of the House of Lords or of Commons, that they are appointed or elected, paid or unpaid and whether either of those differences ought to impact on the standards that the public expects of holders of public office.

534. **Earl Russell:** I cannot see any reason why they should impact on the standards that are expected inside the chamber. Whether you are paid or not, clearly makes a difference to what you are likely to do outside the chamber, but provided that there is time to do something outside the chamber, I do not see why it should make any difference to what you do inside it.

535. I would have thought perhaps you could argue that if you were appointed and not accountable to constituents, people might expect a rather higher standard of you because there is no-one else to hold you to account.

536. **Ann Abraham:** That is interesting. You said that instinctively, you would welcome a code of conduct, but qualified that with saying that you would wish to know what it would look like. I wonder if your instincts would take you as far as telling us what you think it might or should look like?

537. **Earl Russell:** I think firstly it would say that all material interests would have to be declared. Then, it would have to give some guidance on what was a material interest. That, I am not really competent to do. If you think of cases in the Commons, like for instance, Ken Livingstone's journalistic earnings. That was clearly one on which anyone was entitled to want advice. Similarly, shareholdings create questions on which anyone is entitled to want advice. It would include some general principles governing that, and some governing both speaking and voting. I would not want to adopt the local authority principle and go right down the line of saying people must not vote. I would like the interest to be known up-front where everyone can see it.

538. Beyond that, we would have to put a lot of people's experience together and see what was suggested. It is not a job I would want to start working on without a committee around me.

539. **Ann Abraham:** Would you go as far as to give us some indication of what the mechanisms for enforcement of the code

might look like.

540. **Earl Russell:** There are three possible ones, and two that are already in existence. There is the House Procedure Committee, and the House Committee of Privileges. There is a fairly well recognised working line for the boundary between these committees. Then, there is the possibility of a commissioner. I would, on the whole, be in favour of that because if it is done within the House, either the person concerned is likely to be a party politician, in which case a suspicion of interest arises even if it may be unjustified (I believe it very often would be); justice would not actually be seen to be done. Alternatively, it could go to someone from the table-side, who is a servant of the House. There, there is a very proper reluctance to get involved in what may be seen as political decisions; there is therefore, a certain caution as to how decisions are approached.

541. The advantage of a commissioner is that we would have someone who did have the authority and the impartiality and no political motive to pull any punches. That could be rather valuable.

542. **Ann Abraham:** Thank you very much.

543. **John MacGregor:** I would like to pursue the commissioner case, that you have just been talking about. There is the obvious practical point that, as I understand it, there have been no references or complaints of any sort since Griffiths was set up, so there may not be much of a workload for the commissioner to do. More particularly, as I understand all the descriptions of the ethos and culture of the House of Lords, it does seem to me that it is rather similar to what the House of Commons used to be, and that one's own peers could do the investigative work and the recommendation as to what should be done if a case arose.

544. **Earl Russell:** You can never be absolutely certain that a question of party does not come into it. Even if a question of party does not come into it, you cannot be certain that someone outside will not believe that it has, when it has not. I am not certain that it is entirely true that no question has come up since Griffiths. At present in the Lords, we tend to dispose of questions informally, which may very often get very good answers. The trouble is that it does not persuade the public that justice is seen to be done. With the increasing frequency of narrow majorities in the House, we may expect a great deal more public concentration on that question than we have had already.

545. I am not really certain that informal resolution is going to be entirely adequate. Some people have rather thicker skins than others and the ones that we want to get through to probably have the thickest skins of the lot.

546. **Lord Goodhart:** Just one point; if we were to recommend compulsory registration and a code, but no-one wished to go as far as adopting exactly what the House of Commons has done, do you think that this Committee should make recommendations on what should go into that code, or is this a matter that should appropriately be left to the House of Lords to decide.

547. **Earl Russell:** That is a question on which I would expect there to be some informal communication between this Committee and the officers of the House. One would hope that an agreed view on that could be reached before the Committee reported.

548. **Lord Neill:** The Griffiths Report had a three-tier register, Categories 1 and 2 to be mandatory (consultancies and financial interests in lobbying being 1 and 2). The third one was written this way; "any other particulars that members of the House wish to register, relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties". The way that is written is that you should put something on the register if you think that the public might find that of relevance. Quite a lot of the people who have been speaking here today have said that what really matters is your colleagues who are sitting listening to you. They want to know what your interests are because then they know what discount factor to attach to your speech. Do you think that is written in a rather odd way?

549. **Earl Russell:** I have never been certain what that passage means. My instinct is to say that this is likely to have been a committee draft, which in fact, we know it is. I would imagine that there are several inputs into that sentence and I have certainly puzzled over it on occasions. The difficulty with defining in advance what was going to be necessary is that you never know what amendments are going to come before you. Something may be of vital material interest on one amendment which you never foresaw because you never foresaw that you were going to be discussing that particular amendment. I would rather fasten it to sources of income than to things which the public might think affected your discharge of your duties because something may affect your discharge of one particular duty and not your discharge of other duties.

550. **Lord Neill:** Then, on that test, would you leave out charities? If you were chairman of some charity which you were passionate about and did a huge amount of work for, then that is obviously something that members of the House ought to

know, so that they can say you are speaking about your own hobby horse when you are speaking about cancer for example, and that they need to supply a discount factor.

551. **Earl Russell:** I would want to use that discount factor whenever one was speaking on behalf of any outside organisation. For example, when I have spoken to briefs which originated from your organisation, (addressed to Ann Abraham) I believe I have normally said that I was doing so even if they were saying things which I had thought of before I had received the brief (they very often were). I think the House was entitled to know where the material came from.

552. I will never forget one case of a Labour front-bencher in opposition, reading a BMA brief absolutely word-for-word. The Government said that he was spouting socialist propaganda and the shadow minister said "my information comes to me entirely from professional sources". I think he should have named the professional source.

553. **Clifford Boulton:** You talk about speeches or contributions which ought to be discounted but of course, the vote which follows cannot be discounted. Is there not a case for saying that if you have got a view which is so damaging to your contribution that you make in debate, then it is qualifying for the sort of interest which you ought not to have because you are in an atmosphere of small majorities and still voting merrily away? Are we not into that area where something ought to be forbidden, or it allows you to do everything without inhibition, so long as it is known?

554. **Earl Russell:** This is really the case for having the interest registered before the vote comes up. I do not think that you can go into the area of prohibited interests because you do not know what votes are going to come up. There may be a vote which is absolutely integrally linked with some interest that you have, possibly as a guardian or a trustee or something, but you would not have thought of it as something which was going to limit your interest. If your interest was clearly displayed in the register, and then you cast your vote and the result is close, then some sharp journalist is going to notice or if they do not, someone is going to tell them.

555. **Alice Brown:** I am very struck by some of the evidence you have given and the contrast with some of the other things that we have heard today. One of the points that has come across has had a lot to do with the political culture in the House of Lords. Do you think that it is ready for some of the reforms that you suggest?

556. **Earl Russell:** Yes, just, I think.

557. **Alice Brown:** Can I press you to say in what way?

558. **Earl Russell:** I think the political culture since the appointment of the first incarnation of this Committee under Lord Nolan has been changing extremely fast. That change is still in progress and what is just acceptable now will be clearly acceptable in a year or eighteen months time, I think that is moving that fast. This Committee under both its chairmen has accelerated that process considerably.

559. **Lord Neill:** The question is whether we will be able to keep up that speed in the climate that is going to confront this report. Have you any advice to give to us on the contents of the report or areas that would be of particular value to the House of Lords?

560. **Earl Russell:** I think you stick to the line that justice must be seen to be done. How far along that you go is something on which I am inclined to back your political judgement which is after all part of what you are here for.

561. **Lord Neill:** I would like to comment on one paradox which strikes me. I very recently passed piece of legislation: the Scottish Act, says the Scottish parliament shall create a register. Secondly it states that if a Member of Parliament fails to register and participate in the proceedings of the parliament, that is a criminal offence.

562. **Earl Russell:** I would not like to have it said that Scots are holier than Englishmen.

563. **Lord Neill:** I think that concludes our questioning. Thank you very much for coming and it has been a very interesting exchange of views. Our last witness of the day is Baroness Hilton of Eggardon. You have been kind enough to write to us and give your answers to our questions. You have the very valuable qualification, if I may say so, that you were a member of the Griffiths Committee and were in favour of much tighter rules on declaration of interests than they appears in the final report. Is there anything that you would like to say by way of an opening statement before we start our questions?

BARONESS HILTON OF EGGARDON QPM

564. **Baroness Hilton of Eggardon QPM:** As you have raised the Griffiths Committee, I might just say a word about that. We were very split as a committee and I think that Lord Russell is absolutely right that the third category was a result of rather

elaborate attempts to draft something which put in all the interests which perhaps people have but are not necessarily pecuniary. I think the split was between those who thought that there was nothing wrong with the House of Lords at all and therefore we should only be concerned about our public image, and those who thought that there were abuses of the interest declaration and that people did speak on behalf of their own personal wealth and standing. It was very difficult to reconcile those two points of view. In the end, in the third category, we came down on the side of public image being the determining factor, rather than that there were any abuses from the House.

565. I would like to say that I do not think there are any serious abuses in the House of Lords, or that we are anywhere near some of the problems that arose in the House of Commons.

566. **Lord Neill:** Thank you for that opening remark I will now ask Ann Abraham, followed by Sir Clifford Boulton to put the questions.

567. **Ann Abraham:** My opening question was going to be about trying to understand a little more about your views at the time of Griffiths, on rules and conduct. You have said a little about that; perhaps you could say a little more. Then I wished to understand what your views are now and if they are different, what has changed them?

568. **Baroness Hilton:** I was, and still am in favour of a House that regulates itself and not having an independent commissioner. One of the things that makes the House of Lords work is that, to a large extent, we do co-operate with each other and have an ethos that we are a social grouping in a sense, which does set its own standards. I am in favour of that, but I am also in favour of rather more rigorous standards. I am therefore in favour of a compulsory register and would like to see some sort of banding of financial return. Financial returns are relative; one person's £500,000 is going to be somebody else's £10,000 in terms of personal worth. I nevertheless think that it does, to some extent, show how much somebody is getting for a particular aspect of their life. As one is taking part in public service one has a responsibility, if you are in the public world, to undertake certain responsibilities including revealing sources of your income. That, I have always felt.

569. I have become rather harder on the idea that one should not be allowed to vote if you have a pecuniary interest. In that respect, I would not be in tune with many people in the House of Lords who seem to think that perhaps voting is not any worse than speaking on something, where you have a pecuniary interest. In my view, I think it is a direct action on that front.

570. **Ann Abraham:** I think you said at the time that you were interested in tighter rules and I imagine that those were the sort of tighter rules that you were talking about. I am quite interested to know what problems you were seeking to solve with those tighter rules. Was it about perceptions or about substance?

571. **Baroness Hilton:** It was about substance. I think quite clearly that the rules are flouted in respect of personal interests. If you looked at the Leasehold Reform Bill where hundreds of peers arrived in the House who were land owners, or had substantial properties which the change in the law was going to affect, they did not declare their interests and merrily voted, feeling that they were entitled to do so. It will be interesting to see, in relations to the Countryside Bill which has got its second reading today, the twenty or so conservative peers speaking on that Bill (many of whom will be large landowners). I suspect that many of them will not say that they have a personal interest in not allowing people to walk on their lands. Some of them will, but that it is not only putting weight on evidence and discounting people's evidence because they have an interest in a particular topic, it sometimes actually adds to what they say in the House. It would therefore be a bonus to the House to know where somebody was coming from on a particular topic.

572. It is not only useful to the House to say that what somebody is saying is less worthy because they have an interest in it; what they say is sometimes more worthy because of their particular interest in it.

573. **Ann Abraham:** Would I be right to understand that you still believe there are issues of substance to be addressed today?

574. **Baroness Hilton:** Yes I do. I think that pecuniary interests in the mercenary world that we live in, should be totally visible and above board.

575. **Ann Abraham:** With regard to interests of perception, has anything changed in terms of public confidence in that time?

576. **Baroness Hilton:** I do not think on the whole that people see the Lords as having particular problems of corruption, but I think that it is very important that we do appear to be squeaky clean. Obviously, we do have a large number of rich people and currently there seems to be a campaign against anybody who has large amounts of money. Not just Lord Levy, but other people latterly. That is very sad for us, them and for our society.

577. **Ann Abraham:** We have had a number of witnesses today who have expressed different views on codes of conduct. Some have stated fairly clearly that they are not necessary because members of the House of Lords know how to behave. It seems to

me that codes of conduct are double edged; they are partly about advising people how to behave, but they are also about telling the public what they might expect by way of behaviour. We have also heard about codes of conduct which are two sides of A4 and some that are 850 pages. Do you have a view on what the code of conduct might look like and what it might weigh when and if it is done?

578. **Baroness Hilton:** I come from a background in the police service where we had the most elaborate discipline code, but I actually think that it had very little effect on people's day to day behaviour. I am not really in favour of enormously complicated codes; I think that we all know how we should behave and a single side of A4 would be quite sufficient, if well-drafted and succinct. I do not believe in masses and masses of detail. We do know what is expected of us; one could probably write it in a short paragraph and I do not think that words on paper affect behaviour and that is what we are trying to do.

579. **Ann Abraham:** How would it be enforced?

580. **Baroness Hilton:** I am in favour of having a small committee like the 'Committee of Privileges', or some such, which would have to be cross-party. Even if we are in a more political atmosphere, I still think that we can have cross-party committees with Liberal Democrats and cross-benchers represented, who could have the power to recommend suspension. I think the House as a whole, would have to agree to what they recommended, but I think that people could be suspended from the House which would, I think. Be sufficiently draconian.

581. **Ann Abraham:** How would the Committee know there was a problem?

582. **Baroness Hilton:** Probably the press; the ever helpful media would dig out problems. Sometimes one is aware of problems in the House, but they are usually more suspicions rather than hard fact.

583. **Ann Abraham:** Do you envisage any formal mechanism by which problems would arrive at the committees doorstep?

584. **Baroness Hilton:** This is going to happen so rarely that it would be difficult to set up a mechanism.

585. **Clifford Boulton:** Could I ask you about the steps that are taken to help new members understand what the rules are and what is expected? Do you think that there is any room for a more systematic approach to what is called 'induction'?

586. **Baroness Hilton:** Yes, I do think that we need a rather more elaborate induction system. I chaired a small committee last year which was looking at various procedures of the House and tidying up one or two administrative things. We recommended that there should be a two-stage induction process. The first one would be things like standards of conduct and general matters like that. The second one, after about six months, would be much more about legislative passage of Bills through the House and the more complex way of dealing with legislation, which I think people have difficulty absorbing in the beginning. Certainly the initial two or three day process which would introduce people to the House as a whole, could include something on standards of conduct and what was expected.

587. **Clifford Boulton:** Is that report still waiting for consideration or has it been adopted?

588. **Baroness Hilton:** All our suggested administrative changes were adopted but we were told that it was too expensive to run; the clerks and the other officers of the House would not have time to run a two-stage course; the usual problems with resources.

589. **Clifford Boulton:** Do you think it would help in the induction, and as a kind of refresher for members, if there were slightly more details or examples given in the Griffiths rules about behaving in a way that higher thought would suggest and not putting any more detail than that? Do you think that there is scope for a little more detail in the rules?

590. **Baroness Hilton:** I am always rather reluctant to give people bad examples of behaviour. On the whole, I am more in favour of giving examples of what you expect people to live up to rather than how people have failed; I think that that creates the wrong impression in the first place.

591. **Clifford Boulton:** Do you think that slightly more elaboration of the single Griffiths principle might be helpful?

592. **Baroness Hilton:** Yes. Indeed.

593. **Clifford Boulton:** Can I turn to the question of those interests which you say add to a member's value when he or she participates in a debate, but which nevertheless, ought to disqualify them from voting? You may impress your colleagues to the extent of changing their minds and they could all go and vote in a certain way, but you cannot go with them. Do you think that while not to say that if you have got the kind of interest which really disqualifies you from taking part in a legislation, you

ought to think about whether it is the sort of interest you should divest? If it not that limiting, you ought to be a full member and take part in everything? In the House of Commons, the only time you cannot vote is when you have an interest which is so special that your interest would be treated differently from the generality of those affected by it. Everybody can vote to cut income tax, even though they are going to benefit from it; is there not a case for asking the question of if a law is being changed in a way that is going to affect everybody, should they be able to take part in the decision as well as persuading your colleagues in a certain direction?

594. **Baroness Hilton:** Income tax affects everybody, so that would disqualify every member of the House of Commons, so that would not be sensible. There are areas where people have particular interests in land reform or stocks and shares, or very specific things which place them in a specific category. I would say that they should not be allowed to vote if they have a pecuniary interest in that particular commercial or property area. That is different from income tax, which would be universal.

595. **Clifford Boulton:** I am assuming that the law, landlord and tenant is going to be changed for all landlords. Therefore although you will be personally benefiting from it, it is not in any 'special' way.

596. **Baroness Hilton:** That is on the assumption that everybody is a landlord.

597. **John MacGregor:** Supposing you were a non-executive director of an insurance company and there was an issue which somewhat affected you in the Financial Services and Markets Bill amendment, but would affect every other insurance company in a much wider implication, is it not a little difficult to say that you should not be able to vote on an issue like that?

598. **Baroness Hilton:** I do not see it as difficult and I think that one person's vote is not going to make that much difference overall.

599. **John MacGregor:** We have been told today that one of the likely results of the transitional period is that the votes will be much tighter and the government will lose much more often. It could quite often be the case that some of these votes from people who do understand the issues very well could be crucial.

600. **Baroness Hilton:** I think that is why they should be allowed to speak because they understand issues well. However, I still think that if you are getting a direct pecuniary advantage, that you should not be allowed to vote - it is my view.

601. **John MacGregor:** What if you had a mortgage - not everybody has got a mortgage?

602. **Baroness Hilton:** Almost everybody have mortgages.

603. **John MacGregor:** I think that most members of the House of Lords do not actually.

604. **Baroness Hilton:** I can see and am not denying that there are grey areas. In the end, it may have to come down to somebody's conscience. I still think that they should abstain from voting; that might be a matter for the individual. However, it could well be an understood rule that one did not vote if one had a direct pecuniary advantage. People bend rules in all sorts of ways and that will no doubt continue.

605. The written register has to be absolutely spot on, but what I am saying about voting may not be quite so easy to enforce.

606. **Anthony Cleaver:** You focused, like most of our witnesses, on pecuniary interest, but what about other interests; being involved with an NGO that has a particular line, do you think that those should also be registered?

607. **Baroness Hilton:** I think they should certainly be mentioned when somebody is speaking because it sometimes adds weight to what they are saying. I was saying earlier that it is not always something which discounts what they are saying. If you know that they have been associated with a particular organisation for many years, it makes you understand that they do perhaps know what they are talking about. I see no harm in having the third category of the Griffiths Report, which should be general interests. It is not a great pain; I have half a dozen things which I am president of, which I think should be there as a matter of general interest.

608. **Lord Goodhart:** When talking on the code of conduct, you were saying that it should be one side of A4. I was looking at the Commons code of conduct which manages to get it into two and a bit sides, but it then has some thirty pages of guidance attached to it.
Is it going to be necessary (if you have a compulsory registration) to also have some guidance as to what has to be registered or not, for instance, looking at receipt of gifts or benefits, the sort of indication for the level of the gift or benefit?

609. **Baroness Hilton:** That is possible, but the actual code could be a single page.

610. **Lord Goodhart:** You would accept that the code of conduct might have to accompanied by guidance which rather elaborates it?

611. **Baroness Hilton:** Yes; something indexed under headings, so that you could look up certain things that were concerning you. Nobody ever reads these things. I think I was one of the few people who ever read the Police Discipline Code from beginning to end out of interest on one occasion, when I had nothing else to do. It is only when things go wrong that people start referring to these elaborate documents.

612. **Frances Heaton:** It is interesting that in the conversation that we were just having on voting, that you said, in the end, that everybody bends the rules and at the end of the day one has got to rely on one's individual honour and exactly the same applies for any code of conduct relating to registration. The more you get into details, the more you have and the more you get into people trying to get into loopholes which does beg the question of is it all worth it? When you have got the opposite system at the moment, is it actually going to end up with anything better?

613. **Baroness Hilton:** I think that it is symbolically important in the same way that I think most of the criminal law is symbolically important rather than actually having much effect on human behaviour.

614. **Frances Heaton:** So it is a perception point for the outsider?

615. **Baroness Hilton:** No. For the individual peer as well, it is important to know that there are standards which you are expected to abide by. The actual effect that written codes or codes of conduct have on people is probably not terribly strong. Do you think it may be?

616. **Frances Heaton:** No, I think that one goes on to a remorseless chain of every greater detail. For example, my area of expertise is the takeover code, which itself was originally written on four pages. Honour, and one's own individual judgement on it and how one's peers perceive how one has made that judgement (if there is something which causes debate), is in effect, a sanction.

617. **Baroness Hilton:** It is other people's perception of you which ultimately makes you behave. There is no harm in having clear rules so that other people know when they can condemn you.

618. **Lord Neill:** Coming back to the question I put to Lord Russell; you heard me put it and I gathered from what you said when you started answering questions, that there was some sort of a debate about Category 3 on the Griffiths Committee. I was drawing attention to the way it is written in terms of registering matters which the member considers may affect the public perception. Did the Committee consider the view that the drafting might affect the judgement of other members of the House in relation to the participation of a particular peer? This is all written about what the public may perceive as being a relevant interest. Another way of looking at it is, what those who went to listen or watch the peer vote think, will be much closer to it and have a much better knowledge. Do you remember if there was any debate about it in the Griffiths Committee?

619. **Baroness Hilton:** There was this strong feeling amongst many of the people on the Committee that there was nothing at all wrong with the House of Lords; why were we making all this fuss which was got up by the media and that it was the fault of the Commons. Therefore, what we had to fend off was a public perception, not our own perceptions. Other people felt that we had to do something about misuse of the way people spoke about particular topics where they had a personal interest.

620. **Lord Neill:** It is pretty clear from the debate on 1 November 1995, on the Griffiths Report that there was a spectrum, with some saying nothing is needed - all is perfect and then, the radicals who say a great deal is needed. The middle-of-the-roaders say we can do a certain amount and that is going to look alright. I am putting it very crudely.

621. **Baroness Hilton:** We did not have many middle-of-the-roaders on the Committee; on the whole we had the two extreme wings. Lord Griffiths and I were the Middle-of-the-roaders; everybody else disagreed all the time. In the end, what you have is a not very satisfactory compromise between the two extreme positions.

622. **Lord Neill:** One last question: we heard a witness describe the change in the character in the House of Lords over the past few years. You were created Life Peer in 1991. Do you think that over the last few years, it has become more professional?

623. **Baroness Hilton:** In some ways things have sharpened up a bit, although not as much as you would expect. We still have something like 100 hereditary peers most of whom were the ones who worked previously. Most of the ones who remained with us were people who were active in the House. That has not changed.

624. I think that there are fewer amateurs about, some of the hereditary peers were very much amateur politicians and perhaps took things in a more gentle way. I do not think it has changed as much as people expect as a result of losing the hereditary peers.

625. **Lord Neill:** Is it more politicised in the sense of more debating points being scored across the floor of the House?

626. **Baroness Hilton:** They always were scored I think, although they were perhaps scored in a more gentlemanly way, with greater irony, rather than quite so directly. I think that the party political edge was always there. We were endlessly accused of politics of envy for instance, by one of the Tory ministers, when we were in opposition. There was no question that that was political.

627. **John MacGregor:** On lobbying, some of our members have suggested to us that, particularly with the likelihood of closer votes now and a greater likelihood of the government being defeated in the Lords, that there will be much more lobbying of the Lords than there was in the past. I noticed you said that you thought there was much less of that lobbying for particular organisations. Have you noticed a difference in the last nine months?

628. **Baroness Hilton:** We get very heavily lobbied directly by NGOs, rather than by lobbying companies. The amount of lobbying that we have got on the Countryside Bill makes a large pile on my desk, at the moment. That has all been by individual NGOs rather than by any intermediary party. That is perhaps one of the differences in the Lords. It is not the likelihood of all defeats; it is the actuality of more defeats. We are constantly defeated in the House of Lords at the moment with the balance held quite clearly by the Liberal Democrats and the cross-benchers.

629. **John MacGregor:** Even with NGOs on, for example, the Countryside Bill, if this had taken place five or six years ago, do you think you would have had less lobbying than you are getting now?

630. **Baroness Hilton:** On the Environment Bill, I think I got just as much; I was actively involved in that one myself. Again, it was directly by Friends of the Earth, the Countryside Agency, or the Green Alliance; it was always individual groups like that.

631. **John MacGregor:** On that Bill, it is exactly the same as the House of Commons.

632. **Baroness Hilton:** I am not so aware of lobbying companies as such.

633. **Lord Neill:** Lady Hilton, thank you very much indeed. You have had the distinction of receiving questions from all members of the Committee today. Thank you for coming and helping us.

MONDAY 26 JUNE 2000 (AFTERNOON SESSION)

OPENING STATEMENTS

Opening statement by Lord Craig of Radley GCB OBE

I am Convenor of the Cross Bench Peers, having been elected to that position by the cross bench group last December. At the invitation of your Committee I agreed to give oral evidence. I should like to stress, as I did when approached, that I am not speaking on behalf of the cross bench group. All are independent members of the House of Lords, and individually will have their own views on the subject of your enquiry. What I say is entirely a personal view.

In his Foreword to your Committee's Issues and Questions document of April 2000, Lord Neill states that the decision to embark on this enquiry 'has not been prompted by any scandal or crisis'. This is an important point of departure for your report. As is evident (from experience with the Commons) the existence of rules and codes of conduct, while contributing to confidence, do have a significant down side too. The temptation to use them to find or allege fault in order to score a political point is not always resisted. The outcome is that a sense is engendered that there is something discreditable about political conduct generally, and this may lead to a feeling of distrust which is wholly unjustified.
I expect that your Committee will be very aware of this effect.

However, because the Lords is a part of parliament, what has been looked at in the Commons cannot be avoided for the Lords without raising difficult questions of justification for completely separate approaches. The Griffiths Committee took the view that they should 'consider what was best for the House of Lords', recognising that there were key distinctions between the two Chambers, and it would not be right to transpose the Nolan recommendations for the Commons to the Lords. That approach at the time was right, but in a reformed House of Lords greater emphasis on parity of treatment between the two Houses is inevitable. The argument that there are key differences between the two Houses will not be perceived as adequate justification on its own. I regret this, but it cannot be avoided. Nevertheless, in seeking to develop a common approach, there are three points about the Lords which I should like to mention.

First, members of the Lords are not salaried and those not of pensionable age must have other means of financial support. Lord Wakeham's Commission commended part-time attendance, and current practice supports this approach, particularly for cross-benchers. Therefore it is inevitable that many members of the House will have outside pecuniary interests. Very careful consideration will need to be given to striking the balance between full disclosure (which may be extremely onerous) and the listing of only the main one or two sources of income. It would be essential to make clear what discretion was allowed on the extent of financial declarations.

Whatever approach is recommended, I would like it to be accompanied with the proposal that an interest which is recorded in a register does not have to be referred to in every speech or utterance. This practice has become intrusive and distracting. The Register is available to all, and should be sufficient notice of a member's interests.

Secondly, there is potentially greater scope for a member of the Government than any other member of the House, whether in opposition or on the cross-benches, to have the ability to influence business. Therefore, it seems unnecessarily restrictive to treat all members of the House identically. Those with executive function should be more tightly regulated by any rule or code of conduct. This proposition could be further extended to say that those who take a party whip should be more tightly regulated than those who sit as cross-benchers, since the latter do not have any party loyalties to call upon in their support.

Thirdly, there is much specialist knowledge throughout the House. It is right that it should be heard, but it might be that those with a direct pecuniary interest should refrain from voting if the House divides on the issue. There is much to commend the principle that parliament is sovereign, including over its own internal affairs and its discipline. It detracts from that principle if there is an excess of outside proposed regulations, even if these have been endorsed by the appropriate House. The Griffiths formulation that 'Lords should act always on their personal honour' and 'should never accept any financial inducement as an incentive or reward for exercising parliamentary influence' was a good one. It should be retained, not diminished by excessively detailed rules and codes which directly or indirectly impart an inference that members of the House are not trustworthy.

Opening statement by Professor Dawn Oliver

Summary

The guiding principles of any system regulating standards of conduct in the House of Lords should be that, in exercising their parliamentary functions, members are under duties to make their own independent judgements in the public interest as they see it.

In order to promote the observance of high standards of conduct in the future and to maintain public confidence, the House should adopt the Seven Principles of Public Life and a code, to which detailed guidance could be added.

Parliamentary consultancies should be banned in order not to deprive the House of the benefits of the contributions of members with conflicts of interest. If they are not banned, strict limits on participation in parliamentary activity should be maintained.

The government should bring forward legislation criminalising bribery of members of the House and misuse of a public office. This should serve to promote independence and enable a light touch to be continued in the House of Lords.

To adopt an elaborate disciplinary system, such as that in the Commons, could undermine trust both within the Lords and in the public perception, and it could politicise activity to the detriment of the House's proper performance of its functions. But if bribery and misuse of public office are not criminalised, such a system may be necessary.

Any internal disciplinary system must be fair and divorced from party politics. Only members of the House not taking a party whip should participate, and the panel or committee dealing with the matter should include some lawyers.

The general principles of self-regulation should be born in mind. The existence of the Committee on Standards in Public Life should provide the appropriate degree of external influence to secure that the House keeps its system of self-regulation under review and is responsive to changing circumstances.

1.see evidence

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Thursday 29 June 2000 (Morning Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Frances Heaton
Sir Clifford Boulton GCB	Rt Hon John MacGregor OBE MP
Professor Alice Brown	Rt Hon Lord Shore of Stepney
Lord Goodhart QC	Sir William Utting CB

Witnesses:

Rt Hon Lord Merlyn-Rees

David Hencke, Westminster Correspondent, The Guardian

Michael Davies, Clerk of the Parliaments and James Vallance White CB, Registrar of Lords' Interests

634. **Lord Neill:** The hour has come to make a start. I will just say a word about the programme and welcome everybody to today's hearing, particularly the Rt Hon Lord Merlyn-Rees. Today we will hear from eight witnesses, all with experience of public life.

The first witness will be Lord Merlyn-Rees, who was a Member of Parliament for nearly 30 years and a member of the Cabinet in the Labour Government in the 1970s. The offices he held included Secretary of State for Northern Ireland and Home Secretary, from 1976 to 1979. He became a life peer in 1992 and was a member of the Joint Committee on Parliamentary Privilege - the Nicholls Committee - recently.

Following Lord Merlyn-Rees we will hear from Mr David Hencke, Westminster correspondent for The Guardian.
He has been a member of the parliamentary lobby since 1986, and in 1995 he won the title Journalist of the Year. Then we will hear from officials from the House of Lords. They are Mr Michael Davies, Clerk of the Parliaments, and Mr James Vallance White, Registrar of Lords' Interests.
The Clerk of the Parliaments is the head of the Parliament Office and advises generally on points of order and procedure. He appointed one of his Senior Clerks,
Mr Vallance White, as Registrar, and he is personally responsible for assessing peers' entries and ensuring that their interests are entered in the correct form and category.

We had hoped to hear today from the Rt Hon Sir Archibald Hamilton MP, but he will be coming tomorrow morning instead. The names I have given you complete the morning's programme.

In the afternoon, we will be hearing from the Rt Hon Lord Griffiths, a retired Law Lord who became a life peer in 1985. He was the Chairman of the Sub-Committee on Declaration and Registration of Interests, known as the Griffiths Sub-Committee, whose recommendations on the regulatory system for the House of Lords were accepted in a debate held in that House on 1 November 1995.

Then, we will hear from Lord Walton of Detchant who is a cross-bench life peer who has had a distinguished medical career,

culminating in the presidency of the British Medical Association in 1980-1982. As to his academic career, he held the office of Warden of Green College, Oxford. He was raised to the peerage in 1989. Next, we will hear from Lord Campbell of Alloway QC, a Conservative life peer created in 1981. He is a member of the House of Lords Committee for Privileges.

The last witness of the day will be Lord Marlesford, a Conservative life peer created in 1991. He was previously a senior journalist with The Economist and is has been a member of a wide range of public bodies.

With those introductions, I welcome our first witness, Lord Merlyn-Rees and thank him very much for coming today.

635. Two members of the Committee will take the lead in asking questions. Then if there is time, other members come in with supplementaries. This morning, the questions will be from Ann Abraham and Professor Alice Brown.

636. **Ann Abraham:** Good morning. I was interested to hear from you this morning, Lord Merlyn-Rees, because of your enormous experience in both Houses of Parliament and because you concluded in your submission that the Lords and Commons should have the same set of rules. Do you feel that should be a case of the Lords adopting the Commons' rules or should something modified apply?

RT HON LORD MERLYN-REES

637. **Rt Hon Lord Merlyn-Rees:** My view is conditioned by the fact that one of the big changes in the Lords is that it becomes more and more like the Commons every day. The value of the Lords is to be a House of Lords. If it is going to pursue the line of becoming like the House of Commons, that leads to other thoughts in my mind that I will not bore you with. I started off in politics believing in the abolition of the House of Lords but learned the lesson that it has a value. If it is going to be a House of Commons, it will have to be treated like the Commons. If there are rules for the Commons, there should be much the same rules for the Lords.

638. **Ann Abraham:** You said that the value of the House of Lords is to be a House of Lords. Could you amplify that?

639. **Lord Merlyn-Rees:** At my venerable age, I sit on committees, such as the Nicholls Committee. Committee work is superb - much better than in the Commons in many respects. When House of Lords tries to act like a House of Commons, it is not so good. Too many people who fail to get into the Commons come to House of Lord to relive their youth. I am on the Delegated Powers and Deregulation Committee on deregulation with Lord Alexander. It is scintillating, clear, first rate and worth attending. I do not believe that is true of many debates. That is what I meant.

640. **Ann Abraham:** Do you see an inexorable move towards progress - perhaps not the word you would have chosen - whereby House of Lords is becoming more like the House of Commons, which is an argument for imposing the same set of rules and similar mechanisms?

641. **Lord Merlyn-Rees:** They will get stronger every day, the more it becomes like the House of Commons. If it wants to be treated like the Commons, it will have to be treated like the House of Commons.

642. **Ann Abraham:** What are the characteristics of the House of Commons to which you refer?

643. **Lord Merlyn-Rees:** I was not in the House of Commons when all the problems arose in the last parliament but in my view, the Commons is not a corrupt place. Most MPs are perfectly decent people who do not go around trying to fiddle this, that and the other. Nevertheless, they have gone down that road. If it is good enough for the Commons, the reverse is true. Far more lobbying takes place in the Lords than when I started. It is becoming more and more like the Commons in many ways.

644. **Ann Abraham:** The differences between the two Houses have been used by some witnesses to argue that a very different set of rules should apply. One difference is that MPs are paid and peers are not. Another is that MPs are elected whereas peers are appointed. One further difference is the absence of accountability to constituents in the case of peers. Do any of those arguments have force when it comes to saying that a different set of rules should apply?

645. **Lord Merlyn-Rees:** Whether they have any force, I am not so sure. When I was in the Commons, I was accountable to my constituents in the sense that they could decide which way to vote in a general election but I never felt accountable in the strict sense of that term to my constituency party. I was elected as a Labour MP. The first election in which I played a part was in 1923, when I was very young. Nevertheless, at the very beginning I was heavily involved in politics. One has to take constituents into account but I am not sure that "accountable" is the right word.

646. For example, I was passionately against capital punishment. If there had been a plebiscite in my constituency, I think that 90 per cent of people would have been against me. Only one man ever raised it in a general election - the same man every

general election. If one is involved in an area, accountability takes on a different value.

647. I am firmly against peers being paid but if we go down the road to accountability and being like the House of Commons, my argument begins to falter. A good many of my friends come rarely to the House of Lords but they are worth listening to when they do - and long may they continue. It is a different place in that sense. I have not asked them whether they want to be paid but being paid to come in occasionally would be very wrong.

648. **Ann Abraham:** Does peers being appointed rather than elected make a difference?

649. **Lord Merlyn-Rees:** It does make a difference. In the nine years or so that I have been in the Lords, I feel in my bones that I am not entitled to put my view so firmly as when I was an elected Member of Parliament. Being elected adds powerful strength to one's arm. Returning to your earlier point, there might be arguments but at the end of the day, the MP has to make up his or her own mind. In that sense, I accept that the Commons is not like House of Lords.

650. **Ann Abraham:** You suggest in your submission that the Parliamentary Commissioner's remit should be extended to include the House of Lords. Have you thought through how that would work and how the postholder would report? Would he report to the Committee on Standards and Privileges in the Commons and the Committee for Privileges in the Lords?

651. **Lord Merlyn-Rees:** I believe that more and more peers are coming around to that line of thought but I can only speak for myself.

652. **Ann Abraham:** You also said clearly in your submission that Opposition spokespersons should be paid and be subject to rules akin to those applicable to Ministers under the Ministerial Code. Do you think that special rules should apply to Opposition spokespersons even if they are not paid in that capacity?

653. **Lord Merlyn-Rees:** In the days when Labour was in opposition in the Lords, the amount of work that our front-bench spokesmen did was enormous. That is still the case for the Conservatives and the Liberals. In my view, they should be paid - just as a few Labour peers were paid in Opposition. I look askance at the view of the Griffiths Committee that peers must have another income, otherwise they would not be in the Lords. That is not true. There is a problem. I have no axe to grind but without the allowances, I would not be able to attend the House of Lords. I would not be able to afford to do so. The front-bench spokesmen should be paid. They do a sterling job and have to work very hard. They are there night and day. When the rest of us have gone home at 8 o'clock or 9 o'clock, they remain until 11 o'clock or midnight. They work very hard.

654. **Ann Abraham:** Under the current arrangements, is there an argument for having different rules, which recognise that front-bench spokespersons are not paid? Or are you saying that clearly they should be paid and it follows that they would come under the same set of rules?

655. **Lord Merlyn-Rees:** I think they should be paid.

656. **Ann Abraham:** Thank you very much.

657. **Alice Brown:** I want to return to your point about change in the House of Lords. Since the present register was introduced in 1995, there have been changes but what do you think are the most important among them?

658. **Lord Merlyn-Rees:** I will go back even further to illustrate the point. The few of my colleagues who are left in the Lords tell me that in 1945 there were 1,000 Conservative peers and seven Labour peers, so there has been a great change in that respect. And a different sort of person is chosen for a peerage now. Looking around the guest room and the Chamber, it is clear that today's peer is a different sort of person. In just the same way that the membership of the Commons has changed. Different sorts of people are being made peers. They are not worse or better but different. I have long felt that social change is the engine of political change - far more so than pamphlets issued by political parties that few people read. Social change makes an enormous difference. When I lived in a pit village in Wales, there was 80 per cent unemployment. Anyone who worked went down the pits. Nobody does that now because there are no mines. That has been a profound change. Not to take the analogy too far, there is change in the House of Lords too.

659. **Alice Brown:** What are the indications of that difference in composition?

660. **Lord Merlyn-Rees:** One change is that they take the job far more seriously. They are working peers as opposed to non-working peers. While I am firmly against salaries, they need money to enable them to do the job. If peers were elected - I had better pause before I go down that line. I know how they would be selected in the area that I know best. They would be even more different. Completely and utterly different. They would be even more like MEPs and Members of Parliament.

661. **Alice Brown:** So all the more reason for their codes of conduct and other regulatory mechanisms to be the same.

662. **Lord Merlyn-Rees:** If there is a need in the Commons, there is a need in the Lords.

663. **Alice Brown:** May I press you again on that particular point? Previous witnesses talked about the culture in the House of Lords. Would you argue that the culture is changing as a result of the changing composition, the recommendations of the Wakeham Commission and the likelihood of other changes to come? What are the implications of that change in culture for the underlying principles, practices and procedures of the Lords?

664. **Lord Merlyn-Rees:** Certainly on the Labour side of the House, when I first became involved in the Lords nominated peers tended to be ex-Members of Parliament. They knew the procedures of the House of Commons and translated them to the Lords. It is clear, but not terrible, that most of the new peers have no experience of parliament. That is one major change. They do not know the rules of the game or the procedures. That is not the end of the world but it is different.

665. **Alice Brown:** So it is not passed on by osmosis? They have to learn the new rules. Is that an argument for greater clarity in the procedures?

666. **Lord Merlyn-Rees:** I believe that the procedures of the Chambers reflect the people in those Chambers, and the House of Lords is changing.

667. **Alice Brown:** Do we need to change the underlying principles? One key underlying principle relates to the fact that peers should always act on their personal honour. The second is that peers should never accept any financial inducement as an incentive or reward in exercising parliamentary influence. Do you think that we need to add to those principles? Do we need to move beyond a code of conduct based on honour?

668. **Lord Merlyn-Rees:** Those principles are admirable. Let us praise them. They are good. But they ought to have more force. The great practical change that I have noticed in the Commons - I was there this morning - is that every day one receives lobby material. There is far more lobbying than I used to find in the House of Commons, let alone the House of Lords. Whether people read that material is another matter. One can pick out the bits that one wants to read. But far more lobbying takes place.

669. **Alice Brown:** How do the public perceive the matter? Is that an important factor?

670. **Lord Merlyn-Rees:** I do not think that people understand the House of Commons. If they do not understand the Commons, they will not understand the House of Lords. When I was first made a peer, I lived in the country. The postman congratulated me on my promotion. I thought he was pulling my leg but he was quite serious: "The House of Lords is superior to the House of Lords." He was wrong.

671. **Alice Brown:** You advocate making Category 3 of the register mandatory. The first two aspects are already mandatory and Category 3 is voluntary. Why do make that case?

672. **Lord Merlyn-Rees:** It is a personal feeling. I am involved in a fair amount of charity work. I am no worse, no better than others in that respect. I submitted a long list of charities in which I was involved. Other particulars relate to public perception of the way that peers discharge their parliamentary duties. I think it is valuable for it to be known publicly the things in which one is involved. That is nothing to be ashamed about.

673. **Alice Brown:** Do you think that it is an unreasonable burden for some peers - particularly those who are not working peers?

674. **Lord Merlyn-Rees:** Before I answer precisely, that returns to the problem that I see in the Lords. I am now 80 and a number of my friends are 80 plus and do not come to the House very often. When they do come, they have something to say. I see the problem. Peers are members of parliament and have to face up to it.

675. **Alice Brown:** Do you think that rules against paid advocacy could inhibit contributions from peers who are among the most expert in a particular field?

676. **Lord Merlyn-Rees:** I found some difficulty with paid advocacy. I did not quite know what it meant. May I ask what it does mean?

677. **Alice Brown:** I suppose it means someone being paid by another party to put a point of view across in House of Lords.

678. **Lord Merlyn-Rees:** I think that is wrong. That should be the equivalent of illegal in parliamentary terms.

679. **Alice Brown:** But should someone who is in that position be able to speak on a matter that is before the Lords? The argument is that such a rule might inhibit the value of expert advice. Is the issue not one of transparency? If one declares an interest, should it then be okay to speak and maybe even vote.

680. **Lord Merlyn-Rees:** They could declare it. If I had revealed to my constituents after 30 years that I was being paid, they would have made sure that I was not selected at the next election. They may have been relatively poor people but they had standards. Being paid for advocacy is wrong. But there is nothing wrong with putting forward a view.

681. **Alice Brown:** Thank you very much. I am sure that some of my colleagues would like to ask questions.

682. **Lord Goodhart:** You said that there is much more lobbying than there used to be. Who is doing the lobbying? Do you have any idea why there has been an increase?

683. **Lord Merlyn-Rees:** I surmise that there are now far more firms advising bodies on how to lobby. For example, they put forward some very interesting documentation about Clause 28 of the Bill we were discussing the night before last. There is a great deal of lobbying on the subject of community service orders and probation. That is good lobbying material. It does not try to influence one unduly. I suspect, though I have no proof of this, that there are many more lobbyists around the House of Lords these days.

684. **Lord Goodhart:** You mentioned lobbying on Clause 28. I would have thought that comes largely from non-governmental organisations such as Stonewall, rather than from commercial lobbying firms. Has there been an increase in the amount of commercial lobbying?

685. **Lord Merlyn-Rees:** I have not had much commercial lobbying in my post. I am sure there is some but it is no as much as the other. The other has grown enormously.

686. **John MacGregor:** In relation to the system that we have in the House of Commons, you said that if there is a need in the Commons there is a need in the Lords. Could we explore that a little further in light of the fact that, as I understand it, there have been no complaints about any registration or abuse of the system in the Lords and no cases?

687. **Lord Merlyn-Rees:** Mine was simply a logical argument that if we are becoming more like the Commons, what the Commons have we should have.
No more than that.

688. **John MacGregor:** In relation to the Parliamentary Commissioner, if you apply that to the House of Lords and there are no cases, is there any need for the commissioner to be there? Do you think that could create smoke without fire, with people starting to put cases to the commissioner simply because he was there - even if they were irrelevant or minute?

689. **Lord Merlyn-Rees:** The problem of consultancies looms far more in my mind than what we have just been talking about. A number of people are now consultants, which is an easy way of getting money. If firms do not know what to do, they take on a consultant. Members of both Houses sound as though they are very important. I used to put it to the Nicholls Committee that I do not think that members of the Commons, other than the few we heard about, could be corrupt. What is there to be corrupt about? They do not take any decisions, as to which airplanes or tanks are bought. The same goes for the House of Lords, whose members are even further away from taking decisions of that sort. They may pretend that they are not. If my postman thought that I was promoted 10 years ago, there must be many people in business who think that they should get a member of the House of Lords to be their consultant. It is that - getting something for nothing - that offends me.

690. **John MacGregor:** Do you think that it would be necessary to have a Parliamentary Commissioner for the Lords to deal with that?

691. **Lord Merlyn-Rees:** I genuinely do not know. When whispering takes place sometimes, it is about the consultants far more than direct lobbying.

692. **Lord Shore:** I want to be clear in what way the Lords are becoming more like the Commons. It may become so but at present, no one in the House of Lords is elected, which is the crucial distinction, and nobody is paid. In what way is the House of Lords becoming more like the Commons?

693. **Lord Merlyn-Rees:** Yesterday, the dates of the Lords summer recess were announced and we will be coming back in September. I do not want to get involved in party politics but there was also an announcement that there is going to be a fight over legislation, which might take us into Christmas. That is the way that the House of Lords behave. It is like the Irish nationalists at the end of the last century who forced the House of Commons to alter its procedures. That might be futile talk but

I have never before heard anyone talk like that in the House of Lords.

694. **Lord Shore:** Except that party warfare, although very subdued, is more conspicuous in the Lords now than in the past. In terms of our inquiry and the need for disclosure, what change has taken place that makes you feel that the Lords are becoming more like the Commons?

695. **Lord Merlyn-Rees:** I just made the point that we are behaving more like the Commons.

696. **Lord Shore:** But does that relate to disclosure?

697. **Lord Merlyn-Rees:** I understand what you are saying. All that I am arguing is that the new sort of peer is quite different from the old sort and is involved in day-to-day legislation the same as in the Commons, when he did not used to be.

698. **Lord Shore:** Are you also saying that they are different socially as well and that there is a change in the class composition of the Lords?

699. **Lord Merlyn-Rees:** Yes.

700. **Lord Shore:** From that, are you saying that codes of honour are less strong when they operate on people who have not come from a hereditary background?

701. **Lord Merlyn-Rees:** I am certainly not saying that. I am saying that the new sort of peer is involved in the political argy bargy far more than used to be the case.

702. **Lord Shore:** Does that expose him to pressure from improper external influences?

703. **Lord Merlyn-Rees:** Not of itself.

704. **Clifford Boulton:** There is a simple rule in the Lords about Category 1 and 2 peers - those who have consultancy arrangements - not being able to take part in relevant proceedings. How would that read across to the position with which you were familiar in the Commons, where a couple of MPs had a relationship with the Police Federation and were able to report to the House the thinking of the police on particular issues? Do you think such relationships are intrinsically wrong or is it possible to have an acceptable form of consultancy, provided that a member is not committed to speaking to a brief?

705. **Lord Merlyn-Rees:** I looked into that matter when I was Home Secretary when Mr Callaghan, as he was then, was an adviser to the Police Federation in the early 1960s on trade union matters and on how to put forward its view on the need for a Royal Commission. People argue for a Royal Commission now because the last one was in 1961 or 1962. Subsequently, advisers to the Police Federation were in a sense political advisers, which is a change. I see nothing wrong with people advising on how to behave as a trade union.

706. **Clifford Boulton:** So there might be ways of redefining the ban on Category 1 and 2 peers, to permit an appropriate kind of consultancy while making clear that paid advocacy is totally out.

707. **Lord Merlyn-Rees:** I am sure that could be done.

708. **Ann Abraham:** I am interested in Lord Shore's point about personal honour. Is it correct to say that a code of personal honour could be very effective for people from similar backgrounds who have similar values and have come to the Lords by a similar route? If it is the case that today's peers have a range of backgrounds and values and have arrived at the Lords by a range of routes, has that led to a need for more clarity about rules and standards of behaviour?

709. **Lord Merlyn-Rees:** I return to my earlier point. If it is argued that there is a case for the various procedures that exist in the Commons - I believe there is little or no corruption there, but that is another matter - then with the Lords behaving more like the Commons, we ought to have the same.

710. As to personal honour, the amount of tittle tattle that there is around the place about what happens in the Lords is about consultancies more than anything else, with people questioning what is going on. I repeat the point that I made to the Nicholls Committee. I do not believe that MPs and peers can be corrupted. There is nothing to be corrupted about. In 1962, we decided to buy the F1-11 but never did. I went out to the United States, as the Minister with responsibilities for the Royal Air Force, to take a look. A man who came back to London invited me out to dinner. I had a word with the PS and we wrote a note to cover my tracks - not that I had any choice in the matter anyway. One has to be very careful when in government because people think that one has power when does not. I had no power in that case but I had a free meal.

711. **Lord Neill:** Thank you very much, Lord Merlyn-Rees. We are very grateful for your cogent and clearly expressed views, which we will think about.

712. **Lord Merlyn-Rees:** Thank you.

713. **Lord Neill:** Our next witness is Mr David Hencke.

714. Thank you very much for attending this morning, Mr Hencke. I think you know the rules of engagement fairly well, because you have been watching. Is there anything that you would like to say before I invite Lord Shore and Lord Goodhart to put their questions? Do you have any general reflections on the witnesses that you have heard before we start the questioning?

DAVID HENCKE

715. **David Hencke (Westminster Correspondent, *The Guardian):*** There seems to be a strong feeling among peers of different persuasions for some form of a mandatory register. The drift of the argument seem to go more towards a more consistent approach, as between the House of Commons and the House of Lords. But I have made an opening statement, so I will leave it at that.

716. **Lord Neill:** It is early days. There are more witnesses to appear, and certainly the official Opposition do not share that view. Nor does the Association of Conservative Peers. There is more to come but thank you for that. Perhaps Lord Shore would like to start.

717. **Lord Shore:** I am glad that you, Mr Hencke, were sitting in before giving your evidence because you will be familiar with the flow of exchanges and the concentration of interest.

718. I have your work in The Guardian frequently in the past and know that you have great expertise in this subject generally. From your own experience, without actually naming names, do you think there is a problem with people in the Lords not understanding what is expected of them? Even worse, are there peers who actually abuse the procedures of the House? Are you aware of any particular incident? I do not want you to mention specifics but are such cases known to people of investigatory skill such as yourself?

719. **David Hencke:** I am aware of people misunderstanding or of grey areas. Without naming names, I am looking at something at the moment that has required me to use the Lords register and to undertake some investigation. In general, it involves a peer who initiated some legislation, rightly declared the trade body with which that peer was connected but did not appear to declare a connection with a large public relations and monitoring consultancy. I checked the register, where that is declared, but the register does not give any details of the clients involved -which would be done in the House of Commons. Then I checked the company and found the area in which the peer was initiating legislation. On the surface that was a good idea because it is a public issue but at least one national public corporation and two major players in the industry involved are clients one way or another - perhaps of monitoring and so on.

720. That matter was drawn to my attention in a note from someone who was concerned because the same peer had used facilities in the House of Lords - a room - to promote the Bill among his fellow peers. I am not sure whether that was a misunderstanding. I am still looking into it, so I do not want to lambaste anyone but it gave me cause for concern that perhaps in the culture of the House of Lords, someone had not thought through what they were doing. What was done will probably be beneficial for the world in general but it looked like it might be of commercial benefit, certainly to companies in this case. When I discussed the matter with someone else, he - another lobbyist - said that even if the consultancy did not represent any of the people concerned, because it would be known that person was doing this, he thought that other companies might say, "We might join this consultancy, to do work for us." That worried me a bit.

721. **Lord Shore:** Thank you for that. I have before me the principles or decrees almost written into the Griffiths Report some years ago. No. 1 says:

"Lords who accept payment for providing parliamentary advice or services" - services is the big one - "should not speak, vote, lobby or otherwise take advantage their position as members of the House."

That is fairly clear. In other words, paid advocacy of any kind, in any procedure in parliament, is out - with no qualification.

722. **David Hencke:** Yes, that is so. The argument might be that the person concerned was not dealing with the particular firms because it is a multi-purpose lobbying or public relations firm.

723. **Lord Shore:** What additional clarification would you make? I will read No. 2 before you answer. It states:

"Lords who have any financial interest in a business involved in parliamentary lobbying on behalf of clients should not speak, vote or lobby or otherwise take advantage of their position."

That also seems fairly strong and comprehensive, although I do allow for the act that there is a slightly grey area about consultancies that exclude advocacy but which give general advice. Taking account of those two strongly restated Griffiths principles, where do think that additional declaratory or actions are needed?

724. **David Hencke:** That is quite strong. When one Labour peer who had a job in a fairly big lobbying company became a peer, he decided to resign all his involvement because he thought it was wrong. He wanted to be a peer rather than be connected with such an activity. The key issue is transparency. The Lords register is not the same as the House of Commons register. Ex-MPs and other people provided a comprehensive and straightforward entry. Perhaps they were used to doing that in the Commons. But others provided such a vague entry that it would not be clear. As a result, the register is not consistent. One does not get a full picture. Because a Bill will go from the Commons to the Lords, there ought to be the same standards of declaration as between those who are examining the legislation and voting.

725. **Lord Shore:** So you would like the requirements of the register to be expanded. It has three parts. The first two, which I read out, are compulsory. The third states that if a peer has an interest of a more general kind not related to direct parliamentary actions, he should declare such as he thinks fit. Would you like to see that part of the register made compulsory or amplified?

726. **David Hencke:** Yes. I would like to see the same rules as in the Commons on what should be declared. It might be fair to leave it to someone's judgement but if the register is not consistent as a result, the public cannot see who is scrutinising what.

727. **Lord Shore:** In some ways, it is very convenient to have a summary statement of where people are coming from and what there experience is because when one is taking part in debate, it is useful to have that information. Lord Merlyn-Rees commented that most of the lobbying, which in his experience has undoubtedly increased, relates to NGO activity rather than to business interests. That may be partly because we have little influence on Finance Bills. Otherwise, there would be massive interest in the detail of the Finance Bill each year. That is outside our scope.

728. **David Hencke:** But you do deal with a lot of other Bills. I will give another example of something that I investigated a few years ago that got into the public domain. I got involved in a television programme that did an unusual thing. We decided to take the Committee stage of a Bill in the Commons and investigate who was lobbying what. We chose the Bill that liberalised the gas industry, opening it up to competition and so on. We were amazed to find that the Committee in the Commons was packed with lobbyists. One could hardly move for them. There was an audience of 30 or 40 lobbyists.

729. One MP tried to move an amendment. It was tabled but then withdrawn. The MP behind it - he did not move the amendment himself but got a colleague to do that - was paid by the caravan park industry, who suddenly spotted that if gas supply was liberalised, they would have to pay for all the connections to caravans. To them, that amendment was worth a lot of money. That amendment did not get anywhere in the Commons but I am told that in the Lords it did. That sort of thing would not make a headline in The Guardian - "Caravan parks win on gas connections" - but it would in Caravan Weekly.

730. My general point is that lobbyists tell me that the scrutiny procedure in the Lords is open to a lot of minor amendments that the public might not know about because they would not be a big issue in The Guardian or other newspapers. But for the groups that are lobbying or paying consultants, such amendments are worth a lot of money. For them, that is quite important. Since lobbying came under massive scrutiny in the Commons, many new MPs said they would not have anything to do with lobbyists: "If an individual or a firm in my constituency has a problem, they can come and see me directly. They don't have to employ a lobbyist. I am there to represent the area." So the lobbyists moved to the Lords because they see it as a place where perhaps they can have more influence and will not be under so much scrutiny. And frankly, as journalists we do not do such a good job of scrutinising the Lords as we do in the Commons.

731. **Lord Shore:** Those two rules of conduct prohibit virtually all the things we have discussed. So any infringement of them is really cheating, is it not? If that is done and how, we do not know. You gave the example of an MP asking a colleague to promote an amendment on his behalf because of his interest. That is dishonourable and cannot be dealt with by policing methods. It has to be dealt with by a code of conduct. That is why it is important for the Lords to emphasise strongly - I am only a new boy - that their culture insists on peers acting on their honour in conjunction with the precise rules. But it cannot be turned into a police organisation.

732. **David Hencke:** No. That is why it would be better to move to a code of conduct. I think the MPs' code has quite a strong influence on the way they behave. If there were a similar code of conduct in the Lords, that would emphasise the required standards of behaviour - which would be no bad thing.

733. **Lord Shore:** You end your interesting note with a number of proposals. You state:

> "Peers who hold directorships and consultancies with multi-client lobbying companies should be banned from paid advocacy".

I believe they are, from my reading of the rule. We can talk further about that. You go on:

> "Other peers with consultancies should be banned from initiating legislation."

Again, I think that is covered by the rules.

734. We move on to enforcement and so on, where infringements of the rules are alleged. You mention having an equivalent of the Parliamentary Commissioner for Standards. If complaints are made in the Lords, it has a more helpfully composed Committee for dealing with them than the Commons. I did not know that until I refreshed my memory on the Griffiths Report. The Law Lords serve on the Privileges Committee and the general rule is that no hearing should take place without at least three Law Lords manning the Committee. I find that very reassuring and I would have thought it was wholly adequate for dealing with any serious complaint.

735. **David Hencke:** The House of Commons has a combination of self-regulation and an executive person to undertake investigations. The important point about the Parliamentary Commissioner is his role in sorting out the facts. Some allegations are easy to investigate - just a matter of an MP failing to mention something. But where a larger investigation is necessary, it seems a good idea to have someone who can sort out the facts. In the Commons, there is a stop-gap in that it is up to the Committee to decide whether to accept the report or there are other matters involved. In general, the system works well - even though there have been whisperings against it in the Commons.

736. I have noticed that the Committee will throw out trivial and almost party political points. The Committee recently produced a report - it did not receive any publicity because there was nothing to it - in which it threw out allegations against an MP that were totally unfounded and the member was happy for that to be known. By an officer producing an independent report, the Committee was able to prove the facts and that was the end of it.

737. **Lord Shore:** Sorting out the facts when allegations are made is important. That raises the question of the composition of a privileges or standards committee. One of the diverging trends between the Lords and the Commons is the downgrading of the Committee for Privileges in terms of its composition. That is no reflection on its present Chairman, who is an admirable chap. On all previous occasion that I can recall, Committees for Privileges have included the Leader of the House, Attorney General and their shadow Cabinet counterparts. That has changed. The Leader of the House no longer serves on the Privileges Committee.

738. When it comes to sorting out the facts, I would have thought that three Law Lords on a Committee for Privileges was an adequate number. Thank you.

739. **Lord Goodhart:** You say that peers who hold directorships and consultancies with multi-client lobbying companies should be banned from paid advocacy. Members of the House of Lords might be consultants or employees of such companies acting in a particular field or have personal clients. Do you think that a ban on advocacy should extend to fields that have anything to do with any client of the company - or would it be sufficient to limit the ban to clients with whom the peer has personal dealings?

740. **David Hencke:** That is an extremely difficult question. I tend to favour the latter but one would know how that might be done within the company. So for safety, I might argue for the former.

741. **Lord Goodhart:** Assuming that Category 3 was made compulsory, there would need to be some consistent practice as to what was registerable, in more detail than now. How much detail?

742. **David Hencke:** The Commons tends to register directorships and give a band of income, which seems fair. As to trips, there might be a case for limited details. It depends on how much is going to happen to the House of Lords. If it becomes an entirely elected body, one would need an almost identical situation to the Commons. If not, one might not need such a comprehensive register but something fairly close to it. Lord Owen has said that it would be tiresome to register foreign trips. On the other hand, that would be reasonable if a trip had anything to do with business before the House of Lords.

743. **Lord Goodhart:** And if members of the House of Lords were elected, they would almost inevitably have to be paid.

744. **David Hencke:** Yes. If elected, presumably they were doing more or less a full-time job - so one would expect them to be

paid.

745. **Lord Goodhart:** There has been some criticism of the fact that in the House of Commons the detail goes as far as requiring, for example, Ken Livingstone to disclose how much he has earned from after-dinner speaking, or William Hague to disclose some benefit from the use of Jeffrey Archer's gym. Would that amount of detail be unnecessary in the House of Lords?

746. **David Hencke:** In the Ken Livingstone case, the advice initially from the Commission was that if was the odd after-dinner speech, that was okay. But given that Ken Livingstone's income from after dinner-speeches over two years reached something like £150,000, that should be declared. That is moving from making the odd after-dinner speech to making a career out of after-dinner speeches. On that scale, disclosure is fair enough.

747. **Lord Goodhart:** Some people argue that even if the register is compulsory, it should exclude a requirement to disclose the amount of income. In other words, one would disclose a directorship without disclosing how much one was paid.

748. **David Hencke:** The Commons register makes disclosures in bands. If one is a director of a public company, one's salary is disclosed, so I do not see any reason for not giving that figure in the register.

749. **Lord Goodhart:** I think that company accounts disclose the number of directors within each pay band, apart from the chairman. The names of the individual directors and their earnings are not disclosed.

750. **David Hencke:** I believe that has changed now. So if such information is available in company accounts, I do not see why it should not be publicly available in the register. Where such information is not publicly available otherwise, it would be reasonable to give some indication of the income - as in the Commons register. Where a peer has a contract with a consultancy, that information should be available for inspection by members of the public and the press, as is the case in the Commons. The income can be substantial. One in the public domain is the appointment of Charles Wardle to Harrods at a fee of £120,000 for a two-day week. If one takes such a job, it is reasonable not only to disclose the full details but the one or two extra things he gets as well. The public should know.

751. **Lord Goodhart:** Do you have a view about the special position of front-bench spokespersons? Lord Merlyn-Rees suggested that they should be paid but there is also a suggestion that they should divest themselves of their interests.

752. **David Hencke:** Their interests should certainly be declared in a mandatory register. At the moment, the Lords is not so clear on that. I suppose it would depend on the level of the conflict of interest. If such people are required to divest their interests, logically they would have to be paid. There is a half-way house in the Commons at the moment. The Leader of the official Opposition and the Chief Whip are on the government payroll but others are not. If one asks a member to divest himself of all his conflicting interests, it would be reasonable for them to
be paid.

753. **Lord Goodhart:** Thank you.

754. **William Utting:** Returning to Category 3, I was reflecting on what we have heard so far about the amount of lobbying in the House of Lords on behalf of non-governmental organisations. Although it is most unlikely that there would be a direct financial interest, if such lobbying is successful that could produce profound changes in the social climate. I am beginning to form the view that links with voluntary organisations and the charitable sector ought to be disclosed in Category 3.

755. **David Hencke:** I absolutely agree. In the House of Lords, that is one main area of legislation and the public should know. If the peer is not paid, the register should say so - as it does in the House of Commons.

756. **William Utting:** The fact that they are "good causes" does not take them out of the category of requiring to be scrutinised.

757. **David Hencke:** No. If one is going to have transparency, there should be transparency for everything - whether it is a business interest or a charity.

758. **William Utting:** Thank you.

759. **Alice Brown:** Do you see transparency as being one of the key principles that should underline the work of the Lords?

760. **David Hencke:** Yes. If there is no transparency and there are secret areas, one cannot get the full picture. Because legislators are involved in changing our lives by passing laws, transparency is absolutely essential. If it is not there, we are not getting the proper picture.

761. **Alice Brown:** With the changing composition of the Lords, in future peers are likely to be people from different

backgrounds, with different values, who arrived there by different routes. Do those factors have implications for the underlying principles? If so, do we need to add to them?

762. **David Hencke:** Yes, because the Lords has changed. I cannot imagine where the principle of honour came from, because one can imagine a 19th century House of Lords in which a person's honour mattered and ours was not such a multi-cultural society. The House of Lords is changing dramatically, so one needs a code of conduct. With the abolition of hereditary peers, the atmosphere in the House of Lords has changed. Hereditary peers were a bit cautious about challenging the government. Now there are hardly any of them left, they have decided that they will challenge the government and are playing a more proactive role in legislation.

763. **Alice Brown:** Does the fact that today's peers are more in the public glare and have more attention paid to them by the media have implications for the regulatory system that should be adopted?

764. **David Hencke:** Yes. Until now - perhaps to our shame - journalists have not taken a massive interest in the House of Lords. If it becomes a more effective and elected Chamber, areas that have never been scrutinised before will be scrutinised in future. Then the odd case will crop up because someone has looked into it. Also, if the Lords becomes more important, people will start telephoning me about things that are going on there. I have noticed that has already started.

765. **Alice Brown:** The point has been made that as there seems to be no problem, why introduce more regulation?

766. **David Hencke:** I am not certain. In no way would I say that it is an outrageously corrupt body. I am sure that it is not. In fact, I am sure that 99.9 per cent of people in the Lords are totally honourable. However, because the Lords has not been scrutinised very much, there may be more happening than we know about. After all, if someone is a really clever lobbyist, one would not know about it. It would be so secret that one would never find out.

767. **Alice Brown:** Is public perception and public interest something that we should bear in mind in our deliberations?

768. **David Hencke:** Yes. Very much so. Public perception of the Lords is changing. Until a year ago, the public might have thought it was a rather quaint and decorative part of the constitution that went back a long way. Increasingly, the public are beginning to see the House of Lords as a place that scrutinises issues. One of its strengths is that it has more time to scrutinise details. I have given evidence to two Committees on the Freedom of Information Act. The Lords Committee was much better organised when it came to asking detailed questions, yet the Commons Committee was a fairly good one. I did notice a qualitative difference. Public perception will change and I think you should bear that in mind a lot.

769. **Alice Brown:** Thank you.

770. **Lord Neill:** In the second paragraph of your submission, you criticise the present register for failing under three tests - transparency, accountability and consistency. I understand the first and the third. You say that the register is not transparent because peers do not have to list all their interests; and that there is inconsistency because there is no set of rules, so there may be differences between the quality of entry from one peer to another.

I am trying to get my mind around the second of those criticisms, where you state that

> "peers as a whole cannot be accountable to the public."

In what sense do you use the word "accountable"? Members of the Commons are accountable to the public because they can be turfed out at the next general election. If peers are irremovable, in what sense are they accountable to the public?

771. **David Hencke:** If someone is scrutinising legislation, whether they have been elected or appointed, they should be accountable to the public. Peers are there to scrutinise legislation on behalf of the public, even though they are not elected, to ensure that it is for the public good. If peers' interests are not transparent or consistently declared, that causes an accountability problem.

772. **Lord Neill:** Thank you for that clarification. You were present to hear part of the evidence from Lord Merlyn-Rees. He was contrasting the Lords and the Commons and made the same point that you did, that Lords Committees are in a class apart. He used the word "superb", saying that they were well organised and that sharp questions were put by well-prepared people. But he said that the rest of the activities in the Lords were becoming more like the Commons. You are an observer of both Houses. I am interested in your reaction. You said that the Lords is now more activist, in the sense that it seems to have a new-found legitimacy and is more willing to vote down something from the Commons than five or 10 years ago. What about the proposition that as a House, the Lords is now more like the Commons?

773. **David Hencke:** The debates are not the same. The debates in the Lords are more wide-ranging than in the Commons. I agree with Lord Merlyn-Rees to some extent. I can see the beginning of a similarity creeping in. There seems to be more organisation between members of the Commons and the Lords - for example, with the Countryside Bill, to damage the government's legislation. That suggests that behind the scenes, the Lords is becoming more organised, like the Commons, with peers beginning to think about filibustering rather than having a general debate.

774. **Lord Neill:** Thank you for that. If there are no further questions from other members, it has been very helpful to have your evidence, Mr Hencke, and thank you for your paper. We are grateful.

775. Mr Davies and Mr Vallance White, we owe you both an apology for being a little bit late in asking you to come to answer questions. I suppose we feel a little indulgent to ourselves on this because the last witness is not appearing this morning. However, we are starting 15 minutes late and I am sorry.

776. You have produced for us some admirable material on the facts as to what actually happens at the moment and as to how the register works. We are extremely grateful for that information. We could not possibly have got it from any other source except both of you. What I should like to do, unless there is anything you would like to say by way of an opening statement, is to ask our questioners, who in your case will be John MacGregor and Ann Abraham to start in. Mr Davies, is there anything you would like to say for the record before we start?

MICHAEL DAVIES AND JAMES VALLANCE WHITE CB

777. **Michael Davies (Clerk of the Parliaments):** No, nothing additional to what I have already sent in.

778. **Lord Neill:** That will be printed in the records of your testimony. Mr Vallance White, is that the same position?

779. **James Vallance White CB (Registrar of Lords' Interests):** Nothing additional.

780. **John MacGregor:** Good morning. May I start by asking you whether you have seen any difficulties with the present system set up since the Griffiths Report, whether there have been any cases referred under the new system and in particular whether you have received any complaints about the way it is operating, either from peers or from the media or the general public or anyone?

781. **Michael Davies:** I have had no reason to question the present system of registration at all. I am aware that there are certain members on the Government benches who believe that the register should be compulsory, but they have not so far made that case to the Procedure Committee or any relevant committee of the House which could change the practice. There is certainly an underlying sense that the register should be tightened up from certain members on the Government side of the House. There have been no references to the Sub-Committee on Lords' Interests in the time that I have been Clerk of the Parliaments. They met twice very early on after the register was first established to consider certain problems relating to paid advocacy for instance. There was an adviser to the Police Federation who questioned whether he should be no longer able to speak on police matters and the Sub-Committee confirmed that that was the position. Since then, I think I am right in saying, and Mr Vallance White could confirm this, there has been no further reference to the Sub-Committee.

782. **John MacGregor:** And complaints, criticisms, suggestions, either from within the House or from outside including the media?

783. **Michael Davies:** Not that I am aware of.

784. **John MacGregor:** One of the points which has been put to us is that there is sometimes a lack of guidance for peers as to exactly how they ought to operate, particularly for example under Category 3, the voluntary area. Have you heard that and do you feel there is more that could be done in that area?

785. **Michael Davies:** I generally refer detailed guidance to James Vallance White who is dealing with this on a much more regular basis than I am and is more able to give consistent advice than I would be able to. I do draw attention in the case of each new peer to the existence of the register. I show them what other peers have registered and I suggest that peers should register as much as possible rather than the minimum.

786. **John MacGregor:** And by and large they found that satisfactory.

787. **Michael Davies:** Indeed.

788. **John MacGregor:** So your feeling is that at the moment the system is working pretty well.

789. **Michael Davies:** Yes, in the present situation. I believe that with a House of approximately 690 members and a daily attendance of around 350, to embark on a compulsory register may actually hit people who do not attend the House of Lords at all.

790. **John MacGregor:** May I then take you on to some of the arguments which have been put to us and ask you whether you think that this will change as the House of Lords changes, including in the transitional system? I am not looking ahead to any further reforms but just in the present transitional period. It has been put to us that it is already apparent that there is a greater willingness to vote against the Government in the Chamber as it now is, that there is much more media interest in the Chamber. You have just heard what Mr Hencke said about that. Lord Merlyn-Rees this morning told us that he thought it was becoming more like the House of Commons every day and also referred to the increase in lobbying activity which is of course very much at the heart of some of this registration stuff. He had noticed that there was a considerable increase in lobbying activity, no doubt because of these other factors. Do you feel that these suggestions, these thoughts, are legitimate and that with the changes which are now becoming apparent you will need to look at the system again?

791. **Michael Davies:** I think it is asserted that the House of Lords is becoming more self-confident since the change in its membership nine or ten months ago, but of course the number of divisions are fewer than they were in the period of the last Conservative Government when the House was often voting against the Government but not with the same success. On the other hand, in the 1970s the Government was far more frequently defeated than it now is because the Conservatives had an overwhelming majority. It is partly the change in the balance of membership which has caused the House actually to achieve defeat of the Government and send material back to the House of Commons and it is probably true that the Opposition are more selective about what they vote on.

792. So far as lobbying is concerned, that is not really a matter that, as a Clerk, I am aware of because it would not be brought to my attention who speaks to which peer and on what subject. So far as the change in membership is concerned, the House still has the characteristics, as I have already said, of a part-time Chamber. It is perhaps unfortunate to suggest that members of the new House of Lords know less how to behave than their predecessors. I think it is perhaps a slightly insulting suggestion that the new members are not able to observe the codes of honour which their predecessors did.

793. **John MacGregor:** But if we could even just take the current situation, clearly with the majority in the House of Commons the Government has very little chance of being defeated on anything, whereas with the new composition of the House of Lords and the increasing influence of the cross-bench peers and so on and the other Opposition parties, it is becoming much more common that that will happen. There is an argument that that means lobbyists - and I am not just thinking financial interests, obviously all sorts of lobbyists - will now think that they are more likely to win their argument in the House of Lords than in the House of Commons. Does that not make it therefore a changed situation as far as peers' interests are concerned?

794. **Michael Davies:** I think lobbyists learned to use the House of Lords during the 1980s because there was a very large majority throughout the 1980s in the House of Commons. Certainly on issues like disablement and social and welfare policies and so on, the House of Lords was often defeating the Government. The average number of defeats in the House of Lords in the 1980s was round about 16 a session and to achieve those defeats there really had to be a coalition against the Government orchestrated perhaps by lobbying groups, particularly on disablement and so on. Whether the increase in lobbying now is any greater than it was, because the 1980s showed that the lobbying companies or the groups that the House of Lords was a target, I do not think I can actually say.

795. **John MacGregor:** May I come onto the question of whether part 3 should be mandatory? You refer in your statement to the wide range of backgrounds from which peers come to speak. You refer to the background of their professional lives, for example farmers, lawyers, bankers and therefore with knowledge and probably some financial interest in the subject. You go on,

> "The value of an institution such as the House of Lords as presently constituted would be diminished if no-one could speak from practical experience".

I entirely agree with that. However, I think that some of the same arguments apply in the House of Commons, less so now because it is becoming much more of a place for full-time activity, but it still applies and this Committee originally said it is still very relevant that the House of Commons should continue to have those widespread background interests.

796. Nevertheless the House of Commons have opted for a mandatory, compulsory register, not least on the grounds of the importance of transparency. I just wonder whether you would say a little bit more about why you feel, leaving aside the point about the peers who hardly ever turn up, that a compulsory register is not necessary. You say in your statement:

> "Declaration of interest is in my opinion a more valuable safeguard than registration. The register is

inevitably a resource of last resort for ensuring compliance with the resolution of the House".

797. But the register has other advantages. It is a protection for members, as we are seeing in the House of Commons. We have had a lot of reference to lack of consistency in the way in which the register is applied at the moment and I wonder therefore whether you could address those arguments and say why you feel that a compulsory register is not desirable.

798. **Michael Davies:** Of course the question of whether it should be mandatory or not is an issue which members of the House will have to take the decision on and not me. However, the fact is that the House of Lords' members are not paid; there are very, very few that are. Clearly, unless they are retired, they have to earn their income from some other source. There are people who still regard it (although you have asked me to disregard that argument) as a part-time legislature; there are those who do a day's work until about 4.30pm. and then come into the House. The fact that most peers do in fact register, and register very widely, shows the value the House attaches to the register and the sense of probity that exists among its members.

799. I believe that if the register were compulsory it might well deprive the House of some of its current members. There are a few members who have a fundamental objection to registration and in view of the fact that they have no obligation to constituents and that they are not going to have to fight elections, they will actually cease to attend the House. That may be a good thing or a bad thing, I do not know.

800. **John MacGregor:** Is a large part of the argument focused on those who actually do not wish to register all their interests at the present time and those who do not attend very often? Is that what it is focused on, because you have said that most peers do register? I noticed in your statement you said and you made the point yourself just now:

> "Some candidates for a peerage might be reluctant to accept if it meant they had to declare sources of income".

There is a difference between declaring sources of income and declaring income.

801. **Michael Davies:** Yes.

802. **John MacGregor:** Is it the income you are more concerned about, or do you think even the sources of income would be a deterrence?

803. **Michael Davies:** I imagine it could be both. These are just feelings of mine. I do not think I can pin them down very much. It is certainly the case that there are one or two currently in the House who do not register because they have a fundamental objection to registration at all. The reason I say that I do not necessarily support a mandatory register is that I believe that the voluntary register is working very satisfactorily. The House has no machinery and no sanctions against those who do not register. That is a fundamental difficulty.

804. **John MacGregor:** We shall come onto that point later. I am not going to raise that particular point because it is coming later. Can I move on to the question of Category 1, the paid advocacy situation where, as I understand it, peers who are in a situation of paid advocacy cannot speak and vote, whereas in the House of Commons, as you know, we simply ban it and then people can speak and vote across the board. It makes one wonder why there is this feeling that paid advocacy is OK but you cannot speak and vote. One wonders why you have this ban on speaking and voting but allow paid advocacy. If they are not allowed to speak and vote, is it because there is some behind-the-scenes lobbying, or is there some other reason?

805. **Michael Davies:** We have adopted the Griffiths Report recommendation in that regard. I agree with you that it is rather contradictory that peers cannot accept a paid consultancy for an organisation that expects them to do some work for them. This is the point which arose way back in 1996 when the consultant or the adviser to the Police Federation raised the question and was told he could not speak on police matters. It rather negates the point of the payment altogether, yes.

806. **John MacGregor:** Finally, could I just ask you about the Addison Rules? Could you explain the purpose of the Addison Rules and whether there are any points in particular that we as a committee should look at in relation to these rules?

807. **Michael Davies:** I have been somewhat surprised at the importance that has been attached to the Addison Rules so far as Lords' interests are concerned, because in my view the Addison Rules are actually designed to ensure Ministerial accountability for a particular body rather than to prevent anyone else speaking. They were drafted after all at a time of nationalised industries when the chairmen or the board members of nationalised industries might be members of the House of Lords. It was to make clear that the responsibility for nationalised industries rested with the Minister and the Government as a whole rather than with the board members to answer to parliament. I still believe that is the case. The Addison Rules are there to ensure that Ministers answer about the policies followed by boards. There are very few nationalised concerns left now, but clearly there are other public boards where the members and chairmen are members of the House of Lords. I still believe that the Addison Rules are

there to ensure that Ministers answer to parliament rather than the board members.

808. **John MacGregor:** You have not seen any difficulty in relation to the Addison Rules.

809. **Michael Davies:** There was an incident a few weeks ago which was, I believe, a breach of the Addison Rules, when there was a debate on the Youth Justice Board regulations. The Chairman of the Youth Justice Board explained exactly what they were up to, when he should not, in my view, have intervened at all. It should have been left to the Minister who was moving these regulations.

810. **Ann Abraham:** I just wanted to pursue this point about sanctions and penalties. I have to confess, after Monday's evidence and everything I have read, to still being slightly confused. So can we hear from you precisely what the situation is in relation to penalties and sanctions? You say suspensions and fines are not available. Some witnesses have suggested that certainly suspension was. It would be helpful if you could clarify precisely the position in relation to sanctions.

811. **Michael Davies:** The position as I understand it is that there are no sanctions which the House of Lords could apply against members. The question of suspension was considered in the 1950s by a committee of the House and they certainly felt that the matter was unclear. The writs of summons to peers require their attendance and there is no power in the House to suspend those writs of summons.

812. **Ann Abraham:** The question of some sort of admonishment.

813. **Michael Davies:** The power to admonish is a rather eighteenth century term. So far as I am concerned, it would be applied against someone outside the House rather than a member of House. What I should see as perfectly legitimate would be the naming and shaming option. If a peer were named in a committee report and admonished in those terms, that would be the same but there would be no formal stage on the floor of the House.

814. **Ann Abraham:** I was interested in what you said when John MacGregor was asking about the idea of a mandatory register. I think I understood you to say that you did not think there should be one. You said one of the reasons for that was that there was no machinery, no sanctions, for those who do not register. That feels a little bit like saying we should not have a law against housebreaking because we have no police force, no courts and no prisons. I think I might be arguing that perhaps we should get some police force and courts and prisons. It seems a very circular argument.

815. **Michael Davies:** I am sorry if I conveyed too strongly the view that there should not be a mandatory register. I am certain that is not for me to state a strong view one way or the other on because there will certainly be differences of political opinion in the House on that matter. I think I was trying to argue that the current register seems to meet the current needs of the case. So far as sanctions to enforce a mandatory register, if a peer did not register and continued to defy the resolutions of the House on that, there is no way of disciplining that member of the House in any way at all, that remains the difficulty.

816. **Ann Abraham:** Indeed. So maybe it would be fairer to say that in your view if there were a mandatory register the House would have some difficulty in actually enforcing that.

817. **Michael Davies:** That is right.

818. **Ann Abraham:** I am very interested to understand in practice just how the register and process of declaration works very much on a daily basis. We have had written submissions and evidence which suggested that the register is applied with a light touch and that there was some suggestion that peers were discouraged from putting too much detail in the discretionary section. I am just interested in your views on those comments.

819. **James Vallance White:** Yes, that is a fair comment. In so far as I exercise any influence at all, would seek to discourage a long entry, following the recommendation of the Sub-Committee at one of its few meetings which it had in the early days of the register when they discussed the length of an entry. They seriously discussed whether peers should be actively discouraged from making great long entries. They decided that it would not be appropriate actively to discourage them, but on the other hand the views of the committee should be conveyed to members of the House. At the end of the day, in the advice I give to members of the House, I am very careful to say that it is a matter for each peer to decide how he or she wants the entry to appear.

820. **Ann Abraham:** Can I just understand? Is it about the length of the entry or the sort of entries which would appear within it? Is it simply a question of the size of it or is it about content?

821. **James Vallance White:** I should say that it is mostly to do with the length, the literal physical length. I suppose if I were asked my opinion, I might indicate that I thought something possibly was not very helpful if it were an obviously trivial matter.

Again, it would not be for me to say that it should not go in.

822. **Ann Abraham:** It is actually a decision for the member.

823. **James Vallance White:** The resolution of the House makes that very clear. It says that it is for the peer to decide what - it is probably worth reminding ourselves what the actual words are - "Lords consider may affect the public perception of the way in which they discharge their parliamentary duty". The decision as to that perception must lie with each member of the House.

824. **Ann Abraham:** I am interested then in going forward in terms of the way the register is monitored or referred to when peers are speaking, voting. There was a very interesting anecdote really in your submission about an occasion when you happened by chance to notice that a member was speaking on a subject which it was not appropriate for him to speak on. You simply sent a note and he sat down and was extremely apologetic.

825. I am tempted to ask how many times you did not notice and also the extent to which I suppose the whole process of registered interests and declarations of interest is monitored in any kind of structured way. You talked in your submission about an incident where by chance you noticed. Is there any kind of regular reference in the process of the business of the House?

826. **Michael Davies:** No. We would not know if anyone has breached the resolution. There is, of course, no mechanism for pursuing that, if a complaint were made; but no complaint has ever been made about someone breaching the resolution. As I said in my statement, the incident I drew to your attention did not raise an eyebrow from any other quarter.

827. **Ann Abraham:** I am wondering if, say for example as a concerned member of the public, I had noticed from reports of a debate that there was an item which raised a concern for me as a member of the public, where I would take that and how I would know where to take it.

828. **Michael Davies:** I think you would probably write to me at the House of Lords, because you would be able to find the address, or would know that there was some senior official in the House of Lords and that person would then pursue it. Certainly, if there were a complaint from a member of the general public about a breach of the resolutions of the House, it would be taken extremely seriously because of the possible adverse consequences for the House from that person making the complaint more public.

829. **Ann Abraham:** Thank you; that is very helpful.

830. **Alice Brown:** I should like to ask a question in relation to change. We have heard quite a lot from previous witnesses that there have been changes to the House of Lords since the Griffiths Report in 1995 and indeed further changes occasioned by the Wakeham Commission and previous to the Wakeham Commission transitional arrangements which we have at the moment. Out of those changes, people have suggested to us that there is a need therefore for changes to the regulatory system. Do you think there is any merit in that argument?

831. **Michael Davies:** I touched on this a little earlier. The question is whether the Committee and the public think that the new membership of the House of Lords is any less likely to follow the codes of conduct and whether the requirement, as the resolution of the House says, that Lords should always act on their personal honour, is any less applicable now than it used to be. The idea of noblesse oblige is perhaps a bit old fashioned but I do not see why it should not apply to the current peerage as it did to the old peerage.

832. **Alice Brown:** You are using that one example, the composition argument, as the only factor of change. Do you think that is the only significant factor of change?

833. **Michael Davies:** Yes, I do. I think that the practice of the House, the work of the House, has continued. Of course because there are different people in it different interests are displayed, but it is the composition which has changed. The powers have not changed in any way and the House can still pursue the Government on all sorts of fronts.

834. **Alice Brown:** Indeed, but the context in which the House of Lords is now operating could be argued to have changed somewhat.

835. **Michael Davies:** Yes, it is argued that it has become more legitimate and therefore the House perhaps feels a little more self-confident because it is no longer criticised on account of the imbalance caused by the hereditary peerage. Whether that leads to the need for a different sort of register I am less certain.

836. **Lord Goodhart:** Would not naming and shaming be a significant sanction? Certainly in the case of someone who had deliberately failed to make an entry on the register which he or she should have done, would that not greatly diminish the

respect with which any speech by that member of the House of Lords would be heard subsequently?

837. **Michael Davies:** I believe it would. The Griffiths Committee said that the publicity attendant on any finding that a Lord had failed to register would provide a sanction sufficient to ensure compliance. I am sure that no member of the House would wish to be named and shamed in a committee report.

838. **Lord Goodhart:** You said that a number of present members of the House of Lords might feel that they would be unable to take part in future in the work of the House of Lords if they were compelled to enter their interests in part 3 of the register. If anybody in that category were to speak on a subject, as matters now stand at present they would be expected to make a declaration of interest, would they not?

839. **Michael Davies:** Yes; of course. Yes. Declaration of interest has always been a feature of the procedures of the House.

840. **Lord Goodhart:** If they accept the necessity of making a declaration of interest, why should they then object to recording the same interest on a register?

841. **Michael Davies:** I cannot answer that one from an individual peer's viewpoint. I imagine it is because they have interests which are way beyond what they would ever wish to speak on in the House of Lords, much wider. They will perhaps concentrate on particular topics in the House of Lords and they do not see why the general public should know, or the House should know, what their other interests are in areas which are not relevant to their work in the House of Lords at all.

842. **Lord Goodhart:** If there were members of the House of Lords who felt that way, would it be sufficient, do you think, to say that we could make the register compulsory in the House of Lords but allow an existing member of the House of Lords to enter some kind of conscientious objection, to declare that he was refusing to make an entry on the register?

843. **Michael Davies:** Well I suppose if anyone thumbed through the register, they would see certain people had made no return at all. Whether the House would wish to ensure that it was known quite clearly that someone had not registered and had deliberately decided not to do so, that would be for the House to say. I suppose that would work. If you are a current member you could be given an exemption a compulsory register but any newcomer would be required to register everything.

844. **Lord Goodhart:** Finally I should just like to raise the question. Would you agree that the present test in Category 3 is a very vague and subjective one, can give rise to wide differences of interpretation and lead therefore to inconsistent results?

845. **Michael Davies:** Yes, of course it is bound to, if it is up to each individual peer's judgement of what will affect the perception in the way they discharge their parliamentary duties. Yes, of course. To some extent I believe that the register includes too many unpaid and trivial interests and there is a tendency for the wood to hide the trees.

846. **Lord Goodhart:** If there were going to be an effective compulsory register, there would have to be guidance in some form which would ensure consistency of operation.

847. **Michael Davies:** One piece of guidance might be to separate out paid and unpaid interests for instance, or remunerated interests and unremunerated.

848. **Frances Heaton:** Could I go back to your reference to the case of the peer who had represented the Police Federation? He was no longer able to put their arguments forward. What other routes would they then use or do they now use instead? Do you think that there are risks of special pleading and/or expert contribution to the debate being excluded by reference either to the current rules or possibly stronger rules in future?

849. **Michael Davies:** I think perhaps the rigour of the present rule has diminished the way in which certain quite clearly bona fide organisations can get their views across to parliament. Once upon a time the adviser to the Police Federation was Mr Callaghan and I do not think that gave rise to any difficulties in those days. Sir Clifford Boulton may have views on that, from his experience in the House of Commons, I do not know. The fact is that it used to be regarded as a perfectly legitimate role for a Member of Parliament to take on. Now I do not know what the Police Federation do. I do not know whether Mr Vallance White can help in that regard. We do not have anyone registered as the consultant to the Police Federation or the adviser to the Police Federation but inevitably the rigour of the rules has affected the way in which these organisations can make their points clear to the House or even to Ministers.

850. **Frances Heaton:** I can see it obviously could affect the way they do it but my interest was in whether it became less possible for those cases to be put. Both MPs and peers need to have access to this information in order to get expert or knowledgeable input into the debate. The House of Lords in particular has a reputation for being the House where these expert views and special interest groups and perhaps small sub-sets of legislation which have implications for particular small groups

which just do not get dealt with in the Commons can be picked up. One clearly has to have a balance between stopping this sort of information getting through, as against people being paid and doing it and not disclosing it at the other end of the spectrum.

851. **Michael Davies:** They could become unpaid advocates; that is quite legitimate. So long as the peer does not accept payment for being the adviser to the Police Federation that would be regarded as entirely within the rules of the House. The views of the police could still be conveyed to the House through different means but not by means of a paid consultant or adviser.

852. **Frances Heaton:** But are they?

853. **Michael Davies:** I do not know that I can answer that.

854. **James Vallance White:** Perhaps I could help. The peer who was the adviser to the Police Federation at the time when the register was introduced, felt very strongly that he should be allowed to continue the role which he had been fulfilling for quite some considerable time. He brought the matter to the Sub-Committee very soon after the introduction of the register and complained quite forcibly that he should be allowed to continue. The Sub-Committee reached a compromise whereby he was to be permitted to continue to speak on general matters of law enforcement in the House, but he was to keep off any matter which was to do specifically with what he actually advised the Police Federation on, such things as conditions of employment, age of retirement and pensions and that sort of thing. That was accepted, so he continued to be a paid consultant. He is no longer a member of the House but until the time he left the House he continued as an adviser to the Federation.

855. **Frances Heaton:** Are there any more general conclusions which you draw from that case on how this getting minority groups' arguments into the debate is happening or not happening?

856. **James Vallance White:** I notice that you are seeing Lord Griffiths this afternoon and I think he will be able to answer that question very clearly. My impression is that at the time when these matters were being considered in some detail, the view was, as the Clerk of the Parliaments has just said, that if you want to continue to fulfil that role you must give up the fee.

857. **Frances Heaton:** Thank you very much.

858. **Lord Neill:** May we just continue our questioning a little longer? We have passed the set time but we have not quite finished all the questions we should like to ask. I have one or two and maybe some more of my colleagues.

859. May I just ask about this writ of summons? We come across it every so often and we have had it in an earlier inquiry; we stub our toes against the writ of summons. I do not remember it by heart but it is command of the sovereign to attend and give voice and vote, or words to that effect. Have I got it right?

860. **Michael Davies:** Something like that: waiving all excuses, you be personally present at our aforesaid parliament.

861. **Lord Neill:** No doubt this writ of summons is of respectable antiquity. Is it issued once to a peer on appointment or is it renewed when there is a new parliament.

862. **Michael Davies:** It is renewed at every new parliament.

863. **Lord Neill:** If that is the case, there would not be a problem if these powers that be, including the sovereign, were to be willing to amend it in some way; in other words to give vote and voice but subject to such rules as may be laid down within the House. In other words, you would have a proviso. Take for example, the rule that Lord So and So on a vote be not heard, or be no longer heard. That is a sort of nuclear weapon which I believe has been used in the past.

864. **Michael Davies:** It has been used.

865. **Lord Neill:** On the face of it, it countermands the sovereign.

866. **Michael Davies:** Yes.

867. **Lord Neill:** Because that peer has been commanded to attend and speak.

868. **Michael Davies:** That motion is, as you describe it, the nuclear bomb, because it is also a debatable motion so it is self-perpetuating. It would only apply to the particular motion that a peer was speaking on; it would not debar him from speaking on anything else or on a subsequent day.

869. **Lord Neill:** Pro tanto it is still a violation of the command.

870. **Michael Davies:** Yes.

871. **Lord Neill:** Or at least you could debate that. That is the first thing I wanted to put to you.

872. Second, just to confirm that the number who have not registered is 285 on my arithmetic - I am looking at your paragraph 13 of your extremely helpful memorandum. It is 693 members of the House and 408 have made an entry, so arithmetic, 285 have not. Paragraph 13 of your memo. That would be right, would it not?

873. My next question links with a question which has already been asked about the language of Category 3. It is a point I was raising yesterday. The language is:

> "... and any other particulars which members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties".

874. The question which I raised was: is there not another aspect to this and that is the position of the other peers? If they know that peer X has strong connections, let us say with a cancer charity, it is a relevant fact at least to know that when he gets up to speak on some medical issue. He may always take the same point. I wondered whether the language "may affect the public perception of the way" was too limited, whether there should not also be some element of the way it would affect the minds of the members of the House because they want to know where this peer is coming from.

875. **Michael Davies:** Yes; that of course is largely achieved by a declaration. If you are actually participating in a debate, you want to know at the time that someone has got a particular interest in that subject. As I said in my statement, the register for members of the House is a matter of last resort. It is only consulted on very, very rare occasions. After all, members of the House sit on benches rather than have desks in front of them, therefore they are not going to carry in a copy of the register to every debate. Declaration is what is important on those occasions.

876. Of course the introduction to Category 3 of the register could be amended to say "members of the House and members of the public". It is certainly meant to inform members of the House as much as it is to inform members of the public.

877. **Lord Neill:** You are really flagging up a very significant point which I have perhaps not really thought enough about. One is the declaration made on the floor of the House before the speech begins as it were. The other thing is the register which is not much consulted in the ordinary way presumably by peers, but it is on the website and on the Internet, so the world knows.

878. **Michael Davies:** The world knows. It is held in a loose-leaf form at the Table of the House and available in the Library and the public search room of the Lords Record Office and in the Minute Room of the House.

879. **Lord Neill:** Another completely different question. You mentioned earlier in your evidence the induction process in which newly appointed peers have the rules explained to them and so on. Do you feel that there is enough time available to you to give the explanation? There has been a very large number of appointments of new peers. Do you feel satisfied yourselves that there is time for your office, or you personally, to explain to every incoming peer the responsibilities in such matters as the code of honour?

880. **Michael Davies:** There is not normally time to go into a great deal of detail about the register and what it means. I do ask them to go up to see the Registrar to discuss the entries that they may wish to make. There are some new peers who never come to see me. They bypass me in some way, but I do know that they actually end up with the Registrar. So I think every new peer is very, very conscious of the need to go and discuss these matters with the Registrar.

881. **Lord Neill:** That is very helpful. My last question to you is about this committee decision. In paragraph 19 you say that the Sub-Committee has only met on two occasions but the meeting of 23 January 1996 is quite significant because that is the meeting at which it was recorded that some peers have made excessive use of Category 3. It led to the conclusion that the Registrar should discourage long entries, though each peer was left free to decide on his own. Would I be right in thinking that the Griffiths Report and that Sub-Committee interpretation, or gloss, however you like to put it, has never come back to the floor of the House, it has never been debated again since November 1995?

882. **Michael Davies:** No.

883. **Lord Neill:** That is right; they have never looked again.

884. **Michael Davies:** That is right. There has been no request to have these matters further debated.

885. **Clifford Boulton:** May I just pursue this question of declaration and registration in cases where the member is not actually

speaking and therefore able to make a declaration. I understand that it is part of the rules that a member who has an interest and intends to vote should endeavour to speak beforehand in order to declare that interest. Is that really practical when there are large whipped divisions? Is that not a further argument for the usefulness of a register which applied equally to all members, which would also apply then to other activities like the tabling of motions and the asking of questions for written answer?

886. **Michael Davies:** Yes, I think there is a difficulty there if everyone who might have an interest in a subject before a vote. It depends on the extent of the interest and whether it is in Category 1 or 2 whether it would be proper for that person to vote. I fear that neither I nor the Registrar go through division lists and check them against the register and see whether there has been any breach of Categories 1 or 2 in that respect.

887. **Clifford Boulton:** It was more Category 3 I was thinking of because there if you had a Category 3 registered interest you would be expected to declare it in debate, but if you were not playing the register game and then voted, nobody would know. The rules have the effect of biting unequally on members when it comes to declaration, you would agree.

888. **Michael Davies:** Yes, I would; yes.

889. **Clifford Boulton:** Could you just round off a story we were pursuing about formal induction training or whatever ugly expression is used? It is something I have been very familiar with, needless to say, in the House of Commons, the extent to which it is ever timely to try to explain everything to a new member when things are very bewildering. I think that your paper indicates that there is help at hand at every stage and every time you wish to do something you have help and advice available. Baroness Hilton of Eggardon did say that she had been involved with a sub-committee which actually recommended that there should be a couple of structured occasions available for new members to learn a little more about the customs and practice of the House generally, not just standards, but it did not come to pass. Could you explain? Was there any particular reason why that recommendation was not adopted?

890. **Michael Davies:** I am afraid I have not brought Lady Hilton's report with me, so I cannot exactly remember what she meant by "structured occasions". However, we do hold induction courses for new peers fairly regularly. There is one on 12 July, which will last about two hours. Not every new peer will be able to attend that occasion. We have already had four or five apologies for absence from that, but I signed about 40 letters three weeks ago inviting them to come to this occasion. I fear that the induction courses do not generally have time to touch on the register. It is usually much more to do with conduct in the House and declaration of interests but not the register itself. What happens about the register is that any new peer getting his writ of summons from the Crown Office is sent by the Clerk of the Crown a note about the register and the form for registration. Then when they come to see me before their introduction this is repeated. I have already said that they do not all come via me and therefore I do not get a chance to pass on the second form. I do reckon that they all go up to see the Registrar.

891. As far as the induction course is concerned, I am afraid that we hold them ad hoc. It depends what is meant by structured. I hope they are structured; they are meant to be, but not every peer attends and sooner or later those who had not attended have become far too experienced in the House to wish to come along.

892. **Clifford Boulton:** Thank you. That does add very usefully to the information we have. Thank you.

893. **Lord Shore:** I am still a bit puzzled about the strength of the objection to being required to make a return, to register. Do we take it for granted that all peers have accepted the requirements of parts 1 and 2 of the register? Are we entitled to take that for granted?

894. **Michael Davies:** Yes, they have all accepted that when they have a paid consultancy or have an interest in a firm of parliamentary lobbyists, they have to register those two categories.

895. **Lord Shore:** Would it not be in the interests of the House generally, taking account of public perception interests or worries, if at least everyone made a nil return under those two categories so that any accusations of possible impropriety and of conduct are dealt with? As it is, it really rather worries me that over 280 of our colleagues are not making any return at all. I think that exposes them and indeed the whole House to possible accusations and suspicions which I am sure are unjustified.

896. **Michael Davies:** Of course some of those 280... Sorry were you suggesting at the outset perhaps that everyone should register nil returns in Categories 1 and 2? That would rather tend to hide those who had registered, if you had 608 people registering in those nil returns. If I have misunderstood, I apologise.

897. So far as the 280-odd who have not made any return are concerned, some of them are non-attenders at the House. There are some very elderly peers who never come to the House at all and there are some who come extremely rarely. It may be just on a particular occasion for instance to see a friend of theirs introduced perhaps. There are many, even in the current House of

Lords, who are past the stage when they want to participate in any form of parliamentary work. I should probably suggest that at least 100 of those are in that category.

898. **Lord Shore:** Really. I just find it frankly still difficult in spite of your reply to understand fully. All clubs have rules and all of us as citizens have certain obligations. We fill out our income tax returns every year even if we are over the age of 90.

899. **Michael Davies:** Indeed.

900. **Lord Shore:** These requirements are those more or less of a citizen. What really is the sensitivity about this? I can understand sensitivity about the content of making a register, but the fact of a compulsory register is what really so surprises me.

901. **Michael Davies:** As the Clerk of the Parliaments all I can say is that we are operating within the current rules that the House has agreed. The issue of whether the rules should be changed is for the House to settle. Really for me to comment one way or the other on whether it should be a different type of register goes beyond my role. I shall fulfil what the House requires and the Registrar will also enter as many entries in the register as the House requires.

902. **Lord Shore:** I did not mean to put you in an embarrassing position on that or to offer an opinion about whether it should or should not be. It is just that I cannot quite understand why. I can understand a lot of things where people have objections and so on, but there is obviously a sensitivity here which I cannot myself pick up. I wondered simply from your experience whether you could explain that, not whether it is justified or not.

903. **Michael Davies:** The situation is different from what it was nine months ago. Clearly there were many members of the House of Lords who were there not by their choice at all but by the accident of their birth. Clearly now everyone at some stage has accepted membership of the House of Lords. They have either stood for election as one of the 90 hereditary peers or they have accepted a Life Peerage and have become a member of the House in that way. Everyone is there by choice. In those circumstances, there is certainly a case for suggesting that if the House wishes to impose different rules on its members, that would work.

904. The question of sensitivity is for those members of the House who may not have registered to tell your Committee about, rather than for me. I am aware that there are some members of the House who have not registered and will not wish to register in any circumstances.

905. **Lord Shore:** Thank you.

906. **Lord Neill:** If I may come in with a supplementary on your point about there being no members of the House of Lords who are there other than by the exercise of their own free will, it has been put to us that the Lords Spiritual are an exception to that proposition unless you say they made the choice of going into the career of taking Holy Orders. If you become the Archbishop of Canterbury, you are ex officio a member of the House of Lords, are you not?

907. **Michael Davies:** Yes, you are. I suppose if you are prepared to accept the See of Canterbury, it is not an unwelcome addition or privilege to become a member of the House of Lords.

908. **Lord Neill:** One could debate that. I think it is true that it is ex officio in those cases, is it not?

909. **Michael Davies:** Yes; yes, it is, as it is to be Earl Marshal, I suppose, because he and the Lord Great Chamberlain are both there by Act of Parliament whether they want it or not.

910. Lord Neill: A fate thrust upon you. Thank you very much indeed. We are very grateful to you both for coming and for giving us so much information in writing and answering so many question. We have kept you a little bit late, but thank you.

THURSDAY 29 JUNE 2000 (MORNING SESSION)

OPENING STATEMENT

Opening statement by David Hencke, Westminster Correspondent, *The Guardian*

I welcome the interest by Lord Neill's Committee on Standards in Public Life into the rules of conduct and disciplinary procedures in the House of Lords. Radical reform of the present system of registration of interests in the House of Lords is a priority.

The three principles that should underpin the present register are transparency, accountability and consistency. The present register fails all three tests. It is not transparent because peers are not required to list all their interests. Therefore peers, as a whole, cannot be accountable to the public. It is not consistent because the requirements for registration allow a wide range of disclosure (or non-disclosure). The register as a whole falls well below the standards of entries required by the House of Commons - therefore adding to inconsistency across the whole of parliament.

The whole register seems to be based upon the fact that: 'in the end it must be for the judgement of each individual Lord as to what he considers "may affect the public perception of the way in which [he discharges his] parliamentary duties."' (Foreword by the Clerk of the Parliaments)

I examined the latest register - as recorded on the House of Lords website - and the judgement by the peers of what should be included under the maxim was enormous. Some of the most comprehensive entries were Lord Alli (Labour), Lord Alton (Liberal Democrat) and Lord Baker (Conservative). Two of them are ex-MPs and seem to find no problem in providing a comprehensive entry. In fact, Lord Baker told me that the Common's standards of entries ought to be adopted by the Lords. The least informative entries included Lord Archer of Weston Super Mare (Author/earnings from media appearances connected with books); Lord Saatchi (investment in a wide range of media/communications companies involved in advertising, publishing, films and new media).

The need for the three principles - transparency, accountability, consistency - to underpin behaviour by peers is even more important when it comes to the House of Lords' role over scrutinising legislation. It does not seem to be justifiable on the grounds of logic to have two standards of registration for people examining the same legislation. Since peers have the same power as MPs to change and delay legislation, they should be subject to the same accountability. Argument as to whether peers are paid or not should not figure in a decision on how much they need to declare in a register.

The need for a tough register - and a disciplinary system to deal with offending peers - is even more important in dealing with lobbyists. Lord Wakeham in his Royal Commission report on reforming the Lords noted the Upper House was "a more attractive and receptive target for lobbying than the House of Commons (para. 4.442)." He cites its non-partisan style, peers' extensive contacts with interested groups, the ability of any peer to get an amendment debated and the absence of a guillotine on debates as particularly attractive to the lobbying industry.

Since lobbyists are often keen to get minor amendments to legislation, which might be worth millions of pounds to their clients, there must always be a potential danger that a peer might be keen to promote their cause for non-altruistic reasons. The peer may well succeed because of the government's need to get the legislation on the books - might also concede the amendment to save time. The press is unlikely to report it if it appears to be too minor. But, the lobbyist will do rather well for his client - and no doubt will get a six-figure fee for his work.

This seems to me to underline the need for two reforms. Peers who hold directorships and consultancies with multi-client lobbying companies should be banned from initiating legislation - purely to avoid temptation. Other peers with consultancies should be banned from initiating legislation.

There is also a need for the Clerk of the Parliaments to be backed up by a House of Lords equivalent of the Parliamentary Commissioner for Standards to investigate any complaints and for a privileges committee to decide whether any penalties should apply to an offending peer. The new law for bribery and corruption should also apply to peers.

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Thursday 29 June 2000 (Afternoon Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham
Sir Clifford Boulton GCB
Professor Alice Brown
Sir Anthony Cleaver
Frances Heaton
Rt Hon Lord Shore of Stepney
Sir William Utting CB

Witnesses:

Rt Hon Lord Griffiths MC
Lord Walton of Detchant TD
Lord Campbell of Alloway QC
Lord Marlesford

911. **Lord Neill:** Lord Griffiths, thank you very much indeed for coming. Of course we particularly welcome your presence, as you were the Chairman of the Sub-Committee that produced the report on which the House of Lords now acts. Our procedure is that we have two of our Membership who put the questions in turn, and then if there is time at the end, other Members of the Committee will ask you questions, if we may. Is there anything you would like to say at the beginning before we start. You have very kindly written to us, so we know your views. That will be published at the beginning of your evidence.

RT HON LORD GRIFFITHS MC

912. **Rt Hon Lord Griffiths MC:** No there is nothing I want to add.

913. **Lord Neill:** Good. Thank you very much. Then I am going to ask Sir Clifford Boulton first, and then Lord Shore, to put questions. Sir Clifford.

914. **Clifford Boulton:** Good afternoon. I would like to concentrate on two matters if I may. One is whether it is possible to have an effective Category 3 Registry that is not intrusive upon a peer's personal affairs, that it should be effective, but not offensively intrusive. The second area would be whether, with the departure of the involuntary peers, it would be advantageous for all peers who take part in proceedings to be expected to complete Category 3. So, on the question of intrusiveness and effectiveness, are you satisfied with the current definition of what qualifies for Category 3? Do you think that is sufficiently clear and sufficiently effective?

915. **Lord Griffiths:** Well, it seems to be. At the beginning, I believe there were a fair number of questions that came to the Clerk saying, 'Should I declare this? Should I declare that? But, that had been cleared up in the first three months. I think it settled down and I do not think it gives much cause for difficulty. Of course, one must bear in mind that a great many peers do not declare anything in Category 3 registries. As a matter of interest, I looked up to see what had happened to the '92 hereditary peers and, of them, 60 have completed Category 3, and 32 have not made any entry.

916. **Clifford Boulton:** But, you think that, at least, there is a general understanding, if somebody is playing along with it, as to what they should actually put?

917. **Lord Griffiths:** Yes. I think there is.

918. **Clifford Boulton:** And you would not find much use in perhaps multiplying examples of the type of interest, which would be either in or out, to be available to members?

919. **Lord Griffiths:** I think it is working alright.

920. **Clifford Boulton:** What about the new members? Do you feel that there is sufficient explanation for them?

921. **Lord Griffiths:** Well I believe they do. I think you heard James Vallance White this morning, and I think they are pretty thoroughly briefed on what to do. Nothing has come through to me to suggest otherwise.

922. **Clifford Boulton:** We have had evidence that there is some alarm that, if we are thinking along the lines of a generally completed Category 3, all kinds of private irrelevant interests will have to be declared which peers would find offensive really to have to declare. Of course, in the Nolan Committee's First Report on the House of Commons, we said that it is by no means clear that full disclosure of financial matters unrelated to parliamentary business is relevant to the public interest. No one has put a convincing case to us as to why that might be necessary. So, I think that what we would be concerned about would be those interests which actually bit in some way on the performance of parliamentary duties. However, you do not think that they ought to be listed and categorised. You still think that that test should be left to the personal decision of the peer as to what is relevant?

923. **Lord Griffiths:** There are two categories that I thought were so important. With these parliamentary consultancies, when you were actually taking money to give people advice, and also their being too closely connected with a lobbying firm, and you are going round seeing ministers and so forth, and we have actually outlawed those, completely in the Lords. I think that has been totally effective. I really do think it nipped in the bud something that was creeping in. Now, if you stop that, then I would like to be given one or two examples of what it is thought should be registered in Category 3, and then I would tell you what I thought about it. Remember, it is the tradition of the House that if you are going to speak, and you have an interest, you do declare it. I have not heard any whispers or complaints that peers do not do that.

924. **Clifford Boulton:** Well, we are not conducting a debate, but the sort of things that we expect to see, of course, are simply the professional or business background of a Member which becomes relevant subject matter of a debate on agricultural, or trade and industry, or whatever it might be. One would include those matters, but because they are not intimately connected with parliament, one would not be actually required to declare the amount of income that was associated with them. It is a sort of general obligation one is talking about here, but you do not require those Members who have a Category 1 or Category 2 interest to declare the extent of the benefit they obtained. I suppose that is irrelevant because you stop them talking about those subjects and, therefore, you have had a nice clean rule, whereas the Commons has picked their way round the subject and allowed innocent consultancies and advisory positions, which then require the declaration of quantum, but you have avoided.

925. **Lord Griffiths:** We have avoided it by a more rigorous rule.

926. **Clifford Boulton:** Then moving to the Register itself, there is in the rules of the House of Lords, if you call them rules, an expectation that a Member who has an interest and intends to vote, should speak in the preceding debate, that is to say, he should take an opportunity to declare the interest, if he is then going to use his vote. I wonder if you feel that that is really a practical requirement in occasions when there is a heavily whipped division and hundreds of peers taking part. Can they really - those with interests - all be expected to take part?

927. **Lord Griffiths:** No, I honestly do not think they can all be expected to speak. There will not be time.

928. **Clifford Boulton:** Well, this is what occurred to me as a possible defect in the effectiveness of that custom, which is clearly very civilised and well intentioned. However, I would have thought perhaps beyond being practical. Of course, the same situation arises for those non-speaking parliamentary activities, like tabling questions for written answer. One can run quite a heavy campaign, I think, through written questions, pushing a point of view by means of written questions. There again, a peer who is not taking part, not playing on Category 3, thereby both of those instances have got declarable interests which do not get declared.

929. **Lord Griffiths:** Well, I suppose it could be abused like that. I can see that.

930. **Clifford Boulton:** In fact, there is no way round it for the written question. Is there?

931. **Lord Griffiths:** I do not know. I very much doubt if it is. I doubt if anyone runs a heavy campaign keeping up his sleeve

that he has got some interest. I think that, if he did do it, he would be told in pretty short order he should not, by peer pressure.

932. **Clifford Boulton:** But there is quite innocent interest. The farmer feeling very strongly about agricultural matters is perfectly entitled to put down lots of written questions, but he is under no obligation to make any kind of declaration or registration. Do you think it might, in fact, be a strengthening of the system, so long as you feel that it is not intrusive for all peers, equally, to be expected to complete Category 3?

933. **Lord Griffiths:** Well, I have only got one serious reservation about it. I was given clearly to understand, and clearly I cannot mention names, that if we had attempted to introduce a compulsory registration system - and I am talking about Category 3 - that a number of peers would have left the House rather than make their whole interests public. I suspect there may still be a number in that category. That is a real argument against it. Why do you want to make these intrusive rules if they are not necessary?

934. **Clifford Boulton:** I take my hat off to your success in 1995, because you shifted the system quite dramatically and yet carried the House with you and, therefore, it was extremely successful.

935. **Lord Griffiths:** I am pretty sure we went as far as we could, then.

936. **Clifford Boulton:** I think we are just wondering, five years later, with the removal of the involuntary Members, and the concept of the working peer, and what have you, whether it is not fairer to ones who do complete Category 3, that their colleagues - those colleagues who participate in proceedings, we are not talking about those peers who no longer come, we are talking about those actually wanting to take part - whether the time has come to consider whether one should reduce the number 280, or whatever it is, down to a much smaller number. Do you think, at the moment, the fact that it is not compulsory has led to a carelessness about keeping it up-to-date for those who do, which was always felt in the Commons, which is my personal experience? The moment you just leave the matter to an individual, it becomes almost dangerous because you cannot really attach any significance to the completeness of the list, because it is voluntary anyway.

937. **Lord Griffiths:** Well, I can see that as a criticism, but there seems to be a complete indifference to the list. I have made enquiries of James Vallance White as to the interest that is shown. How many people come and say, 'May we look at the Register please?', and he says there is no interest in it whatever. So I do not really know what purpose it is serving. I do not know what the interest is in the House of Commons.

938. **Clifford Boulton:** It is fairly acute there, but, of course, you are not just talking amongst yourselves, you are actually performing a public function. The public outside may also have a legitimate interest. Thank you very much.

939. **Lord Neill:** Lord Shore.

940. **Lord Shore:** I re-read, or read (to be honest), your report quite recently - your original report - and found it very helpful. The principles that come out of it at the end are stated very clearly and very boldly. I have, however, one or two queries about them. The rule that paid advocacy is right out is well understood, but when it comes to banning consultancies of all kinds, I found that just a little bit puzzling. As you will recall, I think your own report quoted the experience of Lord Jenkins when he was a member of the House of Commons, as Roy Jenkins, and who had taken on a consultancy, and you quoted his consultancy arrangements as being a model, because he said he would do nothing - he said to the people with whom he made an agreement - he would do nothing (it was John Lewis Partnership, or something like that) to further their interest in the House of Commons in any way. However, he was prepared to give them general advice and guidance about what is coming up in the House of Commons, and so on. That was quoted with approval.

941. **Lord Griffiths:** You can do that. There is no reason why you should not have a consultancy. However, if you have taken a position as a consultant, you cannot speak for your clients; you cannot lobby on behalf of your clients, nor can you act politically for your clients. You can certainly do what Lord Jenkins said he did for John Lewis. You can say, 'Well, I think we might get that amendment through'. But, what you cannot do is take any part in helping to get the amendment through. So, we did not say you cannot be a consultant. The truth is, if you cannot help them in any way, what do they want you for as a consultant? I am sorry, but I wanted to make that quite clear.

942. **Lord Shore:** I am grateful for that. It has cleared my mind about the distinction there. As you said, the situation is as you described it. However, in the light of experience, is it entirely sensible in practice, to rule out people who have a consultancy arrangement from making any contribution in terms of the debate in the House? I fully understand that very careful reservations have to be adopted about that, but is the rule resulting in the denial of a certain amount of useful experience and expertise? Of course, the connection would have to be declared by some peers who have acquired, through that connection with a special interest, a great deal of worthwhile information.

943. **Lord Griffiths:** I see that, but I think it is better that they have a hard and fast rule which I can sum up: you cannot sell parliamentary interest.

944. **Lord Shore:** I think that is admirably clear, and I think, frankly, I agree with your judgement there that it is better to deny, if need be, the experience in order to have a completely clean and clear rule.

945. **Lord Griffiths:** It is what they call a 'bright line' rule, and I think it is right.

946. **Lord Shore:** The other question, or two more questions I would like to put to you is really this: the rule, which you certainly strongly approve of, is that any peer who has an interest in a matter under debate should declare it before he or she takes part in that debate. If that is accepted, that is an important rule to be observed. Is it really all that different from requiring people to state an interest just before they take part in a debate and state their interest generally in a register?

947. **Lord Griffiths:** Well, it depends upon what you are going to have put in the Register. I mean, in the House of Commons, I understand, if you have £25,000 worth of shares in a company, you have to declare it. Well now I did not quite understand how the £25,000 applied. Is it the £25,000 nominal face value, or is it £25,000-worth of shares? If you are going to have that sort of thing, then it is very intrusive of people's financial affairs. People like me, without much would not mind at all. However, it is the people who have got it who do mind about these things, and I can quite understand it. We are not, as a nation, very keen on it, unless it is going to serve a really important purpose. I think you will lose a number of good people who will say that we are not prepared to pay this price.

948. **Lord Shore:** That, of course, brings us round to the content of a Register, and I agree.

949. **Lord Griffiths:** The content is important.

950. **Lord Shore:** Oh, it is indeed, but assuming that we got the content right, i.e. minimum requirement, and the fact that somebody is a director of a firm, I would have thought this was a relevant interest - you know, to be disclosed.

951. **Lord Griffiths:** Well it might or might not be, you see. But would you have to declare your directorships of all foreign companies?

952. **Lord Shore:** Of a foreign company.

953. **Lord Griffiths:** Yes, all your interests overseas, all that sort of thing. It might before become relevant in the course of the debate or some piece of legislation, but it is not likely to, but if it does become relevant, then you must declare it, or take no part.

954. **Lord Shore:** If one simply had a heading occupation, Company Director, that would be of some use in deciding where people's expertise lie.

955. **Lord Griffiths:** Yes fine, but useless window dressing. I do not believe in window dressing. What about connections with bodies outside of, if you like, financial interests?

956. **Lord Shore:** What about the very large number of Members in the Lords who have strong connections with voluntary groups of various kinds?

957. **Lord Griffiths:** Well, I daresay most of them would not mind declaring it at all. But what is the purpose of it? If you believe that the oral declaration of interest is really adhered to, I take the voting, I see that. But if you take the oral declaration and it is really adhered to, then, when there is going to be a vote, maybe on fox hunting, you get up and say, 'Well now, I am a member of the Countryside Alliance, and I want it to be clearly understood that I am speaking from their point of view'. Whether you have it put down in the Register is going to carry you any further, I do not know. I mean, I do not think terribly strongly on it, do not think I would go to the stake on it, I do not. My worry is that, if you do not make it fairly intrusive, it is really not much use anyway; it is merely window dressing. If you do make it pretty intrusive, then, I think you may lose a good many people. That is my worry, and I think that is the balance you have got to hold.

958. **Lord Shore:** My last point on this, I would like to invite your observation. I understand that actually something over 280 of our colleagues do not respond to the invitation to register under the Part III, whatever it is, of the Register. In your report, you do refer to the problem of public perception. It is a bit worrying, is it not, and weakening in a sense, to the House as a whole, if it is said by critics that over 200 members decline to declare any interest other than the rules about not lobbying and so on. It is easy for those who are hostile and over suspicious to make suggestions or hint at allegations which are very difficult to deny. One of the great things, I would have thought, about a compulsory Register - I agree one does not want it over full and

over intrusive - is that you, as it were, have come clean with the public.

959. **Lord Griffiths:** Well, that is the openness argument, and there is much to be said for it. I quite understand that, but I think the House works perfectly well as it is, and I do not myself feel that the openness argument is necessarily going to overcome the potential loss to the House. I really come back to it, I do not want, if you have a Register ... Take farmers, two chaps right - I am a farmer - one owns 50,000 acres in Yorkshire and the other 200 acres in Dorset. Well, I mean, to say that you have any real information out of that, seems to me totally misleading. Those chaps have got entirely different interests when some agricultural Bill comes before the House. That is the difficulty.

960. **Lord Shore:** I would have thought that, at once, you would have established some credibility and authority to speak on farming and countryside matters.

961. **Lord Griffiths:** Well, you will do that when you get up to speak anyway.

962. **Lord Shore:** Thank you.

963. **Lord Neill:** Lord Griffiths can I ask you a question. I have become aware- it is beginning to strike me - of a difference between the function of a declaration made at the beginning of a speech, or declaration of interest, and the registration. It seems to me that the function of the declaration is to tell the audience, the Members of the House who are listening to you, that you have a particular stand point: it may be financial, it may be charitable or whatever. This background, in a way, is an invitation to them to either to treat you as a skilled contributor on the subject or to apply a discount factor, whichever way round it goes. That is what the declaration does. However, the registration of interest is written in a different language from that used to register matters which may be considered to affect the public perception of the way in which a Member discharges their parliamentary duties. You are suddenly turning round facing a different audience now; you are not looking at the people in the House, you are looking at the people outside, and they are watching what you do, maybe including watching you vote, as it were, if they look at the list of who votes. One has got to remember that this Register is on the Internet and people can plug into it. There is no interest taken in the House, I fully take the point. You do not find peers going up to the desk saying, 'Can I see who has registered what?', not at all. But I am pretty sure that there are hits on the website as to who, journalists certainly do it to see who has registered what interest, and they are sort of addressing a different audience, are they not?

964. **Lord Griffiths:** Well they are, and what is interesting is that the potential audience is the media, I suppose really. Obviously, individuals may be interested occasionally, but principally it would be the media. All I can say is that they do not appear to be taking any interest whatever, and if there really was a question of what his interest is, there are umpteen other sources from which one can get it. So, if Lord So and So voted on the agricultural Bill this way, it must be a matter of the utmost facility, certainly for the media to find out what is his agricultural interest.

965. **Lord Neill:** Did you have a lot of debate on the Sub-Committee as to how to formulate the test for Part 3, the voluntary register? It is a quite carefully cast language?

966. **Lord Griffiths:** We did. We had a very long-ranging debate, and I do not think it is a secret. It ranged from those who thought there should be a compulsory Register, from which they could more or less lift it in confidence, and those who said I would go to the stake against such a Register.

967. **Lord Neill:** You end up with a voluntary Register, but I was more on the language of the public perception. Was it ever a possibility that it should be, which would affect the other Members of the House, of interest to other Members of the House to know that declaring a registering peer had such an interest, coming back to my earlier point?

968. **Lord Griffiths:** I think that, so far, as the other Members of the House were concerned, we were confident that peers did declare their interest when they spoke, and that that was all working perfectly happily. So, really, the registration of interest has, I suppose, two functions. You might - after all, we have had an example fairly close to home - forget to declare an interest, and if it was in the Register you would say, 'Well, look, I am terribly sorry. I forgot it, I mean there it is'. In a way it is covering your tail to have a Register. There is that aspect of it. The other aspect of it, I suppose, is that certain peers may feel more comfortable if they have put down all their interests and registered them. They may feel easier with their public image.

969. **Lord Neill:** There is an obvious difference between the length of the declaration and what you might put in the Registrar. I mean, take farming. If you happen to have a lot of shares in agricultural companies, farming interests abroad, and you were registering voluntarily, you would put all that down. There is no way you could get up at the beginning of your speech and bore the House by trotting through all these things, or simply say, well I have got a lot of farming interests.

970. **Lord Griffiths:** No, but, you put the specific farming interest that is relevant to the debate. You do not just get up and say,

'I have got a farming interest'; that would be quite wrong. If there were a particular debate, you ought to get up and make it quite clear the nature of your interest. Say it was a woodland debate, you ought to get up, I think, and say, 'Now, I have a real interest in this. I have so many tens of thousands of acres of forest in Scotland'. I think we make it quite clear in the guidance that a general declaration is not sufficient; it must be a specific declaration.

971. **Lord Neill:** It obviously depends upon the nature of the debate.

972. **Lord Griffiths:** Of course, it does.

973. **Lord Neill:** Yes. Just to revisit the potential loss point. We have heard this argument that, if you were to have a mandatory Register, there would be some peers who would just simply decline to do it and would not take any part. I suppose there is a balancing exercise there as to how many, and how terrible that would be over 50 to 100 years, or whatever.

974. **Lord Griffiths:** Absolutely, and how you get that, I have no idea. But, all I can tell you is that, at the time we reported, it would have been a reasonable number.

975. **Lord Neill:** That is useful, very useful. Now we have got two questioners, Professor Alice Brown and Frances Heaton.

976. **Alice Brown:** Thank you very much. Lord Griffiths, can I just push you slightly further on that last point? Clearly, in 1995, when you and your Committee were making your recommendations, you were very sensitive to the mood of the House at that time.

977. **Lord Griffiths:** Yes.

978. **Alice Brown:** Bearing in mind some of the changes in the House of Lords that have taken place in the interim period, and also the fact that we are in a transitional House at the moment, can you advise us on the mood of the House for change or for any alternations to arrangements now?

979. **Lord Griffiths:** Well that is why I looked up to see how many of the 92 made a declaration of interest, you see. I say two-thirds have made it and one-third have not. Whether that is from deeply held conviction or bone idleness or indifference, I really could not tell you. But I suspect there are people who still would say I am not prepared to pay that price, and of course not only them. I do not know what the attitude of peers would be who were going to be made life peers. If it were a condition of being made a life peer that the whole of your affairs would be in the public domain, I just do not know, I mean, he might say, 'Well, I am not going to pay that price. Thank you very much'.

980. **Alice Brown:** I thought that figure was, indeed, very interesting, and it does guide us a little bit. But are there other factors of change or reform on which you think there are strong views?

981. **Lord Griffiths:** Well, as you see from my paper, I have assumed that anyone who is going to be offered a life peerage would be a person with a good track record and a person of experience, maturity and integrity. If you went over to an elected system, where you could have twenty-year-olds, or even nineteen-year-olds, running, then different considerations may come in. I think I would want to see the shape of it before I committed myself, but I have addressed myself, as you urged me to, on the present shape of the House of Lords.

982. **Alice Brown:** Thank you.

983. **Frances Heaton:** Lord Griffiths, I also wondered if I may come back to this question of the discretionary element of the Register, where we are talking very much about registration of matters which affect the public perception. In your own submission, you have said that you are fairly confident that a number of able peers would prefer to resign their peerages rather than lay bare all their financial interests to public scrutiny. It seems to me that there must be some room to have disclosure which comes far short of full financial disclosure, and yet still achieve the sort of disclosure which enables members of the public to know that a peer is a land owner or a City person, or any particular interest group. What would be helpful to the public to know would be the sorts of things that the peer does that would affect the way that he would look at any particular matter he was debating. I do not think there has ever been any suggestion of full financial disclosure. I just wondered where that thought came from in your submission?

984. **Lord Griffiths:** Well, in the Commons, you have to declare any share holding of a value of more than £25,000, as I understand it. That is what I read. I think there is full financial disclosure for Lord Hanson or anyone like that.

985. **Frances Heaton:** Yes, but it does not have to be the same rules.

986. **Lord Griffiths:** No, of course not, but the trouble is, if you have a wholly emasculated rule, what is the use of it?

987. **Frances Heaton:** Because it does still indicate, as I say, the special interests and activities of a particular individual, without full financial information.

988. **Lord Griffiths:** I can see that, but there are so many other sources that you are really interested in, if you look at Who's Who.

989. **Frances Heaton:** I think that is absolutely right, so, as most of it is available anyway, it is probably not a great hardship to have it available conveniently in the House.

990. **Lord Griffiths:** That is another way you can put it, but I do not feel very strongly about it, but I do think you will lose a number of people if you do it. Is that the price worth paying for really not very valuable information?

991. **Frances Heaton:** But is it just the financial side, or is it anything else?

992. **Lord Griffiths:** No. I think it might be more than that. I think there might be interests in various charities that you would not really want, and a lot of people who give charitably do not like it known that they are actively involved in it. However, I have not thought very deeply about that, but I can imagine there are other aspects. It is really very difficult to give an opinion until you show me the range you are going to have. Right. Any other questions?

993. **Lord Neill:** I think you have answered all the questions we had for you Lord Griffiths. We are very grateful to you taking time.

994. **Lord Griffiths:** It has been a great pleasure to come.

995. **Lord Neill:** Thank you so much.

996. **Lord Walton** would you be kind enough to come and assist us. In your absence this morning, I introduced you on the record so there is a statement of your career and so on which I have already put on the evidence, which will be on the public transcript available. You have very kindly written twice to us, you wrote a letter to me fairly early on in April, and then we have a follow up letter from you of the 23 June. All that will be published at the beginning of your evidence, certainly this latest statement. I take it that is what you would like us to regard as your opening statement?

LORD WALTON OF DETCHANT TD

997. **Lord Walton of Detchant TD:** Yes.

998. **Lord Neill:** So, that will be in as 'on the record', as you having said that. Unless there is anything else you would like to say before we begin, we will follow our usual procedure of having two questioners from Members of the Committee and then the rest of us will come in if we have additional questions, if we may do that. So the questioners are going to be Frances Heaton and Sir Clifford Boulton. Frances, would you like to go.

999. **Frances Heaton:** Good afternoon. Lord Walton, could I start by just asking you to expand a bit on some of the points you have made in your submissions. First of all, you did argue that an important difference between the two Houses is that the Members of the House of Lords are unpaid, but on the other hand, in the 1974 report of the House of Lords Sub-Committee on Registration of Interest, that was argued to be an irrelevant difference. So, I wondered if you could just expand on your reasons for disagreeing with the Committee?

1000. **Lord Walton:** I wholly accept that power, however limited, carries responsibility. But as a matter of practical politics, it is important, I think, to recognise that peers receive only the most skeletal support for secretarial and administrative activities, and this means, therefore, that it is very much more difficult for them, as individuals, to fulfil many of the obligations that are imposed at present upon Members of the House of Commons who are much better supported in that regard.

1001. **Frances Heaton:** Meaning, in what way? The need for them to find alternative sources of income?

1002. **Lord Walton:** Not at all. I do not mean that at all. I simply mean that, having looked at the declaration of interest, and we come to that later in relation to the House of Commons, if one had to fulfil all the criteria set out in relation to Members of Parliament, I really believe that it would impose an intolerable burden upon peers.

1003. **Frances Heaton:** Right. So, it all links back to that central concern of yours, which, as you say, we will come to in a minute. The next point that I alighted on, that you particularly emphasised, was the significance of it being part-time. Is that,

again, because of the bureaucratic load on a part-time person?

1004. **Lord Walton:** Yes.

1005. **Frances Heaton:** Now, with the changes in the House of Lords that have happened, and look as if they may happen in the future, we are perhaps moving somewhat away from the traditional part-time individuals to more working peers who put in a good long day's work. So, do you think that, of itself, is going to impact on what would be reasonable to require in terms of registration?

1006. **Lord Walton:** Yes. I think it may, but the fact still remains that, unless there were a significant alteration in the level of support that is offered to peers, whether working or whether they have come in under the honours mechanism, as in the past, I still think it would be difficult for peers to comply with the level of requirement that exists in the House of Commons.

1007. **Frances Heaton:** It does not necessarily, of course, have to follow the precedent of the House of Commons.

1008. **Lord Walton:** I understand.

1009. **Frances Heaton:** One word that may not necessarily be easy to implement would be to say that only material interests or some other formula, such as that. Do you see that as being a practical way to proceed?

1010. **Lord Walton:** We will come to that later, under your question 5, where you talk about a clear de minimis provision. I think the difficulty there is what is meant by that particular term. Would it refer to the nature of the hospitality or to the extent of it, for example?

1011. If I give a quote: in March of this year, I was invited to give two guest lectures on neurology in Venezuela and to open a new Neurological Research Unit there. My hosts paid my travel and that of my wife, and also paid for our accommodation. The benefit was, thereby, substantial, but it had no conceivable relevance to my work in the House of Lords. Would I be compelled to declare everything of that nature? I am speaking in this regard personally. So, it is whether you are looking at the nature of the declaration or the extent, which I think is relevant.

1012. **Frances Heaton:** Right. Well I certainly have some sympathy with the concept that activities which were irrelevant to your activities in the House of Lords should not prima facie be disclosed, but on the other hand, one is never sure, I guess in the future, of what might suddenly become relevant.

1013. **Lord Walton:** There is a very large grey area.

1014. **Frances Heaton:** Yes. Just turning now to the question of lobbying activity, do you think, in general, and have you, in particular, been subjected to an increasing amount of lobbying activity?

1015. **Lord Walton:** Again, it depends what you mean by lobbying, and I am sorry to think about the late Professor Joad who always asked for a definition of terms. If it is paid consultancy to lobby in relation to parliamentary business, that is one matter, but if it relates to the very extensive briefings, which all Members of the House of Lords receive from innumerable organisations, whether in the education, scientific or social fields, issues relating to, for instance, Section 28 and the whole series of other things with which we are bombarded, yes, the amount of lobbying in the eleven years that I have been at the House, if that is lobbying, has increased enormously.

1016. **Frances Heaton:** And how do you react to that lobbying material? Do you find it useful or intrusive?

1017. **Lord Walton:** No. I do not regard it as an intrusion, but I must say that it has been my policy very largely, since I became a cross-bench peer in 1989, to concentrate my activities specifically on the fields of medicine, science and education, and just occasionally look at matters of public interest in my native North-East of England, but not very often. So, if I see that the material I receive is not likely to be relevant to issues upon which I would propose to speak, then I acknowledge it when I can, and say that I am not proposing to take account of it because I do not intend to be involved in discussions on that particular issue. I am, of course an unelected peer;nevertheless, I feel that peers have to be aware of and responsive to public opinion. For example, I feel, in a sense, answerable to authorities in the field of medicine, science and education who often regard me as one of their spokesmen.

1018. **Frances Heaton:** Well I think that somebody like yourself, with an expert field of knowledge who can bring that knowledge to the legislative process, is fulfilling an extremely important function, and it is very important that you should have access to the current sort of sources of expertise in order to keep yourself up-to-date. Do you see any conflicts between your role, in a sense, in receiving that information and your role as a part of the legislative process? I mean, does it all work exactly

as you think it should?

1019. **Lord Walton:** I have never been offered any financial inducement in relation to such so-called lobbying activities, although I have from time to time, as everyone has, been offered some hospitality to attend a particular meeting where issues of this nature are to be discussed. However, if, for instance, I am to speak on an issue relating to the National Health Service, then I may, when appropriate, declare the fact that I am a past President of the British Medical Association, for example. So, these are matters which I believe can be covered very properly by a declaration of interest when speaking in the House.

1020. **Frances Heaton:** So, would you not find it helpful to have those interests included in a Register, as well such that a) if you are speaking a lot, you do not have to keep repeating them, and b) you make sure that you have covered them, because the Register is not all bureaucracy and nuisance; it can be helpful.

1021. **Lord Walton:** Yes, in the discretional Register, I do. I do, in fact, include such interests, and in fact I visited the relevant website this morning, and I hope that, in future, regular updating will be requested, because I found that some of my personal entry in the website is now a little out-of-date.

1022. **Frances Heaton:** Because you had filed your update and it had not gone through to the website?

1023. **Lord Walton:** Exactly.

1024. **Frances Heaton:** Yes, right. So you are one of the peers who actually does fill in the discretionary Register.

1025. **Lord Walton:** Yes.

1026. **Frances Heaton:** Have you found that excessively demanding? Or are you saying you are in a position such that you can call on resource so that you can manage it?

1027. **Lord Walton:** No, I have not found it excessively demanding. Whether I shall do so in the future when my secretary is retired, my very part time secretary, is another issue, but no, I do not find that difficult. What I would find difficult would be if there was a demand for a very much more extensive declaration of interest of practically every bit of hospitality from which one benefited.

1028. **Frances Heaton:** I see, so at the moment you feel that the present description of registering matters that affect the public perception of the way in which you discharge your parliamentary duties, is something that you can understand what is wanted, and you do it.

1029. **Lord Walton:** Absolutely.

1030. **Frances Heaton:** So, from your point of view, you would have no problem if that were made mandatory.

1031. **Lord Walton:** Not at all, but I do find it, frankly, rather surprising that there is a substantial minority of peers who have made no such discretionary or voluntary declaration. I think in the public interest, after careful consideration, that that is rather unsatisfactory, and this is the reason why I did suggest that, in my opinion, it should be an obligation upon all Members of the House of Lords to register interests in that way.

1032. **Frances Heaton:** So you are absolutely satisfied with the current wording and what it means, just to make it mandatory? Thank you very much, Lord Walton.

1033. **Clifford Boulton:** Good afternoon. In response to our question 9, concerning whether members of the House of Lords should be required to lodge parliamentary consultancy agreements with an officer of the House, and if so, whether an indication of the amount of fees under the agreement should be required, you answered 'yes'.

1034. **Lord Walton:** Yes.

1035. **Clifford Boulton:** You are answering 'yes' to both parts. Do you feel that the amount of fees earned under the agreement should be also registered?

1036. **Lord Walton:** Yes.

1037. **Clifford Boulton:** I think that is the first time that we have received that suggestion in evidence, but, again, probably in line with the Commons, in a sort of banded arrangement to show a rough idea of the extent of that obligation.

1038. **Lord Walton:** Yes. I felt that this is necessary in the public interest and in view of the need for transparency.

1039. **Clifford Boulton:** Now, you have a draconian rule in the House of Lords that, if you are an advisor or consultant to a professional or other body, you may not take part in proceedings in the House on the affairs of that body, at all. Do you think that, in fact, that might lead, in some circumstances, to the House debates being impoverished by someone who really knows, at first hand, about the subject and about the feeling in that profession from taking part? Do you think it will be possible to devise a system whereby outright paid advocacy and speaking for hire would not be outlawed, because they have been outlawed for centuries anyway, but where a person who is an advisor, and who got a fee in the process, would actually still be able to make his contribution to the debate?

1040. **Lord Walton:** Yes, I do. I believe that invariable declaration of an interest is something which is an important feature of present activities in the House of Lords. However, I can surely envisage extreme circumstances in which, because of the nature and extent of a paid consultancy, Members of the House should be barred by convention, or even ultimately by regulation, from speaking and voting on that subject. There, again, is a grey area. For instance, I was chairman - sorry, I was medical advisor - to the Automobile Association Committee for some years, and I always declared that, if ever I felt it necessary to speak on any matter relating to road transport ... I am also a neuro-science advisor to a pharmaceutical company called Eli Lilly, and always declare that whenever I speak on any issue relating to the pharmaceutical industry. For example, if there is a matter relating to the pharmaceutical price regulation scheme within the National Health Service. I find it absolutely vital to declare that part-time interest in order that people may know that I have pharmaceutical industry connections.

1041. **Clifford Boulton:** Do you feel the current rules for Category 1 and Category 2 interests actually prevent you from taking part in the debate?

1042. **Lord Walton:** Not in that regard, no. I do not believe so, because my few such commitments are not in my understanding, consultancies related to my parliamentary activities. I am advising really as a neuro-scientist and not on matters of public policy.

1043. **Clifford Boulton:** Thank you. One other point was that, in answer to our question about opposition spokesman, I think you stated a view that they should have to divest themselves of their relevant interests. I am sorry; I just do not seem to have it at the moment. It was question 10.

1044. **Lord Walton:** Yes. On balance, I favoured special rules of conduct covering opposition spokesmen and women. My reason, and again it is not an area in which I have any expertise, since opposition spokesmen and women are always subject to the vagaries of the electoral process, and are in many respects to be regarded as ministers in waiting, if they achieve office, non-declaration while in opposition might attract criticism, and might, at best, be an embarrassment.

1045. **Clifford Boulton:** So, this is a balanced argument.

1046. **Lord Walton:** Yes.

1047. **Clifford Boulton:** It is also a fact that it is very onerous, indeed, to be an opposition spokesman.

1048. **Lord Walton:** Indeed.

1049. **Clifford Boulton:** And the fact that you have to divest yourself of the very source of your knowledge and expertise on the subject may, in fact, influence your availability to be the opposition spokesman on that subject.

1050. **Lord Walton:** Quite.

1051. **Clifford Boulton:** So, it is just a matter of personal judgement but, say one went along the line of saying no relevant job for an opposition spokesman, do you think that would then bring along the necessity of having to pay a salary for people who held that position?

1052. **Lord Walton:** Yes, indeed. I do believe that.

1053. **Clifford Boulton:** Thank you very much.

1054. **Lord Neill:** Are there any other Members who have got any questions. Well, I think, Lord Walton, you have satisfied all the questioners on this side of the table.

1055. **Lord Walton:** Thank you. There was just one point, if I may say so, at the very end where you asked me whether I have,

in any other capacity in the public or voluntary sector, been required to register interests. The answer is, as a trustee of innumerable charitable bodies, many of which are companies limited by guarantee, I do, of course, have to complete an annual register under the Companies Act as unpaid director, of those companies. In addition, I have been subject, of course, to a code of conduct as a registered medical practitioner through the General Medical Council. So, those were two of the other issues that you asked me about in the written questions.

1056. **Lord Neill:** Thank you for that answer. We are obviously interested in that because the argument being put forcibly to us by many is that the Members of the House of Lords should not be obliged to register interests. So, it was of some concern and interest to this Committee to know whether there were other walks of life in which the peers and others had been required to register, and the charitable field is one, the trustee field is another, and then the other example you gave. Indeed, in the case of the Scottish Parliament, it has been made a criminal offence to participate in the parliamentary proceedings without having registered an interest, which is the extreme example known to me.

1057. **Lord Walton:** Well, of course, if the register were made mandatory in all three categories, the question, I suppose, which has to arise, then, is the nature of any sanctions that might be imposed upon those who fail to register or refuse to do so. That, of course, I imagine, is a matter for your Lordship's Committee.

1058. **Lord Neill:** Yes, but we would not wish to deprive ourselves of any advice you can give us. One of the things which has been mentioned is naming and shaming, and certainly, in the first place, in the first ten years, that should be enough. People would not want to risk the odium of being named and shamed.

1059. **Lord Walton:** I think naming and shaming probably would, in the very great majority of cases, be sufficient, but I suppose that, in public life, there could arise a circumstance where the nature of the offence was sufficiently severe to warrant a period of suspension.

1060. **Lord Neill:** And that raises questions about the command of the sovereign, the writ.

1061. **Lord Walton:** Exactly.

1062. **Lord Neill:** We were debating that this morning actually. Well thank you very much Lord Walton, we are very grateful.

1063. Lord Campbell, I did formally introduce you, as it were, onto our transcript this morning by describing all those who will be giving evidence today, and you were included in that. As you will have seen, or possibly already know, we follow the procedure of having a couple of the members of the committee put questions to witnesses as they come forward. In your case we were going to ask Ann Abraham and Professor Alice Brown to put those questions. Before asking them to do that, I would like to give you an opportunity, if there is anything you would like to say to the committee, or further reflections you have been having lately in the light of anything that has been taking place in parliament, or elsewhere, we would be very interested to hear that.

LORD CAMPBELL OF ALLOWAY QC

1064. **Lord Campbell of Alloway QC:** Well, Lord Chairman, members of the committee, I did send in a very short document which you may have received. I really, at a public hearing, wanted to express my gratitude for this wholly unexpected invitation. I also wish to welcome the wisdom of Lord Nolan and the members who then sat on his committee, who are here today. There is Sir Clifford, Sir William and Lord Shore. I wish to welcome their approach. I also wish to support the approach of Lord Griffiths and the findings of his Sub-Committee, as reflected in Lord Strathclyde's paper. In saying that, I assure the committee, that although I take the Conservative Whip, I do not always agree with their papers or their findings. That is, I think, fairly well known to certain members of the committee. They do reflect my own approach. I wish to say, if I may, that as I see things, and I have been there for twenty years, and have attended fairly regularly, I am still learning about the way in which the House works: its flexibility, its adaptability, and the way in which it serves its purpose. Against that background, I consider that the exclusive competence of the House of Lords, as regards its own procedures, ought to be asserted as an integral element requisite to retain its ethos of independence. That is especially, at any time, such as we have now, or as we had under Lady Thatcher, a massive majority in another place. Having regard to the order of dissimilarity of the powers, the functions, and the composition as between the two Houses. I, with greatest respect, wholly reject the comparative approach as in any way well conceived. My Lords, I have no interests to declare, and am very unlikely ever to have one at my age. None is registered. My Lord, I didn't really wish to make representations because mine were related in writing to the constitutional position, which worried many of us in the House, in particular myself, greatly. Could I respectfully draw your attention to my representation four, which in due course could become convenient and relevant to how the House, in debate, will deal, objectively, with the recommendations of this committee? I would also like to say that I have drawn it to the attention of Lord Carter, the government Chief Whip, who thinks it is quite a good idea.

1065. I'm grateful to have had a list of questions, and I shall answer them to the best of my ability. You may have heard, as I said to my old friend Lord Griffiths as he left the room, I really support your approach, and I think it is working pretty well. From my point of view that is how I approach it.

1066. **Lord Neill:** Well thank you very much for that. That is a very clear statement, if I may say so. Can we then ask Ann Abraham to put some questions?

1067. **Ann Abraham:** Indeed. That is an extremely helpful introduction, Lord Campbell, because where I wanted to start was on your views at the time of the Griffiths Report, and your views now. I think you have pre-empted a number of questions, and so saved the committee some time in that respect. I was interested that you were reported as saying at the time of the Griffiths Report that a voluntary register would change the nature of the House and the way it operates. Has it?

1068. **Lord Campbell:** Well the fact of the matter is, no it hasn't, but it could have done. Of course you realise that I have no interests to register, so I am quite critical of other people with interests. I haven't seen any change at all. I think there have been considerable improvements on the registration of parliamentary consultancies, but I have never had anything to do with them. I have never received any money for anything that I have ever done. I don't think, as far as I am aware, that anybody else has, apart from, there were when I first went there, people, I'm not mentioning names, who had a retainer from the Institute of Directors. I was always concerned with the trade union legislation from Lady Thatcher, in its embryonic stage. There was somebody who had a financial retainer, but we all knew it. There was no secret about it. I would not have had one myself, because I wish to be independent, but there was nothing wrong about it. I must say that I think it is undesirable, I do not really approve of it, and I think the Griffiths recommendations are first rate.

1069. **Ann Abraham:** We have had evidence from a number of witnesses, and from submissions, which suggest that the way the Register operates, is with what has been called a light touch. Do you think that if it were to be applied with a less light touch, it might not operate so successfully?

1070. **Lord Campbell:** Yes. I am a bit worried about the Register, to be perfectly frank. If you have got a dishonest man, and here the male embraces the female unfortunately, who is going to cheat, he is going to cheat anyway. If he has got written rules, hard rules, he will find a way round them. He will not always get away with it, but that will not stop him. Therefore, I regard a strict form of registration, not only as totally unnecessary, but also as slightly intrusive on the honour of people who were made life peers and go there. If it is not going to be wholly effective to stop the cheats, and it cannot be, then what is the object of having it for the good, honourable people who are not going to cheat? It is a very simplistic approach; it does not provide a complete answer. I support wholly what Lord Griffiths has proposed and the way in which it has worked. I do not want to change it. But if you ask me fundamentally further, 'should it be tightened up?' I am bound to come out with my basic feeling that whatever happens in the House of Commons, I have never been in the House of Commons, but whatever happens there, I do not really understand. This whole business blew up because a handful of members in another place behaved in a most peculiar and unacceptable fashion. The majority of the members of the House of Commons are totally honourable, and this has blown up in a sort of way that I find pretty unacceptable really.

1071. **Ann Abraham:** One of our witnesses this morning, Lord Merlyn-Rees, told us that every day the House of Lords is becoming more like the House of Commons.
He suggested, therefore, that the same rules should apply. You have said very clearly that the comparative approach is not well conceived. I am very interested in a very different perception of the two Houses.

1072. **Lord Campbell:** Well, again, to be totally frank, over the last twenty years, but in particular since reconstitution, I cannot tell you whether it has become like the House of Commons, because I really know nothing about it. I have a lot of friends in the House of Lords who were in the House of Commons, who know, rather, that it is getting a bit like, a bit like, because the manners are sharper, the courtesy is a little frayed now, manners at question time have deteriorated. I have spoken to the Leader of the House about this, I did not know that I was going to raise it with you today, but there is the concern of a deterioration. I do not think it has got anything like the House of Commons as I understand it. When you really look at the disparity, the essence of the House of Parliament, its powers, its functions, and its composition. It is all totally disparate. The fact that we are not paid and they are, I think is virtually an irrelevance, save as to perhaps registration. I take a totally different point of view I am afraid.

1073. **Ann Abraham:** Interesting, thank you. Just one final point from me. I am trying to look at this from the point of view of a concerned, reasonably informed, not party political member of the public, trying to look at it from a public perception point of view. If you were seeking to reassure me as that member of the public that, say I had read reports in the newspapers that members of the House of Lords were speaking and voting on matters in which they had a particular personal interest, and you wanted to reassure me that actually all was well, that peers were behaving in relation to the requirements and the codes of

personal honour. How would you give me that reassurance?

1074. **Lord Campbell:** There are two, I think, fundamental elements in the question, perhaps more. The first is that public perception is important, but as yet there is no cause for complaint or concern that has been voiced by the public. Certainly there is no allegation of malpractice or misconduct that has been taken up by the papers. I do not see...could you ask the question again, I have lost the main point.

1075. **Ann Abraham:** Sorry, it was not terribly well framed. I was really asking you to see if there was a way you could explain to a concerned member of the public that they need not be concerned.

1076. **Lord Campbell:** Well I think it is a lot of nonsense. I will tell you this, the plumber came last week, and he said to me "so now you are out of a job Guv?" I said "No" and explained that I was a Life Peer - to which he said - "that just ain't democratic. I thought you had all gone!" He then said "I always listen to the House of Lords. I do not really like listening to the other place, they shout, they argue, and I cannot understand what they are saying." He said "if I listen to what is going on in the House of Lords, I find it interesting, I can follow it, I cannot follow all of it, but at least they do not interrupt each other." Well now, I said there are two elements, there must be many more, but I give that as an example. I think that this is just a phony point; I do not think there is anything in it at all. I really do not think there is any merit in it at all. I do not know who conceived it, I do not know why people try and use it, when there is no substance in it.

1077. **Ann Abraham:** Well I think stories like that, very real stories about conversations with the plumber, give us a real insight into public perceptions. Thank you very much.

1078. **Lord Neill:** Professor Brown.

1079. **Alice Brown:** Lord Campbell, can I just ask one or two questions. We have very much been discussing your own views on the House of Lords and current practices, things that are happening at the moment in the House, procedures.

1080. **Lord Campbell:** Yes. I am against them.

1081. **Alice Brown:** But a number of witnesses have put to us that there have been a lot of changes taking place in recent years, one of the changes being a change in the composition of the House, of course. Do you think that change in composition has materially affected what might happen in the House?

1082. **Lord Campbell:** It has not affected it at all. Not even materially, there is no effect whatsoever.

1083. **Alice Brown:** No effect whatsoever?

1084. **Lord Campbell:** No. As I said, it is such a remarkable, flexible and adaptable institution. It continues to do its job. It continues to maintain its ethos of independence so far. I really do not think the only difference is the one that I have referred to, which is important, are the manners, the courtesy, and civility. It is very important that we restore the traditions, which are beginning to get frayed. That is a matter for the Leader of the House, through the usual channels. I cannot do anything about it.

1085. **Alice Brown:** Are there particular difficulties, perhaps, for new members who are not familiar with the traditions of the House?

1086. **Lord Campbell:** Well nobody is. When I first got there I knew nothing about it at all. Lord Denham, who was Chief Whip, takes you along and gives you some advice, and says you are going to be taking the Conservative Whip, and you say: 'yes'. Then he tells you how the thing works. Then you were never, certainly in the Conservative Party in those days, you were never stopped being told how it worked, and you had to learn how it worked. The people who come up from the House of Commons, they do not know anything about it either, their not particularly interested in it in the House of Commons. When they get to the House of Lords: they suddenly realise it is a totally different institution with a totally different ethos, and they have to learn. I was having lunch with a very distinguished member, I will not mention his name, who for years had a constituency at the House of Commons; he was a cabinet minister. We were having lunch together and talking about things, and he said: "I'm learning, I'm beginning to learn how it works." So when you ask about the new people, well they have to learn. A code of practice will not do it. That is the last thing in the world that would work, they are just a lot of rules. You get around them, if we are dishonest.

1087. **Alice Brown:** A last question. Again we have heard from some other witnesses that there has been an increase in lobbying activities in the House. Do you have any evidence of that?

1088. **Lord Campbell:** Lobbying, there are so many different types of it, elements in it. There are two main types, for example, there is what I call the postbags from the public. Now at the time of, for example in the old days, the War Crimes Bill, the poll tax, at the time of a large majority in the House of Commons. Our postbags, as Conservatives, were bulging from Conservatives who wanted amendments put down. Now this is one type of lobbying, which is entirely essential. Another type of lobbying, it goes on, for example, the gun lobby, or this section 28 that I got involved with, years ago when it was 28. You get all the lobbyists from all the different sides, the Church, the pro-gay lobby, the teachers. It is absolutely essential that we should have it. Nobody gets paid for doing anything, but you have got to try and understand everybody's point of view, or you cannot argue straight. So this is a beneficial thing, this lobbying, it is totally essential. When it is paid, I am totally against any form of paid advocacy.

1089. **Alice Brown:** Thank you.

1090. **Lord Neill:** If I could just go back to something that I think Ann Abraham was asking you about, the point about giving the reassurance to the public. I just wonder what your view is as to whether the public has a legitimate interest in knowing where particular peers are coming from. Take your plumber, he listens to the debate. If he also has a website with the required apparatus, he would be able to look up on the register, he would be able to find the voluntary register and see what interests were registered for the peers he had been listening to. What I am getting at is Category 3 of the register is to find in terms of registering matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties. That seems to suggest that there is a public interest, or there may be, in where the particular peers are coming from.

1091. **Lord Campbell:** I accept, Lord Chairman, I accept. There is a public interest, and a very vital one. It is the duty of the House, when the House of Commons proposes to introduce legislation which the majority of the electorate at that time appear to wish to resist, for us to resist. We have a very important public duty. Whether that is enhanced in any way by putting things on the website, I am really not competent to answer. All I feel is that the voluntary register seems to be working reasonably well. I really do not know, myself, how one decides what to register. I am not a member of Amnesty International, or anything like that. Ought I to put that on the register so that people know? I think it is a very wide problem, and I frankly do not think it is covered by saying material interest, because you can argue and argue about what is material and what is not material, in concept. This is why, frankly, I get rather foxed on this one. I am sorry, Lord Chairman, I have not been very helpful.

1092. **Lord Neill:** No. It is difficult language. It is what the peer considers might affect the public perception. So he is forming a judgement about what the people out there may think. It is a very difficult test to apply, I completely agree with you.

1093. **Lord Campbell:** I am not being discourteous; I seek no reply, but would the fact that I were the President of the Colditz Society, or a patron of various student societies. None of them are registered, of course, but of course I think they are all totally irrelevant to the job I am doing in the House. But I mean are these matters of public interest? I do not believe they are. If I am involved, and I heard I think it was Lord Griffiths or Lord Walton saying this, if I get involved in a debate, or intervene in a debate, and I have an interest, I declare it. But to try and anticipate and put whatever might, in your view, affect the perception of the public, is a very, very difficult nebulous exercise. I am not saying it should not be done. I do find difficulties, though, in its application. It seems to be working very well, but I do not think there is any case for tightening it up, because I do not see how you would turn the screw, or which way.

1094. **Lord Neill:** Well you have made it very clear, Lord Campbell, that you think the status quo that Lord Griffiths achieved is pretty good.

1095. **Lord Campbell:** It is pretty good, yes. I do not say that it is perfect, but you will never get a totally perfect system of running the House of Lords, or anything else.
It works reasonably well, the public seems reasonably content. If I thought there were anything which were desperately wrong, or even worthy of criticism, I would be prepared to say so.

1096. **Lord Neill:** Well thank you very much indeed for your full and very candid account of your position. I am very grateful.

1097. **Lord Campbell:** Thank you Lord Chairman.

1098. **Lord Neill:** We come, then, to our last witness of the day. Lord Marlesford, if you would be kind enough to come and take a seat. I did introduce you, Lord Marlesford, for the record, I did introduce the entire cast of witnesses this morning at ten o'clock. So there is written down a description of who you are and what your career has been. You are in the particularly good position, from the point of view of the question I wanted to open with, that you have been an observer of the House of Commons for many years as a journalist. Then in your position as a life peer, you have, for a number of years, been able to watch the House of Lords in action. Before I put the questions to you that we are going to start with in that particular field, is there anything you would like to say by way of an additional opening statement? We have your evidence of the 3 May, which

will go in the record immediately related to this evidence you are going to give us, but if there is something else you would like to say, or further thoughts which have come to you since the 3 May, now is your chance.

LORD MARLESFORD

1099. **Lord Marlesford:** Well, Lord Chairman, thank you.
I did send over a two page piece, and I do not think that I would want to add to that other than by replying to your questions.

1100. **Lord Neill:** Well, may I then ask you this question which is linked to one or two in the paper we sent to you as possible questions. We had Lord Merlyn-Rees in this morning as our first witness. He was talking about the change in the House of Lords. He put it in very strong terms, on the hand he greatly admired the committee work, which he thought was superb, but so far as the chamber in general and other activities in the House of Lords, he expressed the opinion that, day-by-day, the House of Lords is becoming more like the House of Commons. Have you any comments to make on that?

1101. **Lord Marlesford:** Well, perhaps it is a little bit, but not much. Perhaps I could just say that, having spent a lot of time observing the House of Commons, professionally, when I found myself put in the House of Lords, the thought which occurred to me, as the is a difference between the two, is that it was really like jungle warfare in the House of Commons, and it was like being parachuted into a desert in the House of Lords. It is much quieter, there is still an interplay of forces and opinions which is every bit as effective, but it is a totally different atmosphere. I myself do not think that the atmosphere in the House of Lords has really begun to approach that in the House of Commons.

1102. **Lord Neill:** Some movement, perhaps, but nothing significant?

1103. **Lord Marlesford:** That is my opinion sir.

1104. **Lord Neill:** Let me ask you this. Are there more party point-scoring from Labour party spokesmen saying this is what you, the Conservatives, did or failed to do when you were in power. Has that sort of exchange increased?

1105. **Lord Marlesford:** One of the points I put in my two page submission, sir, was the difference between life peers. The Great and the Good, who are put there for what they have achieved in public life and the distinction that they have reached, and the wisdom and the judgement, and all of that that they will be able to contribute. And working peers, of which I am one, in general, not put there for any great achievement in the past, but in the hopes of some contribution in the future. By definition, up until now, life peers on the working list, the so-called 'working peers list', have been put forward by their political parties. Therefore they are more political. Certainly with the two-hundred or so who have arrived in the last three years, the great majority, for reasons that we know and understand, from the Labour party, inevitably many of them feel that they are there to perform much more of a political function than traditionally has been performed in the House of Lords. The great characteristic, for me, of the House of Lords is the independence of thought and view. Even those people who, perhaps, do not feel that independent in another place, or when they arrive in the House of Lords from wherever, seem to me pretty rapidly to get a very independent point of view in how they approach matters that come before the House of Lords.

1106. **Lord Neill:** In a way, to some extent, that confirms what Lord Rees was saying, that you have a new category, the working peer, a significant part of the House being made up of working peers who feel they have a job to do in a way that people did not think in the olden days. That is right is it not?

1107. **Lord Marlesford:** Yes.

1108. **Lord Neill:** Well that is a very interesting point of view, and helpful. Could I then ask you about the starred question which you put down in February last year addressed to the Leader of the House, in these terms, whether they should arrange for a committee of the House to consider whether it should now be made mandatory for those Lords who have taken the oath to register matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties. So that is Category 3 in the Register, but on a mandatory basis. What is your view on that today?

1109. **Lord Marlesford:** Well Lord Chairman, I think it should be mandatory because I think that in the relatively short time that the Register of Lords Interests has existed, it has proved extremely useful and informative to those who wish to look at it. It has not, as far as I am aware, been a burden or an intrusion to anyone who has filled it in. I think the Register of Interests has two functions. One is to ensure that people can, and do, declare an interest which might be seen as affecting their attitude to any matter. Rather than just having the ad hoc declaration of interests when you take part in proceedings on the floor of the House, or in the committee, it is quite useful to have on the record your general position because that might sometimes mean that you do not have to declare it ad hoc, although normally most of us would do so if it was clearly relevant. The other reason, of course, really comes to the crucial aspect of the House of Lords. The House of Lords is an elite, and in my view, it should be an

unashamed elite, otherwise it is nothing. That, of course, is a reason why I think it is pretty good nonsense to say that the composition of the House of Lords should reflect the composition of the population as a whole. I quoted in my introductory paper the words of Mrs Beckett in the House of Commons last week. She said the future members of the House should: 'reflect the economic, social, gender, religious and ethnic make-up of society.'
I believe the House of Lords is an elite, with that goes huge privilege, huge responsibility; responsibility both to contribute and also responsibility to behave. I think that for people to be able to see in the register the sort of qualifications and interests that members of the House of Lords have, would add to the credibility and value of the House of Lords, publicly.

1110. **Lord Neill:** In a way it strikes me, the more I ponder on the third category of the Register, the public perception, what you think the public would perceive as bearing on your dischargeable duties, the more there is already a concession there that the world outside has an interest in knowing what your interests are as you sit in the House. It is not just an internal declaration, but it is addressing a wider public.

1111. **Lord Marlesford:** It certainly is. It is a published document and is presumably available on the Internet.
Of course, one has to remember that there is a great deal of information available on all members of parliament, from both Houses, through the published reference books, for example Who's Who. There is quite a duplication between the Register of Interests and the public reference books. In certain cases, though, there would be things which would not be significant enough for the constrained space that Who's Who or Dod have, which nevertheless one might wish to highlight as the sort of things which make one the sort of person one is, which enables people to judge the sort of contribution one could, can, or does make.

1112. **Lord Neill:** Thank you for those answers. Can I then take you back to something you wrote in the letter which you wrote to me on the 3 May, when your first major point on page one was about the culture of contempt in which many institutions are now held. You raised the question at the foot of that page about finding evidence of serious malfeasance. Well I think you probably heard me say in the House of Lords, and I certainly said in our Issues and Questions paper, we are not conducting this enquiry on the basis that there is any such evidence, there is no evidence. Nor are we holding this enquiry in an attempt to seek out such evidence. We are proceeding on the basis that there is not evidence, there does not exist improper conduct. We are coming to it from a different point of view: is the House setting for itself appropriate standards? That is where we are coming from. I think you say that if you do not find the serious malfeasance, you trust that we will not seek to, as it were, lower parliament in the estimation of the public. I wonder what you had in mind by that, is it what we could do which would be damaging to the reputation of parliament?

1113. **Lord Marlesford:** Well, I think the fact that you have been appointed, or have proposed to undertake this investigation, does suggest to people who do not know what you have just said, my Lord Chairman, and who perhaps have not thought about it, that you are there as a sort of tribunal to investigate the behaviour standards in the House of Lords. Therefore there is likely to be some expectation that you will come up with revelations that will be worthy of the press. I believe, actually, that the net benefit of you being there is that I hope you will be able to give the House of Lords a clean bill of health in terms of its behaviour and the way in which it regulates itself, with perhaps one or two small changes, such as the one I believe in, which is that the Register of Interests in its present form should be made mandatory rather than voluntary. I am aware that it has been suggested that it might be unfair on those who take little part in the proceedings to require them to fill this in, they are in the House of Lords because they are there, although that argument is less strong as you pointed out in your introductory paper, now that the hereditaries who remain are people who sought election. Of course there is scope for any member of the House of Lords to ask for formal leave of absence from the House. The number who do so is recorded, of course I would not think it unreasonable if it were to be decided that those members who had sought leave of absence should not be required to fill in the Register of Interests, but I think everybody else should.

1114. **Lord Neill:** That would be an interesting way of dealing with what is a slightly difficult problem. The figures we were given by Mr Michael Davies was that there are 693 members of the House of Lords today, of whom 408 have registered interests, leaving 285 who have not.
In answer to a question this morning, he said he thought, of the 285, perhaps as many as 100 would be peers of the type you have just described, who take no active part in the affairs of the House. The argument is, as you have just stated, it is unreasonable to require any person in that category to make any entry in the Register provided their position is perfectly clear, that they have been granted leave of absence.

1115. **Lord Marlesford:** Well, first of all, the figures I have got, and that I put in my paper, which is up to date, and I did consult that department, but is slightly different because there were some 57 members who made a nil return, which presumably means they did not feel they had interests to declare which were relevant to the Register. Therefore, that makes, by my figures, 482 out of 699 members, which I think is about 70 per cent, did fill it in. But frankly, it really is not a great deal to fill in that register, and I do not see that it is an obligation which is even measurable in terms of being unreasonable for somebody to have to do. Still less, of course, do I think it is appropriate for anybody to say that they would wish not to fill it in

because they would wish not to reveal an appropriate interest.

1116. **Lord Neill:** Let me put to you one of the arguments we have heard this afternoon that there is a category of peer, the numbers are unknown, who, if the Register were to be made mandatory, would say that they did not wish to have any part of that, and they were not going to register. Maybe they would have to get leave of absence. They would cease to be active members of the House of Lords. Have you heard that argument made, and whether you have or not, what do you think of it?

1117. **Lord Marlesford:** Well I would say if that is their view, so be it. They should therefore take Leave of Absence, and not take any further part in the proceedings. I would be surprised if many actually made that decision.

1118. **Lord Neill:** I would be surprised, I think, too. I am going to hand over to Sir Anthony Cleaver, who will ask you some more questions.

1119. **Anthony Cleaver:** Thank you, and good afternoon. If I could just explore a little further your views on Category 3, and making it mandatory, just to clarify one point. I think it is generally taken to refer specifically to pecuniary interests, but obviously there are a lot of areas where people may be involved with an NGO, for example. Would your view be that that should also be something that they should register?

1120. **Lord Marlesford:** Yes Sir. In fact, if I could just read a sentence from the paper I submitted. The value of declaration of interests is not just to prevent concealment, but also to emphasise the focus of views expressed. In this respect, it is every bit as important that voluntary and unpaid links with interest or pressure groups be made known as it is that links of a commercial or financial nature be disclosed. So I am quite unequivocal. When in doubt, I think, declare it. In fact in my own register, I actually put down the fact that I am Chairman of the Marlesford Parish Council. Now I do not think that matters to anybody, although I actually happen to regard it as one of the most important posts I have ever held. The reason I do so is because I advocate from time to time the importance of Parish Councils, and it seems to me appropriate to put that in.

1121. **Anthony Cleaver:** Now, it is interesting that you have commented that in some respects you do not feel that things have changed that much, but one of the suggestions that has been put to us by some of the witnesses is that there has been a significant change in the way the House perhaps sees its own power, and there is a much greater tendency to take issue with recommendations that come from another place. Now is that something that you would recognise?

1122. **Lord Marlesford:** Yes. I think that the House, as a whole, probably feels that it has more legitimacy. That, I think, reflects a comment made by the present Leader of the House during the passage of the legislation. I, myself, supported the essence of the legislation. I did not think it appropriate that there should be a very large number of hereditary peers who were entitled to attend, and who seldom did so, but were a potential power in terms of what the House of Lords said or decided. I think the so-called Weatherill amendment, where we have something over 100 of the hereditary peers remaining, was an extremely good one. I think we have ended up with the best of both worlds. I think the House does have, in public perception, and in its own perception, more legitimacy, and it is likely that it will reflect this, to some extent, in the vigour with which it may criticise the executive.

1123. **Anthony Cleaver:** I guess that would be consistent, obviously, with your view on moving the Registration of Interests in a mandatory direction. One of the other things that has been suggested by a number of our witnesses has been that there has been a significant increase over the last few years in the amount of lobbying of the members of the House of Lords that takes place. Is that something that you have observed?

1124. **Lord Marlesford:** I do not think that I have found more lobbying. Lobbying tends to be from organisations that have an interest in issues before the House. Almost all lobbying tends to be in the form of paper. It is, of course, very useful, particularly if one is taking an interest in the subject concerned. Of course there are meetings held, for example, the Countryside Bill which is presently before us, there was a useful meeting a couple of weeks ago in which the CLA and the Ramblers were both in the room giving a view. That was lobbying, of course. Lobbying is thoroughly desirable provided it is straightforward. I cannot think that any member of the House of Lords is going, in any way, to be unduly influenced or corrupted by lobbying. I have certainly never, ever, come across any suggestion or hint of lobbying which is, in any sense, giving favours in the hope of a good response. So I think lobbying is a part of the parliamentary process. Members of parliament need to be informed of what people think if parliament is legislating. Thus it is totally legitimate for those who are affected, or think they might be affected by the legislation, to give their view on the legislation before it is enacted. That is what it is all about.

1125. **Anthony Cleaver:** Could I pursue just one final area flowing on from the question of mandatory registration, and so on. I suppose, in a sense that carries with it an implication that there has to be the necessary apparatus to deal with failures in that context. It is not entirely clear what that should be. Perhaps, at the more extreme end, the Home Secretary has recently indicated that a modern offence of corruption would apply to members of both Houses. I wonder whether you would not

perhaps suggest that, given your view of the elite nature of the Lords, it should in some sense be excluded from that?

1126. **Lord Marlesford:** I do not think that it would be necessary to exclude it at all. If the law declares corruption to be a criminal act, I think we should all be bound by that totally. But of course corruption is a very much more serious thing than I thought, probably, we were talking about. Again, if I could just read what I have put on the issue of enforcement: 'the Committee of Privileges, which includes three Lords of Appeal, considers any allegations made against peers in respect of the register. Thus, there are already arrangements for invigilation of behaviour at the highest level, and in a calm judicious atmosphere, very different from the harassment on which MPs are beginning to comment.'

1127. **Anthony Cleaver:** Thank you.

1128. **Lord Shore:** I personally, strongly agree with what you have said about compulsory registration. What I find rather interesting, and surprising in a way, is that while the Griffiths proposals have been in force for the last four or five years, there has not been a single complaint. So the procedure that you have outlined for dealing with complaints, which in my view too, is a very strong one, with three Law Lords sitting on a committee of privileges, has never been operated. Can one draw any conclusions from that, favourable or unfavourable?

1129. **Lord Marlesford:** Well, Lord Shore, I think that I would draw the conclusion that it indicates that there is no misbehaviour in this area. There is in place the opportunity for people to complain and they have not found it necessary to do so. As you say, there is powerful machinery for dealing with complaints, which has not had to be brought into action. I think that the argument that the register has worked perfectly well, is not of itself an argument not to extend it. Indeed I would say the reverse. I believe the cost of extending the register to everyone, is small compared to the potential benefit. Even if it is only in the perception that people are willing to be open about the sort of interests which are relevant, or might be seen to be relevant to the performance of their parliamentary duties.

1130. **Lord Shore:** Thank you.

1131. **William Utting:** In other areas of my experience, I have found that registers have not worked terribly well unless there was some mechanism for monitoring their effectiveness, and at the back of that, a process for enforcement. Do you think that the present structure within the House of Lords would be equal to the tasks of monitoring and, if necessary, enforcement?

1132. **Lord Marlesford:** Well as Lord Shore has pointed out, the monitoring has been available to anyone who sought to check on any particular person and their entry in the Register. As for the enforcement, I cannot think of a more powerful body than to have three members of, effectively, the United Kingdom Supreme Court considering and judging any alleged misbehaviour in respect of the Register. I think, therefore, that the monitoring is built in fully at the moment. I take your point that in other areas of life, there may be registers that do not work as well, but I think this one is, as far as I can see, totally watertight.

1133. **William Utting:** Yes. I have been accustomed to there being a nominated officer who was responsible for actually checking that there was conformity to the Register. I suppose what I am getting to is whether the current Registrar in the House of Lords should be given this additional duty of actually checking, as far as he can, that entries that should have been made, in fact have been made.

1134. **Lord Marlesford:** Well, I think that many members of the House of Lords, when they fill in the register, do discuss their entries with the Registrar, and they are then given some guidance as to what is appropriate to mention. I know a number of people who have been told "well that is not really relevant, but you can put it in if you like." So there is a certain unevenness to what people put in, but the idea that you investigate would be rather akin to bringing in some sort of positive vetting, and I would have thought that was completely impractical, and very undesirable. The opportunities for registration are there to a limited extent. I think they should be there to a complete extent. The sanctions which already exist against abuse or misbehaviour are very considerable indeed.

1135. **William Utting:** Thank you.

1136. **Lord Neill:** Ann Abraham.

1137. **Ann Abraham:** I would just like to pursue this point a little bit further in relation to a mandatory register. I was thinking back to the evidence that we had this morning from the Clerk of the Parliaments, when we were talking about a mandatory register. He told us that he would find it difficult to enforce because he said there was no machinery and no sanctions. I take your point entirely about the Judges, but what I am trying to understand is where are the police force, and where are the prisons that follow on from this. It was, as he explained to us, the absence of machinery and the absence of sanctions that he saw as problematic. I am just interested in your views on that.

1138. **Lord Marlesford:** I think in practice it would not be a problem because I think you would get compliance. I remember when seat belts were introduced into this country, there was a certain controversy about it, it was suggested a lot of people would defy the law. In fact, they very rapidly complied totally with it. I remember when the House of Commons Register was introduced; there was only one member of the House who decided he would not, on principle, fill it in. You will remember that person was Mr Enoch Powell. I think everybody realised that his integrity was such that there was no question of needing to do anything about it. I think if the Register were to be made mandatory, it would be a rule of the House, and members of the House are, in my opinion, accustomed to complying with the rules of the House.

1139. **Ann Abraham:** Thank you.

1140. **Lord Neill:** Professor Brown.

1141. **Alice Brown:** Just one small point just to follow that up. I suppose it is a point about resistance to the rules. What kind of resistance would you anticipate? Lord Griffiths was telling us earlier this afternoon that he and his committee were, indeed, very sensitive to the mood of the House at that particular time in making their recommendations, and clearly if you look at the way that particular clause is written, I think it reflects some of the difficulties that were facing them. Do you think things have changed to the extent that to move towards a mandatory register would provoke less opposition?

1142. **Lord Marlesford:** It was a new idea for their Lordships to have the Register. We have now had four years of the Register. It has enabled people to see that it is a perfectly friendly beast. I think in that sense, of course things have changed. I do not anticipate that there would be much objection in practice. But as I have said, I think if you were to suggest that people who did not wish to fill out the Register should take a Leave of Absence, I think that would focus people's minds a bit.

1143. **Alice Brown:** Yes. Thank you very much.

1144. **Lord Neill:** Well, I think you have dealt with all the questions we have to put to you, Lord Marlesford. Thank you very much indeed, and thank you for the shorter paper and for your earlier letter.

1145. **Lord Marlesford:** Thank you, my Lord Chairman.

THURSDAY 29 JUNE 2000 (AFTERNOON SESSION)

OPENING STATEMENTS

Opening statement by Lord Walton of Detchant TD

As you will be aware, I wrote to Lord Neill on 13 April answering to the best of my ability the questions posed in the document published by the Committee earlier this year raising a number of issues and questions. Hence, my opening statement is to be regarded as complementary to the answers which I gave in that letter.

In my opinion, the present arrangement relating to declaration of interests as it applies to members of the House of Lords is in general satisfactory, and in my eleven years as a life peer, I believe that whenever any peer has felt that there might be any potential conflict between his or her public office on the one hand and any outside interests on the other, a declaration of such interest has been made. I do, however, believe that the present requirement relating to documentary declaration of interests should in future no longer be voluntary for members of the House of Lords, but should constitute an obligation.

Having made these points, I believe that the recommendations of the Griffiths Sub-Committee promulgated in 1995 continue to be appropriate and have stood the test of time, subject only to the qualifications set out above, and, in particular, the guidance given in paragraph 3.8 of the paper on Issues and Questions seems to me to be wholly appropriate. The principle that Lords should act always on their personal honour and should never accept any financial inducement as an incentive or reward for exercising parliamentary influence, as resolved by the House on 7 November 1995, seems to me to be unexceptionable and should, I am confident, be maintained. However, while I believe, as set out in question 11, that there is a case for considering some modification to the Griffiths principles, in promulgating a new code of conduct for peers, I could not accept that the specific guidance to peers must invariably cover any financial interests or benefits received from an outside organisation or individual, irrespective of whether they each come pursuant to an agreement for parliamentary services. For this reason, it follows that I would regard it as being unacceptable to presume that the rules regulating conduct in the House of Commons

should apply similarly to the House of Lords if one accepts all of the implications of the present rule in the Commons, as set out in paragraph 3.18.

I do not believe that it would be appropriate for every single member of the House of Lords in a profession or in other employment, in whatever capacity, to be required, for example, to register lecture fees, royalties from publications, other publication fees, or the innumerable matters which fall to such individuals but which could not in any way be construed as being likely to influence their parliamentary activity, except very remotely. Even in my so-called retirement from professional medical practice, I am still invited regularly to lecture overseas, to open new departments and sometimes buildings, and to undertake intermittently, both in the UK and abroad, other professional commitments where invariably the inviting department or organisation agrees to cover my travel and accommodation expenses (and sometimes those of my wife) . It would represent an intolerable burden if I were required to report every lunch or dinner to which I had been invited by professional organisations in order to discuss matters of public or professional concern; here I speak of activities, for example, of the Academy of Medical Sciences, the Royal Society, the Medical Royal Colleges, the British Medical Association, or a multitude of other organisations with which I have had contacts. It would be virtually impossible to recall in detail sponsorship arrangements, for example, offered by companies in the pharmaceutical industry when one attended meetings of the Association of British Neurologists, where some sponsorship is commonly offered by several companies. In addition, I am, at the last count, President, Patron, Vice-President or Vice-Patron of about 20 charities in the medical field which regularly invite me to meetings, when available, in order to discuss their objectives and their programmes; usually, when one does so, refreshment of some kind is offered.

It follows that, in my opinion, members of a largely part-time, non-salaried House would find it exceptionally difficult, and even perhaps impossibly demanding, to attempt to conform to the rigid structure specified in relation to members of the House of Commons, not least because many of us have exceptionally limited secretarial and other administrative support (if any), and the current expenses paid to members of the House are such as to render such support increasingly skeletal.

Having made these points, however, I confirm that I personally, and, I believe, the vast majority of other peers, would invariably declare an interest when speaking in the House if any of their manifold outside interests were to seem likely to impinge in even minor degree upon the comments that they are making in debate or in questions and supplementary questions. To quote one such example, whenever I contribute to debates on the defence medical services, I mention that until 1960 I was a serving member of the Territorial Army Medical Services and commanded the 1 (N) General Hospital, later becoming its Honorary Colonel. Similarly, in questions or debates relating to disability, I declare my current Life Presidency of the Muscular Dystrophy Campaign, of which I was formerly Chairman for 25 years.

I would therefore conclude that with relatively minor modification, which could and should certainly be strengthened in relation to parliamentary consultancy agreements as raised in question 9 and in a number of other areas, the Griffiths Committee recommendations seem in general to be working satisfactorily in relation to the conduct and declaration of interests on the part of peers.

Opening statement by Lord Campbell of Alloway QC

May I by leave express my gratitude for this unexpected invitation, my welcome for the wisdom of Lord Nolan, my support for the approach of Lord Griffiths and the findings of his Sub-Committee, as reflected in Lord Strathclyde's paper.

Exclusive competence at the House of Lords as regards its procedures is asserted as an integral element requisite to retain its ethos of independence. Having regard to the order of dissimilarity of powers, functions and composition as between the two Houses, the comparative approach is not well conceived.

Opening statement by Lord Marlesford

The expected behaviour of peers is one thing. The actual behaviour is another. To ensure that the two match, will require arrangements which will depend on the composition of the House of Lords. Public confidence is crucial.

When the membership was confined to hereditary peers, the House had its own code of honour, which reflected values of the cast from which members were drawn. Members were not, and did not feel, under any obligation to attend. They only did so if they wished to take part in politics, or felt they had something to contribute. If the moral code were found to be broken, peer pressure would have been extremely effective at bringing an offender to book. Hereditary peers did of course include first creations, who would have been every bit as anxious to fit in with the standards expected. If they were not from the cast, their peerage would elevate them to it.

The addition of life peers steadily reduced the plutocratic profile of the House. But in terms of integrity, they were in general the same sort of people who might previously have been created hereditary peers.

However there are now two different categories of life peer. The great and the good, enobled for their distinction and the contribution already made to public life. They are expected, on an occasional basis, to offer their wisdom, experience and judgement. Then there are the 'working peers', appointed from the political parties, not for what they have already achieved but for what they will contribute. They are expected to take a full and regular part, not least in voting for their parties.

When working peers were few in number they rapidly absorbed the culture of the House, most importantly its independence of mind, but also its ethical standards. With the arrival, within the last three years, of over 200 new peers (the quality of whom has been noticeably uneven), coinciding with the departure of most hereditaries, the digestion of the newcomers has been slower.

One relevant aspect of this has been the growing pressure for peers to be paid. Although costs of attendance, and facilities to contribute effectively, are supposed to be provided, they do fall somewhat (not very) short of what is necessary. The introduction of taxable remuneration would be a huge change. It would make membership a job for all, rather than a public service for most. It would certainly reduce the remarkable, and I believe crucial, independence of members.

Now it is suggested that future members should reflect the "economic, social, gender, religious and ethnic make up of society." If implemented this would result in a House as different from the present one, as it would be from the Commons. It would certainly have to be a salaried House. At that stage, substantial changes in the rules, and invigilation, of behaviour would be required.

For the present I believe little change is needed.

There is no reason why standards of integrity between the two Houses of parliament should be different. But this does not mean that the methods of ensuring them should be similar, still less identical. There is a growing view that what is now being demanded of MPs is excessive, intrusive and humiliating. It neither adds to the public perception nor encourages some of the best potential candidates to enter political life.

Although I strongly agree with much of what is contained in the evidence submitted to your committee by Lord Strathclyde, I do differ in one important respect. I believe that the present Register of Lords' Interests should be made mandatory. The majority of peers (482 out of 699) already complete it. The categories are sensible and most makes it clear whether the interests are paid or unpaid. It would be undesirable, for reasons given by Lord Strathclyde, for the quantum of remuneration or other income to be revealed in the register. The obligation to complete the register could exclude those peers who seek Leave of Absence.

The register makes clear the wide experience and expertise which peers can bring to parliament. The value of declaration of interest is not just to prevent concealment but to emphasise the focus of views expressed. It this respect it is every bit as important that voluntary and unpaid links with interest or pressure groups be made known, as it is that links of a commercial or financial nature be disclosed.

The Committee of Privileges, which would include three Lords of Appeal, considers any allegations against the peers in respect of the Register. Thus there are already arrangements for invigilation of behaviour at the highest level and in a calm judicial atmosphere, very different from the harassment on which MPs are beginning to comment.

Public awareness of the quality of advice and scrutiny available to the parliamentary process, and to the monitoring of the executive, provided by the House of Lords should of itself be reassuring to the British people, who see parliament as the ultimate guardian of their rights and interests. I believe that this public service, provided as it is with a negligible cost and with the highest levels of integrity, should contribute to confidence in our democratic system.

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Friday 30 June 2000
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Frances Heaton
Sir Clifford Boulton GCB	Rt Hon John MacGregor OBE MP
Professor Alice Brown	Rt Hon Lord Shore of Stepney
Lord Goodhart QC	Sir William Utting CB

Witnesses:

Lord McNally
Rt Hon Lord Crickhowell
Lord Plant of Highfield
Baroness Turner of Camden
Lord Flowers FRS
Lord Dubs
Rt Hon Sir Archibald Hamilton MP

1146. **Lord Neill:** Good morning, everyone. This is the third day of the public hearings in the Committee's enquiry into the arrangements governing conduct in the House of Lords. Today we have another series of witnesses with very wide experience of public life, including the first current member of the House of Commons to appear before us in this enquiry, as well as six members of the House of Lords. We will finish the session at late lunch time.

The first witness will be Lord McNally, a Liberal Democrat Life Peer, created in 1995. He was a Member of Parliament, first as a Labour MP from 1979 to 1981 and then as an SDP MP from 1981 to 1983. He holds a senior post with Shandwick International, which, among other things, engages in public affairs and government relations work.

Secondly, we have the Rt Hon Lord Crickhowell, who was a Conservative Member of Parliament from 1970 to 1987, holding posts as an opposition spokesman and Minister. From 1979 to 1987 he was Secretary of State for Wales. Following him will be Lord Plant of Highfield, a Labour Life Peer created in 1992 and Research Professor at Southampton University. He then became Master at St Catherine's College, Oxford. Since January 1998 Lord Plant has been President of the National Council for Voluntary Organisations.

The fourth witness this morning will be Baroness Turner of Camden, a Labour Life Peer created in 1985. Baroness Turner was Assistant General Secretary of the ASTMS union from 1970 to 1987 and occupied positions on the Opposition Front Bench in the Lords from 1986 to 1996. Then we have evidence from Lord Flowers, a cross-bench Life Peer, created in 1979. Lord Flowers is a distinguished nuclear physicist, who was Chairman of the Nuffield Foundation from 1987 to 1998, held distinguished positions in the academic world and is currently Chancellor of Manchester University.

Then we have Lord Dubs. He was a Labour MP from 1979 to 1987 and Director of the Refugee Council from 1988 to 1997. In 1994 he was created a Life Peer, and from 1997 to 1999 he served as Parliamentary Under-Secretary of State in the Northern Ireland Office.

Completing the morning's list is the Rt Hon Sir Archibald Hamilton, a Conservative MP, who is Chairman of the Back Bench 1922 Committee. Sir Archibald was a member of the House of Commons Select Committee on Standards in Public Life in

1995.

1147. With that prelude, I now welcome our first witness, Lord McNally. Our procedure, Lord McNally, is to invite a couple of members of the Committee to take the lead in putting questions. In your case it will be first Sir Clifford Boulton, followed by myself. Before we start, is there anything you would like to say to the Committee? Unless I am making a mistake, we do not have anything in writing from you or an opening statement, but please feel free to comment before we begin.

LORD McNALLY

1148. **Lord McNally:** I would like to answer as many questions as possible, my Lord, but perhaps I could make two very short points that will put my evidence in context for the Committee. I have worked around Whitehall and Westminster since 1966. During that period I have worked for a think tank and a political party, I have been a temporary civil servant, a Member of Parliament and an in-house lobbyist, I have worked for a trade association and for two public relations firms. I have seen the business and the issues before you from all sides, and I think that is relevant.

1149. From that 34 years' experience, I make only two points to the Committee. First, I believe from what I have seen from all sides that British public life is essentially clean. I think that such corruption that has occurred has been minor and, put against the context of the large number of people involved in all parties, my direct experience has been of a clean system. The second point I make is that all that experience from all sides convinces me that lobbying enriches and benefits our political system.

1150. **Lord Neill:** Thank you very much indeed for those opening observations. I will ask Sir Clifford to commence the questioning.

1151. **Clifford Boulton:** Good morning. Perhaps I can start by asking you some questions arising from your own entries in the register. Did you feel any awkwardness about the fact that your kind of interest to do with clients and lobbying must be separately entered as a C2 entry? Do you feel that that is invidious in any way?

1152. **Lord McNally:** No, on the contrary, I think it is of benefit. Members of the committee will notice that I was nominated for a peerage in November 1995, just when the House was making resolutions on these matters, and I entered the House on 9 January 1996. One of the first things I asked to do was to meet with Lord Griffiths and his committee, because I felt that, at that time, I was something slightly different: I was not a lord who had been hired as a PR man; I was a PR man who had been made a lord. We had a meeting, which I found extremely constructive and which I think set down the guidelines that have been followed, I notice from the Register of Interests, by other peers. Since my introduction, a number have been in the same position of working for a public relations firm. I think that what we agreed then is sensible. Where I am working directly on a client, I declare it and I desist from taking any part in Lords' activity that applies to that client. The difficulty comes with a company like Shandwick, which has perhaps 2,000 clients: not to participate because of their interests would virtually silence me.

1153. I shall give you one example, which is a kind of self-denying ordinance. I do not work on animal welfare in any respect, but Shandwick does work for the International Fund for Animal Welfare, very actively participating in the debate about fox hunting. My party asked me to take the lead in the House when a fox hunting Bill comes to the Lords. I did not think that was wise, although I do, as I say, take no part in Shandwick's work for IFAW. Therefore, on top of the specific self-denying ordinance, I also put what I consider to be a personal cordon sanitaire on activity. But I personally welcome the declarations of interests, because I know that there is legitimate interest in how I conduct myself. Mr Vallance White occasionally rings me to tell me that a journalist wants to see my declaration of interests and the Shandwick list of clients, and I am very happy for them to do so. I believe the key to this is transparency.

1154. I shall make subsequent answers shorter, I promise you.

1155. **Clifford Boulton:** The distinction is correctly identified by you, but of course it is echoed by a distinction in the register, in that one can see from the C1 peers who they work for and, when the name of their company does not make it clear, they put in brackets after it what the subject is. All you have to do is to lodge with Mr Vallance White your company's clients and your own personal clients. Why do you think you were not asked to show your current clients in the register?

1156. **Lord McNally:** Partly because, as I say, it would make the register very fat indeed.

1157. **Clifford Boulton:** I am sorry, I meant your personal clients, the ones who actually inhibit you.

1158. **Lord McNally:** I honestly do not know, and I have objection at all to listing current clients in the register. In fact in the register that I lodged I marked against them - there are only three of them - "personal client", so there is no secrecy.

1159. **Clifford Boulton:** And they are not constantly changing? They are reasonably stable, are they?

1160. **Lord McNally:** They are reasonably stable, but in the nature of things over the years, one may drop off and one may come in, but most people in public relations who are working directly will handle three or four clients at most.

1161. **Clifford Boulton:** And now that the register is made available on the Internet, it would be quite practical to keep it up to date with a list of your current clients.

1162. **Lord McNally:** Absolutely.

1163. **Clifford Boulton:** Can I turn then to the consequences of this combination of a self-denying ordinance and an absolute ban on certain things that you can do under the rules of the House, when you have a client in that way. In some ways the House of Lords ban is more clear cut and more absolute than the Commons ban. I just wondered whether you feel that, by being simple, it does not in some ways go too far. Is it really for the benefit of the House that you do not come forward with lots of international information, which you must have arising from the fox hunting example you gave, that could serve to enrich the debate, so long as you were not pushing the financial advantage or benefit of a client? You must know a lot of things through them which, so long as the House knew about your interest, it might be helpful for it to have.

1164. **Lord McNally:** I think that is true, but, on balance, it would be a slippery slope. It would open the way for the hired gun. I sometimes feel frustrated in that I have been for eight years the adviser to the Corporation of London. As a result, I stay out entirely of debates about London - not just about the Corporation but about London, again slightly extending the precise rules of the House. But if it became possible for an interest to, as it were, hire a peer and brief him up and for that peer then to participate in debates in the House, I think that does cause problems. Even though the House is undoubtedly denied my wisdom on these matters, I think it is safer to keep it as it is.

1165. **Clifford Boulton:** Can I pick up a point you made about speaking on behalf of your party, because it has been put to us, perhaps rather along the lines of what you feel yourself, that official opposition spokesman should not be chosen from peers who have an interest connected with the subject on which they are the shadow? Do you think that that would be a practical proposition in the House of Lords and do you think it would be desirable or, again, would diminish the quality of the debate by excluding the people who knew most about it?

1166. **Lord McNally:** I think that that is an exclusion too far. It is sensible for front-bench spokesmen again to be judicious and to exclude themselves where there is an absolute conflict, but I think that one must look at a proportionate sanction for a threat. Whilst we have, and I hope we have for a very long time, a voluntary House of Lords, bringing in a wide range of talent and expertise, I do not think that you should exclude people on the front bench from participating because of outside interests. I cannot see the evidence that that is in any way corrupting, but I think that it would deny the front benches the talent and expertise that is needed.

1167. **Clifford Boulton:** Just a last question on Category 3. Lord Griffiths told us yesterday that he does not think that, if they had introduced Category 3 as a compulsory register, it would have been adopted by the House in the atmosphere of the time, when there were also of course a large number of involuntary members who felt that this would be a change of the ground rules once the game had been going on in their family for a long time. Now you have a House of a different composition. Do you think the time might have come when it could be regarded as fair is fair and that, if a large proportion of the House is to make these declarations, everybody should do it?

1168. **Lord McNally:** Probably. I have no problem, as I say, about registering and I believe that transparency is the best guarantee of a clean system. What slightly worries me about some of the atmosphere surrounding the great sleaze debate is that we stray from "Need to know" to "Wouldn't it be interesting to know". Once you get into "Wouldn't it be interesting to know", you might be putting deterrents in the way of people wanting to participate in public life. Again, I think one has to look at the real threat and the real sanction against what you are proposing to do in terms of personal privacy. There are lots of reasons why people may not want to make a full declaration. On balance, I would much rather have a full declaration, but one that was trimmed to the essentials of what we are trying to deal with.

1169. To digress slightly, I think that we should have a separate declaration of some of the entries that clutter up the register along the lines of "I give half my worldly goods to the poor. If people want to do that, we should supply a separate register for that. What we are dealing with is a financial inducement that distorts the peer's contribution to the working of the House of Lords and its public duties. That is what we must narrow down to and not simply feed an insatiable desire of the press - I am not sure the public - to find out more and more about the private lives of public figures.

1170. **Clifford Boulton:** That was very much the attitude of the Nolan Committee on the House of Commons and declaration -

that there must be a sustainable argument in the public interest for the declaration and revelation of details. Thank you very much.

1171. **Lord Neill:** Could I pick you up on language there about distorting financial interests? Is it really limited to that? Are there not other interests - for example, interest in medical charities, cancer research or something like that - which are relevant for people to know about, so that if a peer constantly intervenes or raises issues about medical research and so on, one would know that he has an enthusiasm and interest of this sort? It has nothing to do with financial corruption; it is simply what his position is and where he comes from.

1172. **Lord McNally:** I think that that is probably of interest and, as I say, if you had a separate list of voluntary commitments, that would be of interest, but I do not think that has much to do with standards in public life.
I cannot find any evidence that people who have worked for charities have tried to use undue influence. Most of them are very happy to declare. It is a slightly different thing.

1173. The origins of this committee were concerns about corruption and sleaze. As I said in my opening statement, in truth the proved smoking guns produced have been relatively few. There is a danger, I think, about giving the idea that somehow if only there was another rule, another regulation, they would get to the real corruption in our public life. As I say, I do not believe that that corruption is there. I think that there is a need for rules and regulations and a need for transparency, but there is a danger, if you go down your road, that you produce stuff with so much information in it that the real stuff goes unnoticed. I think you need the rifle not the shotgun in the approach to this.

1174. **Lord Neill:** Does it follow from that that there should be pretty good, clear guidance to peers on what they should put on the register?

1175. **Lord McNally:** Yes. Again it has kind of grown like Topsy. As I say, some entries of interests must make the peer concerned feel very good after he has completed it, but not really deal with the problem of standards in public life; others are shorter. Guidance is always helpful when you are doing these kind of things.

1176. **Lord Neill:** At the moment one has a slightly unbalanced situation that about one-third register nothing at all, which does not necessarily tell one that they have anything to register, and then, with the other two-thirds, there is a difference in the detail and degree to which they disclose their interests.

1177. **Lord McNally:** I will tell you one, and it is an old hobby-horse of mine. I do think that a scandal waiting to happen is somebody working for a foreign government or a foreign agency. We are nowhere near as strict in our rules as the United States, where to lobby for a foreign government or a foreign agency undeclared is a criminal offence. That was on the back of examples of agencies and individuals being hired for very large sums.

1178. I am aware, because of my experience in public relations, that foreign governments and foreign agencies do hire PR companies. There is no order to that in Britain: some of it is declared, some of it is not. One of these days I think we will find that some government is paying large sums to try to influence opinion. May I say that that is not illegitimate as long as it is transparent. We go back to this question of transparency. The more that both Houses get on to a register the real facts about who is doing what for whom, the better that would be, and I do not think we are there yet.

1179. **Lord Neill:** That is extremely helpful. Can you just tell me this? Does the American legislation that you talk about extend beyond the Senate and the House of Representatives? Is it directed at people in the legislature or does a business have to register that it is working for a foreign government?

1180. **Lord McNally:** Yes, any business, anybody that is working in the interests of a foreign government in Washington: it is a Capitol Hill register. But I think it is an extremely healthy one.

1181. **Lord Neill:** That is very interesting. Could I ask you one or two questions about your impressions of the House of Lords? You have not been there all that long. You would have taken the oath in early 1996. Is that right?

1182. **Lord McNally:** I am now in the middle tranche. I used to think of myself as a new boy. Now I look at all these youngsters around me.

1183. **Lord Neill:** You have been there all of four years! I did not mean to insult you. It was a prelude to asking whether you think there are any noticeable changes in the House or the way it operates. One of the points that have been put to us is that it now looks or feels more like a professional body. There are more full-timers, or nearly full-timers, than there were, for example. Is it the same or different from 1996?

1184. **Lord McNally:** There are obviously some slight differences. It is a younger House. One of the benefits of coming in in early middle age is that I was "young Tom" for the first few years. But I do not think it has changed as much as some people imagine - and for the better. Without being disparaging to Croydon Council, I strongly believe that if you behave like Croydon Council, you will be treated like Croydon Council. I think the House of Lords should retain some of its aura and mystique, and it is a very powerful body for doing that. I notice some of the new boys and girls very quickly adapting to some of our courtesies, which I think are important.

1185. But I think it is more professional. I think there is a greater confidence that we are there not by some accident of history but by the democratic wish of a democratically elected House of Commons. Therefore we have a job to do - an advisory and a revisory job - and I think the House is doing that with increased professionalism, and that is welcome.

1186. **Lord Neill:** Thank you for that. I am going to stop asking questions and hand over to my colleagues.

1187. **Frances Heaton:** Could I please explore this distinction which you have so clearly made between financial inducements and non-financial interests of peers, because, under the present requirements, the first two mandatory categories for registration are clearly in the financial inducements category? I must admit that I had interpreted the third one,

> "Other particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties"

to cover both financial interests - such as things like landowner - and non-financial interests, which might include charitable interests or, say, the medical example that was given.

1188. It seems to me that the reasons why the public might want to know about these other ones would be that it would help them to understand where a peer was coming from in the points he was making. Therefore, it is purely a disclosure point rather than a "standards in public life" point on the part of the peer.

1189. **Lord McNally:** Precisely.

1190. **Frances Heaton:** Having got that distinction, I am not absolutely sure where you stand yourself on whether or not there should be mandatory disclosure of those non-financial things, because you do in general promote transparency.

1191. **Lord McNally:** Yes. The big balance there is clutter. If your declaration of interests is going to be cluttered up with the fact that somebody is a practising doctor or a farmer or the vice-chancellor of a university, people can go to Who's Who or other reference books for that. If somebody is constantly speaking on education because they have a lifetime experience in education, does that really belong in the Register of Interests? As I said, the origin of this exercise was a fear that financial inducements were distorting people's actions in public life. The Armalite that you should be training is to root out where people are possibly using their position in parliament for influence for financial gain.

1192. Another big hobby-horse of mine is that I think lawyers and accountancy firms, which increasingly offer lobbying facilities, should be encompassed in the declaration. When the register was first put forward, because it was public relations firms that had been perceived as the wrongdoers, I think that public relations was unfairly put on the spot. It does not reflect the range of companies that now offer their clients, quite legitimately, advice on how to influence the parliamentary process and, as I said in my opening remarks, advice on how to influence the parliamentary process is an extremely healthy thing to be doing. I am working at the moment on the wonderfully called RIP Bill, which would be a much worse piece of legislation if it were not for the fact that lobbyists are actively briefing the opposition to allow us tackle the Executive on their proposals. This is, again, the balance that we must get right.

1193. However, I fear that, in the pursuit of the "interesting to know" you cast your net so wide that you miss the key factors, which I think should be of interest to parliament itself in defending its own integrity. That is, are people taking money to do things in parliament that are contrary to the commitments that are right at the beginning of this Committee's own report: not to do such things and to use their judgement in a way that is not influenced by financial gain? That is the core of it.

1194. **Lord Neill:** We have just time for Lord Goodhart. I think he will have to be the last questioner, because we will start slipping on our timetable.

1195. **Lord Goodhart:** Just one question. It has been suggested to us that the House of Lords is now a more attractive target for lobbyists than the House of Commons. As you are the first witness we have had with direct public relations experience, I wonder whether you could comment on that.

1196. **Lord McNally:** Yes. It has always been a better target for lobbyists, because the Whips are less powerful, the

Government of the day does not have a guaranteed majority and the way we handle our business, particularly at committee stage, allows you to table amendments to be discussed. But that is a strength of the House of Lords. Again, I have always seen parliament as a medieval fair, with acrobats, fire-eaters, the lot. Parliament should not, in defence supposedly of standards, pull up drawbridges and close windows: people should be able to get at parliamentarians. Over the last 20 years a profession has grown up to allow them to do that, but, in trying to go after that profession, we should not stop outside advice getting through to parliament. We already have an over-powerful Executive, and one of the checks on that over-powerful Executive is the ability for people to lobby parliamentarians, professionally and amateurly, and to check the Executive in that way. I do think that the House of Lords' openness to lobbying is a strength, not a weakness.

1197. **Lord Neill:** Thank you very much for a series of very interesting answers. Thank you for coming along, Lord McNally.

1198. **Lord McNally:** Thank you.

1199. **Lord Neill:** Lord Crickhowell, we welcome you here this morning. I did introduce you for the record, before you came, at 10 o'clock this morning. You have written a letter to me dated 25 May, with some answers directed to our Issues and Questions paper. You also spoke in a debate initiated by Lord Rees-Mogg. Do you want to say anything before we start our questioning? I was going to ask William Utting and Frances Heaton to take the lead in putting questions to you, but if there is anything you would like to say for the record, please feel free.

RT HON LORD CRICKHOWELL

1200. **Rt Hon Lord Crickhowell:** Thank you very much, Chairman. I have just two comments. I have seen the press handout of your introductory remarks. There is perhaps one thing that I would add about my career. I have spent 30 years in parliament, spread over two Houses, but I was also chairman of a large public body, the National Rivers Authority, and perhaps the experience there is of some relevance.

1201. The only thing I would say by way of introduction is that I suppose my basic principle is that we should have openness combined with simplicity. I am worried about the tendency, certainly in another place, to get so much detail and so much complexity, that perhaps we have gone too far and are actually obscuring truth, so I am totally in favour of openness. For 30 years I have declared my interest on innumerable occasions, and will go on doing so, but I think we need to keep the rules simple and straightforward.

1202. **Lord Neill:** Thank you. That is very helpful guidance.

1203. **William Utting:** Thank you, Chairman. Good morning, Lord Crickhowell. I have noticed that you make a declaration under Category 1 of the House of Lords register, and certain consequences follow from that.
I should be interested in your opinion on the effect of those consequences on your capacity to contribute to the business of the House of Lords.

1204. **Lord Crickhowell:** I confess that the thing came as rather a surprise. For 11 years I had been declaring an interest as a non-executive director of Associated British Ports and when I ceased to be a director - on the whole people do not like directorships to continue for more than a decade or so, but the company wished to continue to have my advice on a number of matters, not least the extensive property interests in Wales with which I had been closely associated - on considering the matter I suddenly realised that, inevitably, I would from time to time be asked to express my views about political matters by my former colleagues. After all, very few people who are involved in public affairs or commercial affairs do not discuss politics from time to time. Though I do not believe that that the arrangements that I continue with the company actually arise from my membership of the House of Lords - they arise from 30 years in parliament, former membership of the Cabinet and indeed my outside commercial interests - it seemed clear to me, on the interpretation of the rules, that I should register in that particular way.

1205. I think that this creates a slightly odd situation, and it also creates a situation that could cause challenge and misunderstanding. I am perfectly entitled to contribute to a debate on, shall we say, employment rules. I might want to bring my experience as the chairman of a public company - I am chairman of another public company - and someone might say "But doesn't that have some impact on the company for which you are a consultant? Surely you should be silent."

1206. I think my conclusion is that the Commons rule is more sensible than the Lords rule. It is probably, on balance, right that one should not initiate proceedings if there is any form of financial interest, even though it is rather an indirect one, in the sense that one is not "employed" to initiate proceedings, so I do not object to that. But I think that the Commons rule, which makes it clear that you can speak on a matter, is much more sensible than the rule that was introduced by Griffiths. I hinted in the debate that we need to go back and look in the light of experience, and I would make that change. It seems to me absurd that I should

be challenged in making a general contribution to a debate on the vague possibility that there might be some connection with a company for which I am a financial consultant. Therefore, I think it needs that simple change, and to follow the Commons rather than the Lords example.

1207. **William Utting:** And at the moment the House of Lords is deprived of your experience on those particular matters.

1208. **Lord Crickhowell:** Well, I doubt if it is, because I think I would speak in general terms, as I said, from my experience elsewhere, but it does create a situation in which someone might challenge it. This is one of the other points that I make: the more you have rules, the more you have difficulties of interpretation and the possibility of challenge, which is one of my reasons for thinking that personal honour and the basic declaration of interest is a much more sensible route to go, because then people can make judgements.

1209. Clearly, if this was a matter of primary concern to the company for which I was a consultant, I would probably judge it was wise not to speak. If it was perhaps just a vague background piece of information, I would probably take a judgement that it was in order, but declare the interest, and point out that I had a consultancy and perhaps, in some remote way, it might impact; and then the House could make a judgement; and this is where I stand. I think that on the whole we work best if people declare interests and leave their colleagues to make judgements as to their value. I do not think we want to silence people; I think we want to get people's experience, particularly in a House of Lords that is filled with such a vast variety of skill, experience and knowledge.

1210. **William Utting:** The defence of the present system of registration under Categories 1 and 2 that has been put to us is that it least has the merit of simplicity: there is a blanket ban not only on lobbying and direct advocacy but also on speaking and voting, so that members in those categories know precisely where they are. Where they are may not be particularly comfortable for them, but the argument is that this actually protects the interests of the great majority.

1211. **Lord Crickhowell:** I am not sure that it does protect the interests. I do not think it would be very difficult for someone in my position to have a letter written to him suggesting that their advice would be very valuable on, say, property or accountancy matters or some commercial matter, with no reference at all to politics coming into it. It would not arise from membership of the House. I think you could draw up a letter of employment that would actually make you eligible and argue that you could contribute.

1212. This is again the difficulty. Once you have rules, you have ingenious people working out how they might avoid them, if they really are corrupt or want to hide something. Equally, you have people perhaps doing what Lord Howe in his evidence to you described as "sneaking". - the idea that someone comes along and says "Hi, I saw someone having dinner the other day with the chairman of the XYZ company. Why haven't they declared that fact in the register?"

1213. Therefore, again, I prefer the system that has operated in the House of Lords for so long, that on the whole you use your judgement; if there is the slightest doubt, you declare an interest and you leave your colleagues to make a judgement. On the whole I would say that, even if members do not have an interest registered in the register. To take up the last point that was put to the previous witness about non-financial interests, my experience is that members of the House are punctilious, somewhat excessively punctilious, in declaring a wide variety of interests. So someone opening perhaps a six-minute speech in a debate will spend the first minute declaring a whole string of interests. I think that on the whole people in the House are very open and very honest about it, and that is the way we should continue.

1214. **William Utting:** So your recommendation to us about Categories 1 and 2 is, if we are recommending change, to go in the direction of the Commons and to allow speaking, but to maintain the ban on -

1215. **Lord Crickhowell:** I do not think you should forbid speaking. I think you should declare what the interest is and then the House can judge whether your contribution is of value or not. That is the system that I would operate on.

1216. **William Utting:** So you would rather do away with Categories 1 and 2 altogether?

1217. **Lord Crickhowell:** I do not have any difficulty about saying that, if there is a financial interest, you should register. If people feel that that has been a valuable addition, I would not be arguing against it at this stage, as long as you are not prevented from speaking perfectly legitimately in a wide-ranging debate, using your experience, and where it is accepted that the interpretation of all these rules basically depends on judgement, honour and good sense. If you have judged that perhaps it is something that you should not speak on, clearly you do not speak, but if you think on balance that you should, you speak, but you are absolutely open to the House about the situation so that the House can make its own judgement.

1218. **William Utting:** I wanted to ask you also for your views on Category 3. I am inferring from your answers that you would

allow Category 3 to remain on its present basis - that is, of a purely voluntary declaration by Lords as to the public perception of how they might be influenced.

1219. **Lord Crickhowell:** I would not argue for change, because I think the present situation works very well and, as I say, my experience is that members are punctilious. If the change was made to a mandatory one, I am not sure that it would make a huge difference, because I for one always feel that I have an obligation to declare an interest anyway. I have always done so and I think a large number of people with significant interests will do so.

1220. What I would be anxious to avoid is the clutter of totally irrelevant nonsense that seems to have crept into the House of Commons register. I turned it up on the website yesterday just to remind myself. That Mr Hague should register the gift of a pen or that someone should register their attendance at a match at the Llanelli Rugby Club or someone else at the festivities on 1 January at the Dome - he might have registered that as a penance rather than as an interest - seems to me to illustrate well the absurdity of the situation we are in danger of getting into, and the worry is that it disguises the real commercial interests.

1221. I sit now in a House of Lords that has changed at least in one respect: any idea that wealth and commercial success are confined to my own benches is no longer true. I look at a lot of extremely successful tycoons who run great empires. A number of them are old personal friends, I have admiration for them and, as far as I know, they are all punctilious about declaring a relevant interest, but I think it unlikely that, wherever they sit in the House, someone who has complex family and personal commercial businesses can put or will put all those involvements on to a sheet of paper. Yet they are probably the very people who are sitting down to dinner and advising Ministers, and perhaps are official advisers to Ministers. I think that we get into a situation where attendance at the Llanelli rugby ground is registered, but perhaps some tycoon has financial interests that do not appear at all.

1222. I would prefer to rely on a system in which the tycoon gets up and says "On this particular matter I am a chairman of a company that has interests in the steel industry", or whatever it is, and we make that judgement, and we respect their contribution on the basis that they speak from knowledge and experience. Therefore, I am worried that we seem to be getting into a system that may not reveal the real truth that matters, but may help to obscure it.

1223. **William Utting:** In essence, then, you believe that declaration of interests is preferable to an enforced system of registration.

1224. **Lord Crickhowell:** I think so, but if we went down a mandatory system, I hope it will be left to the judgement of individuals to register what they really regard as significant, and not a kind of policed arrangement in which every small involvement is noted. It never occurred to me, for example, to register some of my non-commercial interests in the arts. I cannot remember if I used to register the fact that I was president of Cardiff University, but certainly if I was speaking in a debate on education, I would have referred to the matter because, apart from anything else, I think it might have enhanced the authority with which I speak.

1225. Therefore, again I think one is much better to rely on judgement. People who really want to hide something will probably hide it. We have a House with a huge variety of skill, knowledge and experience that we want to harness. We do not want to discourage people or make them feel that there is intrusion into their personal affairs, which are of no concern to a wider public, but we want a clear understanding that, if there is a significant and relevant interest that will affect their judgement, it is open and it is declared.

1226. **William Utting:** Good. Thank you.

1227. **Frances Heaton:** Can I continue on that line of questions? I suspect from what many peers have said that the declaration of interests that come to your mind, as in your example of the university, when you are talking about these things results in the declaration side working very effectively. Another thing that people say is "Of course we all know one another", and you get to know that old Jimmy is the expert on health and that sort of thing. But the other angle on the disclosure point is disclosure to the public, so I suppose the first part of my question is to ask whether you consider that disclosure to the public, as against to your fellow peers, is important and, if you recognise that there is that kind of role for the public - possibly notably the press - how one can get that information across to them, because I think it is normally the press that use the register.

1228. **Lord Crickhowell:** As I say, I have no difficulty about registering and have always registered. You find all the information about me as easily in Who's Who, as it happens, and there are, as I say, a few non-commercial things that I suspect you would find in Who's Who that I have never thought was relevant to put in the register. But I would encourage the registration of significant interests, just as I would when one comes to speak, and I do not think one can go further than that. I do not think that drawing up a lot of detailed rules and then having to have legal interpretations of them, or someone coming along and saying that a former Prime Minister should declare the exact fees that he earned on a lecture, because they come from

him being a member of the House of Commons, when clearly they come from the fact that he was a former Prime Minister, adds to enlightenment or to the dignity of a parliamentary institution.

1229. Therefore, I come back to saying that I believe that the best way to proceed is to encourage the declaration of all significant interests. I would not object to them being mandatory in Category 3. I would not find any difficulty with that, because I would simply continue to register the interests that I register already. But I believe that the making of rules that have to be interpreted by lawyers or are difficult and complex does not add anything: it potentially detracts from openness on the whole. Griffiths was right about this: you must have individual interpretation about what is right, and I do not think that we add to genuine public knowledge by moving away from that principle.

1230. Frances Heaton: I am not sure at what point in Lord McNally's session you came in, but I was exploring with him whether the categories should be limited to those where there was a material financial interest - back to the sleaze point - or whether it should be wider.

1231. **Lord Crickhowell:** No, I do not think so. It depends what you consider material. Again, I think it works both ways - that the House would be impressed if you know something about something and are involved in it and say so and, equally, if you do, they should know from where you come. That is why I do not think it is entirely a financial matter. The last witness cited a particular Bill. Perhaps an even better example is the Countryside Bill at present before the House, where a huge range of organisations, from the Ramblers to the Country Landowners Association, the National Farmers Union and statutory bodies like English Nature, are not only volunteering to give evidence but are being asked by groups of members of the House to come and give evidence, very often sitting in the same room and arguing it out. That is adding to the knowledge of the House and will help the proper examination of that Bill.

1232. If one is, say, a member of the House of Lords who has a significant role in, say, the CLA or is a prominent campaigning rambler, probably one should say so, because that will influence people's judgement of where you come from. On the other hand, if you are just one of the vast number of people who send a modest subscription to, say, the Royal Society for the Protection of Birds, I do not think you should necessarily register the fact. The fact that one has an interest in environmental matters or supports the World Wildlife Fund is not a matter for declaration. If, on the other hand, you are a leading member of a committee of that body, I think it is relevant and you would probably put that one in.

1233. **Frances Heaton:** I absolutely understand where you are coming from. I am just in my mind trying to work out how one would put down that dividing line, without turning it into a mega rulebook, or whether you just say "Immaterial" and leave it entirely blank.

1234. **Lord Crickhowell:** I think that what is happening at the present time may be the best way out, which is that a lot of people do not put those secondary interests on a written register but, almost to excess, tend to declare them when they get up to speak or ask a question in the House. I am sometimes amazed when I hear my colleagues get up and produce a string of interests, occupying quite a lot of time, which I feel go beyond the necessities of the moment. Certainly we are in a period when that is the tendency to excess, rather than the reverse.

1235. **Frances Heaton:** Yes, it might be nice if they were on the register and then they did not have to keep declaring them.

1236. **Lord Crickhowell:** Except that you do get into this difficulty, which we have I think seen to a certain extent in the other House, that someone comes along and says shouldn't some little thing be registered, and then you have that sort of public announcement that something is being looked at and there is a suggestion that in some way you will have acted improperly. You get into an atmosphere that I think encourages the view that sleaze is around, when it really is not around at all. That is the danger.

1237. **Frances Heaton:** Thank you very much.

1238. **John MacGregor:** You said in your statement to us:

> "There is no case for a Parliamentary Commissioner for Standards. I would be very strongly opposed."

I wonder whether you would like to expand on that.

1239. **Lord Crickhowell:** As I say, I think that, if you have a complex legal system with a whole string of specific requirements, you may need to have it policed in that way, but it does lead to people raising issues that then have to be investigated. We have admirable Clerks in the House of great skill and wisdom. My experience, in the case of my suddenly changing my entry to register my consultancy, was that when I went along to the appropriate Clerk, he was rather surprised, on

thinking about it, that I should have to register it, because he felt that it was one of those rules of which the full consequences had perhaps not been totally thought out, but together we came to a conclusion. I acted on his advice. On the whole I think in the House of Lords that system works extremely well and I do not see why we should add to it.

1240. **John MacGregor:** Some would argue that one of the consequences of having a Parliamentary Commissioner is that in the Commons there has been some politicising of the whole process, and it has become part of the party political slanging match, if you like. Would you be afraid that that could happen in the changing House of Lords, if there was a Parliamentary Commissioner?

1241. **Lord Crickhowell:** I think it is clear from what I said in the recent debate and what I have said in my answers to the questions that I regard the process that has happened in the House of Commons as having gone too far and in some ways to have been damaging. When I came into the House, a considerable proportion of its members had outside employment and interests. From the time when I entered the House and won an extremely marginal seat in 1970 until I entered the Cabinet in 1979, I was a director of companies outside; and indeed could not have been a Member of Parliament and could not have considered fighting a seat if I had not had those outside earnings. I think we all gained enormously from the variety of knowledge and interest. Lord Howe, in the evidence that he submitted to you, which I have read, concentrates on the legal expertise at that time available in the House of Commons.

1242. I think it is a pity that we have a House of Commons in which there are far fewer people of that kind and so many people whose entire careers and experience have been in politics. I would be very worried if we got into a system of registration that led us down that route in the Lords, because I think the great strength of the Lords is the extraordinary variety of expertise. Some people may speak rarely, but seldom is a subject raised that does not stimulate someone to attend and to provide extraordinary knowledge. That is why the House is so effective in revising legislation, and I would be anxious if we went down a route that discouraged people from playing that sort of role. Although it is only one factor, of course, in what has happened in the Commons, I fear that this view that you must have a House of full-time professional politicians is something that has developed there to the damage of the House of Commons. I am desperately anxious that we should not see a similar process happening in the House of Lords.

1243. **Alice Brown:** I think you have made your own practice in the House very clear indeed, but two problems have been identified to us by other witnesses. One relates to the consistency of practice, particularly in relation to Category 3, to do with the number of people who register. We have heard that a substantial number of peers do not register under Category 3. The second point is clarity of rules, because again we have heard that the rules, and particularly that rule, might be interpreted differently by different members. How might you give us advice on how we could address these issues without going too far down the road that you warn us against?

1244. **Lord Crickhowell:** As I said, I suspect that those who do not register an interest may do so because they do not have any interests of significance to register rather than for any other reason. One certainly sees quite a large number of former Members of Parliament who come to the House and may have no other outside involvements at the moment, and therefore may have perfectly good reasons for not registering interests. So I do not think you should necessarily jump to the conclusion that it is because they are hiding something or are unwilling.

1245. Therefore, again, I think that if the House understands and believes, and makes it clear that it understands, that people who have real interests will register them, that is a very strong force of pressure in the House of Lords. Certainly if they fail to, and it comes out, they would earn the opprobrium very quickly, and the House is quite good at expressing its opprobrium. But, as I said, if it is felt that a simple change to a mandatory declaration would add anything, I do not think I would be too worried about that or oppose it. I simply want to keep that registration as basic, simple and a matter of common-sense interpretation as is possible, for the very reasons that Griffiths spells out: you have to use judgement.

1246. **Alice Brown:** Thank you.

1247. **Lord Neill:** Could I ask you a final question, Lord Crickhowell? You were firm in answering our question 10 about whether the Ministerial Code should apply to opposition front-bench spokesmen and women.

1248. **Lord Crickhowell:** I feel very strongly indeed.

1249. **Lord Neill:** I know you do. I want to know what you think the effect would be. It would be nice to have some evidence as to what you think -

1250. **Lord Crickhowell:** I think the effect would be extremely damaging to effective opposition and would strengthen the

position of what many of us believe is an over-powerful Executive. I think it is remarkable how many people who have major sources of expertise and experience are ready to make sacrifices to speak from the opposition benches. I suspect that if the suggestion has come, as I think it has, from one individual, it has come with political motive. I think that those who make the suggestion should recognise that one day they are likely to be in opposition. The fact of the matter is that we would not have an effective opposition if you make it impossible for people with outside knowledge, experience and interests to serve on the benches. Therefore, I think it could have desperately damaging consequences; I think it would have an appalling result. For that reason, I would be very, very strongly opposed.

1251. **Lord Neill:** Thank you for that. We have not had very much specific evidence. It is very useful to have that from you.

1252. **Lord Crickhowell:** Can I just add one point, Chairman?

1253. **Lord Neill:** Please.

1254. **Lord Crickhowell:** That is about the position of those of us who have chaired public bodies. I know that Lord Mackay of Ardbrecknish, in the annex to Lord Strathclyde's evidence, has raised the issue of the interpretation of the Addison Rules. I do think he has got a legitimate point here. I think it is a point that perhaps new Members and new chairmen need reminding of.

1255. I as chairman of, first, the National Rivers Authority Advisory Committee and then the National Rivers Authority always took it that I should never answer for the authority or defend the authority - that is the role of Ministers - but that it was perfectly reasonable, for example when we were discussing future legislation setting up the Environment Agency, I should offer my experience and conclusions as to a sensible way forward and how to proceed; and I think Addison allows for that. I do think that we should not go down a road where the chairmen of prominent public bodies who are answerable to Ministers start intervening in debates and representing the views of their committee. I think the Addison Rules were widely drawn and I think that Lord Mackay has done a service by drawing attention to them.

1256. I think that that raises one general issue about the way in which the House of Lords operates, and perhaps the one thing that one has to watch if there are a lot of new members. It takes a little time for people to understand all the conventions. On the whole they get quickly reminded. There has been a certain amount of friction in the House recently because some members do not appear to know that you not only listen to a maiden speech, but the convention is that you listen to the words of congratulation that follow from the preceding member before you leave, and I think you need to remind people. I think that we need to have a system in which attention is drawn to the conventions. I think we need to look at the Companion from time to time and make sure that it is updated and that people understand it. But that is the only qualification that I make to saying that we should not have rules. People need some guidance and people coming into the House have to learn from the experience and wisdom that have been accumulated down the ages. That is the only other point I think I would make.

1257. **Lord Neill:** Thank you very much, and thank you for coming and for your assistance.

1258. Lord Plant, good morning. You were not here earlier but, for the record, I gave your background and put that on this morning's transcript. The way we proceed is that two members of the committee will be asked to take the lead in putting questions. In your case it will be Professor Alice Brown followed by Lord Shore. Before we start the questions, however, I wondered if there was anything that you would like to say about our enquiry or about any view you have formed through what you have read in the media and so on.

LORD PLANT OF HIGHFIELD

1259. **Lord Plant of Highfield:** I was offered the opportunity of making a presentation to start with and I decided against that, partly because I did not have enough time only becoming aware of that possibility yesterday. So, on the whole, I think I would prefer to let my views emerge through the questioning - other than to say that I strongly support the initiative that the committee has taken in this enquiry. I do think there has been a decline of trust in politicians and political institutions. The House of Lords has changed in ways that we shall no doubt explore and I think in those circumstances it is entirely right to look at the issue of standards, interests and so forth in the new House or in the changed House against that background of a decline in public rust, as revealed by surveys and opinion polls and so forth.

1260. **Lord Neill:** Thank you for that.

1261. **Alice Brown:** Good morning, Lord Plant. You lead me very nicely into my first question, because I wanted to start by raising some very general points and then asking you specifically about your experience in the House as a peer. Clearly you have enormous expertise through your role as Professor of Politics. So can I start by asking you to reflect on the current arrangements laid down by Griffiths and identify for us any areas you think are in need of reform?

1262. **Lord Plant:** There are a number of points here. First of all, in a slightly paradoxical way since the election, I think the House of Lords has perhaps seemed to many people to be more important. With a huge majority in the Commons, legislation goes through, in most cases, relatively easily and relatively unscathed. It does get more of a roasting in the Lords. I think, therefore, that lobbying groups may have become more active in relation to peers. Certainly I have noticed that my mail bag has increased considerably since the election. That may be as a supporter of the governing party and that that is not true of Opposition peers. I just do not know, but I have certainly noticed that. It may be a sense that the Lords is the best place to try to exert some pressure in the present circumstances. So that is one of the important points.

1263. I think that possibly there has also been a rise in the public profile of many new peers. People who already had a high profile outside parliament have come into parliament and the press and so forth are perhaps more interested in both the House of Lords generally and how those individuals perform in it, and indeed how far their interests are represented in it.

1264. So those are two background conditions. More specifically in terms of Griffiths, I take a rather purist view about this. I do think that against the background of declining public trust, and in circumstances in which governments of both parties have tried to make professions and the exercise of professional duty more and more accountable, it is very difficult for us as Members of a Chamber of Parliament not to go down the same road. I think that the public, if they knew more about it, would find it rather paradoxical, it seems to me, that the Register of Interests is full of highly prestigious things that peers do-getting honorary degrees and being honorary members of this, that and the other-but with not a very full account of pecuniary interests. All peers should be required to indicate, in broad terms, the basis of their income-whether it is stipend, salary, shares, farming or whatever. It need not be more specific than that but peers should have to record their basic sources of income. That is much more important than whether one happens to have an honorary degree from a university whose interests perhaps one might then seek to push in some sort of debate.

1265. Secondly, if I can reflect on a rather personal point, there is a degree of interpretation, which is understandable, about the Griffiths criteria. Let me take specific example of this: I was given an award by theRowntree Reform Trust over a two-year period. It started when we were in Opposition and went through the first year of Government. This was to support my political activities in the field of constitutional reform. It seemed clear to me that I should register this interest but I was rung up by the appropriate clerk to query whether I should register it. We had an interesting and polite conversation. I did not convince him that I should register it. He did not convince me that I should not. So, I registered it. It seems to me, however, a mistake that the criteria are sufficiently broad to allow something that seemed so obvious to me to be a matter of interpretation.

1266. **Alice Brown:** How then do we not go too far down the road of being rule-bound with complicated regulations that in themselves create a problem?

1267. **Lord Plant:** That is an issue that goes back to Aristotle who always believed that however detailed the rules one has always to exercise judgement. One has to be wise in the exercise of that judgement. I fully accept that there is an element of judgement in all of this and therefore there has to be an element of trust in the individual's judgement. Nevertheless, it would not be an over-complication of the Register of Interests to have a broad division between pecuniary interests and non-pecuniary interests.

1268. **Alice Brown:** You make the point about public interests. We have heard from other witnesses that it is less the public in general that might be interested in some of these details and more the media that might be trying to pursue a particular peer for other reasons. How do you respond to that?

1269. **Lord Plant:** That is certainly true. It might well 'shoot the fox'-if that is the right terminology-of some of the media if there was more openness about the basis of income. Secondly, the public do become interested through these media leaks and pursuits and so forth. Although the public in general are probably not ardent students of the Lords' Register of Interests, the press is. Via the press one then gets these things that do engage the public's attention.

1270. **Alice Brown:** You do not think there is a danger of feeding an anxiety about corruption in public matters and politics more generally?

1271. **Lord Plant:** There is. I accept that there is. However, we have got to a position now, with the low esteem that parliamentarians are held in, that it is important to be as transparent about all this as we possibly can.

1272. **Alice Brown:** We have heard from other witnesses that the House of Lords is sufficiently different, in a number of respects, so that it would lead them to conclude that they should not be bound by the same kind of rules.

1273. **Lord Plant:** I was given a list of questions and I have a number of things to say on other aspects of the House of Lords. If you want me to move into those now, I could do that.

1274. **Alice Brown:** Certainly. Question 4 would be particularly useful to us, especially the point about paid advocacy. There is concern about regulations that might deprive the House of expertise. How did you personally deal with that?

1275. **Lord Plant:** There was a very acute question for me when I was Master of St Catz's in Oxford over my own Government's proposal to abate the fees of Oxbridge colleges. This came to a debate in the House of Lords and I wondered whether or not I should take part in it because of the Griffiths rules. I have not checked this, but I think it is the case that I was the only head of house who did speak although there are several in the Lords. I did feel a little bit exposed because of that. I felt, however, that it was covered by the resolution of the House. It says:

> "This restriction does not extend to matters relating to Lords' outside employment or directorships where the interest does not arise from membership of the House. Lords should, however, be especially cautious in deciding whether to speak or vote."

1276. Well, I exercised my cautious judgement and spoke. The second thing that I did was to write to the head of the policy unit in Downing Street, who I knew prior to becoming a peer and prior to going to St Catherine's. I then had two brief conversations with the Minister of State in the House of Lords about this. I also spoke at a heads of houses meeting in Oxford about which of my arguments might weigh with the Government. That is what I did, and I felt that speaking in the House was covered by that aspect of the resolution. However, there is a more general issue raised by that case. Part of the justification for a part-nominated House is the expertise that peers are supposed to be able to bring and it would be a bit paradoxical then to have a rule that completely forbade the exercise of that expertise.

1277. In a sense, and I do not want to make too much of this, but the bishops are in a very odd position if this rule were to be very much tightened. One of the most impressive Members of the House of Lords in my time was the previous Bishop of Ripon who spoke very eloquently indeed about church schools in debates on education Bills and so forth. It would be very unfortunate to have a rule that would somehow make that much more difficult.

1278. Furthermore, and this is my final point on this, there are those-and I am not one of them-who would like to see greater 'functional representation' in the Lords. There might be the president of the Royal Society or-well I was going to say the GMC, but perhaps not. However, bodies of that sort. It would be very paradoxical to go for greater functional representation in the Lords while having a rule that prevented people speaking on precisely the things that they were supposed to be expert in and the reason for their being the Lords in the first place. So there are issues there.

1279. **Alice Brown:** Yes. Indeed that particular principle of banning paid advocacy when it comes to speaking itself is something that we may wish to address.

1280. **Lord Plant:** Yes.

1281. **Alice Brown:** Looking more specifically at those principles, and at the three aspects of the Register, particularly this ban on paid advocacy, do you think there should be other underlying principles that we should be more explicit about? We have heard a lot about transparency and other things. Do they need to be stated or is that obvious?

1282. **Lord Plant:** Stated at the beginning of debates?

1283. **Alice Brown:** No, stated in underlying principles that should guide the rules of the House.

1284. **Lord Plant:** I am not sure that I know what the principles are except that the third category in registration is, in my judgement, far too vague. It should cover pecuniary interests.

1285. **Alice Brown:** And would you make it mandatory?

1286. **Lord Plant:** I would myself, yes.

1287. **Alice Brown:** Thank you very much.

1288. **Lord Shore:** I was greatly struck by your story of how that debate on university education affected you. It never occurred to me, frankly, that the existing rules raised any question about the entirely proper intervention of a person like yourself with your background and experience and continued association, and that they possibly put you in jeopardy. This is obviously an important point. Do you think it is a general point? I know you are very sensitive on these matters yourself and you have really shown that in your personal conduct during this. From your eight years of experience in the House, do you recognise other occasions where people have felt inhibited? If so, can you suggest a clarification of the existing rules that would remove those doubts?

1289. **Lord Plant:** I can't do the latter just off the top of my head. I cannot suggest a clarification. I just felt in that particular case that there was an issue and I believe it to be true that the other heads of houses, in either Oxford or Cambridge, who were then peers, did feel inhibited from speaking. I cannot swear to that but I got that impression through conversation. I have not had similar conversations about other activities because I have not been again in that position since then. I have not, therefore, talked to other people about whether they thought I should speak or not speak because of a particular interest. I hesitate to draw a general lesson from it but it was one that did exercise me somewhat.

1290. **Lord Shore:** Of course another colleague, Lord Jenkins of Hillhead, participated in that debate. Is he the Vice-Chancellor or the Chancellor?

1291. **Lord Neill:** Chancellor. Unpaid anyway, so no problem at all.

1292. **Lord Plant:** Both Lord Jenkins and I spoke the week before last in a general debate on higher education and again I declared, as he did, an interest. The crucial difference with the Oxbridge fees case was that my college that paid me my salary was getting money, in a complicated way, from the Government and I was criticising the Government for what it was proposing to do. That made it more complicated.

1293. **Lord Shore:** I hope that that does not mean you will be silenced on the debate arising shortly on the financial provision for higher education over the next few years.

1294. **Lord Plant:** Sure.

1295. **Lord Shore:** The only further question I would like to ask concerns again the issue of the Register. It is a problem that a very large number of peers apparently do not register. Although Lord Crickhowell gave some explanation for this, do you agree it is rather difficult, in a period when public opinion is rather sceptical, to convince the public that all is well when a substantial number of peers apparently do not make any return at all?

1296. **Lord Plant:** In a way it is admirable that many peers take the view that there has to be a large element of trust and part of that trust is that individuals are expected to act honourably and that it should be left at that. I accept that that is a sincerely held view. On the other hand, governments of both parties have been very keen to diminish the degree of what might be called the self-regulation of the professions. They have been keen to make them more accountable and more transparent to those that they serve. They have also been keen to underplay, if not undermine, in the public sector the idea that the service ethic is a sufficient guarantee of proper exercise of professional authority-whether it is in the Civil Service or in the health service or whatever.

1297. The governments of both parties, since 1979, have gone a very long way down the road of diminishing the importance of those sorts of ideas. It would therefore seem to me that governments themselves have rather contributed to the undermining of the notion that individuals can be trusted to act in the best interests of those that they serve because they are constrained by ideas of service and so forth. If governments to which we have contributed through our votes and so forth in parliament take that view of other people, it is not entirely clear that we can escape the consequences of that view ourselves.

1298. I fully appreciate those who are keen on ideas like honour, but it is all part of the transition from status to contract that has still got to work its way through the British system. It started in the 19th century and it is not fully through the system yet. I fully accept that many people mourn the passing of this, but I think it is passing and we need something in its place.

1299. **Lord Shore:** Thank you very much.

1300. **Lord Neill:** Are there any other questions from my colleagues?

1301. **Lord Goodhart:** Just for clarification, Lord Plant, would it be right that your concern as to whether you should speak in the debate on college fees probably arose not so much out of any rules about registration as out of the rule of the House of Lords that peers whose interests are direct pecuniary and shared by few others should be very cautious about speaking?

1302. **Lord Plant:** Yes. The fact that I was a paid employee of an Oxford college was declared in the Register so it was not so much a worry about that. It was whether I was going to fall foul of the first substantial paragraph of the resolution of the 7 November 1995 about being cautious in relation to interests that are direct pecuniary and shared by few others. One of the defining things about being a head of house in Oxford and Cambridge is that it is a job that is shared by relatively few other people - for good or ill.

1303. **Lord Goodhart:** Just one further question. Do you have any views about what the position ought to be if somebody is paid as a consultant on parliamentary affairs? For instance, should someone who is employed by the Police Federation, let us

say, to give advice about parliamentary affairs be allowed to speak in the House of Lords on issues relating to the police service?

1304. **Lord Plant:** Yes, I think they should. My own feeling is that the more transparent we can make the Register of Interests, including the mandatory declaring of the bases of income, the less worried we then need be about people who are paid to do certain things doing those things in parliament.

1305. **Lord Neill:** Could I ask you one question, Lord Plant? Almost the first observation you made this morning was to refer to declining public trust in, for example, Members of Parliament and Members of the House of Lords. The Nolan Committee, for the purposes of its First Report published in 1995, heard evidence about public opinion on parliament-not terribly flattering public opinion at that stage. The committee under my Chairmanship in its last Report, about a year ago, took evidence on the same topic. On the whole, the verdict we got from commentators and so on-very hard to measure this of course-was that things are rather better. The perception of sleaze and bad conduct is not as strong as it was back in 1995. I wondered whether, when you referred to declining public trust, were you actually saying that that trust is on its way downhill now?

1306. **Lord Plant:** No. No, I do not necessarily mean that. I am not a sufficiently close student of public opinion surveys to have recent evidence to hand. But there was a very strong sense that this was happening previously. Although obviously not applying to the House of Lords, the low turnout in general and local elections, and things like that-insofar as they are an indicator of people's sense of commitment to the parliamentary process and to local government-are worrying. But I do think that the Nolan Committee and this committee and the Parliamentary Commissioner for Standards are excellent devices for trying to restore that trust and I am delighted if that is happening. That is why, in my view, we should not just rest on the assumptions that we currently have in the House of Lords about what it is appropriate to do in terms of the Register of Interests.

1307. **Lord Neill:** I understand that. Thank you very much for that answer.

1308. **William Utting:** If I could, Lord Plant. You are also President of the National Council for Voluntary Organisations?

1309. **Lord Plant:** Yes.

1310. **William Utting:** I have appeared before you occasionally when you are in that role as a member of your advisory group. I wanted to ask you if you have registered your interest in that in Category 3 of the Register?

1311. **Lord Plant:** Yes. Let me just check to be on the safe side. Although I am sure that I did, I would not like to mislead you. But I am pretty sure that I did. Yes. Yes, I did.

1312. **William Utting:** What I am interested in is why you register that particular interest?

1313. **Lord Plant:** I was sitting in the waiting room before Lord Crickhowell finished and I could hear what he was saying. He made the good point that both in the Register and in declaring an interest at the beginning of a speech, tedious though it might be-particularly if it is a time-limited debate: some people have so many interests to declare that it uses up a minute of their six minutes-that it is quite useful for Members in the Chamber to have some sense of a special interest because of a particular sort of role. Or, it could equally be: Well, he would say that, wouldn't he?-so it is quite useful. It is not remotely a pecuniary interest. If anything, I thought I was out of pocket being president. However, from a certain perspective, it is a declaration that is probably quite useful.

1314. **Lord Neill:** Thank you very much Lord Plant. We are very grateful to you.

1315. Good morning, Lady Turner. Thank you very much indeed for coming to the committee. You have prepared an opening statement. Would you like to read that into the record? It was circulated only a few minutes ago and we have not all read it.

BARONESS TURNER OF CAMDEN

1316. **Baroness Turner of Camden:** Yes, certainly my Lord.

1317. **Lord Neill:** Thank you very much for giving us that opening statement and for your earlier contribution. I shall ask two members of the Committee to put questions to you. They will be Ann Abraham and then Frances Heaton.

1318. **Ann Abraham:** Good morning. I would like to come back to some of the points you raise in your opening statement. Perhaps we could start with what you have said in your submission about the differences between the House of Lords and the House of Commons. That leads you into a very clear view that a different approach is appropriate. We have had lots of evidence about the differences between the two Houses in terms of salaries and non-salaried, appointed and elected, and the

differences in powers that you refer to. I understand all of that. What I do not understand, and perhaps you could explain to me, is why that means that it is right for the public to expect different standards of conduct and behaviour? Or am I misunderstanding what you are saying?

1319. **Baroness Turner:** I do not think I am saying that different standards of behaviour should be expected. What I am saying is that, as far as outside interests are concerned, it would not be possible for most Members to work in the Lords since most Members now do not have inherited wealth. It would not be possible for them to work in the Lords unless they have a source of outside income. That could be from all sorts of things: pensions or perhaps even outside employment. In other words, it seems to me that it is not possible to have the same kind of rigid rules about what people can do and how people can earn money as far as people in the Lords are concerned for the simple reason that they have to have some outside source of income. Otherwise they simply would not be able to be there at all.

1320. **Ann Abraham:** Right. So it is about the need for different rules to achieve similar standards of conduct and behaviour. Am I right in understanding it in those terms?

1321. **Baroness Turner:** Well, I think we have got a code. We already have the Register and we do have certain codes and so on. I said in my submission that I was not aware of any of that code being flouted. Generally speaking, as the noble Lord Plant said, many of the Members of the House believe that they should act on honour, on a basis of trust. That is quite important. So I am not saying that there should be different standards but simply that, because one is paid and one is not, there are different requirements in relation to outside interests.

1322. **Ann Abraham:** That is helpful. That has clarified that for me. You also say in your submission that you think a code of conduct might be helpful, particularly for new peers. Can you explain why you think it might be helpful?

1323. **Baroness Turner:** Yes. I still think there are some doubts about what people should or should not register and what they should or should not do. If I may give you one example from my own experience. I do not very often go on trips abroad: I am not very keen to do so. However, several years ago I was persuaded to join a group of peers that was going to Gibraltar at the invitation of the Gibraltar Government. I joined this group and we went across and the Government paid for everything-the air fares, the accommodation at The Rock Hotel, and so on. When I came back I did not know what to do about it, whether I should register it or not. I wrote to the Registrar and told him and asked whether I had to register it. He wrote back and said that their Lordships go on lots and lots of trips and that it would not really be possible for him to register all these individual trips. He said that if one was going to speak in a debate, that one should simply that one had been on this trip at the invitation of the Gibraltar Government. The point I am making is that I was not sure what to do.

1324. So I think there is a need to have some very clear guidance, particularly for new peers, about what one should or should not do and one should or should not register.

1325. **Ann Abraham:** Right. So that is specifically guidance in relation to the Register of Interests?

1326. **Baroness Turner:** Yes.

1327. **Ann Abraham:** You talked about a code of conduct for new peers. So does it go any further than that, or is it about registration?

1328. **Baroness Turner:** Well I think it is roughly about registration. On the other hand, although it has improved a lot, it would be useful for new peers to have some sort of induction process so that you get to know what the procedures are. When I first joined the House in 1985 one was expected to learn by a process of osmosis almost! I was there for a year before I knew there was a lounge for women peers, for example. Somebody eventually told me about it. Now, however, there is an attempt to explain to new peers what things are about. But even now new peers do not really understand the procedures. I have to understand them now because I am a deputy Chair butwhen I first came in I did not know anything about them at all. It would be useful to have a clear induction process.

1329. **Ann Abraham:** Right. So you are saying that more could be done than is even being done now?

1330. **Baroness Turner:** Yes. I think so.

1331. **Ann Abraham:** Can I turn to another area that you have covered very eloquently in your submission, about opposition spokesmen and women. You clearly have a great deal of experience here and some strong views. I wonder whether you could expand a little on what you said in terms of any requirements similar to a ministerial code for opposition spokesmen?

1332. **Baroness Turner:** Well, I was for some years chief employment spokesperson and also junior spokesperson on social

security. As I explained in my submission, I had external commitments and small employment's at the same time. I was at that Chair of the Personal Investment Authority Ombudsman Council. We were concerned obviously with pension mis-selling. It was a great thing at the time. Then, for a little while, I was an independent trustee of a major pension fund at the instance, I may say, of members of my union. I did that for several years. Of course, during that period there was a lot of discussion about pensions policy and certainly about pensions mis-selling. I would not have been happy if I had been told that I would have to divest myself of these small employment's in order to participate in debates about subjects I knew something about. If that was done, there would be people who would say: Well, I just do not want to do this front-bench job.

1333. One has to understand too that we do not have very much in the way of research facilities available to the Opposition in the House of Lords. So, as I explained in my submission, I and my two colleagues on the employment bench used to do all the work ourselves. There were about eight employment Bills during that time, one after the other. We had to do the work on that. We used to write all the amendments, do the research for them and everything. I used to do it mostly on a Sunday. There is all that work to be done without any sort of support at all and it is really all voluntary. Most of us do it because we like doing it and we because we think we have something to contribute. If we were told that we could not have the small source of income while doing it, I think it would counter-productive, at least as far as the set-up in the Lords is concerned.

1334. **Ann Abraham:** That could actually lead one to conclude that that is an argument for payment for opposition spokespeople?

1335. **Baroness Turner:** Yes.

1336. **Ann Abraham:** But that was not what you were saying-

1337. **Baroness Turner:** No, it was not what I was saying really. It is very valuable to have people on the front bench who have some experience of the subject they are talking about. I remember that I was nominated originally by the then Leader of my Party, Neil Kinnock. When I went to see Neil, he said to me, "Well, I want you to go into the House of Lords. I want you to utilise your employment experience. I think you and Lord Wedderburn and Lord McCarthy will make a very strong employment bench. In other words, we were deliberately invited because of the background we had and because of the knowledge we had. A number of us keep up that knowledge. I kept in contact with my union, obviously, and I kept in contact with the TUC and they brief me. Those contacts are extraordinarily useful.

1338. **Ann Abraham:** That is very helpful, thank you.
Can I move back to the things you were saying in your opening statement about public perceptions and the media. Almost a counsel of despair, really.

1339. **Baroness Turner:** Yes. I do not know the answer. That is what I am saying. It is very difficult. It is terribly unfortunate for most of my colleagues that we should have this kind of public perception of our activity because I know that so many of them give up a lot of time - and have given their lives really - to the ideals in which they believe. I say this for opposition people as well. Because they happen to believe something different from myself, it does not mean to say they do not sincerely believe it and that they have not given time and energy to it. I think, therefore, that it is very unfortunate that there should be this kind of perception. Now, hopefully, the Committee on Standards in Public Life will help to deal with that misunderstanding - and I think it is a misunderstanding - that arises because the media in this country are interested in identifying individuals and then often demonising them. It has got a lot worse in recent years. Then, of course, they have had their fun and they have sold their newspapers. What happens to the person afterwards - well, it is not their concern. But sometimes people are almost destroyed by this kind of publicity and it is very unfortunate.

1340. **Ann Abraham:** The standards of behaviour of the media are not the immediate focus of the Committee's attention but I suppose I am trying to see if this needs to be a counsel of despair or whether, in terms of public perceptions, there are things that might be done so that the House can reassure the public about standards of behaviour. Do you have any thoughts about what that might be?

1341. **Baroness Turner:** I remember about two years ago when we balloted for the right to introduce a debate and I won the ballot on one occasion. I introduced a debate on the media and I urged the appointment of a Press Ombudsman. The Government spokesperson did not accept that and said that they were satisfied with Lord Wakeham and the Press Complaints Commission, that at that time - and still, I believe - was endeavouring to improve their procedures and tighten up and so on. But we had quite a debate about it. A number of Members of the House contributed and shared my view about the destructive effect of much publicity and the need for people who are 'sorted out' in that way - not necessarily Members of the House: they could be members of the general public - to have access to some kind of justice without having to go to court which most people cannot afford.

1342. **Ann Abraham:** Indeed. I would just like to come back to the role of the code of conduct in public perceptions. It seems to me that a code of conduct is double-edged. Certainly it is a way of enabling those to whom it applies to know what standards are expected of them and to know how to behave. But it is also, is it not, a mechanism for explaining to the public what standards they can expect? Perhaps a code of conduct might be one of the weapons in the armoury against some of the concerns about the media that you expressed?

1343. **Baroness Turner:** Well I think that that may very well be the case. Perhaps the committee will consider that and make a recommendation.

1344. **Ann Abraham:** Thank you very much.

1345. **Frances Heaton:** Could I just turn to the point in your original submission where you say the recent changes in the composition of the House do not call for a more wide-ranging Register of Interests: that was in answer to one of the questions. There is also a second part to the question, as to whether the third bit of the present rules should be made mandatory rather than discretionary.

1346. **Baroness Turner:** Again, I think this is rather difficult. As far as changes in the House are concerned - was that part of your question?

1347. **Frances Heaton:** Well you may want to comment on the changes.

1348. **Baroness Turner:** I do not think that the recent changes that have arisen as a result of the House of Lords Act 1999 have made that much difference - not from my perception anyway - for the simple reason that the 92 people who were elected from among the hereditary peers were mostly people who were active anyway. If one looks across to the other side of the House, the same people are sitting there: Lord Strathclyde, Lord Cranborne, Lord Henley, Lord Attlee and so on. They are all there because they were active and have been returned. So I do not notice very much difference as a result of the changes. I am sorry, what was the second part of your question?

1349. **Frances Heaton:** I was really interested to know how you felt about the third part of the Register of Interests, where other particulars have to be disclosed relating to matters which might affect public perception. Whether you felt that it was right that it should be discretionary, or whether you felt that it should be mandatory?

1350. **Baroness Turner:** I think I would go for discretion at the moment, unless the House entirely changed. Some people think that there should be an entirely elected Chamber, probably a paid Chamber. If that were to be the case, that would change things quite substantially. However, while there is the sort of House we have now, that is made up of people who are essentially volunteers and who act basically upon honour - that is what it is supposed to be - I would favour the present arrangements where it is mandatory to disclose consultancies, but disclosure of 'non-consultancies' is discretionary.

1351. **Frances Heaton:** Yes. I cannot quite understand why you feel that it should change if it is a purely elected House. What would be the effects that would require a change?

1352. **Baroness Turner:** I think that in an elected House would move very much in the direction of the House of Commons because there would then be people who are being paid, who presumably - if there were to be a totally elected House - would have to have a support system as there is for Members in the Commons. There would have to be a system of salaries and allowances and I think that would change the character of the House quite substantially and move it more in the direction of the Commons.

1353. **Frances Heaton:** The House is already undertaking legislative activity so that the Members of the House of Lords are doing things where their other interests might influence the way that they act. The declaration of interests is mandatory, though there might be discretion in what one actually declare. The Register seems to me to be the public face of declaration to some extent and it is certainly used by the press and by members of the public. Prima facie, I would have thought there was no reason why that bit should not be made mandatory as well. Now there are clearly some reasons why you feel it should not be. Is it that the present Members of the House would object or-

1354. **Baroness Turner:** I do not feel very strongly about it but at the present time I think many people would object. I cannot see any overwhelming reason to change the present system. People, in my experience, do tend to declare if they have an interest. I am not aware of people not declaring. But of course it is a discretionary arrangement at the moment. I do not see any pressing need to change it at the moment.

1355. **Frances Heaton:** You said you went to Gibraltar and received a significant amount of hospitality and then you sought guidance on whether that should be disclosed and were advised that it was not really necessary. Would you have been

embarrassed if you had subsequently spoken in the House on the subject of Gibraltar and it had got into the press that you had been entertained on a lavish scale and so on?

1356. **Baroness Turner:** No, I do not think so. In the first place, I would declare it. I did speak on the Gibraltarian issue when we had a debate about it. I was quite interested in what the Government had told me while I was there.
I certainly used the briefing that I had to make a contribution to the debate. But I told the House that I had been the guest of the Gibraltar Government when I was there. So what? So they say that we were lavishly treated. It was not all that lavish, but it was all right. I would not have been particularly embarrassed by it. I declared it anyway.

1357. **Frances Heaton:** So I think that declaration is the thing that matters. The Register is very subordinate.

1358. **Baroness Turner:** Yes. I think if you declare it, that is it. People have a right to know. One's colleagues in the House have a right to know.

1359. **Frances Heaton:** Yes, a number of peers have made the same point. It does appear that the principle driver on this transparency point is to make sure that other peers know, rather than the world at large. Perhaps that is because, to date, the world at large has not taken a very active interest in the affairs of the House of Lords. With the change in its composition and the generally more active role that the House of Lords is taking in its new format, do you think that it will become more subject to scrutiny by the press? If so, would it be an added protection for peers if there was a more onerous requirement on registration?

1360. **Baroness Turner:** I am not sure about that. The interest of the press is not terribly great in parliament generally. They are interested in the odd story here and there but, as I am sure everybody says, the level of reporting of parliament is pretty low. At one time The Times used to report parliament and it no longer does so. Parliament does not get reported very much. One may make a wonderful speech and nobody takes any notice. There may be great disappointment, but that is the way life is at the moment. The press will report only on something that catches its eye and about which it can made some kind of snide comment - particularly as far as the House of Lords is concerned. It likes to make snide comment about the Lords.

1361. **Frances Heaton:** Thank you very much.

1362. **Lord Neill:** John MacGregor?

1363. **John MacGregor:** Are there any recommendations that you would make to this committee to help to deal with the issues you raise in your opening statement? Or, the other way around, are there recommendations that we should avoid that might intensify the problem you identified?

1364. **Baroness Turner:** Perhaps my statement was a bit of a counsel of despair. I said in my submission that we should not bother our heads too much about public perception and that we should simply do what we think is right because we cannot govern how the press will take it or how it will be reported. That is probably still my position although I do accept that if there are transparent rules that are laid down then that could be helpful if it were publicly available. On the other hand, I still think that if there is a desire to 'have a go' at the Lords, they will 'have a go' at the Lords no matter what happens. It is very difficult. I really do not know what the answer is. I hope that you know what the answer is because I do not!

1365. **John MacGregor:** We have had one or two of your colleagues making suggestions. Lord McNally suggested that it was important in the Register to distinguish between the "need to know" and "interesting to know". Others have advised that we avoid the detailed investigatory systems that the House of Commons, for example, has set up. Have you any comment on that?

1366. **Baroness Turner:** I have never been in the Commons so I cannot make any comment about it from experience. I know that they have a different set of standards from ourselves. We had the Griffiths Committee and we have operated on that basis since. I really cannot help about the Commons. It is outside my experience.

1367. **John MacGregor:** Just one other question. You have said in the statement you sent us on Question 7,

> "There would appear to be no reason at all why financial interests or benefits that have no connection with parliamentary work should be subjected to a mandatory declaration."

Lord Plant suggested to us that in fact it was important that all bases of income - the sources, not the amounts - should be in a register. There seems to be some difference of view between you.

1368. **Baroness Turner:** Again, that is something I am not absolutely certain about. I take the view, as I said earlier, that people in the Lords have to have external sources of income otherwise they would not be able to work there.

I accept that as far as consultancies are concerned, obviously there are rules. There are also rules about whether people who have consultancies can act as advocates and so on. Generally speaking, I support that. I have no objection to that. However, there are other external activities that produce incomes for people and, if they are not directly relevant to parliament, I do not see any particular reason for declaring the income or its source. That seems to me to be a private matter that would cease to be private if people were to be paid a salary. Then, in a sense, the public would be the employer. Any external employment would then have much greater relevance then if one is not being paid.

1369. **Lord Neill:** Lord Goodhart?

1370. **Lord Goodhart:** You have indicated that you thought that provided the declaration of interest was made in speaking, that there was not really any need for the interest to be registered. However, is there not a problem with Members of the House of Lords who may have an interest and who vote on an issue but do not speak on it? Obviously, it would be a terrible waste of the time of the House of Lords if everyone who had an interest had to declare it before voting. Might it not be desirable to have these interests on the Register so that the interests are known of people who vote but do not speak and who, therefore, do not make a declaration of interest?

1371. **Baroness Turner:** Yes. Again you are talking about whether it should be mandatory or whether it should be discretionary as it now is. I still believe that it should be discretionary, at least in the transitional House. If it changes, one would need to look at the whole thing all over again. But we are operating with people who voluntarily give up their time. I suspect that most of my colleagues in the House would want to maintain the discretionary element. I see no reason really to depart from that.

1372. **Lord Neill:** Thank you very much Lady Turner for coming and for your two statements and for answering all those questions that were put to you. Thank you very much indeed.

1373. **Thank you,** Lord Flowers, for coming. At the beginning of this morning, before you arrived, I formally introduced you and placed your qualifications on record for today's transcript. I referred to your distinguished academic career. I did not formally state your rectorship of Imperial College from 1973 to 1985. Following that, you were Vice-Chancellor of London University, and in that incarnation our paths first crossed.

LORD FLOWERS FRS

1374. **Lord Flowers FRS:** And I am now Chancellor of Manchester University.

1375. **Lord Neill:** That I did state this morning. You kindly wrote me a letter on 12 April, which we have before us. Perhaps I may ask you some broad, background questions. Did you attend the debate in the House of Lords that was initiated by Lord Rees-Mogg?

1376. **Lord Flowers:** No, I could not attend.

1377. **Lord Neill:** Did you read that debate?

1378. **Lord Flowers:** I read part of it.

1379. **Lord Neill:** Strong feelings were expressed in some parts of the House against making any change to the present rules. It was strongly argued that there should be no movement at all towards assimilate the rules to correspondent to those in the Commons. I believe that you feel differently and do not subscribe to the do-nothing view. Do you feel that there should be a move?

1380. **Lord Flowers:** Yes. The brief message in my brief and very informal formal note to you was that I did not think that constitutional differences between the two Houses mattered at all, constituencies apart - I will say a word about that later. What matters is public perception, and here I seem to differ from Baroness Turner. I believe the public hold the view that as far as legislation is concerned anyway - which is what we are mostly here about - there are two Houses of Parliament that do much the same thing in much the same way, and the public expect the same standards of behaviour to apply to both. That is my main message. I do not know that I can expand on it very much.

1381. **Lord Neill:** You twice refer in one paragraph to the opinion of the public and how the public see it. Do you have any basis for your belief or is it based on an impression from the media?

1382. **Lord Flowers:** A lot of it is based on the media but I know some members of the public and talk to them. It is clear that they share the same oversimplified view of what goes on in parliament. What I just said more or less accurately describes the public's attitude.

1383. **Lord Neill:** Would it be correct to say that a large percentage of the population has no perception of the difference between the way that the two Houses work? Presumably the Parliament Act is unknown to most people.

1384. **Lord Flowers:** I imagine that many people who watch parliament on television are struck by the difference between Prime Minister's Questions and what goes on in the Lords. Apart from that, I strongly doubt that the public have an analytical view of the difference between the two Houses.

1385. **Lord Neill:** We had some striking evidence yesterday - a hearsay report of what a taxi driver thought. He watched the House of Lords debates because he thought they were of better quality.

1386. **Lord Flowers:** The opinions of taxi drivers should always be listened to with the greatest attention.

1387. **Lord Neill:** There is a degree of reluctance in your movement towards the Commons because you use the phrase, "I would therefore reluctantly agree to the Commons procedure."

1388. **Lord Flowers:** The reason for my reluctance is that I am fairly content with the arrangements we have in the Lords already, for internal purposes. Each peer needs to know, when he listens to another peer speaking, whether or not there are hidden interests. On the whole, I think we deal with that fairly well. But I think that arrangement breaks down when one asks the public what they think. I am reluctant but I argue myself into saying that there must be change.

1389. **Lord Neill:** In the rules, Category 3 is conceived in terms of public perception:

> "Any other particulars which Members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties."

That is your point. Internally, the member who has an interest will declare it. Sometimes it will be a discount factor or it could be that it enhances the status of the speaker because people will say, "He has spent the past 20 years in universities and has been a Vice-Chancellor. Maybe he knows something about the way universities work." Which would be a plus. So the arrangement works all right internally but the public are deprived of information. Is that where you are coming from?

1390. **Lord Flowers:** Yes. My main concern is that the public have the information that I think they ought to have.

1391. **Lord Neill:** One criticism of the House of Commons procedures is overkill - that they have become too elaborate.

1392. **Lord Flowers:** I want to say a word about that because I probably went a bit too far. The procedures there are elaborate and would probably be over-elaborate if they were strictly applied to the Lords. Those are thoughts I have had since I wrote my note to you, which shows how naive I was when I wrote it.

1393. I have been thinking rather more and talking to people about the role of constituencies in all this. Questions are often put to the commissioner in the Commons about constituency interests of particular MPs. The issues that have to be registered and sometimes declared in the Commons take into account constituency susceptibilities and anxieties. I do not think it is necessary for national purposes to declare that one is chairman of a local darts club but that might be important in the village in which one lives. Somebody in that village wanting to discover whether or not one has declared that interest will look it up on the Internet. If he does not find anything, he may deduce something from that. There are differences between the Commons and the Lords deriving from constituencies, so I slightly draw back from my remark that the two are precisely equivalent.

1394. **Lord Neill:** That leads to the conclusion that one might need a less rigorous register than in the Commons - less detailed.

1395. **Lord Flowers:** I make a distinction between the register and the declaration. The register need be less detailed, perhaps referring to matters of national significance. But if one is speaking in the House on something in which one is involved - not necessarily financially - one ought to declare it, whether it is a purely local matter or a national one.

1396. **Lord Neill:** I follow that. I will now ask Lord Goodhart to put some questions to you.

1397. **Lord Goodhart:** Do you think that a declaration of interest is a must? It would be more difficult. One would have to find out who spoke and when, and whether they made a declaration of interest, which would take some research. If that information were on a register, one would be able to obtain it instantly on the Internet.

1398. **Lord Flowers:** Everything for which one receives payment ought to be on the register anyway - large or small.

1399. **Lord Goodhart:** Including the interest of a member of the House of Lords as a landowner deriving income from

farming.

1400. **Lord Flowers:** Yes. Or receiving a small fee. I do not receive any fees from anyone. I am just on a pension - so it is easy for me to say that.

1401. **Lord Goodhart:** Would you want the amount of income to be identified?

1402. **Lord Flowers:** Within brackets, yes.

1403. **Lord Goodhart:** So you would be in favour of some form of banding system.

1404. **Lord Flowers:** Yes.

1405. **Lord Goodhart:** Even though it is clear that Members of the House of Lords need outside incomes.

1406. **Lord Flowers:** I accept entirely that they must have outside incomes or pensions. Therefore, at least the younger ones can be expected to be working in some capacity. What I find totally unacceptable is the idea that one should receive payment to interfere in the parliamentary process. I know that some people do that quite openly and declare it but I would never do so, believing it to be wrong.

1407. **Lord Goodhart:** What is you view about the registration of matters such as travel paid for by some outside source. Lady Turner spoke about the Government of Gibraltar paying for her parliamentary trip to Gibraltar or for hospitality. Ought we to recommend the application of the same rule as in the House of Commons or something less elaborate?

1408. **Lord Flowers:** On one occasion, I undertook a business trip - the expense of which would be paid for in the normal way. I would not declare that. While I was there, some not lavish but nice hospitality was offered to my wife and myself. We were put up in a very nice hotel for a few extra days, to dip our toes in the sea and so on. I was not expecting that. When I returned home, I declared it and that is on the file. I do not think that it is in the register of interests but it is declared on my file.

1409. **Lord Goodhart:** What file? If it is not on the register of interests, where could it be?

1410. **Lord Flowers:** I have not seen the file but Mr Vallance White told me that it did not seem appropriate to put on the register but he would keep it on his file. That was a one off. If it became a practice, which it has not, perhaps it should go on the register.

1411. **Lord Goodhart:** Do you know whether that file is open to the public?

1412. **Lord Flowers:** I should not think so.

1413. **Lord Goodhart:** As to the registration of non-pecuniary interests, have you registered your chancellorship of the University of Manchester?

1414. **Lord Flowers:** I hope so. I have tried to put in those few things that indicate the sort of chap I am. I have not put down a who's who account of everything in it because that did not seem to me necessary or desirable. I have just put down a few things such as my fellowship of the Royal Society, which tells everybody that I am a reasonably senior scientist, and things of that sort. I hope that includes the chancellorship of the University of Manchester.

1415. **Lord Goodhart:** Did you have difficulty persuading the Registrar to put those on the register?

1416. **Lord Flowers:** I had no difficulty. He told me that there was no need to declare any of that stuff. I said that I knew that but would rather have it there, so that somebody could look it up and see what sort of a chap I am.

1417. **Lord Goodhart:** What is the purpose of registering non-pecuniary interests? Is it negative, to warn people about something in which you have an interest and which may influence the way you vote? Or is it positive, to show people that it is a field of which you have a lot of knowledge and about which you are particularly qualified to speak? Or both?

1418. **Lord Flowers:** First and foremost, it is to show that one has an interest in something and should be listened to with care. If one were a member of a hospital trust and speaking about the NHS, it is fair enough that people should know that one has an involvement - whether or not one gets any financial reward. As to showing that one also has some knowledge of the subject, that is a useful side effect.

1419. **Lord Goodhart:** At the time of the Griffiths Report, the House of Lords was still a largely hereditary body in terms of its membership, if not attendance. Has the fact that the number of Members sitting as hereditary peers has reduced to 92 affected the situation? Is the position different now from the time of the Griffiths Report?

1420. **Lord Flowers:** Yes and no. I agree with Lady Turner that the hereditary peers that remain were, by and large, the most active anyway. To that extent, there is no change. But the influx of 200 new peers, or whatever the number is, more or less all at once has introduced at least temporarily a change in the behaviour and tone of the House. If you ask whether that has had an effect on regulatory matters, I do not know. As there are a number of people who have not had time to learn our ways, I suppose that one might expect some effect. On the other hand, many of those people have experience of organisations outside parliament in which it has been customary for quite a long time to declare one's interests and they would be well disposed to doing so automatically anyway.

1421. We rather treat the declaration of interests as though it were peculiar to parliament. Of course it is not.

1422. **Lord Goodhart:** Although there are good arguments for saying that the fact that peers are unpaid is not itself a reason for peers not being required to register their interests, is it arguable that in 1984-85 the reason for peers not being required to do so were not, in a sense, by choice but that is no longer true?

1423. **Lord Flowers:** It was an argument. Lord Strathclyde's submission to you goes through that sort of thing at great and tedious length. Personally, I think that all financial involvements should be declared. If one does not like that, one can always take leave of absence.

1424. **Lord Goodhart:** Thank you.

1425. **John MacGregor:** You have made it clear why you think that the Commons procedures or something very like them should be adopted by the Lords, in relation above all to public perception. I note that you say in the same paragraph that you regard the Commons arrangements as being much too complex and heavy handed.

1426. **Lord Flowers:** For my liking but I am prepared to put up with it and support it.

1427. **John MacGregor:** But you are critical of them to some extent. Do you draw a distinction between different parts of the Commons procedures? We have talked quite a bit about the register. Would you apply the same thinking to the independent Parliamentary Commissioner that we have in the Commons who has investigatory powers?

1428. **Lord Flowers:** I would try to do without a commissioner, at least to start with, because I believe that the system we operate now - if it is modified, all well and good - works well. I would not want to instigate an investigatory element unless there was proof that was necessary. I may be wrong but I believe that a lot of the commissioner's activities are to do with constituency affairs. If that is so, they would not apply to the Lords anyway. At least, not for as long as we are unelected. If we contained an elected element, the problem would occur in the Lords as well. Then we probably would need a commissioner. Personally, I would be inclined to do without a commissioner at least to start with, to try to keep a light touch.

1429. **John MacGregor:** Thank you.

1430. **Lord Neill:** You have answered all the questions that we have for you, Lord Flowers. Thank you very much for coming and for writing your letter.

1431. **Lord Flowers:** Thank you. Good luck.

1432. **Lord Neill:** We need it.

1433. Lord Dubs, thank you for coming and being willing to answer some questions. Lord Goodhart and Sir Clifford Boulton will be putting questions to you. Is there anything that you would like to say? I believe that you were present for the debate with Lord Rees-Mogg.

LORD DUBS

1434. **Lord Dubs:** No, I was not. It was the one day that I had to be abroad for a conference so I missed that debate, other than what I read of it in Hansard afterwards. I was quite annoyed about that.

1435. **Lord Neill:** Bad luck.

1436. **Lord Dubs:** I apologise for not submitting anything in writing beforehand. I just plead that was unprofessionalism on my part, in not getting my act together by the deadline. I will make just a couple of points.

1437. I am conscious that I have less experience of the House of Lords than most of the witnesses who appeared before you. I plead in mitigation that I have House of Commons and ministerial experience. I have also been a local councillor, which might add something.

1438. My general proposition is that we should be fairly close to the Commons in our approach - and if we are not, there should be good reasons for differing. The presumption ought to be that we should be similar to the Commons in the way that it approaches these matters. As to the declaration of interests, I am concerned that Category 3 goes too far. I believe that a declaration involvement with voluntary organisations and so on would undermine the basis of the register. I would be happy to develop that argument in answering questions. I think that it has reached a ludicrous point, when people are told that they should register that they are only involved with a couple of charities. And if they are much more influenced by things that they have done in the past, they should put that in as well. It gets out of hand. The right approach should be to declare interests where there are financial or material benefits but not others.

1439. The system of declaring an interest as one is about to speak does not work when asking Questions, when voting or at committee or Report stage. It works in set piece debates such as Second Readings but not otherwise, so I do not think that is good enough.

1440. **Lord Neill:** We have been exploring the limited application that the declaration system has and you have pointed the many areas in which it does not operate. We will start the questions with Lord Goodhart.

1441. **Lord Goodhart:** You were one of the two speakers in the debate on the Griffiths Report in November 1995 who took the view that it did not go far enough.

1442. **Lord Dubs:** Yes.

1443. **Lord Goodhart:** What would you like to see included in that report?

1444. **Lord Dubs:** I am trying to remember what was in my mind then. It would be easier to say what is in my mind now. I was concerned that where people enjoy an income or material benefits - not from lobbying or parliamentary consultancy - those still ought to be declared. Not within precise financial limits but within bands. It ought to be on the record if somebody has a particular interest or occupation, because that might impinge on how something they say is perceived.

1445. **Lord Goodhart:** The argument made by those who want to preserve the status quo is, "If it is not broken, don't fix it." Is it broke? If not, why does it need fixing?

1446. **Lord Dubs:** I am not saying that I have any reason to think that there are transgressions at the moment but there is an expectation that people in public life have to be more transparent both to their colleagues and the wider world. I do not mean that we should run scared because the media occasionally get it into their minds to scrutinise. Scrutiny by the media is right but sometimes they go a bit too far. Standards in public life should be of the highest order and your committee is obviously seeking to raise standards. One is required to make declarations of interest in other bodies and that is proper. If one holds any public position, one should be answerable for any possible conflict of interest and should be open and transparent about them.

1447. **Lord Goodhart:** You are suggesting that income from outside sources should be disclosed in bands. That would be even stricter than the rules in the House of Commons, where one only has to declare income in bands if it is somehow linked to one's membership. For example, it was ruled that Ken Livingstone should have declared his income from after-dinner speaking because he was asked to speak because he was an MP.

1448. **Lord Dubs:** I am not totally familiar with any recent changes in the Commons declaration of interest rules but when I was in the Commons, one declared income from lectures, talks and so on and one was expected to do so.

1449. **Lord Goodhart:** But not income from shareholding-

1450. **Lord Dubs:** Oh yes.

1451. **Lord Goodhart:** Rents or-

1452. **Lord Dubs:** Yes. A colleague of mine in the Commons declared that he owned a property in Yorkshire from he derived no income, but he still declared it as a tangible and material thing. If it is not like that in the Commons now, perhaps it should

be. I am not sure whether such declarations should be in bands. That may be going too far. If the bands are not sufficiently broad, people might not like it, and I can understand why. But the fact that a member has a material interest or derives benefit from an activity or occupation should be declared. It is not easy to say, "I have this but it has no bearing on current debates" because one day it might be perceived as such. In the interests of transparency in public life, it is right that such interests should be on record.

1453. **Lord Goodhart:** It has been suggested that some Commons rules are too rigid, in that it would be undesirable to require Members of the House of Lords to declare travel costs repaid, for example, by the Gibraltar Government - you were present when Lady Turner spoke about that - or hospitality. Is there a case for making the rules less rigid than in the House of Commons?

1454. **Lord Dubs:** No. I think that overseas visits are seen by the public as a great freebie, even if they involve hard work, and it is important that they are declared. In the Commons they are declared for one year. They do not stay on the register for ever. They are declared in the next register after the visit has taken place. If one goes abroad other than at the British taxpayers' expense, it is right that should be known. After all, why is one invited abroad? One is invited either by commercial interests or other governments who seek to influence one or to take advantage politically of the fact that one has made the visit. One should be very careful before accepting such an invitation anyway. There are times when that would be proper but it should be on the record.

1455. It is not good enough to say, "It is just a visit." Such visits are important in the public's perception of how we do our job and how we are likely to be influenced. I was invited along with a colleague from the Commons when we were in the Opposition to make a visit to the United States to examine energy policy. I had quite a job persuading the powers that be that the visit was declarable. I felt it should be because I had derived a significant material benefit from having two weeks in the States.

1456. **Lord Goodhart:** Would you favour having a Parliamentary Commissioner on Standards for the House of Lords?

1457. **Lord Dubs:** Probably yes. If the commissioner for the Commons had a little time to spare, her remit might be extended rather than have a separate commissioner for the Lords. I would hope that her task in the Lords would be very limited but it is right that she should have a presence there, just in case. I think the same person would be better. Let us not appoint more people for what might not be more than a part-time job.

1458. **Lord Goodhart:** Would that not cause constitutional problems? Do not the two Houses vigorously maintain their independence from one another?

1459. **Lord Dubs:** Yes, sometimes to ridiculous extremes - but that would be opening up the discussion to other things. The Wakeham Report suggested that there should be greater collaboration between the two Houses on a whole range of matters, more joint committees and so on. That is probably the right way forward. I do not believe that there would be any constitutional difficulties. The commissioner would have one appointment in the Commons and a separate appointment in the Lords. It would just happen to be the same person.

1460. **Lord Goodhart:** You do not envisage that there would be much work to be done in the Lords.

1461. **Lord Dubs:** I hope not but, as I said, just in case.

1462. **Lord Goodhart:** You would like the third class of registration to be mandatory rather than voluntary.

1463. **Lord Dubs:** I will qualify that. I would like it to be mandatory as regards financial or material benefits but I think that registering a whole spate of voluntary organisations is going too far. Some years ago, I was a trustee of Action Aid, involved in overseas development. I was invited to serve on that organisation because I had an interest in overseas development. It was not that I developed that interest because I was a trustee in Action Aid. That appointment was a reflection of my existing interests and commitments. I do not mind declaring something like that but I see no point. Many Members have at times served on a large number of voluntary organisations. I see no point in being under pressure to declare a range of non-pecuniary, non-material interests.

1464. **Lord Goodhart:** Lord Flowers thought it was a good idea that non-pecuniary interests should be registered, on the ground that would enable people to know that a member had expertise in a particular subject and was qualified to speak about it. Is that a justification for including voluntary interests on the register?

1465. **Lord Dubs:** Not particularly. It is not a question of whether one is qualified to speak but whether one has something sensible to say. If one holds an important position, as Lord Flowers has had and continues to have, that would inevitably come

out in the way that he puts his case in parliament. One does not need to use the register as a way of demonstrating that one is good at something. That is not what it is for.

1466. **Lord Goodhart:** Could there be cases where even involvement with a voluntary organisation might be a material fact that people ought to know? I am thinking of the Pinochet case. That involved the House of Lords in its judicial capacity, which is entirely different, but could an equivalent situation arise in the course of considering a Bill?

1467. **Lord Dubs:** I will give an example from my own background. I was for seven years director of the Refugee Council. I am no longer that and no longer hold any position with the Refugee Council. But if an issue arose involving asylum seekers and refugees, I might well want to say that I learnt about the subject when I was director of the Refugee Council. Not many people are suggesting that past involvements of that sort need to be declared. Maybe at the margin they should be, but that was a paid job.

1468. **Lord Goodhart:** Do you think that a current, active involvement should be declared? I am not suggesting that a person should register the fact that they are a member of Amnesty but if they were a member of its executive committee or a trustee, should that be registered?

1469. **Lord Dubs:** I think that is very much on the margin. One would be a member of the governing body of Amnesty because one was committed to human rights and wanted to express that commitment further, not the other way around. The important thing would be the pre-existing commitment to human rights. What concerns me is that there is pressure now to register every tiny voluntary organisation, trustee body on which one serves. The register is devalued if one dilutes it in that way.

1470. **Lord Goodhart:** What is your view of lobbying in the House of Lords? What should be the rules about excluding people from speaking or voting on the grounds of consultancy or financial interests in public relations companies?

1471. **Lord Dubs:** It is hard to know where to draw the line, which may bedevil any solution. If, hypothetically, one were a paid lobbyist for universities, the rule should bite hard. If one happened to work at a university and was not paid to lobby but wished to argue a case for universities, one might be in a different category. The distinction can be fairly thin at times. Part of me says that no one who is a paid lobbyist should be a member of either House because it is a contradiction in terms. One might have to exempt existing Members because one cannot change the rules after they have entered parliament. There is a continuum. What about a person who is not working for a lobbying company but who happens to hold an advocacy role within a large company and does it in-house. Should he be treated differently? My instinct is to say that nobody who is a member of either House should be a lobbyist.

1472. **Lord Goodhart:** Should someone who took on a consultancy role on behalf of the Police Federation be allowed to speak? That is the present rule. Is it correct?

1473. **Lord Dubs:** I have doubts. A series of eminent people have done that in the Commons and put their case very well. One does not want to get to the position where every organisation that wants a voice in parliament pays somebody to give effect to it. That undermines the point of parliament. Members of the Commons should represent their constituencies and Members of the Lords should take a broad view based on their knowledge, judgement and experience - not because they are paid to do so. I do not think it is right in principle that Members of either House should be paid to advocate a cause.

1474. **Lord Goodhart:** What about people who have financial interests in public relations companies? The present rule is that they cannot speak for clients of the company in which they have a direct involvement but can if the firm has other clients with whom the peer has no dealings.

1475. **Lord Dubs:** It is a Chinese wall argument. I would settle for that as the only way out of a difficult situation. In principle I am not happy about it but if I take my position too far, nobody in the Lords should be paid for anything, which would be absurd. That is not a bad compromise. It is uneasy one because clients change and an individual's involvement with a particular client might also change. If one is very senior in a company, one might be involved with all its clients. But as a compromise, that may be the only one at which we can arrive.

1476. **Lord Goodhart:** Would you say, from your experience in both Houses, that lobbyists play a useful role in the political system?

1477. **Lord Dubs:** I should declare an interest. I once wrote a book about lobbying, which is out of print. Lobbyists play a useful role in briefing politicians in both Houses, so they add to the ability of Members to understand an issue and to reach conclusions. To that extent, lobbyists perform a useful task. Sometimes they overdo it. Sometimes in the past they have used methods that were not transparent, which was not a good thing, and insinuated themselves into all-party committees. Where the

process of lobbying is open, clear and transparent, it can be helpful.

1478. **Lord Goodhart:** Thank you.

1479. **Clifford Boulton:** Some peers have strongly made the point that because they see themselves in an individual capacity, they are the only people who can make a judgement on what interests they should register or declare. They argue that general rules would be unnecessary. A register ought to be complete because of all the voting that goes on. If a member is deeply involved in something such as the Countryside Alliance who does not take part in set piece debates but votes like billyo on fox hunting, would it not be better for that interest to be registered?

1480. **Lord Dubs:** I am almost agnostic on that point. Provided that there is no pressure to register tiny and seemingly irrelevant interests, I do not think it matters. If there were a category for substantial non-pecuniary, non-material interests of significance in parliamentary debates. it would probably be better to register than not. After all, anyone involved in the Countryside Alliance who spoke in a debate on fox hunting would want to say that they are associated with that organisation.

1481. **Clifford Boulton:** You are saying that there is room for more specific guidance for Members and the Register.

1482. **Lord Dubs:** Yes. If it is left to individual peers to decide, the danger is that we might all behave differently from the best of motives. The result would be inconsistent and not helpful in achieving transparency. Many of us would prefer guidance, so that we do not undermine our colleagues by declaring more than they do or ourselves by declaring less than them. A little consistency would be helpful.

1483. **Clifford Boulton:** We cannot quite measure the number of peers who do not take part in Category 3 registration. That is partly because we do not know how many peers attend parliament because they are too old or for other reasons. Others have notified nil returns. Would it be helpful if the names of those peers who have submitted a nil return - that is, they are playing but do not have anything to say - were published in the Register?

1484. **Lord Dubs:** Absolutely. I wanted that. When I was a Minister, I could not have any interests. The first register following my appointment showed me as having no interests. Next time, I will add a few. That is more important if the register is not compulsory.

1485. **Clifford Boulton:** If the office of the commissioner were imported, to whom should she report? Would one also have to import a system that allowed a member under investigation to have a further chance to explain and defend before a committee? Would there have to be sanctions? Would it be a hollow exercise simply to call the work of the current Registrar the work of the commissioner and do nothing else?

1486. **Lord Dubs:** I am not too familiar with some of the committee structures in the Lords but a commissioner would need a committee to report to or work through. Anybody subjected to criticism by the commissioner
ought to have the right to an element of due process and to be able to defend themselves and put their case. It would be quite wrong for anybody to be condemned without being able to speak in their own defence - publicly if they wished. Otherwise the process could be very unfair.

1487. **Clifford Boulton:** And what about sanctions? Would naming and shaming be enough?

1488. **Lord Dubs:** I think it would. The humiliation of being named and shamed, certainly in the Lords, would be so appalling that if it happened to me, I would not dare show my face there again. Even in the Commons, naming and shaming seems to work well most of the time. It finishes the careers of Members who are named and shamed.

1489. **Clifford Boulton:** The public does not understand the traumatic impact of having to stand before the House and apologise.

1490. **Lord Dubs:** Absolutely. Naming and shaming would be sufficient. I would not wish to see any further sanctions.

1491. **Clifford Boulton:** I am old enough to remember when the Speaker used to wear a tricorn hat for the occasion.

1492. It has been suggested that considerations surrounding interests when one is an Opposition spokesperson is almost the same as having a relevant interest as a Minister. Do you go along with that argument or would it be extremely difficult for Opposition spokespersons in the Lords to divest themselves of relevant interests?

1493. **Lord Dubs:** I do not go along with that. I see Opposition Front Benchers as having to meet the same standards as any other peer. Ministers are different. When I was in the Opposition, we had a whole team of front-benchers. Such a thing would

be unworkable. I do not think that it is necessary. There are a couple of paid Opposition spokespersons but for the rest, I do not think that front-benchers should be subject to a more onerous declaration system than would apply to peers generally.

1494. **Clifford Boulton:** What about the art of the possible? What if we were to recommend that current Category 3, with or without more guidance, should be obligatory? Lord Griffiths told us, very frankly, that at the time he produced his report there was a large number of involuntary Members and one could not have contemplated making Category 3 compulsory. Has the House reached the stage where it would be prepared to accept uniformity?

1495. **Lord Dubs:** I think we will get there. There will be difficulties but in the fullness of time, I think that the House will move in that direction. After all, everyone in the Lords now is there of their own free will and some are desperate to be there. I do not see why certain obligations should not be part and parcel of holding a very privileged position in public life.

1496. **Clifford Boulton:** Lord Archer of Sandwell said that it would be a disaster if we made recommendations that were not accepted. He did not say whether it would be a disaster for the Lords or for us.

1497. **Lord Dubs:** It would not be a disaster for you. Your wisdom is greater than that of the House of Lords on this subject. It may be presumptuous of me to say this but if your committee makes recommendations that it believes would be acceptable as opposed to recommendations that are right in principle, it would be diluting its responsibilities. It may be impertinent of me to put it in those terms. I should try to find a nicer way. I hope very much that the Lords will bite on and decide how to respond to the committee's recommendations. Those recommendations should reflect the highest standards, not be tempered to meet the wishes of the present membership.

1498. **Clifford Boulton:** Thank you.

1499. **Lord Neill:** There are no further questions, so it appears that you have dealt with all those that we wish to put, Lord Dubs. Thank you very much for coming.

1500. **Lord Dubs:** Thank you for inviting me.

1501. **Lord Neill:** We now welcome Sir Archibald Hamilton. Your letter of 6 April contains a warning about not duplicating what happens in the Commons in the Lords. You also made a point about the impoverishment of certain contributions and having them debarred so that they are not heard in the Chamber. Would you like to make an opening statement before Professor Alice Brown and Sir William Utting put their questions?

RT HON SIR ARCHIBALD HAMILTON MP

1502. **Rt Hon Sir Archibald Hamilton MP:** Thanks you. As we go along, I would like to talk about the Parliamentary Commissioner in the Commons and, if I have the opportunity, about two particular cases - those of John Major and Ken Livingstone because they illustrate where we may be going rather too enthusiastically down a particular road.

1503. **Alice Brown:** You say in your statement that your main reason for giving evidence is your concern that we may be in danger of making mistakes and that there are lessons to be learned. What particular lessons should we heed?

1504. **Archibald Hamilton:** The question of advocacy was introduced by the committee on which I sat. We were reacting very much at that time to the issue of cash for questions. There is some law stating that there should not be any advocacy.

1505. As a Minister, I wound up a debate on Nimrod - the airborne early warning system on which the Ministry of Defence had spent £800 million. Somebody updated the figure in real terms to £1 billion. The whole exercise was completely wasted. Nothing came out of it. We ordered the American Boeing AWAC system instead. So it was a somewhat traumatic debate, which I wound up as Under-Secretary of State for Defence Procurement.
Jim Prior participated in the debate, as chairman of GEC, which had been responsible.

1506. It would be difficult for him to give now the speech that he gave then. Not impossible but difficult. I believe that we are losing something. We need openness. We must have people being totally straightforward about where they are coming from and declaring their interests on the Floor of the House. Jim Prior would have difficulty today making his speech, which defended GEC's position, but that was a valuable contribution to the debate. The House would be poorer if that could not be done. I have defence interests now and I am extremely nervous about getting involved in debates at all, because there is always somebody waiting on the other side of the House to accuse one of abusing one's position. We are moving to the situation where Members are worried and concerned about contributing to any debate that might refer to them. We have impoverished the quality of debate by going down that road on advocacy.

1507. **Ann Abraham:** Are there other lessons to be learnt from practices in the House of Lords?

1508. **Archibald Hamilton:** I would like to refer at this point to the role of the Parliamentary Commissioner and to what earnings one should declare. Life is confusing here as well. The view is that if one is using one's position as a Member of Parliament, one should declare one's earnings but if not, one should not. There is general acceptance that if one sits on the board of a company, one does so because of the role that one can play as a company director. What happens if one's fellow board members ask, "What is going to be in the next Budget?" Does an MP say, "I would have to declare my earnings to reply to that question"? It gets slightly difficult.

1509. In her report on John Major, Elizabeth Filkin, the Parliamentary Commissioner, ruled that he should have declared all his earnings. John Major had gone along to the Clerk beforehand and got leave not to declare his income from lecturing in the United States. Was John Major using his position as a Member of Parliament in giving those lectures or as a former Prime Minister? I would have thought the latter. That report was seriously diluted by the committee but that was an indication of where things are going.

1510. The 1922 Committee was quite exercised by the report that Elizabeth Filkin made on Ken Livingstone. I think she was within her rights. She said that if he was contributing an article to the Evening Standard about restaurants, he was under no obligation to declare his earnings - but if he was writing a political article, he should declare his earnings from that work. That returns to the point about whether Ken Livingstone is doing that work as an MP or a former Leader of the Greater London Council. Probably the latter. He does not appear in parliament very much. We do not see him around.

1511. That brings me to the second point in my statement. Why do we have to declare our earnings?
What was Nolan's original thinking? I do not know. Was the view taken that if one is earning £100,000 a year, one was more likely to abuse one's position than if one was paid a retainer of £5,000 a year? At the end of the day, it depends on where one is coming from. If one is earning absolutely nothing else, £5,000 a year can buy someone lock, stock and barrel. I can think of a number of colleagues in the House who earn serious sums of money but who would not dream of advocating anything. They keep all their business affairs to themselves and do not bring them on to the Floor of the House at all. I have never really seen the relationship between money and what one does in the House.

1512. It matters because the public think that every MP is grossly overpaid, earning the £47,000 salary they get now - so it is embarrassing for any Member to explain to his constituents that he is receiving any more income. Such earnings are used by political opponents to cause embarrassment. The effect will be to discourage some people from entering the Commons, because they will have to take an enormous drop in salary. On the other hand, if they can make it up a bit from other earnings, that might determine whether or not they do. We want, not as Members of Parliament but as Ministers people who are capable of earning money and have management ability that they can bring to government. We are discouraging such people because it is becoming virtually impossible to earn anything outside without being put in a difficult and embarrassing position. If all that were repeated in the Lords, it would be very regrettable.

1513. **Alice Brown:** You raise a number of important points but as you say, they apply mainly to the Commons. Would you advocate any changes to the current arrangements in the House of Lords?

1514. **Archibald Hamilton:** There has to be greater openness. As I understand it, the register in the Lords is voluntary at the moment. I personally cannot see any great justification for it being voluntary. The problem with a voluntary register is always that people who behave honourably fill it in and those who behave otherwise do not. That inevitably creates difficulties.

1515. I believe that we are coming to regret more and more the role of the Parliamentary Commissioner. It is making life tricky for us in the Commons. In many ways, the position of the Commissioner is being abused because it provides the opportunity to score points and trip people up. If one appointed a Commissioner for the Lords, there would be an irresistible temptation - particularly as the Lords will probably take a more partisan view as time goes on. I understand that the Lords has some form of privileges committee to deal with any alleged abuse although it has never actually done anything. I would be keen to see the existing arrangements continue and wait until something goes wrong to see if they can handle the situation, before introducing totally new machinery that might attract frivolous and partisan complaints.

1516. **Alice Brown:** So you arguing that Category 3 should be mandatory but you would be concerned if peers were asked to declare any earnings. And you certainly do not want any change that would take us down the road to having a Parliamentary Commissioner.

1517. **Archibald Hamilton:** There is growing concern in the Commons about the role of the Commissioner. We were very cross with Elizabeth Filkin over the Livingstone report but when she gave evidence, I have to admit that she was completely within her rights. She said that because Ken Livingstone had a number of speaking engagements that were repeated year after

year with each agency, that meant he received a regular income and she was technically within her rights to say that Ken Livingstone should have declared them as well. We are getting down to the nitty gritty. It is getting very intrusive and it is debatable whether or not that is helpful.

1518. **Alice Brown:** You raised the interpretation of the rules in both Houses and suggested that there might be some confusion - or at least different practices by different Members. One of our concerns is to achieve clarity and consistency without being over-prescriptive.

1519. **Archibald Hamilton:** There is an argument for treating the Lords differently from the Commons. The abuse that gave rise to Nolan came from the Commons. There is an argument that, to date, their Lordships behave better anyway. I do not think there should be a presumption that peers will behave as badly as some MPs have done historically.

1520. **Alice Brown:** Given the changes since Griffiths and that the Commons and Lords are moving closer together in their composition and in other ways, might there be some pressure to standardise at least some aspects of their codes and regulatory systems?

1521. **Archibald Hamilton:** Yes. One has to stand back. Such pressure - let us face it - always comes from the media. The media feed off problems. They love crawling through the Register of Members' Interests to find out how much Members are earning. It sells newspapers. One has to be careful to look for an objective judgement of openness and integrity - not merely feed the media with stories that sell newspapers. There is a distinct line to be drawn between the two. One should be wary of unnecessarily reacting to pressure from the media, which is working to their own agenda rather than having anything to do with a better functioning second Chamber.

1522. **Alice Brown:** There might be some pressure from new Members. We heard evidence this morning that Members who wanted to register an interest had been advised against doing so, which left them feeling rather awkward. How does one overcome that difficulty?

1523. **Archibald Hamilton:** As I said, I do not go along with the idea of a voluntary register because Members who are honourable will register and those who are less honourable would not. I am keen on a mandatory register. I thought the Commons was in a bit of a muddle when it had a voluntary register and Enoch Powell said, "I am not going to register anything." Nobody had him up for that but it created an absurd anomaly when certain people refused to register. Members should also declare their interests when they speak and all of that. Then one knows where they are coming from. That helps debate and maintains the concept of openness, which is what we want.

1524. **Alice Brown:** I appreciate your concern about the media but what about public perception? Do the public distinguish between the Commons and the Lords? Would they understand that the rules should be different?

1525. **Archibald Hamilton:** I have always taken the view that the House of Lords is held in higher esteem than the House of Commons. I believe that the public appreciate the quality of debates in the Lords and rather like the lack of rough and tumble that goes on in the Commons. I believe the Lords is viewed markedly differently in the public eye and for that reason could be treated differently.

1526. **Alice Brown:** We have some evidence that some of that rough and tumble is transferring to the second Chamber and that there is increased lobbying in the Lords. Could that lead to a need to tighten up its regulatory systems?

1527. **Archibald Hamilton:** I am not against all tightening up but I do not believe one needs to go down the same road as the Commons. I do not accept that there is wide public concern about the way the Lords conducts its affairs as there is about the Commons - with cash for questions and all the other dramas we had in the last parliament.

1528. **Alice Brown:** Thank you very much. That was most helpful.

1529. **William Utting:** I recall your evidence to our last inquiry, when you made some of the same points about unnecessary restrictions on advocacy in the Commons. I hope that you have been reassured by Recommendation 10 of our Sixth Report, for some loosening. We are still awaiting a response.

1530. **Archibald Hamilton:** You are still waiting for something to happen. Absolutely. There we are. Meanwhile, Elizabeth Filkin is still interpreting the old rules.

1531. **William Utting:** Interestingly, the House of Lords rules on advocacy are actually tougher than those of the Commons. If one is a consultant or engaged in a public relations company, one cannot speak on a conflicting interest - let alone vote. If you think the rules are too tough in the Commons at the moment, do you think that is too tough in the Lords?

1532. **Archibald Hamilton:** Yes. I have always taken the view that as long as one knows where somebody is coming from, they often have something to contribute. I believe that a large number of Members with outside interests do not contribute and that we are the poorer for it. I have some difficulty because there is a rule on advocacy. How one divides that, I do not know. I just feel that debates in the Commons are poorer because people who have expertise are not contributing.

1533. **William Utting:** It seems to me possible to maintain a ban on advocacy, yet allow Members with specialist interests to contribute to debates where they are setting out to inform the House about the facts of a situation and use their professional knowledge to do so. Should Members with interests be able to vote as well as speak?

1534. **Archibald Hamilton:** Voting is more difficult. I have given some thought to the matter and I believe there is an argument that Members should not be allowed to vote on issues in which they have an interest. If that happened, it would be clearer in the minds of the public that Members were not abusing their position.

1535. **William Utting:** You have taken the line that openness is the best course, and that depends on complete disclosure of relevant information. Therefore, there could be an additional mandatory element in the present process of registering interests in the Lords. There are steps beyond that which almost inevitably lead to the appointment of a Parliamentary Commissioner. Even if registers are mandatory, they may not be effective unless somebody is charged making sure that information is entered - and one needs some sort of system for investigating allegations of misconduct. I do not see how one can get away from something like the Parliamentary Commissioner, even if one does not replicate the Commons model.

1536. **Archibald Hamilton:** Let us go back further, before Nolan. The Commons had a register of interests running for decades. A Clerk used to make all the adjustments and sent Members a copy of their new entries. If there were any complaints or worries - on occasions, there were - there were dealt with by the committee with responsibility for members' interests. The commissioner is a relatively new invention. Parliamentary life ran for some time and reasonably satisfactorily on that basis. There was a register and it was mandatory, and complaints were dealt with by a committee. As I said, I believe that Members in all parts of the House are not necessarily comfortable with where we have got to with the Commissioner.

1537. **William Utting:** Does not the onus fall on the Commons. It has a committee to which the Commissioner is accountable, which presumably gives her guidance and, if necessary, direction as to the way in which she should conduct her business.

1538. **Archibald Hamilton:** No.

1539. **William Utting:** You have sat on that committee.

1540. **Archibald Hamilton:** Yes, I have. I do not think that committee was in much of a position to say, "We do not think you should investigate this matter." In the case of the John Major report, the committee toned it down. I think it would be in a very difficult position if it wanted to stop something being referred in the first place. The Parliamentary Commissioner has a life of her own. It is difficult to have much control over what she does. All one can do is wait until she produces a report, then determine whether the committee backs it.

1541. **William Utting:** You mentioned the declaration of earnings. I sat on this committee when we first-

1542. **Archibald Hamilton:** Oh, you did. Perhaps you will tell me why you thought that was so important.

1543. **William Utting:** Without being overly defensive, our view was that if Members of Parliament were enjoying additional earnings solely by virtue of being MPs - that is, by providing parliamentary services to third parties - there was public interest in having a rough idea of those earnings. We were following the principle of openness in reaching that conclusion. We did not go further than that ourselves. Our recommendation was very narrow. It is clear that the interpretations you have been talking about have broadened considerably from our original intention. Again, it is probably for parliament to bring the boundaries back towards the centre.

1544. **Archibald Hamilton:** I hope that parliament is capable of doing that but I am not sure that we are not involved in a ratchet that only goes in one direction.

1545. I have a number of consultancies and feel that I have to declare my earnings if there is any question of the people for whom I work using the facilities of the House of Commons. I declare them for no better reason than that they may ask me to hold a dinner in one of the dining rooms in the House. I can only do that as a Member of Parliament, so to protect my position I have to declare my earnings. I do nothing for them in parliamentary terms.

1546. **William Utting:** I appreciate that from small beginnings, big things with unanticipated consequences may flow. We have taken the point from a number of witnesses that for the House of Lords, it is better to begin unambitiously if one is thinking of changing the rules of the game that it currently plays.

1547. Another issue is the usefulness of a code of conduct, which was an innovation by the Commons following our First Report. Do you think that provides a useful structure in respect of behaviour?

1548. **Archibald Hamilton:** I remember spending a lot of time when we implemented Nolan, crawling over the code of conduct and getting the wording right. I think it has been useful. It lays down broad rules that have been helpful. It is given to new Members and to that degree
it is useful.

1549. **William Utting:** Thank you.

1550. **Clifford Boulton:** As another of the aborigines, perhaps I may support Sir William's comment. If one casts one's mind back to the atmosphere in 1995, the committee's recommendation was intended to be helpful in revealing to constituents that Members were not becoming fat cats arising out of their membership of the House. That was the story - that because they were MPs, they were coining it. It was certainly not the intention to stop people well informed of other aspects of public life from being MPs. That was the motivation. You are right to say that was done because of the feeling that everything was too in-house and darkly suspect - being looked at by an anonymous registrar and the responsibility of a committee. We square the circle and said that the matter should be dealt with by an Officer of the House, who should have the right to publish his or her own opinions rather than just feed information privately to a committee. That was done to provide public reassurance that matters were being properly examined by someone who had the right to do that. That was our intention.

1551. **Archibald Hamilton:** I think we all accept that the problem now is that it has expanded, with the declaration of earnings and the role of the Commissioner. It is difficult to see how one could put that genie back in the bottle.

1552. **Lord Shore:** I was interested to hear what you had to say about the John Major and Ken Livingstone cases. I had conversations with intelligent members of the public about those issues and they expressed surprise at the interest that parliament had in having those activities disclosed. The point was made that parliament was surely about establishing rules of conduct in relation to external financial interests - and that there should not be an improper exercise of influence in parliament by MPs receiving money from external forces. If that is the line of thinking, is it not possible to draw a distinction between declarations of interest and financial connections that could be related to activities in parliament? As opposed to declarations of income generally that, on the face of it, have nothing to do with exercising influence in parliament.

1553. **Archibald Hamilton:** I would like to think that one could draw that distinction. The wording we are operating on now is about using one's position as a Member of Parliament, which is extremely broad. One could argue that nobody would have appointed me to a board had I not been a Member of Parliament. I do not know to what degree that has helped or hindered me. Clearly my previous experience before I entered the House is also useful in sitting on the boards of companies. When the wording relates to one's position as a Member of Parliament, it becomes a catch-all. I wholly welcome the restriction on Members putting down Questions. If one is restricting activity, in theory no Member should have anything to declare anyway.

1554. In the old days, before Nolan reported, consultants could organise meetings between their employees and Ministers. That was stopped by Nolan and by our committee. One has slightly to argue now what is the use of an MP to a consultant lobbyist because it has been radically reduced. The opportunities to be paid to do things uniquely as an MP are now very restricted.

1555. **Lord Shore:** Clearly one cannot be of use to anyone if one is simply delivering a lecture or a series of lecture.

1556. **Archibald Hamilton:** Exactly. One draws on one's experience as a Member of Parliament to make those lectures but fundamentally they are paid by all the
punters who come to listen.

1557. **Lord Shore:** Thank you.

1558. **Ann Abraham:** It has been extremely interesting to hear about your views and experiences on the way that the changes brought about by Nolan have impacted on the House, the behaviour of Members and parliamentary business. It was also to hear from original members of the committee what was intended and that somehow diversion has happened. The other aspect is the mechanisms that were proposed to restore public confidence. If the mechanisms in place have not done that, would mechanisms should be used? I can see that there have been unintended consequences in terms of parliamentary business and the way that MPs but if we still need codes of conduct, Parliamentary Commissioners and a panoply of mechanisms to address

public confidence in parliamentarians - we have heard from a number of witnesses about its decline - what sort of mechanisms should this committee be considering?

1559. **Archibald Hamilton:** My view is that they should be extremely gradualist. One of the advantages of your committee is that it continues to review. It can always return to anything that it has done previously and say, "We did not do enough of that and we should do more." We are impoverishing the House of Commons. A serious number of people are for a number of reasons - pay and the exposure to which they are subject being among them - not entering parliament. We do not need them as MPs because that job can be done by anybody but we do need them as Ministers. The pool of people we have to choose from is getting fairly shallow. That is extremely marked with the present Government. I am not making a partisan point. The pressures on and the need for professionalism in Ministers is growing by the day. The workload seems to increase all the time. At the same time, the role of Members of Parliament is becoming minimalised. Our constitution means that most Ministers do come from the House of Commons, so we have to attract people.

1560. We started the problem. We had the difficulty with sleaze and therefore Nolan was a very natural progression, to handle that difficulty. But the result is that people are rather discouraged from entering the House. You are now looking at the House of Lords, which has a much cleaner reputation. It is most important that the two are not scooped together and that we do not muddy the Lords with the problems of the Commons. I would like the committee to take a very gradualist approach that builds on the institutions that are already there for dealing with problems.

1561. It is significant that the Lords has a Committee for Privileges that has never met. Our committee on Members' interests met constantly, with dramas going back for decades and people being punished long before Nolan met. We are talking about a totally different scene. I am very keen that you should not put their Lordships in the same strait-jacket - which we put ourselves in, because I am not blaming Nolan for that. If things start to go wrong subsequently and there is abuse, then your committee can return to the fray and tighten the screws - which you would have to do. You must be careful not to try curing rather drastically an ailment that does not exist.

1562. **Ann Abraham:** I have some sympathy with your view but I am not sure that you have answered my question. I was referring to the decline of public confidence that extends to the Lords, not as a result of any scandal that initiated this inquiry, that witnesses have mentioned. If this committee does not produce a recommendation that what is good for the Commons is good for the Lords, there may be concerns that nothing is being done. Codes of conduct are double edged. They set standards of behaviour for those to whom they apply but they also send signals to the public at large about what they can expect, and the absence of more clearly defined codes have been identified by the inquiry. I am asking you to consider the issue from outside the House and to think about what this committee could say to the public that would make them more confident.

1563. **Archibald Hamilton:** The problem is the premise from which we start. You have said that evidence has been given to the committee suggesting a decline in public confidence in the House of Lords. I am not sure that I recognise that. One could say that there is a decline in public confidence in parliament generally so some degree of what has been going on in the Commons slops over into the Lords but I feel that the House of Lords is held in much greater respect by the public than the Commons. It all comes back to recording interests and all the rest of it.

1564. I voted adamantly against the proceedings of the House of Lords being broadcast on radio. I said that would send all the wrong signals to people outside, who would think the whole thing is a bear house. They did. Then it was suggested that if we were shown on television, Members would behave much better. In fact, they went on to behave as badly as they ever did on television as well. That does not happen in the Lords. They do not behave like that. That is one reason for the public holding a totally different view of the Lords. The House of Commons has always been a bear house and it will continue to be a bear house. The less the public see of it the better but that is another of those ratchets that cannot be turned back.

1565. My view is that public confidence in the Lords has not declined.

1566. If you start from a different premise, you will have to hit the Lords with everything you have by clamping them down for all the appalling things that have happened in the Commons, which would be a great mistake. What evidence is there that there is a decline in public confidence in the House of Lords? If you are totally persuaded, you must obviously act much more harshly than you otherwise would. I think that the Lords has worked quite well so far. For heaven's sake do not start mending things that are not broken. If things start to go wrong, your committee can reconvene and introduce much tougher measures. But at the moment, it seems to be working.

1567. **Ann Abraham:** Thank you. I think we have probably taken that as far as we can.

1568. **Lord Neill:** I think we have got the message. Thank you very much for coming. It has been very enjoyable so far.

1569. **Archibald Hamilton:** Thank you very much.

1570. **Lord Neill:** That is the end of today's session. We will meet again on Friday 7 Jul

FRIDAY 30 JUNE 2000

OPENING STATEMENTS

Opening statement by Baroness Turner of Camden

I'd like to thank the Committee for seeing me. I have already submitted a short statement and I would be happy to answer questions on it. You have been kind enough to give me the opportunity of making a short opening statement.

I would therefore like to take advantage of this to make a few additional points.

There is a reference in your document Issues and Questions to public perception. In other words, everything must not only be right, but have the appearance of being right.

I have been in public life, one way or another, for a very long time. Before I came to the House of Lords, I was a senior trade union official. I have been a member of a number of public bodies - the Occupational Pensions Board, the Equal Opportunities Commission, the Central Arbitration Committee and others. I was at one time a Governor of Ruskin College. I have worked with MPs, although I have never been a Member of the Commons. I have been very active in the House of Lords. In my experience the people I have worked with have not been motivated by self-interest. Their motivation has mainly been a desire to improve matters for other people. We may differ about ways in which this could or should be done, but that is why most of them are in public life. Many would have done better materially had they concentrated on their professional careers.

It therefore concerns me that the public conception - at least as expressed via the media - is of people who are simply there to get something out of it for themselves.

I believe this to be undeserved. In my youth, idealistic young people often joined the political party nearest to their views and participated in the political process. This does not now seem to happen.

Cynicism and apathy seem to be rife.

I think this has dangers for democracy

I do not know what the answer is.

We are unfortunately dependent upon media coverage, which is mainly concerned with scandal and demonising individuals.

This is extremely destructive.

I recall that some years ago, we agreed in the House of Lords to participate in a television programme intended to be about the work of the House. It turned out to be quite a malicious representation. Of course we protested, but to little avail. The programme was seen by millions of people.

Of course individuals who act badly should have to answer for their conduct. But all too frequently people are destroyed before they have any chance to answer charges (if any) against them.

I hope that if it is intended to introduce sanctions of any sort in the Lords (more difficult, probably, than in the Commons) it will be on the basis that the people identified - perhaps as a result of media stories - do have some rights and should not be treated rather worse than if they were ordinary citizens.

But I do have faith in the Committee in that regard. Thank you very much.

Opening statement by the Rt Hon Sir Archibald Hamilton MP

The main reason why I requested the opportunity to give evidence to your Committee was that I considered that you might be in danger of repeating the mistakes made in your report on the Commons when you come to report on standards of conduct in the House of Lords.

It was understandable that in the aftermath of 'cash for questions' that the Nolan Committee should have gone to great lengths to prevent paid advocacy in the House of Commons. Indeed, the Select Committee on standards in public life, of which I was a member, went further than Nolan to ensure that all paid advocacy was banned.

Quite probably the Commons had no alternative but to do this. Having said that, it was now quite clear that we have prevented people with expertise in a number of areas being able to speak in the Chamber and initiate the debates because they are paid by organisations outside.

I believe that the Commons is poorer for this and feel that the House of Lords would be even more impoverished if similar restrictions were introduced there. I say that because I feel that there is greater wealth of experience in the upper chamber than in the Commons.

Another mistake made by Nolan was to insist that Members of Parliament declared their earnings. As far as I can gather, the thinking behind this was that the more people earn outside, the more likely they were to abuse their position as Members of Parliament by advocating on behalf of people by whom they were paid. I can find no evidence to support this and find, to the contrary, that some of our highest earners in the House are those least likely to use their position to promote the interest of the organisation by whom they are paid.

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Friday 7 July 2000
Members present:
Lord Neill of Bladen QC (Chairman)

Sir Clifford Boulton GCB	Rt Hon John MacGregor OBE MP
Lord Goodhart QC	Rt Hon Lord Shore of Stepney
Frances Heaton	Sir William Utting CB

Witnesses:

Lord Tugendhat
Rt Hon Lord Wakeham
Elizabeth Filkin, Parliamentary Commissioner for Standards
Lord Newby OBE
Lord Chadlington of Dean

1571. **Lord Neill:** Good morning everyone, and welcome to this public hearing in our study of the rules governing conduct in the House of Lords. This morning we have a number of senior parliamentary figures to give evidence, bringing together a great deal of experience and expertise relating to both Houses and many other areas of public health.

Our first witness will be Lord Tugendhat, who was a Conservative MP before becoming a member of the European Commission in 1977 and subsequently Vice-President of the Commission during the 1980s.

Following him will be the Rt Hon Lord Wakeham, who had wide experience as a Conservative Cabinet Minister and was Chairman of the Royal Commission on reform of the House of Lords, which reported in January this year.

Third will be Ms Elizabeth Filkin, who became Parliamentary Commissioner for Standards in 1999.
Then we will hear from Lord Newby, a Liberal Democrat spokesman on Treasury and trade and industry matters. The last witness today will be Lord Chadlington of Dean, a Conservative life peer who has served on a wide range of public bodies as well as holding senior positions with companies concerned with, among other things, public affairs and lobbying.

1572. You are very welcome, Lord Tugendhat. Thank you for coming to our hearing. We ask two members of the Committee to take the lead in putting questions. In your case, they will be Sir William Utting and Sir Clifford Boulton. Is there anything you would like to say for the record before we begin?

LORD TUGENDHAT

1573. **Lord Tugendhat:** Thank you. I circulated a three-sentence statement and have nothing to add.

1574. **Lord Neill:** Would you be kind enough to read it?

1575. **Lord Tugendhat:** Certainly. It reads:

> "The purpose of my recommendation is twofold. One is to ensure that, as far as possible, the House of Lords can call upon the experience and expertise of all its Members. The other is to promote public trust and confidence in its proceedings."

1576. **Lord Neill:** Thank you.

1577. **William Utting:** I would like to take you through a few of the points that arise from your submission, which is brief, clear and extremely helpful. You begin by agreeing with Lord Richard that there should be the same standards of conduct in both Houses but place that in the context of certain significant differences between them. Could you describe the crucial differences that would justify separate structures for the two Houses.

1578. **Lord Tugendhat:** It seems to me that the Lords is part-time and meant to be so. By contrast, Members of the House of Commons are virtually full-time. Peers get only attendance allowances whereas MPs are paid on the basis that being an MP is their main job. Also, peers have no constituents. Therefore, they have a responsibility to the nation as a whole but not to a defined group of people to whom they owe their position. The whole point of Members of the House of Lords is the personal expertise and authority that they bring. Many of them - I think this is desirable - are current practitioners in whatever profession or occupation from which they gain that experience.

1579. I would like us to ensure that all Members of the House of Lords can contribute on the basis of an agreed set of rules. MPs are elected on the basis of party affiliation. Many peers have a party affiliation but they are or should be primarily appointed on the basis of individual attributes.

1580. **William Utting:** What are the points at which you think there might be some convergence between the current structure in the Commons and that which ought to apply to the Lords? If one takes the registers, Categories 1 and 2 in the Lords are mandatory whereas Category 3 is entirely voluntary - yet the entire register in the Commons is mandatory. Do you think that what is now Category 3 in the Lords should become mandatory?

1581. **Lord Tugendhat:** I would like the House of Lords to have a lighter regime, reflecting the differences between the two Houses, but a mandatory one. I do not think it is satisfactory for some people to register their interests while others do not. The essential thing is that, as far as possible, everybody should be treated equally.

1582. **William Utting:** At the moment, it seems that one third of the membership of the Lords does not make an entry in Category 3.

1583. **Lord Tugendhat:** That gives rise to certain misunderstandings. Everybody understands that if one is in business, one has an interest because one is involved in a particular company. Some people do not always fully appreciate that such an interest is no greater and no less than if one happened to be an academic working at a university, a landowner or all kinds of other things.

1584. **William Utting:** Such as the trustee of a charity.

1585. **Lord Tugendhat:** Exactly.

1586. **William Utting:** So you think there should be a mandatory register but one that does not necessarily go into the sub-structures and detail that the Commons register does.

1587. **Lord Tugendhat:** That is my general view.

1588. **William Utting:** Categories 1 and 2 seem quite oppressive in the way that they operate. More oppressive than the Commons register. For example, if one is in either category - as you are - one is prevented from speaking on matters that led one to be placed on the register. It seems a fairly oppressive requirement in a legislature if one cannot speak, let alone vote. That is a fairly extreme prohibition.

1589. **Lord Tugendhat:** If people are appointed to the House of Lords, the purpose must surely be for them to contribute on subjects about which they know most. Provided they have declared their interests, it seems to me that there should be no inhibition on them from speaking. It is up to their audience within the House and outside it to judge whether they are speaking objectively and responsibly or are paddling a particular canoe. But to say that somebody should not speak on banking because they are, as in my case, chairman of a bank; or that they should not speak on the administration of the judicial system because they are solicitors would negate the purpose of the House of Lords.

1590. **William Utting:** It seems curious that a system that depends on personal honour should place such a barrier in the way of exercising it.

1591. **Lord Tugendhat:** I am sorry to say that personal honour is not a very satisfactory way of dealing with the matter. I do not mean to say that some people have higher standards than others, although self-evidently that must be the case in any gathering of human beings. But some people will genuinely interpret matters in as different fashion. I would like to see as clear

a set of guidelines or rules, as close as possible to misunderstanding, so that everybody realises what it is that they can and cannot do - with the object of enabling as many Members as possible to speak on the subjects they know most about.

1592. **William Utting:** Is another point of convergence with the House of Commons a code of conduct? You are indicating that a code of conduct would be desirable in the Lords.

1593. **Lord Tugendhat:** Yes. I hesitate to say anything about the House of Commons because I am not up to date but I think that a code of conduct is necessary, by no means only in relation to what it is that people speak about or do not speak about. In the contemporary world, one needs a code of conduct to cover a variety of other practical matters.

1594. For instance one needs guidance - which most companies give, in my experience - on what kind of hospitality and entertainment it is appropriate to accept if one is involved in the subject concerned. My experience of most forms of employment is that one needs guidance on what expenses it is appropriate to claim. Honest people can take different views if they do not have such guidance.

1595. I noticed in the newspapers this week that judges are being given guidance about what it is appropriate to use their personal computers for. It might be helpful if there were guidance about appropriate use of the facilities of the Houses of Parliament, such as stationery. It is difficult for individuals to make judgements on their own. I emphasise that honest, well-intentioned people can come to different views. It would be better if everybody understood the system and complied.

1596. **William Utting:** So one would draw up a simple and straightforward code of conduct that dealt with general principles, backed by detailed guidance notes on the interpretation and application of those principles.

1597. **Lord Tugendhat:** Yes. It is difficult not to get involved with detail but in the companies with which I am connected, people are clear what expenses are legitimate to claim. Once people are clear, the system works without hassle or problem. At the moment, such matters are left to individual discretion and judgement - so the present system bears more harshly on some than others.

1598. **William Utting:** We have been warned, quite rightly, against over-prescription and too much detail, because that ends up being self-defeating. The art is to find the proper point of balance between over-prescription and lack of guidance.

1599. **Lord Tugendhat:** Yes.

1600. **William Utting:** What are your views about the disclosure of earnings. I read your comments as wanting to restrict disclosure to earnings acquired by providing parliamentary services.

1601. **Lord Tugendhat:** Yes, absolutely. Although my earnings as a director of companies are disclosed, so I have no personal axe to grind, it would be undesirable to expose earnings. That would bear very harshly on many people and encourage prurience. I draw a clear distinction, however, between earnings derived from the pursuit of one's normal occupation and those derived from paid advocacy on behalf of agencies or interests. If somebody is a consultant or agent of an organisation because they are a Member of the House of Lords or House of Commons, not only what is earned but the rules and conventions governing those earnings - the expenses claimed and so on - should be published. I do not go as far as Lord Owen, who said that he would ban such activities altogether but I would wish to raise considerable barriers and to see the practice diminish as much as possible.

1602. **Clifford Boulton:** You gave Sir William a rather general answer, saying that a person's employment should not restrict their ability to contribute to proceedings. If we relate that specifically to Members who have consultancies and ought to declare in bands their income therefrom, would you extend freedom to participate to those members or keep them, as they currently are, out of voting and speaking about issues that affect their clients?

1603. **Lord Tugendhat:** It is a matter of judgement. I would not restrict people from speaking or voting. If they have been made Members of the House, they ought not to be so restricted but other Members and those outside the House should, as far as possible, know where they are coming from and any personal stake, if any, they have in the matter. If I speak about banking, that is not because I am paid to do so but because banking is how I earn my living. It arises out of the knowledge I gain. Likewise with a barrister, solicitor, don or farmer. But if somebody is paid by XYZ Consultants representing a particular interest, that is quite different. Far more detail should be provided but Members should still be permitted to speak and vote, having declared their interest.

1604. **Clifford Boulton:** It might be thought that they have a specific interest in doing well for their client, to keep the business.

1605. **Lord Tugendhat:** Yes. However, if there are proper rules and Members have complied with the rules and declared, the

House and commentators can judge for themselves.

1606. **Clifford Boulton:** In the Commons, the text of the contract that a Member has with such an agency has to be tabled, with a view to checking that it does not stray into the realms of literal paid advocacy. Would you favour contractual arrangements for parliamentary services being deposited in the Lords?

1607. **Lord Tugendhat:** Yes. That is the sort of openness that helps to dissipate misunderstanding on the part of the peer and on the part of those judging what he or she is doing.

1608. **Clifford Boulton:** Lord Griffiths told us that had his Sub-Committee recommended in 1995 that Category 3 should be compulsory, the House would have turned that down. Now that the composition of the Lords is different and times have moved on and were we minded to recommend that Category 3 should be compulsory, could you give some examples of the lighter touch you mentioned, to produce a useful register that was not unduly intrusive?

1609. **Lord Tugendhat:** I find it difficult to make comparisons with the House of Commons because I do not feel up to speed with it. I used the words 'lighter regime' because Sir William drew attention to practice in the House of Commons. I have in mind that Members of the House of Lords should list the sources of their earning. If the source is a specifically named institution, such as Abbey National in my case, or for others, say, the University of Cambridge, holdings of land or a partnership in a firm of solicitors, the name of the organisation should be given. Members should not be required to list the amount or to provide additional information.

1610. **Clifford Boulton:** In the Commons, Members are required to declare shareholdings of a nominal value of more than £25,000. Would that be intrusive for a peer?

1611. **Lord Tugendhat:** I would not go that far in the House of Lords, reflecting the differences between the two Houses. That is, the House of Commons is a paid, principal occupation and membership of the House of Lords obviously is not. Also, the purposes of the House of Lords are not quite the same as those of the Commons. The legislative impact of the House of Lords is less than that of the Commons.

1612. **Clifford Boulton:** I was trying to think of examples where a lighter touch would apply. That would be one of them.

1613. **Lord Tugendhat:** That would be one of them.

1614. **Clifford Boulton:** Do you have any other examples of the sort of thing that peers would find intrusive?

1615. **Lord Tugendhat:** If one earns one's living as a business man or barrister, one no doubt engages in a certain amount of travel. I travel frequently to places such as Japan, Hong Kong and the Middle East. I do so not for pleasure but entirely for business. It would seem unreasonable to require me to list the travel that I undertake as some sort of perk of office. It is not and it would be wrong to make it appear so.

1616. **Clifford Boulton:** Have you come across any cases in other areas where people are expected to declare their interests to participate in public life? Could we reassure the reluctant Lords that such a system operates widely and does not inhibit people volunteering for or taking part in public life?

1617. **Lord Tugendhat:** The two Houses of Parliament are unique. If one is a member of a board of directors, one has to declare one's interests - as some of your members will know from personal experience. I am Chancellor of the University of Bath. Each year, I declare my various interests for the University Council. The Ditchley Foundation, which is far removed from commercial life, still requires one to list one's interests. I do not think that anyone is deterred from joining the Council of the University of Bath or boards of directors because of the need to make a declaration. My experience of boards of directors is that one not only lists interests but if something comes up on the agenda that could lead to a conflict, the normal form would be to tell the chairman or company secretary. Then the chairman would decide whether or not one should attend or speak to the item of business in question. I have never found such arrangements to cause difficulty because they are open and everybody knows what they are supposed to do.

1618. **Clifford Boulton:** You do not declare your Chancellorship of the University of Bath in the Register but it is something you would declare if you took part in a debate about universities.

1619. **Lord Tugendhat:** Yes. Perhaps this is an example of misunderstanding but I have interpreted the interests that I should declare as being those from which I derive earnings. I do not derive any earnings from being Chancellor of the University of Bath. But were I to speak in a debate on education, I would regard it as mandatory to declare an interest.

1620. **Clifford Boulton:** What about taking part in votes, where you have not had the opportunity to declare an interest. You might vote on a matter relating to higher education but the House would not have the opportunity of knowing your interest.

1621. **Lord Tugendhat:** No. This is the first time I have thought about the point in relation to a non-pecuniary interest. If the rules were sufficiently clear, requiring me to declare the University of Bath as well as Abbey National, I would be free to vote as I choose. Because my interests would be registered, it would be clear where I was coming from. Everything would be open. I would be exercising my right as a Member of the House of Lords and others would know what might have influenced my vote.

1622. **Clifford Boulton:** So it is a case of a few more rules leading to consistency, which you think might be lacking.

1623. **Lord Tugendhat:** Yes. You have drawn attention to a misunderstanding or dichotomy. I would have no difficulty listing my non-pecuniary interests as well.

1624. **Lord Shore:** My colleagues have already noted the relative severity of the Lords rules for Members who come under Categories 1 and 2, as to things they must not do in the House. The wording is

> "shall not speak, vote, lobby or otherwise take advantage of their position."

You have made clear your view on voting and speaking but other activities have caused most concern - certainly in the Commons. I refer to the tabling of amendments to Bills in an expert context, the pursuit of particular matters with Questions and taking deputations to see Ministers. Am I right in assuming that you would wish to retain the bar on those activities and confine the right to speak to taking part in general debates, such as Second Readings?

1625. **Lord Tugendhat:** I find this a difficult area. A recent Bill on the administration of justice clearly bore directly on the professional interests of barristers and solicitors in the House. On the other hand, they know a great deal more about the way in which courts work than somebody like myself. I would not have wished to see them inhibited from moving amendments or anything else. My guiding light is dealing with something that is part of one's normal occupation as opposed to operating as paid agent for a specific purpose. I do not like the idea of a Member working for XYZ PR Consultants on behalf of the Law Society moving amendments but I would feel unhappy about inhibiting peers who are members of the Law Society from doing so. I think that would restrict the expertise of the House. A paid agent has no expertise. He is briefed. Somebody who is a professional in a field has independent knowledge that is not derived from a consultancy fee.

1626. **Lord Shore:** But a professional of the kind you describe would not be caught by Categories 1 or 2.

1627. **Lord Tugendhat:** I am not clear enough on the distinction to offer a clear answer.

1628. **John MacGregor:** I agree entirely with your comment about the importance of having a wide area of expertise able to participate fully in the House. The same applies to the House of Commons. I find the rules on advocacy in the Lords stricter and less easy to understand than those in the Commons. It could be thought that a benefit such as being an employee of a company and being paid by it is a source of influence and ought to be taken into account when deciding whether to speak or vote in the House. Have you ever felt that you should not speak or vote on banking or financial matters or do you draw a clear distinction and feel that is all right?

1629. **Lord Tugendhat:** I find it difficult to provide a clear answer. I did not speak or vote to the extent that I might have done on the Financial Services Bill that has just gone through the Lords. That was because I felt there was a problem in distinguishing between me as an individual and me as chairman of Abbey National. I felt that if I had spoken and voted on certain matters, it would have been presumed that was Abbey National's position, as distinct from my own. The extent to which I was influenced in my self-denying ordinance on that Bill arose primarily from a fear of compromising the institution of which I am chairman. I would approach matters on an issue-by-issue basis.

1630. **John MacGregor:** That was unfortunate in a way, because it meant that the House was deprived of your knowledge in relation to that important area. In the House of Commons, if one is a non-executive director of a financial organisation, provided that was declared and fully known, one could both speak and vote.

1631. **Lord Tugendhat:** I did not regard myself as being prevented from speaking or voting. I was just concerned that there should not be any misunderstanding outside as to me as an individual and me as chairman of Abbey National. In that respect, there is a distinction between a chairman and a non-executive director. I am a non-executive director of Rio Tinto. If we were debating mining, I would declare that interest but I do not think anyone would suppose that any view, decision or action of mine reflected the view of Rio Tinto. In the case of Abbey National, because I was chairman I thought that there was greater scope for misunderstanding. I did not feel that I was prevented by the House of Lords from speaking. My sensitivity towards the company was my guiding light.

1632. **John MacGregor:** As to paid advocacy, we have been told by Lord Newby that he has for a number of years advised the Prince's Trust and is now acting as chairman of a major football initiative that involves development activities for unemployed young people. No aspect of either of them relates, he says, to parliamentary lobbying yet he believes that he is debarred under the rules from any debate on youth unemployment. If that is a correct interpretation of the rules, it suggests that they have gone too far.

1633. **Lord Tugendhat:** Absolutely. If that is the correct interpretation, it seems to be reductio ad absurdum.

1634. **Lord Goodhart:** If one allows Members with paid consultancies on behalf of a particular business or business sector to initiate debates, speak and table amendments, businesses might then feel that they need a hired gun? Might not that practice become widespread, with a large number of Members of the House of Lords ending up as paid consultants?

1635. **Lord Tugendhat:** I deplore the idea of paid consultants. I deplore the practice of hired guns in either House. I would wish to see through the rules I mentioned a great deal of deterrence to that activity. Personally, I would not have any difficulty with prevention but my general view is that rather than preventing people from doing things, there should be rules that ensure that their motives, intentions and interests are exposed to the maximum degree of light. In many human affairs, light is a good disciplinarian.

1636. **Lord Neill:** Could you address the argument, "If it ain't broke, don't fix it"? It is felt quite strongly in some quarters in the House of Lords that there should not be an inquiry of this sort at all. Leaving that aside, the view has been expressed that there are no scandals, nothing has gone wrong, there is no public concern and people are not writing to newspapers that sleaze is evident in the House of Lords. The argument is adduced that there is no need to alter a system that is working perfectly well.

1637. **Lord Tugendhat:** Institutions like cars and washing machines can become a little out of date. One has to move with the times. One has to ensure that one is operating according to the standards that are prevalent within society at a given time. I think of the old maxims that prevention is better than a cure, and that things must not only be right but be seen to be right. They apply very much in this area. It would appear to me odd if standards of disclosure in the legislature of our country were based on significantly different principles than those required in a great many other walks of life - such as business and university councils.

1638. The fact that something has worked very well in one epoch does not necessarily mean that it is ideally suited to another epoch. I am not in favour of change for the sake of change. I am not in favour of always being in keeping with the latest nostrum or theory. But one has to recognise that requirements and expectations alter and one needs constantly to consider rules and conventions in that light.

1639. **Lord Neill:** Thank you very much. We will have to stop there, even if there are other questions still pending. Thank you very much for attending. It has been a very interesting and helpful exchange.

1640. **Lord Tugendhat:** Thank you.

1641. **Lord Neill:** Thank you, Lord Wakeham, for attending. You come with special expertise, having been studying the House of Lords for a number of months and produced a report - which is on a different aspect. I want to ask you a question about it in a minute. We have a short opening statement from you, which we will include in the record at the beginning of your evidence.

You heard my question to the last witness. Do you share his view that one should not simply stand back and make no recommendations because nothing has gone wrong in the House of Lords since the Griffiths Report was produced and accepted?

RT HON LORD WAKEHAM

1642. **Rt Hon Lord Wakeham:** I do not think that one can go on for ever with one system without having a sensible review, to see reasonably independently whether or not it has fulfilled its expectations. My impression is that the Griffiths Report has not worked too badly. After all, it has not been going that long. I would tend to be a bit slow about wanting to change things very much at this time. In principle, one cannot go on for every saying, "If it ain't broke, don't fix it" but it is a question of timing.

1643. **Lord Neill:** Under Part 3 of the Lords register of interest, you have quite a long list of directorships of one sort or another. There are a couple of schools there and Alexandra Rose Day, which is a famous charity. My impression is that quite a number of peers, even those who have registered, who would not register a charitable interest of that kind. Is there any problem with the present register, in terms of incompatibility? So little guidance is given as to what should be included that one can get a hugely different range of response.

1644. **Lord Wakeham:** I think that overwhelmingly the most important thing is the declaration of interest at the time one is speaking, participating and so on. The idea that because one's interests are in a register that most people have not bothered to look at one can avoid making a declaration of interests is a very dangerous nostrum. To some extent, the register is a slightly worrying factor. I send off every year to the Register my up-to-date CV and say, "You can pick and choose what you like, so far as I am concerned. I've got no secrets. If you want to put it in the register, do so." I just send the lot in and put in what they want. It does not worry me in the slightest.

1645. The thing that I am passionately concerned about is that debate and proceedings in the House do not proceed under false premises. I want to know where people are coming from when they are making remarks. That is overwhelmingly the most important thing. It will be increasingly important if we get to the sort of House we have advocated, which is basically a part-time House for the bulk of peers - who will be conducting themselves most of the time in other worlds. When they come, they come. The idea that they should rake up all sorts of interests for a register that have no part in the proceedings of the House would be a deterrent to getting the right people.

1646. My view is that the House could compile a register from public sources. If anybody wants to add to it, fine. One public source is any Member who speaks in a debate, because that is on the record. That is of value for other people to look at if they want. The most important thing is a declaration of interest at the time of debate.

1647. **Lord Neill:** There are two audiences. One is the peers present when one makes a speech. Take a press matter. You would immediately refer to your chairmanship of the Press Complaints Commission. What about the public interest, in being aware of what interests peers have? Part 3 of the Register has language such as requiring a peer to register anything that he considers may affect the public perception of the way in which he discharges his duties. There seems some element there of the public.

1648. **Lord Wakeham:** I do not pretend to be the greatest expert, any more than Christopher Tugendhat was, on the existing register. My view is that if the Register is compiled by the House authorities from publicly quoted information, my chairmanship of the Press Complaints Commission and my directorships would be recorded automatically. They ought to be seen. There is no secret about them. It does not matter whether one declares them or not.

1649. **Lord Neill:** You are the only witness that I can recall who has advanced that point of view. I am not saying that you are wrong. You may be right. It may be for the authorities, with all the benefit of computers and the Internet, to compile the Register.

1650. **Lord Wakeham:** People could be sent a draft and asked if they want to add to it. In my experience of both Houses, which goes back a fair number of years, very few people do not want to declare an interests if they have them. It makes the House think that one knows something about the subject that one is talking about. I have heard more people declaring interests that were fairly phoney to make them sound authoritative when they were not than the other way around.

1651. I find it extremely hard to think of anybody ever having been deceived, or the House being deceived subsequently, by a Member not declaring an interest and Government policy or legislation has changed. In my experience of the Whips Office, we knew the people who sailed a bit too close to the wind. We knew the people
who were particularly friendly with people. They were discounted for that reason. It is a close community.
I am very keen on a declaration of interests. That is the honourable and proper thing to do. But as to lists of minute detail, I do not think that is anything like the problem that some people think.

1652. **Lord Neill:** Suppose it is a big debate and not everybody can speak and a Member's interest is undeclared. Is that a problem? Those who have spoken will have declared their interests. What about if the others vote?

1653. **Lord Wakeham:** I have no difficulty about voting on public business. If I happen to be a garage proprietor and road tax was going to increase, I would not have any difficulty. I would feel somewhat inhibited about playing a part in a private Bill or something of that sort if I had an interest that nobody knew. I think most Members would feel some inhibition about playing that part. I do not believe that is a great problem, certainly not in the House of Lords. We do not want a lot of rules to cover somebody who might have a private interest in dogs when the House is debating dog licences.

1654. **Lord Neill:** In your evidence to Lord Griffiths five years ago, one of your arguments against a compulsory register was that it would

> "to some degree inevitably lessen the sense of honour."

Could you elaborate? Why do you think that would be the case?

1655. **Lord Wakeham:** Most of us think very carefully, as to whether we ought to declare an interest in any way. If it is all registered, one would not necessarily think so carefully about it. In any case, if one has failed to say anything during the course of debate and people think one should have done, one could fall back on saying "It is in the Register." I do not believe that is good way of conducting debates.

1656. **Lord Neill:** I want to ask you about the House of Lords that you foresee. I do not want to get into the detail of the report but you envisage a House composed primarily or largely composed in such a way that it is different from the House of Commons. You do not want 100 per cent professional politicians but a mix. Do you think that any change in the composition of the House that might arise from your recommendations should have an impact on the problem we are examining? Would it make any difference if your views were accepted in full?

1657. **Lord Wakeham:** One could have one form of declaration of interests in the House of Commons, where overwhelmingly full-time professional politicians are operating. One would have to consider carefully whether the same form of declaration would be appropriate for a House in which the bulk of Members are part-time and do not attend often - only to contribute to a subject that they know about. We will find it very difficult to get all the right sort of people if membership of the Lords is seen to be too onerous.

1658. I would sooner see three Vice-Chancellors as members of the reformed House of Lords who continue to be Vice-Chancellors than one Vice-Chancellor who has to give up that office to serve in the House of Lords. You must have a different regime for people who are not going to attend that often. Provided it is absolutely clear that if they do take part, where they come from has to be known.

1659. **Lord Neill:** I invite Lord Goodhart to take up the questioning.

1660. **Lord Goodhart:** If there is a compulsory rule about declarations of interest, why should there not be compulsory registration of interests?

1661. **Lord Wakeham:** I think that registration implies a lot of detail that would not be relevant to one's role in the House of Lords.

1662. **Lord Goodhart:** Does not that depend on the rules? If one said that a peer had to disclose sources of income as a barrister or farmer but not the names of one's clients if one was a professional lawyer, would not that be reasonable?

1663. **Lord Wakeham:** I do not think that is very reasonable or relevant. I am not particularly interested in what a barrister earns but who he acts for might be relevant. If it is, he ought to declare it. As to his income, he may be overpaid. I do not think that matters very much. The most important thing is to know where he is coming from in debate.

1664. Observations have been made over many years about paid consultancies. The truth is that overwhelmingly the people who are 'swindled' over paid consultancies are the companies that are foolish enough to pay these people and think they are effective. There are simply not effective. In my experience, other parliamentarians see them coming a mile off. They are not very good at getting anything for their clients. It will die and become more realistic.

1665. **Lord Goodhart:** If one is acting as a paid consultant, that is already contrary to the rules of the House.

1666. **Lord Wakeham:** Indeed. That was not so for most of the time that I spent in the House of Commons. If that is the rule, it is the rule. I have never accepted a job as a paid consultant. I would not feel that it was honourable to take the money for what one can do.

1667. **Lord Goodhart:** Do you think that the present rule about not being allowed to speak or vote if one is a paid consultant should be retained?

1668. **Lord Wakeham:** I do not have a very strong view about it. I think it is rather a sorry state. If we keep that rule, perhaps such people would wither on the vine. We talked about lobbying in our report. We were not concerned about financial lobbying. Our view was that Members of the House of Lords take a much more detailed interest in what is in the legislation than a great many people in the House of Commons. If one is a company or an institution with something to get across and send a letter to every Member of the House of Lords, there is a fair chance that one of them will read the letter, seek more information, be persuaded by the arguments and lobby for that point of view - not particularly or rarely for financial gain but because he has been persuaded by the argument.

1669. Anybody has any doubts about that should read the proceedings on the last Companies Bill in the House of Lords and compare it with the proceedings in the Commons. In the Lords, people were genuinely trying to identify the issues. They are

lobbied but there is very little financial reward in it for anyone.

1670. **Lord Goodhart:** Do you think that the House of Lords is therefore a more attractive target for lobbyists than the Commons.

1671. **Lord Wakeham:** Yes, in a sense. People in the House of Lords are receptive to understand the argument and to advocate a particular case about which they have been informed and persuaded. I do not think that many members of the House of Lords look on that as a method of financial gain. They are genuinely trying to do a job as legislators and are receptive to advice and help given by people outside who are concerned about the legislation.

1672. **Lord Goodhart:** Do you have any views about the balance of lobbying, as between commercial interests and pressure groups?

1673. **Lord Wakeham:** If legislation is going through both Houses, it is the right of every citizen, company and institution to make sure that their views are known by the people who are legislating on their behalf. I am in favour of that information being delivered and pursued. Our task as legislators is to read it, understand it and decide what to do. I take a totally different view of being paid to do that.

1674. **Lord Goodhart:** One of the proposals in your report was that a proportion of the membership of the House of Lords - varying from 65 to 195 - should be elected. Once they were elected, presumably they would have to be paid.

1675. **Lord Wakeham:** The report said they should be elected but it also made the point that they should be elected once only. In a sense, one could argue that we were advocating a system of appointment by the people in the regions. We did not think that a central body was a good way of finding people from the regions. We were at pains to say that everyone should be treated the same. We were a bit vague about payment, except that we recognised that nobody should be deprived of serving because they did not a means of income. Most of us favoured a daily attendance allowance that covered some living costs as well as expenses. We would not have been in favour of a salary. But we recommended that it was for others to decide.

1676. **Lord Goodhart:** If people were paid a significant living allowance or a salary, would that alter the view on registration?

1677. **Lord Wakeham:** I do not think so. A legislator, whether or not he is paid, has a position of responsibility and must declare where he is coming from. If one is paid a significant salary or an allowance, that may alter the most effective and proper way of handling the registration of interests. If one does not get paid unless one attends and participates, I see no reason for being terribly worried about registration. A comprehensive register may be appropriate for a House made up of professional, full-time politicians but a different system may be appropriate for a House made up substantially of part-time people.

1678. **Lord Goodhart:** There is clearly a wide difference of opinion among Members of the House of Lords as to what they ought to register under Category 3, if they choose to register. Would it be desirable to offer guidance, to ensure consistency of practice?

1679. **Lord Wakeham:** I could not complain about that. That probably is the right way of doing it. If we get the right sort of regime, I think there would be considerable enthusiasm among Members to try to do the right thing. If we get the wrong regime, we will have all sorts of hostility, difficulty and argument. I would like a relatively light regime. There should be some consistency. There is no reason for not achieving it and it would be an advantage.

1680. **John MacGregor:** It is clear that the House of Lords is flexing its muscles a good deal more, defeating the Government and so on. Quite a number of people have put to us the argument that there will be a great deal more media focus on the transitional House, if there is to be House - let alone the kind that would follow from your report. Could that lead to the kind of thing one has seen in the Commons, with the media trying to fish out undeclared interests and would a mandatory Category 3 be a protection against that? Also, do you think there is need for a Parliamentary Commissioner for Standards in House of Lords?

1681. **Lord Wakeham:** The answer to your second question is no. The answer to the first that I do not see the pattern of events in quite the way you phrased your question. We are in the middle of a transitional period. There is considerable disagreement - I do not want to be political - as to the way that things have been handled in House of Lords. There is a high level of political fervour and activity, partly based on the size of the Government's majority. I do not look upon any of those as normal. Things are likely to settle down and if our report is adopted, I anticipate reflective, revising and not particularly partisan but intelligent consideration of those issues. I think that the House will revert to an atmosphere much like it used to be. It is not that at the moment but I view that as a temporary phase while we are going through all these difficulties.

1682. **Frances Heaton:** Everybody who has spoken has put declaration and voting into a common packet. You have majored

on the importance of declaration, putting registration as subordinate. If Members just vote and do not speak, they do not declare their interests. Would you say that does not matter because the significance of declaration is purely internal, within the House, as the purpose of speaking is to influence others - whereas the purpose of voting is to express what one thinks oneself?

1683. **Lord Wakeham:** I have always been brought up to believe that voting on public issues, whether or not one has a personal interest in them, does not matter. If there were an occasion when one wanted to express a personal view without having the chance to declare an interest, I would feel inhibited - but they are so rare that I am not particularly worried about them. If the House of Lords comes to be like some people think it is now, I would soon become a unicameralist. I see no point in a House of Lords that just repeated what went on in the House of Commons. That would be an absolute waste of time.

1684. **Lord Shore:** I do not dispute the importance you attach to declaration at the time of debate but I wonder whether you are underestimating the utility of a written register. Your long experience of the House of Commons, which I share, and your particular knowledge of the place as a Chief Whip perhaps leads one too easily to the view that we know where all our fellow Members are coming from. But as a relatively new Member of the House of Lords, I am not sure that I do know where people are coming from. I find it convenient from time to time - not that I necessarily have any doubts about the bona fides of fellow Members - to know a little bit more about the background of other peers, without having to thumb through Who's Who, which is rather a large volume, to evaluate their worth and contribution.

1685. **Lord Wakeham:** That is why I advocated the House having a register. It could be compiled from all public sources. Overwhelmingly the bulk of the information that you want would be in that register. Then I would invite peers to add to it if they want, on a voluntary basis. If we found some serious problems, we might have to change that arrangement. I do not believe for a minute that we would get serious problems. What I do not want is to make the system so onerous that the type of part-time person who is vital to a reformed House of Lords is frightened away by prying. Someone might say, "My wife has a farm in Somerset but nobody asked me to enter the House of Lords because my wife is a farmer." I am anxious about the way that the House of Lords will develop.

1686. **Lord Shore:** But if the system did not require intrusive bits of information but was rather closer to a Who's Who entry, would you have any real objection?

1687. **Lord Wakeham:** No. My point is that could be done by the House authorities, circulated and added to if necessary.

1688. **Lord Shore:** It would help public perception if there were a 100 per cent return, rather than just 400 members registering.

1689. **Lord Wakeham:** My opening statement advocates just that. That would be perfectly acceptable.

1690. **Lord Neill:** You have answered all our questions, Lord Wakeham. We are grateful to you for attending. It has been illuminating.

1691. **Lord Wakeham:** Thank you. I enjoyed it when you came to talk to us and I have enjoyed coming to talk to you.[2]

1692. **Lord Neill:** Our next witness is the Parliamentary Commissioner for Standards in the House of Commons, Ms Elizabeth Filkin. Would you be kind enough to take the seat? We are grateful to you.

1693. Is there anything you would like to say by way of an opening statement? We are going to ask Sir Clifford Boulton and John MacGregor to take the lead in putting the questions but we shall listen to anything you would like to say at the beginning.

ELIZABETH FILKIN

1694. **Elizabeth Filkin (Parliamentary Commissioner for Standards):** No, I am more than happy to answer any questions the Committee has.

1695. **Clifford Boulton:** I think you heard Lord Wakeham talking about the risk of a register which was extended from its present nature in the Lords becoming intrusive or resented by the peers, partly because there are bound to be many of them who regard themselves, quite properly, as part-time and have their more substantial activities take place outside. We are obviously thinking about ways in which some system could be effective without being intrusive. Could you give examples of the system in the Commons which Members have found to be either irksome or intrusive? What do you find the most reluctance amongst Members to comply with?

1696. **Elizabeth Filkin:** I do not find that Members are reluctant. It is the responsibility of Members of Parliament as to what they put in the register. I do not have a role in telling people what they have to put in the register. From my office we send

Members a list of the requirements which the House has laid down, which they are required to enter in the register and Members send it back to us when they have filled in the form. We get a lot of Members contacting us for advice, to make sure that they have fully recorded the interests that the House wants them to record. We get a great number of people by telephone and in person asking us for advice and we try to give that advice in line with the rules that the House has agreed. I have not found Members at all reluctant. There may be some reluctance amongst some people of course, the odd person, comes to tell me that they think the rules are terrible and they wish the House had not ever instituted them but they suppose they have to comply with them and please would I give them advice to make sure they get it right. Of course that is their view and that is fine.

1697. **Clifford Boulton:** But there is no particular area where they make that complaint or moan about.

1698. **Elizabeth Filkin:** No. There is a real issue about privacy when one has to investigate complaints. I have to say I have only investigated 22 complaints since I have been there; very often people get the numbers out of proportion. There are 650 Members and most Members never have any complaints about them in any form. Most of the complaints which come to my office I do not investigate and I turn them down because there is no evidence to suggest that there is anything in them. In others when I have asked the Member for the facts I can tell the complainer that there is nothing in them and I do not need to investigate them further.

1699. When I have to investigate them, with most of the complaints, the very great majority of them, there is no issue about obtaining the information from Members. They are open, they want to be open very quickly. They often contact me themselves before I have even got the complaint when they have heard about the complaint perhaps from a fellow Member or constituent or whatever and they rush round with all the information, very keen to be very, very open. There have been one or two - and it is only one or two and again it is very important that it is not got out of proportion - where I have had to ask questions which that particular Member has felt was intrusive. I have to say when I have had to do it it has been because I have not been confident that the information I have been given is sufficient or accurate. I have to check whether it is sufficient and accurate and therefore I do have to ask the odd intrusive question. On that I can always assure the Member that if they believe that information is personal or private, I can inform the Standards and Privileges Committee and it is entirely up to the Standards and Privileges Committee whether they think that it is so relevant to the complainant that it must be published. They are very sensitive to Members' privacy and will not publish things if they can avoid doing so, which are about people's private interests.

1700. **Clifford Boulton:** One of the fears which has been expressed to us is that any move towards a compulsory system in the Lords will inevitably carry with it a great corpus of rules, regulations, guidance and so forth. Seventy-three paragraphs of guidance are sent to Members of Parliament. Is that necessary? Do you find that has become something which really is needed by Members in order for the Commons' system to run?

1701. **Elizabeth Filkin:** Of course for any institution it very much depends on what sort of code of conduct or set of rules you decide you want. Many institutions can act perfectly all right by having a set of ethical standards because all the members in that institution agree on those standards and know what those standards mean. You do not have to have great written documents.

1702. When you have a lot of people who have different views of the world and when you have a lot of people who are new, or where there is a constant turnover in an institution, people may not always be sure what those standards are, what those ethical bases are. So I can understand why the House of Commons decided it wanted a detailed set of rules and why it then also decided that because you have to look at practical cases you do need to give people guidance. Any guidance you produce of course will not provide detailed guidance in all situations. So you will have to use common sense and you will have to refer back to the guidance you have and ask how it applies to the new situation. You have to have a mechanism for doing that.

1703. The answer to your question is no, I do not think you necessarily need a document as long as that; indeed - I believe you have had copies - I have produced a pocket guide to the rules which Members say is what they use mainly. Then they ring up my office if they want to know what the bigger document says because they do not carry that around in their heads. We tell them or we write them a note reminding them of the relevant bit so they can look it up easily. That seems to work generally quite well.

1704. **Clifford Boulton:** One of the things we are looking at is the extent to which a Member's interests actually restrict his ability to take part in proceedings. Paragraph 57 of the guide says that in addition to the actual specific advocacy rule:

> "Members should also bear in mind the long-established convention that interests which are wholly personal and particular to the Member, and which may arise from a profession or occupation outside the House, ought not to be pursued by the Member in proceedings in parliament".

How do you help Members to understand how restrictive that is? What is meant by "wholly personal and particular" interests which would keep a Member from taking part in proceedings?

1705. **Elizabeth Filkin:** I have not found that Members have found that particular section of the guide particularly difficult. It may be because Members do not define things which other people would define as personal interests as such. But I do not get that impression. I have had various enquiries, particularly when people have been involved, for example, where their properties are subject to planning arrangements in which a department is involved in one way or another. They will then consult and be very careful because they might have benefit or expect one if a particular piece of legislation goes through. We try to chew it through with them and of course it is the Member who comes to the decision but we try to offer the sorts of advice about the probity, standards, which we think are necessary.

1706. The situations Members consult me about where they do find the rules restrictive are on initiation of proceedings, where they have wide financial interests outside parliament. Where they have narrow interests outside parliament, and they may have a number of paid interests but if they are narrow in scope, they do not
cause them much problem. For example if a person is a non-executive director of a consultancy or a firm of accountants with very, very large numbers of clients, they may feel that their business interests do impinge on a very wide range of other people. Those are the people who find some of those restrictions, which of course are not put there to stop them doing their proper parliamentary business, they are there to stop the unworthy, but the rules do, sometimes cause some difficulty for Members in those situations.

1707. By and large I believe Members have found ways of dealing with that, making sure that other people are informed about the facts, making sure that other people do know the arguments and can take matters up if they see fit. It is that area where people find some restriction.

1708. **Clifford Boulton:** I think we have already expressed an opinion on that matter.

1709. **Elizabeth Filkin:** Yes; absolutely. The Standards and Privileges Committee has been considering those views because they share some of those concerns.

1710. **Clifford Boulton:** One of the rules is:

> "Where the Member is an adviser to a trade association or to a profession or other representative body, the Member should avoid using a constituency interest as the means by which to raise a matter which relates primarily to the wider industrial, professional or other interest".

That would not apply in the Lords because they do not have constituencies but they do come from particular areas of the world, for instance a Member might be a Chancellor of a university in the Lords. By comparison with the Commons rule that would stop him taking part in a debate on higher education by instancing the particular problems of his university, would it not? Is that not a restriction which is unreasonable?

1711. **Elizabeth Filkin:** No, that is not right. The rules in the House are very, very less restrictive about speaking. The restrictions can be quite difficult for people initiating proceedings. If that Vice-Chancellor were just talking about trying to promote the exclusive interests of his institution, yes he would be restricted, but he is not restricted from talking about the problems facing universities under the House of Commons rules.

1712. **Clifford Boulton:** That was not how I read that particular paragraph. It just shows the need for having someone who can give one help in these matters.

1713. **Elizabeth Filkin:** Absolutely. Speaking in the House of Commons, unless one is speaking to promote an interest exclusively, is much less restricted.

1714. **John MacGregor:** We have had a large number of representations that there would be real dangers in replicating the House of Commons system in the House of Lords. In order that I can be objective about it, I think it would be easier if I just read out - forgive me for doing this, it will take a little time - the evidence we have had from Professor Oliver, Professor of Constitutional Law at UCL. This quite neatly encapsulates a number of the points. She says:

> "If such an elaborate system were adopted in the Lords, it could paradoxically serve to undermine the ethos of the Lords, which is reputed, rightly or wrongly, to be highly altruistic and independent. Such a system",

that is the system in the Commons,

> "can undermine trust unnecessarily. Complaints about failure to register or declare interests in the Commons had proliferated since the system was put in place. Some of these complaints have turned out to be unfounded, some have been found to be minor oversights. My impression overall is that the making of allegations and having them investigated has been sometimes used as a weapon in battle between the parties in the House. It has undermined trust in the House and I would guess that it may have given rise to an element of tit-for-tat between the parties. If it has not yet done so, there is certain scope for it to do so".

She concludes:

> "I would not wish myself to see such elaborate procedures put in place in the Lords unless there were sound reasons based on experience to do so".

I wonder whether you could comment on those points. This is the burden of a lot of the suggestions we are getting put to us.

1715. **Elizabeth Filkin:** It seems to me that there is a variety of points in that statement. Perhaps I can try to pick them apart.

1716. You do not have to have the system as a whole. Of course I assume that she is talking about the system as a whole as in the Commons. The registration of interests, whether compulsory or voluntary, but anyway achieving the same end, obviously can stand alone. You do not have to have the rest of the process if the House of Lords so chooses. All I can do is to tell you what the situation is if you do have the other part of the system, which is that if you are going to have any mechanism, if people think there possibly might have been a breach of any rules which an institution lays down, then you obviously have to create some sort of mechanism for looking into whether or not there has possibly been a breach. There is a whole range of systems one could have.

1717. The system in the House of Commons - and obviously I would say that would I not? - seems to have some features which might be considered in the sense that it does have a mechanism where there is somebody actually to amass the facts. I doubt Members of Parliament would have the time to amass the facts themselves. They need a dogsbody to amass the facts in some form or another. That does not of course mean that that person need say what they think those facts amount to if it were chosen, but the process of amassing the facts is often very onerous.

1718. Then there is the process of having some advice on what those facts add up to in the light of the rules that the institution has laid down. If those rules are complicated, it may be useful to have advice on that. Whether or not the system as in the Commons produces inter-party tit-for-tat is a comment of course that a lot of people make. As I have said, my experience is very limited. The Commons procedure allows me to decide not to look into two thirds of the complaints which come to me; it is entirely my decision that I do not need to take them any further. By asking the Member of Parliament for the facts or by looking at the letters myself, I can see that there is no basis on which to look into them and I can tell the complainant and the Member of Parliament.

1719. Of the ones I have looked into I have not upheld almost half of them; the others I have upheld. Turning to the people who make them, it is difficult for me to be clear about what their motives are and often their motives may be mixed. Some of their motivation may be that they are wanting to have a go at the other party. I have to say from the people I have dealt with I have not found anybody I would clearly put in that category. There is no doubt that some of those people are making complaints about people over the other side in the other party, but I have to say that by and large those people do feel very passionately that there is an issue of public interest when they bring the complaint. I may not share their view but they feel it very clearly and intensely. I do not think they are bringing the complaint just to have a go, although the odd one may. I think they are usually bringing the complaint because they think the rules should be upheld and that they have a public duty to pick up things when they think they are not. I also have to say that many of the complaints which do come from Members of Parliament to me, come via their constituents. It is their constituents writing to them about other Members of Parliament which makes them take it up. I see the back letters before that and although the complaint has come from that Member they have come from elsewhere in the public originally.

1720. Were there any other bits of that which you wanted me to comment on?

1721. **John MacGregor:** My other question will really follow it up in a way because I was going to ask you, and you may not be able to answer this, whether you felt there was a case for a Parliamentary Commissioner for Standards in the House of Lords, bearing in mind some of the points which have been made to us that there have been no complaints in practice in the House of Lords since the Griffiths Report was set up, that there is a system of having Law Lords involved in looking at any complaints and so on.

1722. **Elizabeth Filkin:** I do not think it is for me to say. I think that is entirely for the House of Lords to decide. What I would

say is that I do think that if openness is a value which is important, then our very important institutions need to carry that out in their daily business, for a reassurance of the public and for the leadership they can give other institutions as much as for what may be occurring in their own institution. I should be delighted if any institution never had to use its complaints system.

1723. **John MacGregor:** The House of Lords has a system and perhaps I could just say on behalf of the House of Lords that if there have not been any complaints so far it suggests that there is not a great deal of public concern about the system not being used properly in the Lords.

1724. **Elizabeth Filkin:** That may be absolutely true. I do not have the evidence one way or another to know whether that is true. All I can say from my office is that we get a lot of comment from the public and indeed from Members of Parliament that they are using the system or speaking to the system or getting advice from the system because they believe the complaints procedure will be operated if necessary and that they trust that it will then be carried out fairly.

1725. I make no comment on whether there are any complaints about the House of Lords, whether there should be or whether the House of Lords needs any system. What I believe is true of many, many public bodies, and much of the work done on complaints systems so successfully by many public bodies does demonstrate this is that there is a value in having a complaints system for the assurance of the public. One hopes it will never be used and there will never be anything that anybody needs to look into.

1726. Do you need a parliamentary commissioner at any point in that situation? Maybe, maybe not. You do need somebody or some facility to get facts amassed if you do at any point get a complaint. That does not mean to say you have to have anybody permanent or employed or whatever, you just have to have a facility.

1727. **John MacGregor:** Finally, on that point really, would you feel, particularly if there are going to be so very few complaints, on the facts amassing issue, that the Clerk of the House of Lords could do the job equally well and put the facts to the committee they have set up? Just as a supplementary to that, some are arguing that if you have a system like the House of Commons system, it does encourage trivial complaints and there have been a lot of trivial complaints.

1728. **Elizabeth Filkin:** On the first point, I have no doubt that very many clerks could do the job of amassing facts very properly. The problem is whether that assures the public. Sadly, it does not, because the public, wrongly often, of course, because Clerks would do it absolutely properly, thoroughly, fairly and independently, would not believe it. They would believe, because Clerks were employed and have been employed 'inside' for a long time, that they could not be objective. I do not share that view but if one is talking about setting up a system which does assure the public, one has to have somebody who is recognised as independent and there are lots of ways of doing that.

1729. As to the trivial complaint point, people do make that point and yes, of course, some complaints which certainly come through the House of Commons process are about mistakes, are minor and are not serious in any way. Often they require a bit of work to come to that conclusion and a bit of amassing of facts to take that view. I put into that category the complaints I have not upheld. There is a difficulty, as you know. The press will often run all complaints as being serious but they run things which do not go through the complaints system in exactly the same way. You only have to pick up newspapers most weeks and you will find things are run against Members of Parliament which have not been through the complaints system.

1730. On the detail of whether the complaints which the Standards and Privileges Committee have upheld are trivial, often my impression is that people say that when they have not actually looked at the detail of those reports or looked at the detailed reasons why particular complaints have been upheld. Of course on some complaints there will be differences of opinion, but by and large my impression is that what may seem trivial as reported may have other features which has led to the Committee deciding the complaint should be upheld.

1731. **Lord Shore:** To pursue the same line of questioning, obviously there is a danger, more than a danger, of frivolous complaints, particularly, frankly, as we get very near the period of the next General Election.

1732. One point which might be helpful is if, when complaints are received, there were not an immediate announcement that somebody is under investigation or they are being looked at. That is an enormous embarrassment to those concerned. At the time obviously the charges are wholly unproven, but they are damaging and damaging particularly in the Member's constituency. Is there not a way of avoiding that by your office simply saying that a letter has been received and only if asked about it?

1733. **Elizabeth Filkin:** I totally share your view. We never tell the press from my office that we are investigating a complaint. Many complaints come through my office and the press knows nothing about them until the Standards and Privileges Committee report is published. There have been two in the last six weeks like that. There is one which is going to be considered

by the Committee next week which has never been run in the press. That is the usual situation.

1734. Sadly, complainants often tell the press they are making a complaint to my office before I even receive it, and before the Member knows anything about it. I think that is wrong and I share your view that it is quite inappropriate. But it does happen and it happens particularly, I have to say, with complaints from Members of Parliament who do tell the press that they are about to make complaints to me. In fact numbers of them tell the press they have made complaints to me and that I am investigating things when I never then receive a complaint or investigate anything. I think that is sad and I think Members of Parliament do themselves and their institution harm by doing that. Obviously I can in no way do anything about that except continue to express this opinion.

1735. **Lord Shore:** This applies presumably when somebody else has made this public knowledge. Somebody will ring you to ask whether you can confirm that a complaint has been made.

1736. **Elizabeth Filkin:** Yes.

1737. **Lord Shore:** What do you do then? What do you say then?

1738. **Elizabeth Filkin:** The majority of those enquiries, I am delighted to say, I am able to say no, we have had no letter, no, we have had no complaint, no, I am not investigating anything. By doing that I protect very many Members of Parliament from newspapers running things.

1739. **Lord Shore:** But suppose you have received a complaint.

1740. **Elizabeth Filkin:** I was going to go on to say that. Of course I can only say to those journalists, no I certainly have not had one when that is the case. I know in those instances responsible journalists do not then run the story. I have lots of instances of that and I therefore feel it is useful to Members of Parliament. I can only do that and do that properly and provide that protection if I am also truthful to journalists and Members and say yes, Mr Y you are right, Mr X has sent me that letter. I can say no more about it and just because I have received a complaint, does not mean to say there is anything in it. We always say exactly the same thing. We never say anything further than that. We say to journalists "You should be very careful not to imply that because we are doing an investigation that means there has been anything found that is amiss". We use the same term every time.

1741. **Lord Shore:** If a form of words can be found to use which implies almost a rebuke for people making public-

1742. **Elizabeth Filkin:** We do. Certainly the Standards and Privileges Committee made that clear and the Speaker has made it very clear. I obviously welcome that because I totally agree with your view on that.

1743. **Lord Shore:** The second point is this. In our last report, we anticipated the dangers of frivolous complaints and the increase in their number. I think we recommended that where you have been forced to investigate a frivolous complaint and in your judgement it is a frivolous complaint, you should say so because that would greatly discourage those who are making frivolous complaints from repeating it or others from following their example.

1744. **Elizabeth Filkin:** I certainly would do so, but I doubt if I would get that far. As I have said already I do not investigate the majority of complaints which come to me because I either think they are totally off the wall, or frivolous, or foolish, or uninformed or that they appear to be made in the public interests but when I get the facts, it is just not true what has been put to me.

1745. I hope that I would not be investigating anything which I thought was purely frivolous. That does not mean to say that I have not done what I think you may be implying. I have had a complaint which has been published in the last couple of months which was a major investigation. I had to get a lot of information together but my decision at the end of it was that the previous channels which had been used for that complaint and on which pronouncements had been made, were the proper channels for it and that the people who had brought it were not right in bringing it to me because there was a Member of Parliament involved in it in some way. He was not improperly involved in it at all and I was able to say that very clearly. I dismissed that complaint. I did not uphold it or otherwise; I dismissed it. However, I published it because it was a major inquiry to get to the bottom of it.

1746. **Lord Shore:** Whether it led to serious inquiry or not or merely just a checking on your part, if it has been in the public domain and done damage to a particular MP, it would seem to me to be very helpful if you were to offer the MP concerned a statement to the effect that it was a frivolous complaint and ought not to have been made, or was made with quite inadequate basis. In other words, I think Members have to be protected, as you can gather from my line of questioning.

1747. **Elizabeth Filkin:** I totally agree with you. That is why, in the case I have just talked about, which is in the public domain

so I can mention it, I decided it was necessary for me to make a formal report to the Standards and Privileges Committee. I did advise them that they should publish it because I felt that to prevent this matter running - and it had run in the local papers - and so the facts were properly known and could be locally published - it was right that my report should be published by the Committee. That is what happened and the Member was very grateful. I think that is a very useful function as well as the other more distasteful functions which I have to carry out.

1748. **Lord Shore:** Moving onto a different area, but really asking you for your experience and reflection now on how the thing is working, I think an awful lot of people who wholly agree that Members have great obligations if they have financial interests both in declaration and withholding actions in parliament, nevertheless I am very surprised that when Members who undertake activities for which they are paid, but which have no bearing upon parliamentary proceedings at all, are as it were complained against and investigated. I have in mind one or two recent cases, obviously Livingstone and John Major. Whatever else was said about their activities as lecturers, they were in no way, frankly, influencing parliament and parliamentary debate in a proper or improper way. Do you feel yourself, in the light of this, that there is an area here - I know you are operating under rules and so on - which ought to be looked at again and perhaps removed?

1749. **Elizabeth Filkin:** I think the first thing I should do is to clarify what the rules actually require of Members, because those two things which applied in the case you have mentioned sometimes get muddled up. The House of Commons requires Members to register all their financial interests. If they earn money from any activity they have to register it. They do not have to say what they earn from those activities. So they can have widespread outside earnings and as long as they list them properly and carefully in the register, there is no complaint which could be run against them at all if they do that.

1750. Because of the deliberations of your predecessor committee in relation to the provision of services in a capacity as a Member of Parliament, the House agreed some new rules to restrict some sorts of activities. You will recall that what the House did was to say that if Members are providing services in their capacity as a Member of Parliament in any way, that does not have to be wholly in their capacity as a Member of Parliament. It might be partly because they used to be the Chairman of the GLC or they used to be an important Minister but if it is partly because they are a Member of Parliament they are then required to deposit an employment agreement. That was mainly, as I understand it and you will know better than I the detail of it, to prevent people who were employed in parliamentary consultancies acting improperly. But it was written much more widely by the Commons own Select Committee on Standards because they also recognised that there were other things which came within that purview to some extent. What they specified in detail in the rules, for example, are broadcasting and newspaper articles. That is given as guidance, as an example. One of the things done in the capacity as a Member of Parliament. Members must deposit an employment agreement about is frequent broadcasts or newspaper articles. The guidance clearly says if you are only doing the odd one, you do not have to put it in the Register. If you are doing them frequently, you do.

1751. In the case of Mr Livingstone, there was a set of things which were complained about which he had not registered. His regular column in The Independent and his regular column in the Evening Standard for example. When I looked at it all, I could see that his regular column for the Evening Standard did not fall within those guidelines at all because it was all about restaurants; it was wholly unrelated to parliamentary or public affairs, which is the test. It was wholly unrelated so he did not have to deposit an employment agreement for the Evening Standard column. However, his arrangements with The Independent newspaper clearly fell within the rules for the deposit of an employment agreement because it is frequent broadcast or newspaper articles. It was a frequent commitment and it was about parliamentary and public affairs.

1752. **Lord Neill:** I think we will have to stop you there, if you do not mind. We have that distinction very clear; you put the dividing line there extremely clearly. If I may, I am going to thank you on behalf of the Committee for coming and for giving your evidence and being so helpful to us. I am most grateful.

1753. **Lord Neill:** Good morning, Lord Newby. Thank you very much for coming to our deliberations this morning. You are probably aware of our procedure: two members of the committee take the lead in putting questions. In your case, they will be Frances Heaton and Lord Shore. You made a written submission to us, which we have in the record and will be published. Is there anything that you want to say before the questions start?

LORD NEWBY OBE

1754. **Lord Newby OBE:** No, I do not think there is.

1755. **Frances Heaton:** Good morning. May I begin by turning to your letter, starting with your second paragraph, in which you say that you are in favour of a register of interests and that it should disclose the sources of income and tangible benefits? Could you expand a little on your rationale for that?

1756. **Lord Newby:** Yes. I think that, particularly as the House of Lords gains a higher profile, it is important that Members of

the House of Lords are seen to be above suspicion in the way they behave and the basis on which they speak in the House. It is often suggested that, because Members of the House of Lords are unpaid part-timers, the same requirement for transparency that now applies in the Commons should not apply in the House of Lords. This seems to me to be mistaken. Arguably, because we are not paid, we are more susceptible to people offering to pay us to exercise our influence in the House of Lords than Members of the House of Commons, who are paid. I have no evidence that that happens, but that case could at least be made. It is important that Members of the House of Lords are seen to be operating in a very transparent way. An interesting example about how informed opinion is moving on can be seen in the judgement relating to Lord Levy, who failed to gain an injunction preventing a newspaper from publishing his tax affairs, on the basis that his financial affairs were very much of public interest and should be in the public domain.

1757. **Frances Heaton:** I wonder whether you consider that the amounts that people are paid to be relevant.

1758. **Lord Newby:** I think that the amounts that people are paid are relevant. I suggested in my letter that there should be a de minimis level below which no declaration should be made. As many peers are on relatively low levels of income - many are retired and some have given up their previous employment to come into the House of Lords - it can be argued that there needs to be a relatively low point at which income should be recorded.

1759. **Frances Heaton:** One has to go on to explore why one is looking for disclosure. The origins of Nolan lay in sleaze, which was buying a point of view. We have now moved quite a way on from that in terms of disclosure of relevant interests - possibly non-pecuniary interests - so it is really becoming a different point. Against that background, I am quite surprised that you are arguing that disclosure of amounts of income should be required.

1760. **Lord Newby:** I am not proposing that they should necessarily be detailed amounts to the last penny, but it would make sense to have bands of income. The reason is that in recent decades the public's view of politics has been so damaged that the old view - which, I suspect, applied to the House of Lords - that these were senior people, devoted to public business, is not widely held: politicians in both the House of Commons and the House of Lords are held in low regard. One of the reasons for that is the sense that people have been profiteering from their membership of parliament. Against that background, I believe that there is a need for a considerably greater degree of transparency about where we derive our income from than was the case a decade - or two decades - ago. The public require that of us.

1761. **Frances Heaton:** We have had a number of peers coming who have stressed the great difference between the two Houses and have suggested that there has not been the same criticism of the House of Lords from the public. I do not think that there have been any issues surrounding disclosure by peers. Why do you not want to retain the distinction between the two? Those who come to the Lords are likely still to be very different kinds of persons.

1762. **Lord Newby:** The new membership of the House of Lords is rather different from that of the past. Obviously, there are far fewer hereditary peers and the nature of the House of Lords is changing. What is also happening is that ten or 20 years ago the House of Lords was not often seen to have a major influence on legislation. Even when I went in, three years ago, and people were telling me about the differences that the House of Lords had made to legislation in previous years, they were, frankly, very small. As a result, the public has neither known nor cared much about what the House of Lords has done. There has not been the spotlight on the Lords that there has been on the House of Commons. With the change in the composition of the House of Lords and the party in government no longer having an automatic majority in the Lords, as the Conservatives did, and with legislation being changed significantly, the spotlight is being cast on the House of Lords to a far greater extent. That makes a difference in the way that the House conducts its business, for a whole raft of reasons, and I certainly think that it strengthens the argument for us to be more transparent than was felt to be necessary in the past.

1763. **Frances Heaton:** But there has been quite a lot of emphasis on the fact that it will still be a part-time House and will not be paid, so the disclosure of other interests will be proportionately more of a burden and possibly a total inhibition for Members of the House of Lords.

1764. **Lord Newby:** I do not know why it should be an inhibition. The only circumstance in which it would be an inhibition is if people felt embarrassed about disclosing other interests. If they do feel embarrassed about disclosure, should they be embarrassed about doing it?

1765. **Frances Heaton:** About doing what?

1766. **Lord Newby:** About doing the activity that gives rise to a source of income about which they feel some inhibition in disclosing.

1767. **Frances Heaton:** But you said that it should not only be sources of income, but amounts.

1768. **Lord Newby:** I referred to them in terms of bands. I am not necessarily advocating that tax returns should be made public, but it is relevant whether someone receives £1,000, £100,000 or £1 million from an employer or another source. The public would think that that was a material difference.

1769. **Frances Heaton:** Are you saying that that is material in the context of the likelihood of their being influenced in the way in which they speak?

1770. **Lord Newby:** It will be seen as material in the influence that it has on the person's activities more generally. If I see that someone is earning a vast amount from, say, an insurance company, I might think that that is relevant when looking to see what that person says in the House of Lords in terms of insurance matters.

1771. **Frances Heaton:** As against if he earns a small amount?

1772. **Lord Newby:** As against if he earns a small amount as part of a raft of sources of income.

1773. **Frances Heaton:** Yes, but earning a small amount from an insurance company?

1774. **Lord Newby:** Yes.

1775. **Frances Heaton:** Thank you very much. May we move on to your second main paragraph about lobbying, where you suggest that peers should be debarred from speaking only on matters relating to the interests of clients to whom they give parliamentary advice?

1776. **Lord Newby:** Yes.

1777. **Frances Heaton:** If this were instigated, how would be it be policed?

1778. **Lord Newby:** I think that much of the policing of the detail would have to rely on two things: first, the information that is supplied by peers - that is the most important thing. I regularly submit a schedule to the Clerk, showing the clients of my company for whom I work. I could equally easily add, after the name of the client, a little paragraph that described the services that our company provided for that client. That would make clear what we were doing for them. The second point is that one then has to rely on peers to tell the truth in such documentation. It would not be a practical difficulty for me to segregate out the clients to whom the Flagship Group provides parliamentary advice and those to whom it does not.

1779. **Frances Heaton:** Do you think that the public would concur with the merits of that distinction?

1780. **Lord Newby:** If the public and the journalists could see a register that explained it, I think they could, yes.

1781. **Frances Heaton:** I think that you have seen the list of possible questions that referred to the fact that the Clerk of the Parliaments said that the restriction applied only to the affairs of clients with whom the peer had personal dealings. Is there a difference in interpretation between you and the Clerk?

1782. **Lord Newby:** There are two issues. First of all, there is the distinction between clients with whom one has personal dealings and other clients. The second distinction is between clients for whom our company provides parliamentary advice and those for whom it does not. The second area is the area of difficulty. In terms of segregating out the clients to whom I give advice and those to whom I do not, by and large that is a straightforward distinction. There are always borderline issues. For example, we have an insurance company as a client, for which I normally do not act at all, but at one point the managing director wanted to give a speech and one of my colleagues asked me to cast my eye over the draft of the speech and to try to improve it, and on one day I spent a few hours looking at it. I shall almost certainly not deal with that client ever again. In that case, I operate in my own mind the de minimis rule and say that that is not a client with whom I regularly work, but by and large there is a clear rule within our organisation about which clients have individual consultants working for them.

1783. **Frances Heaton:** Did you just declare your interest in the insurance company?

1784. **Lord Newby:** I did not declare an interest, because I was not speaking on the relevant issue at the time when I was helping the man to write his speech, so a declaration on the Floor of the House did not arise. In terms of the declaration that I left with the Registrar - where, broadly speaking, I update what I do every three months - it did not appear on the list of clients for whom I was actively working because, between submitting two lists, I had worked with this insurance company for one day.

1785. **Frances Heaton:** Potential for some misunderstanding and adverse publicity, I suppose.

1786. **Lord Newby:** The potential for adverse publicity in a case like that is far less than that for people who work for firms of

accountants or lawyers or who are non-executive directors of companies and may have been taken on in some cases to provide parliamentary advice as part of what they do. At the moment they need to make no declaration at all on the register and would only do so if they made a speech on the Floor of the House in the period when they were fulfilling that function. I was not making a speech relating to the insurance industry, so it did not arise.

1787. **Frances Heaton:** You would like to see Category 2 widened to cover those people?

1788. **Lord Newby:** Yes, I would. One of the reasons for that is that, being at the receiving end of lobbying, I have been struck by how rarely the lobbying comes from a company that I would recognise as a lobbying company and how much more often the impetus for the lobby comes from a legal firm. Certainly on the Financial Services Bill, where I was active, I am pretty sure that no lobbying company was involved in lobbying me, or getting a client to lobby me, but I am certain - because I met some of them - that partners and other people working for legal firms were directly involved in lobbying activities on their own behalf or on behalf of clients. At present, if a peer had been a member of a legal firm that was doing that lobbying as an ancillary part of providing general legal advice to a client, it is not clear that they would be required to register in Category 2.

1789. **Frances Heaton:** I think you have, both in your written submission and today, attached more importance to registration relative to disclosure than have many other Members. Do you think that there is a risk, when the House of Lords comes to decide what, if anything, they will do to change the rules, that they will be too inward-looking?

1790. **Lord Newby:** The House of Lords is one of the most inward-looking bodies with which I have ever been involved, and many Members find change - even of a very minor nature - very difficult. Attitudes towards change are in part generational. Older peers and those who have been there a long time and feel that the system has worked smoothly are pretty resistant to any change. I should be very surprised if that applied to most of the people who have been appointed since I was appointed in 1997. We feel that we should be happier if there were disclosure, so that people could not make allegations about peers or generally insinuate that the House of Lords was a rather secretive place.

1791. **Frances Heaton:** That has been very helpful. Thank you very much. I will hand over to Lord Shore.

1792. **Lord Shore:** On the face of it, the rules of the House of Lords on the activities undertaken by peers who are connected with lobbying groups are very fierce indeed, but the caveat is that, unlike the Commons, the rules apply in that form only to peers in lobbying firms that are dealing with a particular list of clients and not to the generality, as I believe that they would do in the Commons. Have you any comment on that? You explained your occasional problem, which I do not think you have found anything like insoluble, but do you think that there is an advantage in the more absolute approach of the Commons on this matter?

1793. **Lord Newby:** That is in requiring members not to be associated with lobbying companies. No one in Category 2 works for a company that simply gives parliamentary advice. I may be mistaken, but most peers in that category work for broadly-based communications companies that have a lobbying strand. The main argument for the difference between the Lords and the Commons is that peers have earned their living over a number of years doing that activity. If the Commons rule applied and we were no longer to be involved in a company that carried out that activity, whether or not we did it ourselves, we should have to find another career. That is fairly onerous on people, particularly given the stage of their career at which they come into the House of Lords. To say to Lord Bell, Lord Chadlington or Lord McNally, "I'm terribly sorry. You have been doing this kind of work all your life or for a large proportion of it, you have got to go off and do something else or retire" would be unreasonable, particularly because the rules that apply to those of us in Category 2 are, as you said, pretty fierce.

1794. **Lord Shore:** Let us look at the issue from the other side. We have had quite a bit of evidence from peers who say that the rules are rather too tough in the sense that they ban people with considerable expertise - I am referring to both Category 1 and Category 2 - from taking part in debates and from voting. What is your view on that? Do you go along with it, or do you think that we have got it right as of now?

1795. **Lord Newby:** I think that on balance the House has got it right in saying that when peers are actively advising clients on parliamentary matters, they should not speak on them, even although they may be technically expert and able to add to the quality of the debate. At the moment, about the only client I advise on parliamentary matters in the United Kingdom and in Europe is the Caribbean Banana Exporters' Association. I think I can honestly say that, having worked for them for six years, I know more about the details of the EU banana regime than probably anyone else in the House of Lords. It is even possible that I could add to peers' general knowledge about bananas if I spoke in a debate on the subject. However, I think that it would be improper if I did, because, if I did, people who are not my clients at the moment would say, "If we're his client, he'll speak about our subject". That would be paid advocacy. I do not engage at all in paid advocacy for my clients in the House of Lords. I am banned from doing it, and I think that that is right. As I said in my letter, my problem with the current rule is that when I have advised clients on something completely different from their parliamentary work and how they should approach

parliament, the ban has applied. I was slightly surprised to see the Clerk's evidence in this regard - which you kindly sent me - that suggested that perhaps I could speak on behalf of those clients. When I have asked about it in the past, the rule has appeared to be absolute: I could not speak on behalf of any client of the Flagship Group - which, among other things, provides advice on parliamentary affairs - whatever advice I was giving them.

1796. **Lord Shore:** Last question. You have made it quite clear that you believe that there should be a compulsory register of interests. Presumably, Part 3, instead of being voluntary, would become part of the compulsory register, but on what principally would you want to see the peers obliged to make a return, which is not at present covered by Categories 1 and 2?

1797. **Lord Newby:** I think that peers should be obliged to make a return that lists all their sources of income. It also seems to me to be common sense that they should be obliged to list their involvement with other organisations from which they may not derive income, but which are clearly relevant. If they are involved in a charity, it seems only sensible that they should declare that as well. Equally, peers who work for companies that provide parliamentary advice ancillary to more general professional advice should be required to follow the same rules as those of us who work for companies that provide parliamentary advice as part of the mainstream of what our companies do.

1798. **Lord Shore:** Thank you.

1799. **John MacGregor:** Can I follow up a point that you made in your letter, to which you have just been referring, in relation to your role in advising the Prince's Trust and the chairmanship of this major football initiative?

1800. **Lord Newby:** Yes.

1801. **John MacGregor:** Is it really right that because of that - an area where you have no parliamentary activity for them at all - you are debarred from speaking on youth unemployment matters generally?

1802. **Lord Newby:** That was my understanding of the rule.

1803. **John MacGregor:** But if a law firm was advising the Prince's Trust entirely on its legalities and that rule had applied to it, the lawyer would not be able to speak on unemployment either?

1804. **Lord Newby:** If that rule applied to the law firm, the lawyer would not, no.

1805. **John MacGregor:** There seems to be an idiocy of the rule on the one hand and the fact that it is not applied consistently to all people who have clients. That is the situation in the House of Lords at present, is it?

1806. **Lord Newby:** That is my understanding of the situation at the moment.

1807. **John MacGregor:** My second question is, on the detail that would go into a mandatory register, one of our earlier witnesses drew a distinction between the need to know and "wouldn't it be nice to know?" Do you think there is a distinction?

1808. **Lord Newby:** No. The problem here is that in terms of Category 3 the rule says that Members can register particulars of matters that they consider may affect the public perception of the way in which they discharge their parliamentary duties. The problem is that what one person believes to be relevant - or not relevant - to their parliamentary duties, another person may think is relevant to their parliamentary duties. The only way to get round the boundary problem is to require people to register everything.

1809. **John MacGregor:** Probably what was meant by "wouldn't it be nice to know?" was "wouldn't it be nice to have revealed in the press just how much somebody was earning?".

1810. **Lord Newby:** Yes. Clearly, there is a strand of journalism that enjoys making fun of parliamentarians whenever it can. They might wish to make fun of how much someone earns. But one should be prepared to put up with that in order to have the greater transparency that I think most people would prefer to see in the House of Lords.

1811. **Lord Neill:** Any other questions? Thank you very much, Lord Newby. It was very kind of you to come and help us with your evidence. We are grateful.

1812. Finally, our last witness of the day, Lord Chadlington, if he will be kind enough to move to the seat. You have been Chairman of Shandwick International for many years, I think. Am I right in thinking that International Public Relations is the title?

LORD CHADLINGTON OF DEAN

1813. **Lord Chadlington of Dean:** That is right.

1814. **Lord Neill:** You have an entry in Category 2 and a number in Category 3, which include educational interests as well as business interests. We are going to put some questions to you. I am going to ask Sir William Utting to go first. Professor Alice Brown, who is listed as a questioner, has not got down from Edinburgh today, so
Sir William will start and, if there is anything left to ask - which I very much doubt - I will ask the follow-up questions.

1815. **William Utting:** We have heard a good deal, Lord Chadlington, about the changes that have occurred in the House of Lords since the Griffiths reforms of 1995 - in particular, changes in the composition of the membership. Indeed, one noble Lord said to us that the place was getting more like the House of Commons every day. It is that part of it that I want to seek your view on. We are told that the House is becoming more professional in its dealings, more party political and that there is more whipping. Does that conform to your perception of what is going on?

1816. **Lord Chadlington:** Yes, Sir William, to some degree. There is no question that it is more professional in the sense that a lot of people are being drawn from commerce, the professions and so on. I do not think it has got any better, because the independence of the hereditary peers was a considerable advantage to the House of Lords. The loss of them is considerable. The atmosphere and culture of the House, although I have only been there for four years or so, has changed noticeably. The nature of the relationship and the manners - that sort of thing - has gone - not completely, but they are disappearing quite fast. Therefore the culture is different. In that sense, it is a different place. I personally would not use the word "professional", I would say it was "different". Is it more like the House of Commons? I have never spent any length of time in the House of Commons, but if becoming slightly ruder to each other as opposed to being quite polite is a move in that direction, I regret it.

1817. **William Utting:** Your remark about the changing culture stimulates a follow-up on that subject. It concerns the reliance that is placed on personal honour in conduct in the House of Lords. We all have a sense of personal honour, but basing behaviour on that seems to be possible only within a group that is very cohesive and has shared values. You just told me that that culture has changed. Is it changing to the extent that one can no longer place as much reliance on a common understanding of personal honour as one could in the past?

1818. **Lord Chadlington:** You have to replace the old culture with a new one. The question is, what kind of culture do you want to create in this new, reformed House. When I was thinking about what I might say today, I started at precisely that point of honour, what the personal responsibilities of being a Member of the House of Lords involve and the kind of people that we want to have there. When I thought about that, I thought that honour is a different kind of honour now, if that is possible, a different code of behaviour. That is where I would start from when I think about what people in the House and externally should know about me and my interests. It takes quite a lot of work to decide what culture you want. Perhaps I can address it slightly tangentially. When I arrived in the House of Lords, no one ever told me anything about it - nothing. No one ever said to me, "This is the way it works. This is what the place is like." If someone joins my business, we spend an enormous amount of time inducting them into what the name of the game is, so that they feel at home, enjoy themselves and learn how to use the system efficiently, but at the same time do not break the rules. No one ever did that to me. Maybe I missed some event that went on over here, but when I talk to my colleagues, they seem to be in the same situation. I should like to create a culture that comes about from the day when it is first suggested that one might become a Member of this House, to learn the obligations that are placed upon one - such as the regularity of turning up - as well as how to behave and what the codes of conduct are to be. I regret that that does not happen.

1819. **William Utting:** I think that we gathered from an earlier witness that at best a new peer might get a half-day's induction into the House of Lords and that a substantial proportion of peers do not take it up anyway. You are implying that a more structured form of induction - dare I say "training"? - might be required of new entrants to the House of Lords.

1820. **Lord Chadlington:** Yes, I would support that. I did not know that this half-day existed, but if it does, it sounds good. I went off to find three or four peers whom I knew from other situations and said to them, "I want someone to explain this place to me". I bored them rigid for a few days until they taught me how to find my way round. It was an unstructured and auto-didactic way to go about the problem.

1821. **William Utting:** Yes. A consequence of this is that some of the things that are required will have to be written down for peers. We would be particularly interested in something like a code of conduct. There is a reasonably brief code of conduct for the House of Commons, which has had to be amplified in rather more detailed guidance. Would you see any merit in the idea that the code of personal honour needs to be amplified now?

1822. **Lord Chadlington:** We have an exact parallel in being the director of a public company, in my judgement, namely, that one behaves in a particular way. Up until very recently, it depended on how you felt you should behave: there was no

compliance role. A series of initiatives over the past ten years have come up with the notion of telling the chairman or director of a public company how to behave. That is helpful, but in the end everything has to do with fine judgement. I should not like to see compliance with the code becoming an argument about whether I could dance on the head of a pin; that would again be counter-productive to the culture that I should like to see created in the House of Lords.

1823. **William Utting:** We have certainly been warned by other witnesses about the dangers of prescription and having excessively detailed codes and regulations. On this side of the table, we are well seized of those problems. As an individual, I also agree with you about the importance of exercising individual judgement and interpreting codes. May I move on from the more general considerations that we have been talking about to some of the practicalities of the register? You were here during much of Lord Newby's evidence and heard a number of the exchanges about the effect of Category 1 and Category 2. You have an entry under Category 2, and I am particularly interested in the effect that that has on your capacity to contribute to the business of the House. I ought to say that I have been following the line that I think that these prohibitions are interpreted in a way that is oppressive and inhibits people from making a contribution that might help the House. I am seeking your agreement to that. Do you agree?

1824. **Lord Chadlington:** My colleagues always complain that I overstate my case on subjects about which I feel strongly. I shall try to avoid doing that. I think that they are not only oppressive, but useless. Let me give you a precise example. I am a director of Halifax - the bank. They are not a client of my company, but, for the sake of the discussion, let us suppose that they are and that I am personally involved in the lobbying programme. I have been involved in banking since 1968. If Halifax was a client of my company, I could not speak in a debate concerned with banking; if it was not a client of my company, yet I was a director and had been involved for the same period of time, I could stand up and speak, declaring the interest. Not only could I get up and speak, declaring the interest, but my financial interest is considerably greater as a director of the company than if it were a lobbying client. As a lobbying client, one would get a straight fee over a period of time; if one is a director of a company, one is probably involved in share options and so on, so the value of what one is saying and the share price impetus behind it is very important. If I were the merchant banker advising the bank I could declare the interest and speak. It is just ludicrous. I start from a position of saying that this is not sensible.

1825. In Category 2, I list myself as chairman of the public relations consultancy, as Lord Neill has pointed out, but our public relations consultancy employs just over 3,000 people and we have more than that number of clients round the world. I have no idea who my clients are. I do not know whether I am speaking on a client interest; if I get up and speak, all I can do is to be honourable about it and say, "I do not believe that this is a client in which I have any interest". I might be quite wrong, because while I have been asleep, we have been appointed by a mining company in Australia, and a decision that is currently being taken through the Houses of Commons and Lords is relevant to that company's future.

1826. **William Utting:** In those circumstances, it seems to me that far too much weight is placed upon individual judgement. An individual judgement clearly requires rather more detailed guidance in order to come up with the right answer in circumstances such as those. I really want to know the answer to that.

1827. **Lord Chadlington:** I hoped that you would not ask me that. I start from the belief that too many codes and rules will make it more difficult to dance one's way through it. It is very important that, when people come into the House of Lords, they understand their responsibilities. That has to be done properly. I do not think that it is improper for me to want to know, when Lord Marshall gets up - a very honourable man - whether he is a director of the company that is affected by the piece of legislation that is being debated. That seems to be a perfectly reasonable thing for me to want to know. But that is all that I really want to know. I do not want to know whether he earns £50,000 or has share options. At present, the rules imply that the standards of honour of lobbyists are significantly lower than those of being a director of a public company; that is ludicrous.

1828. **William Utting:** One register, then.

1829. **Lord Chadlington:** Yes.

1830. **William Utting:** Perhaps one rule that paid advocacy is banned.

1831. **Lord Chadlington:** Yes.

1832. **William Utting:** The register to be mandatory?

1833. **Lord Chadlington:** Yes.

1834. **William Utting:** So the large bit of Category 3 that is at present purely voluntary and on which one third of the Lords do not make any entry becomes mandatory.

1835. **Lord Chadlington:** Yes, that is right. I think one has either to rely on honour or do something transparent. One has either to do nothing and leave it to individual peers to declare the interest or get them to list everything and declare the interest; but I would not include financial information. Those seem to be the options.

1836. **William Utting:** Absolutely. Outside earnings are not included on the register unless they are acquired as a result of paid consultancies, for example.

1837. **Lord Chadlington:** Correct, yes.

1838. **William Utting:** The final thing - you have already referred to this - is that the register should include relevant non-financial as well as financial interests. You quite rightly said that even your trusteeship of Cheltenham Ladies' College might at some time be relevant to the business of the House. Good. That is very helpful. Thank you very much.

1839. **Lord Neill:** Can I take you back quickly to the induction process? You were arguing that there should be a better form of induction. To follow your advice that some people say that you exaggerate a position, could you comment on the suggestion that the traditional way of finding out how an organisation works is just to sit there, watch it and shut up - to wait until you find out how it works? That is how a lot of peers have found out about the House, its code of conduct and so on, and it is really unnecessary to try to teach people: they just have to watch.

1840. **Lord Chadlington:** One can certainly sit and watch; that is part of the induction process. There are several issues. For one's own conduct in the House, one can sit in the Chamber, watch people and see how to behave. Part of Sir William's question was about the culture of the Chamber itself. That is very important. I do not know whether Lord Shore would agree, but over the past four years I have seen it deteriorate quite a lot. I feel that people are becoming much more gladiatorial than they were before. To learn the culture of the House and how it operates, I should have liked someone to take me round, to talk about the process of a Bill and what happens each day, to tell me how the Committees work. The single thing that I have enjoyed most in the House of Lords is being a member of a Select Committee. Select Committees are wonderful things, but how the system works was never explained to me.

1841. **Lord Neill:** Is this too extreme a position? Is the whole concept of a working peer an anomaly? Traditionally, peers were non-working; that was the whole point. They were independent, although they had outside interests, and spoke on things they knew about. The introduction of the concept of working peers - leaving aside the Ministers and the Opposition Front Benchers - is almost another method of recruiting a House of Commons; instead of electing them by popular vote, they are put in by the Government of the day or nominated by the Opposition. Is that a factor that has changed the character of the House?

1842. **Lord Chadlington:** Yes. I think it is bound to be a factor that has changed the House. What has changed the House as well is a feeling of guilt, therefore, if one does not go. I suspect that hereditary peers who had been there for a long time just bowled up when they wanted to. This has been a bad week for me: I have been in the House only once or twice, and not for long when I was there. I feel guilty about that. There is a different kind of feeling that a working peer goes to the House of Lords: it is a job and should be treated as such. It is a job that should be done with enthusiasm.

1843. **Lord Neill:** Were you appointed as a working peer?

1844. **Lord Chadlington:** Yes, absolutely.

1845. **Lord Neill:** That carries with it problems. Can I take you back to a point of detail? You gave the example of a merchant banker who was a Member of the House of Lords and involved in a current take-over transaction. Surely he would have to declare that if he spoke on any matter related to that issue, even if it was pending legislation?

1846. **Lord Chadlington:** It might be a take-over, but I was thinking more of him being a banking expert. He would not have to declare the interest of being a banking expert as a merchant banker. I could not get up at all as a lobbyist for bankers, but he could get up and speak, declare the interest and say, "I'm very interested in banking and I have worked in the banking sector". But he himself may be benefiting from the success or failure of a particular transaction in that sector more than I would as a lobbyist. The financial motivation may be much greater in his case than in mine, yet he can speak.

1847. **Lord Neill:** He declares the interest ...

1848. **Lord Chadlington:** But he still gets the benefit, which is what lobbyists miss.

1849. **Lord Neill:** I will see if my colleagues have any questions. John MacGregor.

1850. **John MacGregor:** I am in some confusion about some of the Lords' rules and I am not sure that I have got it right. Do

you have any difficulty in interpreting the rule that Lords should be particularly cautious in speaking or voting in cases where they have interests that are "direct, pecuniary and shared by few others"? I think that I should.

1851. **Lord Chadlington:** Yes, I do have some difficulty.

1852. **John MacGregor:** This is most unlikely, but if you were the sole farmer in the House of Lords, it could be interpreted that you could not speak and vote.

1853. **Lord Chadlington:** "Few other people".

1854. **John MacGregor:** "Few other people". I see. I am told that it means "not shared by few other peers". With "few other people" there is not the same difficulty.

1855. **Lord Chadlington:** I did not find the rules clear when I joined. I went off and chatted to them about it, so that I understood them. I was worried about them. If there are rules, they must be clear, so that everyone knows where they stand. That goes back to the point about dancing on the head of a pin. It is clear really: one should play the game according to the rules.

1856. **Lord Goodhart:** I should like to follow up something, because I was not clear what your views were. It relates to paid advocacy. This comes under Category 1 and to some extent under Category 2. Category 1 states that a consultant to a business or business sector who is paid for their parliamentary consultancy cannot speak in the House of Lords on a subject directly affecting that business or business sector. Do you regard the present rule as proper or too restrictive?

1857. **Lord Chadlington:** At the moment it is only drafted to stop lobbyists - if I receive a fee as the representative of a bank and I am a lobbyist. Therefore it is too restrictive, in my view; it should either include others who have similar interests or be disbanded and included in the general list of responsibilities, so that one declares it and says, "I am a lobbyist and I receive a fee for this on behalf of the banking sector". I think that everyone has to be included in it or no one at all. It is as simple as that. As Lord Newby said, it does not take account of the accountants, bankers and everyone else who is in the same business.

1858. **Lord Goodhart:** Is there a danger that, if the rules are relaxed too far, all sorts of businesses and organisations will want to have paid spokesmen in the House of Lords?

1859. **Lord Chadlington:** I so much doubt it. I just do not see it. I do not think that we shall have huge numbers of paid spokesmen arriving on the scene; that will not happen. I was very surprised that Lord Newby said that he did not feel that there was much lobbying over the Financial Services Bill. My experience was exactly the opposite. I thought that there was very heavy lobbying.

1860. **Lord Goodhart:** There was massive lobbying, but I am not sure that he said that.

1861. **Lord Chadlington:** Maybe I misunderstood him, but I understood that he said that not much work was done by lobbyists.

1862. **Lord Goodhart:** I think he said "professional lobbyists".

1863. **Lord Chadlington:** And massive lobbying from professional lobbyists, but I do not envisage that we shall open the floodgates.[3]

1864. **Lord Neill:** Any other questions? Lord Chadlington, thank you very much for that interesting exchange. I am grateful to you for coming. That closes today's proceedings. The Committee will sit again on Monday 10 July at 10am

FRIDAY 7 JULY 2000

OPENING STATEMENT

Opening statement by the Rt Hon Lord Wakeham

The present House of Lords is a transitional one. Some Members of the House of Lords play, and always intended to play, a minimal part - for them, a peerage is an honour, not a job.

Others see themselves as legislators.

Our report supported the view that what we wanted for the future is a reformed House of Lords composed of Members very different from the Members of the House of Commons - more broadly representative of the British people than politicians can ever be - after all, members of the House of Commons are all politicians. We want people from all walks of life with expertise and experience, and nothing we have by way of regulation should discourage those broadly representative people from giving their services to the nation in the House of Lords.

So I don't differ from what I said in evidence to the Griffiths Committee - a declaration of interest at the time of the debate is vital - absolutely vital.

No Register can take its place and, in some respects, could be harmful. I think I should also say that my wide experience as Chief Whip and Leader of both Houses has never shown me an example of where a non-registration of interest has altered any piece of legislation or altered any Government policy. The present system in the House of Lords works well. It is ideally suited for the present membership and we hope the future membership, which would contain many part-time members.

All Members would be required to declare any interest if they take part, but to ask those who don't would be unnecessarily intrusive.

2. see evidence.p252

3. see evidence.p252

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 10 July 2000 (Morning Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Lord Goodhart QC
Sir Clifford Boulton GCB	Frances Heaton
Professor Alice Brown	Rt Hon John MacGregor OBE MP
Sir Anthony Cleaver	Rt Hon Lord Shore of Stepney

Witnesses:

Lord Haskel
Peter Riddell, The Times
Lord Dixon-Smith
Rt Hon Lord Rodgers of Quarry Bank, Leader of the Liberal Democrats
Rt Hon Lord Trefgarne and the Rt Hon Lord Mayhew of Twysden QC, Association of Conservative Peers

1865. **Lord Neill:** Good morning. This is the fifth day of our series of public hearings, which form part of our enquiry into the rules governing conduct in the House of Lords. Today we have a very substantial list of senior figures in public life, including a senior Law Lord, the Leader of the Opposition in the House of Lords and a prominent journalist. We are very grateful to them for coming to give evidence.

We start the morning with Lord Haskel, a Labour life peer who has substantial experience of the front bench in the House of Lords. He was an Opposition Whip from 1994 to 1997 and a Government Whip from 1997 to 1998 and he has held a number of portfolios as an opposition spokesman. Our next witness is Mr Peter Riddell, assistant editor of The Times. Mr Riddell, who has also worked at the Financial Times, has published many books and articles on constitutional issues. In his recent contributions to The Times he has shown a lively interest in the present enquiry.

After Mr Riddell, we have the Lord Dixon-Smith, a Conservative life peer created in 1993, who has a long history of involvement in local government as a member of Essex County Council from 1965 to 1993. Since 1998, he has been an opposition spokesman on local government. Then comes the Rt Hon Lord Rodgers of Quarry Bank, who is the Leader of the Liberal Democrat Party in the House of Lords. He was a Member of Parliament from 1962 to1983, first for the Labour party and then for the Social Democrat party. He was created a life peer in 1992. It is perhaps relevant to mention that Lord Rodgers served on the Griffiths Committee in 1994-95.

Then we have three senior members of the Association of Conservative Peers. They are Lords Trefgarne, Mayhew and Denham. Lord Trefgarne has extensive front-bench experience in both government and opposition. His portfolios have included defence, trade and industry, foreign and commonwealth affairs and transport. Lord Denham was the Government Chief Whip in the House of Lords from 1979 to 1991, having been Opposition Chief Whip from 1978 to 1979. Lord Mayhew, a life peer, held a number of senior government posts, including Attorney General, and from 1992 to 1997 he was Secretary of State for Northern Ireland.

I shall just mention now the names of those who will be giving evidence this afternoon. I will introduce them more fully at the

beginning of the afternoon's proceedings. They are Sir George Young MP, Lord Bingham, Lord Rees-Mogg, Lord Strathclyde, Lord Mackay of Ardbrecknish and Mr Nicholas True.

1866. With that prelude, Lord Haskel, our thanks to you for coming. We can begin our questioning, and the questions will come from Frances Heaton and John MacGregor. Is there anything you would like to say before we start? You have very kindly written to us, and we know your views from your letter of 6 June.

LORD HASKEL

1867. **Lord Haskel:** No, I have nothing to add.

1868. **Lord Neill:** You are happy to start in? Thank you very much.

1869. **Frances Heaton:** Good morning. Could I start by asking you a little more about your submission and also your speech in the debate on the question of alienation of public from politics and politicians and whether you think this is indiscriminately applied to the Commons and the Lords or whether it is different, and, if so, how?

1870. **Lord Haskel:** I think it is indiscriminately applied. I think it applies to all politicians. You ask what is my evidence for this view. It is, firstly, what I see round about me - the number of people who turn out to vote in elections, the drop in membership of political parties, the ageing of membership of political parties. My other evidence is polling evidence. I do not know whether the Committee has seen the polling done by the Better Regulation Task Force as to who is trusted to tell the truth. Politicians come very low down, unfortunately.

1871. **Lord Neill:** I do not think we have got that. Can you give us a date?

1872. **Lord Haskel:** Yes. This is the Better Regulation Task Force, January 1999. It was some polling done by MORI.
I can let the Clerk have this.

1873. **Lord Neill:** Please do. Sorry, I did not want to rush you. I just wanted to get the date for the record.

1874. **Lord Haskel:** I simply make the point that politicians come very low on the list of people who are trusted to tell the truth. The polling speaks for itself.

1875. **Frances Heaton:** A number of your fellow peers have come here and have emphasised the difference between the Lords and the Commons. One of the differences that I have taken on board is that many of the people in the House of Lords see themselves as being there as experts rather than as politicians, and they are not elected. There is a very different culture in the House of Lords, and that is a reason for a different approach on our part. When you joined the House of Lords did that difference strike you and do you think the difference is diminishing?

1876. **Lord Haskel:** It is difficult for me to judge the difference, because I was not a member of the House of Commons. I made my comments because I tried to see it from the point of view of the man in the street, the voter.
I do not think the ordinary man in the street perceives a big difference between members of the House of Commons and the House of Lords. We in the House of Lords, and in the House of Commons, of course know the differences, because we are dealing with them all the time, but I am not sure that the man in the street makes this differentiation.

1877. **Frances Heaton:** We have certainly had the occasional taxi driver who understands the difference. Perhaps we will have to do a poll on that. I think you joined in 1994.

1878. **Lord Haskel:** 1993.

1879. **Frances Heaton:** 1993, and have you seen a change in terms of the politicisation of the Lords in that period?

1880. **Lord Haskel:** To a certain extent. I think the big change in politicisation is yet to come, and has already started to come, with the disappearance of the bulk of the hereditary peers. One thing I have noticed is that there are a lot more people in the House of Lords who seem to be interested in getting consultancies and things, and part of the politicisation of the House of Lords is to do with the fact that a lot more people in it are earning their living at the same time, and obviously consultancies form an important consideration.

1881. **Frances Heaton:** So you think that the consultancies should be permitted.

1882. **Lord Haskel:** As life peers are not paid, I think that probably one would have to permit consultancies. I do not

particularly like them, because of the obvious conflicts of interests.

1883. **Frances Heaton:** I think that, in the Lords, anyone having a consultancy cannot speak on that topic.

1884. **Lord Haskel:** Yes, there is this rule, but I am aware of it being breached from time to time.

1885. **Frances Heaton:** But to the extent that it is not always breached, is there a loss in expertise from those who consider themselves barred by the existence of this rule?

1886. **Lord Haskel:** I think we have to differentiate between lobbyists and experts. Some people have consultancies and are now lobbyists, and they are paid to promote an interest, but others are experts and they are committed to a purpose, be it defence, health or education. I think that we must make that distinction. Certainly the work of the experts who are committed to a certain purpose is to be welcomed, but the rules must somehow differentiate between these two activities.

1887. **Frances Heaton:** I do not want to put words into your mouth, but are you suggesting that those who have paid consultancies should be prohibited from speaking and should register, but those who have an expert interest should disclose and then speak?

1888. **Lord Haskel:** I am very reluctant to say that people who are lobbyists should be forbidden, because they have to earn their living and, as long as the House of Lords is not paid and as long as what they do is legal and above board, I do not see how one could actually ban it. I do not particularly like it. You wonder what interest they are speaking to, but I do not think one can do much about it, as long as peers are not paid. You must allow people to earn their living.

1889. **Frances Heaton:** You do not find disclosure adequate? Other people who have come here have said that disclosure is the rule that matters, because when people disclose their interests, you know where they are coming from, and then you listen to what they have got to say and you can weight it in the light of their interests.

1890. **Lord Haskel:** Yes. I think that many peers would agree with me that the disclosures are pretty routine. We are quite used to hearing them, and I am not sure how much they register. My personal experience is that quite often after a debate, when you are thinking about what went on, you realise that there may have been a conflict of interest. People declare their interests in a fairly routine way.

1891. **Frances Heaton:** Right. So they slip it in.

1892. **Lord Haskel:** They slip it in, yes.

1893. **Frances Heaton:** If I may turn to the Register of Interests, given your attitude that there should be full disclosure, and therefore, presumably, you would support the third category of register becoming mandatory, do you see any distinction between pecuniary interests and non-pecuniary interests?

1894. **Lord Haskel:** Not really. The difference again, which I see and which I think is important, is the difference between those who are paid to promote an interest and those who have expert knowledge and are committed to a purpose. Whether the latter category is paid or not I do not think really matters. I think that is the difference that must be demonstrated.

1895. **Frances Heaton:** So you would have a full register of interests -

1896. **Lord Haskel:** I would, yes.

1897. **Frances Heaton:** - but not disclosure, necessarily, of the actual amounts that people are paid by particular enterprises.

1898. **Lord Haskel:** No. I think that probably one way of dealing with it would be to have an official in the House of Lords with whom you would register these agreements, and if conflict came up, presumably this agreement could be examined by the authorities of the House of Lords if necessary. I do not think one needs to put on a public register how much one gets for various consultancies.

1899. **Frances Heaton:** No, but leading on from that to the question of sanctions, you think that the existing House of Lords Committees, plus the Clerks, would, between them, be sufficient to monitor and regulate the register?

1900. **Lord Haskel:** I think so. Maybe I should say that I had a discussion with Mr Vallance White some time ago. He is the official who keeps the register. I made the point that he advises people whether they should or should not register an interest. If you have not registered an interest, nothing appears in the register, and to the outsider it appears that you have not bothered to do anything about it. I think that what is important is that, if you have no interest to declare, some sort of nil declaration should

be made, to show that you have bothered to go into it, but there is nothing that you need to declare. At the moment the register is blank whether you have nothing to declare or you have not bothered to go along and do anything about it.

1901. **Frances Heaton:** I think there is a bit of a contrast between the House of Lords register being blank and the House of Commons being full with every single paid visit, lunches, etc. Presumably you would agree with some sort of de minimis.

1902. **Lord Haskel:** I would have thought so, yes.

1903. **Frances Heaton:** Thank you very much.

1904. **John MacGregor:** Can I explore a little further this point you make about differentiating between lobbyists and experts - those with specific knowledge? You are basing your argument for allowing the lobbyist consultancies on the ground that they have to earn a living, because peers are not paid, but could you not say that they are earning a living simply by promoting particular interests in the Lords, and that is the whole purpose of their occupation? Therefore, as in the Commons, doing that in the Lords should be banned.

1905. **Lord Haskel:** I think I would like to ban it. I prefer to look at it in a slightly different way perhaps. People with particular expertise illuminate a debate: they add an extra dimension to it. If they plead for an interest, it is a sectional interest which they are committed to, and one must differentiate, as I said before, between that and a consultancy. But as long as people are not being paid, I find it very difficult to say that they cannot speak.

1906. **John MacGregor:** But if they are lobbying for a specific interest and clearly are parliamentary lobbyists, I understand that they are not allowed to speak or vote.

1907. **Lord Haskel:** I think they are allowed to vote. No, sorry, I am wrong.

1908. **John MacGregor:** You have made it very clear that you want people with special knowledge from special interests, whether it is being a lawyer, a farmer, a director of a company or whatever it might be, to speak, and I fully understand and totally support the argument that their expertise should be made available to the Lords. Presumably you would also feel that they should be able to vote on any matters that they are speaking on.

1909. **Lord Haskel:** I think so. I think that, if people who speak in the Lords cannot vote, that creates two categories.

1910. **John MacGregor:** You made a point in your submission about the propriety of consultancy agreements with overseas governments. What sort of propriety issues did you have in mind?

1911. **Lord Haskel:** What concerned me was this. It appeared to me that there was a conflict of interest. A legislator who makes laws for the United Kingdom being in the pay of a foreign government somehow seemed wrong to me. Also, we swear an oath, and it seemed to me that it might be contrary to that oath. This was what concerned me.

1912. **John MacGregor:** You talk also about wanting specific guidance for people with special knowledge. What sort of specific guidance did you have in mind? If there is transparency and declarations of interest, is that not sufficient?

1913. **Lord Haskel:** I come back to my original point. The special guidance that I wanted to ensure is that there is this differentiation made between those with a particular interest in promoting a particular purpose or a particular business or organisation and those with a sectional interest - for instance, the military people who speak in the Lords. They have a sectional interest in promoting the welfare and interests of the armed forces, and I think that is perfectly legitimate. They are not saying that they should buy my tank instead of your tank. I think the differentiation should be between people having a particular interest and a sectional interest.

1914. **John MacGregor:** Talking about opposition front-bench spokesmen in the Lords, and obviously you have had a lot of experience of that, you say:

> "It is difficult to extend the rules governing opposition spokesmen and women in the House of Commons to the House of Lords, because in the Lords they are not paid."

I am just trying to get clear in my mind to what extent you thought the rules were different.

1915. **Lord Haskel:** As I understand it, the opposition spokesmen in the Commons have more facilities than the opposition spokesmen in the House of Lords. Being in opposition in the House of Lords, you are tempted all the time by outside organisations who will offer you briefings, research assistants or, indeed, a researcher. They obviously do this because they want you to speak to their point of view. As long as front-bench opposition spokesmen are not given enough resources to find

their own researchers and get their own briefings prepared, one is very much tempted to accept these offers of assistance, and they obviously come with strings. Equally, opposition spokesman in the Lords also have to go out and earn their living, so the facilities offered by outside organisations do help them.

1916. **John MacGregor:** I am a little puzzled by your reference to "strings". If the strings are declared - if you can declare strings - isn't that sufficient? And could I take the point a bit further? I presume that you are not in favour of the suggestion that opposition spokesmen in the Lords should discard their outside interests, even if they are relevant to the subject that they are opposition spokesmen for, because, to take your own point, that means that they have a much greater knowledge of the subject that they are on the front bench to discuss.

1917. **Lord Haskel:** Yes. I find this point very difficult, I must admit, because, as I say, on the one hand I do not think you can take people's right to earn their living away from them, but, on the other hand, we all have sectional interests. Certainly if they are declared and transparent, it helps, but in an ideal world they would not be there in the first place.

1918. **Lord Goodhart:** I would like to ask you one or two questions, Lord Haskel, about enforcement of the register. We know that there have not been any complaints about misconduct so far since the register was set up, but there obviously could be. How would these be, first of all, investigated and, secondly, punished? Have you any views on that?

1919. **Lord Haskel:** I must say it is not something which I have given a lot of thought to. I really do not have firm views on that.

1920. **Lord Goodhart:** The possible alternatives for investigation are that, in theory, the Parliamentary Commissioner for Standards could have jurisdiction to investigate in both Houses, you could have a separate Parliamentary Commissioner for the Lords, you could have investigation by the Clerks, you could have power
for the Committee for Privileges to appoint an ad hoc investigator. Have you any preference between those?

1921. **Lord Haskel:** In the House of Lords at the moment the Clerks are asked to investigate any conflict of interest on the odd occasion that it has arisen, and that seemed to be satisfactory, but, there again, my concern about these internal investigations is that the public may think that we are investigating ourselves. I think that one must bear in mind how it appears to them, so perhaps on balance it might be better to have an outside person or organisation investigating these things. We in the House of Lords are particularly vulnerable to the public's view: if the public take a dislike to a Member of the House of Commons, they do not vote for him, but if they take a dislike to a member of the House of Lords, there is really nothing they can do, except that we will all, as peers, become marginalised. This is my concern about the House of Lords. Unless what we do appears to be absolutely right in the eyes of the public, they will just marginalise us, because there is nothing else they can do.

1922. **Lord Goodhart:** So far as punishment is concerned, legal view seems to be at present that there is no power, without new primary legislation, to expel or suspend a member of the House of Lords, so the only punishment available would be naming and shaming. In your view would that be adequate punishment for a breach of the registration rules?

1923. **Lord Haskel:** I do not think it would be adequate in the eyes of the public, but I am not sure what the alternative would be.

1924. **Lord Goodhart:** Do you think it would do damage to the standing of a particular member of the House of Lords if they were named and shamed?

1925. **Lord Haskel:** I am sure it would do damage to them, but the press can be quite unpredictable on these things. Somebody who is named and shamed can turn out to be a hero sometimes.

1926. **Lord Neill:** Can I ask you a question on the answer that you gave in your paragraph 4 about a code of conduct? You said that there should be a code,

> "particularly because many members are working peers".

I just wondered what the thrust of the reasoning there is. Why does the fact that many members are working peers make it more desirable to have a code of conduct?

1927. **Lord Haskel:** Again, the point I was trying to make there is that there are many people in voluntary walks of life in this country who have to submit to a code of conduct. If you are the governor of a school or a further education college, you are a volunteer - you are not paid - and you have to submit to a code of conduct. You have to declare all your interests, and indeed you are financially responsible if there is any financial mismanagement. I wonder why we in the House of Lords act on our honour, yet we as lawmakers, who presumably produce these regulations about school governors - I only take school governors

as an example - do not trust them to act on their honour. There must be 100,000 people in the country who are school governors. They must wonder why they are not trusted to act on their honour, yet we are. That is why I felt that perhaps the age of deference has passed and there ought to be some sort of code of conduct for peers.

1928. **Lord Neill:** It could be argued that the House of Lords already has a code of conduct, not so styled. The resolutions that we printed in our paper are precisely that.

1929. **Lord Haskel:** Yes, and I think they are very good. I think that they should be given a lot more prominence.

1930. **Lord Neill:** Thank you very much. Thank you for coming to give evidence. It has been a very helpful and useful exchange. We are most grateful to you.

1931. Our next witness is Mr Peter Riddell. Good morning, Mr Riddell. When I was introducing this morning's cast list in your absence, I said that, in your recent contributions to The Times, you had shown a lively interest in the present enquiry, which I hope was a factually correct statement. You know our procedures. You have given us an opening statement, which we will print in the record. Unless there are any words that you wish to address to us now?

PETER RIDDELL

1932. **Peter Riddell** ***(The Times):*** Just two. Because of my other journalistic calls, I have not been here before, but I have read the transcripts, and there are just two points from that.

1933. One echoes the point made by my colleague David Hencke on The Guardian. In a sense this is an area neglected by the press. Unlike your previous enquiries, where there have been problems, scandals and so on, this is very different. It is almost a theoretical exercise rather than a response exercise. That is true of the press too, although I think that press interest in the Lords is increasing because of the changing nature of it after the House of Lords Act, let alone what happens after the election in response to Lord Wakeham's Commission.

1934. The second point, which I am struck by, having read the evidence on the Internet, is that in a sense the argument used by some of the witnesses, that this enquiry casts doubt on the honour and character of members of the Lords, is a blind alley. The key issue is the changed nature of the House. To my mind that is absolutely the central issue.

1935. **Lord Neill:** By that you mean the abolition of the hereditaries, and would you comment on the point I put to the last witness about the number of working peers, which is now very substantial?

1936. **Peter Riddell:** I think it is the fact that every member of the House is there in a voluntary character.
I treat the bishops and Law Lords in a slightly different category, and I think it is sensible to do so. But it is the changed character of the House and, as I say, everyone is there of their own choice - including of course the elected hereditaries, who are there very much of their own choice. Secondly, it is the belief and behaviour of the House, particularly as I think we may see in the early autumn, that it has greater legitimacy in pressing reservations. We have already seen a statutory instrument defeated for the first time in over 30 years, we have seen the Parliament Act invoked and we will see what happens on Report stages of Bills in the autumn. There is a feeling of greater legitimacy. That was the phrase used by the Leader of the House herself.

1937. **Lord Neill:** Thank you very much for that. The questions will come from Lord Shore and Sir Anthony Cleaver.

1938. **Lord Shore:** Good morning, Mr Riddell. It is a pleasure to have you before us again - first, because you are very familiar with our previous background and our approach and, secondly, because you have written quite considerably around this area, and I shall refer to a number of the matters that you have already placed on
the record.

1939. Can I follow up immediately the question put by our Chairman? The line of thinking is not quite clear to me that, because the composition of the Lords has changed, there is a different set of values - culture - in that chamber. What, to you, is the significance of change in relation to behaviour and standards of conduct?

1940. **Peter Riddell:** I am not saying that people will behave differently. As I said, I think that is a red herring.
I think the fact that there has been a massive number of new peers is a red herring in the argument. My point is a different one. Given that the nature of the House itself is different - it is differently constituted - that implies a greater sense of accountability. The debate launched by the Wakeham Commission about the powers, role and functions of the House in itself makes it a different chamber, so it is less the nature of the peers than the fact that you are talking about a different chamber. Pre-November last year you could have talked about what was effectively a medieval legacy, with various grafts on by Harold Macmillan with life peers. Now you are talking about a wholly different type of chamber. As I say, it is not the peers themselves; it is the nature

of the chamber.

1941. **Lord Shore:** Thank you for making that point clear. In an article that you wrote in The Times some time ago you made this point:

> "Obviously any new rules need to be different from the Commons, since the interim House is still part time and its members need outside incomes."

Can you elaborate a bit on that, again making the connection between this change, as it were, in the interim House and the need for a particular form of regulation or of declaration?

1942. **Peter Riddell:** The first point is that, because the House is now being treated, as I say, as less of an almost medieval relic but is being thought of, regarded and debated in a different way, it must be regarded as more transparent and accountable. That is why I believe that part 3 of the register needs to be made compulsory.

1943. Why I made the point, which in a sense is a secondary point, when you asked why it should be different from the Commons, is that at present, and one must view the present House of Lords - who knows what will happen in the long term; wholly different issues would arise in the long term -members of the House of Lords, apart from those who hold ministerial office, do not get any income from it. All you get is your attendance allowance, and I think that has to be regarded in a different way. It is a very mixed composition, because of age and so on. This is one aspect where the vast number of new peers has made a difference: you have a large number of younger peers who are earning a living. I think it is unreasonable to require not the same standards, because the standards should be high in both cases, but the same type of disclosure from people who are, by definition, part time - that is the basis on which they are there - as those in the House of Commons, who are now paid £43,000 or £45,000 a year to be MPs. Therefore, while the registration should be compulsory in Category 3, it should be a different type of disclosure requirement, because the assumption is that people have an income from outside.

1944. **Lord Shore:** That makes that clear, but the crucial question that follows from that is how different are the interim House and the Commons, and in what ways.

1945. **Peter Riddell:** If I could leave aside Categories 1 and 2 on lobbying and so on, because they are quite specialist areas, the problem at present is that Category 3 is entirely arbitrary. Not only do over a third not register, but the degree of detail of registration varies enormously, as one sees just reading through it. It is clear from the evidence that you received from Michael Davies and his colleague that there is no desire necessarily to persuade peers: "Here are standards you have got to follow". It is very much done on an ad hoc basis: "It would be a nice idea if you registered, but we are not too fussy about how you do it." I may be maligning them, but that seems to be the gist of the approach that has been followed on that. So there is a lack of consistency both in registration and in what is registered. If you compare it with the Commons register, that comes through quite clearly.

1946. Where would there be differences? I think it is quite reasonable that, because peers have to earn money from elsewhere, they are not required to register how much they earn from external interests, if someone is a successful doctor, say, or a successful lawyer. I think it is an intrusion in privacy to say "How much do you earn from that?" and I think that would be a discouragement. I do not believe that a compulsory register would be. If people are supposed to behave on their honour, but then object to a compulsory register, I think there is a logical gap there. But I do think it would be an intrusion in privacy to say how much is earned, and that would be a discouragement for people.

1947. However, what is registered also needs to cover some unpaid activity, because a number of issues coming before your House, Lord Shore, are as much involved in voluntary activities. What one is saying is not that someone is behaving dodgily but that we know where they come from and what their interests are, and that cannot all be registered by someone speaking in a debate, because voting is as important.

1948. Let me take an issue that will undoubtedly come up before your House over the next year - fox hunting. I think that the political pressure early next year, or whenever the vote comes up, to know where people stand on it and what interests they have is quite legitimate, and that will not all be registered by people who speak in debates. Therefore, there must be much more consistency about listing unpaid interests.

1949. Another example that comes up on the Commons register is foreign trips. It would be absurd to say, if I might invoke you, Lord Neill, as Chairman, that, if you are travelling abroad in your role at the Bar, that has to be registered. It is nonsense. But if you were being given a paid trip by some group to inform you about something, that should be registered. There is a clear distinction there.

1950. That is where I see the differences and similarities, but the main difference from now is compulsory registration, greater consistency and application of the register and greater clarity, including unpaid posts, but not requiring money to be stated, because I think that would be an intrusion.

1951. **Lord Shore:** What about what is probably the most distinctive feature of Commons regulation, the position and person of the Parliamentary Commissioner for Standards?

1952. **Peter Riddell:** Certainly from reading the evidence and from seeing what has happened in the Lords - it is part of my point about moving from what inevitably has been an inward-looking House to one which has a different role and wants to have a different role - I believe that that involves a change of regulation, and I do not think it can be done internally. I think, to be frank, from the evidence that Mr Davies showed, that it just would not work. He is a servant of the House. It reminded me of the secretary of a rather old-fashioned club, working admirably for what is happening within the organisation. But it is very difficult to see someone who has had that background and has that functional role - it does not apply just to him; it applies to his predecessors too - being able to say to a member of the upper House "We're slightly worried about this aspect of your declaration". I think you need someone external to do that. I do not think they necessarily need the full panoply of the Parliamentary Commissioner for Standards, but I do think it has to be someone outside the hierarchy of the Clerks Department: it needs to be someone coming from outside the House. After all, all the principles of regulation that this Committee has looked at over the last five years have involved outsiders. It has been shown up in something that I gave evidence to you on before. One of the problems of looking at ethical conflicts in Whitehall is that it is very difficult for a Permanent Secretary to do it. Similarly, I think it is very difficult for a Clerk to do it. It is vital that it should be an outsider, but possibly not with the full panoply that Elizabeth Filkin or Gordon Downey had.

1953. **Lord Shore:** There is one distinction between the arrangements in the Commons and the Lords that you may feel has some significance. The Lords has a Sub-Committee of its Privileges Committee that contains three Law Lords. There is a feeling that very great confidence can be placed not only in the judgement but in the familiarity with investigatory procedures and the weight of evidence, with such eminent people there.
What is your comment on that?

1954. **Peter Riddell:** I think there is a distinction, Lord Shore, if I may say so, between when there is a full-blown enquiry and someone who acts as an adviser - the investigating magistrate aspect of it. I think there is a distinction between the two elements of it. This came up in your Reinforcing Standards report. I think that what is needed is someone who is outside the Lords hierarchy to act as the adviser, because it was clear from Mr Davies's evidence and from what has happened in the past that that is pretty weak at present. Say, when you became a new peer you said "I've got these various interests" and someone said "Right. This is what the rules are. This is what you should do" and acts as an adviser. That is what happens in the Commons and in every other organisation where there is a kind of ethics officer. If there is any problem, I think that the Sub-Committee with the Law Lords on it should obviously be the body that considers whether it is fully justified and what follows from it. But I think there are two different aspects - an advisory, investigatory magistrate one, and then the full panoply one, if there is a serious problem.

1955. **Lord Shore:** And it clearly would not, given those differences, justify the full panoply?

1956. **Peter Riddell:** I do not think so, no, but I do think it is very important. This comes back to my point about the club-like atmosphere and an outward-looking, accountable chamber, which is, after all, what the current process is evolving.

1957. **Lord Shore:** Let me press you a little further on this. You say in one of your very interesting articles, of which we have copies here, that the majority of cases in the Commons going before the Commissioner are trivial and do not even suggest improper actions by the MPs concerned. You give the example of William Hague's failure to declare the use of a gym as a benefit in kind. Yet you say

> "Such complaints are treated in exactly the same way as charges of corruption, with comprehensive and often minute inquiries by the Parliamentary Commissioner for Standards."

How serious is that and how, in the light of that, can any members of the Lords be helped to avoid the trivialisation and damage that follow from trivial complaints?

1958. **Peter Riddell:** I saw the testimony that Elizabeth Filkin gave to you and the point that she was making about the danger of tit for tat between MPs of rival parties, and I think that is the danger. That is why I think there needs to be a distinction between minor omissions of disclosure and more serious cases, where there is clearly an intent to mislead. That is the distinction that I would draw. What we have just discussed brings it out, because in the Lords the person I am suggesting would deal with the minor omissions, things that people have forgotten about, and say "Hold on here. Shouldn't you do this?" and act

as an adviser.

1959. Also, on your second point, given that the Lords prides itself on not being partisan in the way that the Commons is, I do not think that, certainly as at present constituted - who knows what would happen in the future - the kind of tit for tat that we have seen in the Commons would occur in the Lords, because the culture would be so disapproving of any peer who engaged in that. Secondly, I think that, if one had the proper structure of an adviser on the register, that would deal with it.

1960. Essentially the role would be this. Let us take the William Hague case, which is a pretty marginal case anyway. Someone would have gone to Hague and said "Someone has mentioned your gym. Don't you think it should have been on the register?" To my mind, that is the right way of doing it, when there was no suggestion that William Hague had suddenly taken a different view on the politics of gyms or something like that, which is a serious issue. If it is just an omission, that is the way to treat it. I think that is do-able, and also a different culture from the Lords itself.

1961. **Lord Shore:** My last question is this. I think you heard Lord Haskel's evidence, or the latter part of it. He referred to the fact, and it is a rather conspicuous fact, that something like a couple of hundred peers do not make any return at all. That may be entirely due to the fact that they do not have anything to declare. But it would help, would it not, if a nil return, as suggested by Lord Haskel, was made in those circumstances?

1962. **Peter Riddell:** I find it slightly odd that someone would be in the Lords if they have a nil return, without any interests outside. It is a slightly perverse idea on my part. But, no, I agree with you. I think that the principle of a nil return is a legitimate one - absolutely.

1963. **Lord Shore:** Thank you.

1964. **Anthony Cleaver:** Good morning, Mr Riddell. I think your views are fairly clear from your opening statement and your articles in a number of areas, but perhaps I could take you back over some of them. You comment on the change in the nature of the House over the last period. Has it changed in particular, do you think, in respect of lobbying? Is this something that you think is now more prevalent than it was and more significant perhaps?

1965. **Peter Riddell:** As my colleague on The Guardian David Hencke said, we just do not know. It is a hidden area. It varies obviously from Bill to Bill, but my impression from talking to peers is that, for example on the recent financial services legislation, the lobbying was very intense, because the House of Lords plays an important role. If it is more willing to amend legislation against the Government - I am not talking about Government amendments, which are the vast majority that go through the Lords - and to press the amendment even against the Commons, which has been done, or at least to force a compromise, which happens in most cases, the votes matter. That is not to say that anyone is behaving improperly. I know also from talking to lobbyists that on some Bills - it varies a lot depending on the Bill - they know that there is better chance of influencing and forcing a change by operating in the Lords rather than in the Commons. Also in a sense, as the Lords becomes less of an amorphous body and more a coherent one in its voting membership as well as its attendance membership, that becomes more important too. The other point about it clearly is that, as we have seen, the votes can no longer be dominated by one party. That again increases the pressures in some cases.

1966. **Anthony Cleaver:** Some of those who take a rather different view from yours on the question of mandatory registration say that this is essentially covered by the declaration of interests that Lords make before speaking. Do you think that is a valid position and that it ought to be monitored in some way? I think that in one of your articles you say that this is done very honourably, or some such comment.

1967. **Peter Riddell:** I think the problem is not people behaving venially, but not knowing what the rules are. I think you have had evidence yourself. I have certainly heard some peers express the view that they just did not now what the rules were on some things. This comes back to the answer that I was giving to Lord Shore: if you have a club-like system of regulation, that will happen. It is not that people are necessarily behaving badly, but they may not know the rules. In many cases the rules are very vague. The Category 3 ones under Griffiths are pretty vague and, as we see if we read the register, some people have totally different views on what is required.

1968. The point about declaring in speeches is all very well, but it almost goes back to your last question, Sir Anthony: what matters as much is votes, and for there you have to have a register. After all, in any debate, depending on its length and nature, you may get seven or eight peers speaking on an amendment, more if it is a big issue. Therefore, a mere declaration in speaking in a debate is a pretty secondary matter. What matters is not that people assume that people are behaving badly, but that people know where they come from. Again, the fox hunting Bill will be a classic example of that.

1969. **Anthony Cleaver:** So the point you are making is that people can vote without having made a declaration and nobody

would know that they happen to have an interest that is relevant.

1970. **Peter Riddell:** Yes, absolutely.

1971. **Anthony Cleaver:** Again, you said that the change has been in the House rather than perhaps a change in individuals in some senses, but when we were taking evidence from Lord Griffiths he said that he did not believe that mandatory registration would have been accepted by the House in 1995. Do you think that is still the case?

1972. **Peter Riddell:** Yes, absolutely. Sorry, I think it was the case in 1995. It will be a very interesting test to see whether it is the case now, depending slightly on what you recommend in the autumn. I think it will depend on how you phrase your report and what you recommend, but there will clearly be more of a battle, for a variety of reasons, most of which are to do with the transitional nature of the House. I think there is a genuine tension in the Lords about what type of house it is. In a sense, curiously, the existence of what I like to call the Cranborne/Weatherill/Irvine peers increases the ambiguity: is it intended to preserve the old House or is it a step to a new House? There is enormous ambiguity there, and that is reflected in attitudes to things like registration. So whilst the balance will have tipped compared to 1995, I do not think it would go through nem con.

1973. **Anthony Cleaver:** One of the concerns has always been to get the balance between having expert evidence from people who really understand the issues and the declaration of interests and so on. But people have also taken further this question of mandatory registration and have suggested that, if that was introduced, it would deter able people from entering the Lords. Do you have any sympathy with that view?

1974. **Peter Riddell:** No. It all depends on the nature of the registration. As I was pointing out to Lord Shore, I think that, if you required the same type of financial disclosure as in the Commons, it would deter people, but not if you are just saying "List your interests". There is also an internal contradiction there. If everyone is supposed to behave with honour, I cannot see what the objection is to having a looser form of compulsory registration, provided that the requirements of the registration fit the nature of the House as it is, and, as I say, that should be different from the Commons.

1975. **Anthony Cleaver:** Thank you very much.

1976. **John MacGregor:** Could I ask a question reflecting your expert knowledge of the media. You said in your opening statement that so far there has been very little interest indeed in the media about this area - standards of conduct and so on - affecting the Lords. Since the altered character of the Lords we have seen, certainly, more news reporting of debates, speeches and, particularly, votes, but nothing like the analysis that we see day by day of what goes on in the House of Commons. I wonder whether, with your knowledge of your colleagues and the discussions you have, you could tell us whether you think that that will develop much more now, with the altered character, and that you will see a much bigger focus on all these sort of issues as they affect the Lords?

1977. **Peter Riddell:** Journalism tends to go where power is, and it is a fact that the Lords is willing to defeat the Government on issues, which is one of the reasons for the increase in tension, as well as the whole debate about the nature of the Lords itself - its own interest and focus. But, essentially, if you have a more assertive chamber that acts as a check, particularly when the Government has such a large majority in the Commons, that is one of the main reasons, as well as the debate about the changed nature. I think that will increase, yes. We will have to see how this develops over time. It is not just the increased frequency of defeats; the issue is the degree to which they are pressed. What has been striking in the last year is not necessarily that there has been a vast increase in the number of defeats, but that they have been pressed and have forced the Government to compromise. That is why there has been an increase in reporting, and that will, I think, continue.

1978. **John MacGregor:** Do you think that will also cover the areas that we are concerned with, such as standards declarations, etc. - where people are coming from?

1979. **Peter Riddell:** Absolutely. I think it will. Most of the media attention has been on new peers, links with honours and things like that, but - I come back to the issue of fox hunting - I think that when that Bill arrives in the Lords, as I assume it will, some time in late winter and next year, there will be enormous attention on the peers' interests on that, and I think that will continue; and I can see other issues. Leaving aside the issue of the Law Lords and their interests, which I think is a separate category, on the main legislative activity I think there will be, yes.

1980. **John MacGregor:** One other question. In your written submission you say that

> "paid activity by members intended to influence parliamentary votes and debates should be banned."

I think you were talking there mainly about lobbying consultancies.

1981. **Peter Riddell:** Yes.

1982. **John MacGregor:** Does this mean that you would like to see in the Lords the system we have in the Commons?

1983. **Peter Riddell:** Let us say the Commons one as suggested with the amendments by you, which we have yet to hear the Government's response to, with the qualifications that you rightly put in in the Reinforcing Standards report - not discouraging people who have been abroad on a trip from speaking.

1984. **John MacGregor:** I am talking about lobbying really.

1985. **Peter Riddell:** Exactly, absolutely, not the over-interpretation that it has in the Commons. I think so, yes. It comes back to the point that Sir Anthony was asking about lobbying. Because there is more scope for it, I think there must be a much more clear-cut line on that. That is an activity where I think people have to decide what they want to do.

1986. **Clifford Boulton:** Turning to the administration of a regulatory system, you said that the current tone set by the Registrar seems to be rather free. Is that not a reflection of the current rules of the House of Lords? It would not be the function of either a clerkly Registrar or a Commissioner to get ahead of the game, would it? Is it not incumbent, first, on the House of Lords to adopt some rules that can then be tested objectively by whatever official is performing that role?

1987. **Peter Riddell:** I think that is a fair point, but we must look at what has happened since Griffiths, where there appears to have been a fairly relaxed attitude to what Category 3, particularly, means. That is a perfectly fair point, Sir Clifford, about getting ahead of the game, but you must also look at how the game itself has worked so far, and it has allowed a lot of vagueness. There is not parity between peers; some interpret it in different ways. There has been no sign that those responsible for regulation have tried to suggest consistency. Your point is perfectly fair: what matters is the rules, and the Clerks are servants of the House.

1988. I also think there is a more general principle, which I mentioned earlier, that it is terribly difficult for people who are operating as Clerks, or for that matter as civil servants, to act as regulators of the people in either House.

1989. **Clifford Boulton:** I had better declare my interest as a former Clerk.

1990. **Peter Riddell:** Not a great secret, Sir Clifford.

1991. **Clifford Boulton:** No, but you know what we are like.

1992. **Peter Riddell:** I looked down on you for many years.

1993. **Clifford Boulton:** Of course as a Committee we attach great importance to self-regulation, and when we find that we need to modify self-regulation by allowing an independent voice into a system, it is almost always because we say that the public perception requires it: it is necessary to deal with some collapse of public confidence. Nobody accused me of pulling my punches when I performed this role for the Select Committee looking into the Poulson and Dan Smith affairs. When this Committee was set up, there was a tremendous collapse of public confidence, and we had to recommend modified self-regulation.

1994. We are dealing in the House of Lords with no complaints; we are dealing with an atmosphere where, as far as we know, neither the public nor their colleagues are fussed at the moment about the standards of conduct. Do we really have to march straight into an independent voice or can we set up a system and see how the Registrar gets on?

1995. **Peter Riddell:** I take your point, Sir Clifford. One point, which I think is a valid one, is that we do not know. But the second is the changed nature of the House. We are not dealing with an unchanged House; we are dealing with a House that has substantially changed, and in a sense that goes back to your point about getting ahead of the game. I am not suggesting that the game should be the same as the Commons game, and I think I have made that clear. I think that that argument would not be acceptable to the current House or necessary. I do think, however, that however long the interim status, let alone a post-Wakeham House, is in being, people will have an increased focus on the Lords. Therefore, rather than run into problems, it is better to have in place what will still be a pretty light touch. That is my argument on that.

1996. **Clifford Boulton:** Thank you.

1997. **Lord Goodhart:** You suggested at the beginning of your evidence, as I understood it, that members of the House of Lords ought to register an interest if they take part in hunting, but that would require people to register their recreations, wouldn't it?

1998. **Peter Riddell:** I am thinking, for example, if they are a Master of Foxhounds or something like that, not actually wandering behind - if they actually have a position, which, after all, a lot of people do in voluntary bodies. I take the point about recreation, but given that the Government, for better or worse, have decided to legislate in this area, I think the lines between recreation and voluntary activity become blurred. I take your point on that. I am not saying everyone who hunts, but if someone is a Master of Foxhounds or whatever, that should be on the register, yes, because I think it is relevant to the legislation coming up.

1999. **Lord Goodhart:** But you would not require somebody to register simply the fact that they were a member of the hunt.

2000. **Peter Riddell:** No, no, holding an office. Sorry, I ought to have been clearer on that. That is a general category. No one is saying that you have got to register your membership of the National Trust, the Royal Society for the Prevention of Cruelty to Animals or something like that, but if they are an officeholder. Sorry, I ought to have clarified that, Lord Goodhart.

2001. **Lord Goodhart:** Yes. Thank you. One final, very short point. Going back to this question of investigations, it could be said to be reasonable that the Clerks of the House are capable of providing advisory services about registration, but it would be inappropriate for them to carry out investigations. The Committee for Privileges can be the trial body, but it is undesirable that they should also investigate. How would you fill that gap?

2002. **Peter Riddell:** What I am suggesting is that the advisory function and the initial investigatory magistrate's function, however one likes to call it, should be done by one person, which effectively is what happens in the Commons, separate from the clerk structure, because I think it puts the Clerks in an invidious position. That is my point: I think it is a very difficult position, when they have all the other relationships to members in both Houses. That should be the function that deals with anything which is just an omission, which most things are, and would arise if members do not know because they are busy in other activities. The person would just say "Hold on, you ought to do that", which I am sure is what 90 per cent of it would be. Then, if there is something more serious, that is when you get the Committee for Privileges and so on involved.

2003. **Lord Goodhart:** But you would envisage something that would be a pretty part-time job, I imagine - at this stage.

2004. **Peter Riddell:** It depends how many peers there are and so on, but, yes. It should not be something that develops into as demanding a job as it has been for the Parliamentary Commissioner for Standards, and part of that is because of the tit-for-tat nature of the Commons, which I do not think would happen in the Lords.

2005. **Lord Neill:** Thank you very much, Mr Riddell, for giving evidence, which, as always, has been extremely helpful and stimulating. Thank you.

2006. **Lord Dixon-Smith,** would you be kind enough to take the seat? Is there anything that you would like to say to the Committee before we start with the questions? As you know, two members of the Committee will take the lead, Professor Brown and Lord Goodhart, but if you would like to say anything, now is the time to say it.

LORD DIXON-SMITH

2007. **Lord Dixon-Smith:** I think I have put myself in enough danger already, Lord Neill.

2008. **Lord Neill:** Sufficiently exposed! Right.

2009. **Alice Brown:** Good morning, Lord Dixon-Smith. Can I begin by referring to the submission that you made to the Committee? You lay great store on the public's rights in these matters and you refer to "mechanisms of public reassurance" and "satisfy[ing] the general public". What do you believe to be public opinion about standards in the Lords at present?

2010. **Lord Dixon-Smith:** That calls for a fairly brief answer, I think, because one can only speak from one's own limited experience. I am not aware whether anybody has done any surveys on this matter. Certainly in my limited experience, among the friends and acquaintances that I have, who come from many walks of life, respect for the House of Lords, both individually and collectively, is high. There is little doubt about that. If one goes back to public expectations, public expectations are - you will forgive me, Lord Chairman, for putting it this way - that a committee of this nature should not be necessary. Public expectations are that people will behave to the highest standard, and I do not think, in my knowledge of the House of Lords as it is at the present time, that they fail.

2011. **Alice Brown:** Again, you draw in your submission comparisons with other bodies and you say that this is a House of Parliament that we are talking about and therefore certain standards should apply. Can I press you a little further on that, particularly from your experience of local government, because we think that the public have come to expect open registration and declaration of interests? Should that apply to all bodies of public office and in public life?

2012. **Lord Dixon-Smith:** I had not thought about all bodies: there are so many. Yes, I think it is perfectly reasonable that all interests should be declared, as indeed they are in the Lords at the present time under Griffiths, as I understand it. There is a compulsory part of the register, which does not affect me; there is a voluntary part, where I declare an interest; and members of the House declare their interest on every occasion that it arises. Certainly in Select Committees the procedure is now very formal and the meeting begins with a declaration of interests, because inevitably in the House of Lords, where everybody is there because they have become prominent in some walk of life, everybody has an interest of some sort and every now and again, inevitably, that impinges on the business of the House.

2013. But, again, if one comes back to the question of the public expectation, the public expectation, again, as I say, is that this will all be out in the open. If you are actually looking at mechanisms, I am not aware that the public are concerned about the mechanism. It is certainly not a topic of conversation that bores people round dinner tables. What they are concerned about is that the system should be open and should be public, so that people know that it exists, but I think, beyond that, they are not too concerned about the detail.

2014. **Alice Brown:** I shall return to the system in a moment, but I want to put another point before we move away from this. Our last witness made the point, and I think you were present, that there has been no crisis: we are not reacting to public concern about the House of Lords or any particular instance of sleaze. But you make the point in your submission that perhaps there is a need for clarity in the regulatory system before such a crisis occurs. Would you like to expand a little on that point?

2015. **Lord Dixon-Smith:** Yes. The clarity is a question of perception. From the point of view of the public, they need to have confidence in whatever system is in place. If one goes back to the existing situation, one could conceivably argue that the House has been remiss in that it may not have given enough "publicity" to what it already does. That said, you can take a horse to water, but you cannot make it drink, to use a rotten old clichÈ. Trying to get publicity so that the public are informed on issues of this nature which on the whole, unless there is a scandal, are matters which they are not concerned with, is quite difficult. The procedure in the Lords is well known, but it has not caused any problems, even, I was about to say, with the rapidly changing membership in the Lords. That is just about a legitimate description. We have lost a lot of peers and we have gained a lot of peers. Even with that, I think I can stick to my statement that their Lordships behave in an honourable way. I personally regretted enormously that there was a time when some people, if you like, lost their sense of honour in public life, and that is the reason why we are all here today.

2016. **Alice Brown:** You made the point there that the system is well known inside, but also that it might be less well known to the outside world, and there is an issue about information and public perception, but let me press you a little on the current system. You say in your submission that you think the recommendations and implementations of the Griffiths Report have worked well in practice.

2017. **Lord Dixon-Smith:** Yes.

2018. **Alice Brown:** But we have had evidence from other witnesses that there has been some concern about the clarity of Category 3 of the register, and perhaps about the consistency with which it is applied. Would those aspects cause you any concern?

2019. **Lord Dixon-Smith:** They do not cause me concern, because if any member has concern about what he should or should not put in, he can go and ask, and have the situation clarified, so I do not think that there is a problem from that point of view. If there is inconsistency in what is happening, dare I say it, it will ever be thus. It will not matter how tight you draw the lines and write out the specification: some people every now and then will think "That particular bit of wording does not apply to me". If one was to have a system that was so detailed and so policed - God help us - that everything was down and consistent, it would be administratively impossible and would break under its own weight.

2020. **Alice Brown:** You also make the point about the differences between the two Houses. Would you like to expand a little on which factors you think are key in the differences and the implications of these differences for any system of regulation?

2021. **Lord Dixon-Smith:** Yes. The key difference is that members of the House of Lords, in the sense that they are unpaid, are amateur, so immediately a whole lot of potential sanctions fall by the wayside. The second key difference, with the exception of those who sit on the government front -benches is that the House of Lords, under its present remit, is strictly non-executive. The one thing that I constantly miss in the Palace of Westminster, having had a background in local government, where my own view is that any senior councillor knows more about real power than most MPs know exists, is that there is no executive authority at all. So the opportunity for corrupt practice of the most obvious sort, or even of a covert sort, simply does not exist: it is not there. Of course the government front-bench are covered by government rules, so again it is not a problem.

2022. **Alice Brown:** Again we have had evidence that post the 1999 Act the constitutional position of the Lords has changed. That would not, in your view, imply a change also in the system that we operate?

2023. **Lord Dixon-Smith:** The constitutional position is held to have changed, but my own opinion is that, whenever push becomes shove in the relationship between the two Houses, the Commons will always say "But the Lords is an appointed House and therefore we can disregard their opinion". There are, fortunately, some parliamentary practices which mean that they still have to defer to our opinion on occasion, but by and large, when push becomes shove, that will be the view that they will take, and in that sense the position has not really changed. This is a question of perception rather than fact. As a member of the opposition, of course, I would argue strongly that the House, as a result of what the Government has done, should be in a more authoritative position, and indeed is so, but it is a very marginal shift. If one starts to argue about what the House might become, we are in a different ball-game. I am afraid I go seriously out of line with most members of the House of Lords on that, but it is a different issue and we should not wander into that alley-way.

2024. **Alice Brown:** We will not speculate about that particular development at the moment, but we could talk a little about the fact that the House of Lords has been seen to become more assertive in recent years: on a number of occasions it has held the Government more to account. Also we have heard about an increase in lobbying that may have affected practice. Can you comment on either of those two developments and, again, on their potential implications?

2025. **Lord Dixon-Smith:** The House of Lords is not holding the Government to account particularly any more than it used to do, as far as I can see. If you were to take the voting record, it is still very much as it was. I remember with enormous pleasure - dare I say - shortly after I arrived in the Lords going through the Lobbies against the Government and literally taking Lord Whitelaw through with me on an issue about policing, and that is the function of the Lords. I am not aware that we are doing it any more than we were or with any greater authority. The politics may have changed, the balance of the House may have changed, but the function of the House essentially has not. If we get into this ball-game of reform, what may happen in the future is what may happen in the future, but the House is behaving pretty much as it always has done. The pressures may be slightly more intense on the political front, but the remarkable thing to me is how little it has changed, despite a whole lot of new faces.

2026. **Alice Brown:** You have cautioned us to take a light touch, but you say that you could envisage having a code that set down certain principles, along the lines of the House of Commons code, and you made the point earlier about the Clerk's role. Would you think that the Clerk would be sufficient if the House of Lords had a code or do you need an outsider, as Peter Riddell suggested earlier?

2027. **Lord Dixon-Smith:** I think that one needs to deal with the question of practicality. I do not know whether you would call it a patrician view or a Corinthian view, but I go back to public expectation. The public expectation is not that a code should exist and that somebody should police it: the public expectation, I say again, is that people will behave properly.

2028. What concerns me about having too detailed a code is this. Certainly one can have a code. I would not say that the Clerk should police it, but I think that the Clerk should be in a capacity to advise members on it and as to how they should proceed, but I do not see how you can establish a useful policing mechanism. At least, I do not think you could establish a policing mechanism that would be better than the press. The press may annoy us and infuriate us and drive us all mad, but it does a lot of things very well, and one of the things that it does very well is sniff out bad practice in both public life and corporate life, and indeed elsewhere. Infuriating though we may find the press from time to time, I would certainly say that it fulfils that role very usefully for society and I doubt whether any officially appointed body could do it better.

2029. **Alice Brown:** So we can rely on the Peter Riddells of this world to do this function for us.

2030. **Lord Dixon-Smith:** I deliberately did not come in to listen to Peter Riddell because I am a great admirer of his and I did not want to be, shall I say, brain-washed by him. But he should not be modest about his own profession. It is an extremely good one, in my view.

2031. **Alice Brown:** Lastly, as you know, category C of the register is voluntary, but the case has been put to us by other witnesses that it should be made compulsory. Is that a development that you would support?

2032. **Lord Dixon-Smith:** Sorry, would you mind repeating that? I am not sure that I got the specific point that you are after.

2033. **Alice Brown:** Yes. I am looking at particularly Category 3 of the register. The first two, as you know, are compulsory and the third one is voluntary.

2034. **Lord Dixon-Smith:** Yes. It would probably make very little difference whether it was compulsory or not, in the sense

that you are still relying on the honour of the individual as to what he puts down. Again, I come back to the question of how you police it. If you are relying on the honour of the individual as to what he puts down, even if it is compulsory, you are relying on the honour of the individual and that is the end of it, unless there is some procedure under which you have an immensely detailed policing system. I would simply say that I could never justify that on what I know of the behaviour of members of the House of Lords.

2035. **Alice Brown:** I take your point about content, but a large number of peers currently do not register. Is that something that causes you concern?

2036. **Lord Dixon-Smith:** No, because if there is an issue on the Floor of the House or before a Committee where they have an interest, they declare it there anyway. Some people still have what might be regarded as an old-fashioned view of how to behave and regard, if you like, the requirements of a compulsory register as an intrusion. It is a view that one has to respect, but at the same time one must recognise human weakness. But if human weakness goes to the point where it is "wrong", generally speaking that will be found out quickly enough.

2037. **Alice Brown:** I am sure that some of my colleagues will want to pursue some of those points. I will hand you over to their capable hands.

2038. **Lord Goodhart:** I shall indeed now pursue that point. You said that you thought that it did not make much difference whether Category 3 was mandatory or voluntary because members of the House of Lords put interests down in the register because they thought it was right to do so. Is that a fair summary?

2039. **Lord Dixon-Smith:** That's right, yes.

2040. **Lord Goodhart:** You earlier said that one of the important features was that the public should have confidence in the procedures of the House of Lords. Do you think the public would have confidence in a voluntary register?

2041. **Lord Dixon-Smith:** I think the short answer to that is that, as far as I am aware, they do, because that is what we have and the public have confidence in the Lords as it exists.

2042. **Lord Goodhart:** The public have confidence in the Lords as it exists, but of course that might not always be the case. Do you think it might be better to have a mandatory register in case problems arose, so that you could say "We have a mandatory register"?

2043. **Lord Dixon-Smith:** It would be a greater defence for the Lords against attack in the future if filling in the register were mandatory, but, as I say, the question of what is actually put in that register is still a matter of the individual's honour in filling it up. So you might still have a bit of difficulty, I think. I would hope not. Peers of the realm jolly well should be peers of the realm, and if they are not behaving properly, then we are all in trouble.

2044. **Lord Goodhart:** Would you agree that the definition of the third category at the moment is extremely vague and leaves a great deal of room for different interpretation by different members of the House?

2045. **Lord Dixon-Smith:** Yes, I would accept that. It may be that that could be tightened up, but I still think that there would be problems of definition. My experience of life is that the tighter you try to draw lines of definition and regulation, the more people start looking for ways under, through, over or round them, so, even though I expect everybody to behave properly, sometimes I am let down.

2046. **Lord Goodhart:** What would you think ought to go on the register? You have put down your interest as a farmer. What about significant unpaid posts? For instance, you were formerly chairman of Anglia Polytechnic University. If you were still the chairman, do you think that is something that you ought to put down on the register?

2047. **Lord Dixon-Smith:** Personally, I would not have thought it was necessary. It was a voluntary job. It was something that I fell into after years of familiarity with the place and as part, originally, of my role as a county councillor. Again, it was an unpaid role. It was a question whether it was an executive role or not. I would not have thought that it was a role that would warrant declaration, no, because you could never make anything of it. It might occasionally be a position of influence on the margins, but that was all. It was not the sort of interest that I would have thought the public would particularly be bothered about, in that sense. Everybody knows it is there anyway.

2048. **Lord Goodhart:** But presumably if you had been speaking in a debate on higher education at the time, you would have declared it at least.

2049. **Lord Dixon-Smith:** I would certainly have said that, yes.

2050. **Lord Goodhart:** Do you think there is a case for saying that the register ought to be brought closer to the sort of interest that one would declare on speaking?

2051. **Lord Dixon-Smith:** It certainly could be and, as I say, it might be a defence against trouble at some point in the future.

2052. **Lord Goodhart:** Of course, and a number of witnesses have pointed that out.

2053. **Lord Dixon-Smith:** We are going back over ground that we have already gone over. I would not regard it as mandatory. I do think it would be important to declare an interest where you might gain. I think that is the crucial category of interest that should be declared.

2054. **Lord Goodhart:** What about the question of enforcement? You were saying that this is to a large extent enforced by the press, but if the press were to come up with evidence that somebody had failed to put an entry on the register that they should have put on, how would you see that being dealt with?

2055. **Lord Dixon-Smith:** Can we separate two things - enforcement and policing? I said that the press were doing the policing.

2056. **Lord Goodhart:** The policing, yes.

2057. **Lord Dixon-Smith:** It is a very real distinction. When you get into the issue of enforcement, you are in a very different ball-game, because you are beginning to look at the situation where the House itself is sovereign, and technically it derives its sovereignty from the Crown. It is a similar problem in the Commons, but there are more potential sanctions. In the Lords, technically, unless the lords themselves, by their own procedures, decide to create some sanctions, they do not exist. So there is a problem, and that is an issue which, in the end, the House itself will have to debate and decide.

2058. **Lord Goodhart:** We have the Committee for Privileges at present, which of course includes a number of Law Lords. Is that an appropriate body to decide whether somebody has or has not committed a breach of the rules as to registration?

2059. **Lord Dixon-Smith:** I am bound to say that I could not think of a better body to decide that. The greater problem is what they could actually do about it if they did so decide, and at the moment the House has not agreed a system of sanctions that that Committee could exercise, as I understand it. My own reaction to what you are saying is "And please God, it will never need to do so". This is one where I would wait until the Committee for Privileges had to make a recommendation that the House do something about a situation. Then the House might have to do it, but I am a great believer in leaving well alone, if you can.

2060. **Lord Goodhart:** But somebody could be reprimanded by the Committee for Privileges, which could publish his or her name in its report. Do you think that would be a significant sanction?

2061. **Lord Dixon-Smith:** I would have thought that for any individual who was so named it would be a dreadful thing to happen.

2062. **Lord Goodhart:** Finally, I would like to ask you about an entirely different subject. You are currently a spokesman for the opposition. Do you think it is appropriate to have different rules of disclosure or conduct for opposition spokesmen from other members of the House of Lords? Is it desirable for tighter rules to apply to front-bench spokesmen?

2063. **Lord Dixon-Smith:** It is a seductive temptation. My experience, which I admit is limited to nearly two years now, and it is certainly something that I would never aspire to, is that my colleagues, with the exception of the Leader of the Opposition and the Opposition Chief Whip, are in the same position as all other peers, except that our work load is rather greater. We have all the same pressures - the same family pressures, the same need to make a living - and, for the life of me, I cannot make a distinction between them. They happen, I suppose, to have a margin of more interest in their work from the point of view of future policy, but that is very limited. Generally speaking, in my experience I find that colleagues in the other place think that they are a repository of all wisdom and knowledge and are not too concerned about our views. They know that we are, shall we say, loyal enough to go with them when that is necessary.

2064. **Ann Abraham:** Can I take you back to this issue of the register and declarations? There was one small point that I wanted to clear up in order to understand what you were saying to us. I understood you to say that if there were members of the House of Lords who, for their own strong reasons, did not want to register, that should be respected and it was not a problem, because they would declare their interests in a range of contexts. Was I right in understanding you to say that?

2065. **Lord Dixon-Smith:** Yes, that is paraphrasing pretty much what I said. I certainly respect individuals who hold strong views on these matters, as indeed one should. It would be a matter of judgement as to how long into the future that rather patrician view can be retained, but I am wildly optimistic in these things. I would hope that it will be retained, because there is not a problem. Maybe I am wrong.

2066. **Ann Abraham:** You have also talked a great deal about public confidence and public expectations. I understand how a system of declaration might work in relation to the business of the House - internal business, as it were. We have had different evidence about the extent to which it does work. I do not understand how a system of declaration deals with the fact that a member of the public might want to consult the register to obtain information about a member's interests, and that information would not be there. You have had a lot of very positive things to say about the importance of public confidence, so I was trying to understand how you reconciled that aspect.

2067. **Lord Dixon-Smith:** I do not have too much difficulty with the apparent inconsistency, because there are so many other matters of public record about the lives of all of us who are in the House of Lords anyway - Who's Who for a start, where, to take my own case, I have relatively more than I would dream of needing to put down in a register of interests. I am sure that every other peer would say the same. Dare I say it, some peers have put down a much fuller biography than I have, but my view is that my biography is my biography and it is my business. But it is there, and anybody can come and ask me if they are bothered. I would not see any register of interests as being a very useful source of information to a member of the public who wanted to find out something about an individual peer. It would be a very limited source of information and there would be far better places to go if you wanted to find out about a person as an individual.

2068. **Ann Abraham:** It is interesting to hear you say that, because it suggests that the register of interests as it stands is not worth a great deal in terms of public confidence.

2069. **Lord Dixon-Smith:** Yes, but, with the greatest deference, unless we are all going to write a four-page biography, it will not be so. I would suggest very seriously that that sort of detail would be hopelessly over the top. If I thought there was a problem, I suppose my views might change, but I am not aware that there is one.

2070. **Lord Neill:** One idea that has been put to us, Lord Dixon-Smith, was that the officials of the House might compile a register from public information. Does that strike you as an intelligent suggestion?

2071. **Lord Dixon-Smith:** I think it would put the officials of the House in a difficult position.

2072. **Lord Neill:** They could check it, obviously, with the peer. They would do a draft entry and say "Is this about right?"

2073. **Lord Dixon-Smith:** Yes. It is a bit like turning Who's Who into an official record, which it certainly is not, and I think it would be a very funny thing to do, to be quite honest. If the information is to come from anywhere, it must come from the members. I do not see how you can do anything else.

2074. **Lord Shore:** I have a last question on that. I understand that the issue of what the content of a declaration should be is highly controversial, but the principle is not. If you are willing to make an entry in Who's Who, why should you not be prepared to make a similar entry and declaration, just of your broad interests, in a register?

2075. **Lord Dixon-Smith:** I have no difficulty with that at all.

2076. **Lord Shore:** So it is the content of the register, not the principle, that you are concerned with?

2077. **Lord Dixon-Smith:** No, it is not even the content in particular that I am concerned about. What I am concerned about is that we may be creating machinery and mechanisms to deal with non-existent problems. Through 35 years in public life I have spent a great deal of time, energy and effort trying to avoid creating administrations to do things, which will grow like bacterium on a Petri dish, if you are not careful. I have had a rooted objection through the whole of my life to putting something in place because somebody says a problem might exist. We spent many happy hours on occasions in county hall discussing, amongst other things, how to defraud the council - very useful discussions they were. But to put permanent mechanisms in place to police everything in such detail that you should not have a problem - I say "should not have a problem", but you will still have problems - simply creates another problem in its own right, and you have start looking at value for money and whether what you are doing is sensible in that context. Sometimes the conclusions are very blunt, and you had better go back to a clean sheet of paper.

2078. **Lord Neill:** Thank you, Lord Dixon-Smith, for coming and for answering all those questions. We are very grateful.

2079. Good morning, Lord Rodgers. I introduced you at the beginning in your absence but now personally welcome you and

thank you for attending. I mentioned that you had served on the Griffiths Sub-Committee, which is relevant, and have extensive experience. In light of the questions that you have been listening to, is there anything that you wish to say before I invite Sir Anthony Cleaver and Sir Clifford Boulton to put questions?

RT HON LORD RODGERS OF QUARRY BANK

2080. **Rt Hon Lord Rodgers of Quarry Bank (Leader of the Liberal Democrats in the House of Lords):** Mine must be a rather elementary view. I take for granted that people in public life - particularly those who have responsibility in central and local government - ought to declare any interests of a kind that might be the subject of a conflict. My starting point is that I do not see why there should be any objection whatever to a register that is broadly comparable to that in the Commons. I supported that 25 years ago. There are differences between the two Houses and account should be taken of them but my starting point is not the case for a register comparable to that in the Commons but the case but the case that has to be made against.

2081. **Lord Neill:** That is very helpful. We will publish your opening statement as a prelude to the evidence you will give today.

2082. **Anthony Cleaver:** Let me take you back to the time of the Griffiths Report. You stressed at that time the importance of the public having confidence in the way that the House of Lords conducts itself. Do you have a feeling for the way that the public thinks about the Lords and the way it behaves?

2083. **Lord Rodgers:** I have a feeling but no more than that. I think that the public regard the Lords as rather more reputable than the Commons at present. I cannot detect widespread public anxiety about the position as it now is. That is my instinct. That does not mean that such anxiety could not develop. In both Houses, a small cloud can suddenly appear and completely reverse public judgement. At the moment, I do not think that there is talk in clubs and pubs about it.

2084. **Anthony Cleaver:** Since the Griffiths Report, there have been many changes in the character of the House of Lords. How does that affect your view?

2085. **Lord Rodgers:** The House has become a much more professional place. It always claimed to be very expert but its expertise was limited. It has been greatly broadened by the new people who have come into the House. This is entirely an impression - I have no figures in my head - but I believe that more of our new Members are obliged to earn a living than many of those who have gone. The case for doing what I wanted done at the time of Griffiths has been strengthened by the change of membership.

2086. **Anthony Cleaver:** In your speech on the Rees-Mogg debate, you suggested that Griffiths was too limited in its scope and experience. Could you elaborate on that?

2087. **Lord Rodgers:** It was limited in the obvious sense that it was a Committee of the House. With respect to whatever your committee recommends, at the end of the day the House will have to embody it in resolutions. There are times - the present is one of them - when although the power of self-regulation continues, an outside view is very desirable. Griffiths was an inside view. It was a small committee established to head off Nolan - there was some instinct of that in the attitude to setting it up - or alternatively, to fill a gap before the Nolan Committee came to the Lords. It was probably a bit of both. I think it was a good committee but it is time for outside scrutiny, which I why I welcomed your committee's decision to conduct this inquiry.

2088. **Anthony Cleaver:** You referred to the fact that more Members of the House of Lords today are engaged in more significant paid activity outside. The argument has been put to us on a number of occasions that the principal difference between the Commons and Lords is that Members of the House of Lords are unpaid in that capacity. Is that relevant to the question of whether should be a register of interests?

2089. **Lord Rodgers:** Relevant in the reverse way normally argued. If more Members of the House of Lords rely on outside interests to pay their way, there is a strong reason for being wary of the possibility of conflict. The majority of MPs enter the House of Commons when they are relatively young - from their late 20s to mid-30s - and have little expertise. That does not mean they have not learnt the art of lobbying. Alas, they have only too well. Nevertheless, the fact that the House of Lords is an expert House is a prima facie reason for having a register at least as good as that of the Commons.

2090. **Anthony Cleaver:** One issue is whether it would be sufficient simply to register interests or whether it would be necessary to go as far as they do in the Commons and specify amounts earned and so on.

2091. **Lord Rodgers:** The Commons approach is broadly right. The Lords has a register and although there are only a few mandatory requirements, there are discretionary ones that, for the most part, Members respect as far as I can judge. The House of Lords is one of the two Houses of Parliament. It has the power to make legislation. It is arguably more important today

because of its power to defeat governments in a way that was once regarded as exceptional and, by some, unacceptable. Given the role of the Lords in legislation, its vulnerability to lobbying is sufficiently great - greater than it was and certainly sufficiently great to justify a register.

2092. If peers with great experience of a narrow area of expertise are unable to speak - I make a distinction between speaking and voting - that would be to the disadvantage of parliament and the public. They have to be free to bring their expertise to parliament but that is different from not declaring one's interests. It would be easy to declare, then to speak. I think back to our long debates on Sunday opening in the 1992 Parliament, when Members were very vulnerable to lobbying. Lobbying was properly legitimate. I was influenced by lobbyists, which was perfectly legitimate - but I had no interest in those who were lobbying or in winning their cause except in terms of public policy.

2093. **Anthony Cleaver:** We understand the concern that the Lords should not deprived of expert input. You said that the register is respected. Certainly nobody has suggested that there has been any failure to register mandatory information. Category 3 of the register, however, is voluntarily and about one third of their Lordships have registered nothing in that section - which perhaps is surprising.

2094. **Lord Rodgers:** Not entirely surprising but regrettable.

2095. **Anthony Cleaver:** It has been suggested that lobbying is much stronger now than previously. Do you have personal experience of that trend?

2096. **Lord Rodgers:** I think that it is. I have no evidence. It would be necessary to look back over a long period. Lobbying is totally legitimate. It is in the nature of parliament. Why have lobbies but to allow the public to come into parliament and tell us what they think we ought to do? Lobbying is not only commercial. A great deal of legislation has no obvious commercial implications. If one takes the huge volume of Home Office legislation there is a great deal of lobbying, especially of Opposition spokesman. I am doubtful whether there is more now than five years ago. Whether there is more lobbying than 10 or 15 years ago, I do not know. I could only guess that there is a great deal more.

2097. **Anthony Cleaver:** Much of the lobbying relates to areas in which peers might have interests that are not pecuniary or material. They might be aligned, for example, with a non-governmental organisation that has a particular set of positions. Would you favour those interests being registered?

2098. **Lord Rodgers:** There is a great distinction between commercial interests of one kind or another and non-commercial interests - between paid employment and voluntary activity. The current balance is about right, as I understand it. Most peers who declare at all will declare voluntary organisations of which they are president, chairman or a member. I find it rather tiresome when Members get up to speak, even at Question Time, and make a feature of the fact that they are president of the Pedestrians Association or whatever. That can become repetitive but if that is a fault, it is a fault on the right side.

2099. We all have views that we want to put that are conditioned by our experience of life, organisations to which we belong and persuasive arguments among our friends and others. That is in the nature of politics and parliament and is wholly healthy. Members who do not have views and did not listen would be poorer Members as a result. That is different from having a financial interest.

2100. It is all too easy to be influenced by financial interests. That is a natural instinct. At the time of the tragic Paddington rail crash, for example, there was much public criticism of Railtrack and its shares went down. I can well understand persons owning Railtrack shares - including me, with my little package bought at the time of privatisation - might feel upset at that reaction and ask, "Is Railtrack being fairly criticised?" One cannot ask people for detailed information about their shareholdings but we need to recognise that money and ways of making money are big incentives. All of us go further than we ought from time to time, to protect our financial interests of one kind or another.

2101. **Anthony Cleaver:** In the event that we move in the direction of a compulsory register, it has been suggested that the current processes may not be sufficient to police or deal with issues. Do you feel that there are enough safeguards there already?

2102. **Lord Rodgers:** I do not think that there are any ultimate sanctions. There is naming and shaming, so it would be possible to print in the register the names of those peers who have made no declaration. The argument would be that they have no declarations to make. Even under the present regime, Members can make a nil declaration. So they would either have a substantive nil declaration or be named and shamed in that way. I have never believed in the sanctions in the Commons. I would never myself have voted for the expulsion of a Member.
A Member's relationship is with his constituents. In the Lords, we are not elected but I do not see any more sanctions. The theme always is the honour of the House and I believe that the great majority of men and women in the Lords are honourable. I

would not want to name any exceptions to that rule. If peers do not respect the rules, their colleagues will know. Peer disapproval is quite a considerable factor.

2103. **Anthony Cleaver:** Thank you.

2104. **Clifford Boulton:** I am sure that we take your point about participation in parliamentary proceedings being an extremely serious matter. Therefore the question of openness ought to be comparable in both Houses. How can we retain a satisfactory register without going as far down the road as the Commons - out of respect for those peers who have been invited to become Members of the House of Lords because of their eminence as Nobel prize winners, field marshals and so on? Can there be an effective register without quite the apparatus of the Commons, with 73 paragraphs of explanatory matter and detailed listings of foreign travel - much of which relate to the pursuit of professional activities as a surgeon or something like that and has nothing to do with public life? Could there be a modified register that is both useful and fair?

2105. **Lord Rodgers:** A modified register could be useful - just as we have a register that falls short of that in the Commons but which is still useful. I do not see the case for making an exception for Nobel prize winners.

2106. **Clifford Boulton:** I meant that they are not politicians tarred with the same brush in the public mind. They may feel that they are being unnecessarily exposed to questions about their personal or private lives that are not really justified.

2107. **Lord Rodgers:** I would be surprised if your committee got a happy reception if it were to draw up two lists - one class being those who do not have to declare because they are honourable men and women with a professional life and the other being Members of Parliament. I would resent that very greatly. I do not think that is really on the cards. The argument is made that peers arrive in the Lords not knowing that they have to declare and are suddenly confronted with having to do so. I do not think that any peer should have arrived in the Lords since the establishment of the register without having been told by the leader of their party in the Commons or Lords, if they were political nominees, that they were expected to register. If they are cross-bench peers, the same applies.

2108. No peer need appear in the Chamber, speak or vote. Peers can ask for leave of absence or simply stay away. There is no compulsion to be active in the Lords. It would be reasonable to say that Members who never appear do not need to register. I am thinking aloud now. That may be nonsense but offhand, the principle is that Members who do not attend should not have to lay themselves bare. Those who do attend and participate should register whatever their background, whether it is mainly professional or political.

2109. **Clifford Boulton:** Should peers be required to register the same amount of detail as in required in the Commons, including foreign visits financed by others, shareholdings with a nominal value of more than £25,000 and so on? Do you think the Lords should just import the Commons system?

2110. **Lord Rodgers:** I thought you were making a distinction between some peers and others.

2111. **Clifford Boulton:** Not at all. The point of view has been expressed on the part of the people I mentioned that the general rules for the Lords would need a slightly lighter touch.

2112. **Lord Rodgers:** I do not take that view. The only qualification is my feeling is peers should not find themselves unable to speak in their areas of expertise because of the restrictive conditions. If peers declare all their interests totally openly, their expertise is something from which the House and the public can greatly benefit. But I see no case for a lesser declaration than in the Commons.

2113. **Clifford Boulton:** You are obviously a little worried about the register becoming unnecessarily cluttered with information that does not amount to real interest. Other peers have told us that entries sometimes look more like a job application or a claim for status or expertise that does not exist. Your letter states that registration

> "should be unnecessary where no commercial or monetary interest is involved."

What about cases where a peer is on a management committee of a large charity or national trust? I have mentioned Amnesty International. Sometimes, participation gives one a representational role that is different from that of a mere back-bench member of such a body.

2114. **Lord Rodgers:** I may have gone too far. There is unnecessary repetition in the case of members who are well-known for their voluntary role. That interest is registered although they do not have to register it. Repetition occurs particularly at Question Time. Sometimes it is plainly slightly ridiculous and there is a feeling in the House that it is slightly ridiculous. That is what I have in mind. I take your point entirely. I think you are right and I was wrong.

2115. **Clifford Boulton:** Assuming a fuller code, do you think that advice to peers can adequately be given by the Clerk of the Parliaments and the Registrar on what is expected by way of compliance? Or should one move straight to importing an independent commissioner? I am talking not about investigating formal complaints but about day-to-day advice to peers on what the rules mean.

2116. **Lord Rodgers:** That depends on what the Clerks say. I would be perfectly happy if the Clerks did it, if they felt comfortable and it was not too large a burden. If the rules are explicit and any incoming peer has been warned about them and has examined them beforehand, the burden should not be too great. If the Clerks feel uncomfortable, we should consider some other way. It depends very much on what the Clerk of the Parliaments says.

2117. **Clifford Boulton:** Thank you.

2118. **Lord Shore:** You began your evidence by referring to the need to declare a potential conflict of interest. I examined recently the wording of Categories 1 and 2:

> "Lords who accept payment for providing parliamentary advice or services shall not speak, vote or take part in any procedure."

That is so even for peers who provide parliamentary advice and goes beyond the prohibitions in the Commons. It goes on:

> "Lords who have any financial interest in the business involved in parliamentary lobbying on behalf of clients are similarly banned from all activities."

Given those two compulsory categories to which Members must sign up if they have those interests, what other categories would justify compulsory registration in Category 3, which is at present voluntary? What are you most concerned to catch that currently eludes the net of Categories 1 and 2?

2119. **Lord Rodgers:** I thought you were making a different point from the one with which you ended. The reaction against lobbying and the abuse of the authority that membership of the House was absolutely right. It is right today, insofar as Members are lobbyists and abuse their parliamentary opportunities, that we should be very tough about that. Even then - this may sound a softening - there may be, and it is for your committee to decide because I have no firm view, there may be an argument for acknowledging that some peers have expertise that the House should have available to it. Given that such peers declare in the Chamber, the register is complete and they do not vote - I do make a distinction there between speaking and voting - there may be a case for some relaxation.

2120. Most voluntary declaration could appropriately be mandatory. One does not have to be lobbying for a client to have a substantial interest if one is a director of a company. One does not even have to be lobbying for a client if one has a very large shareholding. I do not see a great distinction, although I have hitherto shared the feeling that professional lobbyists need restraining more than those who do not appear to be.

2121. **Lord Shore:** Are you suggesting that the prohibition, which might be relaxed in the one respect you mentioned, falls short of the coverage necessary because it only covers parliamentary advice or services. That is Category 1 and is mandatory. One must not accept payment for parliamentary advice or services. Are you suggesting that peers can have an interest of an important kind, perhaps financial, that lie outside that direct relevance to activity in Parliament and should declare it? If I have understood you correct, say yes and I will follow up with one other question.

2122. **Lord Rodgers:** Yes.

2123. **Lord Shore:** Good. Then my question is, are those interests so important that they should be declared as to amount - as is in the practice in the House of Commons?

2124. **Lord Rodgers:** Yes, they should. An obvious area is defence contracting. It is a lucrative area in which governments make decisions, and one in which there have been abuses - not in parliament but outside. If one is a director or a major shareholder in a defence contractor, that ought to be on record if one is participating in defence debates or voting on relevant legislation - not that I can immediately think of what such legislation might be.

2125. **Lord Shore:** Would it be sufficient simply to declare that one was a director of a company? Do we need to carry forward the requirement to specify the amount earned?

2126. **Lord Rodgers:** I would have to refresh my mind about exactly what has to be done in the Commons. If one is a director of a major public company, the size of one's shareholding does not much matter. If one is not a director but has a substantial

shareholding, of course that does matter.

2127. **Lord Shore:** I am sure you keep in contact with the Commons and will have heard how MPs reflect upon the post-Nolan regime - particularly the detailed complaints that are made about what appear to be minor matters. There is a lot of parliamentary tit-for-tat. As the general election approaches, that is likely to increase. Would the Lords be well advised to look carefully at the practices that have grown up in the Commons and to question whether they should go along the same lines that have developed there over time?

2128. **Lord Rodgers:** You have more recent experience of the Commons but I do not think that the tit-for-tat is the result of the changes we made 25 years ago in introducing a register. On the contrary, there might be a great deal more tit-for-tat if there were no register. The safeguard is the nature of the House, which is much more conciliatory, less aggressive and less confrontational. As long as it remains that way, I hope that we will not get into that sort of tit-for-tat. If the Lords changes further in whatever direction, that cannot be ruled out. Meanwhile I do not think that one is cause and the other is effect.

2129. **John MacGregor:** In the Commons, one has to disclose if one is a non-executive director or has shareholdings with a nominal value above £25,000 - but not the amounts. If one is a director of a public company, the figure is disclosed in its report and accounts but one does not have to give that information in the register. Peter Riddell suggested this morning that if one had to make a disclosure of earnings as a surgeon, barrister or whatever, that would be a disincentive and discouragement to some people wanting to become peers. He made a distinction between disclosing the interest and the earnings. I am not quite clear where you are coming from. I hope that clarifies the position. Perhaps you could indicate exactly what you feel.

2130. **Lord Rodgers:** I share that view. If I am confused, it is because I am not sufficiently familiar with the details of the Commons register. I am not suggesting that there is need for a declaration of earnings in any respect. If that is what Peter Riddell said, I rather share that view. If individuals had to declare their incomes, they would find that extremely uncomfortable and it would be complex to monitor. If one declares earned income, one must declare income from other sources. That would be complex because that figure depends on dividends paid and everything. I think that is an unnecessary world to get into - that is my first reaction.

2131. **John MacGregor:** Sir Clifford asked about providing advice but there is also the issue of the investigations undertaken by the Parliamentary Commissioner for Standards. As I understand it, there have been no complaints to the Clerks in the House of Lords. Do you think it would be unnecessary to have a parliamentary commissioner in the House of Lords?

2132. **Lord Rodgers:** At the moment, no. But as soon as there was an incident, the answer would be yes. You ask a difficult question. There has to be some long stop. I am not sure by what procedures the Lords have reached that point - presumably by a resolution of the House. That would lead to the appointment of a suitable person to investigate. I cannot contribute more because I have not thought it through.

2133. **John MacGregor:** Thank you.

2134. **Alice Brown:** You made clear your position at the time of the Griffiths Report, when people were very sensitive to the mood of the House. Could you speculate on the extent to which the mood of the House has changed since then with regard to reform?

2135. **Lord Rodgers:** This is inevitably subjective but I think that the mood of the House has changed partly because its composition has changed. I would be surprised if the majority of the 200 Members who have entered the Lords in the past three years or so would not take it for granted or at least would not resist the idea of a register. Quite a number of the hereditary peers who have gone were clearly very hostile to one. The mood of the House has changed but I believe that it is divided. It is certainly not divided entirely on party lines and I do not known the views of cross-benchers.

2136. There has been a shift but how big a shift I do not know, because we never really put opinion to the test five years ago. As you implied, I was in favour of a register five years ago but I went along with Griffiths because I had been a member of that committee, its decisions had been properly reached and that was clearly the mood of the House at the time. If there were two to one in favour of the Griffiths recommendations then, it might be two to one in favour of going further now - but it would be a bold Member of the House who could be sure about that.

2137. **Alice Brown:** Thank you.

2138. **Lord Neill:** Thank you, Lord Rodgers. That completes our questioning. We are very grateful to you for attending and for writing to us.

2139. Our pair of witnesses for the Association of Conservative Peers are Lord Trefgarne and Lord Mayhew of Twysden.

Unfortunately they are not accompanied by Lord Denham, who was hoping to attend but is unable to do so. Thank you both for the written submission and introductory remarks, which will be printed at the beginning at your evidence, so that it will be available on the website for everybody.

2140. The third paragraph of your statement refers to confidentiality. Only two peers have asked us to treat their submissions in confidence. We are writing to them asking them to waive that obligation. Another peer wrote, then gave oral testimony but wanted part of his written testimony to be treated confidentially, and we will deal with that in the same way. You have my assurance that it makes a minimal impact. We will see if we can find a way of stating the substance of your evidence, even if the imposition of confidentiality cannot be displaced. As to the Law Lords, I will be asking a question about that matter. It may be of interest to you to know that the senior Law Lord, Lord Bingham, will be attending this afternoon to give evidence. We have been in touch with the bishops. For the moment, we have not succeeded in securing a witness from among them. The Lords Spiritual have been very hard to pin down.

2141. After I have put some questions, I will be followed by Professor Alice Brown. We have already submitted some questions, so you know the general shape although we may not stick to them word for word.

2142. Has the composition of the House changed in significant respects since the Griffiths Report in 1995 in any way that affects the issues we are considering?

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2143. **Rt Hon Lord Trefgarne (Association of Conservative Peers):** The answer is yes and no. The House has of course changed since 1995 because a large proportion of hereditary peers are no longer Members. We do not think that has changed the ethos of the House. Peers were always guided by the Seven Principles of Public Life to which we have referred and we think they still are. The arrangements that were put in place after the Griffiths Report have worked well, so we do not see any need for substantive change. That is not to say there is no need for adjustments or minor change. Although the House has altered, that has not changed the underlying principles that need to guide peers in their conduct.

2144. **Lord Neill:** One or two witnesses have drawn attention to an alteration in the courtesies and knowledge of the courtesies of the House. One example was of a peer leaving the House after making a maiden speech, not even remaining to hear the congratulatory words of the following speaker. That may not be significant in itself but is there some lack of understanding of the ethos of the House?

2145. **Lord Trefgarne:** It is true that has happened on some occasions. It was largely a matter of ignorance on the part of the peers concerned. There are 200 or so new peers who were not familiar with the rules and traditions that apply. Once they learn about them, they soon comply.
I know of no case where a peer has deliberately and willingly walked out after the end of a maiden speech and has not subsequently regretted it.

2146. **Lord Neill:** The point has been made to us that the induction process could be fuller.

2147. **Lord Trefgarne:** Perhaps.

2148. **Lord Neill:** I thought one normally learnt things by osmosis.

2149. **Lord Trefgarne:** The House is very good at teaching people things by osmosis. The traditions of the House soon become common knowledge even among new members. It was once said that there is something in the air conditioning that has the desired effect on new peers, who sometimes arrive with the most revolutionary ideas - all of which seem quickly to evaporate.

2150. **Lord Neill:** It has been put to us that there is an air of professionalism about the place now, with more of a sense of obligation to attend. Whereas hereditary peers used to attend to speak on a subject that they knew something about, the new working peers feel that they have to discharge an obligation to attend and vote - somewhat similar to the House of Commons. Is there anything in that?

2151. **Lord Trefgarne:** I believe that the respective party Chief Whips would not agree that newly appointed peers have an obligation to attend and do so. That is self evident from the figures that many newly appointed peers who sit on the Labour benches do not take that obligation. If they did, the Opposition would have even greater difficulty than it does in carrying votes on important occasions.

2152. I do not believe that the obligations that peers used to feel and now feel have changed significantly following the removal

of the hereditary peers. Perhaps they will but they have not done so yet.

2153. **Lord Neill:** So there has been no relevant change within the House. I ask you a slightly different question - one that is difficult because of the lack of empirical evidence. Has there been any change in public attitudes, in the way that they view the workings of the House of Lords compared with five years ago? Has public interest or perception altered in any way?

2154. **Lord Trefgarne:** There was much interest in the affairs of the House when the reforms were being legislated last year but following their enactment, I do not think that public perception has dramatically changed. All the life peers remain and 92 hereditary peers were elected - largely those who took an active part in the proceedings of the House anyway. The faces that one sees around the corridors are not quite the same as they used to be because some distinguished hereditary peers did not stand or were not elected. But the Members who are in the House now are faces that we know and recognise. I would not say that the faces have changed that much. Likewise, the procedures and attitudes of the House have remained broadly unchanged. Of course there was dramatic change in the days and weeks surrounding the enactment of the reforming legislation but things are now settling down.

2155. **Lord Neill:** Your written submission refers to the Seven Principles of Public Life that Lord Nolan enunciated in the First Report of this committee and have been adopted by the House of Commons, local government, charities, the Scottish Parliament, Welsh Assembly and others - sometimes with modifications. Those seven principles have been added to in some cases or slightly amended to suit the context. Am I correct in saying that the House of Lords has not formally debated or adopted them?

2156. **Lord Trefgarne:** In practice, the House of Lords has adopted them, because we are all guided by the principles. Whether we are able to recite them verbatim, each of us every night, is another matter. All the Members of the House of Lords that I know are distinguished and honourable people. They are inevitably guided by those principles, which are in most cases common sense.

2157. **Lord Neill:** I will read the subtext of one of them, dealing with accountability. It states:

> "Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office."

There is a difference between a Member of Parliament and a Member of the House of Lords. An MP is very accountable, in the sense that he or she can conduct themselves in a manner to alienate constituents and at the next election is not returned. Without naming names, we can all think of examples where that kind of direct accountability has actually happened. That is not the case with peers, who are irremovable. Does accountability and submitting oneself to appropriate scrutiny link to Part 3 of the register? Page 31 of the booklet refers to the resolution of the House of Lords. Parts 1 and 2 are mandatory. Part 3 states that there shall be a register of

> "any other particulars that Members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties."

Is that language appropriate?

2158. **Lord Trefgarne:** It has worked very well. Those arrangements have been in place for several years and I know of no public disquiet that they have not been adequately observed. I know of no concern within the House that anybody has abused those arrangements and has not, when the moment arrived, declared an appropriate interest. Therefore, I do not think that there is any call for significant change.

2159. **Lord Neill:** Would Lord Mayhew like to add anything?

2160. **Rt Hon Lord Mayhew Of Twysden QC (Association of Conservative Peers):** Accountability is not capable of precise definition but I would argue that with today's televised proceedings and the coverage that the Lords increasingly gets, there is accountability to the public in the sense that they know what is going on. If there is disquiet about the behaviour of a peer, that will be voiced within the House and be known of outside. There is not the direct accountability of a Member of the House of Commons or the ability to expel a peer in the way that the Commons has expelled an MP. The proceedings of the House of Lords are not in camera. Given the House of Lords' subordinate character to the House of Commons, my feeling is that the degree of accountability that exists, although less than in the House of Commons, is sufficient.

2161. I agree with Lord Trefgarne about the absence of any public disquiet. As we express in our paper, the general view is that confidence that the Lords commands among the public is rather a long way above that of the House of Commons - tightly regulated though the latter is.

2162. **Lord Neill:** We have heard similar evidence from a number of witnesses, that the standing of the House of Lords is high.

2163. I turn to the difference between a declaration of interests and the register of interests. It is said that the well-understood practice that a peer will state his or her interests works in one of two ways. Suppose there were to be some financial interest, the House could apply a discount factor, thinking that he or she would say that anyway. The second is to enhance the position of the speaker, such as a Vice-Chancellor of a university when talking about education. When it comes to voting, many peers will have made no speeches but might have relevant interests. Under the existing system, there is no record of those interests unless they have been voluntarily registered. Does the voluntary system cater for the needs of the wider public?

2164. **Lord Trefgarne:** As far as Members are concerned, none of us keeps the register in our head. So unless a peer declares an interest when he rises to speak, the chances are that we do not know - which reduces the value of the register to Members. The public outside is a different matter and that should guide anyone who is interested in the voting record of a particular peer. I think the rules are properly understood by virtually all Members of the House. I know of no exception although there may be one. Therefore, I remain satisfied with the present arrangements. I repeat my earlier point that there does not seem to be any criticism of them, within the House or outside. Nor is there any allegation that a peer has abused his position, as an advocate with an interest, when speaking or voting.

2165. **Lord Neill:** Lord Bingham wrote to the Committee on 20 June, and I can read one paragraph to you:

> "Our final response to any recommendation made by the committee would of course depend upon its content. We would, however, envisage that any rule accepted by the House as binding on its Members should be accepted as binding upon us" -

that is, the Law Lords -

> "in our capacity as Members of the House."

He is making the point that Law Lords are full Members of the House of Lords who also have a judicial capacity and responsibility. In so far as they are parliamentarians, Lord Bingham is saying that subject to the nature of the final recommendation, the Law Lords would not want to draw a distinction between themselves and the rest of the Lords. Do you foresee any difficulty between the House and the Law Lords?

2166. **Lord Trefgarne:** To the contrary. We take the view that the Law Lords are indeed Members of the House of Lords. Not only do they sit on the Judicial Committee but often intervene in our non-judicial affairs - and that is very welcome. I am glad to hear that Lord Bingham now thinks, it seems, that Law Lords ought to register. Up to now, they have not registered a thing. I think that I am right in saying that they have taken a decision among themselves not to register anything.

2167. **Lord Neill:** That was so stated in a debate in parliament but as it is a voluntary register, there is apparently no reason-

2168. **Lord Trefgarne:** There are two small compulsory elements but I dare say that no Law Lord has such a thing to register.

2169. **Lord Neill:** I do not think that is likely to come into question. We are talking about the voluntary bit.

2170. **Lord Trefgarne:** Last year, there was an incident that was well-publicised at the time and which might not have occurred had the Law Lords taken a view as to voluntary registration.

2171. **Lord Neill:** That is so but I do not think that anything that Lord Bingham is saying is intended to relate to the Law Lords' judicial capacity. They would comply with the rules.

2172. **Lord Trefgarne:** But once it is registered, it is registered - in whatever activity they may subsequently partake.

2173. **Alice Brown:** You make the point, which we accept very much, about the high standing of the Lords and that there have been no scandals to which we are responding. Lord Dixon-Smith stated earlier that at a time when standards of behaviour in public life are under detailed scrutiny, no purpose would be served if no mechanisms of public reassurance are put in place until after damage is done by lax behaviour. He said that would be irresponsible. He was making the point that just because there is not a problem, that is not necessarily a reason for not having certain mechanisms in place. Do you think there is some validity in that argument?

2174. **Lord Trefgarne:** I would want to study Lord Dixon-Smith's words more carefully. I take the view that before we start making wholesale changes to the present arrangements, we need to establish a need and reason for change. There is no public anxiety. Nor is there any hidden problem of which the public is not aware and that needs to be addressed. Before we embark on

wholesale change, there needs to be some justification for doing so.

2175. **Lord Mayhew:** As must be obvious to the Committee, a balance has to be struck serving the end of disclosure in which the public may have an interest, not to say curiosity, and not damaging one of the most important characteristics of the second Chamber - the broad sweep of expertise and experience that it deploys. The latter is extraordinarily important and that has been recognised by inquiries held hitherto. That is the relevance to me of the no-salary point. If somebody is asked in future, by whatever mechanism, "Will you become a life peer because your expertise is so valuable?", and that person is to be subject to registration and inquiry, he is much more likely to say, "No, thanks. I have seen what happens in the House of Commons. The move seems to be towards bringing House of Lords regulation into parity." That would be greatly to the disadvantage of the public interest. It would also fail to feed public curiosity. That is the balance. I do not want to anticipate the future - particularly when, as was said by Lord Trefgarne and Mr Vallance White, the Clerk of the Judicial Office, no complaint of any sort has been made to the authorities of the House since the register was established.

2176. **Alice Brown:** I accept also your point about the potential deterrence effect. Your comment about balance is also extremely important, because we do not want to lose the value that we have. You were clear that the culture and ethos within the House is based on tradition but there might be a change in political ethos external to the House. Perhaps that is part of the tension within the system. How would respond to external expectations resulting from that change in political culture?

2177. **Lord Mayhew:** You helpfully invite us to consider a hypothetical situation and one cannot define it in advance precisely. Not every public expectation ought, in the public interest, to be fed. Of course it is important to take account of what the public look for but one has to take a view on whether, if they were accorded an expectation, they would suffer in the long run.

2178. I endorse Lord Trefgarne's comment about the success with which the House, in the short time I have been there, has impressed its ethos on new members - including me. There is a strong desire among new members to get the form. If one happens to rise or go to walk out of the Chamber when the Lord Chancellor is on his feet, one sits down like a shot rabbit. Otherwise one is thought to have been terribly bad mannered. That works. Public expectation in some quarters may be that the Lords should be treated the same as the House of Commons but the public are very good, when presented with the bones of the argument and the factors on both sides, at reaching a commonsense conclusion. Expectation, although to be heeded, is not always to be fed.

2179. **Alice Brown:** Some witnesses have referred to the perceived increase in lobbying activities. Also Lord Rodgers referred to the fact that more peers are dependent now on paid income external to the House of Lords. He was arguing, unlike some others, that was a greater case for greater regulation.

2180. **Lord Mayhew:** I defer to Lord Trefgarne because he has longer experience of lobbying and so forth.

2181. **Lord Trefgarne:** My experience is the reverse. In recent years when there has been concern about lobbying that was not as principled as it should have been, the lobby has decreased. That is my personal experience. Maybe the lobbyists know that I am less resistant to it than most. As a peer, I do not feel that I have been more lobbied in recent years. There are one or two notable exceptions. For example, I gather that all peers in recent weeks, certainly including me, received I have lost count of how many letters on the desirability of Clause 28. But all of them appeared to come from private individuals, not paid lobbyists. I do not think that there has been an increase in lobbying in recent years, as some maintain. The lobbying that does go on now is much better regulated and, in my experience, wholly in accordance with the rules and what is proper.

2182. **Lord Mayhew:** We say in our paper that it is desirable that use should be made of the voluntary ability to register an interest. We have been asked to take account of the latest figures. Before we submitted our paper, I asked Mr Vallance White for the figures. At that time there were only 544 Members of the House. Of those, 399 had registered interests in Category 3; 57 had sent nil returns, positively indicating that they did not have anything that they wished to declare; and 98 had remained silent. A general pressure to make use of the voluntary register is the right way to go about. The figures now are higher but there has been an enormous increase recently. I imagine that disparity or gap will fall sharply soon.

2183. **Alice Brown:** You say that the gap is closing but would you be concerned if a substantial number of peers did not register any interests?

2184. **Lord Mayhew:** I would not know in each instance or in any instance whether they had anything to register.
I would want to wait before the House legislated to make a change by whatever means. I would want to see evidence of any abuse. The key is the inhibiting effect on the ability to recruit.

2185. **Lord Trefgarne:** The mischief is not failing to register but seeking to impress upon the House a particular point of view and keeping secret some relevant interest. There is no evidence of that. None at all.

2186. **Alice Brown:** So the key point is openness.

2187. **Lord Trefgarne:** Yes. If peers who have not registered rarely attend, speak or vote, it hardly matters.

2188. **Alice Brown:** I refer to your response, on page 3 of your submission, to our second question - which concerned whether the differences between the Commons and the Lords were so significant as to justify a completely different approach. You answered yes but qualified that response:

> "That is not to say that the existing rules governing the House of Lords may not need modification in future by the House from time to time."

What are the circumstances in which modifications might be made, and what would those modifications be?

2189. **Lord Trefgarne:** We have no such circumstances in mind at present but we do not have closed minds.

2190. **Lord Mayhew:** As the author of that sentence, I know that is exactly what my colleagues meant in adopting it. We would not wish to be criticised for ossification and being unwilling to contemplate any changes. After all, things have changed in the past 20 years and more recently. We would respond to such circumstances as suggested there should be change. We certainly do not see any awful thing coming over the horizon that is no bigger than a man's fist at the moment.

2191. **Alice Brown:** While it is not for me to say that the Wakeham Commission might be such an awful thing, how would the proposal to have a House of Lords comprised of elected and nominated members bear down on the nature of the regulatory system that exists or which might be appropriate?

2192. **Lord Trefgarne:** On an earlier occasion, my Lord Chairman, you told me not to answer hypothetical questions. We decline to do so.

2193. **Lord Mayhew:** Without departing from that very sound principle, if the day came when there were elected Members of the House of Lords in part, it would be extremely important not to distinguish between them and others. We try hard in the House of Lords to make distinction between the remaining hereditary peers and the appointed life peers. That would be no less important with elected Members. If it is right at the moment, let us wait to see whether it ceases to be right and effective in the case of elected peers.

2194. **Alice Brown:** You were present when I asked Lord Rodgers about the mood of the House at the time of the Griffiths Report. He speculated that the mood has changed since 1995. Could you put some numbers on it, as he did?

2195. **Lord Mayhew:** I was not in the Lords in 1995. Lord Trefgarne was.

2196. **Lord Trefgarne:** I do not think that the mood of the House has changed as dramatically as Lord Rodgers may have suggested. There were moments of sharp mood change when all the so-called reforms were implemented last year but the House is settling down again. It is not so different from the House that it once was - largely for the reasons that I enunciated earlier. I would not agree that there has been a huge mood change in recent times. It is self-evident that the Conservative Party does not have as many supporters in the Lords now because a large number of hereditary peers who were for the most part Conservative are no longer Members. The mood of the House is not dissimilar to that which prevailed before the changes were implemented a year or so ago.

2197. **Alice Brown:** Your written submission raises the idea that Opposition spokesmen and spokeswomen should be required to divest themselves of relevant financial interests. Should any special rules should apply to Opposition spokesmen and spokeswomen?

2198. **Lord Trefgarne:** I cannot think of any that ought to apply. The present arrangements for all Members of the House apply perfectly well to Opposition spokesmen and do not need further alteration.

2199. **Lord Mayhew:** I can say this because I have absolutely no ambition to become an Opposition spokesman. It is hard to get them anyway in the House of Lords. I can think of no more inhibiting rule in recruiting Opposition spokesman than the one on which we are asked to comment. I think that would be a disaster and quite unjustified. We also make the point that many individuals are appointed ad hoc, and I believe that is not unknown in the House of Commons.

2200. **Alice Brown:** Thank you.

2201. **Lord Shore:** Lord Mayhew's reference to the need for balance between reasonable public demands for information and

not inflicting a regime that harasses was right. If all the demands of the media were to be met, that would be an intolerable situation for anyone in public life. But all that is being asked so far is to accept the
principle of making a return about one's major interests.
I frequently use the analogy of Who's Who. I have not met anyone who seriously objects to making an entry in Who's Who, by providing basic details about their experience, major interests and so on.

2202. It is not so much the principle of making a return to a register, which gives public confidence. When something like 200 peers have not registered at all, that makes the House a bit vulnerable to critics. There is a big difference between making a return and the demanded content of the register. I can understand people being very concerned about the demands being made but not the other concern. I particularly address Lord Mayhew, because I could feel the strength of his concern about discouraging people of distinction entering the Lords.

2203. **Lord Mayhew:** It would open up some vulnerability for the peer who chooses to make a minimal entry in the register. There are people who make minimal entries, even though it is voluntary and not compulsory, in Who's Who. For a long time, I declined to say what my recreations were. Not that I was ashamed of them but I thought they were my business, not anybody else. In the current edition, I have put down one or two. It is foreseeable that comparisons of an invidious kind would be made by commentators between Lord A and Lord B, because Lord A was reticent and Lord B was not. One might say that would tell us something about Lord A but should Lord A be subjected to that kind of comment? I think it would be more damaging to future and hoped-for Lords A, B and C if they are obliged to go through all that. It is a question of balance. Nobody can be precise about it. I think that the figure of 200 non-registrants is likely to fall. Now the total number of peers is larger, I think that figure will fall considerably.

2204. **Anthony Cleaver:** I understand your strong view that it is not always wise to feed public appetite but it is difficult to handle the logic that there is no need to make disclosure in the Lords, whose members have wide interests for which many of them are paid, whereas disclosure is required in the Commons, of people who may have a non-executive directorship. I accept Lord Shore's point about the extent of the detail but a declaration that one is involved in this or that area is now a standard requirement of any of us who serve on voluntary boards. It seems somewhat strange that there is a passionate desire to avoid such disclosure in the Lords.

2205. **Lord Mayhew:** That is the high watermark of the argument for changing the principle. Against it, one has to place the tradition of the House of Lords and the standing in which it is held in the country. The reason for that is the tradition of their Lordships acting upon their honour and taking responsibility for their own conduct. Lord Carr of Hadley said in evidence to Griffiths that he knew of no code of discipline that was more demanding or stringent that the code of personal honour. One was terribly anxious not to infringe that code. The more that one gets into the small print, the more one is tempted to say, "I don't think this is quite right but it is not excluded in this comprehensive list, so I will do it." I think the code works extremely well, which is the only worthwhile test.

2206. In 23 years as a Member of the House of Commons until three years ago, I never came across the slightest indication of anxiety about the conduct of Members of the House of Lords. I did about the House of Commons. I had to make it perfectly clear that I was not tainted with the brush that seemed to be sploshed over every Member of the House of Commons. I do not recognise the concern that Members of the House of Lords register all their interests in the same way. If such concern is not apparent, the foreseeable damage of the kind that you and Lord Shore have been kind enough to acknowledge should carry the day.

2207. **John MacGregor:** Page 3 of your statement refers to movement towards

> "equating the rules with those of the House of Commons would be disproportionate to the problem and likely to do more harm to the public interest than good by reason of a diminishing stock of experience available in debate and of inhibiting future recruitment to the House of Lords."

All of us agree that we do not wish to diminish the stock of experience available in debates or to inhibit future recruitment. However, the rules of the House of Commons are not just the register but everything that goes on around it. The House of Commons has 73 paragraphs indicating what the register should be about, so it is very prescriptive. If one had a light register that did not involve that detail and disclosure of earnings, would it inhibit recruitment? Secondly, the rules also involve the Parliamentary Commissioner for Standards. Is that an area of concern for you?

2208. **Lord Mayhew:** You have been looking at me but perhaps Lord Trefgarne should go first.

2209. **Lord Trefgarne:** I have never been a Member of the House of Commons but my father was, and I can remember these matters being discussed when a young man - although perhaps I did not bring the same considerations to bear in those days. In

the time that my father was an MP, up to the mid-1940s, there was no register at all. Members operated on their honour. Since then, the rules have been steadily tightened. First there was the register, then the Parliamentary Commissioner for Standards, but things do not seem to have improved much. The behaviour of Members of the House of Commons is still criticised from time to time, despite the existence of all the rules and arrangements. It is not self-evident that a hugely detailed register together with a Gauleiter to preside over them has the desired effect. It is believed to expose any shortcomings but problems still arise.

2210. We come back to the essential thrust of our case. We do not think that public interest would be served by a more detailed register. We do not believe that there is a public requirement for one. Less still would public interest be served by more detailed arrangements flowing from the register, as now occurs in the House of Commons. It is widely stated - though I do not know whether it is widely believed, because I have no means of judging the view of the House of Lords - that the arrangements in the Commons have gone too far, with all the disadvantages that flow from that. In any event, we are different from the House of Commons and we think that ought to be observed and maintained.

2211. **Lord Mayhew:** Perception cuts both ways. Your committee is rightly concerned with public perception but you need to look also at the perception of those who are in the pool for possible nomination to the House of Lords. They will not have closely in their minds that there would be fewer paragraphs in any rules. They would simply say, "They have made it like the House of Commons." People know that there are detailed rules for the House of Commons and what has been happening - with a former Prime Minister made to disclose his earnings from lecture tours in the United States. Their perception, whatever the reality of the comparison, will be, "The Lords has gone down the same road. That's not for me, thank you very much."

2212. **John MacGregor** spoke about a lighter set of rules for the House of Lords. His experience and mine, and that of all of us in public life, is that one starts with something small and it gets bigger and bigger and bigger. It only takes another resolution of the House of Lords to add this and that. All that is well recognised or perceived. The consequence on recruitment would be the same.

2213. As to a commissioner, that goes clean against the ethos and philosophy of the House of Lords and the way of conducting its affairs. More importantly, it feeds a public perception that everybody in political life is the same and cannot be trusted unless their activities are independently monitored day and night, especially at night. That is not good for public confidence in the conduct of the second Chamber. Although I well understand the logic behind that suggestion, in practice - as is often the case with logical proposals - the result would be counter-productive.

2214. **Lord Neill:** Lord Goodhart?

2215. **Lord Goodhart:** My question has already been raised.

2216. **Frances Heaton:** Fellow peers are informed of a Member's interests by declaration at the time of debate. I suppose that you would say that declaration is mandatory, even if whether or not something is relevant is a matter of judgement. One school of thought on registration is that it would put the public in the same state of knowledge as peers. One cannot have a continual stream of declarations going out into the world. One form of register would be intended to catch declarations. One advantage would be that it would serve as a form of protection for peers against the event that they forget to declare. Another form of register would be geared to how much money a Member derived from a particular activity, because the more money involved, the more interesting it is to know and the more he is likely to be influenced. Do you see any advantage in a register that served as a back-up to declaration? Also, do you consider that disclosure of income is of a different order of awfulness?

2217. **Lord Mayhew:** If one is obliged to make a declaration under the present rules, it is only in a forum into which one has voluntarily chosen to enter. One decides to contribute to debate, ask a question or intervene in a Committee and takes into account the pros and cons of one's personal interests.

2218. The problem with a mandatory register is that it would oblige one to make such a declaration if one is to be a Member of the House of Lords at all. We have gone, I hope not at wearisome length, into the adverse consequences we foresee.

2219. I would like some help with what you mean by a register that catches declarations.

2220. **Frances Heaton:** I meant a register that is not concerned so much with financial interests but is designed to cover instances where a peer, if he were to speak, would have to make a declaration.

2221. **Lord Mayhew:** I see fearful difficulties of definition because we do not know what we want to speak about in the course of the coming year. Any such register would be scrutinised by people wanting to write stories, in the hope of finding that Mayhew has made a speech on a topic that never occurred to him a year ago and that he has not registered.

2222. **Frances Heaton:** I did not mean that a Member would only declare matters that he wanted to talk about but would

identify interests that would be declarable.

2223. **Lord Mayhew:** That would be just as difficult. One would have to say, "I have a slight interest in this subject. Might I want to make a speech about it?" Still, that is a variant and perhaps it ought to be considered along with everything else.

2224. On the money side, one has to balance disclosure with intrusion into privacy. People are very sensitive about what they earn. It would have a deeply inhibiting effect if Members had to declare not only their registerable interests but what they earned from them. Would it be what they earn now or have earned in the past? Would it say who their clients were and who paid what? It would difficult to place a limit on it, and hard to persuade that any limit imposed now would not be extended by a resolution of the House in year. I think that would be a strong inhibiting influence.

2225. **Ann Abraham:** You stated in your submission that you would not be opposed to a code of conduct, provided it was broadly framed and did not go into great detail. You have expressed a clear view on a register of interests, rules and methods of enforcement. I am not sure what purpose a code of conduct would serve. I cannot see any way of monitoring or enforcing it.

2226. **Lord Trefgarne:** I rather share that view. We do not want to appear inflexible or unreasonable but the trouble with a code of conduct is that inevitably as time passes, it becomes ever more detailed. Then when people study the code and find that it does not cover what they have in mind, however undesirable that might be, they will think that they are entitled to do it. A code of conduct can cut in both directions. For that reason, we much prefer the unwritten principles enshrined in the seven principles in the front of your document, which ought to guide all peers regardless of their particular interests.

2227. **Ann Abraham:** I take the point about perception being a two-way street. Codes of conduct serve two primary purposes. One is providing a reference point in setting standards for those to whom it applies. Secondly, the code is there for the public at large, to inform them of the expectations that they can have about the people to whom it applies. In the absence of a public reference, that would be a positive step.

2228. **Lord Trefgarne:** Why cannot the public likewise refer to the seven famous principles?

2229. **Ann Abraham:** Why cannot the House of Lords adopt the principles? That would be a start.

2230. **Lord Trefgarne:** For all practical purposes, it has.

2231. **Lord Neill:** Surely the resolutions printed at page 30 of our paper represent a code of conduct, though not so headed. They are full of statements such as

> "Lords should not speak, vote...should, however, be especially cautious...should not speak...should declare".

Over five years, it has not got any longer. In fact, it has got rather shorter because the practice under Part 3, coming from Mr Davies and Mr Vallance White, is to administer a light touch. We have received evidence of peers trying to register interests but being actively discouraged and told, "We don't want that kind of thing on the register." Do you accept my point that it is an embryonic code of conduct?

2232. **Lord Mayhew:** I do, which is why we said in answer to Question 4 that there is not a strong enough case to changing the present arrangements. We believe that the resolutions to which you referred suffice, having met the perceived needs from time to time of disclosure and general conduct. I hope that we have not given the impression that we believe there is a case in principle against a code of conduct. We are saying that the conduct required of Members of the House of Lords is sufficiently specified in its resolutions and in the expectations of Members in the form of internal discipline as not to require a code of conduct. We cannot put it more clearly than that.

2233. **Lord Trefgarne:** Even before Griffiths and all that flowed from that, the Standing Orders of the House of Lords made reference to those matters, which seemed to work very well at the time.

2234. **Lord Mayhew:** The public could have regard to what is set out in Appendix B on page 30 of your paper.
If they were really interested, they could look that up just as readily as they could a code of conduct. I do not expect that they are awfully likely to look at either.

2235. **Lord Neill:** Thank you both very much. Thank you for your time. We have had a lot of assistance from you.

MONDAY 10 JULY 2000 (MORNING SESSION)

OPENING STATEMENTS

Opening statement by Peter Riddell

The inquiry by the Committee is timely, fully-justified and well within its terms of reference.

The central question is the position of the House of Lords as a legislative chamber of parliament. The days when the House was a largely amateur body with an idiosyncratic membership and status are fast disappearing. The House of Lords Act of 1999 may not - thanks to the Cranborne/Weatherill/Irvine deal - have produced much change in its active membership or character in the short-term. But its constitutional position has altered. Leaving aside the bishops, all members are there out of choice, whether hereditaries or life peers. Moreover, the new House, albeit a transitional one for at least a few years, is, in the words of Baroness Jay, more "legitimate" and is behaving accordingly by being willing to defeat the Government more regularly and pressing its objections. If the House is to become more assertive then, like the Commons, it must be seen to be more transparent and accountable.

The objection, expressed by the Conservative peers and discussed by Michael Davies, Clerk of the Parliaments, in his testimony to the committee, that a tightening of regulation is somehow an insult to the many new peers misses the point. The argument for change is the altered character of the House following the House of Lords Act, not the many new members.

The Griffiths rules are anyway flawed since fewer than 60 per cent of peers register under Category 3, which is anyway loosely worded. Moreover, as a series of reports from Griffiths to Wakeham have shown, the Lords is more susceptible to lobbying than the Commons. That underlines the case for clearer rules and transparency.

Any register must be compulsory. The objections seem tautologous. The objectors to a mandatory register stress the honour of members in already declaring interests but then say that some people would not become peers, or would even refuse to register, if a compulsory list of interests is introduced. If peers do not like compulsion, they can always apply for leave of absence. (Naturally, special arrangements need to be made for the bishops, the Law Lords and the Earl Marshal etc.)

The register should be different from the Commons because members of the Lords are at present not paid and those of working age have to earn a living elsewhere. Therefore, while the same categories of declaration should be used as in the Commons, amounts of money earned should not have to be declared.

The Griffiths Categories 1 and 2 seem broadly right, though could perhaps be tightened up to ensure that paid activity by members intended to influence parliamentary votes and debates should be banned.

The present regulatory mechanisms are too redolent of the clubby/good chaps era. It is invidious to expect a clerk to act as a regulator of the behaviour of members. Any advisor/ investigator should be independent of the formal structure of the House, even if without the powers of the Parliamentary Commissioner. On disciplinary powers, naming and shaming seems a sensible short-term answer, though powers to suspend should be considered.

Any arrangements should be seen as transitional and will need to be reviewed if, and when, further reforms to the membership and role of the House are enacted.

Opening statement by the Rt Hon Lord Rodgers of Quarry Bank

I welcome your enquiry into standards of conduct in the House of Lords not because they currently fall short but because independent scrutiny is a necessary safeguard in public life. I was a member of the Griffiths Sub-Committee five years ago and its report has served the House in the interim. But the terms of reference of your Committee cover all holders of public office and it is not less appropriate to examine the House of Lords than it is to examine the House of Commons.

The inescapable starting point is that the House of Lords is one of the two Houses of Parliament. All members of the House of Lords are Parliamentarians. They scrutinise legislation and cross-examine Ministers at Question Time; in this capacity they are public servants. They are open to lobbying and persuasion, as they should be in providing access to all those who want their voices heard.

The routine lobbying of members by correspondence, meetings and social events has increased in recent years. Reform of the Lords and the greater focus on its activities has alerted individuals, voluntary bodies, public institutions and commercial interests to its influence. Its ability, even reformed, to defeat the Government of the day when the Government cannot be

defeated in the Commons, makes it an attractive target for pressure groups.

No member of the House of Lords can complain about the requirement to disclose as every member of the House has chosen to be there. Life peers have made a positive choice In accepting a peerage. But those hereditary peers who remain have also made a choice in standing for election under the so-called Weatherill amendment. In any case a peer can apply for leave of absence or simply absent himself or herself from the daily proceedings of the House.

For these reasons, I favour maximum transparency. The starting point for any Code of Conduct should be the assumption that the rules regulating the House of Commons should similarly regulate the Lords. If peers have nothing to hide, they cannot reasonably complain about an obligation to disclose. Transparency is now common in many professions where a conflict of interest can arise. A comprehensive Register of Interests is the best guarantee of compliance. Disclosure when speaking in the House should be routine although there should be some discretion to avoid needless repetition.

Some peers now regularly declare an interest in the House as an officer, even a member, of a voluntary body which they serve in a voluntary capacity. This should be unnecessary when no commercial or monetary interest is involved.

Other peers are anxious that a Code of Conduct might prevent them speaking in the House on subjects in which they are expert. To a substantial extent the House of Lords is a House of experts which the House of Commons is not and the danger of conflict of interest is potentially greater. But the existence of the Register and the readiness to declare an interest should be sufficient to alert the House. There may be circumstances when it would be better for a peer not to vote if a conflict of interest is apparent, but this can be left to an individual's conscience and judgement.

A House of experts whose members are unpaid (except for expense allowances) implies that peers may have substantial extra-mural remuneration. They need to be reassured that this will be well understood when they register.

I repeat: the House of Commons and the House of Lords are two Houses of the same parliament. That is the heart of the matter. The public are entitled to expect the same standards of conduct from both. They will not take for granted that the Lords are less in need of self-regulation than the Commons and that conduct governed by personal honour is alone enough.

Opening statement from the Association of Conservative Peers

My Lord Chairman, My Lords and Members of the Committee.

Firstly may I say how grateful we are for the opportunity to submit written views to your Committee and to appear before you today. I am the Chairman of the Association of Conservative Peers and I am accompanied by the Rt Hon Lord Mayhew of Twysden who was the principal author of the document which we submitted. Unfortunately Lord Denham who also contributed to the document and whom I had hoped to be able to accompany us today is not free to do so but I very much hope that Lord Mayhew and I can provide the responses which you will seek.

My Lord Chairman may I also take this opportunity to thank you for coming to talk to the Association some weeks ago. I hope the rather forthright exchange of views which took place on that occasion did not suggest any reluctance to cooperate with your work. We do so freely and willingly. We note as you yourself have said on several occasions that your role is a purely advisory one.

My Lord Chairman I have little to add at this point but I would like to seek your guidance on one matter which I raised in my covering letter namely the confidentiality of submissions to you. We believe that were you to take account of evidence which none of us could see or test you would run the risk of forming conclusions which might well be valid but which would not command the respect they deserved. I do not know whether you have received any such submissions - I hope you will feel able to tell us - but if you have we hope you will disregard them. Finally I note that the position of the Law Lords was among the issues you would like to ask us about. I hope we can t the same time cover the position of the Bishops which in our view is also relevant.

My Lord Chairman and Members of the Committee thank you for your attention.

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 10 July 2000 (Afternoon Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Lord Goodhart QC
Sir Clifford Boulton GCB	Frances Heaton
Professor Alice Brown	Rt Hon John MacGregor OBE MP
Sir Anthony Cleaver	Rt Hon Lord Shore of Stepney

Witnesses:

Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons

Rt Hon Lord Bingham of Cornhill TD, Senior Law Lord

Lord Rees-Mogg

Rt Hon Lord Strathclyde, Leader of the Opposition in the House of Lords, the Rt Hon Lord Mackay of Ardbrecknish, Deputy Leader of the Opposition in the House of Lords and Nicholas True,

Private Secretary to the Leader of the Opposition in the House of Lords

2236. **Lord Neill:** Good afternoon, Sir George. Thank you very much for coming. You are Shadow Leader of the House of Commons and there is one particular aspect of our report with which I know you would like to deal. Is there any opening statement you would like to put on the record?

RT HON SIR GEORGE YOUNG Bt MP

2237. **Rt Hon Sir George Young Bt MP (Shadow Leader of the House of Commons):** There isn't an opening statement but, if I may, there is an opening question which is: Whether the proposition that you are looking at is simply the one that was put forward in the letter, namely divestment of financial interests, or whether it is the much broader one of giving up any outside job-in other words, non-executives? Reading the document it was not absolutely clear which proposition was the one that the Committee was looking at, whether it was the narrow one or the broader one.

2238. **Lord Neill:** I think it was the narrow one, but it is up to the specialists who are going to pose the questions. Sir Clifford, perhaps you could answer Sir George's question?

2239. **Clifford Boulton:** I think we are interested only in whether the retention of any kind of financial interest would be inconsistent with the sort of things that Members of the Shadow Cabinet or Members of the Shadow front-bench might have.

2240. **George Young:** That would be the broader one, rather than the narrower one?

2241. **Clifford Boulton:** Yes, simply to clear the issue.

2242. **George Young:** They do raise different issues, in that if one is simply talking about divesting of shares and putting them at arm's length or into a trust, without obviously affecting the income stream - that is one thing. The proposition about giving up outside earnings - non-executive directorships, which would also mean that the income was forgone - raises different issues. I was trying to clarify which proposition was the one that was under examination. It was not immediately clear which one was being looked at.

2243. **Clifford Boulton:** I think if we were able first to establish whether there needs to be any special rules for the front bench, different from those which apply to all Members. If we were able to answer that in a certain way, the supplementary situation would not arise.

2244. **George Young:** Well my view is that we are much closer to Members of Parliament than to Ministers for the reasons that I think are well established. We do not have an executive role. We are not running the country. My interest is to make sure that we can do the job we are meant to do, which is holding the Government to account in the most effective way. I would be concerned if access to our front-bench was constrained in the way that was suggested because I think that would mean that some individuals who are at the moment prepared to serve on the front bench leave the party. They might not feel they were able to serve if that meant giving up all their outside interests, including the income that went along with them. That might mean that our front-bench was less effective because it drew on a narrower pool of people and our priority is to attract onto the front bench, and indeed to the House of Commons, the highest quality people that we can.

2245. **Clifford Boulton:** Thank you. I think we understand the position very clearly from your paper.
I wondered if I could pursue the question of what front-benchers actually do, for the sake of the record.
It would make clear why it might have entered into the mind of somebody or other that they ought not to have those interests.
Would you agree that the Opposition Front Bench does have the right to choose the debates and the terms of a motion on Opposition days? Front-benchers can expect to be called to ask supplementary questions, unlike ordinary back-benchers. They determine the terms of amendments to Government motions and they decide the strategy and tactics of Opposition to Government Bills going through. Then, normally by meeting as a team, they table Opposition amendments which, if there are other amendments on the same subject, would be the lead debate. So there are those things which they take on with their own initiative really before the House. So those are the sort of things that they are doing.

2246. **George Young:** If I may so, that is a very good definition of what the front-bench does. To which one might add, that we have access to Short money and, thanks to the recommendations of your Committee, that has been increased. Back-benchers, of course, do not have access to that.

2247. **Clifford Boulton:** I wanted to ask you, as a separate issue, do you want to say anything on that subject of Short money?

2248. **George Young:** Thank you.

2249. **Clifford Boulton:** But can I just pursue this question? Because, having agreed with that little list I gave, each one of those represents initiating business. If a Member of the Shadow Cabinet had a substantial interest in the subject of his department, he would not be able to initiate business under the current rules of the House. Isn't that the case?

2250. **George Young:** Yes. My own view is that we should stay where we are. Namely, the interest should be declared rather than given up. If you look, for example, at the Financial Service and Markets Bill - a fiendishly complicated piece of legislation - we had Howard Flight speaking from the front bench. He is a man who knows the issues very well indeed. Each time he spoke, of course, he had to declare his interest. I do not think that detracted from the subsequent debate. In fact, I think you could argue that it added to his credibility. Each issue has to be judged on its merits. In that particular case I do not think any harm was done by the declaration of interest. There may be other cases. For example, when I was Shadow Secretary of State for Defence, if I had a substantial interest in a defence weapon manufacturer, I think that would have been quite a substantial barrier to participation. So it has to be judged on its merits with each debate. My own view is that it is the declaration that is what matters, rather than the total divestment at arm's length which is what a Minister would have to do. I think that is really what the House needs.

2251. **Clifford Boulton:** When I asked if this person would be inhibited from initiating debates, you agreed. Therefore it must be in the mind of a Leader of the Opposition that there are certain Members of the front bench team of the Shadow Cabinet for whom, because of the nature of their interests, it would not be appropriate to be appointed to a particular position. Therefore, to that extent, the whole thing is self-regulating because the Leader of the Opposition himself does not expose members of his team to the criticism that would flow from having an "interested" front-bencher in a particular portfolio.

2252. **George Young:** Yes. So this is an argument for leaving it as it is?

2253. **Clifford Boulton:** Yes.

2254. **George Young:** Yes. We do have our own internal guidelines for front-bench spokesmen that cover this particular aspect. I think it would be counter-productive to appoint somebody to a very sensitive portfolio if he or she had a substantial financial interest in it. We would so arrange things that that conflict was avoided. In other cases, and I gave one, where there was a financial interest, I do not think that either the House or the Shadow Cabinet would say that that was a total barrier to participation in the debate. They might have argued that actually it enhances the credibility because of the background.

2255. **Clifford Boulton:** Yes. As you know, we have expressed ourselves in general terms about wanting debates to be enriched by being contributed to by people who knew what they were talking about. However, without asking you for any details, are you aware of any cases where the Leader of the Opposition has borne in mind that a Member's interests might complicate a particular point?

2256. **George Young:** No. I have not asked him, but I am not aware of any.

2257. **Clifford Boulton:** Well I think you and I at least are clear about what they may or may not do at the moment and how they would be inhibited if they did have substantial interests under the current rules. Would you just like to say whether the Short money is adequate and how it is working? Also-and excuse me for just forgetting this detail-are the Lords' Shadows dependent on being able to have access to that money?

2258. **George Young:** I think there is the Cranborne money.

2259. **Clifford Boulton:** So there is. I am sorry. So we will just talk about your money.

2260. **George Young:** We are grateful for the recommendations of your Committee. The Government introduced them. They slightly short-changed us but we are not going to squabble about that. There was also a significant delay until we received it. We got it last May, two years into the parliament, whereas they had the benefit since the general election of, as it were, the special advisers. However, I do not want to sound ungrateful either to the Committee or indeed to the Government because they sustained some criticism from their own supporters. It is gratefully received and being put, I hope, to effective use in the House of Commons in holding the Government to account.

2261. **Clifford Boulton:** Thank you very much.

2262. **Frances Heaton:** I realise you have come here principally to talk about the one question of the front bench, but may I ask you one or two wider questions?
The registration requirements that are in place at the moment for the House of Commons are very much based on financial interests, not non-financial interests. Have you had any occasion when the non-disclosure of non-financial interests has been an issue in the House?

2263. **George Young:** I think there has been an issue when people came back from visiting an overseas country at the expense of that particular country where there was then a difficulty. I do not know if you call that a non-financial interest? I think I would. They may be inhibited from initiating a debate when, in fact, they may be the people who know most about it. I think, speaking from memory, that was addressed in the Report that we have not as yet debated or had a response to.

2264. **Frances Heaton:** I was more thinking of an analogy with the Lord Hoffman case and Amnesty International - that I realise was a judicial affair but, on the other hand, one could imagine that there could be similar issues arising in the House with charitable or other activities.

2265. **George Young:** I am not aware of any issues and I am not sure that they came out during the very extensive review that this Committee did a year ago into how our system was working. If it did not come up then, I am not aware of anything that has happened since then that would cause any anxiety.

2266. **Frances Heaton:** Are there any other matters that have arisen that you think would be ones that you might beneficially draw to our attention as being relevant as we look at the case of the House of Lords at the moment?

2267. **George Young:** No, I think there are some issues that probably the House of Commons has to resolve itself about the operation of the Register and how that is managed. I am not sure there is anything I need say to the Committee about it.

2268. **Frances Heaton:** Right. Thank you.

2269. **Lord Neill:** I think you have covered the waterfront. It was a narrower part of the waterfront than other witnesses but you have dealt with it and there are no more questions for you. We are very grateful.

2270. **George Young:** I'm a free man!

2271. **Lord Neill:** You are a free man. You have been here before. You are now very free. Thank you for coming again.

2272. **George Young:** Thank you and thank you again for the Short money.

2273. **Lord Neill:** Good afternoon, Lord Bingham. Thank you for joining us in our deliberations. You were kind enough to write a letter to me on the 20 June expressing the collective view of yourself and the other Law Lords and the members of the Committee have that letter in front of them. The procedure we normally follow is that we have two members of the Committee who pose the questions and, in your case, I was going to ask Lord Goodhart and Lord Shore to pose the questions. I would like to start with that unless there is anything that you would like to say, or if there are any further thoughts that you have had since your letter?

RT HON LORD BINGHAM OF CORNHILL TD

2274. **Rt Hon Lord Bingham of Cornhill TD (Senior Law Lord):** No thank you.

2275. **Lord Neill:** Very well. Then let us begin in that way if we may.

2276. **Lord Goodhart:** Lord Bingham, is it correct that in 1995, following the report of the Griffiths Committee and its adoption by the House of Lords that the Lords of Appeal in Ordinary, who I will call the Law Lords for short, decided as a group that they should not register interests?

2277. **Lord Bingham:** I gather so, yes.

2278. **Lord Goodhart:** Do you know why that decision was taken?

2279. **Lord Bingham:** So far as I can understand, they had a discussion and there were one or two among those present who quite favoured disclosing, for example, honorific university appointments that they held. The balance of opinion, however, was that nobody could really suppose for a moment that that would affect the way they did their job as Members of the House of Lords. It was thought desirable that on the whole they should act in the same way and so the decision went against voluntarily registering these other interests at all.

2280. **Lord Goodhart:** And thereby leading them to say that that applies even if the interests are financial, for instance if a Law Lord is a landowner and derives significant rents from the land?

2281. **Lord Bingham:** I think that situation was almost certainly entirely hypothetical. But it certainly applied so far as any shareholdings that they might have were concerned. You will, of course, understand that the rules that govern the behaviour of judges are such that the financial interests that they can have are extremely limited. The only form of income that is acceptable is the royalty of any book that a Law Lord may have written, and there was probably one Law Lord in 1995 who wrote a book. I cannot think of any others. Every other form of receipt has either to be declined or given to charity.

2282. Whether anybody thought of this at the time I simply do not know, but it does of course happen from time to time that one is invited to travel around the world and give a lecture. If one does that it is usually on terms that one's expenses and accommodation are paid. I think under the Commons Register that would be registerable and no doubt if the same regime were adopted in the House of Lords it would be registerable. It would, in a sense, give quite a misleading picture because what the Law Lord is actually doing is giving up half of his vacation to write the lecture and travel around the world in order to give it. The idea that at the end of all that he feels beholden to whoever has invited him is not very apt. But on a strict construction of the Commons rules, I think it would be registerable.

2283. **Lord Goodhart:** Of course that would depend on whether the Commons rules on paid-for travel applied also to the House of Lords with the same strictness, wouldn't it?

2284. **Lord Bingham:** Yes of course. I do not want to suggest that they actually considered that. I am simply unaware of whether that crossed their minds or not.

2285. **Lord Goodhart:** Yes. And does this principle apply to judicial peers who are not Law Lords, such as Lord Woolf or indeed such as yourself up until two or three months ago?

2286. **Lord Bingham:** It certainly applied to Lord Woolf at the time because he was a Law Lord in 1995. He was a Lord of Appeal in Ordinary. I did not write my letter on his behalf but, having had a word with him the other day, he seemed perfectly content with what I had said.

2287. **Lord Goodhart:** When you became a Member of the House of Lords, would you have regarded that 1995 decision as being the rule that you yourself should follow?

2288. **Lord Bingham:** I would have to say that since I was not a Member of the House of Lords in 1995, to the best of my belief I was entirely unaware of the decision that they had reached.

2289. **Lord Goodhart:** If I could turn to your letter, you have said that the Law Lords with whom you have consulted have come to a common view that

> "We are not ourselves persuaded of the need for mandatory disclosure beyond the existing categories."

Could you say why you reached that decision?

2290. **Lord Bingham:** Yes. Of course we had no access to privileged information of any kind on this topic but the way that we see it is broadly this. In 1994 when Lord Nolan's Committee was first established there was hard evidence of unacceptable conduct by some Members of the House of Commons, however few and there was a very general public belief that Members of the House of Commons were not conducting themselves as they should. Plainly the facts, if true, and the public belief were gravely damaging to the working of our democracy and it was right - in the view of all of us - that something should be done about that. So far as the House of Lords is concerned, and to the best of our knowledge - and, as I say, we have no special source of knowledge, no Member of the House of Lords has been found to have misconducted himself in that sort of respect. We are not aware of any occasion when anyone in the House of Lords has allowed any personal interest undisclosed on the Floor to affect the way he discharged his duties.

2291. Moreover, so far as we are aware, we simply do not think that the public sees the House of Lords as tainted in that sort of way. It would seem to us, therefore, that there is, so far as the House of Lords is concerned, no disease that requires the administration of medicine. It does not seem to us very persuasive to say: Well, you may not suffer from the disease but you ought to take the medicine just the same.

2292. It seems to us that the compromise that the Griffiths Committee reached in 1995 and that commended itself to the House then has really worked extremely well and given no grounds for dissatisfaction.

2293. **Lord Goodhart:** It was a compromise, wasn't it, between the people who wanted to have a mandatory register and those who wanted no register at all?

2294. **Lord Bingham:** Yes, I think it plainly was.

2295. **Lord Goodhart:** Of course it is effectively a requirement that anybody who has an interest in a matter under debate should declare that interest before speaking.

2296. **Lord Bingham:** Yes.

2297. **Lord Goodhart:** Can you see any reason why, therefore, it should be mandatory as regards making a declaration of interest but not mandatory when it comes to entering that interest in a register?

2298. **Lord Bingham:** Well it seems to me that if you are trying to commend a point of view to the House and you have some personal interest or association that could lead you to be advancing the views that you are supporting, it is the right of your fellow Members to know of anything of which they might say: Well he would say that, wouldn't he? So that would seem to me an elementary principle of any democratic assembly. I do not really follow why, because you should enter a caveat of that sort before seeking to persuade fellow Members of the House, you need necessarily enter something in a register.

2299. **Lord Goodhart:** Well there are two main points that have been put to us the other way. One is that of course you can vote without having to declare an interest and that could be a matter for concern. Secondly, that one is not only concerned with other Members of the House of Lords but also with the public. Do you regard that as being a significant factor?

2300. **Lord Bingham:** No, not very. The evidence is that the public are not particularly concerned about interests of Members of the House of Lords as evidenced by the lack of interest in the register. If they are interested, they can look at Who's Who where they will find all these things set out.

2301. **Lord Goodhart:** It is not mandatory to put down an interest in Who's Who if you do not want to.

2302. **Lord Bingham:** No. But the sort of interests that most Law Lords would reveal probably would be in Who's Who because they would not be largely financial interests. They would be honorific presidencies and honorary fellowships and that sort of thing.

2303. **Lord Goodhart:** I am sure that is the case in the Law Lords but they are only a small proportion of the House of Lords. Do you think it would be reasonable for the public to take the view that Members of the House of Lords are Members of one of the two Houses of Parliament and that they are entitled to have a reasonable amount of information about what their interests are, particularly their financial interests?

2304. **Lord Bingham:** That is clearly a point of view that appeals to some. The other point of view is that unless there is seen to be a problem, there is really no need to depart from the way in which things are being done at present. I do not think there is a problem and, as far as I can gather, my colleagues do not think there is a problem. But others, of course, may take a different view about that.

2305. **Lord Goodhart:** You think it would take more than one bad case of non-disclosure that became a matter of public knowledge for public opinion to shift quite rapidly on this?

2306. **Lord Bingham:** If there were serious evidence that people were abusing their position, then plainly the case for introducing some more detailed code would be very much stronger. I have always thought that provided the principle that should govern somebody's behaviour is clearly understood, there is a great deal to be said for sticking to the principle because it is so much more easy to apply. Everybody knows what the principle is here. The evidence is, so far as I can gather, that people observe it and there is a difficulty that the moment you get detailed rules people start arguing about the letter of the rules and lose sight of the principle that ought to be guiding them.

2307. **Lord Goodhart:** Turning to another matter you raised in your letter, you said

> "Our final response to any recommendation made by the Committee would of course depend on its content. We would, however, envisage that any rule accepted by the House as binding on its Members should be accepted as binding upon us in our capacity as Members of the House."

Can you foresee any problem if the House of Lords decided that it should be mandatory for the Law Lords to make the necessary entries in the register?

2308. **Lord Bingham:** No, I cannot see any problem. But one has a constitutional reluctance to sign a blank cheque and, therefore, until one knows what is proposed one does not give unreserved assent to it. But the answer to your question is: I cannot imagine that this Committee would propose or that the House would accept any rule that would be one that we could not happily comply with if we had to.

2309. **Lord Goodhart:** Yes. Of course we are not concerned with what disclosures should be required of judges at any level but, would you envisage that if disclosure was required of Law Lords in their capacity as Members of the House of Lords, that this would cause any problems with the wider obligations of the judiciary to make known, by whatever means they think appropriate, their interests?

2310. **Lord Bingham:** There are various layers in that issue. Insofar as the Law Lords themselves are concerned, I do not think it would give rise to problems. It might give rise to some irritation with people raising spurious objections that would then have to be dealt with. However, I cannot believe that that would actually be very problematical. So far as the rest of the judiciary is concerned, I gather that the Lord Chancellor does not see any reason why any disclosure made by Lords of Appeal in Ordinary or Law Lords, in their capacity as Members of the House, should have any bearing on the disclosure to be required of any judge who is not a Member of the House of Lords. As I gather, he is opposed to a register of judicial interests. Therefore, I think these questions are in principle distinct but I could foresee the possibility that if the Law Lords were to make disclosure, there would be argument to the effect: Well, if they are doing it and they are judges, why should all the other judges not do it too? So there is that wider implication. But I see no reason why what the Law Lords do, as Members of the House of Lords, should have any bearing on what any other judge does.

2311. **Lord Goodhart:** I think you said in your submission-not in your letter-that you

> "argue in favour of continuing the present voluntary system on the ground that extended mandatory requirement would be needlessly intrusive."

Why would you regard this as being intrusive?

2312. **Lord Bingham:** Because I think it would require the disclosure of information that would have no bearing whatever on the way that Members of the House of Lords conducted themselves in that capacity. The important thing to my mind is disclosure about which I believe the Members of the House of Lords are very scrupulous.

2313. **Lord Goodhart:** But could you not say that a register is simply an additional method of disclosure, perhaps to a different group of interested parties?

2314. **Lord Bingham:** I do not think that it is proposed that it should be a substitute for disclosure on the Floor of the House. If a peer were making a speech or a contribution in Committee on a subject that gave rise to the need for disclosure, the fact that it was in the register would not excuse him from that obligation - and it should not excuse him, in my opinion.

2315. **Lord Goodhart:** I can obviously envisage a form of register that would be needlessly intrusive, but does not this really depend on what is required to be put into the register rather than on the fact that there is a register as such?

2316. **Lord Bingham:** Yes. One either has a register that is sufficiently exacting that it elicits details that could be important, or it is so bland that there is the risk that it really does no good. This is not an issue on which we have a crusading position. For reasons that I have already indicated, most of our affairs are extremely straightforward and we have extremely few sources of pecuniary interest. Some would say depressingly few. So this is not a campaign that we feel enormously strongly about. However, since our views have been invited, we have given them.

2317. **Lord Goodhart:** Suppose a former Law Lord has retired but is undertaking work as an arbitrator - an obvious financial interest there - is that something that you think should be disclosed? Does the decision taken in 1995 extend as far as that?

2318. **Lord Bingham:** I have not given any detailed thought to this. I think I understood the decision to relate to serving Lords of Appeal in Ordinary who were, so far as I am aware, the only people consulted in 1995.

2319. **Lord Goodhart:** So it would not apply to a retired Law Lord? Some have very substantial practices as arbitrators.

2320. **Lord Bingham:** Yes. I would obviously expect them, if they were making a contribution in the House, to disclose any role as arbitrator that had any bearing on what they were saying or doing.

2321. **Lord Goodhart:** If the House were minded to make the third category of the register mandatory, do you think that it should extend merely to financial interests or should it go further and include significant positions in voluntary organisations?

2322. **Lord Bingham:** If it were to be mandatory, it would probably be sensible to ask Members of the House to disclose any interest of any kind.

2323. **Lord Goodhart:** Any significant interest.

2324. **Lord Bingham:** Yes. I repeat myself, I'm afraid, but I still think disclosure is vastly more important. But my mind does go back, admittedly quite a time now, to a time when I, as very junior counsel, was instructed to watch what was then the Charities Bill going through parliament. I recall that almost everyone who spoke, particularly in the House of Lords, relied on their own experience as leading figures in charities. I can remember one peer in particular who made frequent reference to his role in the Royal National Lifeboat Institution. Now that was extremely valuable because it was a means of testing the provisions of the Bill by real life examples and implications. But of course nobody who had spent time listening to the debate could have been in any doubt about his involvement with the RNLI. The same was true of other Members of the House, all of whose roles were very, very clear. I simply think the system in the House of Lords works all right as it is.

2325. **Lord Goodhart:** One final question: while members of the bar or solicitors who are in the House of Lords are not expected to disclose who their clients are at present, do you think there is any case for requiring them to make any form of disclosure about clients where they are giving them advice that is specifically related to the work of parliament? For instance, advising them on possible amendments to a Bill that is going through the House.

2326. **Lord Bingham:** Which the Member of the House is himself-

2327. **Lord Goodhart:** Intending to speak on.

2328. **Lord Bingham:** Well I would have doubts whether any barrister or solicitor should be proposing amendments if he is doing so for a client.

2329. **Lord Goodhart:** There is a ban at present on people as paid advocates in the House of Lords. Do you think that should extend to lawyers who are debating amendments on behalf of a client?

2330. **Lord Bingham:** Yes. I should be very unhappy indeed if any lawyer were doing that - in any event without making it absolutely plain to the House what he was doing. I would have thought there is no difference between that and being a paid consultant. It would mean being paid for one's work as a Member of Parliament and I would have thought that was quite strictly outside what was permitted.

2331. **Lord Goodhart:** Thank you.

2332. **Lord Neill:** Thank you. Lord Shore?

2333. **Lord Shore:** If I may, Lord Bingham, go back a bit over the very crucial words that you use in your written submission: "needlessly intrusive" on the one hand, and "no commensurate public benefit" on the other. When my colleague questioned you about "needlessly intrusive", I think really you were saying that anything like an entry in Who's Who which virtually everyone voluntarily contributes to would be simply too bland to be useful. I would like to hear you further on that because information that gives the career background and positions held, previously and currently, by a Member is of use. I don't think that providing that limited amount of information really deserves the word "intrusive".

2334. **Lord Bingham:** Well it obviously depends on what degree of detail is asked for. I repeat: my colleagues and I have rather straightforward financial affairs on the whole. But one is vividly alive to the fact that there are some Members of the House whose interests could quite literally be described as vast and if those in that happy position are to be asked to make any detailed disclosure of their position, one does have to say oneself: Well, what is the gain? People would know that the holders of various old titles had extensive interests in land and agricultural property and tenancies and one thing and another. But it does seem to us, as onlookers really, that one would need to be quite clear if one were going to ask for any detailed revelation of those matters that one should say: What is the public benefit that justifies this?

2335. **Lord Shore:** I would expect most Law Lords to make a nil return under the categories-

2336. **Lord Bingham:** I do not think they make a nil return. I think they just do not make a return. Isn't that right?

2337. **Lord Shore:** Coming on to make this point though, there is a public interest in this. I am not saying that there is a great public concern - as far as I can see, there is not - but, on the other hand, as a kind of precaution against criticism that peers do not, unlike virtually everyone else in public life, declare their interest. Hostile people may well say: Well, you know, why not? What have they to hide?

2338. This is an important point because, of these 600 - 700 Members of the House, something like 200 do not make any return. Do you not think it would be a help to the House if a non-intrusive register was made compulsory so that everyone made a return and those who had no interest to declare simply made a nil return?

2339. **Lord Bingham:** Well, my conception would be that everybody would have something to declare. Of course it would depend on the terms of the mandatory requirement. But if it were any position held in any charitable or analogous body, any academic institution and so on, or a body of which you were the president or the patron or whatever, then the list could become quite long. I am not sure that I really understand the concept of a non-intrusive public register. The purpose of any public register is to intrude to a certain extent.

2340. **Lord Shore:** Who's Who?" is the classic.

2341. **Lord Bingham:** Yes. But whether one appears in it at all and, if so, what one discloses in it, is completely a matter for one's own choice. One knows various people who scrupulously do not allow their names to appear in it at all-for whatever reason.

2342. **Lord Shore:** It is a very special category I would suggest.

2343. **Lord Neill:** Lord Bingham, could I ask you one question? The next witness happens to be Lord Rees-Mogg. I do not know whether you recall reading the article he wrote in The Times about six weeks ago. It was in his regular column on a Monday morning.

2344. **Lord Bingham:** "Read" would be an exaggeration.
I saw it.

2345. **Lord Neill:** You maybe glanced at it. Well, I hope I do not do him an injustice. His general line was not to be supportive of the enquiry that this Committee is holding: that was the tenor of it. However, one of the arguments he deployed was that he regarded what we were doing as a threat to the independence of the judiciary. Just limiting that to the Law Lords, do you see any threat to the independence of the judiciary in what we are engaged in?

2346. **Lord Bingham:** No.

2347. **Lord Neill:** Thank you. Are there any other questions?

2348. **Lord Bingham:** There were some issues raised in your covering letter relating to the Committee for Privileges and potential offences of corruption. I am assuming that there are no questions on those?

2349. **Lord Neill:** Well, if there is anything you had in mind that you wanted to add, we assume the Home Secretary is moving forward with that. The recommendation has been made on a number of occasions. This Committee, repeating the Nicholls Committee, also recommended it. It goes back to Lord Salmons' enquiry and we just hope and believe that is rolling forward. Do you see any particular problems arising?

2350. **Lord Bingham:** No.

2351. **Lord Neill:** John, did you want to ask a question?

2352. **John MacGregor:** It was really a question on the Committee for Privileges and whether the presence of the three Law Lords on the Committee would cause any difficulties for the Committee for Privileges, and whether you felt that if the Lords had to comply with a fully mandatory register of interests that would cause any difficulty?

2353. **Lord Bingham:** I don't think so. I think the view has been very clearly taken that if corruption involving a Member of either House of Parliament were to become a criminal offence and, if the Committee for Privileges on beginning to investigate such an allegation thought it had substance, its very clear duty would be to hand the matter over to the police and hold back until the outcome of any police investigation. So I do not see why there should be any problem nor do I see any reason why the procedures should be adapted very much. The present practice is usually to have four Law Lords on any such Committee. However, I gather that on a recent occasion there were three in order to make sure that there was a majority.

2354. **Lord Goodhart:** Could I just ask one or two follow-up questions on that? I think it would probably be fairly widely accepted that the Committee for Privileges would be an appropriate body to decide the questions of guilt or innocence of somebody who was accused of improper conduct. However, it would be right, would it not, that it would be contrary to proper legal practice for the judicial body that decides to also carry out the investigations?

2355. **Lord Bingham:** Yes, I think that would be true.

2356. **Lord Goodhart:** Do you think it would be satisfactory for the Committee for Privileges, therefore,
to make an ad hoc appointment of somebody to carry out a search and investigation in a case where they had come to the initial conclusion that there was a case to answer?

2357. **Lord Bingham:** Could you repeat that question?

2358. **Lord Goodhart:** If the Committee for Privileges cannot itself carry out the investigation - it would not be proper for them to do so - can they get around the problem by having an ad hoc appointment by them of somebody who will act as investigator?

2359. **Lord Bingham:** That would seem to be totally satisfactory. The reason I was hesitating a little is that it would seem to me totally acceptable for the Committee for Privileges to look into the matter sufficiently to see whether there was something that deserved to be taken any further at all because, in the nature of things, quite a lot of complaints are utterly without foundation and one wants to stifle them at birth.

2360. **Lord Goodhart:** But if they thought there was a case for investigation, there is no reason why they should not appoint somebody ad hoc to carry out that investigation?

2361. **Lord Bingham:** No.

2362. **Lord Neill:** I think that covers all of our question. Thank you very much Lord Bingham.

2363. Our next witness is Lord Rees-Mogg. As you will readily understand, we are not today looking into whether it was right or wrong for us to be doing what we are. We have reached the point of launching this inquiry - and this is day five - and we would be very interested to have any views you have on the substance of the matter, whether any changes are desirable or whether the status quo, as many have said, is perfectly acceptable and no change of any sort should be made. That is the position from which we are starting today. Is there anything that you would like to say, by way of a general statement, before I hand over to our two questioners, who will be John MacGregor, on my left, and Frances Heaton? Is there anything that you would like to say to us about your thoughts on the substance of the paper you received?

LORD REES-MOGG

2364. **Lord Rees-Mogg:** Only this: you are facing a difficult and complex problem. In answer to your broad question, in my judgement it is desirable to have a review, but it should obviously include the possibility of deciding that changes are not necessary. I would not argue strongly in favour of simply staying with the status quo.

2365. **Lord Neill:** With that prelude, can I ask John MacGregor to put some questions.

2366. **John MacGregor:** Good afternoon. Can I ask you first - and this almost follows on from what you have said - how well you think the Griffiths framework has worked in practice since 1995?

2367. **Lord Rees-Mogg:** Since 1995 it has worked reasonably well. There have been no outrageous public scandals of any kind so far as I am aware and no insoluble problems. The reason for having a review at this stage is, first, that five years has gone by and that is a considerable time in such matters; and, secondly, there continues to be public anxiety about the good credit of public people. Although I do not think that this is at all focussed on the House of Lords - and nor should it be - nevertheless it is reasonable to keep the arrangements for the House of Lords under review, along with others.

2368. **John MacGregor:** You made some declarations under the voluntary third category. Have you had any difficulty in understanding or interpreting the rules on that or have you come across any comments from others about such difficulty?

2369. **Lord Rees-Mogg:** I have changed my declaration over time and widened it because I found it difficult to know exactly what I should be declaring. My desire has been to make sure that on essential matters my declaration was wide enough, but if I remember correctly - and I have not checked this - it never occurred to me to declare my journalistic activities since I thought that they were already on the public record, as it were. On second thoughts, I am now not sure that it would not have been appropriate to do so.

2370. **John MacGregor:** You probably have, according to the information that we have here, so you obviously acted on your second thoughts. Did you seek any guidance on it, or did you feel the need to?

2371. **Lord Rees-Mogg:** Originally I sought guidance from the Clerks of the House, but I did not do so when I revised it.

2372. **John MacGregor:** Many witnesses have argued that one of the reasons for a review is the change in the character and general ambience of the House of Lords - not necessarily the composition - as a consequence of the large number of working peers appointed since 1997 and also, of course, of the Act last year. Have you detected any changes as a whole in the atmosphere in which the House of Lords works?

2373. **Lord Rees-Mogg:** Since the removal of the hereditary peers the House has on the whole become more politically partisan. The sharpness and rigour of debate has increased and the new Labour peers seem to lead more active, interesting and varied careers than most of those hereditary peers who were not elected among the hundred.

2374. **John MacGregor:** It has also been put to us that because of "greater legitimacy" the House of Lords is now more inclined to defeat the Government. Therefore, (a) it has become much more subject to lobbying, and (b) the media interest increases as it seems to become more willing to use its power effectively to change legislation more frequently. It has been suggested that this greater media attention will lead to more focus on people's interests. Do you have any comments on that?

2375. **Lord Rees-Mogg:** It is certainly true that the new House is much more willing to defeat the Government than the old one was. It has more confidence in itself and that is understandable because many of the hereditary peers who have now gone did not have confidence in their own legitimacy.

2376. On the question of the press, I still notice very little press attention being paid. They usually report a Government defeat, but quite briefly. There is little general coverage and relatively little understanding of the change in attitude that has taken place. I certainly have not noticed any increase in ordinary lobbying, although in common, I imagine, with virtually every other Member of the House of Lords, I have received an enormous number of letters on clause 28, all from one side and presumably

organised by some central source.

2377. **John MacGregor:** It has, for example, been argued that the Financial Services and Marketing Bill was the subject of a great deal of lobbying in the House of Lords. I presume that was partly because of the expertise there, but also because it was thought that was the place to make some changes, given the Government's very large majority in the House of Commons.

2378. **Lord Rees-Mogg:** I think that I got one letter about that. I was not personally lobbied and certainly I got no more than one letter.

2379. **John MacGregor:** Do you feel that the changes that we have just discussed should lead to a different approach to the register? In particular, should Category 3 become mandatory, rather than voluntary?

2380. **Lord Rees-Mogg:** I do not exclude a mandatory Category 3. It is conceivable that public perception makes that desirable. Equally, I see considerable difficulties if the House were to go down that road, partly because of the need for most Members of the House to earn their living outside it - there are relatively few who do not have to; partly also because of my experience of registering in other areas; and, lastly, because of the extreme difficulty of making sure that one has completely complied.

2381. For instance, I was a director of M&G Investment Management, which had a banking function. When I left it about 10 years ago, it was spending about £1 million a year on compliance. It can be extremely difficult for somebody with the sort of life led by some of my colleagues, to make sure that they do not omit something. I am anxious therefore that it might create a situation in which people who were behaving innocently and trying
to register all the proper things, found themselves being caught out, as has happened with the register in the
House of Commons.

2382. **John MacGregor:** Do you think that this might happen anyway? Much emphasis has been put on the importance of declaring an interest if one speaks in a debate in the House of Lords, and that is the key issue in the eyes of many. There is also, of course, the question of those who do not speak, but vote. At some stage, if there was concentration of interest on a particular Bill, might the fact that certain interests were not declared in the register cause some media attention on votes?

2383. **Lord Rees-Mogg:** There may be difficulty over that, but to take a public example, if Baroness Thatcher had to start to register all the things she does, she would probably have to employ somebody full time in order to make sure that she did not leave anything out. That would probably also be true of some of our active businessmen and yet it is thoroughly desirable that people who lead complex lives should be Members of the House because of the experience they bring.

2384. **John MacGregor:** There is general agreement about that last point, but is your concern more about application than about the principle of a mandatory register?

2385. **Lord Rees-Mogg:** Yes. In an ideal world, although it would be difficult to formulate a definition, one would have a mandatory register of continuing and major interests, those being something that play a substantial part in somebody's life in terms of the time they give to it and, probably in most cases, the proportion of their income they derive from it. To know the basic structure in that way would remove considerable suspicion. If one goes wider than that, there is the possibility of accidental failures to register interests. We have had such cases in the other place. Both the Leader of the Opposition and the Prime Minister, whom I believe to be people of total integrity, have had to apologise for failures to register interests. I would deplore it if we started to have such situations arising in our House.

2386. **John MacGregor:** Some of our witnesses have suggested that this has arisen in the House of Commons partly because the system is now moving down the line of political tit for tat, especially in the period leading up to an election. Some have argued that the culture and ethos of the House of Lords is such that that sort of use of the registration system would not occur.

2387. **Lord Rees-Mogg:** One could not rely on that. First, we have our moments of acute political tension; secondly, the tit for tat can be on the part of the press as well as on the part of politicians from either side. The danger of blown up exposure of non-scandals would be greater in our House than in the House of Commons because of the lives led by, for instance, our major businessmen.

2388. **John MacGregor:** Do you think that there is a case at all? Some have argued that the House of Lords system should become closer to that of the House of Commons. Are there big differences in looking at this issue between the two Houses? Is there any case for a Parliamentary Commissioner for Standards such as we have? As you probably know, there have been no complaints yet to the Committee in the House of Lords.

2389. **Lord Rees-Mogg:** In answer to your second point, until serious complaints start to happen, setting up such a body would

not be justified. On your first question, the differences are enormous. There is a difference, of which everyone is conscious, between unpaid and paid people. For most of those in the House of Lords, it is only a part of their lives while for a considerable number of Members of Parliament the House of Commons is their whole life. That is a major difference, but more important is the difference in power.

2390. It is true that the House of Lords can amend a Bill in a way that is favourable to some interest or another, although I have not found that people have approached me over the years in order to help through that process. Only occasionally does one get a letter from a clearly declared interest body. The cockpit of power is the Commons. That is where power and sovereignty in the country resides, not in the House of Lords. The situation in terms of power is totally different between the two Houses and is likely always to remain so.

2391. **John MacGregor:** One final question. You have written a little bit about the risks of precedents in relation to, for example, the Law Lords and the judiciary system as a whole. We know that the Law Lords took a view in 1995 not to register anything collectively. However, if there was a recommendation from the Lords itself - and in due course that is where it would have to be acted upon - to have a mandatory registration system that applied to the Law Lords acting in their capacity as ordinary Members of the House of Lords, not their judicial capacity, would you see any difficulty?

2392. **Lord Rees-Mogg:** Yes, unless it had been preceded by a consideration by the judiciary of how such matters would be handled in respect of judges. If people had to disclose interests in their capacity as Members of the House of Lords, they would also be doing so in their judicial capacity - I do not see how that could be avoided. If there was a mandatory declaration of interests for senior judges it would set a precedent that would run right through the judicial system. It is important to avoid dictating standards to the judiciary and therefore it would be wise to leave it to them to decide on the appropriate standards.

2393. **Lord Neill:** Now I should like to ask Frances Heaton to follow up those questions.

2394. **Frances Heaton:** Going back to the question of the register of interests and how, if it were to become mandatory, it could be described, at the moment, the two current mandatory areas for lobbyists and those who have a financial interest in a company undertaking parliamentary business are clear. When one gets onto the third category, it is more difficult to see what the drivers are. I suppose that for the Griffiths Committee, in the context of the House of Commons activities, sleaze was the underlying driver. Being paid to do things - in other words, the financial interest - was pre-eminent.

2395. You made an interesting suggestion earlier that the register should be confined to continuing and major interests. Implicitly that included non-financial interests.

2396. **Lord Rees-Mogg:** Yes. I would probably be more likely to run into a conflict of interest in terms of charitable work with which I am connected than my business work. Charities that badly want to achieve a particular objective have very strong feelings and one may be attached to those views. As other members of my family also have charitable interests, I might have interests through them. That was Lord Hoffmann's difficulty and it is one with which one can have a great deal of sympathy. Something that is a major part of one's life is hard to define, but it ought to be made known.

2397. **Frances Heaton:** There is an interesting distinction there. Lord Hoffmann, in his judicial capacity, is meant to be objective, independent and so on, whereas those in the House of Lords are there for their personal qualities, which include their expertise and all the other things that go into their make-up. If one goes down the road of trying to identify everything that makes a person who they are, it is difficult to draw a dividing line. One wonders whether that sort of interest should be registered, or whether the register should be limited to financially driven matters.

2398. **Lord Rees-Mogg:** It is probably more important in practice to know whether a Member of the House is, say, a member of the Executive of the Royal Society for the Prevention of Cruelty to Animals than it is to know whether he is a non-executive director of a medium-sized public company. The first is much more likely to influence his decision making on a problem that might come before the House than the second.

2399. **Frances Heaton:** I can understand that and, hence, everybody seems to be unanimous in their support for declaration. There is no dispute that declaration is extremely useful; all the peers who have come here have said so. It is the relationship between declaration and registration that is causing a problem.

2400. **Lord Rees-Mogg:** Yes. I am merely saying that if there is to be a change, I would accept a mandatory register if it were minimalist, but would include in that major interests that go to the heart of somebody's life.

2401. **Frances Heaton:** Thank you very much. We have had evidence from some peers who are part of the new intake and have felt that it has been difficult to get guidance on all sorts of things within the House, including the register. Do you have any

comments to make on how the present informal guidance works?

2402. **Lord Rees-Mogg:** What they said is absolutely true. I had been in the House for 12 years before I knew how the usual channels worked, or who they were. I should think that is the normal experience, certainly on the cross benches. We do not have adequate instruction and it would be good if it were improved.

2403. **Frances Heaton:** Turning to another topic, do you consider the fact that Members of the House of Lords are not paid of itself is an argument for treating them differently from Members of the House of Commons, or do you consider that the question of pay is irrelevant, because both Houses are performing a public function for the public good?

2404. **Lord Rees-Mogg:** It cannot be irrelevant, simply because one has to lead a different life. If one is not paid, one is not only perfectly entitled to have extensive outside interests of one sort or another, but one has to have enough outside interests to pay the rent. As this is so, the whole balance of life for the average Member of the House of Lords , other than those who are in the Government, is different from that of Members of the House of Commons. That has to be taken into account, but also we do not really have a great deal of power, so there is not the same risk from the sleaze factor.

2405. **Frances Heaton:** I have one last question on lobbying. It has been suggested to us that although the public relations agencies are clearly pinned with the title "lobbyists", there is much lobbying undertaken by professional firms, notably lawyers, and that therefore Members of the House who belong to that sort of organisation should be subject to the same restraints as the PR agencies. Have you had exposure to that sort of activity and have you any comment to make?

2406. **Lord Rees-Mogg:** Not really. Certainly that is common in the United States where the Washington lawyers are far more powerful than the specific lobbying firms and spend a great deal of time and money on achieving results. I do not know that London law firms do it. What does crop up is organisations which are more or less ad hoc to a particular Bill. One is not necessarily sure who is putting such an organisation together, but I suspect that in some cases it might be lawyers.

2407. **Lord Neill:** Could I ask you to turn your thoughts to the Law Lords. The point is fresh in my mind because we have just seen Lord Bingham of Cornhill, who is the senior Law Lord. We thought it right to consult him and he came to us expressing the view of all the Law Lords, having first written a letter. I hope that I can accurately summarise his position as follows. The Law Lords consider that the present rules as they stand are perfectly satisfactory and that no change is needed. But they take the position that the Law Lords are full Members of the House and that if the rules were to be altered by a decision of the House, in, say, six months or a year from now - that, for example, part 3 of the register became mandatory for peers - subject to seeing the fine print of the proposal, the Law Lords would go along with it and act accordingly. That was his view. Obviously he said "We don't sign blank cheques.", but if we assume something like a mandatory part 3 of the register with a common sense view as to what has to be disclosed and no excessive stuff about every foreign trip or lecture, as I understand it the Law Lords would not have a problem. Would you like to comment? Of course, it is difficult for you because you have not seen exactly what was said.

2408. **Lord Rees-Mogg:** Obviously I would not wish to defend the Law Lords' independence beyond the point at which they wish to defend it themselves.

2409. **Lord Neill:** I thought that might be the case. That might be some comfort if they take that position. That registration, of course, would only apply because they were parliamentarians. It so happens that they are part
of the judicial arm of the state and there might be a read-across effect. We did not explore all that, but the effect would be that a litigant or solicitor could look up the Register to see what the interests were and that might be the foundation for an objection to a Member of the House sitting. That is the sort of thing that might be a consequence of such a change, but does the fact that the Law Lords remain calm about such a proposal, subject to seeing the fine print, reassure you?

2410. **Lord Rees-Mogg:** Yes. The difficulty is that it would inevitably spread to all the other judges and if there is to be a change to a mandatory register for judges, I should like to see the issue considered beforehand. If I were a Law Lord I would be more cautious than they are, but perhaps they know their business best.

2411. **Lord Neill:** Do you think it is rather unsatisfactory to back into the big issue of whether judges as a whole should register their interests through the most senior 10, who are Law Lords?

2412. **Lord Rees-Mogg:** Yes, I do.

2413. **Lord Neill:** You think that it requires fundamental consideration of the whole problem?

2414. **Lord Rees-Mogg:** Yes.

2415. **Lord Neill:** Any other questions? Yes, Lord Goodhart.

2416. **Lord Goodhart:** I should just like to put one question, Lord Rees-Mogg. The third category in the Register of Interests is "Other particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties". Would you agree that that is a very subjective test and one that could lead to wide differences of interpretation?

2417. **Lord Rees-Mogg:** Yes, indeed. The difficulty is that either you have a subjective test, or a test with a substantial subjective element, or you have a detailed test. If you have a detailed test, you then have the problem of non-disclosure by innocent people, which is a real problem. It has already proved to be so in the House of Commons and it would be so on a larger scale in the House of Lords because of the nature of the careers and business work people are doing. I do not know how one could get round that difficulty. Both the subjective and objective approaches seem to have disadvantages.

2418. **Lord Goodhart:** Would it be possible for the House of Lords itself to publish more detailed guidance than at present?

2419. **Lord Rees-Mogg:** There must be a middle position that would be helpful, but I am anxious to avoid the situation in which an innocent failure to disclose leads to apologies to the House and so on, as has happened in the House of Commons and which creates in the public mind a belief that sleaze exists where I am satisfied it does not, as, for instance, in the cases I mentioned of the Prime Minister and the Leader of the Opposition.

2420. **Lord Neill:** Are there any other questions? You have dealt with all the matters we wanted to put to you. I hope it has covered everything you wanted to say to us.

2421. **Lord Rees-Mogg:** Thank you very much.

2422. **Lord Neill:** Thank you. It was very kind of you to come.

2423. **Lord Rees-Mogg:** I wish you luck in your difficult task.

2424. **Lord Neill:** Thank you very much.

2425. Good afternoon, Lord Strathclyde, Lord Mackay and Mr Nicholas True. Thank you very much for coming and for writing to us with such care. We should like to look at the key issues that arise out of the questions posed in the paper that we circulated. The way we proceed in these matters is to have a couple of members of the Committee putting questions. In your case the first will be Sir Anthony Cleaver and I shall follow him.

2426. You have an opening statement and that will be printed in the record in the ordinary way at the front of your testimony today. If you like, you can read it out but the public and those watching the website will get all this at the beginning of your statement. Of course we on the Committee have all read it. Unless you have any afterthoughts, we will go straight on to questions. Is that acceptable?

RT HON LORD STRATHCLYDE, THE RT HON LORD MACKAY OF ARDBRECKNISH AND NICHOLAS TRUE

2427. **Rt Hon Lord Strathclyde (Leader of the Opposition in the House of Lords):** Lord Chairman, I have nothing to add to our opening statement. Thank you very much for asking us to come along to give evidence. We are delighted to do so orally, as well as the written evidence already provided.

2428. **Lord Neill:** Thank you very much. Sir Anthony, would you like to begin?

2429. **Anthony Cleaver:** Good afternoon. Could I start by exploring the question of the differences between the two Houses. Obviously they are significant, we understand that, but in paragraph 5.4 of your written evidence, you cite 13 differences between them. Could you tell us which of those you consider relevant to the issues we have raised?

2430. **Lord Strathclyde:** All the differences are relevant because they create the basis on which we put our evidence that there is such a fundamental difference between the two Houses that they should be treated in different ways. I will not repeat the evidence, but the essence of it is that the House of Lords is unpaid; it is not elected or representative; it is not as partisan as the House of Commons; its Members cannot hold the highest offices of state - those of Prime Minister or Chancellor, and in fact it is increasingly unlikely that a Member could hold any of the other great offices of state. The House of Lords has no influence over who forms a government and it cannot impose an Act of Parliament or prevent one from becoming law. We have, of course, no power over financial matters or over the letting of contracts. It suits some peers sometimes to talk up the power of the second chamber. In reality, the powers of the House are relatively limited.

2431. **Anthony Cleaver:** I understand some of those, but perhaps we could look at some of them in a little more detail. You cited the fact that Lords are unelected and MPs are elected. Given that one of the issues here is that of public perception, one of the Lords who gave evidence this morning suggested that it was more important that the Lords should be conscious of public perception than the Commons. His point was that in the case of the Commons, the constituents had the ultimate remedy of not re-electing the Member, whereas in the Lords Members tend to stay there for life.

2432. **Lord Strathclyde:** There are two things to say about that. Remember that it is the elected House that always has the final say. It does not matter how badly behaved the House of Lords or an individual peer is, the elected House will always have its way. Secondly, on the question of being representative and therefore having access to constituents, it is entirely open for members of the public to write to individual peers. Some do, but not many, which leads me to believe that, in as much as the general public have a perception of the House of Lords at all, it is not a bad one. Very often, particularly in the past nine months, since the start of the new House I have felt and been told - and this has been reflected in articles in the press - that the House of Lords is often more in tune with public opinion than elected Members in the House of Commons.

2433. **Anthony Cleaver:** I should like to come back to the changing nature of the House a bit later, but perhaps we could pursue one or two other differences that you cited. You said that it is significant that Lords are unpaid and MPs are paid, but in the 1974 report of the House of Lords Sub-Committee on Registration of Interests it was suggested that the fact that Members of the House of Lords were unpaid was irrelevant because responsibility and registration of interests should go with power and not with the payment of salaries.

2434. **Lord Strathclyde:** The point that we were making is that the House of Lords is a House of interests. Unless one is very rich and does not need to rely on any other source of income, one can only survive as a Member of the House of Lords by having other interests. After all, the expenses regime is a repayment of expenses, not a way of creating profit.

2435. Secondly, there is a view that there is no regime in the House of Lords that allows for declaration of interests, but of course there is. There is an enormously powerful and strong one and that is the mandatory declaration of interests at the start of every debate, question or anything else in which you take part, as well as the three-part written Register, which you know all about. There is therefore already quite a tough regime in place and in some instances I am led to believe that it is tougher than that in the House of Commons.

2436. **Anthony Cleaver:** Again, I should like to park that one for the moment and come back to it. To pick up the first point of your response there, again, it was suggested by a witness this morning, Lord Rodgers, that the very fact that the Lords were unpaid and therefore relied on earnings outside was significant and should be taken into account in determining whether registration should be mandatory. Inevitably, therefore, there were significant areas in which they had a financial interest that could affect their actions and the part they took in debates in the Lords. In a sense that turns on its head the question of the fact that the Lords are unpaid.

2437. **Lord Strathclyde:** Can I ask John Mackay to comment in a moment? I can feel that he is bursting with something useful to say on this, as he does on so many other subjects.

2438. Of course, people are there with financial interests because they are paid to do other things, but the most powerful declaration is the one that is made in debate. Why is it the most powerful? It is far more powerful than anything you can put down on paper. First you are saying "I know a little bit about this subject." and that is rather an important thing in the House of Lords. In the House of Commons people do not expect you to know a great deal about a subject, but in the House of Lords if you come from an interest and can contribute knowledge of it, that is considered a good thing. The other point is that people know where you are coming from. A written register is not as useful as an oral declaration made in debate. For those reasons, I much prefer it. A written register might well tempt peers to forget about giving a declaration during the course of the debate. Can I now turn this over to John Mackay.

2439. **Rt Hon Lord Mackay of Ardbrecknish (Deputy Leader of the Opposition in the House of Lords):** May I make two points on that. First, there is no evidence at all that I know of that the current situation has not worked - that people have been involved in debates without declaring any interests they have. I have not seen any evidence of that and your paper certainly did not show any.

2440. Secondly, in comparison with the House of Commons, it is no secret that there are some people - although I do not agree - who want the House of Commons to be totally professional and have no outside interests at all. Clearly you could not have that in the House of Lords where people are not paid. They are dependent on outside interests to allow them to do the job and it is in fact the knowledge they gain from them that make the House of Lords in many ways, at least on certain issues, much more knowledgeable than the House of Commons.

2441. **Lord Strathclyde:** It is interesting that you should have quoted from the 1974 report. Here we are, more than 25 years on, and what you, Lord Chairman, said on 10 May in the House of Lords is as true today as it was then. Lord Neill said that: "The papers are not full of allegations about misconduct in the House of Lords. Such allegations are entirely absent." That speaks for itself.

2442. **Anthony Cleaver:** Nobody, I think, is disputing that, nor do we in any sense undervalue the importance of people having expertise and speaking from that position in the Lords, which is clearly one of the major advantages. It is interesting that you refer to the House of Commons becoming professional. We have in fact had a lot of evidence in the past few days that the House of Lords is seen as being more professional and that peers are now under increasing pressure to attend, with evidence of whipping and so on. Is that something that you would agree with and would you not expect it to lead to a change in the regulatory system?

2443. **Lord Strathclyde:** The Conservative party does not share that view. There is no greater requirement on Conservative Members to turn up any more than they did in the past. The party of Government found in the past three years that they appointed peers who did not much bother about turning up. They have therefore had to introduce a far stricter regime. I suppose that if that is what people call more professional, it is, but it is not that the House of Lords is becoming a more professional house of politicians.

2444. The impression I get is that there are increasing numbers coming to the House of Commons whose only interest is politics. They come with no other base. In the House of Lords people come from a variety of backgrounds, interests, different parts of the country and so on and that should be encouraged.

2445. On the main point about more peers being encouraged to attend, I have not seen the daily attendance records. I suppose there must be some increase in that, but remember that some of that was a reaction to the old House. Many of those who were in favour of removing the hereditary peerage wanted to demonstrate that the change had worked and they encouraged people to come along to show that they could do without the hereditary peers.

2446. **Anthony Cleaver:** You referred to the declaration of interests that is made at the outset of speeches. Obviously you say that it is of the greatest value to the house. Does it have any value to the general public?

2447. **Lord Strathclyde:** The public is served best by a House that functions well and effectively and has integrity. As we have already demonstrated, there is no great public concern about the integrity of the House. It functions well - that too has been demonstrated over the course of the past few months - and effectively so in those terms the interests of the public are well served. I have already mentioned the importance of the declaration being made in the House. The power of that declaration is that people recognise your interest, welcome it and are encouraged by it. They can furthermore tell whether they are being swayed by your argument in debate or by something else.

2448. **Anthony Cleaver:** Very often, in a debate not all those present speak. It is therefore possible for someone who has not had the opportunity to make a declaration to vote in an area where they have a significant interest. Is that entirely satisfactory?

2449. **Lord Strathclyde:** Yes, because they have not had the opportunity of talking anybody round to their side of the argument. They have not used their expertise in a terribly intellectual way, except to vote. You will see from the recent records of the House that there are very few divisions decided on the votes of a handful of people. The most important time to give the declaration is when you are actively involved in a debate. To follow the logic of your argument would require that everybody had to check up on the particular interests and regimes of speakers before deciding how to vote.

2450. Why do people vote in certain ways? The main reason peers vote is because they are instructed to do so by the Whip that they receive at the beginning of each week. If that is the major interest people have in voting, perhaps the weekly Whip should be published.

2451. **Lord Mackay:** If it is the public you are worried about, a declaration of interests at the beginning of a speech, question or other statement at least tells the other Members of the House where you are coming from, which is hugely important because they are literally your peers.
If they feel that you are stepping beyond the mark, they will tell you. Secondly it informs the public who are in the gallery and, thirdly, those, if any, who are watching the feed on the parliamentary channel. I suggest that that is many more than would be acquainted by a register that they would not be able to see without going to a lot of bother.

2452. **Anthony Cleaver:** I gather then that you are comfortable with the Register as it stands at the moment. The third part of the Register of Interests specifically says it is related to

"other particulars which Members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties"

Is that reference to public perception appropriate?

2453. **Lord Strathclyde:** I can see why people might be confused by that, but there are two publics here. The first public is that inside the House - all the other peers who wish to have a perception of the background of a speaker. As far as the general public are concerned, let me give an example. The public know a great deal about the private affairs of Members of the House of Commons. I do not believe that they feel protected by that any more than they do by the Register of Interests that currently exists in the House of Lords.

2454. **Anthony Cleaver:** In your paragraph 7.7, you say that your concern over a compulsory register is that it would deter many excellent people from attending or joining the House. Could you elaborate on that a little?

2455. **Lord Strathclyde:** I have been told that there are some existing Members of the House - not many - who would not wish to continue there if there was a different regime as far as interests are concerned and that was why we included that line. It might also be the case that there are people outside the House who may be approached to become peers, but who feel that their personal and private interests are legitimately their own business, having been created long before they had any thought of becoming Members of the House of Lords. People join the House of Lords normally later on in life, in the opposite way from that in which people go to the House of Commons. Although I do not have immediate evidence of this, I suspect there is some that would show that some candidates would decline a place in the House of Lords. If they were good enough to be asked in the first place, it would be a pity to lose out on their wisdom.

2456. **Anthony Cleaver:** People join the House of Lords voluntarily. Everybody is there voluntarily now, with the two exceptions that you mentioned - which make up less than 10 per cent. We have already had Lord Bingham this afternoon explaining to us that the Law Lords would, as parliamentarians, go along with whatever was decided by the House.

2457. **Lord Strathclyde:** Of course the Law Lords would go along with what the House of Lords decided, but it raises the interesting question that judges in and out of the House would be treated differently. The same goes for the bishops. While people do become peers voluntarily, those who are there currently have no obvious means of getting out. They can take leave of absence, but that has always been the case. There are fewer people now on leave of absence than prior to the passage of the House of Lords Act 1999. There would also be the feeling that if you took leave of absence, you would have something to hide because you did not then need to register your interests. I am not sure that that would be an attractive outcome of the deliberations of this Committee.

2458. **Anthony Cleaver:** People in all sorts of other areas, serving in a voluntary capacity on charities and so on, nowadays have to register their interests, so what is the key distinction that separates Members of the House of Lords?

2459. **Lord Strathclyde:** I do not know enough about individual charities' declarations, but I assume that if you do not wish to be a patron of a charity, you can leave.

2460. **Anthony Cleaver:** But as you said yourself, you can get leave of absence from the Lords very easily - it is not difficult.

2461. **Lord Strathclyde:** You can get leave of absence very easily, but the point is that if that is the only way of not declaring an interest, people will immediately say "There you are. That chap has something to hide." It is therefore a particularly unattractive choice.

2462. **Lord Mackay:** It also depends how intrusive the declarations are. For example, the intrusiveness of the House of Commons is damaging the position of Members of Parliament. As an ex-member of the House of Commons, it saddens me to see that happening. They are being damaged. The public fall about laughing when they read that X's invitation to an FA Cup Final has had to be declared. It is all great sport but the effort to create openness has, if anything, damaged the House of Commons. It depends on the degree.

2463. If you were doing an all-singing, all-dancing register, people would not only have to declare their interests, but their earnings from them. People such as lawyers and accountants might have to declare individual clients and their related earnings. You could go down a road where it could become so intrusive that many people would back off.

2464. **Anthony Cleaver:** I understand that and there has been a lot of discussion about what needs to be included in such a register. We tend to take the view that one could have a far lighter regime. There is, perhaps, no necessity for amounts to be declared. That could still serve the purpose of showing where people's interests lay. Could I ask one final question before handing over? In the 1997/98 session, the Procedure Committee agreed with a proposal to set up a working group following

complaints that conduct in the House and adherence to its procedures had deteriorated recently. I understand, Lord Strathclyde, that you are a member of the Procedure Committee, but that no proposals have been taken forward. Is there any particular reason why that is the case?

2465. **Lord Strathclyde:** A number of things flow from this. The first is that since 1997, over 200 peers have been brought to the House of Lords - nearly a third of the House is relatively new. It was therefore not surprising in those early months that there was a problem of assimilation. Peers who were used to the parliamentary life and ex-Members of the House of Commons obviously found it easier than those who came in from outside, so there was a feeling that procedures had deteriorated. Now, after three years, that has changed. The new peers have made the transition, which is not very difficult.

2466. As far as the Conservative party is concerned, we did have for the first time ever a mini-conference at the beginning of this year to train and explain the issues to existing peers, as well as newer ones. The new peers problem is not so great for us as it is for the Labour party because they have more new members than we do. However, there is no suggestion that there is a lack of resources being put into training up new peers and anyway the problem is simply not as great as it was a year or two ago. I do not think that there are now any peers who do not understand their role and the behaviour and courtesies that apply in the House.

2467. **Anthony Cleaver:** Thank you very much.

2468. **Lord Neill:** You have already dealt with my first question, which was going to be about some of the evidence we have heard on previous occasions of a lack of courtesy and understanding of the ethos and manners of the House. You feel that may have been a problem, but that it has now substantially disappeared?

2469. **Lord Strathclyde:** I do. There will always be minor transgressions of minor rules, but overwhelmingly - and I think that Lord Mackay would agree with me - the standards of courtesy in the House are as good as they always have been. On some issues it is perhaps more overtly political than in the past, but that is part of the changing nature of the House and has very little to do with its essential ethos.

2470. **Lord Mackay:** The underlying point is one of self-discipline. Members of the House of Commons find it a little odd to begin with, as I did, but you quickly get to know what is what and what the differences are. People coming from outside who are, perhaps, used to a chairman chairing a meeting find it hard to see that the chap sitting on the Woolsack does not chair the proceedings in the normal sense of the word and that we are therefore forced to discipline ourselves. Once that lesson is learned, the situation improves. Certainly there was an incident when someone intervened in a speech that I was making and the courtesies are that one does not intervene in timed speeches - as you know, Lord Neill. Afterwards that was explained to the Member and he apologised and understood. Those are points of procedure we have to deal with ourselves. It is not a matter for great concern.

2471. **Lord Neill:** Can I ask you to expand on the statement that the House of Lords is not as partisan as the Commons? There are occasions when it becomes quite partisan, are there not? Obviously you have far greater experience, but I went to a very thinly attended debate on Indonesia. The only people who spoke were complete experts who knew all about it and it was totally non-partisan. On other occasions there is quite a lively atmosphere between the two sides of the House and, while it is not similar to the House of Commons, there is a party spirit abroad. Has that increased through the working peers system or am I imagining things that are not there?

2472. **Lord Strathclyde:** I do not think that you are imagining it, but I would not put it too strongly. There always were issues in 70s, 80s and early 90s on which there were profound political differences. That is why people sign up to political parties. It has always struck me that if you are a Member of the House of Lords, there is no reason, unless you have ministerial ambitions, to be a member of a political party. Most Members of the House of Lords could happily join the cross benches and have done with it, but they do not, because they still feel that they have party links. That is as true now as it was 20 or even 10 years ago, so it has not changed remarkably. There may be some issues now coming to the fore on which there are clearer and cleaner political divides than was thought possible when there was a more hereditary House.

2473. **Lord Neill:** Can I come back to public perception. It is interesting that the third part of the Register causes the peer to put to himself the question "Have I got any interests that might affect the public perception of how I am carrying out my duties. This is not really related to making a declaration on the Floor of the House, but to the public out there. Is this something that they would like to know about what I am doing in the House?" That is what the House adopted; do you think that is the correct form? In the light of what you were saying, how strongly do you feel that public perception matters?

2474. **Lord Strathclyde:** Public perception always matters for those of us who operate in the political field and one is always aware of that. My point was that public perception is not overtly concerned about what goes on in the House of Lords and does

not regard the issue of registration of interests as one of their primary concerns. Members of the public are much more interested in how people become peers. I get far more letters about that than about the Register of Interests.

2475. Could the wording be improved? May be. I became the Government Chief Whip in 1994 and since then I have either been Chief Whip in Government or in Opposition or Leader of the House. In all that time, I have had very few - may be two or three - Members of the House who came to me to ask my advice on what they should and should not register. On each occasion, apart from one, I was able to give pretty clear views as to what I thought was the right thing. I cannot believe that there is an enormous problem and, of course, the Registrar is there to give advice. I know that the Registrar takes the view that in the end it is a personal decision. I suspect that the fact that there has been no evidence of problems caused by the Register in the House of Lords means that people have tended to use their judgement wisely.

2476. **Lord Neill:** In your paragraph 8.8 you say you want publication on the Internet of the list of those who have acted as special advisers in the past for the government of the day. That looks like a very strong public perception point, that the users of the Internet ought to know where people are coming from when they speak. Am I misunderstanding?

2477. **Lord Strathclyde:** No. The Register of Interests is now available on the Internet.

2478. **Lord Neill:** It is.

2479. **Lord Strathclyde:** Given that, we would not want to propose anything that was not equally accessible. This, of course, is a register by the Government of Members of the House who have previously been special advisers. We have more former special advisers in the House of Lords than ever before. I know that John Mackay has views on this, as he does on the Addison Rules, that he might want to discuss.

2480. **Lord Mackay:** The role of special adviser is quite current at the moment, so when we get people who were special advisers, in some way they are a bit like people who have had parliamentary consultancies. If they come into the House of Lords when their side is still in Government, human nature being what it is, they will be pretty firm advocates of the sort of policies they helped to dream up. You might say the same about politicians, but everybody knows where they come from. It is just one point, but rather than a register, if the Government were open about that it would allay any concerns by Members of the House, the press or the one or two members of the public who might be interested in who were special advisers.

2481. **Lord Neill:** I feel I must speak carefully here. I am flanked by ex-special advisers - John MacGregor and Lord Shore. In a way you are making the point for me when you say that there is some information that ought to be out there and available on special advisers.

2482. **Lord Strathclyde:** The Government could do that.

2483. **Lord Neill:** You think that the Government should publish that?

2484. **Lord Strathclyde:** The point is that this is an interest that would not be registerable at all under the House's current procedures. You cannot register the fact "I was a former special adviser." That is not a properly registerable interest. But as Lord Mackay explained, if you have been a special adviser to the President of the Board of Trade for some years and you come to the House of Lords, although you are no longer his employee, you may well feel that you wish to support some of the policies that have been pushed through. It is probably quite worthwhile people knowing that you have been in the employ of the President of the Board of Trade for some years.

2485. **Lord Neill:** Turning to your paragraph 7.4, you raise the issue about the advantages and disadvantages of the House of Lords having adopted a system tougher than that of the Commons. This is about the ban in rules 1 and 2 and in the general part of the resolution that was passed in 1995. Could you say a little bit more about this?

2486. **Lord Strathclyde:** I am aware that there are some Members of the House of Lords who feel that this rule is too tough and that they are therefore debarred from speaking in debates or on issues in which they have an interest. Some of them, I know, have given evidence to you. I have some sympathy with that. However, the beauty of the rules as they are currently crafted is that they are clear and transparent. You either fall one side of the line or you do not. In both of the first two categories, you know whether you are a paid advocate or are employed by or a director of a lobby company. Therefore there are some advantages in leaving the rules drawn as clearly as they are. It is a balanced judgement. If, as we do, you wish to retain the third category as a non-mandatory one, it helps to preserve the first two categories as mandatory, with the full limits to one's personal freedom in the House of Lords that that implies. That is different from the House of Commons, which has no rules that bar you from speaking or voting - or at least from voting. I am, however, not an expert on the House of Commons rules.

2487. **Lord Neill:** Could you just explain one thing from your opening statement before I hand over to my colleagues for other

questions? Halfway down you say:

> "...in an amateur House, we shouldn't undermine, directly or impliedly, the legitimacy of interests unrelated to membership of the House by requiring them to be registered."

Is that Lord Mackay's point about having a set of rules that goes over the top? I think that he was arguing that the House of Commons has done that. Is it saying more than that? You do not want to have a ridiculous set of rules.

2488. **Lord Strathclyde:** You do not want to have a ridiculous set of rules. The joy of what we have now is that everybody understands them, or should do. It does not take very long to understand the current declaration of rules of the House. They do not affect outside interests unless you choose to bring them to the fore. They do not affect the oral registration in the House and they are unbureaucratic. The Griffiths system - if I can call it that - was masterful. Remember that it was done against a background of weekly press revelations with terrible things going on in the House of Commons. Nothing during the past five years has led me to believe that things have got worse. Generally speaking they have got better and the House of Lords has come out of it with a relatively clean bill of health.

2489. **Lord Neill:** I shall now ask my colleagues if they wish to ask more questions. Lord Shore?

2490. **Lord Shore:** I should not for a moment wish to drive a wedge between our witnesses, but I got the impression that you, Lord Strathclyde, said that you were opposed to a mandatory register. I also have a very clear recollection that Lord Mackay said that it was a matter of degree - a question of how much is demanded. I thought that that was a very intelligent approach to the question.

2491. **Lord Mackay:** I think that you have read too much into that. I was answering the question about people perhaps not wishing to come to the House of Lords and I was using illustrations of the sort of register that would certainly put people off. There is no doubt that if it was all-singing and all-dancing, it would put a lot of people off. If it was less all-singing and all-dancing, fewer people would be put off. That was really the only point I was making. I certainly think that a mandatory register would put off too many people.

2492. **Lord Shore:** In that case I shall not push that further. I was hoping that you would both be a little bit more responsive to the idea that there is nothing objectionable in principle to a register. What is objectionable is an obtrusive register that demands information from people that titillates the press and probably serves no other purpose.

2493. **Lord Mackay:** The current Register seems entirely satisfactory from that point of view.

2494. **Lord Shore:** It satisfies a great deal, but when something like 200 of our fellow peers have registered nothing, not even a nil response, it leaves us open to criticism which could be caught in the bud early on if we had a register. On the question of what should be in it, I have been looking recently, as I am sure we all have, at the two big resolutions that followed the Griffiths Report which made mandatory Categories 1 and 2 certain kinds of declaration and behaviour. It is surely not impossible to imagine the House of Lords committee compiling a resolution that gave serious guidance as to what was needed, if anything more, than a Who's Who at entry in the third category.

2495. **Lord Strathclyde:** As soon as you start creating a register, you run into difficulties. Some of the arguments that you, Lord Shore, propose support our point of view. You said that 200 peers failed to make a declaration. I say "So what?" to that, but you regard it with suspicion; he suggests that they must be guilty of trying to hide something. There is no certainty that the peer in the third category who has mentioned only one or two things has not left other things out. I am sure they have, because they have not regarded them as being anything to do with their parliamentary work.

2496. The problem here is about the ratchet. You create a voluntary register; it seems to work perfectly well, nobody suggests that there is any wrongdoing going on, but after a few years you come back and say "We've had a voluntary register for five years that has worked quite well. Most people have signed up to it. Let's make it compulsory." You make it compulsory and after a few more years, you come back and say "We've made it compulsory. Now let's find out what you all earn doing these things. There are probably one or two things that you have left out." Then, a few years after that, somebody comes back and says "Actually, we ought to know about your wife's interests (or your husband's interests) and your grandfather's interests." Where is this going? We have a system that everybody understands. It works extremely well and there is no evidence whatsoever of any wrongdoing or that public perception has been poorly affected by the current regime in the House of Lords. The right thing is to congratulate Lord Griffiths for doing such a masterful job of work five years ago and leave well alone.

2497. **Lord Shore:** Lord Strathclyde, I must say straight away that I have no suspicions about my colleagues who have not made declarations. But is your almost nightmare forecast of what might happen realistic? It is in the hands of the majority of

peers and I cannot believe they would be so foolish as to adopt intrusive resolutions about the conduct of their members. I agree with Lord Mackay and others that some of the demands in the Commons have been intrusive and almost ridiculous, but is there any reason to believe that the Lords would follow. I should have thought that they would rather have taken a warning from that.

2498. **Lord Strathclyde:** I hope that you will be proved right, Lord Shore, but I suspect that once you start to make more complicated rules, you will find that peers, for whatever reason, forget to put things or leave bits out. They will be caught out and suspicion will fall upon them. Already in the past few months, William Hague was admonished by the House for not declaring that he went to Jeffrey Archer's gym; the Prime Minister himself sent his nanny on holiday to the South of France in Geoffrey Robinson's flat; John Major has been in trouble for going on lecture tours to America. Maybe this is all legitimate in the House of Commons, but I suspect that if it is already going on there and if we apply the same system in the House of Lords, it is only a matter of time before we get to where they are. I cannot see that that would benefit the general public.

2499. **Lord Mackay:** The argument is always "If you are not going to do this next ratchet, you must have something to hide." Occasionally, in the long watches of the night, I have mildly thumbed through the Register of Members' Interests and one or two make me quite jealous. Equally, I have never come across a situation where I have thought, "He should be in there." Many of the 200 may have nothing to declare. They may be retired, as many of them are, and only have their pension.

2500. **Lord Shore:** Nil return?

2501. **Lord Mackay:** Yes. Many of us do not bother with nil returns. We think that is just bureaucracy gone mad.

2502. **Lord Strathclyde:** There is also the old problem of where to draw the line on a fairly limited mandatory register. I know that you have already investigated the case of lawyers who are Members of the House - some very high profile - who are not Law Lords but have a wide variety of clients. Should those client lists be as open to
us as in other categories? Should they register under Categories 1 or 2? What about accountants? That might affect a range of professions and drawing the line is difficult. That is why we prefer to leave things the way they are, which everybody understands and most people support.

2503. **John MacGregor:** That line was not the one I was intending to follow, but there is a question I should like to ask. Criticism has been expressed frequently, here and elsewhere, of the way in which the House of Commons is now working, leading, as Lord Shore suggested to a lot of trivia being highlighted and to fears that political tit for tat has entered into it and suggesting that, especially in a run up to an election, there will be more of that. One of our witnesses in particular has suggested that because the culture and the ethos is different, this would not happen in the House of Lords. Would you like to comment on that?

2504. **Lord Strathclyde:** I like to think that is true, but nothing is ever certain and once there was a regime, if someone felt that they had been wronged by snitching in the press about something that had not been declared, they may decide to have a go at somebody else. Why take the risk when we have a system that works well? Why bother trying to find out what would happen in the House of Lords? Would we have the same ethos or become involved in the same sort of trivia about which Lord Shore was concerned?

2505. **John MacGregor:** What I really want to ask about are the Addison Rules. I am not much of an expert on these and I was not clear what Lord Mackay was recommending. Is it that although the Addison Rules are perfectly adequate, people do not understand them well enough and they need to be promulgated more?

2506. **Lord Mackay:** It could be that. To be honest, I should not have raised them had the discussion document not done so. There is a lack of proper understanding, but I know that one or two of my colleagues think that I was being too sanctimonious in my attitude when I was a quango chairman. I gave some instances, one of which was Lady Kennedy introducing a debate on the British Council. I think that that is fair, but at the other end of the spectrum, another colleague who is a quango chairman did begin to answer for the body in the way in which ministers are supposed to do.

2507. I would have no problem about the rules being slackened and clarified, but less obtrusive. In many cases, the person who chairs a public body builds up an expertise and in a house of experts, that is reasonable. Dare I say that if I had spoken on fisheries when I was the chairman of Seafish, I would probably have been the leading expert in the House of Lords, but I took the view that it was difficult to speak about it without getting into a position where I appeared to be, in the wider sense, answering for my board or giving the views that my board might have. Clarification would be worthwhile, because undoubtedly certain current chairmen are going much further than even a narrow interpretation of the Addison Rules would allow. You have my evidence and an example would be that one member of a board answered to such an extent that the minister thanked him for answering the questions. In my view, that broke the rules.

2508. The Government should look at redefining and clarifying the Addison Rules, but they should also make it clear that people should be allowed to speak.

2509. **John MacGregor:** You have made the point already that as we all recognise, the House of Lords can draw on a wide range of expertise. It probably is the case that you knew as much about fishing as anyone in that debate and it seems a pity that you were prevented from making a contribution. It would, in a sense, be up to the individual to decide how far to go without answering for the Government on specific issues.

2510. I asked about this because in paragraph 8.7 of your memorandum, on page 17, you suggest extending this to all peers holding appointments on public bodies of all kinds, including task forces appointed by ministers. There is now an enormous number of task forces and I would guess that a long list of people would be involved in them. Presumably one would not want a situation where they could not speak in the House of Lords on the subject covered by the task force on which they were serving. I imagine you do not want to go down that route?

2511. **Lord Mackay:** No. As I said in my first answer, they should speak, but it is important that everybody should know that they are on those public appointed boards. That is the big difference between them and anyone else. With public bodies your pay and rations come from the tax payer, which is where they differ from outside interests. They are part of the Government machine, even at arms length, and although a number will be unpaid, some will be paid.

2512. **John MacGregor:** Your point is then that that sort of interest should be declared.

2513. **Lord Mackay:** Yes. I would certainly declare it if I was still the chairman of a quango. It is public knowledge anyway and it is a public appointment, not something that is due to my own great brilliance. It is something that a minister has bestowed on me - not yourself I think.

2514. **John MacGregor:** But because of your great brilliance.

2515. **Lord Strathclyde:** Lord Chairman, can I just say that we are trying to reinforce the constitutional position and to put the onus on the Government to recognise that while Members of the House of Lords make good chairmen of a variety of quangos or members of boards and task forces, it is ministers who are accountable to parliament and not the John Mackays or other chairmen.

2516. **Lord Mackay:** If the chairman of another public body is not a Member of the House of Lords, he is not in a position to be answerable to parliament.

2517. **Lord Strathclyde:** That is why the Addison Rules were introduced. They are good rules, but people should recognise them.

2518. **Lord Mackay:** In my view the Committee should remind the Government that they should re-state them and make sure that new appointees appreciate the distinction between taking part in a debate on the subject of the board and answering for the detailed work of the board.[4]

2519. **Lord Goodhart:** I apologise for going back to the well-ploughed question of voluntary or mandatory registration, but back in 1995 when the Griffiths Committee reported, one argument for making registration in the third category purely voluntary was that many members of the House of Lords were, in effect, involuntary members. They could, of course, have disclaimed, but that would have meant disclaiming their peerage as well as their membership of the House of Lords. Therefore, particularly for people who only turned up in the House once or twice a year, it was unduly burdensome to require them to register their interests. That was a legitimate argument in 1995, was it not?

2520. **Lord Strathclyde:** If it was a legitimate argument then, it must be so today because there are plenty of peers who only turn up once or twice a year to vote on some particularly heated matter at the behest of the Government. The only way out for Members of the House of Lords is to take leave of absence. I described earlier that if you did that, presumably suspicion would fall upon you.

2521. **Lord Goodhart:** Of those who do not turn up now, a significant proportion are probably elderly or in poor health and all of them have accepted life peerages.

2522. **Lord Strathclyde:** Yes, they have, but they did not know that the rules were going to change. They are busy doing other things and I do not know what excuses they produce. We have quite a few peers who do not turn up very often and I know that the Labour party does and many cross-benchers do not come along. I am not quite sure what point you are trying to make.

2523. **Lord Goodhart:** I will come to that. The House of Lords in determining how it wished to impose a mandatory register on itself could include what I believe is known as a grandfather clause. In other words, it would not apply to those who are already there or who had joined before a certain date.

2524. **Lord Strathclyde:** I suppose that it could, but that would be pretty unsatisfactory. I am a believer in the equality of peers and the only inequality that currently existed, which obviously should continue, is that between ministers and non-ministers. Ministers only account for 20 or 22 Members of the House, so obviously they should be treated differently because they have a different constitutional role. All other peers should be treated the same, whether they are bishops, Law Lords or the rest of the peerage. I would not favour a scheme where there was a grandfather clause.

2525. **Lord Goodhart:** To get back to the previous point, we now have a situation where all holders of public office, apart from Members of the House of Lords have to meet disclosure requirements that are a good deal more burdensome than those on the House of Lords. That applies to the House of Commons, local councils and members of this Committee. Can the House of Lords be justified in maintaining for itself standards that are significantly lower than those of other holders of public office?

2526. **Lord Strathclyde:** Yes, I think so. It was up to the House of Commons which route they chose to go down and they did so. Whether they regret that decision I do not know. It will be up to the House of Lords to decide when it comes to deliberate on whatever report this Committee makes. You made a comparison with the House of Commons and local authorities, but I contend that the House of Lords is a very different creature. Local authorities, of course, let contracts and there is plenty of room for local corruption and we have seen that in the past. Likewise, in the House of Commons we have seen specific problems and allegations. None of those things, thank goodness, at the moment seem to be present in the House of Lords.

2527. **Lord Mackay:** And also, Lord Goodhart, peers are on their honour to make a disclosure if they take part. That may be an old-fashioned approach, but it seems to have worked and there is no evidence to the contrary. They have to admit to any interest they may have in any debate on legislation and in putting questions, despite the fact that it takes another 15 to 20 seconds, so it is not as though they do not have to make a disclosure. If they have an interest and do not want to make a disclosure, they do not take part.

2528. **Lord Goodhart:** We have already been through that argument, but that does not get through to the public, except those who are present in the chamber at the time, as you suggested. Neither does it cover those who vote but do not speak.

2529. The bulk of the arguments against moving to a mandatory register come down to two points. The substantial argument is that the present system works and does not need to be changed. The other is that the creation of a mandatory register would deter potential candidates from joining the House of Lords. I can see that the first argument is significant; is the second really a serious one?

2530. **Lord Strathclyde:** All the arguments that we have put forward are serious.

2531. **Lord Goodhart:** Could it not equally be said that if we have a register with a reasonably light touch, if you are so concerned with your personal privacy that you do not wish to register something which is a genuinely significant interest, you are really not suited to be a member of a public body like the House of Lords?

2532. **Lord Strathclyde:** No, I do not believe so. Do the 200 peers who currently do not put anything in the third category fulfil your description? We know who they are and they can adequately maintain their presence in the House of Lords. None of the Law Lords currently declare interests under the voluntary arrangement.

2533. **Lord Goodhart:** We know the position relating to the Law Lords. They took a decision in 1995 and you have been told what Lord Bingham said. Of the 200, a number are people who have either entered nil interests or perhaps because they are pensioners have no registerable interests. However, when you are inviting people in the future to become Members of the interim House of Lords, would it not be appropriate to say to them, "If you are not prepared to declare significant interests, you should not be a Member of this House."?

2534. **Lord Strathclyde:** That is not a stipulation I would put forward. I would be concerned about all those come bouncing up, saying "I am happy to declare all my interests. Here is my tax return. Please publish it. Can I become a Member of the House of Lords please?"

2535. **Lord Goodhart:** That, of course, is not inconsistent with saying that those who do not want to disclose significant facts should not be Members of a public body.

2536. **Lord Strathclyde:** Again, what is the great problem we are trying to solve? I have yet to see any evidence - and if the Committee have it, I am sure they will have an opportunity to share it - of what is wrong with the current scheme.

2537. **Lord Mackay:** Such a person will also be told that if he or she takes part in anything affecting any of their interests, they will have to declare them.

2538. **Lord Goodhart:** Of course, but then, why not say "You have to register them at once."?

2539. **Lord Mackay:** It is up to them to decide whether to take part in these issue or not. I never thought that I would be lecturing you, Lord Goodhart, on things such as privacy. There is a balance between one's privacy and what one should properly make known, not just to the wider public - although I do sometimes wonder if the public are nightly readers of the current Register of Members' Interests. I am pretty certain that it is not a best seller. The current situation where you declare if you intend to take part has provided protection for the interests of the public, but also for the privacy of the individual.

2540. **Lord Strathclyde:** If we are to move away from protecting the privacy of the individual and towards a mandatory register, it would have to be all encompassing. It could not be a trivial register; it would need to analyse people's interests, particularly those in your profession who undoubtedly have an interest because they are not only legislators in the House of Lords, but help to interpret that legislation in course of law and give advice to individuals.

2541. **Lord Goodhart:** Do you not think that this is a case for using that rather over-worked word "proportionality"? Do you not have to maintain a balance between the right of an individual to privacy and the right of the public to know what are the significant interests of those who are Members of the most important public body in this country?

2542. **Lord Mackay:** The second most.

2543. **Lord Goodhart:** I meant parliament, not the House of Lords itself - unless you perhaps were referring to the European Parliament.

2544. **Lord Strathclyde:** I thought I heard a rather old-fashioned view of the protection of a vested interest coming out there. You seem to be saying that if we are to have a mandatory register, it will protect lawyers like yourself, accountants and others who have clients in the private sector, but not those whose interests you regard as being legitimate knowledge for the public.

2545. **Lord Neill:** Ann Abraham?

2546. **Ann Abraham:** Good afternoon. Section 9 of your paper looked at the disciplinary procedure and the whole question of enforcement. In paragraph 9.3 you say:

> "We believe that the investigative machinery for allegations of failure to register is effective and adequate."

I am struggling a bit with the conflict of evidence here. The Clerk of the Parliaments told us on 29 June that the House has no machinery and no sanctions against those who do not register. Can you help me on that?

2547. **Lord Strathclyde:** It has no machinery, I suppose because none has ever been put in place since no complaint has been made. However, there is a body that exists to supply the machinery, which is, I think, currently chaired by Lord Nolan, as a Sub-Committee of the Privileges Committee. I hope that there is no clash of evidence there and whatever the Clerk of the Parliaments said, I agree, but I put an extra gloss on it by saying that the machinery could be put in place quickly if a complaint was made.

2548. **Ann Abraham:** He said, in the context of a reason for not supporting a mandatory register, that there was no machinery to enforce it.

2549. **Lord Strathclyde:** It is right that since you cannot remove peers without an Act of Parliament or suspend Members, it is difficult to see how you can create something that is enforceable. The answer goes back to an old-fashioned view of life, in other words, the shame of being caught out. In the House of Lords, if you were seen to have broken the rules in this way, you immediately would lose any authority. The next time you spoke your word would not be taken seriously and that is more powerful than outsiders can imagine.

2550. **Ann Abraham:** I do not in any way disagree with that. He did say "no machinery" and "no sanction", so I think he was saying both things. You are suggesting that there could be a machinery if one were needed?

2551. **Lord Strathclyde:** A Sub-Committee of the Privileges Committee exists - although it has rarely, if ever, sat - to examine such things. Presumably, if it needed to investigate any matter it would be able to create the machinery relatively quickly. I cannot believe that that is an insurmountable problem. The problem of discipline is a real sanction. What is the sanction if you are seen to do something wrong? I take the view that between the political parties, it would be a terrible thing.

2552. **Ann Abraham:** Many witnesses have echoed the view that it would be a terrible thing, so that point has been well made.

2553. Moving on to a slightly broader question, that of self-regulation. We have heard witnesses use the term in different ways. Clearly, I am sure that you would agree that there is more to it than not interrupting timed speeches. My day job is about self-regulation of the legal profession and I suppose that I would describe it as setting standards of conduct and ensuring that they are upheld. That is what self-regulation is about and there are bodies that do that. I cannot offhand think of any other self-regulatory body of any significance or profile that does not, somewhere in its structure, have some independent, outside element in its investigatory process or decision-making, recognising that they benefit from that external involvement. Why not the House of Lords?

2554. **Lord Strathclyde:** I daresay that the House of Lords could decide to set up something external if it wanted to, but this goes to the heart of the debate about the sovereignty of parliament. Again, if I can say so, we have
a system that works rather well and has not been questioned. I am sure that your experience of outside bodies is exactly what you say, but they are different - they are professional bodies.

2555. The self-regulatory aspect of the House of Lords in its wider sense is one of its great strengths. Many people come to the House wondering "How can this possibly work.". If you compare the House of Lords with the House of Commons, they work in very different ways. One reason for that is because the House of Commons has a Speaker and we do not. That imposes a discipline on individuals to give way and do the decent thing, because there is no one else there to tell them. On the very rare occasions when a Government Whip has to explain the rules, it is just that - not to dispense discipline. That is a strength that should, if anything, be preserved. Even in your professional life you would presumably rather people were genuinely self-regulatory than to have to impose an ever increasing amount of regulatory bureaucracy externally, whether it is independent or not.

2556. **Ann Abraham:** The point that I was making was not that I was against self-regulation. I can see all the benefits of it in the legal profession, accountancy and even doctors. But an independent, lay, external perspective is seen to be of great value in all of those contexts. I was trying to understand why that was not so in the House of Lords.

2557. **Lord Strathclyde:** To some extent in the House of Lords we all regard ourselves as being lay.

2558. **Ann Abraham:** I meant "lay" in terms of being non-House of Lords.

2559. **Lord Mackay:** All those bodies you mentioned are professional bodies and negligence comes up on all these things - lawyers, accountants, doctors. You mentioned doctors and you laughed a bit. There are some outsiders on the GMC and if I read the papers right, it is not exactly flavour of the month as a regulatory body, is it? These are professional bodies looking into quite different things from those we are talking about in the way the House of Lords conducts itself. I do not see that there is any read-across.

2560. **Ann Abraham:** I shall not pursue this much longer; my starting point was that self-regulatory bodies actually set and maintain standards of conduct. That is the read-across that I am making, but obviously we do not see it the same way.

2561. **Lord Neill:** Alice Brown?

2562. **Alice Brown:** My colleagues have pre-empted most of my questions, but I shall have one last go at this. Can I return to Category 3 because I am still bothered about it and about your resistance to any change whatsoever. I understand the points that you are making about the differences between the two Houses and your concern that we might shift over to the system that exists in the House of Commons, but as pragmatists and people who believe in logic, I cannot understand why you will not move at all on any change. It seems to me to be rather inconsistent that on the one hand you say "We have two mandatory aspects of the Register, but one voluntary." and I am not convinced about your reasons why the third should remain voluntary.

2563. Importantly, also, Lord Strathclyde, you said "For the first two categories, the rules are very clear indeed." That could not be said of the third one. Again, there is an inconsistency there. Why is the third one not so clear as the other two? There is an ambiguity about it. I can see the benefits of it, but we have heard from other witnesses that there have been differences in interpretation of Category 3. You have problems of clarity and, crucially, of consistency of practice.

2564. **Lord Strathclyde:** I am sorry that we have not yet convinced you of the merits of leaving well alone. We will have another go and I hope that you are not too fixed in this view. I can also understand why, coming to it fresh from investigations of the House of Commons and other bodies, it may look unusual, but the House of Lords is an unusual body. Even in its current state, shorn of its hereditary peers, it is a very unusual body. I cannot think of any other where so many people do so much work

for such little reward, particularly financial, but that is the way it is.

2565. On your point about the three categories, the first two are clear. People know where they are. They either take money or not, they are either directors or they are not. There is complete clarity there. If the third category was mandatory, the effectiveness of the other two might be reduced. What would be the point of having the other two if the third one was mandatory?

2566. As far as clarity and ambiguity of the third is concerned, there is bound to be ambiguity because people will use their judgement in different ways as to what is declarable and what is not. In fact, as we have heard, 200 peers do not declare anything. Equally it may be clear to them that they are doing what they believe to be the right thing. The only way of getting round the ambiguity is to have detailed rules and regulations for the imposition of a register. Simply saying "You must declare all your financial interests." may not be enough.

2567. **Alice Brown:** But you are jumping to your nightmare scenario. The point that Lord Goodhart was making was that of proportionality. It is the extent of change we are arguing about here and the balance between different elements. What I am having trouble with is your unwillingness to concede even an inch.

2568. **Lord Mackay:** I can understand you arguing that we ought to concede at least an inch, if you could present cases where the current situation was not working. But as no case has been presented by anybody suggesting that it does not work, if you have read your game theory, you will know that the option is the "do nothing" option. Something only has to be done if there is a proven need and there is none. No case has been made where there have been breaches of the current position left to us by Lord Griffiths and therefore the argument is much stronger. Why do we need to go an inch, two inches, a foot or a yard. Sorry, that was a mistake: a millimetre, centimetre, metre. Why do we need to do that?

2569. **Alice Brown:** We have accepted that there is no scandal. I was making the point that there is different practice and interpretation of the rule. We are talking about pragmatism-a tidying up, if you like. That is my concern.

2570. **Lord Strathclyde:** That misconstrues the purpose of the third category. Category 3 was intended to allow those who wanted to declare other interests for all sorts of reasons to be able to do so. That is what it does. If you feel you have an interest that you want to write down, you can do so. You will see from the list that some people declare all sorts of funny little voluntary local bodies which could not conceivably be of public interest, but they choose to declare them. In the ministerial register, which I know is not the point of this, I understand that a minister declared a stick of rock, which is ridiculous. The present system allows people to get such things off their chest if they wish to do so and therefore provides a valuable service for them.

2571. Echoing what Lord Mackay said, nowhere has a case been made for it to be changed.

2572. **Alice Brown:** Returning to the point you made earlier about special advisers, if I had been a special adviser, when I read the wording of Category 3 I would have declared that.

2573. **Lord Strathclyde:** If you were a special adviser, yes. Our point was not about existing special advisers, but former special advisers.

2574. **Alice Brown:** But it is not clear and that is my point.

2575. **Lord Strathclyde:** I do not think that Category 3 could be construed as a register for your former employment.

2576. **Alice Brown:** Lastly, this point was debated extensively when the Griffiths Committee looked at it and the phrasing is the result of the fact that people had different points of view at that time. The Committee was convinced then that the mood of the House was such that this would satisfy it. Has the mood of the House changed?

2577. **Lord Strathclyde:** That is difficult to say. I do not think that the mood of the House has changed much. Once you strip away the political sensitivities I do not sense a great need in the House to have a mandatory register. You would expect me to say this, because it supports my point of view, but there is a genuine recognition that what we have works.

2578. **Alice Brown:** Thank you.

2579. **Lord Neill:** We have overshot our time, but can I put in one last probe? I hope that you appreciate this is a probing exercise. Speaking for myself, my mind is a complete blank as to conclusions. But I should like to direct this question to Lord Mackay. You said that there must be a proven need before you introduce something like a mandatory register. I want you to cast your mind back to the Scotland Act 1998 on the Scottish Parliament. The Bill went through both Houses of the Westminster Parliament and it includes a provision for a Register of Interests of Members of the Scottish Parliament, provision has to be

made for Members to register financial interests, as defined, and there must be rules requiring that any Member of the Parliament who has a financial interest declares it before taking part in any proceedings of parliament relating to the matter. It then goes on to say that a Member of Parliament who takes part in any proceedings without having complied with the provision I mentioned is guilty of an offence. That is an extraordinary high degree of sanction attaching to a new parliament which everybody believes is entirely filled with honest, honourable people.

2580. **Lord Mackay:** The easy answer is to say that it was not my Bill. I put forward many amendments to it; some were accepted, but not many. There is a climatic problem and no doubt elected people were acting in a different climate. We are not elected. The Scottish Parliament - regrettably, they did not take my advice - does not have a second chamber. These people are elected; they are therefore comparable to Members of the House of Commons. I suspect that the Government's point was that from scratch the Members of the Scottish Parliament should largely play under the same rules as the House of Commons. If I had had my way and got a second chamber in the Scottish Parliament, I would have asked that it played under the same rules as the House of Lords.

2581. **Lord Neill:** That is a very good answer.

2582. **Lord Strathclyde:** If I could just add to that, the Scottish Parliament is, of course, a creature of statute, in a way that the House of Lords is not.

2583. **Lord Neill:** Yes, of course.

2584. **Lord Strathclyde:** Although it would have been quite open for the Government in the House of Lords Act 1999 to include such a provision. You may wonder why they chose not to do so.

2585. **Lord Neill:** I enjoyed that exchange very much. I hope that both of you did. Thank you for coming and for the great trouble you have taken in preparing the paper.

2586. **Lord Strathclyde:** I hope that was helpful.

2587. **Lord Neill:** It was. Thank you so much.

MONDAY 10 JULY 2000 (AFTERNOON SESSION)

OPENING STATEMENT

Opening statement by the Rt Hon Lord Strathclyde

We are very grateful for the opportunity to give evidence. We endorse the Committee's recognition of the profound differences between the two Houses of Parliament.

The House of Lords is unpaid. It is not elected or representative. It is thankfully not as partisan. Its members cannot hold the highest offices of state and have no influence over who forms a government. They cannot impose an Act of Parliament, or prevent one becoming law. They have no power over financial matters, or over letting of contracts.

In the light of those differences, we suggest we need stronger arguments for adopting Commons procedures than simply transposing practices of one House to another. If we are to make changes, with potentially far-reaching implications, they should flow from proven wrongdoing within the House of Lords, or from clear public concern. As Lord Neill told parliament the study is based on no such impropriety or misconduct.

The House considered these issues carefully only five years ago, at the height of press ferment about so-called sleaze, under the Chairmanship of a distinguished Law Lord. We believe Lord Griffiths' recommendations were sensible then and sensible now. They have worked - and they are in keeping with a self-regulating House. As a result of Griffiths, the House currently has firm rules forbidding paid advocacy and advocacy by the employees of lobbying firms. They are backed by a mandatory register. We support their continuance - there is no place for paid advocacy.

But, in an amateur House, we shouldn't undermine, directly or impliedly, the legitimacy of interests unrelated to membership of the House, by requiring them to be registered. Part of the House's strength and character comes from its being a House of interests. Peers are not professional politicians. Membership of the House is a part-time duty, additional to other professional work. Many value their privacy for no reason more sinister than a reasonable belief that their personal affairs are personal. It

would be a great pity to drive from or deter from the House - as a detailed compulsory register of all personal interests might - people who legitimately value privacy. Privacy should not be equated with guilt.

Declaration of interest in a debate is the most immediate and useful safeguard. A voluntary register, backed by expectation of declaration, was Griffiths' balanced view. We don't think circumstances have so changed in 5 years to justify altering that view.

We believe disciplinary machinery already exists, as proposed by Griffiths. The presence of Law Lords gives it an authority that no Commissioner could match. We would counsel against the view that regulating and policing everything necessarily raises confidence; the experience of the Commons suggests the opposite. So, subject to a number of specific changes and clarifications we have suggested, we believe the balance struck by Griffiths should not be so swiftly overturned. But, if it were to be, the principle of equality of treatment of peers must be maintained.

4. see evidence

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 17 July 2000 (Morning Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Sir Clifford Boulton GCB
Sir Anthony Cleaver
Lord Goodhart QC
Frances Heaton
Rt Hon Lord Shore of Stepney
Sir William Utting CB

Witnesses:

Rt Hon Lord Naseby
Rt Hon Robert Sheldon MP, Chairman, House of Commons Standards and Privileges Select Committee
Michael Burrell, Chairman and Martin Le Jeune, member of the Managing Committee,
Association of Professional Political Consultants (APPC)
Rt Hon Robert Maclennan MP, Principal spokesman for Constitution, Culture and Sport,
Liberal Democrat Party in the House of Commons
Baroness Young of Old Scone

2588. **Lord Neill:** Good morning everyone. This is the sixth and final day of public hearings of the Committee's inquiry into rules governing conduct in the House of Lords. Today we have 11 witnesses with very extensive experience of public life. They include several members of the House of Lords, two members of the House of Commons and representatives from the major organisation in the lobbying field.

Our first witness is Lord Naseby, a Conservative Life Peer created in 1997. During his time as MP for Northampton South from 1974 to 1977, he served on a wide variety of Commons committees, and from 1992 to 1997, he was Deputy Speaker of the House. Following him will be the Rt Hon Robert Sheldon MP, who is chairman of the House of Commons Standards and Privileges Committee. Mr Sheldon has been Labour MP for Ashton under Lyne since 1964. He was Financial Secretary to the Treasury from 1975 to 1979 and an Opposition Front Bench spokesman in the early 1980s. Mr Sheldon chaired the Public Accounts Committee of the Commons from 1983 to 1997 and has been Chairman of the Standards and Privileges Committee since 1997.

Two representatives of the Association of Professional Political Consultants come next. Michael Burrell has been the Association's chairman since May 1999 and has held senior posts with Westminster Strategy, a leading public affairs consultancy for many years. He is accompanied by Martin Le Jeune, an associate director of Fishburn Hedges, a firm which among other things is involved in lobbying and public affairs work. Mr Le Jeune is a member of the Management Committee of the Association and he was formerly a member of the staff of this Committee.

The Rt Hon Robert Maclennan MP, who gives evidence next, is principal spokesman on the constitution for the Liberal Democrats in the House of Commons. He has been a Member of Parliament since 1966 and was a member of the Commons Select Committee on Standards in Public Life in 1995. This Committee was charged with considering how to respond to the recommendations in the first Nolan Report.

I shall say a little more about our afternoon witnesses after the midday break, but they will be the following: Baroness Jay, Leader of the House of Lords, accompanied by the Attorney General, the Rt Hon Lord Williams of Mostyn QC, Lord Simon of Highbury, Baroness Young of Old Scone, the Rt Hon the Earl Ferrers, the Rt Hon Lord Biffen and the Bishop of Portsmouth.

2589. With that preamble, I now invite the first witness to answer questions. Lord Naseby, is there anything you would like to

say before we begin? You have made a submission to us, but a lot has been going on in the past few weeks. Please feel free if you would like to make a statement on opening.

RT HON LORD NASEBY

2590. **Rt Hon Lord Naseby:** Just one sentence, if I may.
I believe in lobbying for legitimate interests. However, as a legislator, I want to know, first, that I am being lobbied and, second, from where it comes.

2591. **Lord Neill:** Thank you very much. As you may know, our procedure is to have a couple of members of the Committee take the lead in putting questions. This morning, they will be Frances Heaton, followed by Sir William Utting.

2592. **Frances Heaton:** Could I start, Lord Naseby, by asking a few questions about your letter. There are one or two things I did not quite understand. In the fourth paragraph, you said that, following your election as Chairman of Ways and Means and Deputy Speaker, you immediately resigned all your interests. Is that a post with extra remuneration?

2593. **Lord Naseby:** The Chairman of Ways and Means and Deputy Speaker is paid at approximately the same level as a minister of state. So, yes, it is extra, over and above that for normal Members of Parliament.

2594. **Frances Heaton:** And then you said you took steps completely to de-register the private company you owned. What did that mean?

2595. **Lord Naseby:** I had a company that was trading and it seemed inappropriate that I should remain a director and, since I was the chairman of the company, the majority shareholder. Once I became Chairman of Ways and Means and Deputy Speaker, I asked my accountant to ensure that the company stopped trading, but it takes some months to de-register.

2596. **Frances Heaton:** So that amounted to de-registering on the House of Commons Register, by virtue of the fact that it was no longer 'registerable'?

2597. **Lord Naseby:** Correct.

2598. **Frances Heaton:** Turning to your answers, in reply to question 1, you say that the two Houses are very different, but in both cases you recommend disclosure.

2599. **Lord Naseby:** Yes.

2600. **Frances Heaton:** What difference in disclosure would be appropriate? That which there is at the moment?

2601. **Lord Naseby:** The present arrangement is broadly appropriate, although I have some comments on it in relation to the specific guidance questions that you kindly sent. The core difference is that the members of one House are elected by constituents and paid, while those of the other are appointed and unpaid.

2602. **Frances Heaton:** In the House of Lords, one can have paid consultancies, but may not speak on them. In the House of Commons, although one cannot take the initiative, one can speak, as long as one declares. Given that the members of the House of Lords come from a variety of backgrounds, with different expertise and interests, about which one wants to hear as a member of the House of Lords, is this prohibition on speaking right?

2603. **Lord Naseby:** I find that difficult. To take a specific example: you will have seen from the Register that I declare under Category 1 the Council for Responsible Nutrition, which is a group of about a dozen leading vitamin and mineral companies. I have been involved with that organisation for the best part of 20 years now, and it was declared in the Commons previously, when it was the Committee for Responsible Nutrition. I can honestly claim to be one of the best briefed legislators on the topic, but I may not - and do not - speak on it; nor do I vote on it. There was great excitement about a year ago on B6 and I was not able to take any public part in that, possibly to the detriment of the House's consideration of the issue. Having said that, I do not argue against the ban. I accept it along with the rules that others have laid down. I would not challenge them at this point.

2604. **Frances Heaton:** So, you think that, on balance, there is more benefit in that, but I am not sure why, as it would be different in the House of Commons, which would have had the benefit of your expertise.

2605. **Lord Naseby:** Partly because most of us in the House of Lords, at present, have finished our careers and are able to reflect on life. Secondly, while I can - and do - give strategic advice and suggestions on how an issue should be handled, there is no real need for me to stand up and expound upon it.

2606. By contrast, I have been involved in Sri Lanka ever since 1963, when I worked there. I can honestly claim to be the most knowledgeable member of either legislature on Sri Lanka, but I have purposely never had any financial involvement in Sri Lanka, because the issues are so important that I would not wish to be hidebound one way or the other about being able to speak out. There is an option open for the individual to decide which way he or she goes.

2607. **Frances Heaton:** Is your role on the Council paid?

2608. **Lord Naseby:** Yes. If it were unpaid, I am not sure that it would have to be declared. It would come under Category 3.

2609. **Frances Heaton:** Yes. That is another moot point. I do not expect you get paid a huge amount for doing this.

2610. **Lord Naseby:** Just over £5,000 a year.

2611. **Frances Heaton:** A very small amount, but yet you are stopped from speaking. I do not understand why you prefer to be stopped from speaking rather than being able to declare. As you said in your introductory remarks, when people are lobbying or speaking, one likes to know where they are coming from.

2612. **Lord Naseby:** It is simply a tougher discipline.
On balance, the Griffiths Committee decided, after weighing these things up, that this was appropriate,
and I accept that, although the situation is not black and white.

2613. However, you raise an interesting point. If one looks at Category 3 reasonably carefully, as I did last night, it is not clear which entries are paid and which are not. That is a minor modification that could easily be implemented. Under my own submission and those of a number of other colleagues, there are interests both paid and honorary. I have put 'paid' or 'honorary', but for the vast majority of colleagues, one has to work it out and it should be crystal clear.

2614. **Frances Heaton:** Which are honorary, which are paid and which are paid material amounts or simply black and white, between paid and not paid?

2615. **Lord Naseby:** There should be two stages. First, it should be clear which interests are paid and which are not. I have no problems about having a banding system of pay. I had 20 years in advertising and had many clients. I never had any difficulty, and I see none for anybody who has multi-clients stating up front, "I am declaring an interest in whatever it is; therefore, I come with knowledge." The House then knows where one is coming from. If I am paid, I have no problems with saying "I am paid to do it", nor should any legislator.

2616. **Frances Heaton:** That is how the House of Commons operates, is it not?

2617. **Lord Naseby:** Yes.

2618. **Frances Heaton:** One simply says and speaks, whereas, at the moment, in the House of Lords, one cannot speak. Since you have moved on to Category 3, that is discretionary and the other two are mandatory. It is also extremely subjective and one can opt out, either because one decides that a matter does not affect public perception, or because one decides one will not comply with Category 3 of the Register anyway. There is a double vagueness there; does that matter? Does it matter more now that there has been a big influx of younger people coming in to the House of Lords?

2619. **Lord Naseby:** Whether they are older or younger does not make any difference to the principle. I respect them for what they have to offer the revising chamber. It does not matter who they are or what the numbers are. Flicking through the Register, I notice fairly extensive recording of interests by some newer colleagues.

2620. Sorry, what was the other half of the question?

2621. **Frances Heaton:** I was asking whether the large numbers made it worse. In general, is there a wide difference in how people interpret that? If so, does it matter?

2622. **Lord Naseby:** I do not think that there is a wide difference. It is made clear in the induction procedures what the Register is and that one should comply with it, and that Category 3 is voluntary. Most people try to get to the seminars that are held. Even if they do not, the material supplied to us is clear, and I have no knowledge of anybody not complying. Indeed, I suspect that, even if they did not, and then proceeded to speak or became active on an issue, the House would notice very quickly. That degree of self discipline is something that we respect and recognise.

2623. **Frances Heaton:** The declaration is very much part of the culture of the Lords, and many witnesses have said how well it works and how important it is. There is a greater divergence of view about the significance of registration, which, one could

argue, is more for the benefit of the general public and media, and less for members of the House. Do you look at the Register on occasion?

2624. **Lord Naseby:** I do, yes. It is not very easy to find one's way round it. It could do with better indexing.

2625. **Frances Heaton:** Did you do that because you had come from the Commons and would have looked at the Register there?

2626. **Lord Naseby:** Quite possibly, yes. Having also been in the Chair in the Commons, I found it important to double-check where people were coming from on occasions.

2627. **Frances Heaton:** Turning to your answers to questions 11 to 13, you say that the House of Lords should have its own unique code of conduct to meet the issue raised in question 12, which relates to the needs of many members of the House of Lords to have outside employment. What specific difference do you see as necessary to meet that particular point?

2628. **Lord Naseby:** The uniqueness?

2629. **Frances Heaton:** You say there is a unique code, presumably because of outside employment to which you refer in question 12.

2630. **Lord Naseby:** That uniqueness arises from two dimensions. First, the House of Lords is our second chamber. It is not a normal public body, nor is it elected at present, so it is not the same as the Commons. In my judgement, in order for its status to be maintained in the eyes of the public, it needs to have a unique set of rules. We can argue about what they should be, but the status of the House needs to be treated in a unique manner.

2631. **Frances Heaton:** In other words, one cannot simply roll on the House of Commons rules as a starting point for the House of Lords?

2632. **Lord Naseby:** No, absolutely not at this time, when there are no elected members.

2633. **Frances Heaton:** Thank you very much.

2634. **Lord Neill:** Sir William?

2635. **William Utting:** Thank you, Chairman. Good morning, Lord Naseby. Going back to Categories 1 and 2 of the Register, I ought to explain that I have been concerned throughout the inquiry that the effect of those categories may be to gag members on matters on which they could make a useful contribution to the business of the House. Therefore, I want to test their necessity and the way in which they are implemented. The wording of the prohibition is as follows:

> "... acting in the interests of clients or on behalf of clients ..."

Yet, it seems to me that this is interpreted by individual peers in a very broad sense. They seem to regard it as a general gagging order. You implied earlier that you, too, prefer to err on the side of caution in relation to anything that might impinge on your Category 1 entry.

2636. **Lord Naseby:** That is correct. Why do I err on the side of caution? Because I do not wish to be pilloried in the press or the media, and it would not be in the interests of those I serve if I put myself in that position.

2637. **William Utting:** I can appreciate the burden of this on you as an individual. I suppose that what I am now reflecting on is the fact that any kind of limitation imposed on a member's capacity to help the House is likely to be interpreted in a way that broadens the effect beyond what was intended by those who brought in the prohibition. There is a general rule here that we should, perhaps, err on the side of parsimony in introducing these rules.

2638. **Lord Naseby:** There is substance in what you say, but you need to distinguish between Categories 1 and 2. Would you like me to elucidate further?

2639. **William Utting:** Yes.

2640. **Lord Naseby:** Your line of questioning is entirely appropriate on Category 1. However, I have great reservations about Category 2 and wonder whether it should not be removed altogether. It is not sufficient in today's world to lodge a list of clients that one is serving in relation to a public affairs consultancy, which, by definition will be multi-client. In that situation it is more difficult to know where someone is coming from or what their interests are. I would ban altogether anybody having an

association with a public affairs consultancy. There is, though, a problem where somebody who was an executive on a particular consultancy then becomes a Life Peer. It is not right that their livelihood should be removed, but they will know better than anybody else which clients are relevant and those should be declared. Again, that could be done under Category 1. I have a big problem with that area, and I say that as one who has dealt with many public affairs consultancies and who has come from the advertising industry, although that is clearly very different.

2641. **William Utting:** That is very helpful. In your submission, you distinguish between what is right for the House of Commons and what might be right for the House of Lords. One can, of course, argue that they are both parts of the legislature and that there ought, therefore, to be fairly full disclosure of personal interests on the part of those who are legislating for the rest of us. You are not, in any way, arguing against that. You say that you have no embarrassment about disclosing your own affairs, whatsoever.

2642. Looking at how things are in the House of Commons, can you identify anything in their code - or in the way they regulate their business - that would be wholly inappropriate for the House of Lords? What is it that you particularly dislike about the House of Commons procedures?

2643. **Lord Naseby:** To be honest, since I have not been in the House of Commons for three years, I doubt whether I am fully up-to-date on the most recent changes. The one that irked me most was the proposal - which I think has been withdrawn, though I am subject to correction - affecting those who specialised in and visited a particular country. Taking Sri Lanka, which I know best, as an example: I used to go there once a year because one cannot possibly stay up-to-date on the politics and problems of a country without visiting it regularly. If I had not been given the air-fare to Sri Lanka, which was declared, I could not have gone. The idea that, when I came back, I could not share my latest analysis of the problems of Sri Lanka with colleagues seemed ludicrous.
I think that has been changed now. I do not consider that the provision of the means of travel from the UK to Sri Lanka is paid employment.

2644. **William Utting:** I think that this Committee recommended some relaxation in those rules in its latest report. Could I direct you more particularly to the office and role of the Parliamentary Commissioner for Standards. If, in the House of Lords, there is the introduction of a comprehensive, mandatory Register, whatever its content, this leads on to the assumption that there has to be an official to monitor entries and advise the House about action that ought to be taken for breaches. Do you have any views about the appropriateness of such a role in the House of Lords?

2645. **Lord Naseby:** If that were the position, the House would want to have its own person who understood the differences between the two Houses, rather than tidying everything up to make it look bureaucratically coherent.

2646. **William Utting:** I am not suggesting that the present Parliamentary Commissioner's office should be extended to cover both Houses. I was really after your views on the principle.

2647. **Lord Naseby:** Yes. Definitely, we should have some person who would be responsible for monitoring, recording and advising. It is important that members have an opportunity to go to somebody to seek advice.

2648. **William Utting:** You mentioned induction earlier. If one introduces a compulsory system, a form of induction and training would become essential. You seem to have found the induction you received useful.

2649. **Lord Naseby:** Yes.

2650. **William Utting:** My understanding is that this is limited to half a day and that a number of peers do not take it up. Do you have any comments?

2651. **Lord Naseby:** I did not actually attend myself because I had other business, but the material I was sent was clear. It does not take long to read the requirements. However, it is important to point out that, at present, we are not reminded annually to register. That used to be done in the Commons - I do not know whether it still is. There would be merit if, every January or at the beginning of the parliamentary session, all members were reminded of the requirement to register and of what the rules are at the time.

2652. **Lord Neill:** Returning to the Council for Responsible Nutrition, you said that you are the most knowledgeable person on nutrition in the House. I fully accept that. If one said to a member of the public, "The most knowledgeable person on nutrition is Lord Naseby, sitting there. He is unable to speak on this debate about nutrition", they would find it astonishing. However, you do not criticise that. Because it is paid, you think that there is an aura of suspicion?

2653. **Lord Naseby:** Yes, I am afraid that there is, in the climate in which we operate in the United Kingdom.

2654. **Lord Neill:** If, when you stand up you declare "I am on the Council for Responsible Nutrition, which is a paid appointment. Now I want to say something", as far as the Lords are concerned, they are entirely happy.

2655. **Lord Naseby:** Yes, they are. Having read the Griffiths Report, I decided that those were the rules and I would abide by them. I accept that it can go either way.

2656. **Lord Neill:** I understand your position. Can I ask just one other question? I do not want details or names, but you said that, when you were in the Chair in the Commons, there were occasions on which it was useful to be able to refer to the Register, to see where somebody was coming from. Does that suggest that there could be occasions where the declaration had not been sufficiently full?

2657. **Lord Naseby:** Yes.

2658. **Lord Neill:** You wanted to see exactly who the person was and their background?

2659. **Lord Naseby:** It was not sufficiently full.

2660. **Lord Neill:** Sir Clifford knows far more about this than I do. You take over.

2661. **Clifford Boulton:** I was giving an example of where that might be relevant. Because you had the power to select amendments, you would be interested to know the background of the Members who tabled them?

2662. **Lord Naseby:** Yes, absolutely. That was one of the key ones.

2663. **Clifford Boulton:** Going back to a point in one of your initial answers, on the question of Opposition Front Benchers, you said that they should be able to keep their interests:

> "However, there may be a case for strengthening the code where spokesmen for any Opposition party find themselves dealing with a matter where they have an interest or potential interest."

The existing code requires Opposition Front Bench spokesmen to declare the interest when participating in proceedings. What further strengthening did you have in mind there.

2664. **Lord Naseby:** Sorry, to correct you, but if you look at Category 2, I assume that, if you are an Opposition Front Bench spokesman, in other words, a Liberal, a Conservative or a cross-bencher - although obviously it would not apply so much on the cross benches - you are not able to stand up and say, "I declare an interest in this". So, the only option is not to take part. That is wrong for two reasons. First, the House definitely would be the poorer if a front-bench spokesman who has put the time resources into becoming knowledgeable on the broad subject he is covering - which applies particularly to those covering trade and industry - is not able to take part because the House loses that knowledge.

2665. Second, the House ought to be in a position to be told by such a front-bench spokesman that he has an interest or is a consultant, and to whom. We would then have to rest on the honour of the individual to decide the extent of involvement: whether it impinged so much on the particular issue before us that he or she should take no further part, or was just tangential, in which case, although the House should know about it, it was not of great importance to the Bill.

2666. **Clifford Boulton:** In that case, it is a relaxation rather than a strengthening?

2667. **Lord Naseby:** Yes. It would help the House to do its work better.

2668. **Lord Neill:** Lord Shore?

2669. **Lord Shore:** I have one point of clarification. You have made clear your view about Categories 1 and 2, but do you feel that Category 3 should also be mandatory? Or should it remain voluntary?

2670. **Lord Naseby:** Certainly there is a case for a mandatory list. The problem is the extent to which it should go. Everybody has many interests and, inevitably, one puts down those of substance or relevance. If it were made mandatory, the result would be the sort of problem they have in the Commons, where one has to declare an interest because one went to the Cup Final or the opera or any other rubbish, all of which is irrelevant to parliament.

2671. I would have no problems with Category 3 becoming mandatory, although most of my colleagues seem to resist it. But I should like to see clarification. I have already mentioned that there is no indication of what is paid or unpaid. The term 'adviser'

has been used by some colleagues, and I am not sure what one should understand from that. I notice that solicitors simply put down 'solicitor'. I could argue that I would like to know whether they had clients involved in particular Bills because that seems as relevant as it would be for a public affairs man.

2672. There are one or two other areas where there should be minor clarification, but, although I would be relaxed about it being mandatory, I understand why the second House wishes to be different from the first. It comes back to the point that we are unpaid. I know that we are all volunteers, but, nevertheless, we are unpaid and have no constituents. We are behoven to the whole nation to give the best of our ability in its service, not a particular part of it.

2673. **Lord Neill:** Thank you very much Lord Naseby for coming to answer our questions and for writing to us. It has been very illuminating.

2674. We will move on now and ask Mr Sheldon if he would be kind enough to come forward. Welcome, again, Mr Sheldon. In my short experience, this is your third visit to this Committee. We wrote some material about the House of Commons in our sixth report. You have responded to that and I have written to you saying that we would be in touch further if we have more thoughts.

2675. It is a great pleasure to see you again. We have a submission from you, dated 11 July, which will go in as part of the evidence. Is there anything you would like to state before we start? You know our practice. We have a couple of lead questioners and, in your case, they will be Sir Clifford Boulton and Lord Goodhart. Can we move straight on to questions?

RT HON ROBERT SHELDON MP

2676. **Rt Hon Robert Sheldon MP (Chairman, House of Commons Standards and Privileges Select Committee):** Certainly.

2677. **Clifford Boulton:** Good morning. Thank you very much for the material you sent us. Also, some of us have had a chance to see the fifteenth report of your Committee on proposed amendments to the rules, which came out last week, from which we saw that there are some areas where you are refining current practice.

2678. When we announced that we were proposing to take on this subject, several peers said that they hoped we would not wish on them the system with which the House of Commons has found itself struggling. We would not expect you to be prescriptive about what the House of Lords should do or what is appropriate, but can you suggest any areas where the House of Commons has found it necessary to be more detailed or intrusive than you would expect a mark I system for the House of Lords to be?

2679. **Robert Sheldon:** The difficulty is knowing where we are with the House of Lords changes. As it was, the House of Lords rules would need to be quite different from those for the House of Commons but, as we move towards greater tasks being put upon the House of Lords, the requirements become more closely allied to those in the Commons. I am not sure where we are at this stage. As things were, the requirements would be quite different; if it is to be as some people are suggesting, they will be almost the same. Where are we at present? With the 92, will the situation remain the same? If you asked me what I would do if the 92 became permanent, I could give a better answer. If you told me that the House of Lords will become a largely elected second chamber, I would give you a different answer. It is hard to know what to say at present.

2680. **Clifford Boulton:** Can we start with the House, as it is at present, because that will be the body that will be looking at our report? What would you say on that basis?

2681. **Robert Sheldon:** If it stays with 92, undoubtedly, some differences are required. In particular, many members of the House will earn their living outside, and that has to be allowed for. The House of Commons is becoming very much a full-time occupation for its Members. The House of Lords, as it is now, consists of a large number of people who earn their living outside, and the differences must allow for that.

2682. We refer to an important aspect of this in our fifteenth report, which, incidentally, did not take into account your inquiry into this area. We have been mulling over the changes we wish to see for a long time, and we have put out a consultation paper. One of the most interesting and important aspects is the approach to ministers. If one is speaking in the House of Lords or the House of Commons, people can look up interests in the Register or hear any declaration that is made.

2683. If a Member makes an appointment to see a minister, there is nothing on the record publicly, and that is a serious matter. I should be interested to have the views of ministers. I recall incidents, both when I was Financial Secretary and when I was Minister of State at the Civil Service Department. Effectively, I ran the latter department for six months because the Prime Minister was too busy at the time, and also because I had been a member of the Fulton Committee. I was approached there on a

matter that was clearly one of personal interest - "Can you do something?" - although it was not put so boldly. If that comes from a member of one's own party, or someone who is known to one, one cannot brush it aside. On these two occasions, neither were members of my party, so that was easier for me, and I let it run through in the normal way, but it occurred to me that a good friend coming to me could not be brushed off. What one did would depend on the character of the minister and of the person making the contact.

2684. **Clifford Boulton:** A member of the House of Lords using the status of a Member of Parliament to approach a minister is the same as a Member of the House of Commons doing so. Is it not the fact that, paid or not, when one is performing a parliamentary function, there are standards of openness and accountability to which one should have regard? Those would be stable, whatever the shape or membership of the House of Commons. Do you agree that there must be a basic requirement for regulation of standards that would apply, whatever kind of House we are talking about?

2685. **Robert Sheldon:** Openness - including openness to the approach to ministers - is something that has to be added to everything that we have said already.

2686. **Clifford Boulton:** We are, of course, seeing things from the point of view of the Lords, at the moment. I think that the Lords are required or expected to do that.

2687. **Robert Sheldon:** When approaching ministers?

2688. **Clifford Boulton:** If you see a minister and you have an interest, I think that, under the House of Lords existing rules, you have to declare it.

2689. **Robert Sheldon:** I did not know that.

2690. **Clifford Boulton:** That is something that we can check, but thank you for raising it because it will ensure that we do so.

2691. **Robert Sheldon:** To be clear, because I regard this as important, what I am talking about is a private approach to a minister - a letter or conversation: "By the way there is something that I would like to take up with you.
Could I come to see you?".

2692. **Clifford Boulton:** Or bring a delegation. Yes, that is already common in the Commons, is it not?

2693. **Robert Sheldon:** No, we have had to add this. In our consultation document we say:

> "We, therefore, recommend ... be further amended by adding the words 'or any approach, whether oral or in writing, to ministers or servants of the Crown'".

That is the change we want to see.

2694. **Clifford Boulton:** Making what is required more specific. If we were looking for ways of making the House of Lords' rules less intrusive to reflect the requirement of many members to earn an income, should we look into not having to declare the amount of earnings obtained in various ways? In the Nolan Report, we said that the public and, in particular, Members' constituents have a right to know what financial benefits Members receive as a consequence of being elected to serve their constituencies. There is not, of course, the same relationship with a member of the House of Lords. He or she simply has a general obligation as a public figure. Nevertheless, could we begin a credible system that did not actually require the Lords to declare the amount of earnings derived as a consequence of their membership?

2695. **Robert Sheldon:** There are clearly extremes in both cases. If a person has a large involvement in financial terms, that is a wholly different situation from if there is only a modest amount involved. One need not be specific, but one needs an indication of the scale of involvement. If that could be done in other ways, I should be delighted, but I am not sure that it can.

2696. **Clifford Boulton:** The difference between a large landowner and someone with 50 acres?

2697. **Robert Sheldon:** Yes.

2698. **Clifford Boulton:** Should the Commons copy the Lords in banning those members with a consultancy arrangement from taking part in proceedings? On that, the Lords have a stricter rule than the Commons. If one has an advisory consultancy in the Commons, so long as everybody knows about it, one is able, leaving aside initiation, to take part in proceedings. In the Lords, one is prevented from doing so. Is that something you would advocate for the Commons?

2699. **Robert Sheldon:** Disclosure is, of course, the most important aspect of this - as long as everybody knows.

In the Commons, the Register is available to everybody. So, if somebody is speaking, one can look up their interests. One can overdo the control of these matters. People with direct knowledge should be allowed to make use of it for the public good. I am a bit uneasy about over-proscribing some of the valuable work that can be done by the Member speaking about his or her experiences.

2700. **Clifford Boulton:** Thank you. I think you heard Lord Naseby saying that, when visits are made to inform oneself of a situation in a country and are paid for, one is not then able to take part in certain procedures, or at least initiate them. You are proposing a relaxation of that, but you say that

> "it should be maintained in preventing you from advocating help to a particular government".

That is what appears in the consultation paper, is it not?

2701. **Robert Sheldon:** Yes, indeed.

2702. **Clifford Boulton:** Poor Lord Naseby would still be stymied because he could not come back, shocked by the situation in Ethiopia or somewhere like that and say, "These people must be helped". Why do you think the prevention of initiating proceedings should be maintained?

2703. **Robert Sheldon:** Because, clearly, there could be a financial relationship between the member and what he or she does in a particular country that could involve more than the air fare. There may be a spin-off and we have to be careful about people pressing ministers, particularly if they were to do so in private in the way we discussed earlier, and put forward claims for assistance to a government that may be actively helping the member personally. There is a problem there. We have been too tight on this, and there have been many representations, not least from me, because I thought that there was something wrong about it. We have, therefore, put forward for consultation a considerable relaxation of the rules in that respect.

2704. **Clifford Boulton:** It does not matter whether it is paid for by the host government or by, say, Oxfam. When you came back you still would not be able to advocate help.

2705. **Robert Sheldon:** Now you are clutching at my heart-strings. I can see the difficulty. The whole code is, of course, terrible. None of us ever expected anything like this when, years ago, we first started pointing out some of the problems arising from ministers approaching me. That was, after all, 25 years ago now, but as one finds out more details of what people have done, one keeps adding a bit more and the result is a very complicated code. Our task is to try to simplify it.

2706. **Clifford Boulton:** That is what horrified some of the peers whose initial reactions I referred to. You have 73 paragraphs of guidance to explain the code. Does that, in itself, feed the appetite of those members who are looking for an area in which to trip up a parliamentary colleague? One is not dealing here with the sort of atmosphere there was of deep-seeded public distrust or coping with trying to claw back some respectability for the House of Commons. In a situation like that, which exists in the House of Lords, where there are no cases being considered or public alarm, can we at least begin by proposing a mark I system for their Lordships that does not require 73 pages of guidance? It could contain the sort of general areas of interest which you talked about - the difference between large and small land-ownership and so forth - without having to cover the whole waterfront, as the Commons felt they needed? Is it open to us to suggest something less intrusive and more generally based?

2707. **Robert Sheldon:** You are touching on a matter that concerns me greatly, and that is the tit-for-tat situation. People are now looking for ways of tripping up a member from the other side of the House. This is becoming serious. As I saw it, my task, as I explained when I came to see the Committee before, has been to improve the perception of the House of Commons and its Members. What we are now seeing is trivial matters being put forward, some of which meet the requirements in the rules and some of which are doubtful. The other side responds, and that creates the situation, particularly in the run-up to an election, that causes me some anxiety.

2708. The House of Lords is, of course, more relaxed than the House of Commons and, as a result, I would hope that you might be able to get away with less than the whole of this. I cannot speak with much expertise on that.

2709. **Clifford Boulton:** Thank you for that encouragement.

2710. **Lord Goodhart:** On the question of paid advocacy, the rules in the House of Lords do not prevent someone who is, say, a director of a bank, from speaking on financial issues. They only prevent someone who is paid in order to speak. Do you think there is a risk that, if the House of Lords were to abandon or water down its rule on paid advocacy, one might find peers were paid to represent various sectoral interests in this country?

2711. **Robert Sheldon:** That is obviously a danger. I am not sure how important a speech in the House of Lords is in

convincing colleagues. In the House of Commons, the point is that everybody knows everybody else awfully well - we live together. You know a person's reputation without having to read the Register, which simply confirms certain aspects. In the House of Lords, I am not sure how wide an understanding of each other's problems and activities there is.

2712. **Lord Goodhart:** In the House of Commons, you remain primarily bound to represent the interests of your constituency.

2713. **Robert Sheldon:** And the country.

2714. **Lord Goodhart:** Yes. But in the House of Lords, we do not have constituencies, and there might be more of a temptation to become a paid representative of a sector of the economy or whatever.

2715. **Robert Sheldon:** That is undoubtedly true, but I am not sure what power a speech in the House of Lords actually has to change things. That is why I mentioned the matter of approaches to ministers. Undoubtedly, if a good friend comes to ask for assistance - and that can be done in a much more reasonable way than saying, "Put money in my pocket" - one has a problem.

2716. **Lord Goodhart:** Turning to the question of categories of interest that has been raised by Sir Clifford, can I look at that in more detail? I want to look at the present regulation of the rules of the House of Commons to identify which you would regard as fundamental as part of any enforceable code of conduct and which may be more marginal. First, is it correct that, with a mandatory register, there would have to be some guidance to ensure consistency of practice between members?

2717. **Robert Sheldon:** Unquestionably.

2718. **Lord Goodhart:** The code of conduct in the House of Commons is, in fact, only just over two pages long. It is enlarged by about 20 pages of guidance, but will some degree of guidance be necessary?

2719. **Robert Sheldon:** It is not quite the same in the House of Lords as in the House of Commons. In the House of Commons, if you are sure that a person has not registered or has not put their facts down correctly, there will be a piece in the local papers and the national papers, even though they have done nothing wrong at all, and members do not like that. This is part of the tit-for-tat problem that affects the House of Commons. I would not have thought that it would have that effect in the House of Lords. Nobody in either House wants to be under suspicion, but if they have done nothing wrong, it is not something that is likely to excite the editor of a newspaper.

2720. **Lord Goodhart:** In Category 1, paid directorships are on the record anyway in Companies House. There is no great dispute about that.

2721. **Robert Sheldon:** No.

2722. **Lord Goodhart:** Category 2 covers remunerated employment, office or profession. Would you regard that as a fundamental matter?

2723. **Robert Sheldon:** It is fundamental to a House of Lords that is changing legislation, as it is. If people are taking part in that, one must know what their interests are.

2724. **Lord Goodhart:** Yes. Category 4 sponsorships provide financial support for a constituency, and that would not apply.

2725. **Robert Sheldon:** No.

2726. **Lord Goodhart:** But what about financial support, for instance, to enable a member of the House of Lords to employ a research assistant?

2727. **Robert Sheldon:** That would be covered by the rules in the House of Lords. But payment from outside would have to be included because such people can do all sorts of work for one.

2728. **Lord Goodhart:** Category 5 is more controversial. It covers gifts, benefits and hospitality. You have just proposed that the '0.5 per cent of parliamentary salary' rule should apply to gifts as well as to benefits. How important do you regard that category?

2729. **Robert Sheldon:** Personally, I think that we are too tight on that, but that was what the Committee decided. In the House of Lords, I would have thought that there was a strong case for some relaxation of that rule.

2730. **Lord Goodhart:** So, a couple of seats at the Royal Opera House would not have to be registered?

2731. **Robert Sheldon:** No. I do not think that sort of thing would change people's perceptions much.

2732. **Lord Goodhart:** No. Overseas visits have been discussed at some length. Again, there is presumably no reason why overseas benefits and gifts should not be broadly subject to the same rules as domestic ones?

2733. **Robert Sheldon:** As it is now, I would have thought that the Lords could be much more relaxed on that, but as the House of Lords gets nearer to the House of Commons, in terms of tasks and operations ...

2734. **Lord Goodhart:** If one is to be more relaxed about it, do you think there would still have to be some rule about gifts? For instance, if somebody goes on a visit to an overseas country where they are given jewellery worth £5,000?

2735. **Robert Sheldon:** Rolex watches in the Gulf.

2736. **Lord Goodhart:** When it is on that scale, do you think that it should be declared?

2737. **Robert Sheldon:** Yes. Such things can be very expensive.

2738. **Lord Goodhart:** You have suggested that, for land and property, the appropriate level should be about 10 per cent of parliamentary salary - just under £5,000 - a year in rent. Is that something that you would regard as fundamental? If so, is that an appropriate figure?

2739. **Robert Sheldon:** Again, in the House of Lords as it now, most of these rules could be relaxed a little. I would not say they need to be exactly the same as the House of Commons.

2740. **Lord Goodhart:** Category 9 is probably an important one. Would that apply to shareholdings?

2741. **Robert Sheldon:** Shareholdings are clearly very important and I would expect that to be of a similar type to the House of Commons, although I am not here to give exact figures.

2742. **Lord Goodhart:** I think that you have now proposed that the limit should be £25,000 of market value at the time of purchase.

2743. **Robert Sheldon:** It is difficult to do anything else with values going up and down.

2744. **Lord Goodhart:** Yes. Of course, your present rule of £25,000 in nominal value is completely irrational.

2745. **Robert Sheldon:** Yes, indeed. That has caused us a little anxiety, but it is not easy to reflect it properly.

2746. **Lord Goodhart:** But, again, that is something that the House of Lords could vary if it wished. It could increase the limit.

2747. **Robert Sheldon:** Yes.

2748. **Lord Goodhart:** Finally, Category 10 is for miscellaneous and employment agreements. This has caused some concern because that is the rule under which Ken Livingstone was held to have acted incorrectly by not registering his after dinner speeches, along with John Major and his lecture tours. Is that something that needs to apply to the House of Lords?

2749. **Robert Sheldon:** I am concerned about those two cases. One can overdo that. John Major made the very sensible point that the agency did not employ him; he employed the agency. I felt very strongly for him, and we have been looking at that. Even if it is not a result of the consultation exercise, that is something that we shall need to take into account.

2750. **Lord Goodhart:** There would be something to be said for the House of Lords that, so long as one registered any agreement to provide parliamentary services, the fact that one earned income from being invited to speak because one was a member of the House of Lords, would not need to be registered.

2751. **Robert Sheldon:** What I am particularly concerned about is that this sort of relationship should be disclosed and known about. I do not know what penalties the House of Lords would have in mind, but that is another interesting aspect. The House of Commons has established penalties, ranging from a personal statement in the House, up to one month's banishment from the House of Commons, including, of course, loss of pay. I am not sure what your penalties are, but that needs to be taken into account.

2752. **Lord Goodhart:** Yes, thank you.

2753. **Lord Neill:** Lord Shore?

2754. **Lord Shore:** I was interested to read the helpful memorandum in which you describe, in detail, how the present system works, and I was struck by one particular paragraph. I am referring to paragraph 6 which describes almost precisely the role of the Commissioner on Standards and Privileges. It says there that she has to investigate and check her investigation. Then, at the end, it says:

> "The Commissioner decides whether or not the complaint should be upheld."

It does not say, as I perhaps foolishly thought it might, that the Commissioner decides whether or not the complaint is such that it needs to be reported, with her findings, to the Committee. Does that mean that, under the present rules, having reached a judgement, the Commissioner's report will then be published?

2755. **Robert Sheldon:** Yes, indeed.

2756. **Lord Shore:** Without necessarily the sanction and approval of the Committee?

2757. **Robert Sheldon:** Correct. But the Committee will make its own report and it might not tally exactly with that of the Commissioner. We have had some cases of that.

2758. **Lord Shore:** Fairly clearly upholding or not a complaint? Has there been such an occasion where there has been a clash?

2759. **Robert Sheldon:** There have been two occasions, but I would not say a clash - a difference of view.

2760. **Lord Shore:** A difference of view?

2761. **Robert Sheldon:** Yes.

2762. **Lord Shore:** I see. Do you feel that this is a sensible boundary of responsibility?

2763. **Robert Sheldon:** No, I am a bit uneasy about it.

2764. **Lord Shore:** Thank you. If I might come back to one further point, I can well understand your concern about the possibility of triviality being resorted to, particularly as the election approaches and partisanship inevitably becomes more important, but is there not something a bit more than that involved now? You referred to the way in which the document and guidance grows with experience. When you have a document as detailed as that, it is not difficult to make out a prima facie case against virtually anyone. Is there any way of combating that? Can you think of a way in which that misuse or over-elaboration of the code can be corrected?

2765. **Robert Sheldon:** We have considered that, where there is a report made about a person complaining of another member, some reference to triviality should be made. That might have some effect. The danger, of course, is not at that stage, but earlier when the complainant comments to the press that they have referred the matter to the Commissioner. That is when one sees one's name cropping up, and only much later is it shown that there is no justification for it; the press, of course, do not publish that. No Member of Parliament with constituents likes to see their name in that context. The same is true to a certain extent in the House of Lords, but much more so in the House of Commons because members have elections to fight. There are quite a few such cases going through, and I feel very sorry indeed for a colleague concerned in this to see their name again and again in the press.

2766. **Lord Neill:** Can I ask a very simplistic question? For whose benefit does the Register exist? Is it for members, the wider public, the media or all three?

2767. **Robert Sheldon:** The public, undoubtedly, in my view, without question. It is the perception of high standards in parliament. When I came in to parliament, I was surprised by the way in which people trusted each other. That was new to me, coming from the more difficult commercial and industrial world I had inhabited. However, that has definitely declined. People no longer have that sort of trust. The members themselves still have very high standards, but that is not how it is perceived by the public and my task was to improve that perception. As we approach an election, it will be difficult to achieve that.

2768. **Lord Neill:** I was struck by your remark that everybody in the House of Commons knows one another. You know who they are, their interests and so on. That led me to the thought that the Register was probably not primarily for the benefit of other members of the House and must be for some other purpose.

2769. **Robert Sheldon:** Yes, the public interest. We do know each other awfully well. When one has gone through the night in various committees - not so much now, but certainly in the past - one gets to know people very well.

2770. **Lord Neill:** Thank you very much. You have dealt with all our questions, Mr Sheldon. Once again, we are extremely grateful to you for coming.

2771. We now have Mr Burrell and Mr Le Jeune. Mr Burrell is the Chairman of the Association of Professional Political Consultants, and Mr Le Jeune is a member of the Managing Committee of that body and, as I announced at the beginning of today's proceedings, a former member of staff of this Committee. You are both very welcome.

2772. We have had from you a submission dated 5 June. Unless I am in error, we received no opening statement. Is there anything that you would like to say? You have the opportunity now to make statements.

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2773. **Michael Burrell (Chairman, Association of Professional Political Consultants):** No, other than to say that Martin drafted the statement. I suspect that, if you go into detail, I shall ask Martin to deal with it.

2774. **Lord Neill:** Subject to that, as you know, our procedure is that two members of the Committee pose the questions in the first instance and then the others may follow up. In your case, they are Sir Anthony Cleaver and Sir William Utting. Sir Anthony will start.

2775. **Anthony Cleaver:** Good morning. Before we go into some of the things you say in your statement, could we look at the general background? Could you give us your view on the changes in the composition of the Lords over the past two or three years and the impact that that has had?

2776. **Michael Burrell:** I think that it is easy to overstate the impact. My experience is that the way we would approach Members of the House of Lords is much the same now as it was before the changes in composition. Arguably, the role of the House of Lords - at least formally - has not changed. There may be a change in two areas. First, Members of the House of Lords may feel that they have greater legitimacy and are, perhaps, less hesitant than they were to challenge the House of Commons. Second, the range of people who are in the House of Lords is different. There are a large number of working peers, and that may have produced some changes but, fundamentally, in terms of the way in which we deal with the House of Lords, I do not see any very significant change.

2777. **Anthony Cleaver:** One suggestion has been that there is a sense that the House of Lords is becoming more professional; there is more whipping in of Members and more expectation that they should attend. As a result, it is, in a sense, becoming more like the Commons.

2778. **Michael Burrell:** I am sure that it is true that there is a greater expectation that they should attend. I have heard some Members say that they have a greater sense of guilt when they do not attend. I doubt, however, whether it is more effectively whipped. I have not done a thorough study of the statistics, but my impression is that there continue to be substantial rebellions against what the governing party would want.

2779. **Anthony Cleaver:** In your paper, you say that the reform of the House of Lords requires a fresh approach to questions of conduct. I think that what you are saying is that things may not have changed that much, but, nonetheless, there has been sufficient change for the way in which conduct is viewed and regulated to be reviewed. Is that correct?

2780. **Michael Burrell:** There are two reasons for review. The first is that the procedures of the House of Lords seem not to have kept pace with the changes in the Commons. I am not saying that the rules should be identical, but currently the gap seems to be too large. The second reason is that, looking ahead, everyone expects that there will be further changes in the House of Lords that are likely to bring it even closer to the House of Commons. That is another reason why now would be a good time to make sure that robust rules were in place.

2781. **Martin Le Jeune (Member of the Management Committee, Association of Professional Political Consultants):** If I may add to that: We would be inclined to argue the point of view, that even if there had been virtually no alteration in the membership, status or functions of the House of Lords, on the basis that the Commons has progressed so far, so fast, over the past few years that a re-examination would be natural and inevitable in any case.

2782. **Anthony Cleaver:** On the other hand, the arguments that have been made about the differences between the Commons and the Lords range particularly around issues such as the fact that Members of the House of Lords are not paid and, therefore, require to earn their living outside, and that this is a significant factor. Do you agree?

2783. **Michael Burrell:** I understand the point, but it is not the most important point. Before the recent changes, it could have

been argued that some Members of the House of Lords were there involuntarily, because of who their parents were. Every single Member of the current House of Lords has chosen to be a legislator. The role of legislator carries with it certain responsibilities. That broad principle applies to both parts of the legislature. One might find reasons for some modest variations, of which that to do with pay, which you mentioned, might be one, but the fundamental principle is that they are legislating on behalf of the public, and the public are entitled to know and to see that high standards are being maintained.

2784. **Anthony Cleaver:** You have clearly had the opportunity to see what has been happening in the Commons in terms of the register and the way in which it has worked. In your statement, you support a register of interests "on Commons lines", but not necessarily identical. Have you any observations on the way in which the register has worked in the Commons and the conclusions that one might draw from that, in terms of looking at how it could be done in the Lords?

2785. **Michael Burrell:** The principle of transparency is most important. My personal view is that some of the limits that have been set in the House of Commons may be too low. For example, I think that the current rules on foreign trips probably need to be looked at again, but the principle of transparency is paramount, so there should be a register and it should be mandatory.

2786. **Martin Le Jeune:** This is a wide question and, in a sense, by addressing the two Houses separately, as the Committee inevitably has to do, a game of catch-up is being played. We would start from the philosophical point of view that the most desirable outcome is the maximum transparency about private interests, whether that is achieved by a register or by the rules on declaration during proceedings. The scope of that register should be very wide. A register that is completed in the fullest possible sense enables people to participate in proceedings on the basis that as much as possible is known about them at the time. That might avoid some of the difficulties that the House of Commons has fallen into recently, in terms of what exactly initiation of business - and the like - is, which has contributed to a feeling that the system of registration does not promote public confidence in standards which, after all, is the primary aim.

2787. **Anthony Cleaver:** Let us focus on registration for the moment. Can I ask you to clarify what you mean by "the maximum transparency" in registration? Would that imply stating financial amounts when one is talking about remunerated positions? Or simply the fact that the position is held and is remunerated?

2788. **Martin Le Jeune:** I have to answer that on a personal basis, because the discussion that our organisation had before appearing in front of you was largely focused on the House of Lords. This is a wider question and people might disagree. Given the difficulties that have applied to the rule of paid advocacy within the Commons, the simplest approach would be to aim for the maximum possible written transparency by way of a register, including sums of money. I have no doubt that some colleagues in the APPC would disagree, but that would enable people who complete the register to complete it fully and then to participate as far as is possible in debates and proceedings. I would draw the line very wide on registration, but I stress that this is a personal view.

2789. **Anthony Cleaver:** In your submission, you criticise the Commons decision on banning paid advocacy and urge us to recommend for the Lords a ban on consultancy arrangements with organisations that provide paid parliamentary services to multiple clients. Could you elaborate further on why that would be preferable?

2790. **Michael Burrell:** I think that was the recommendation that your Committee made to the House of Commons, which the House of Commons chose to ignore. We still think that it was the right recommendation for the House of Commons, and it is the right recommendation for the House of Lords. The reason is very simple. When consultancies like ours, on the one hand, are lobbying, and on the other hand, legislators are listening to the points of view that are being expressed, there are clearly two different roles. We are helping our clients to make their case as effectively as possible. Legislators have a different role: they have a duty to listen, but they also have a duty to work out what is the best thing to do. Those two jobs are quite distinct and should be seen to be distinct. I have never understood how anyone can be a lobbyist and a legislator simultaneously.

2791. We have sought to deal with this through our own rules, which make it impossible for people who work in member consultancies to be Members of the House of Commons, the House of Lords, the Scottish Parliament or the Welsh Assembly. It would be preferable for those rules to be mirrored by the House of Lords' own rules, so that lobbyists cannot simultaneously be legislators.

2792. **Anthony Cleaver:** You say that, in your organisation, you have remedial action, including expulsion from membership. Has that ever happened?

2793. **Michael Burrell:** We had a case - colloquially known as Drapergate - where two of our member companies withdrew from membership while an inquiry by outsiders was carried out, but principally it operates by peer pressure. Unfortunately, the word does not really work in this context. I do not mean pressure from the House of Lords, but pressure from colleagues.

2794. To give you a simple example: until recently the Chairman of one of our member consultancies had no connection with the House of Lords. He was made a working peer by the Labour Party in one of the recent announcements. He immediately resigned as chairman of the member consultancy, not because anyone forced him to, but because it was clear, from our rules, that he would be expected to.

2795. **Anthony Cleaver:** A number of witnesses have commented on the degree of lobbying now in the House of Lords. More have said that it has increased rather than the reverse, although we have been told both. Do you have a view on that, from your professional position?

2796. **Michael Burrell:** It is very hard to measure. One could look at the anecdotal experience of peers who were on the receiving end of it. I suspect that the change in the composition of the House of Lords is not particularly significant. Two or three quick points: First, I suspect that the majority of our members' lobbying would be directed at officials rather than parliamentarians, in either House. Second, the extent to which one would focus on the House of Commons might depend on the size of the majority. If a government had a large majority, one might feel that time spent in the House of Commons was unlikely to produce a result for the client. There may be some increase currently, but I suspect that this has as much to do with the large majority in the House of Commons as with any change in the composition of the House of Lords.

2797. **Martin Le Jeune:** An issue that may have coloured the answers of your witnesses is how they interpret the term 'lobbying'. After all, as our submission points out, a very large number of organisations engage in direct lobbying of the House of Lords, and I suspect that it would be completely impossible to quantify whether lobbying has risen or fallen.

2798. **Anthony Cleaver:** One final question from me: You obviously represent and are appear for professional lobbyists who lobby for their living. What about in-house lobbyists in companies, and so on? Is there any significant difference there, as far as these activities are concerned?

2799. **Michael Burrell:** A very wide range of bodies engage in lobbying or advise others on how to lobby, for instance, consultancies such as ours and law firms, who would be covered by our proposed definition. There are a lot of in-house lobbyists. Transparency is important; people should know who they are and on whose behalf they are talking. Transparency is the key to all this.

2800. **Anthony Cleaver:** Thank you very much.

2801. **William Utting:** Thank you, Chairman. I am interested in how professional lobbyists go about their business. I should like to know what the pitfalls are for people who are being lobbied and for the lobbyists. I am simply enquiring without any sinister implications - I do a bit of amateurish lobbying myself, which is perfectly respectable and responsible. What are the methods of a professional lobbyist?

2802. **Michael Burrell:** We are stuck with the word 'lobbying', but it is slightly misleading, because it gives the impression that we walk across the road to the Houses of Parliament and engage in personal discussion with parliamentarians and say, "You must be able to see that on clause 3(c), the right thing to do is to abstain" - or vote for or against. It may work like that to some degree in the United States, but certainly not here. Essentially, we advise our clients on how best to make their case, when to make it - because timing is very important - and in what tone of voice they should make it. Usually, that means neither in a Uriah Heap tone of voice nor in an imperious one, but courteously, somewhere between the two. We advise on what length to make it - normally the advice is to make it short and crisp, because parliamentarians receive a great deal of information; the clearer and shorter it is, the more likely it is to be read. We advise them on who to make it to. Often, that will involve steering one's clients away from the more obvious targets to less obvious ones - perhaps away from Ministers towards officials, or away from the Floor of the House of Commons towards a Select Committee. In the context of the House of Lords, we may advise that it should be directed towards peers who have particular knowledge of the sector and can speak in the House with authority. That is common sense.

2803. **William Utting:** We have heard from a number of Lords about the volume of written briefing that they receive from lobbyists and that it is generally helpful. But a professional lobbyist advises a client on how to manage the process, rather than undertaking it on behalf of that client. You are also identifying peers and Members of Parliament with special interest and particular expertise, Members of all-party groups, and so on. That sounds perfectly straightforward and above-board. Have you come across any particular pitfalls in the process?

2804. **Michael Burrell:** I do not know whether it is a pitfall exactly, but one of the things that we do, which is very helpful, is to listen very carefully. On occasion, we may accompany a client to a meeting and the client will be impressed by the courtesy with which he is received. There are a thousand ways of saying "no" that can sound like "yes" when one is not used to talking to officials and politicians, because they are generally very polite. Often, when we come out of a meeting and the client says,

"That went terrifically well, didn't it?", one of the less pleasant things we have to do is to say, "From the body language, our judgement on the point about the environment is that you have completely failed to persuade them. Clearly, we have to look at the arguments again". It could be a kind of pitfall that politicians and officials are generally so polite that their politeness can be mistaken for agreement.

2805. **Martin Le Jeune:** If the implication behind your question was whether or not we found the ethical framework within which both the Commons and the Lords operate to be restrictive or difficult, the straightforward answer is 'no'. We know the rules and how to stay within them. We want to stay within them, because that is far more effective with the people we talk to.

2806. **William Utting:** That is an important observation, that you do not find that the Commons rules inhibit the exercise of your profession.

2807. **Michael Burrell:** I have never experienced that, no. It is important to understand that we do not seek any special privileges, but only those that members of the public enjoy. For example, we have a rule that says that we cannot work for a consultancy and have a research assistant's pass. That is not a difficulty; if we need to go to the House of Commons to sit in on a select committee, we have a right to do so as a member of the public. I do not see any problems.

2808. **William Utting:** You spoke to Sir Anthony about your code of conduct and the way in which you can enforce it. I have to say that I read it only quickly this morning, since I am a late entrant to the questioning stakes, but it is an impressive document. Clearly, your methods of enforcement are limited. You referred to peer pressure and the inquiry that had taken place. Presumably, if people do not abide by the code and there are complaints, you can require them to resign from your association. They carry on in business, but they can no longer say that they are a member of APPC. In the course of your work, abiding by your own ethical standards, have you had reason to feel concerned about the standards of the people you are lobbying? Obviously, I do not want examples, but do you get into situations where people appear to be susceptible to improper pressures?

2809. **Michael Burrell:** My personal view, based partly on my experience, but also on international surveys, is that the United Kingdom is a relatively corruption-free country. The standards of parliamentarians are in general very high. There clearly appear to have been one or two exceptions, but the concept that our system is riddled with corruption is completely wrong; my experience does not suggest that this is right.

2810. **Martin Le Jeune:** Nor mine. It may be worth remarking that, because of the work that the Neill Committee and other bodies have done, the profile of standards of conduct in public life is extremely high. Although no code or system of guidance will ever deflect those who are determined to engage in criminal acts, I suspect that those who might otherwise be tempted to step over the line are well aware that that is a dangerous proceeding in today's climate. That is very positive.

2811. **William Utting:** I should add, of course, that there is no suggestion of any current impropriety in the House of Lords.

2812. I think you say in your evidence that there ought to be similar codes between the House of Commons and the House of Lords. It has been cogently argued by peers that there should be a lighter touch in the Lords. Do you accept the argument for a lighter touch? If there were a similar code, do you think that the Commons code and processes should be transferred to the House of Lords exactly as they stand?

2813. **Michael Burrell:** I will let Martin answer in detail, but I should like to make one point: I think that there should be a slightly lighter touch in the Commons than there is at present. The rules are slightly too detailed and prevent Members from giving their experience of foreign visits, for example, in a way that the House might find helpful. Having made that point, I will ask Martin to take the general question.

2814. **Martin Le Jeune:** I guess that one would start from the premise, "What evils are we trying to deal with in both Houses?". The first of those evils is the existence of secret financial relationships. In that respect, a full register, and a requirement to declare in full each time one takes part in proceedings, are the most suitable antidote. That means that we can deal with the second evil, namely whether, if restrictions are too tightly drawn, they prevent those who have a good knowledge of a subject from participating. That would be especially damaging in the House of Lords, where people often have extremely relevant experience of sectors, in which they may have financial relationships.

2815. Therefore, if we were to look across the two Houses - and I agree with Michael that the Commons may have become too restrictive - one would want to have broadly similar arrangements in place: registration, declaration, code and supervision of the code. We do not deal with the latter directly in our submission, but that would appear to be the ideal starting point at least. For those who argue that the arrangements in the House of Lords should be significantly different, the challenge is to prove conclusively why that should be so, not for us to argue why it should not.

2816. **William Utting:** Thank you. That is very clear. You also say - in the context of the Wakeham Commission's view of the House of Lords as a more attractive target for lobbying these days - that you would be very concerned if any restrictions were placed upon lobbying in the House of Lords. We have not had any suggestions that there should be. Are you aware of any drifts in that direction?

2817. **Michael Burrell:** It does not relate to the House of Lords, but to an institution in London. During his campaign, Mr Livingstone, who is now the Mayor of London, proposed that members of his staff should not be able to meet lobbyists; there should be a ban on such meetings. It seems to us important at every stage to emphasise that the right to lobby and to petition for redress of grievance is fundamental to the unwritten British Constitution. Therefore, we argued strongly that Mr Livingstone was putting forward a mistaken view that conflicted with his pledge to listen to Londoners. To select one class of Londoners to whom he was not going to listen seemed to us inappropriate. Therefore, we were naturally pleased when his colleagues in the Greater London Assembly recently took a different view; the proposal for restriction is not now going ahead. That is the only recent example I can think of.

2818. **William Utting:** Thank you. Thank you, Chairman.

2819. **Lord Goodhart:** I should like to ask a couple of questions about lobbying consultancies. You said that you supported the original proposals of the Nolan Committee that no Member of either House should be allowed to take employment with a multiple-client, parliamentary consultancy firm. What particular vice do you see in that?

2820. **Michael Burrell:** There is a problem of perception and the danger of something worse. The problem of perception is that, if someone is working for a consultancy whose clients include Megabucks Corporation, how can we be sure that the legislator is not influenced in what he does by the knowledge that the people who are paying his salary earn money from Megabucks Corporation? It is very difficult to be sure.

2821. **Lord Goodhart:** Are you suggesting, therefore, that Members should not be allowed to speak even on matters that do not affect their own clients? At the moment, the rule in the House of Lords is that peers who are members of a public relations firm cannot speak or vote on anything that is of concern to their own clients, but can do so on matters that relate to other clients of the firm, with which they have no personal contact.

2822. **Michael Burrell.** Yes. That is difficult; it places too great a burden on the judgement of the individual. It would be much simpler and preferable to have a complete ban on holding the two jobs at once. One is either a legislator or a lobbyist; one cannot be both at the same time.

2823. **Lord Goodhart:** What about those who are offered peerages when they are already employed by a parliamentary consultancy firm? Should they be required to give up those jobs if they accept the peerage?

2824. **Michael Burrell:** Yes. I gave the example earlier of one of our members who did exactly that a few months ago.

2825. **Lord Goodhart:** I also understood you to say that, when individuals were providing parliamentary advice or services to a single client, registration was enough and they should be allowed to speak in the House of Lords, once they had registered and declared their interests.

2826. **Michael Burrell:** Yes. If someone is Chairman of Help the Aged, that is perfectly reasonable, as long as the interest is registered and declared. The knowledge that they have in that role can be useful to the legislature.

2827. **Lord Goodhart:** Yes, but a director or chairman of an NGO or of a major company is allowed to speak. I do not think that any of us would have any difficulty with that, but let us suppose that Megabucks decided to employ a Member of the House of Lords to represent their views in the House of Lords. As you have argued, they would be free to do so.

2828. **Michael Burrell:** Only if they have registered the interest. I would argue that, in a sense, their point of view would be discounted, because their colleagues would say, "He would say that, wouldn't he?".

2829. **Lord Goodhart:** But is there not an inconsistency in your views on this? On the one hand, you said that an employee of a multi-client firm cannot speak for any of that firm's clients, but if he is paid by one particular client to be their lobbyist in the House of Lords, that is alright.

2830. **Martin Le Jeune:** May I answer that? I do not regard that as an inconsistency, but rather as a recognition of the fact that there is almost a symbolic value, in terms of prohibiting legislators from working for multi-client lobbying firms, apart from the transparency issue to which Michael referred, which is important. The confusion of roles, which he described, is also a factor. We would start from the position that, provided that one is completely open - I underline completely - about the degree of

influence that an outside organisation might have on one - and I am afraid that this includes sums of money and the nature of the agreement - one's colleagues would aim off. It is difficult to imagine that a Member of the House of Lords who had any self-respect would stand up to declare that he was being paid £30,000 a year by a given company and wish to introduce a motion that favoured that company in front of his colleagues. His credibility would not last long. I suggest that most people would not enter into that kind of deal.

2831. **Lord Goodhart:** In the past, I think, the Police Federation had spokesmen in both Houses, who were paid. It is a matter of public record that they were open, but they still spoke and were listened to.

2832. **Martin Le Jeune:** If I recall it correctly, it was a commonly used example of the way in which contracts for providing both political advice and advocacy were not, at bottom, harmful when the Committee was considering its First Report. It becomes a matter of judgement, but the arguments made at the time were that colleagues were aware of one's work for the Police Federation and that a sum of money was attached to it, and they welcomed the expertise that one could contribute from the briefings given. Those arguments were accorded some force by the Committee when it was considering that area.

2833. **Lord Neill:** I have a point of detail: In your written submission, there is a passage headed 'Code of Conduct'. Have you got it in front of you?

2834. **Martin Le Jeune:** I gave my copy away.

2835. **Lord Neill:** Can you find the passage? It talks about the code of conduct; in our version, that is on the second page. Do you have that?

2836. **Martin Le Jeune:** Is there a number against it?

2837. **Michael Burrell:** Are you referring to our submission or our code?

2838. **Lord Neill:** Your submission.

2839. **Martin Le Jeune:** We have that.

2840. **Lord Neill:** It is headed 'Code of Conduct'. There are two lines, and then there is a quotation from the Code of Conduct, paragraph 7. Is the next quotation right?

> "Political consultants should not place themselves in a position of potential conflict of evidence".

2841. **Michael Burrell:** No. It is a mistake, I am afraid.

2842. **Lord Neill:** It should be 'interest', should it not?

2843. **Michael Burrell:** 'Interest' is what it should read.

2844. **Lord Neill:** Yes. I thought it must be. We will correct that.

2845. **Frances Heaton:** Mr Burrell, on one occasion, you referred to other businesses that engaged in lobbying, although they are not called 'lobbyists', in particular, solicitors. I guess that there are others. Where' in your spectrum' do you think they should be treated? You have drawn a divide between lobbying firms and have said that people cannot be both lobbyists and legislators, but you have accepted that people can work for a particular company and engage in debate.

2846. **Michael Burrell:** My view is that lawyers would fall under our definition of multiple-client consultancies. Therefore, it should not be possible for someone who works for a firm of solicitors and is doing lobbying work simultaneously to be a Member of the House of Lords.

2847. **Frances Heaton:** That is where your dividing line would lie? They would have to be, not only a solicitor, but a solicitor who engaged in lobbying work. Are there other firms, such as accountants?

2848. **Michael Burrell:** My guess is that there are probably a small number of firms - accountants (possibly), management consultancies and one or two financial PR consultancies.

2849. **Frances Heaton:** Thank you.

2850. **Clifford Boulton:** Referring back to multiple-client agencies and the distinction between them and the individual, was

not the Nolan Committee faced with the fear of a growth of "MP for hire" situations, where the public perception was that some Members were putting themselves out to say and do anything for those agencies in return for a fee? That was different from Members who could exercise selectivity over whom they were prepared to brief themselves to speak about. Therefore, the Police Federation came out as acceptable because of the nature of the work. That situation was quite different from that of someone who signed up to speak for whoever was dished up to him by the agency for which he worked. Is that not the distinction that we were maintaining at that time?

2851. **Martin Le Jeune:** The answer is 'yes'. Behind it lies the question of how one has looked at how that has developed over time. One of the most important focuses in that area is the precise nature of the agreement contracted. Virtually every citizen of the United Kingdom would agree that a contract that states, "In return for a sum of money, you will undertake a certain number of actions within the House of Commons" is not only improper, but runs counter to established standards in the House of Commons that had existed long before the Nolan Committee started. I was speaking about relationships that do not tie down an individual Member in that way, and I would not have much difficulty with a relationship with an outside body in which the Member provided political advice and spoke on their behalf in the House of Commons, always provided that I could read the detail of the agreement, as a citizen, were that the case.

2852. **Clifford Boulton:** Which we provided for anyway.

2853. **Lord Neill:** I think that concludes the questioning from this side of the table. Thank you very much indeed for coming and for your written submission. I am very grateful to you.

2854. Robert Maclennan, would you be kind enough to come forward? As you may have guessed, we have invited you because you are the principal spokesman for Constitution, Culture and Sport of the Liberal Democrat Party in the House of Commons and are well placed to assist us. You were a member of the Commons Select Committee on Standards in Public Life, which was the recipient of the first Nolan Report. You have all that background.

2855. I have just been handed an opening statement from you. Would you mind reading it into the record? We have not had time to read it. I am going to ask Lord Shore and Frances Heaton to ask you questions when you have read the statement into the record.

RT HON ROBERT MACLENNAN MP

2856. **Rt Hon Robert Maclennan MP (Principal Spokesman for Constitution, Culture and Sport, Liberal Democrat Party in the House of Commons):** I have been invited to consider the issues raised by the Committee in their Issues and Questions paper at paragraphs 3.29 through paragraph 3.33.

2857. Although opposition spokesmen and women may have greater prominence in speaking on the subjects for which they are designated by their parties than back-bench members, their constitutional position is no different. Their rights of access to Ministers depend entirely upon the attitude of the individual Ministers to particular requests, and it is my experience that Ministers are, for the most part, as open to requests for access from back-benchers who are interested in an issue, either because of special knowledge or a particular constituency link, as they are to requests from spokespersons. Furthermore, although spokespersons may be thought to exercise influence over parliamentary matters through their position, the extent to which that influence is significant will flow less from the personal interests of the spokesperson than from the representativeness of his or her arguments.

2858. Individual back-benchers may carry considerable weight and potential influence of a personal kind at least as great as that of any spokesperson, either because of their known qualities or knowledge, including knowledge drawn from personal interests.

2859. In sum, I see no case for treating spokespersons for opposition parties differently from Members of the two Houses at large. The rules which govern their conduct and personal interests should, in my judgement, be the rules applicable in each House, and applied in common to all who are not Ministers.

2860. There are a number of other points to consider:

2861. Whereas members of the Government may be moved from one department to another without consequentially affecting any external interests which they may have, and which are managed under the Code of Conduct for Ministers, the same would not be true of opposition spokespersons, since a declarable interest under one sphere of responsibility might well not be declarable in respect of another.

2862. Any requirement to divest, for the duration of a spokesmanship, an interest held to be relevant might result in reducing the flexibility with which party leaders can change their spokespersons.

2863. Since Members of Parliament are paid substantially less than Ministers, and many of them consider their external earnings are necessary, not only to sustain their families and their working lives appropriately, but to bring to their discharge of their responsibilities as Members of Parliament direct and continuing experience of the outside world, any suggestion that all outside interests held by a spokesperson should be treated as are the interests of Ministers would be likely to result in some diminution of the pool of talent from which opposition spokespersons are drawn.

2864. To my mind, if spokespersons' financial interests were to be treated differently from ordinary Members of Parliament, it would be necessary to consider remunerating them as spokespersons. That, it seems to me, raises issues that go beyond the terms of reference which I have been asked to consider.

2865. **Lord Neill:** Thank you very much, Mr Maclennan, for that statement. I am now going to ask Lord Shore to put questions.

2866. **Lord Shore:** Good morning.

2867. **Robert Maclennan:** Good morning.

2868. **Lord Shore:** You certainly have considerable experience of the areas with which we are dealing, not only in the narrow area of Shadow spokespersons and whether there should be any special requirements, but more generally. You were on the Select Committee on Standards after our first major report. I know that you have a great deal of experience, going back to that period, as well as subsequently. Do you think there are any lessons from the House of Commons that we should learn before coming to any conclusions about what is appropriate for the Lords?

2869. **Robert Maclennan:** I have heard criticisms voiced of the difficulties that Members have found themselves in when the Commissioner for Standards has made a finding of some impropriety that the proceedings for examining those allegations or findings do not sufficiently protect the Member in respect of the requirements of natural justice. Questions have been raised about the appropriateness of permitting legal representation, and indeed funding it, but I notice that you have made recommendations on that point in your Sixth Report and have very comprehensively argued for a more quasi-judicial proceeding at the stage of following the initial finding of serious misconduct in the event by the Commissioner and have proposed that there should be a tribunal headed by a legal chairman and other MPs, with the possibility of lawyers being engaged and funded from the public purse. That certainly seems to me to go far enough towards protecting any interests that may have been thought to be in jeopardy under the existing arrangements. I think it right, however, that there should be a distinction drawn between allegations of serious misconduct and other matters, which may be more technical infractions, because I do not think that one should establish too complex legal procedures to deal with those.

2870. On the whole, I think that the system that is now in place is working quite well. I have not, in any particular case, felt that the criticisms that have been made were clearly pointed toward the need to change the proceedings. I had some doubts, in the case of John Major, about the report of the Commissioner, Ms Filkin, in which she concluded that she had been minded to uphold the complaint and had refrained from doing so, only because she was satisfied that Mr Major had regularly consulted the House authorities upon the disclosure of his interests in the register. I thought that that was an unfortunate way to open up the Parliamentary Commissioner's mind, implying, as it did, technical irregularities which, even by an admission of her own report, had not occurred and the proposed changes that she recommended should not have, in her own judgement, retrospective effect. But there was, I thought, an unfortunate opening there to suggest that the former Prime Minister had not done all that he ought to have done.

2871. I think it is extremely important that the Commissioner should choose her language with very great care in reaching her conclusions. They are published conclusions, for Members in such exposed positions as a former Prime Minister are open to attack. In my opinion, some unfortunate headlines resulted from those published conclusions. But that is a matter of detail perhaps.

2872. **Lord Shore:** Thank you for drawing that distinction. Our minds are very open about serious matters and how they can best be handled, whether people should have the right of representation and what the appeal procedure should be. The technical irregularity or the party-motivated tit-for-tat complaint, particularly as a general election approaches, although trivial, is a more serious matter. Apart from hoping - or maybe expecting - that the Commissioner will use language with great care, can you think of any change in procedure that would minimise the damage done by frivolous complaints or technical irregularities?

2873. **Robert Maclennan:** I think it would be sufficient for those cases to be dismissed without the full panoply of investigation and the deployment of arguments and counter-arguments, because that very process inflates the nature of a complaint to something that may lead people to say, "There is no smoke without fire".

2874. **Lord Shore:** Thank you. May I move on to an adjacent area? Obviously, a pretty worked-out regulatory system is now in place in the House of Commons. Do you think that anything like that would be appropriate and suitable for the House of Lords? Or do you think that the differences are such that something different should be considered?

2875. **Robert Maclennan:** I am inclined to the view that there are differences, flowing from the fact that the House of Lords is an unremunerated Chamber with part-time, active membership and, in consequence, it must be expected that its members will engage in remunerative activities, many of them in areas related to the work being considered in the House of Lords. The procedures in the Commons, however, particularly in the existence of a Commissioner for Standards, seem to go beyond what is necessary at this stage of the development of the Upper House. The requirements of openness are paramount and apply equally to both Chambers; the ban on advocacy should apply to both Houses; the exclusion of direct lobbying, which is really a ban on advocacy under another name, is appropriate to both Chambers. But the structure proposed in the Sixth Report for dealing with those matters in the Commons is probably unnecessarily elaborate at this stage in the House of Lords.

2876. **Lord Shore:** Thank you. The machinery, of course, is one thing; the Lords has a three-part register, as I think you know.

2877. **Robert Maclennan:** Yes.

2878. **Lord Shore:** Parts 1 and 2 are largely very prohibitive in terms of what can be done by people who have a financial interest. The third part of the declaration is entirely voluntary. Do you think that this should be accepted or changed?

2879. **Robert Maclennan:** I see no need to change it at the moment. Clearly, the first two categories in the register, where peers are employed as consultants, involving payment and other rewards, should be mandatory. The category where peers have financial interests in businesses involved in parliamentary lobbying on behalf of clients should also, clearly, be mandatory. Both cover the field at this time. I see no reason to go beyond that.

2880. **Lord Shore:** I come back to the first area covered in your statement. I have only one question to put: Is there a strong demand in the Commons for the introduction of new rules for opposition spokespersons, other than the ordinary rules of declaration that are now in place?

2881. **Robert Maclennan:** I have heard no strong demand for such changes. It is the case that, in some quite prominent examples that spring to mind, a spokesperson may have a major interest in the matter under discussion, but that fact is declared and known and, I believe, affects the judgement that may be brought to bear upon what that spokesperson says.

2882. **Lord Shore:** It could, equally, give weight to or diminish what is ...

2883. **Robert Maclennan:** Absolutely. It cuts both ways.

2884. **Lord Shore:** Thank you.

2885. **Lord Neill:** Frances Heaton?

2886. **Frances Heaton:** Thank you. May I carry on the questioning relating to your opening statement, please?
I have one question on that. In your penultimate paragraph, you refer to the difficulty of spokespersons who move from one area of interest to another in having to change their declarations. Presumably, the interests which we are discussing here would be universally applicable to all Members of Parliament?

2887. **Robert Maclennan:** I really had in contemplation the possibility that it might be suggested that a person should be a spokesman only if he had divested himself of, or put into trust, some interest that might be held to be directly affected by the discharge of his responsibilities as spokesman.

2888. **Frances Heaton:** As against the fact that, with Ministers, at present, it is all financial interests?

2889. **Robert Maclennan:** All financial interests, yes. I doubt that it would be seriously argued that spokesmen should put into trust or divest themselves of all financial interests in any outside matter. I did not take that to be a runner.

2890. **Frances Heaton:** We did put that as one of the questions, but at least we have had your clear view on it.
I am inclined to agree with you. I turn now to wider questions. First of all, in the time we have spent in taking evidence from witnesses, it has come across clearly that, in the House of Lords, the declaration of interests seems to be working perfectly well. There is unanimous agreement on that. The question of what more, if anything, should be included in the register is a matter for debate. It would be fair to say, as a generalisation, that those who favour a more all-embracing register do so because they see greater significance to the public perception need for a register than for the internal to the House of Lords requirements which,

by and large, are met very well by the disclosure point. From your viewpoint in the House of Commons, do you consider that there are shortcomings in the House of Lords register, from the point of view of how the public perceive it?

2891. **Robert Maclennan:** No, I do not.

2892. **Frances Heaton:** You have no evidence at all?

2893. **Robert Maclennan:** I have no evidence to support that.

2894. **Frances Heaton:** Lastly, I want to ask about the proposal of the Home Secretary to apply the new offence of corruption to Members of both Houses. How do you think that will affect the regulatory systems?

2895. **Robert Maclennan:** I think it would be of value, in that it would bring home to the public that bribery involves more than the person who has received the bribe and that there is a public duty on those who have a case to make to refrain from improper methods in bringing pressure to bear or in offering inducements to those who may be in a position to respond to them. It, thus, widens the ambit of responsibility for maintaining standards, beyond the scope of Members themselves, to the general public. That seems to me to be highly desirable.

2896. **Frances Heaton:** Thank you very much.

2897. **Lord Neill:** May I come back to the question of a voluntary versus mandatory register? You can imagine that we have had a lot of evidence on this and opinions both ways. One of the arguments used by those who are in favour of a mandatory register is that of accountability. It is said, in relation to the House of Commons, that if a Member of the House evidently dissatisfies his constituents, they have the weapon of not voting for him at the next election. In the case of the House of Lords, all Members are irremovable, so the argument runs like this: one bit of accountability is a public statement in the register of where the particular peer is coming from and what his or her interests are. Therefore, it is even more desirable to have a mandatory register of interests in the House of Lords than in the Commons. I am stating one of the arguments. Have you a view about that?

2898. **Robert Maclennan:** Only the a priori view that there is a case for it. I have to say that it does not rest on my perception that the present arrangement is not working, but I can understand the force of the argument that you deployed. The issue has come to public attention more in connection with Members of the House of Lords who have become Ministers - I am thinking of Lord Sainsbury, Lord Simon and so forth - than in connection with individual back-benchers or even spokespersons who have interests. When they have interests, they have frequently not only chosen to declare them, but have almost invoked them as evidence of the expertise that they may bring to bear upon a specific subject. Therefore, I feel that there is no evidence as such of any abuses, but, for reasons that you have given, that are certainly logical, I can understand a recommendation of that kind. It might bring in its train - in the implementation - complexities and issues of fine judgement about how far it should go, which have characterised the operation of the register in the Commons. For that reason, and because the Lords, although it is one of the Houses of Parliament, is still largely a voluntary association within parliament and is the nexus between the individual and the subject under debate, I am inclined to the view that a greater degree of informality has worked and could continue to work.

2899. **Lord Neill:** If there were to be a recommendation for a mandatory register and the House of Lords were to adopt it, would you be concerned about the matter that clearly worried a previous witness, Mr Robert Sheldon, the tit-for-tat political battle that one reads regularly in the press now, where a Member of Parliament makes an allegation that someone on the other side has failed to register, and within a fortnight there is a counter-allegation against someone else? Mr Sheldon worried that this brings the Commons into disrepute and is not really how the scheme was ever meant to work. Do you have a concern about that? Would it spread into the Lords if
there were a mandatory register?

2900. **Robert Maclennan:** I suspect that it would. It would also raise requirements for policing and monitoring allegations of the lines not having been observed properly, or constant arguments about whether the lines had been drawn in the proper place. Those arguments were made in the Major case, to which I referred. It would not be conclusive of the matter, but seems to erect a system that, by virtue of being more determined, would inevitably lead to disputes and the need to resolve them to a much greater extent than at present. That would be a necessary concomitant of erecting a system such as we have in the Commons. What looked like quite a simple system in the Commons, when first proposed by Nolan, is developing rapidly under your guidance, following the recommendations of the Sixth Report, into a quite complex process, justified, no doubt, by the arguments that you have deployed. It is open to question whether such complexities are, at this stage, necessary in the House of Lords.

2901. **Lord Neill:** Thank you very much for that assistance. Are there any other questions? I think you have dealt with all the questions we had. Thank you for coming and for your opening statement. We are very grateful.

2902. Good afternoon, Lady Young. You have been kind enough to make a written submission to the Committee dated 5 June and we shall be putting some questions to you about that. The questions will come in the first place from Lord Goodhart, on my left, and from myself, and then from other members of the Committee. Is there anything that you would like to say by way of an update or any further thoughts in light of the public discussion that has been going on?

BARONESS YOUNG OF OLD SCONE

2903. **Baroness Young Of Old Scone:** No. I am happy to answer questions.

2904. **Lord Neill:** If you are quite happy to start with questions, I shall ask my colleague, Lord Goodhart, to begin.

2905. **Lord Goodhart:** Let me start with something that is not on the list of questions. You are a relatively new member of the House of Lords. Indeed, you and I came in at the same time about three years ago. Were you satisfied with the induction process?

2906. **Baroness Young:** Just about. It was quite hard to make sure one did get inducted. One had to fight to get inducted and the number of pieces of paper one was given was quite confusing. The most adequate induction I got was, in fact, from old hands of whom I asked dumb questions. That is fine if one is prepared to ask dumb questions, but I suspect that some people would not be comfortable with that. It also meant that one had to know what questions to ask. I am still learning things about our House by chance because I had not thought to ask the right questions.

2907. **Lord Goodhart:** Do you think that the formal induction process could be improved?

2908. **Baroness Young:** It could, particularly the paper back-up. Bringing all the pieces of paper together into one compendium with an index would be a great help. I know that there are books such as the Companion and various others, but they are not comprehensive. In particular, more guidance on custom and practice, rather than written rules would be useful.

2909. **Lord Goodhart:** It is probably particularly difficult for cross-benchers who do not have the back-up from the Whip's Office that party members have.

2910. **Baroness Young:** Yes, although, strangely enough, the Whip's Office is not always the first port of call. We all have our informal networks and, in particular, the supporters who brought one in are an extremely useful source of information if they have been around the House for a long time, but that is a very unsatisfactory way of getting information.

2911. **Lord Goodhart:** Yes. You have registered three paid interests and one unpaid. Did you have any difficulty in deciding what to put on the Register?

2912. **Baroness Young:** The basis on which I worked was to include everything that could possibly be construed as making me partial about what I said and when I said it. That meant anything where there was an issue of bias or potential interest. The most important point for me was to leave no doubt in anybody's mind about where I was coming from.

2913. **Lord Goodhart:** Did you ask anyone for advice about what to register?

2914. **Baroness Young:** No, but subsequently, there was a useful discussion held by the Labour group within the Lords on registration of interests. It was only then that I realised there was so much disparity in the way that people had registered. For example, others, not just ministers, were regularly submitting details of hospitality and gifts to the Registrar, who then placed them on the file. I have not done that so far, and I feel uneasy if others are doing more than me, even though it is not required. That is why I believe that it is in everyone's interest to have a common standard operating, rather than the degree of discretion that is currently allowed.

2915. **Lord Goodhart:** Did you consult the Registrar about registration?

2916. **Baroness Young:** No. The things I registered were pretty straightforward.

2917. **Lord Goodhart:** In your submission, you say that the principles underlying the rules regulating conduct should be the same in both Houses. Professor Oliver told us that the underlying principle should be that members of both Houses, exercising their parliamentary functions, should make their own independent judgement of public interest as they see it. What do you think of that formulation?

2918. **Baroness Young:** The point about independence and the public interest covers a couple of useful principles: first, that people are independent and; second, that the touchstone for what they do is the public good. There is a third fundamental principle, that of transparency. The idea that, somehow, we are all good men and true, who will do the right thing, but do not need to reassure people that we are doing it, probably does not fit well with modern times. Not only do we have to be good, but we have to be able to demonstrate it.

2919. **Lord Goodhart:** To follow that up, it has been suggested that what really matters is declaration. That is more important than registration. Do you agree with that?

2920. **Baroness Young:** No. Registration and declaration should be on an equal footing. There are a number of problems with declaration. It gives nobody any advance notice of where one is coming from. It may be that, after a number of years, we are all so well known that everyone knows our interests. But it is useful to have a public record so that people can judge at times other than when we are standing on our feet, because we take part in a range of activities that do not involve formally recorded speeches. Also, if you have six minutes of a time-limited debate and have to go through a long declaration of interest, particularly if you are to declare, not only your paid and unpaid semi-permanent interests, but also, for example, visits or hospitality, it would become unworkable. It is a bit boring having to make a declaration on every occasion one stands up. In our Select Committee, we simply write our interests down, and that is circulated in advance to the witnesses so that they are aware of them beforehand, rather than restating them on every occasion.

2921. **Lord Goodhart:** Do you believe that the third category of registration should be mandatory?

2922. **Baroness Young:** Consistency is important for transparency and, therefore, there should be guidance on what should be registered and what need not be. The third category is important because, although it is less crucial than the first two, it gives a more rounded picture of peers' interests and allows people to put their statements into context. I would be in favour of wider registration than at present and of a common standard, so that there is no room for doubt.

2923. I find the discretionary nature of Category 3 unsatisfactory. Nobody knows from reading the Register whether one has nothing to disclose, chosen to exercise one's discretion not to disclose, forgotten to register or misunderstood the principles of registering. The basis of what should be 'in' and what should not is unclear, and the standard between different peers is very variable because it is entirely discretionary. I would be in favour of a common mandatory standard that was considerably wider than at present.

2924. **Lord Goodhart:** Would it include only financial interests? Does one look at it in order to find out what financial interests members of the House of Lords have? Would you extend it to cover interests such as membership of the executive committee of a voluntary organisation?

2925. **Baroness Young:** I have thought long and hard about this. Clearly, financial interests are fundamental, but it is probably wise to declare non-financial ones as well, simply because the issue of transparency is so important in allowing people to understand what informs what we say and what predispositions and interests might shape it. I hope that, for the vast majority of peers, the first principle of independence in the public interest is what guides them. But it is useful to know what the predispositions might be so that one can judge one's colleagues and so that members of the public can judge what is said.

2926. **Lord Goodhart:** It has been suggested to us that, for members of the House of Lords, in many cases, the registration of voluntary, non-financial interests serves the purpose of showing 'what a big fish I am in this pond'.

2927. **Baroness Young:** I hope not. A few might see it like that, but for me, it is to do with upholding the principle of transparency.

2928. **Lord Goodhart:** What about the interests of other members of the family or household? How far, if at all, should they be registered?

2929. **Baroness Young:** Where there are pecuniary interests, they should be registered.

2930. **Lord Goodhart:** How far would you go with that? Would it apply merely to one's spouse or partner, or extend, for example, to adult children?

2931. **Baroness Young:** I have not thought this through in any great detail. I am sure that there are other standards elsewhere - for instance in company law - that might be useful. It seems to me that we ought to use simple precedents from other walks of life that have validity and appear to work, rather than invent our own. I am anxious that whatever we end up with makes us look like normal human beings, operating to the same standards of probity as the rest of the world.

2932. **Lord Goodhart:** Declaring the interests of adult children who are independent could be quite intrusive.

2933. **Baroness Young:** Yes, though I must confess that, in my BBC declaration of interests, I say that my brother is also involved with the BBC.

2934. **Lord Goodhart:** Yes. Should disclosure of financial interests extend to levels of income? For instance, should solicitors be required to disclose the income they derive from their firm?

2935. **Baroness Young:** I do not feel that disclosure of levels of income is necessary. When I look at my colleagues in the House of Lords, I come to the conclusion that what would seem very small sums to some members would be a major contribution to survival for others. Therefore, disclosing levels of income does not mean much. If one is extremely well-off from a variety of incomes, small sums from this and that do not make much odds. If one is extremely poor and gluing together bits and pieces to keep one going, small sums make a big difference. If one is earning a living in a sphere of activity well outside the Lords, although there may have to be registration and declaration, to have to declare one's income from each source is probably more intrusive. I suspect that, for most public and private activities, the sums involved will already be in the public domain. That is true, certainly, for all public bodies and for most public limited companies, if one is a director.

2936. **Lord Goodhart:** What about receipt of gifts and hospitality? The proposed House of Commons level is 0.5 per cent of parliamentary annual salary, which means that one would have to declare anything above about £235. Is that going beyond what is reasonable for the House of Lords?

2937. **Baroness Young:** I am not sure. Gifts and hospitality ought to be declared, and it would probably be convenient to use the same level as the Commons. The difficulty for a House consisting of people earning their living elsewhere lies in when to define gifts or hospitality as being connected with Lords activities, rather than one's other activities. For example, I have just come back from a visit to the Czech Republic for my PLC, but while I was there, wearing my environment hat, I also met some people and no doubt, at some stage, I shall say something about the Czech Republic's environment programme. It is difficult to know whether that should be declared or not. Thought has to be given to defining how close the link with parliament needs to be before such a declaration takes place and whether when one is given gifts or hospitality or invited to travel abroad as a parliamentarian that ought to be declared.

2938. **Lord Goodhart:** We have heard suggestions that, if members of the House of Lords were required to enter financial interests on the Register, some of them might stop participating or take leave of absence, and that some potential members might not be willing to accept nomination. How would you assess that risk?

2939. **Baroness Young:** There is loose talk in that area. People humph and mutter. I think that such statements are pretty outrageous; we are public servants and people expect us to be able to demonstrate our standards, as opposed to taking them on trust. My response to that would be, "If you can't stand the heat, get out of the kitchen".

2940. We cannot rail against the press and others for picking the scabs off to find out what is underneath if we do not go the extra mile to give reasonable information that enables people to make a judgement about our impartiality and probity.

2941. **Lord Goodhart:** Finally, what about the rule that, if you are a parliamentary consultant to a company or sector organisation, you cannot speak on their behalf in the House of Lords? Do you regard that as reasonable?

2942. **Baroness Young:** The rule about paid parliamentary consultancy is reasonable. There is a very direct connection when you are saying "I will assist you in your parliamentary relations by helping you to understand", or whatever. That is too close for comfort, unless there is a stringent rule about not speaking in such circumstances.
A line needs to be drawn between that and being able to speak or initiate business on something in which you have expertise. I have heard it said that we could otherwise end up with a House where the only people who are allowed to speak are those who do not know anything about it. However, the parliamentary consultancy issue is so particular and direct that it ought to be a reason for people not speaking.

2943. **Lord Goodhart:** What about those who are employed by public relations firms with many clients? At the moment, they are prohibited from speaking on issues to do with clients for whom they act, but not for other clients of the company. Is that the right balance?

2944. **Baroness Young:** Yes, probably. Where people are paid for advocacy on behalf of an organisation, those relationships need to be in a separate category.

2945. **Lord Goodhart:** One of our witnesses, who is a member of the House of Lords, is employed by a public relations

company. He has some clients whom he does not advise on parliamentary business. Should he be entitled to speak on issues that affect them, or should he be excluded from speaking on any business relating to any client?

2946. **Baroness Young:** It is difficult to see how one would distinguish between them. For example, if he were working on issues connected with corporate image not involving parliamentary relations, although I would see the line coming between those two, whether you could police that effectively would be another matter.

2947. **Lord Goodhart:** At the other end of the spectrum, we have had evidence from an organisation of professional lobbyists suggesting that nobody who is employed by a multi-client public relations firm should be entitled to speak on issues involving any clients, even those with whom they are not involved.

2948. **Baroness Young:** That depends on whether they are employed by virtue of being a parliamentarian or, for example, as a public affairs specialist. That applies, not simply to people with those sorts of contract, but even to people associated with public bodies. It also depends on the nature of the debate. For instance, I would never speak in a debate about English Nature. I find it difficult to avoid talking about the BBC in debates about public service broadcasting, but I have to walk that line, because I do not consider that it is appropriate for me to talk about either of those two organisations with which I am associated. Similarly, with my PLC board hat on, I could not legitimately talk about Anglian Water. I can talk about the water industry, but the dividing line for me is whether the debate is about the issues in general or about the particular organisation. The difficulty in all of this is how you establish a clear set of principles and framework that is intelligible to the outside world. In the spirit of transparency, it is important that the general public understand the rules. It is also important, for members of the House, that there is not too much fine-grain judgement required as to what comes on each side of the fence.

2949. **Lord Goodhart:** Thank you very much.

2950. **Lord Neill:** Could I just take you back to your particular interests, which you mentioned just now. Take English Nature: is there any - and if so, what - inhibition on you speaking or initiating a debate over an issue about which you feel passionate, but which could be of direct relevance to your interest? Do you feel inhibited in any way from joining in or initiating a debate or asking a question?

2951. **Baroness Young:** Where the issue is a general one, I would not feel inhibited from either raising or speaking on it. For example, if the issue of sustainable development came up, or some broad environmental issue in which English Nature had an interest along with many other people, I would have no qualms. If the issue was whether English Nature should survive or be done away, I would find it difficult to speak because that would be seen as special pleading and ought to be, to some extent, discounted.

2952. **Lord Neill:** Is it not the intention of the declaration to show either that you are particularly well qualified to speak, in whatever the field is, or to allow other members to make a discount about what you say?

2953. **Baroness Young:** That works well where the topic is generally associated with the issues with which English Nature or the BBC are involved, but not if it is about the organisation itself. I shall find it difficult this week when we discuss the Countryside and Rights of Way Bill, which delivers a package of new legislative tools to English Nature. I have to decide how to move forward on that. The Addison Rules are extremely helpful, but possibly too helpful. They are very wide in their application and they seem aimed more at protecting public bodies from ministerial interference and, to some extent, protecting ministers from embarrassment at somebody else standing up and stealing their thunder or knowing more than they do, rather than helping with the issue of conflict of interest or bias.

2954. **Lord Neill:** One can read them in all sorts of ways. One interpretation is as a protective shield to prevent an individual member from being held accountable in the House for something that is a ministerial responsibility. Have you read them in that sense?

2955. **Baroness Young:** I try to read them as widely as possible because they are my only salvation on these issues.

2956. **Lord Neill:** Can I ask you to address an argument that many witnesses have put to us. A general point, put with a good deal of apparent force, is the old argument of "If it ain't broke, why fix it?" They say to us, "You said in your issues paper that no scandal or sleaze has come to your attention. We might add to that that there is no media interest and no public interest. Why are you getting into this field at all? Leave well alone". How do we address that point of view?

2957. **Baroness Young:** I am a great believer in shutting stable doors before horses bolt. The fact that we have not had a scandal or that the media have not gone in for it is, I suspect, pure luck. I do not believe that going down the sort of route I describe in my evidence is a major imposition. They are already declaring many of these things in other walks of life and the

public would quite easily misunderstand why there is a difference between the standards we expect for the Commons and the Lords. The House is changing fast and there are many new entrants. It is quite confusing for them because there is no clarity about what is expected. Too much is left to discretion and in the interests of moving forward through the transition of the House to whatever, it is important to have a better framework than at present.

2958. **Lord Neill:** When you say that, I take it you would not recommend that the Lords should go straight down the Commons route?

2959. **Baroness Young:** No. The Commons route is complex and detailed, but the fundamental for me would be a broader register that was mandatory rather than discretionary and some guidelines about when it is or is not appropriate to speak, perhaps even with some examples. There should be a strong admonition towards disclosure, even if it is in shorthand and merely restates what is on the register, because disclosure does not always happen. There was an example last week of several members of the House speaking on an issue where I thought it would have been appropriate for them to disclose, but they did not. I have taken part in debates when I have been outraged by people taking strong positions without disclosing the basis on which they did so. We ought to adopt clear principles and guidance and perhaps even a code of practice. I would not be against the idea of a code of practice.

2960. **Lord Neill:** What about enforcement - somebody to give advice on what should be registered and to say "You appear not to have registered." or "It has been drawn to my attention that you have not registered this."? What sort of officer would you favour? Would you want a clerk as with the present system or would you want a new official to be appointed?

2961. **Baroness Young:** I do not have any strong views about who might do it, providing that they were not left in a position where they had to exercise too much discretion. At the moment it is slightly unsatisfactory that Mr Vallance White is placed in a position where he has to negotiate or discuss with peers what goes on and what goes off and also in the case of those peers who submit information on a rolling basis about hospitality and gifts, how that should be presented. He is in an impossible position at the moment. A peer can ask for something to appear which in some cases will be a huge amount and in others next to nothing. He walks a delicate tightrope, negotiating with each of us on an individual basis what should go on the public Register. Information lodged on the file for use on some future occasion if there is ever a dispute is not satisfactory because the public are not aware of the file and it is not in the public domain on a regular basis, although people can consult it.

2962. I do not much mind who keeps the Register and gives the advice, provided that they, like us, work within a clear framework that the public understand.

2963. **Lord Neill:** Thank you. Are there any other questions?

2964. **Frances Heaton:** Could I ask just one? Did you say that the file, as opposed to the Register, is available to the public if they ask for it?

2965. **Baroness Young:** I am led to understand that should the public ask "Has this member declared anything else that does not appear on the Register?" they could see what has been submitted. It is a mark of its unsatisfactory nature that that is not written down anywhere.

2966. **Frances Heaton:** I knew about the file, but I did not know that it could be available to the public if they ask the right question. Thank you.

2967. **Lord Neill:** Lady Young, thank you very much for coming to give evidence and for writing to us.

2968. **Baroness Young:** I hope it has been helpful.

Official Documents

comments

The Committee on Standards in Public Life

Transcripts of Oral Evidence

Monday 17 July 2000 (Afternoon Session)
Members present:
Lord Neill of Bladen QC (Chairman)

Ann Abraham	Frances Heaton
Sir Clifford Boulton GCB	Rt Hon John MacGregor OBE MP
Sir Anthony Cleaver	Rt Hon Lord Shore of Stepney
Lord Goodhart QC	Sir William Utting CB

Witnesses:

Rt Hon Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords; and the
Rt Hon Lord Williams of Mostyn QC, Attorney General and Deputy Leader of the House of Lords
Lord Simon of Highbury
Rt Hon Earl Ferrers
Rt Hon Lord Biffen
Lord Bishop of Portsmouth, Rt Rev Dr Kenneth Stevenson

2969. **Lord Neill:** I will start with the normal opening statement that I make at the beginning of each session for the record, saying who will be participating.

This afternoon, we start with the Leader of the House of Lords, the Rt Hon Baroness Jay of Paddington. With her is the Attorney General, the Rt Hon Lord Williams of Mostyn QC.

Baroness Jay has held her current post since 1998. She was created a Labour life peer in 1992, and she was an Opposition spokesman in the House of Lords from 1995 to 1997. She is a Member of the House of Lords Procedure Committee and the Committee for Privileges.

Lord Williams has been Attorney General since 1999. A Queen's Counsel, he was a Member of the Bar Council from 1986 to 1992 and its chairman in 1992. He was created a life peer in that year and was a Minister in the Home Office from 1997 to 1999.

The following witness will be Lord Simon of Highbury, a Labour life peer created in 1997. Lord Simon held a number of senior posts in the oil industry and became chairman of BP in 1995. Two years later he became Minister of State at the Treasury and the Department of Trade and Industry, a position he held until 1999.

Then we shall be hearing from the Rt Hon Earl Ferrers, who is an elected Conservative hereditary peer. He held a number of ministerial posts in previous governments and has acted both as Deputy Leader of the Opposition in the House of Lords in 1996-97 and Deputy Leader of the House of Lords from 1979 to 1983 and from 1988 to 1997.

Then we shall hear from the Rt Hon Lord Biffen, who was created a Conservative life peer in 1997. He was a Member of Parliament from 1961 to 1987, holding a number of senior ministerial posts. Between 1982 and 1987 he was Leader of the House of Commons.

The final witness in this series of public hearings will be the Bishop of Portsmouth, the Rt Reverend Dr Kenneth Stevenson. He has been Bishop of Portsmouth since 1995 and a Member of the House of Lords since last year.

2970. Baroness Jay and Lord Williams, thank you both very much for attending and assisting us. Baroness Jay, I understand you have an opening statement which was circulated to the Committee. It is very brief. I wonder whether you would like to read it into the record?

RT HON BARONESS JAY OF PADDINGTON AND THE RT HON LORD WILLIAMS OF MOSTYN QC

2971. **Rt Hon Baroness Jay of Paddington (Lord Privy Seal and Leader of the House of Lords):** Thank you very much, Lord Neill. I will certainly read it into the record. May I say on my behalf how grateful we are for this opportunity to appear before the Committee. As you know, we very much welcomed the inquiry. I would just emphasise - and this is made clear in my opening remarks - that we are speaking on behalf of the Government Ministers in the House of Lords, not on behalf of Labour peers as a whole. In that capacity, Lord Williams is Deputy Leader of the House and that is the point of his being with me this afternoon.

2972. **Lord Neill:** Thank you very much, Baroness Jay.
The way that we intend to proceed is that I will ask some questions. I shall be followed by Sir Anthony Cleaver and then other members of the Committee will come in with their own independent questions.

2973. A question arises out of the first sentence of what you have just said: that you are speaking on behalf of the Government and not on behalf of the entire group of Labour peers. This will betray my ignorance. We had a submission from the Association of Conservative Peers.
Is there a similar body in the House of Lords from whom we might have heard?

2974. **Baroness Jay:** Not formally constituted in that way. All peers who are members of the Labour group are members of the Parliamentary Labour Party, which extends across both Houses. We only have a very informal arrangement. For example, members of the Labour peers group meet together every Thursday afternoon, often only to consider business and to have practical housekeeping matters of that kind. It is quite difficult, particularly in the light of what you will understand to be a very predominant feeling in the House of Lords that everybody acts as an individual and that self regulation is the word of the day, to say that one has a collective view from the Labour peers as such. On the other hand, in relation to your particular inquiry, we have had meetings of that group in which I would say that, in general, the views
that Government Ministers have portrayed as being theirs (because we have formally taken decisions) would have been reflected by the group. But I would not want it to be thought that I was, as it were, speaking for every one of them.

2975. **Lord Neill:** I understand that. It is difficult to generalise. We have had views on the rights and wrongs of particular issues across the House on all sides, but there probably tends to be a prominent view coming from the Conservative side, as you will be aware from the debate we had, that the inquiry is unnecessary, and - perhaps more particularly - the argument that "if it ain't broke, don't fix it". Let me put that point to you as a question. It was repeated by one witness this morning: there is no sleaze, no public scandal, no intense media interest in the conduct of Members of the House of Lords, simply because it is perceived that there is nothing wrong. People are not writing to us about it. Could you just address that?

2976. **Baroness Jay:** If I may, I should like to ask Lord Williams to make a comment on this. My position on that rather easy sentence "If it ain't broke, don't fix it" is that it is always the one that stands against any form of reform.
I do not believe that "It ain't broke" necessarily means the same as "It cannot be improved", and the position of the Labour peers in general, and very strongly of the Ministers on Labour Front Bench in the House of Lords, is that this is not a witch hunt or any attempt to expose corruption; that is not what we are trying to do. What we are trying to do is to get a more transparent and more precise system in operation to enable people as individuals to feel more comfortable with their own situation and therefore not remotely exposed to any potential criticism that might arise.

2977. **Lord Neill:** Lord Williams, would you like to add to that?

2978. **Rt Hon Lord Williams of Mostyn QC (Attorney General and Deputy Leader of the House of Lords):** Thank you. I would say that we do not know whether it is broken or not. It was not thought that the Commons was a splintered system until The Sunday Times carried out its own investigations and discovered apparently that Members in the Commons were willing to ask questions for £2,000 a go. We take a fairly brutalist view, I believe, which is that membership is a privilege. It has co-relative duties. We believe that openness is much better, both from the public point of view and from the point of view of Members, and we feel quite strongly that to have this disciplined structure is helpful for us as individuals because it constantly acts as a reminder that something one might have overlooked, might genuinely have forgotten or regarded perhaps as of no particular central relevance, is drawn to one's attention and one has to say to oneself, "Ought I to be declaring this?" It is a very useful structure.

2979. **Baroness Jay:** I have been interested, obviously, to read some of the previous evidence that has been given to you, Lord Neill. It is instructive that there have been so many people who have appeared before you, some of them very experienced and senior peers, who have revealed that kind of confusion and lack of clarity about the present system. May I read to you one point which vividly brought this across to me, which is something that Lord Plant said to you when he was discussing whether he should take a view about declaring a grant from a particular charitable foundation. He said that he approached the Clerk who was responsible for this:

> "We had an interesting and polite conversation. I did not convince him that I should register it. He did not convince me that I should not. So I registered it. It seems to me, however, a mistake that the criteria are sufficiently broad to allow something that seemed so obvious to me to be a matter of interpretation."

To repeat that point, it is about clarity and a sense of self protection almost against the possibility of inadvertence leading to potential realistic criticism that we are concerned to see the system made more clear and, I believe, mandatory.

2980. **Lord Neill:** Another sort of philosophical divide that has appeared in the evidence is that quite a number of witnesses have said that the declaration is what really matters: you stand on your feet and you make a declaration as to what your interests are. At that very moment the listening peers know where you are coming from, and that is a critically important purpose. Less important for those who advocate this point of view is the register. I have put this point to a number of witnesses and I invite your comments. The declaration is internal, within the House, at the moment. The register is there for all to see and is addressed to a different audience.

2981. **Baroness Jay:** Personally, I believe we need both. That would be the position of the Government Ministers, that we need both to continue and possibly even to tighten up, without becoming laborious about it. If one is asking a question during Oral Questions, the difficulty of declaring a relevant interest which may be quite detailed will hold up proceedings and be an irritant to those who are listening, but one of our concerns that both our Ministers and our back-benchers have is that there is not that clarity. We are back to 'transparency' and 'clarity'. Even in Committee work peers are not altogether sure of precisely the background from which individuals speak. That is not to say that they should not speak or that the authority that may be drawn from their outside interests should be ignored, but that there is not that clarity if they are not in the register.

2982. **Lord Williams:** We do not believe that the two are alternatives. Both are necessary. To follow up on Baroness Jay's point, when one is asking oral supplementary questions it is quite difficult to foresee that one ought to declare. In any event, in my experience a declaration that is made orally in the Chamber tends to be bland and general and it should be supplemented by the opportunity to look up the written mandatory declaration.

2983. **Baroness Jay:** The point is that in the speed of debate or the speed of Question Time it is quite legitimate to assume that somebody's interests may not be in the forefront of their mind, but that does not mean that it is not relevant to the debate.

2984. **Lord Neill:** In the whole of the discussion that we have been having in these hearings the same facts have been stated by both sides with entirely different consequences drawn from them. One that has repeatedly been drawn to our attention is that Members of the House of Lords are unpaid, therefore they have to have outside employment. One school of thought deduces from that that one should therefore not be too hard on them, one should not have an oppressive register or embarrass them. The counter-argument is that the public are entitled to know what these outside interests are. Members of the House of Lords are not accountable, they cannot be turned out by their constituents; they can never be turned out. That is all the more reason for a public declaration and a register.

2985. **Baroness Jay:** You will not be surprised to hear that I support the second interpretation. Indeed, I believe that it is not simply that the public should be aware. Of course the public should be aware, but so should other Members of the House. The fact that sometimes during the course of debate it is not clear precisely in what context people are speaking is what creates the difficulty. People who are Members of an unpaid House will have to have outside interests if they are to survive; they cannot survive on the daily allowance for their expenses. That much is clear. But there should be that clarity. Whether or not one needs to look at the system and the precision with which those things are declared in the context of an unpaid House is something about which we hope you may make helpful recommendations. It is clearly not appropriate to have an entirely transferred read across from some of the things that are done in the House of Commons to an unpaid House.

2986. **Lord Neill:** I was going to ask you about that. Some of the opposition in the House of Lords to making changes along the lines of the House of Commons is - to put it crudely - that there has been overkill. They have 73 paragraphs of guidance as to what should be put on the register and it has become enormously complex and has led to the Parliamentary Commissioner being actively involved in almost a full-time job dealing with various complaints. To complete the adverse picture, the worst case is a kind of tit-for-tat with Members on one side in the House of Commons reporting an allegation to the Commissioner,

which leads to adverse publicity for that party; then there will be a counter-blast a week or so later. We were talking to Mr Robert Sheldon this morning and he thought that all that brings the House into disrepute and is not good for anybody. How does one avoid that, once you start down the road of a mandatory register?

2987. **Baroness Jay:** There is a difference between the kind of transparency and clarity that Lord Williams and I are speaking about within a clear framework, and detailed mechanisms to enable people, beyond what might be common sense judgement, to have to fulfil that. I would agree that one probably needs a lighter touch - if one can use that phrase - in the regulatory system, which is directed 'underneath' the umbrella of the mandatory register. On the other hand, the Ministers in the House of Lords would prefer to see some independent and external lay intervention in the operation of the register because it would not be easy to have internal self regulation on it.

2988. **Lord Neill:** So some form of independence in the sense of a person who could give advice and look into allegations?

2989. **Baroness Jay:** Yes. That is again something on which the precise read across from the Commons is not necessarily the right one, but some type of independent, lay, external involvement I believe would be important.

2990. **Lord Neill:** Under the Griffiths Committee Report, which was adopted by the House, there is a very high-powered form of investigation with three Law Lords engaged. There is a preliminary sift and then the inquiry
is held at hearings where the majesty of the law is present in a sense.

2991. **Baroness Jay:** The Attorney General may want to comment on the force of that.

2992. **Lord Williams:** I take Mr Sheldon's criticisms because as part of my work I have the record of their proceedings sent to me regularly. It depends on the nature of the framework and the nature of the commissioner.
I do not mean the person. To have three Law Lords investigating seems to me to be absurdly disproportionate. Any commissioner or body ought to be rigorous in saying that if there is tit for tat this is childish and we are not going to let it go any further. Except for the grossest, gravest breaches that one could think of, three Law Lords, with all respect to them, sitting or retired - I do not think it could be sitting ones - are not at all proportionate.

2993. **Baroness Jay:** Proportionality is precisely what we are looking for. One thing that was discussed, although we have not put in any formal evidence on it, was that one could have a Sub-Committee of one of the committees already in existence, advised externally, with some further extended authority in this area. One of the advantages if there has been self regulation is that the authority - for example, the Deregulation and Delegated Powers Scrutiny Committee - is strong, and if there were a committee with equal weight its recommendations would be powerful.

2994. **Lord Neill:** Yes. At the moment the voluntary part of the register, Category 3, is written in terms of any other particulars which Members of the House consider "may affect the public perception of the way in which they discharge their parliamentary duties". Something written like that obviously opens up a huge field of interpretation, and different people in good faith will reach entirely different conclusions as to what the public would be interested in knowing. When you say you are in favour of a mandatory register, one would have to get away from this concept altogether, would one not, and have something that was not written in terms of perceived public perception for each individual Member of the House?

2995. **Lord Williams:** You would have to have more detail, but equally, as rulings developed, people would be guided by the extended body of rulings. I do not believe one can be entirely prescriptive. One could look at rather more detailed advice than exists at the moment. Going back to your earlier observation that some might not wish to be embarrassed by a declaration, if one were to feel embarrassed by a declaration that would reinforce in my mind that one should be making the declaration.

2996. **Lord Neill:** We have heard some evidence to the effect that some existing peers would feel so strongly about their right to privacy and not to put entries on the register that they would no longer take part, which I suppose would mean getting leave of absence, and possible future candidates for the House of Lords would not be prepared to enter it on this basis. Would you like to comment on those two propositions?

2997. **Lord Williams:** I do not believe that either of us knows of an existing peer who would take that view. There may be one or two, but I would say, with great regret, that they are fundamentally mistaken in their views about what their position requires. It is a privilege. One is a Member of Parliament. I would not find it as embarrassing in the slightest myself and neither would Baroness Jay. If others regard it as embarrassing they should take their bat and go home.

2998. **Baroness Jay:** If I may say so, it is not necessarily a judgement on which I would feel happy personally to comment in general terms, but if you look at the legal reinforcement for the position that was taken earlier this summer about one of our colleagues that his tax affairs should be in the public domain because he was a Member of the House of Lords, I suspect that

the point that you have made has been overtaken by events in the development of life.

2999. **Lord Neill:** Yes. Do you have any guidance for us about sanctions available where transgressions are found to exist? The point has been variously made to us that the powers are rather limited for dealing with malefactors - if one can use such a word. Even suspension appears to be doubtful in view of the terms of the writ of summons, and whether there is a power to fine is debatable. One is really back to naming and shaming. First, am I right? Secondly, is that adequate?

3000. **Baroness Jay:** I am sorry, I interrupted you. May I emphasise what I said at the beginning, that a good deal of this, I believe, is about inadvertence or a failure to understand. I remind you again of what Lord Plant, a senior peer, said about having a disagreement of opinion with a Clerk but taking a particular position himself. I emphasise again that what we are looking for is clarity and transparency because of this honour of being a Member of the Houses of Parliament. In my experience of being in the House of Lords, which is eight or nine years, if any committee of the kind that I have described, one with authority, were to require a peer, for example, to make a public apology on the Floor of the House, that would be regarded as a weighty sanction.

3001. **Lord Williams:** An alternative sanction, of course, is removal of Whip, and we have the power in the Companion to move that a Lord be no longer heard. I understand that that is for the proceedings in question, but if it were a gross breach it seems to me, in principle, that there is no reason why the House should not vote that a noble Lord should not be heard for four weeks, or whatever. One could do it proportionately in that way.

3002. **Lord Neill:** One witness had the revolutionary proposition that the writ of summons might be amended to have some delicate legal words about a proviso - provided always that should the House resolve so-and-so this would be an exception. Is that completely inane?

3003. **Baroness Jay:** That is something about which Lord Williams and I might have slight trepidation, having sat through many hours of debate on the nature and force of the writ of summons during the passage of the House of Lords Act last year. I would not want to response in any instantaneous way.

3004. **Lord Williams:** It is not sacramental; it is quasi-sacramental. If we voted that a noble Lord be no longer heard for a period of time, I believe that would be a pretty stinging reproof in very extreme circumstances.

3005. **Lord Neill:** I have asked too many questions. I shall hand over to Sir Anthony Cleaver, and other members of the Committee will have questions.

3006. **Anthony Cleaver:** You say that Ministers in the Lords already voluntarily declare their interests to the same standard as is required in the House of Commons. I understand that that was a change that took place consciously last year. Can you give us a little background about the thinking then?

3007. **Baroness Jay:** It was really as a result of this kind of discussion within the front-bench group. We were all new Ministers in 1997 and we found that there had been slightly different forms of advice given by Permanent Secretaries in individual Departments to different Ministers about their responsibilities in this area. Again, I come back to my word 'inadvertence'. People with enormous departmental and parliamentary responsibilities did not have this at the forefront of their minds and it was only when we began to discuss it and realised that we needed to take a collective position about our responsibilities that we decided to act in the way that we did. Frankly, that brings me back to my original point, that if we had a clearer and more structured system in which the advice to everybody was pretty obvious, these confusions, even among Government Ministers, would not arise.

3008. **Lord Williams:** Some colleagues were troubled about fine detail, thinking about their pension fund which, apart from their home is probably their largest asset: if they were in a department that was putting out contracts and they knew their pension fund had investments in company 'X', what was the position? People were genuinely worried about whether they were behaving scrupulously and properly.

3009. **Anthony Cleaver:** Fine. What is expected or required of Ministers may be different from what is required of Members of the House in general. You are in favour of a mandatory register, and that is something that a number of us feel might well be beneficial. Would it be satisfactory if there would such a mandatory register but there was no requirement to put in amounts or even bands of income?

3010. **Baroness Jay:** That is again something on which there is a difference between my ministerial colleagues and my back-bench colleagues. I was talking to someone at lunchtime today who had a feeling of concern about the exact references that there might be to her level of income. She is someone who has a highly organised life outside and needs the income. But they would probably not feel so concerned about bands. However, I would not feel comfortable about saying that every peer felt the

same.

3011. One of the places where we would like to see reform - and this is a general feeling - is when people have not returned anything. Could a distinction be made between those who have deliberately said 'nil entry' and those who simply have not put anything in?

3012. **Anthony Cleaver:** That is a clarification that has been suggested and would probably be helpful. Do you think that there should be any exceptions to this mandatory register, if one were to move in that direction? Questions have been raised about the specific position of the Law Lords or the Lords Spiritual.

3013. **Lord Williams:** We do not feel that there should be exceptions. In fact, it is a particularly apt question to be asked about the Law Lords post Pinochet and post the discussion in the Court of Appeal, which was a Court of Five or Seven, if I remember, about judicial interests. The issue about "If it ain't broke, don't fix it" could easily have been asked about the Law Lords and everyone would have pooh-poohed it, yet significant embarrassment to our system was caused in the circumstances of the Pinochet case. I personally would accept no exceptions because I do not regard it as a burden.

3014. **Lord Neill:** Lord Bingham, speaking as a senior Law Lord, said that he would not be asking for any exceptions, Law Lords qua parliamentarians.

3015. **Lord Williams:** I personally believe that that is a great protection for the Law Lords because if one wants to have exceptions there is always the suspicion that there may be something to hide. The openness that Lord Bingham spoke of is a true protection to the Law Lords.

3016. **Anthony Cleaver:** Staying with the register for the moment, what are your views on the possible requirement to include non-financial as well as financial interests? Again, it has been suggested that people who have had a significant role in an NGO, for example, may be just as influenced by that as they would be by financial considerations.

3017. **Baroness Jay:** That is something that needs to be included. Lord Williams made the point about the Pinochet case. That was not related to a pecuniary interest but to involvement with a voluntary organisation which had enormous significance in that area. That is a good example which illustrates the point that those broader issues should be covered.

3018. **Anthony Cleaver:** I understand that there was a proposal from the Leader of the Opposition in the House of Lords that the Government of the day should publish a list of peers who were former special advisers because that also carried with it some influence.

3019. **Baroness Jay:** I would have no difficulty with that. It might need to be slightly retrospective in terms of the previous administration or whatever was relevant. I do not know whether Lord Strathclyde gave you a particular time frame, but I do not think there would be any difficulty with that.

3020. **Anthony Cleaver:** May we now go back to the issue of declaration? Those who are opposed to mandatory registration rest their case heavily on the fact that peers are expected to make a declaration at the start of their statements and therefore that lays out what interests they have and so on. Will you clarify for those of us who are not as familiar as we might be with procedures in the House whether it is a fact that a significant number of occasions involve a limit on the amount of time that people can speak, and therefore having to declare interests in that limited time may be a problem in itself?

3021. **Baroness Jay:** I entirely take your point, and that is the force of what I was saying earlier about Oral Questions where we have to have the right number of questions within 30 minutes. Quite honestly, if one looks at any timed debate it is rare for people to have less than five or six minutes to speak, and simply to be able to say I am a founding Member of the Countryside Alliance, or whatever may be relevant, will only take less than 10 seconds, so I am not altogether sure that I accept the force of that as being a time issue. I come back to the point that I do not believe that people are necessarily deliberately obscuring their relevant interests but they are probably not having them in the forefront of their minds.

3022. **Lord Williams:** We cannot detect the principled distinction between a declaration made in the Chamber and the requirement for mandatory registration.

3023. **Anthony Cleaver:** I understand your inability. One final question is that of induction. It has been suggested that it is perhaps somewhat variable in terms of quality or even quantity. Do you have any views on that?

3024. **Baroness Jay:** I feel strongly about that. It is something that one has to look at very clearly again in terms of the administration of the House. We try as a Government group of ministers and as a political party within the House to help new Members. We have, for example, a system of mentors for individual newcomers so that they are taken through some of the

more arcane practices within the Lords, both on the Floor of the House and in relation to its activities in general. May I emphasise once more the point that if there was clarity about declaration of interests and about the type of things that could be covered or not covered, particularly in the voluntary area of the register, it would be much easier for the mentor or the Whip or the House authorities to be able to give a new peer a piece of paper saying this is what you have to do. As Gareth said earlier, that would be a very consistent jog to the memory or to the idea of what one was doing, which would aid the practical facility and - the bottom line - be a protection to the individual involved. I am aware of a case at the moment of a back-bench peer on my side who feels that he has been rather exposed in another activity in which he is involved because his interests were not properly covered in the House of Lords voluntary register (because of an error by the Registrar), and this has been noticed by a local newspaper.

3025. **Anthony Cleaver:** Thank you very much.

3026. **Clifford Boulton:** May I follow up the reference that Baroness Jay made to the recent case in which a judge took an opportunity to say that a peer was in public life and therefore there were various consequences. The case was about an application for an injunction to stop publication of facts obtained by a newspaper about a peer. The judgment, as I understand it, was not intended to place a moral obligation on all peers to declare their tax affairs.

3027. **Baroness Jay:** No, certainly not. I am sorry, I must have mis-spoken if I gave that impression. I certainly did not mean that. In response to Lord Neill's question that people might be deterred from taking up a peerage or might feel they wished to resign from the House of Lords because of the unwelcome spotlight that might be placed on their affairs because of a mandatory register or other systems operating, I simply meant that in that particular instance, as I read the judgment - I was not present - it was the fact that this individual was a Member of the House of Lords and therefore in public life that was regarded as the defining point: that membership of the House of Lords was not a protection, were one to be in that position.

3028. **Clifford Boulton:** There was just some loose comment at the time of the judgment that seemed to need some clarification.

3029. **Baroness Jay:** I certainly did not want to add to that. I was simply saying that there were other things that might deter people from wishing to be a Member of the House of Lords in relation to their financial interests, and
I did not believe that the possibility of there being a mandatory register was the most significant.

3030. **Clifford Boulton:** Returning to the question of the registration of Ministers' interests, I sympathise with your point of view that it is not satisfactory to have these details finding their way to the bottom of Mr Vallance White's drawer, where either they are known about or people are almost encouraged to go on treasure hunts to find out what might be there. I understand the reluctance to include what might be regarded as very full or over-full registration of Ministers' details because that could be taken as casting some reflection on back-bench peers for not putting in so much when the requirements are quite separate. I know that one of Lord Griffiths's anxieties was not to overload the register so far as back-benchers were concerned. Do you think that that might make the case for a new category, Category 4, of Ministers, who could then be shown to have different rules applying to them, that they were seeking to reveal all equally to the public as well?

3031. **Baroness Jay:** That is a very sensible and practical possibility. Ministers probably find it rather ludicrous sometimes to 'over' register. I remember having a letter from a colleague saying that he was going to adopt this practice and he looked forward to declaring his first bouquet, which is something that I did customarily because I was often given rather expensive plants and flowers. Obviously, you can reach rather daft levels if you pursue this, but what we are concerned to do - and I come back to the issue of self protection and inadvertence - is to be over-proper in a situation where we do not feel that we have very clear and precise guidelines. Therefore if you as a Committee were to make a recommendation - I have already mentioned that it has been reported that you have suggested a higher limit of value for gifts to people - that might be helpful in terms of giving clarity about those positions.

3032. **Clifford Boulton:** You would no longer need to keep in line with the other peers because everyone would know this was what the Government internally felt ought to be known about. Perhaps that makes the case for not having quite such detailed declarations for ministers about small gifts. Once you are wanting to reveal all, should you not put the whole lot in? Although I know the register is only published occasionally, the current version is available on the Internet, and might it not be a simpler rule-

3033. **Baroness Jay:** - to say put everything in? I echo what Gareth said a few minutes ago. I am absolutely happy to put in everything - the bouquets of flowers or whatever it may be. I prefer that position rather than to try to do complicated calculations about whether in my or the registrar's judgement this was a legitimate thing to accept and was below some guideline. I am merely saying that in general it would be helpful if this Committee were to recommend a more structured framework that gave clear guidelines.

3034. **Clifford Boulton:** But to make it clear, there is no sensible read across between current Category 3 and what might be the new category?

3035. **Baroness Jay:** I believe that is right.

3036. **Lord Shore:** You have been very clear about the desirability of a compulsory register. We have had quite a lot of witnesses who have not all accepted that principle even of compulsory register but who have certainly expressed great anxiety that the register should not be intrusive. Have you any general thoughts about what could be described as the necessary minimum requirements as distinct from what might be called almost the competitive exposure?

3037. **Baroness Jay:** I simply come back to the point that both Gareth Williams and I have made several times this afternoon. If you have nothing to put behind you or to be concerned about, the level of transparency simply becomes an administrative burden or not - if you see what I mean. That is where we would seek the guidance of a committee such as this one on the question of the administration, to say whether this in a non-salaried House was something that was appropriate and proportionate. I have no objection in principle to having what could be described as an intrusive - or, if you flipped the coin, could be described as a comprehensive - register.

3038. **Lord Williams:** One has to look at the duty owed to the public. As it happens, my wife is an employed barrister who works for a company, so I declared it to the Permanent Secretary because there might be a conflict. It is very unlikely, but I prefer to declare it. It is a reminder to me, and it is known to the public, about any decision I might make.

3039. **Lord Shore:** I understand that. We have, though, had quite a lot of expressed anxieties from people who have been in touch with the Commons about the requirements there which are thought to have grown, like Topsy, and a huge advisory code has developed from a few fairly sensible principles. If you have any thoughts about that it would be useful for us.

3040. **Baroness Jay:** Neither Gareth Williams nor I have been Members of the Commons, therefore we feel slightly uneasy about drawing any judgements on that, but I suspect that it is back to the point that I made in reply to Lord Neill and Sir Clifford that you cannot have a direct read across and there may be ways in which we, if we were 'to go second', could learn something about the administration of a register from the Commons. Of course, we would have to apply it always in the context of a non-salaried House. Some of the arrangements that emerged even from your most recent recommendations about the value of properties against the salary base and so on, and about some of the things related to the constituency would obviously be inappropriate and we would have to draw up a completely different framework from first principles. However, it is the first principles that we feel are applicable and should be applied to both Houses of Parliament.

3041. **Lord Shore:** Thank you.

3042. **Lord Goodhart:** On the declaration of interests, I have the impression that you have been suggesting that the declaration of interest during a debate and the entry in the register should be broadly saying the same thing at different times and perhaps to different audiences. Is there not, in fact, rather a different role for them? The declaration of interests in particular has to be much more tailored to the subject of the debate. I have in mind the Countryside Bill where, for example, one would expect a large landowner to register that fact in the register, but he would not register the fact that a couple of thousand acres of that was moorland. When it came to the debate on the Countryside Bill, of course, one would expect that to be declared.

3043. **Lord Williams:** It depends on the circumstances, we believe. The declaration in the Chamber is generally quite bland and very general, non-specific - "I am the director of a company in the cement industry", or whatever. We see that as a reminder to the individual, but as a reminder to those who wish to know, that there is the opportunity of looking in the register to see exactly what this interest is. Some interests are almost trivial. I was a trustee of the NSPCC, I always declared it. There was no remuneration nor any suggestion that there could be. You would not get any further benefit from looking at the register in my case because it simply said 'Trustee unpaid'. Had I been paid it would have made a difference.

3044. **Lord Goodhart:** But is it not the case, when you look at the Countryside Bill, that the declaration ought to be more specific than the entry in the register, because you would not expect an entry in the register by a landowner to identify whether it is arable or pasture or moorland or whatever.

3045. **Baroness Jay:** If we pursue that and you think of the conventions - either capital or small 'c' - that there are in the House about a direct pecuniary interest shared by few others, as it were, if you were the owner of a large piece of moorland which brought you in a substantial income from leasing for grouse shooting or whatever, it seems to me that that would be something that you should declare, and you should certainly, in my view, in that case not take part in that debate, which would not prevent you from having a wider authoritative contribution to make. I do not know how many people in this country who would derive

an income from that sort of activity and you were one of them, it could be described as a pecuniary interest, not shared by many, and that would be something that could preclude your involvement on that issue.

3046. **Lord Goodhart:** I do not wish to be derogatory at all, but given that that Bill is targeted at them, is there not a feeling that they should be entitled to speak in their own defence?

3047. **Baroness Jay:** I probably went too far in saying that they should not be allowed to speak, but they should at least make clear that this is not just a broad, general interest in the countryside - and we are perhaps pursuing this example too far - but it is something from which they derive an income because of this particular interest in this activity.

3048. **Lord Goodhart:** I have one other, different point to raise, on the question of the supervision of the register. You were suggesting that a Sub-Committee might be set up to handle all but the most serious cases of allegations of breach of the rules. Is there a case for saying that a Sub-Committee of this kind would be an appropriate body to take a decision and impose a penalty of whatever kind but would have some difficulty in itself carrying out the investigation?

3049. **Baroness Jay:** I am sorry, there may have been a lack of clarity there. I would agree with you, and that is why I referred to the independent, lay involvement in the first part of the procedure. As Gareth Williams said, whether it is somebody who has the full powers that the present Commissioner has in the House of Commons is something that is open to question because of the different nature of the House, which we have discussed at some length. You need some independent regulation of that kind, although the disciplinary procedure might be invoked by the Sub-Committee of the House.

3050. **Lord Goodhart:** Given that at the moment there is no reason to believe that there would be a significant number of investigations, do you see somebody having a permanent role as the investigator or whatever you call it, or would it be sufficient for the Sub-Committee to have a power to appoint somebody ad hoc to carry out in investigation if and when the need for one arose?

3051. **Lord Williams:** The ad hoc procedure is a good idea, needing to be reviewed, say, after 12 or 18 months to see what the workload was. One would get the benefit then of experience to decide on whether one needed a full-time commissioner. Going back to your earlier point about a dual role, the Professional Conduct Committee of the Bar Council has exactly that, and it works well.

3052. **Lord Neill:** Arising out of Lord Goodhart's question, the possibility has occurred to me that in the early stages one might have one of the existing Clerks in Parliament, under the guidance of the chairman of the Committee, as was, for example, Lord Griffiths for some time - when disputed matters arose or there was a complaint, that could be dealt with by the Clerk. Is that inconceivable?
I am just probing your independence notions.

3053. **Baroness Jay:** I do not think it is inconceivable for ease of administration and, as Gareth Williams has said, in the first year one might be dealing with a very small workload, or it might always be a small workload. However, in principle, my instinct would be to prefer someone who was independent of the House of Lords.

3054. **Lord Williams:** It is invidious, I believe, to the Clerk, because we all find that the Clerks are friendly and helpful to all of us. It would put both the Clerk and the person complained against in a very invidious position indeed and that is not a fair burden to put on the Clerks or the permanent staff.

3055. **Lord Neill:** That is very helpful. You have answered all the questions we have for you. Thank you very much for coming and for writing the paper and the opening statement.

3056. **Baroness Jay:** May I just say that in the course of our front-bench discussions we asked colleagues to discuss the questions that you circulated in your issues paper and we have a version of their answers to that for circulation if that would be helpful to the Committee.

3057. **Lord Neill:** Thank you.

3058. Good afternoon, Lord Simon. Thank you very much for coming. The procedure which we follow is that a couple of the Committee take the lead, then the others are eagerly waiting with their questions. In your case, I shall ask Sir Clifford Boulton and Ann Abraham to take the lead as questioners. Would you be happy if they start straight in on the questions?

3059. **Clifford Boulton:** Good afternoon, Lord Simon. May I start by asking you to think back to your experience as a new Member of the House. First, how did you become aware of the rules that would apply to you in your new role. Secondly, as a matter of detail, were you always clear about the distinction between Categories 1 and 2 and Category 3 in relation to any

consultation or advisory relationships you had with bodies?

LORD SIMON OF HIGHBURY

3060. **Lord Simon of Highbury:** The sequence of events on appointment to the DTI was that I had a briefing from the Private Office. That was my first induction into what would be necessary as a Minister. I was handed the book on a ministerial code of conduct, which I read in some haste because there were plenty of other things to do in your first week's appearance in a ministry in a new government.

3061. The second issue was to discuss my own financial circumstances as a result of reading the Code of Conduct I had to put my own financial matters in order. That meant that I had an interview and discussion with the Permanent Secretary and we decided what was appropriate for my financial circumstances. Within the first 48 hours also, I was told to go to speak to Black Rod and he passed me on to a very helpful gentleman who told me there was guidance I should read for the Lords as well, so I was given another document to read. Four interviews, therefore - Private Office, Permanent Secretary and Black Rod in the Lords - and two publications basically. I was quite busy at the time. I was not aware of categories but they were probably in the original book that I read. If you ask me now, should I have known about categories, the answer would be honestly no.

3062. **Clifford Boulton:** What I had in my own mind when I asked the question was actual induction as a peer, and you have told me that it all happened at once. You had a double whammy of rules to comprehend. Of course, they are different, and they are for different purposes. It is quite clear that what is required of am ordinary parliamentarian is different from someone who has an executive role in government, and it is quite proper that they should be different. Presumably you agree with that? You do not think that there should be some kind of drawing together of the rules that are required of back-benchers and of Ministers?

3063. **Lord Simon:** No, I do not. I take your point and hold it quite strongly that there should be a different regime for Ministers from the regime for ordinary Members in the House of Lords. I also believe that the regime for Ministers should be common to all Ministers. There is a confusion in that circumstance, because currently as a Minister, on getting my briefing as a Minister from the Civil Service and then reading the Ministerial documentation and finally reading what was available in the Lords, I could have thought that there were two different regimes between a Commons Minister and a Lords Minister. I did not ask at the time, but it looked as if there could be. And I believe that is wrong.
My own conclusions are that all Ministers should have the same regime, but you may well wish to differentiate, because of the different nature of the House of Lords, for ordinary Members of the House - if I may put it that way.

3064. **Clifford Boulton:** Are you aware of anything that the ordinary Member of the House of Lords is expected to register or required to register that a Minister does not register in the Private Office?

3065. **Lord Simon:** As I remember the documentation, having read the ministerial briefing I took it that I should certainly register in the Lords as a Lords Member directorships and consultancies that might affect my actions, but that matters of financial shareholding were discretionary.

3066. **Clifford Boulton:** We have just been discussing with Baroness Jay the possibility of Ministers actually registering the things that they declare in the Private Office but perhaps in a different category of the register so that it was clear that there was a proper distinction between the two. Do you think that that might make it easier for those Ministers who are peers to feel that they are satisfying both aspects of their public life, to publish?

3067. **Lord Simon:** I am pondering quite hard because my experience is that the difficulty with that would be what the outside world believes about your motives in either declaring privately to the Private Office or publicly through the register. It is not really helpful for Ministers to leave too much room for doubt about that, therefore my own judgement would be that it would be wise for Ministers to declare the lot - a transparency regime for ministerial appointment.

3068. **Clifford Boulton:** We are obviously bearing in mind the distinction between the Lords and the Commons, moving away from the Minister's special position, and anxious to suggest, if there is a need to suggest any change at all, something that is effective for its purpose but is not needlessly intrusive, given the different character of many peers. Do you believe it is possible to have a lighter rein, so to speak, applied to the House of Lords so that the register for peers, while perhaps being compulsory, need not be as intrusive as it is for the Commons?

3069. **Lord Simon:** Without detailed knowledge of the Commons system, which I have not lived under and did not study as a matter of interest, I would think it is absolutely possible to discriminate between various levels of transparency. I am sure that would be possible.

3070. **Clifford Boulton:** Lord Griffiths rather suggested that if the details in current Category 3 of the register were too general or too vague, it would be quite useless: it would be no better than being able to look up in Who's Who or something like that, and that one would have to go into some detail in order to get the measure of extent of a peer's interests. Do you think we would be expected to give some guidance about this?

3071. **Lord Simon:** It would be helpful because a voluntary system, as it was when I looked at the documentation in 1997, is not helpful. For 'financial interests' I took shareholdings or trusts to be the things that one should be looking at, and that can be defined. The only thought that I have had privately is that it might be helpful if some financial minima could be established. I put in my note to you that I do not feel it is necessary for ISAs, Tessas and such like to be declared because I find that bureaucratic. It is not as if one is going to trade those shares all the time. However, if you establish a minimum around which level you could take good advice, it would be the right thing for people to declare above a minimum.

3072. **Clifford Boulton:** Even the Commons have a de minimis.

3073. **Lord Simon:** I plead ignorance.

3074. **Clifford Boulton:** I expect that would come up with the rations! Would you be in favour of the same rules applying to everybody? Do you think it would be reasonable to make Category 3 applicable to all Members since it has ceased to be voluntary?

3075. **Lord Simon:** To all Members of Parliament in general?

3076. **Clifford Boulton:** All Members of the House of Lords - it would cease to be voluntary.

3077. **Lord Simon:** It depends on how you establish the criteria for transparency, but my leaning would be towards transparency in all matters, frankly, given the standards required in public life today.

3078. **Clifford Boulton:** So if someone had a 'nil' return they would say 'nil' and that fact would be published; and if they had things to say they would have to be published?

3079. **Lord Simon:** Yes.

3080. **Clifford Boulton:** I will pass you to my colleague.

3081. **Ann Abraham:** Good afternoon, Lord Simon. I am interested in the degree of 'culture shock' that you encountered in the shift from industry to government, and I am sure we all recognise the amount of documents to read on Day One. It is really about the set of values in terms of disclosure of interests, accountability. A number of witnesses have said that in other walks of life, whether industry or local government or the charitable sector, they have been used to declaring a great deal and registering interests, and that the House of Lords demands very little. I wondered what was the degree of change you encountered. Was it very different?

3082. **Lord Simon:** Yes, it is. As a member of the Hampel Committee and the Greenbury Committee, I had been deeply involved for the previous seven or eight years on issues of standards in public life in the private sector and questions of declaration. We have come quite a long way on acceptance in the business community of how directors should declare their income through the business. I was quite surprised to find that the issue of the Lords register was voluntary. I was also quite surprised that the advice that was given was - if I can find the right word - casual about how to approach the documentation and the way to handle it. I felt that possibly it would be wiser to draw lines slightly more clearly and give slightly more formal advice rather than just interview and a casual conversation. Clearly, I had formal advice from the Private Office, but that was about being a Minister and not about what Lords declaration could be, because the Private Office did not know much about the Lords - hardly surprisingly.

3083. **Ann Abraham:** One of the arguments that we have heard over the past couple of weeks against change is that a more stringent regime of disclosure would deter good candidates from accepting peerages. Do you believe that is the real problem?

3084. **Lord Simon:** There is substance to that argument if there is not more clarity and understanding of what values you are trying to protect. It is an unpaid House and people are volunteering, and something that is over-intrusive or over-administered will probably discourage - I cannot say to what extent. Therefore, one needs to think about the nature of the declaration. As I said in a previous answer, my tendency in today's world is towards transparency rather than opacity.

3085. **Ann Abraham:** What sort of mechanisms might we consider that might guard against the deterrent factor that you have described?

3086. **Lord Simon:** If we are talking about financial matters, the minima are important. If people are holding investments in trusts, you should take that at face value and they can say "I hold a trust" and that should be the end of the matter. If you have an equity holding in a single company which is significant, you should declare that. I find 'significant' a difficult word to define, but I am sure that is what you are thinking about as a Committee. There should be fairly simple rules so that people do not have too many doubts. If you are a paid consultant or a paid director of a company, you declare it: that is the regime that I believe most people are used to outside the Lords.

3087. **Ann Abraham:** You talked about work you had done on the Hampel and Greenbury Committees. I want to move on to the idea of a code of conduct and whether you would support a code of conduct that would set down standards of behaviour and values.

3088. **Lord Simon:** My experience of codes of conduct is that if people understood what the values were you would not need to write them, and you have to write them because you want to safeguard certain territory. I am in favour of codes of conduct that define territory but are not bureaucratic - if you understand what I mean by that answer. A code of conduct should give you principles by which you should operate, minimum standards you would like to see applied, but a totally descriptive and certainly prescriptive document is not what is required.

3089. **Ann Abraham:** How would you see those standards as being upheld?

3090. **Lord Simon:** That is a difficult question to answer. If the question is whether you need a police force and the law in its appropriate place to handle a House like the Lords, I would be doubtful whether that is the way to go about it. I happened to listen to the previous discussion about a commissioner, who I suppose would be a court of appeal in that sense rather than a policeman. Yes, I understand that that would be necessary and I listened with great care to what Lord Williams and Baroness Jay said about it and it sounded very sensible. But a strong regime is not necessary.

3091. **Ann Abraham:** So it is proportionality again?

3092. **Lord Simon:** That is a good word and I wish I had thought of it.

3093. **Ann Abraham:** Thank you very much.

3094. **Lord Goodhart:** I have a couple of questions Lord Simon. You said to us a minute ago that you thought significant shareholdings in a single company ought to be disclosed. You have more experience in business than most, probably all, of the witnesses that we have seen before. Would you have any views yourself about what would constitute a significant holding, either in terms of percentage of the share capital market or the market value?

3095. **Lord Simon:** No, I do not. In this sense significance is in the eye of the beholder. The reason why people are declaring is that the world believes that it is right for them to declare. Therefore, the system is being defined by what the outside world requires - if I may say so. If people do not know how to behave they should not be in the House of Lords. I believe that there is a strong self-regulatory capacity for the House, which is why I do not feel strongly about a police force. I believe the House has great capacities, in the little time that I have been there, for understanding how it should behave. On the other hand, the question of what sources of income, what sources of potential danger people are in, is very much to be judged by the outside world. I have given an opinion: I believe it is unnecessary to register Tessas, ISAs and whatever - that gives you some idea of what I believe minimum thresholds would be. But my idea of what is instrumental in a shareholding would be very different from the general public's.

3096. **Lord Goodhart:** There would have to be figures, would there not?

3097. **Lord Simon:** Thresholds.

3098. **Lord Goodhart:** The common thresholds at the moment are 1 per cent of share capital or £25,000 worth nominal value, which is clearly ridiculous and they are thinking of altering that to £25,000 of market value at date of acquisition. Do you have any views on whether those would be appropriate?

3099. **Lord Simon:** One would make you a very rich man in some companies. The latter is probably not important to some of the people who would be making up the register. The relevance of the numbers, if I may say so, is really what the eye of the beholder feels is reasonable. I am not trying to avoid this; but in the answer I just gave you neither of these numbers may mean very much to anyone. That is the problem. I have to say that, and I would not want to give advice. It is a very difficult judgement, but what is good for the Commons and accepted may be good for the Lords.

3100. **Lord Goodhart:** One other point - so far as Ministers are concerned, as I understand it, the requirements for public

disclosure for Ministers currently in both the House of Commons and the House of Lords are the same as for other Members of those Houses. Separate disclosure is made in the Private Office and that
is kept private. Is that publicly acceptable?

3101. **Lord Simon:** No. I put nothing in the Private Office that I would not have put in the register.

3102. **Lord Goodhart:** If it is suggested that there should be different levels of public disclosure for Ministers in the House of Lords from other Members of the House of Lords - and I can see the force of that argument - is that a matter for a decision by the House of Lords or should one say the House of Lords should have one standard applicable to all its Members and any higher levels of disclosure by Ministers should be a matter for a ministerial code of conduct? Do you have any views on that?

3103. **Lord Simon:** I lean towards that latter view that ministerial behaviour should be something of wider significance and therefore should be outside the ruling of the House itself. The House arguably could take care of its own internal matters.

3104. **Frances Heaton:** May I ask you about the ban on paid advocacy and the restrictions on peers who are paid for speaking on topics related to their clients or the company or business by whom they are paid. In some respects those rules are more strict than in the House of Commons and there is clearly a balance to be drawn between those prohibitions and the need for the House of Lords to draw on the expert knowledge of Members. Do you think the balance there is about right or have you seen evidence of people who had knowledge that you would have liked to have heard about but who have not felt able to speak?

3105. **Lord Simon:** I have not been aware of that latter point. I do not feel that the matter of how you speak and who is speaking is governed by the aspect of pecuniary remuneration or interest in the matter. You do not feel that at all. I am only talking about perceptions of what you feel in the House. People stand up and declare an interest, then they speak on, but I do not think that anybody in the House naturally tries to correlate that with what they may have declared or not declared in the register. I just assume that if people stand up and they have an interest, they should jolly well declare it and that is it. One is not aware of the situation that it could be otherwise. I find it strange that somebody says there is a ban for speaking on this, that or the other in the House.
I was not aware of it. I knew that people stood up and declared interests, but I have no feeling that that influences the behaviour of the House. I would be surprised if any rule book would change that.

3106. **Frances Heaton:** We have heard Baroness Young who was on the board of English Nature, and she said that she would not feel able to speak on a topic on English Nature but would be able to speak on wider subjects involving conservation and such like. She clearly saw a tightrope along which she would have to walk.

3107. **Lord Simon:** Yes, but we are arguing about whether the rule book can arbitrate over what people's feelings are of what is the right or wrong thing to do. I am saying that in this instance I was not aware of a rule book having very much effect on the way people behave. People stand up and say, "Look, I'm sorry but before I start I need to tell you that I have an interest in this matter. But I have knowledge of the subject and want to bring it to you" - you have registered that point and you listen with great interest because they often know a great deal about the subject. Where Baroness Young wants to make her line-drawing on that issue is for her. It varies about the House, and all I am saying is that I doubt whether the rule book will change that essentially.

3108. **Ann Abraham:** So it works pretty well?

3109. **Lord Simon:** I believe it works. I am not aware of it not working is the right answer. I just feel that it works well.

3110. **Ann Abraham:** Thank you.

3111. **Lord Neill:** You were talking about a possible code and you said something to the effect that you need to write things down where there is a need to define territory. There was an implication that there may be many instances where you do not need to do so, where it is so well understood what the current position is that you do not need to define any territory. A point that has been put to us very strongly is that the House of Lords has a clear principle embodied in the words that peers speak and act on their honour and, that being thoroughly well understood, you do not need to gloss that by any form of elaboration: any elaboration spoils the principle. That is the argument that has been put. How do you feel about that?

3112. **Lord Simon:** It might be helpful to give people a little background on what is meant by 'honour'. As I said in my previous answer, it is helpful for codes to define territory and remain with principles. However, if you were defining 'honour' under the terms of "it would be dishonourable to speak in this House if you had the following shareholdings and had not declared them" that is one way of measuring what you are meaning by 'honour'. And I believe it is right in the case of shareholdings that one says, "I expect you to declare these above a certain level" because that gives some people some grip of

what you mean by the point of principle. All I am saying is that you cannot bring a code into place on the principle of defining 'honour' right across the board, but you can give people clues to hang on to. They are already in the documentation and they are pretty good ones. However, they should be made a little clearer because they are confusing as they stand. That was my point.

3113. **Lord Neill:** Thank you for clarifying that. You have answered all our questions, Lord Simon. We are grateful to you for coming.

3114. Good afternoon, Lord Ferrers, and thank you very much for coming. I am told you have prepared a statement that you sent to us but, owing to some vicissitude, we have not received it. How would you like to proceed? If it is fairly short, you could read it to us?

RT HON EARL FERRERS

3115. **Rt Hon Earl Ferrers:** No, no, Chairman. Thank you very much indeed for giving me the opportunity. I was going to apologise for the fact that I had not sent it earlier. I hadn't realised it was supposed to be with you a week before. I sent it off on Thursday and, regretfully, it has not arrived. However, I do not think you would find it of particular interest so I am quite happy for you to take it as read.

3116. **Lord Neill:** We are quite happy to take it as read. What we will do is to print it at the beginning of your evidence so it will be on the record. I wondered whether, as we have not read it, there are any major points you would just like to enunciate? Then those who are going to put the questions-which in the first place will be Ann Abraham and Sir William Utting-could know where you are coming from and what the gist of it is?

3117. **Earl Ferrers:** Well, if one were to encapsulate my thoughts, they are that I find it a great pity that it has had to come to pass that there should be somebody over and above members of the House of Commons telling them what to do and what not to do. I have always regarded the Houses of Parliament as the highest authority in the land. It is - and I used the word "pathetic" - that somebody now has to be over the House of Commons telling them what they should and should not do. I would regret that happening in the House of Lords. It is possible to argue that the House of Commons is an elected base and that it is a paid base and therefore we must have these strictures. The House of Lords, of course, is not an elected House. It is not a paid House. It has always worked on the basis that a person's honour is sacrosanct and he gets up and announces his interests and that should be enough.

3118. I just do not like the idea of a register, not only because of the bureaucracy that this involves but also because of people's fear that they might not have put down something they ought to have put down. We saw an example of it today with Mr Blunkett who is now being chased around because he failed to say that he had a house that he had let. I think that is totally irrelevant to a person's business in the House. Therefore, I just hope that your Committee will not suggest that the House of Lords should go down the same route and have to register their interests.

3119. I also said that I thought that the idea that members of the Opposition Front Bench should have to divest themselves of any financial interests is just totally impractical because they have to earn their money. They are not paid. If they would have to get rid of their interests, nobody would take the job on other than the very rich or the very old.

3120. **Lord Neill:** Well, thank you very much. That was a very clear summary. Can we start with Ann Abraham putting some questions?

3121. **Ann Abraham:** Good afternoon. I wanted to start by trying to get the benefit of your very considerable experience in the House. I wondered whether you could tell us about the changes that you have seen over the years, perhaps particularly in the last five years? We have had mixed evidence with some witnesses telling us that things have changed quite dramatically and others who have said that, actually, they have not really changed at all. I just wanted to get your perspective on the degree of change, particularly in recent years in the Lords.

3122. **Earl Ferrers:** There has obviously been very considerable change. There is considerable change over the way that the business is conducted. There is much more of a sense of getting a thing into a bureaucratic phase. There is less of a respect for the House as such and people who come into it do not have quite the natural respect that was held of old.

3123. One of the arguments that I think is a terrible one is that we ought to tighten up the regime because of the new influx of people who have come in the last few years. It is a most appalling slur on the people who have come in: that they are of such doubtful character that we have to alter all the rules. I think that is intolerable.

3124. So there has been much more of a change for the respect of the institutions and, certainly, for the tradition of the House of Lords. Some may say that it is just harping back to the days of pomp and ceremony. It is not. Because a country is built on

tradition people are built on tradition, whether that is good or bad. One is the inheritor of that tradition and the passer-on of it. I think that to denigrate tradition, which has happened to a certain amount in the House of Lords, is a pity.

3125. **Ann Abraham:** Do you have any sense that, externally, public opinion and public expectations have changed over that same period of time, in terms of standards and expectations of behaviour in the House?

3126. **Earl Ferrers:** I do not think so. There is a certain body of people, as there always was, who say that the House of Lords is indefensible as it is and ought to be changed. But they said that 50 years ago. Attlee said that it was entirely indefensible and undemocratic but that it worked so it should be left alone. There is always that strata of people. But there has not been any great feeling that the House of Lords is such that it ought to be changed and that it is not trustworthy and so on. I would say the reverse. In many respects the House of Lords is more respected now than it has been for a very long while.

3127. **Ann Abraham:** It has been very interesting listening to witnesses who have come to the House from a variety of routes - from industry, from local government, from other parts of the public sector, with involvement in charities and voluntary organisations. Many of these have said that the regime for declaring interests and registering interests is much more robust and less casual - the word used by one witness - than that they had encountered in the House of Lords.

3128. **Earl Ferrers:** I am sorry. Would you clarify? It was more robust where - in the industries they came from?

3129. **Ann Abraham:** It was more robust in industry, in other parts of the public sector and in the voluntary sector. They have been quite surprised at how 'casual' it is and also at the lack of clarity. I was interested as to whether there was any argument that puts the House of Lords apart, making it acceptable in public life to have that perhaps less robust regime.

3130. **Earl Ferrers:** I think I might turn that around on its head and say that I think we have gone crazy in our national life of starting from a point where you distrust everyone unless they write everything down. The bureaucracy that is involved, the distrust that is implicit, would not be of benefit to the House of Lords. In fact, as far as I know, nobody has complained of members of the House of Lords misbehaving or being bad or being wrong. If they do, and there are rotten apples in every barrel, there are ways of dealing with it. However, it would not be right to make everyone register every interest. One person, not a Member of the House of Lords, told me that he was invited out to a match at Twickenham. At the end of it he had to say to his host, "Would you mind telling me how much the tickets cost because I have to put it down on a register?" I think that is intolerable.

3131. It seeps of bureaucracy and it instills into genuine people a fear that they may not have registered everything necessary: Am I going to be pursued if I haven't registered such-and-such?

3132. I think that is terrible. If that is the way that the House of Commons wants to do it, so be it. But I hope that that will not happen in the House of Lords and I see no reason for it to happen.

3133. **Ann Abraham:** I am interested in your obviously very strong views about bringing any kind of external involvement into the self-regulatory regime of the House. I am interested because I am involved with a number of other bodies that are self-regulatory, like the legal profession, but many of them actually get a non-legal person - a lay person, an external independent person - to help them run their self-regulatory regime. I am not sure why you feel that would be such a bad thing. They are not taking over: they are helping the self-regulatory regime to work.

3134. **Earl Ferrers:** That is rather like the 70 mph speed limit that came in just to be tested and has remained there. My understanding is that this would not be the House of Lords saying, "Gosh, we ought to have some help. How shall we do it?" It would be an outside body saying, "We have gone into all this and we think you ought to do such-and-such." If I might say, Chairman, with the greatest of respect to your body, that if you were to come out and make various suggestions you would say, "Well, these are only suggestions. You don't have to apply them." However, can you in reality see the House of Lords saying, "Well, this great body has sat and has taken evidence from all these people and has made these suggestions. As a matter of fact we are going to disregard them completely."

3135. So in fact what you do is that your body overrides parliament. Parliament has always been the highest authority. If it needs help it will seek help but I think it ought not to be necessary to put bodies, of whatever nature, above parliament. Not very helpful to you, I am afraid.

3136. **Ann Abraham:** Indeed. I am sure our Chairman will respond to that if necessary. However, I do not think that any of us would see ourselves as being above parliament. Going back to the register and to the requirement to register interests, it has been suggested to us that such a mandatory register would deter some people from accepting peerages and some existing peers might find that unacceptable and decline to attend. Do you think that is a real problem?

3137. **Earl Ferrers:** I think it is a possibility. It depends what you have to register. At the moment you register if you are paid for being a consultant to a firm. That is reasonable. One says one is paid £5,000 per year or whatever it is to be a consultant to a particular federation. However, if one is going to say that one is chairman of ICI or chairman of Unilever and therefore that has to be declared and say how much one has earned and all that, or if one happens to have some shares and is told that one has to write that down - in the end, where is the privacy? And who is going to benefit from it? The average person in the street does not benefit. The only beneficiary is the media that crawl over the thing like cats and then pick something up and blow it all up.

3138. **Ann Abraham:** So you are not opposed to the principle of a register as such: it is about the degree of registration. Is that it?

3139. **Earl Ferrers:** No. I am actually opposed to the registration as such. But I could understand and go along with the argument that says, "If you are paid for being a consultant, then you ought to declare the interest." But then, is there any great difference between being paid as a consultant or being paid as a chairman? If you were chairman of GEC, for instance, and there is some great debate of a technical nature on which you happen to know quite a bit because of being the chairman of GEC, it is quite right that you should take part. Is that any different from a person who is paid to be a consultant to GEC taking part?

3140. **Ann Abraham:** It may or may not be. Thank you very much.

3141. **William Utting:** Lord Ferrers, if I could begin where Ann Abraham started by acknowledging your enormous experience of the House of Lords. It gave me a bit of a shock to realise that you will soon have clocked up half a century in that House. It must have been a very different place when you joined it in 1954 from the place it is today. The relevance of that to what we are looking at is that it has been put to us quite strongly that all members of the House of Lords when you joined it were involuntary members. They were there because of their birth: they had no choice about whether they were there or not. This in itself constituted quite a strong reason for not having an external strong regulatory system in place because you could not help but be where you were. The situation now, however, is quite different in that almost all the members of the House of Lords are there by choice. You yourself are now there by choice.

3142. **Earl Ferrers:** By election. The only ones who are there are there by election.

3143. **William Utting:** Yes, but you chose to stand. Put it like that. That removes some of the argument about the involuntary nature of your being in the House of Lords and it does expose you to the view that you are now a member of a legislature like every other member of a legislature, and that there is a public interest in knowing what your interests and those of your colleagues are: the private interests that bear upon the legislation that you have to consider.

3144. **Earl Ferrers:** Yes, I think that that is a perfectly fair argument. It has changed a great deal over the last four years from the point of view of complement. In the old days it never sat much after half-past six. There were no dinners or anything like that. There was hardly anyone on the Labour benches and the few that were there used to have to work like fury. That, of course, has all greatly changed. But I do not see that that necessarily means that those people who are there now, even if they have been appointed, are any more discreditable (although I am not sure that is the right word) than those people who were there before. The House of Lords is a place. It is an institution. It has its own ambience. It has its own way of working. It is funny, if I might say so, with the greatest respect to Lord Shore, that many people who came from the House of Commons came thinking that this is going to be like the House of Commons. It was not and after a while they go used to it and they found that their attitudes towards it and towards the proceedings were different. I do not see that those changes are sufficient to insinuate that somewhere throughout there must be a sort of misbehaviour that ought to be regulated so that it cannot happen. The fact is that, wherever you set the rules, there is always the possibility of people doing wrong. That is a fact of life. But because that happens, I do not see that it is necessary to make a whole lot of rules that will affect everyone and that will have, in a slight way, a denigratory effect on the House of Lords and on the members thereof without it having any great benefit. The only benefit would be, as I say, for members of the media who like to go through these things with a toothcomb, pick something out and blow it up.

3145. **William Utting:** I agree that the changes we have been talking about do not necessarily make the case for stronger external regulation of the House of Lords. But I think the critical issue is whether the traditions of the House of Lords, in particular those that are founded upon concepts of personal honour, are now strong enough unaided to assure us of the continuing high standards of probity of conduct of members of that institution. That seems to me a more difficult argument to make.

3146. **Earl Ferrers:** It is a more difficult but, if I might say so with respect, it is a more offensive argument too. Because it really means that those people who have come recently do not have the same integrity as those who were there before and, therefore, the rules ought to be changed because they may not be so trustworthy or however one likes to put it. I do not accept

that. I think that people, once they come there, take an interest and they carry out their work on their honour. Certainly there are a number of things that they do and have not got used to not doing - such as using mobile telephones around the place. That is perfectly appalling. But because they make those changes, I do not think that that reflects on their character.

3147. **William Utting:** I do not think that is an argument that is at all offensive to the people who are now coming into the House of Lords. I would want to put to you that people from different background have different concepts of personal honour. These are not necessarily better or worse than the concepts of personal honour that already exist in the House of Lords. I am merely saying that they are different. And, if they are different, then there may be a greater need for articulating the general standards that are expected of members of the House of Lords.

3148. **Earl Ferrers:** I can see that, but I do not think one wants to blow up unnecessarily the clarity and the good nature of previous members of the House of Lords. A forebear of mine decided to shoot his steward. That was not a particularly honourable thing to do but there were ways of dealing with that. People are, on the whole, honourable. I do not like the idea that one has to start off by saying, "Here's this organisation that has been composed of a lot of honourable people in the past who have done their work well and courteously and with a public spirit and now that it has changed and there are more people coming in, somehow we have to change the rules to absorb this modern phenomenon because they might not fall into the same mould as the others. I accept that that is not a view that is universally held.

3149. **William Utting:** No. I have great personal sympathy with it myself and dearly wish to believe that we could continue to rely upon concepts of personal honour throughout public life in this country.

3150. **Earl Ferrers:** But usually if honour goes wrong, we have seen ways of dealing with it. We have seen ways of dealing with it quite recently. The House has its method of dealing with people. The law has its own method of dealing with people found to be dishonest or who behave in a way which is inappropriate. There are ways of doing that. I do not think that setting up a whole new set of rules will be of long-term help. And I bet that these will not be simple rules: they will be pages long so one will be unsure of the correct interpretation.

3151. **William Utting:** Could I come, briefly, to the present rules that were introduced after the Griffiths Report in 1995. I infer from what you said to Ann Abraham that you do not object to the requirement to register interests under Categories 1 and 2 of the Register. However, I notice that you do not have any entry under Category 3 yourself and wondered if this was simply your taking advantage of the fact that this was a purely voluntary category, or that as a matter of principle you declined to enter interests? Or perhaps, thirdly, that you did not have any at all. If it is not impertinent of me, could I just ask you about that?

3152. **Earl Ferrers:** It is a mixture of all three! I did not want to do it, as a matter of principle. As I said, I do not see why one should do this. If I was a director of a number of companies and that kind of thing - which I used to be but am not at the moment - then I would still not to have wished to have registered that because I do not see that it is necessary. If someone had paid me £15,000 a year to be a consultant, then of course that would be different. I would feel that one would have to do that.

3153. **William Utting:** Would you have regarded the moral imperative to disclose relevant interests as being satisfied by declarations in the course of debate?

3154. **Earl Ferrers:** Yes, I think so. In my particular case, I happen to have been involved with agriculture all my life. Whenever one gets up to speak, one declares an interest in that. But I do not see that there is any advantage or need to put that down in a register. There are various other things with which one is involved. I do not see the point of it, frankly. A lot of people say, "Oh, we'd better do this and have the slate absolutely clean. So we'll put everything down and if anyone wants to look at it they can look at it." Well, the chances are that one is going to miss something and then everyone will say, "Ah, well, he's tried to hide something because he hasn't put it down." I can give as an example what has happened today in the newspapers. So, on principle, I would not wish to participate. If one is made to participate, well then of course one will. I hope.

3155. **William Utting:** Thank you.

3156. **Lord Neill:** Lord Ferrers, Could I just ask you a question? It does seem to me, listening to what you are saying, that the logic of your position is that the House should not have accepted part 3 of the register which is a voluntary filling in of interest. It is written in a funny way. The language is written in terms of public perception.
It says you can enter if you want to

> "any other particulars which members ... wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their parliamentary duties."

So each member of the House of Lords, in theory, has to sit back and say, "Now, have I got interests which the public out there,

if they knew about, would think have a bearing on the way I am carrying out my duties as a member of the House of Lords?" I think the logic of your position is that that should not have happened at all, that register. Because it is embarrassing. It is intrusive. It is not written in terms of what the House ought to know. These are not the terms of the declaration about what one tells the House when one speaks. This is written in terms of public perception. I am not saying you are wrong, but is that not right? Is not that where you are coming from on this register? It should not have happened at all.

3157. **Earl Ferrers:** I think half the trouble with a voluntary register is that if one does not participate in it, then somebody turns around and says, "Oh, you haven't participated. Why haven't you?"

3158. **Lord Neill:** Exactly. Something to hide.

3159. **Earl Ferrers:** Well, yes. But then, what is the point of it being voluntary? If one has to put it down because otherwise one is accused of hiding something, it then becomes a mandatory obligation. I do not know. I never thought that it was necessary to put an interest down, but the fact that it is voluntary and that you can put it down if you like, that is fine. But if one chooses not to put it down, then as a schoolboy would say, "It's not fair!" It is not fair that one should be accused of hiding something because one has not participated in it.

3160. **Lord Neill:** Could I ask you something completely different? You mentioned earlier something that I was very interested in. You talked about the respect inside the House. This did not refer to the views of the public outside. You are not saying that that has declined. We have heard a lot of evidence that it has gone up and that the position of the House of Lords stands very high in the public regard. Internally, however, there is a lack of respect. If that is so, what is being done or what should be done to remedy that?

3161. **Earl Ferrers:** The first thing being done is that people are being given a sort of tutorial by the Clerk of the Parliaments when they come to the House of Lords. The Clerk tells them about the procedures and what they are supposed to do and the way they are supposed to behave and this, that and the other. One hopes that that will work. A simple detail: in the old days, if somebody got up to ask a supplementary question and somebody else got up, one would sit down. Nowadays, however, they all stand up rather like bulls pawing the ground at each other and determined to stand up until the others sit down. That, I think, is not very respectful for the House or for anyone else.

3162. With regard to the outside perception, I do not think personally that the public have a derogatory interest. I do not know that they have much interest in what the interests of members of the House of Lords are. They are interested when something comes up of major interest. One refers to something like clause 28 which is of major interest. They are concerned with what the House of Lords does. They are not concerned in going and looking through everyone's individual CVs to find out what they are doing. The public do not. The media do and the media often do it not for beneficial reasons.

3163. **Lord Neill:** My perception would be the same as what actually happens in the real world: a small amount of consultation of the register by the public. However, I was interested in the detailed point you gave there that at question time the courtesies have altered, to your perception. Is that very recently? Can you give a time frame? Over the last five years?

3164. **Earl Ferrers:** Six years, I would say.

3165. **Lord Neill:** That is interesting.

3166. **Lord Goodhart:** Lord Ferrers, you obviously endorse the rule that when we are making speeches in the House of Lords, we must all declare our interest in the matter under debate ...

3167. **Earl Ferrers:** Other than lawyers!

3168. **Lord Goodhart:** Could I ask: what is the principle behind this rule?

3169. **Earl Ferrers:** The principle is that when one gets up to speak, one gives of one's knowledge, of one's views, whatever they may be, as a person. If one has been influenced in those views, because one has an interest, then it is right that people should know that that is how those views may be coloured. I go back to the example I gave a short while ago. If, for instance, the chairman of GEC takes part, he probably knows a great deal about the matter under discussion and the debate would be enhanced by his views. It so happens, of course, that he is chairman. Therefore, it is right for him to declare the fact that he is chairman. Then everyone knows where they are and they would be able to weigh up his views accordingly.

3170. **Lord Goodhart:** When you said "people should know", do you mean just the other members of the House of Lords or do you mean the public as well?

3171. **Earl Ferrers:** Those people who take an interest in the Lords to such a degree that they read Hansard.

3172. **Lord Goodhart:** So you think it is adequate that a declaration is made which is recorded in Hansard?

3173. **Earl Ferrers:** I think so. I cannot see what has happened over the last few years, particularly in the House of Lords, to have changed that position.

3174. **Lord Goodhart:** But if somebody wants to find out about somebody's position or interests, it would be rather easier, would it not, to be able to find that out in a register which can be checked very quickly than on Hansard which means having to go through a long process?

3175. **Earl Ferrers:** Yes. One wonders why people would want to check on people's lives. I understand now that one can have somebody's bank balances and everything else disclosed to you for a fee of £200. That is against the law but it is still done. I do not see why it is necessary to have a list of all the things that people do just because they happen to be in parliament.

3176. **Lord Goodhart:** What is the objection to having to register an interest which you would have to declare if you spoke on that subject in the House?

3177. **Earl Ferrers:** The reason for the object is that the register is in black and white. Everyone can turn around and say, "That is that. That's written down - but he hasn't written the other, and he hasn't written the other." Therefore, the fact that something may be left out can be inferred as being a form of escapism. If I remember correctly, and I may be wrong, the Prime Minister was castigated the other day because he had a trip in Concorde or something from somewhere and he did not put that down in the register. I think, personally, that that is totally demeaning. Secondly, I do not think it would have done any harm whatsoever. But the fact that one has not gone according to the book of the law allows somebody to come along and blow it up as being a malfeasance. That is wrong.

3178. **Lord Goodhart:** What about the position that although one is supposed to declare an interest whenever one speaks, one can vote without having to declare an interest? Is not that a reason why an interest should be declared on the register?

3179. **Earl Ferrers:** All the points made have been valid but, if I may say so, that is a particularly valid point. I can think of one example. When the Lloyds Bill was going through the House of Lords about 10 - 15 years ago and, as far as I remember, it was a private member's Bill to regulate the House of Lords. What were people to do? Were they to vote or should they all have said that they must not vote? I think people did vote. That is a fairly substantial argument.

3180. **Lord Goodhart:** Thank you, Lord Ferrers. I will remember next time I speak to declare the fact that I am a lawyer!

3181. **Earl Ferrers:** You can also declare the fact that you may be speaking from a brief.

3182. **Lord Neill:** Any other questions? Well, Lord Ferrers, thank you very much for coming. That was a very interesting dialogue that we had.

3183. **Earl Ferrers:** Thank you very much indeed. I can only apologise again for my little bit of homework not having arrived on time.

3184. **Lord Neill:** Lord Biffen, thank you very much for coming to help us. You have already written in with your answers to our questions and some general observations which will of course be printed in our record of all the evidence submitted. Is there anything you would like to say in the light of further thoughts before we start questioning you? Or are you happy to take questions straight off? You will have seen that our procedure is for a couple to take the lead and then others come in. In your case, Sir Anthony Cleaver and then Lord Shore.

3185. Sir Anthony, would you like to commence?

3186. **Anthony Cleaver:** Thank you, Chairman. Good afternoon, Lord Biffen. You obviously heard the last of the last witness's evidence but I think in your general observations you have made the comment that the culture of the House is changing. I wonder if you could just illuminate that a little and give us some feeling for what you mean by that?

RT HON LORD BIFFEN

3187. **Rt Hon Lord Biffen:** Since the decision on hereditary peers was taken, already one can perceive some almost measurable change. First of all, and perhaps this is an irony, there has been more of a combative spirit in the House of Lords and more frequent defeats of the Government. One would not have anticipated this in a fairly raw and ready analysis of what would happen after the disappearance of the hereditaries. I think that that is going to filter through to much of the spirit of the

House of Lords. But, above all, I assume - and in my paper I have made that clear - that there will be an alteration, and quite a significant alteration, in the composition of the House.
It is possible that it might have an elected component - although that is not certain. But what I think is quite clear is that what has now begun is an interim situation that has yet to be fulfilled. Secondly, although it is possible that no alteration will take place in the actual powers that the Lords possess, the truth is that a great deal of those powers lie in abeyance. I think there will be a disposition of the Lords - or perhaps I should say the Second Chamber - to use more fully the powers that they possess under the legislation before and since the First World War.

3188. Also, the area where the Second Chamber is developing an acknowledged expertise is in its select committee work. I think we will see greater emphasis on that and it is going to be very much a touchstone of the future relationship between the legislature and the executive. The Second Chamber is, if anything, ahead of the House of Commons in this respect. I do not say that influence is the same as voting power but I say that the influence it derives from a select committee procedure does buttress the growing authority of the Second Chamber.

3189. Finally, I make the note - and it is just in passing - that I do not believe there can be this change in prospect with some alteration in the financial allowances. It is a trivial point but it is not trivial in the hands of the press or anyone else who want to represent the changing character of the House of Lords and who believe that its procedures should include a revised system of interest.

3190. **Anthony Cleaver:** Now your suggestion, I think, is that, possibly at least in part as a result of those changes and the implications of them, that there should now be a register in the Lords that is much closer to that in the Commons?

3191. **Lord Biffen:** Yes. You are trying to make me more precise than I am by nature but I feel that the present climate in the Second Chamber is such as to make it extremely difficult to bring about any of these changes. Therefore, immediately, there has to be a sort of 'looking for the long grass' reaction to buy time to see the new procedures I have indicated coming into effect and to hope that those will be paralleled by the development initially of a voluntary arrangement along the lines that I have suggested. But it will be a matter of immense tact and delicate handling as far as the authorities are concerned.

3192. **Anthony Cleaver:** I am not sure whether I entirely understand what your recommendation does amount to in the sense that the existing register already has the third section, a voluntary element. You are suggesting that the new register, more akin to the Commons, should be voluntary.

3193. **Lord Biffen:** Yes.

3194. **Anthony Cleaver:** Is it that you would like to see amounts and specific elements put into it?

3195. **Lord Biffen:** It is a sort of Augustinian approach to this whole problem of not wishing perfection yet awhile. However, I think that initially one has to have, as it were, intellectually the belief in the commitment to a reformed system of interest. There are very profound difficulties in trying to put the problems of the Commons alongside those problems of the Second Chamber. It is quite easy to understand why there are those difficulties. The Second Chamber is absolutely full of people who come in, perhaps once a month or perhaps more or less frequently, but the point is that they are very much an integral part of the Second Chamber. They often have quite significant interest and, indeed, they are full-time in their activities in the world at large and they come into the Second Chamber merely on a part-time basis but very much a valued basis. Now the moment one begins to try and establish what has to be declared, one has to try and draw a distinction between those who are full-time in business or commerce or whatever but come in occasionally, and the House of Commons where that phenomenon is relatively rare. I cannot draw that distinction. I am merely saying that that will have to be done by the committee who are going to try and secure the acquiescence of the Second Chamber to these proposals.

3196. So I accept that on the whole what happens in the Commons is a good general guide but I do not expect it to be paralleled precisely by what will happen in the Second Chamber. Above all, there are quite a lot of things that now happen in the Commons which are trivial. There is the idea of declaring a whole host of things under a sort of general heading of 'Asset'. Quite a lot of those are put there by people who are disposed to try and ridicule the whole business. This would be a very good opportunity to try and move towards a system of a de minimis that would make it much more realistic and much more intelligible and, I believe, would be accepted by the press as a fair form of reform.

3197. **Anthony Cleaver:** Fine. So one should perhaps not require registration of amounts - financial numbers so to speak -

3198. **Lord Biffen:** Can I just check you there? You see, it seems to me the most extraordinary thing. I am a company director. What happens? I am required by company law to state what salary I draw. Now it is absurd if one is going to say that that requirement cannot be disclosed to the Lords even though it is part of the law of the land. It seems to me that the very fact that

these things exist, that we are living in a situation that is evolving about the whole question of the understanding of what should be general property in the public sector, gives one the chance to sit round and try to work out some rational system that deals with these points.

3199. **Anthony Cleaver:** But I am still having some difficulty with why you feel, given that, that the whole thing has to be voluntary. I can understand the concern about detail and the implications that come from that.
But supposing it was simply a requirement to register the fact that one has an interest, be it as a director or whatever, without going into any of the detail. Why is it important that that is voluntary?

3200. **Lord Biffen:** I have merely observed in tactical terms that it has to be voluntary at this stage of the general debate and the practice that will flow from it.
But if you are asking for a more strategic judgement, then I think one will have to look at areas where there will be compulsion. They will not be necessarily exactly the same as the Commons. Certainly not. But I do not rule out the compulsion as part of the process. Indeed, to have voluntary disclosure is, to my mind - I will not say it is a 'cop-out' but it is normally done on the basis that one cannot afford not to volunteer the information. Therefore, it becomes part of the whole sort of moral pressure. I would far sooner the matter was made much more explicit. But it is a very delicate matter and mercifully it is nothing to do with me in trying to navigate change through the Second Chamber. I am on the reformers side, but they will have very substantial problems.

3201. **Anthony Cleaver:** One of the interesting things is that the present Category 3 really relies on the concept of what the public may perceive: particulars which members of the Lords consider may affect the public perception of the way in which they discharge their parliamentary duties. Do you think that is the most important aspect?

3202. **Lord Biffen:** I find that a Category 3 is most extraordinary potentially elastic arrangement. The very point that you make underlines it. Without wanting to get into a bureaucratic system, there has to be more formality to it. I have here the paper and it is a noble document and written in absolute total good faith. But I must say: Give me a few years. Give me a changed Second Chamber. Give a greater public interest in what the Second Chamber are doing. Give me a greater press interest in what the Second Chamber are doing. This will not stand.

3203. **Anthony Cleaver:** I understand that viewpoint. Obviously, you yourself have substantial experience of the House of Commons and also have observed the way things have developed there. Are there any particular lessons that you think could be learned from the experience there that would be relevant to future aspects of this in the Lords?

3204. **Lord Biffen:** No, and to quote from the House of Commons: "to include the second chamber in the path of rectitude would be very unwise". I can say that, while I was in the House of Commons, what struck me was the terribly difficult problem of deciding on what were correct sanctions. I imagine that must have been the great debate that took place 100 years ago or more, when it was decided to end the House of Commons' deciding on disputed elections and passing it to the courts. I think that the House of Commons cannot conceivably have the courts resolve these matters, but they are being nudged in that direction. The appointment of the Commissioner is an attempt to find some means of a halfway house and is an immensely difficult task. I do not, in any sense, blame the authorities in the House of Commons from shrinking from taking the court 'path', but as long as it is left to self-regulation, over the years, you will find that it brings up its own situations of arbitrary judgements, which are in my view contrary to natural justice.

3205. **Anthony Cleaver:** Thank you very much

3206. **Lord Shore:** Going over the ground again, we have had a lot of evidence now, and I have a very strong sense that the minority of witnesses who have been before us who object to the register idea in principle - although we have had some - do not press it very hard. What they are concerned about is the content and whether it would be 'intrusive', as is the favourite word that is used. I think that most of us around this table rather get the sense of, perhaps, rather exaggerated expectations that' if such demands were made' i.e. Category 3 would be made compulsory, then peers would give up attending and new peers would cease to take up the offer of peerage - all that is really over the top. However, if that is so, I would like to know first of all whether you share that perception, although there is undoubtedly a feeling in principle that it is the content that really matters. Would you accept that yourself, from your own contacts?

3207. **Lord Biffen:** Yes I would and that is why I mention the possibility of a de minimis so that you can eliminate so much of the trivial and so much which, in its way, can be obtrusive. I do not wish to disparage those who have come and given witness and have said that people would not come to the House of Lords if they had to make declaration and if that declaration was other than voluntary. All I can say is that on Friday I took part in the debate on the World Trade Organisation and I noticed in the report the names of those who were on the committee and all their interests. So I saw the Chairman afterwards and said, "On what basis was this?" He said that the information had been sought and given and nobody had thought that there was

anything extraordinary about it at all. That is what I find although there is a lot of feeling that the changes recently have been precipitated at a rate which is really unacceptable.

3208. Therefore, I suspect that quite a lot of the reaction is a reaction not against the whole idea of declaration as such but against the whole wider question of transforming the Second Chamber. But I wonder, when you then get down to the specific, who in the Second Chamber is going to decline to go on a select committee because he would have to declare his interests? I do not believe you would find a single person who would walk away from the opportunity to work on a select committee. So I think this whole business will take on a perspective with time. My argument is not about reform now. My argument is about accepting the inevitability of the reform and using the time to bring about a more measured acceptance of its inevitability.

3209. **Lord Shore:** However, if we add to that a perception that there is still a problem of timing, but your particular helpful notion of a de minimis declaration, it seems to me that the next step is to try to define a little more closely what the de minimis declaration would be. I have yet to find anyone who objects to appearing in Who's Who?.
Yet Who's Who? does give one a great deal of very valuable information. It gives one's career. It gives one's main background and interests. It might even give a bit of information about one's family interests. But, apart from that, one does not declare in Who's Who? how much one is earning or anything of that kind. People make an ordinary, normal, voluntary entry in Who's Who?. Somebody who does not know them and who reads it knows a great deal about them when they put down that volume.

3210. Now, if we were to take that almost as a model, can you really see that people in the Lords would object to any such register?

3211. **Lord Biffen:** They would next Monday. But I think that it might be quite a deal different 12 months from now.

3212. **Lord Shore:** The debate, I am sure, will continue for quite a considerable time. But when, as I would expect following the precedent of the House of Commons, this report is made, whenever it is, whatever we do report, very sensibly the House of Lords will then at once appoint a committee to examine it. Sensibly, then, they will derive rules of conduct with people who have their ears far closer to the ground than this Committee could hope to have. When they themselves take on the task, if they are so willing, to devise those rules, I have confidence that a sufficient degree of sensitivity will be shown as to make it acceptable. Am I being unduly optimistic?

3213. **Lord Biffen:** Well, I wish you every success in your optimism. I am perhaps sitting on a different side of the Chamber. Perhaps I am more aware of the scepticism and perhaps you are closer to enlightenment. I think the arguments that I have made are not unreal. But they do require time. Of that I am quite convinced.

3214. **Lord Shore:** Yes. An enormous amount of tension about the whole issue would be eased if somehow it could be made absolutely clear that it is the belief of virtually everyone, in both Houses and in this Committee, that people do in fact act upon their honour. Their honour is not being questioned in any way but rather that, along with honourable behaviour which is the norm, there have to be some concessions to a rather rancid media which look for every opportunity to attack the institutions of parliament.

3215. **Lord Biffen:** Absolutely. I plead that the House of Commons and the Second Chamber have long and very honourable reputations in public service and I contrast that with what happens in many neighbouring countries where there is a great deal of corruption. I think we still have something which is to be treasured. I believe that it is precisely because of that that one has to take the pre-emptive step of ensuring that you have what you can present to the public and to the press as your reaction to this situation - and not be chivvied and chased by some miserable incident that is then blown up by those who have no faith, no interest and no affection for the institution.

3216. **Lord Shore:** Thank you.

3217. **John MacGregor:** Lord Biffen, I am rather tempted not to ask you questions and to leave it there because I thought that was a rather splendid peroration. I am sorry to bring you back to practicalities but I do very much agree with you. You said in answer to one of our questions that you do not recommend a Lords Commissioner for Standards and you went on to say that you were not happy with the performance to date of the Commons Commissioner for Standards. You have partly touched on this but you have had long experience and, not least, for a considerable period as Leader of the House of Commons. Could you say a little bit about your unhappiness with the present system and then why you think it would be wrong to translate that to the Second Chamber system?

3218. **Lord Biffen:** First of all, the whole of the development of the Commissioner took place after I had finished being Leader of the House and I have never met Elizabeth Filkin and therefore have had no personal contact whatsoever. My comments are in no sense ad hominem. They are entirely because I believe that the establishment of the Commissioner was intended to try

and bring about a more equitable method of dealing with assessment of offences in the absence of the judicial procedure, to which I have already referred and which I quite understand is not on the agenda. However, in my view it is simply not succeeding in doing that. Whether in fact over time there will be such a corpus of experience and respect that my anxiety is allayed, I do not know. But at the moment I would think that it was not proving to be a success and for the same reasons I think that it would be disadvantageous for the Second Chamber to pick up something that was not really of proven advantage.

3219. **Lord Neill:** Would it be unfair to put this to you, that you are in the classical position that the best is the enemy of the good? You are like a sage leading us by the hand and saying, "In case you are a bunch of zealots, or you have any zealots among you, let me show you what the real world is like." Were you to write a report advocating all the revolutionary thoughts that have been put to you, that has no chance of success. I think some of your evidence is coming from the point of view of what is presentable or adoptable by the current House of Lords. Is that not right?

3220. **Lord Biffen:** Yes. That puts it very fairly. It is perfectly reasonable to argue that reform will have to take place in respect of interests and will take its part with the wider changes that are now in process. That gives some time and also keeps open the situation. Because I think that it would certainly be very difficult to present the idea of a compulsory register, even if one were to be very liberal about what would be included in that register. I just do not think that the climate is propitious. Surely it is not unknown politically that the 'when' is just as important as the 'what', and I think that the 'when' is crucial.

3221. **Lord Neill:** I understand that. I have one point of detail that I wanted to follow up and I know that Ann Abraham wants to ask you a question. You drew a distinction at one point between what I crudely call 'full-timers and part-timers'. I was not sure whether you were drawing a distinction between members of the House of Commons who are paid to do a job and to be there and to represent their constituencies and the rather more relaxed attendance record in the House of Lords, or whether you were drawing a distinction between different types of peer where, if one were to have a register, obviously it could be recognised who were the professionals who were there a great deal of the time. Were you saying there should be a more rigorous register for them than for the others? I did not quite follow that.

3222. **Lord Biffen:** The difficulties are so profound, because you are touching now upon the whole question of the payment of Members of Parliament outside of parliamentary sources. What I had in mind was the person who is in the world of business or medicine or whatever and who comes in to the House of Lords, perhaps once a fortnight or once a month. That type of person does not exist in the House of Commons so I was not seeking to draw a parallel between them. However, I was saying that if there is going to be register, if the register is thought to be intrusive then it is certainly going to be more intrusive for a person who comes into the Second Chamber very occasionally but who may find that he is obliged to make all kinds of declarations. Although I must say that all this is changing with the greater requirements of company legislation. I can see that there is a different position for such a person than, say, for someone like myself who has now retired and who goes to the House of Lords a great deal. It is a totally different parliamentary species. We have to be able to try and understand that and to find some way of reflecting it in our rules and in our guidance because otherwise some people certainly will be put at a serious disadvantage. They may be very occasional practitioners in the Second Chamber but, nonetheless, very valued even on that account.

3223. **Lord Neill:** We had one witness who might have been an example of that. He is a distinguished figure in the medical field who said, "Surely it is not going to mean that every time I am asked to lecture in Canada or the United States I will have to enter that up on a register? Of course I cannot go there unless my fare is paid." Is that an example of the sort of thing you mean? There should not be a register that would compel a peer of that sort to have to write down every trip abroad.

3224. **Lord Biffen:** That is right. It is difficult, but it does call for a gradation in the extent to which you are under 'register obligation'. It is because the members of the Second Chamber are nothing like as homogeneous as the members of the House of Commons.

3225. **Ann Abraham:** I am not sure whether I should be asking this question of our witness or of the Committee, but I will ask it anyway. You have given us some very persuasive and constructive advice on tactics. It is very persuasive. I am concerned, however, that in hearing about the real world - which is the mood of the House and what the House may or may not accept at this time - we forget another real world which is the world outside the House. This is the world of public expectations and public confidence. I suppose that my question is: Is there not a danger for this Committee if we are seen not to take an objective and independent, self-contained view of standards in public life but we are seen to temper (some might say compromise or argue) in a pragmatic way to reflect the climate in the House?

3226. **Lord Biffen:** You have put it very poignantly because there is no doubt that at the end of the day, whatever resolutions you make are not going to be binding on the Second Chamber. It will be the resolutions that the Second Chamber have decided to take on themselves. That is not a difficulty merely for this Committee. Almost every committee that has ever existed has had

that difficulty.

3227. **Lord Neill:** Lord Biffen, thank you very much for your very good, wise counsel to the Committee. Not every witness has given us that! Thank you for it.

3228. **Lord Biffen:** Thank you very much.

3229. **Lord Neill:** Thank you very much for coming. I introduced you formally to the record before you came. You have been in the House for one year now, I think.

LORD BISHOP OF PORTSMOUTH

3230. **Lord Bishop of Portsmouth, the Rt Rev Dr Kenneth Stevenson:** Since last November.

3231. **Lord Neill:** You have been a bishop since 1995.
Our normal procedure is to get a couple of members of the Committee to take the lead in questioning but, before I do that, is there anything that you would like to say? Are there any thoughts that have occurred to you?

3232. **Bishop of Portsmouth:** Yes. Thank you very much for inviting me. I am, I think, speaking in a personal capacity rather than on behalf of the Bench of Bishops or the Church of England, and I have been in the House of Lords only since last November. My remarks will have, I suspect, something of a freshness about them. But, nonetheless, I am very prepared to offer them and am pleased to be here. That is all I want to say by way of introduction.

3233. **Lord Neill:** We have had some written observations from the Bishop of Wakefield. One of the reasons why we particularly welcome you is that it has been pointed out to us that we should hear from the Lords Spiritual. We have heard from the Lords Temporal and I think you are the only bishop who has appeared in front of us, so it is particularly valuable to us. I am going to ask Sir William Utting and then John MacGregor to put questions to you.

3234. **William Utting:** Thank you, Chairman. I think it would be helpful if we began, just for the record, by identifying the routes by which bishops actually become members of the House of Lords. Could I share my understanding with you and ask you to correct me where I go wrong? That understanding is that the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester are automatically members of the House of Lords. They are then joined by the 21 most senior diocesan bishops. Have I got that right?

3235. **Bishop of Portsmouth:** Yes.

3236. **William Utting:** Good. Splendid. I ought to have a round of applause from the Committee for remembering that.

3237. **Bishop of Portsmouth:** In the Middle Ages it was all the diocesan bishops and I think three abbots who were landowners, including the Abbot of Core on the Isle of Wight. But that changed at the Reformation and in the 19th century there was a reduction.

3238. **William Utting:** Grievously reduced.

3239. **Bishop of Portsmouth:** I think there was a locking in the number that was there, because more diocesan bishops were being created.

3240. **William Utting:** Yes. You were appointed bishop in 1995 and graduated to the House of Lords last year.

3241. **Bishop of Portsmouth:** Yes, that is right.

3242. **William Utting:** That seems to me to be quite quick progress really. I suppose it means that, other things being equal, most diocesan bishops are likely to end up as members of the House of Lords?

3243. **Bishop of Portsmouth:** Most. It depends obviously on age. I think four years was a little more rapid than has been the case. Some bishops in the past have had to wait for seven or eight years. But it does mean that you can get your feet under the table and get used to the job before the extra responsibilities, welcome as they are, of being members of the House of Lords. That is how it has been seen, certainly up till now.

3244. **William Utting:** Yes. The point I am pursuing is that great play has been made to the Committee about, in the past, the House of Lords being made up of people who were there involuntarily, largely by accident of birth, and that the big change that has taken place is that they are all now there voluntarily. I am really trying to work out whether the Lords Bishops are there

involuntarily or voluntarily. When you were asked if you would like to become a bishop, did the fact that you might get into the House of Lords weigh as one of the considerations in your accepting the office?

3245. **Bishop of Portsmouth:** That is the first time I have ever been asked that question and it is five years ago this last month since the letter arrived from the Prime Minister. I think it was not among the first considerations but it certainly bore on me as the days went on after I did agree to the job, yes. I knew that if I were offered a diocesan bishopric, the House of Lords would be part of it. On the morning of my consecration, at breakfast with the Archbishop of Canterbury (and I don't think he would mind my revealing this particular conversation at all), the question of a former rector of Guildford and a university chaplain being in the House of Lords was thought by the pair of us to be appropriate.

3246. **William Utting:** Yes. How did the prospect bear in on you? Did it seem an exciting thing, or a proper part of the job, or a tiresome additional chore?

3247. **Bishop of Portsmouth:** It has never been seen by me to be tiresome or a chore. The way I look at it now in Portsmouth is that I am the only one of three members of the House of Lords from south-east Hampshire and the Isle of Wight - which is a diverse and thickly-populated part of the country - to have representation in the House of Lords. So that, whenever I speak in a debate, I do my best to refer to the area of my diocese.

3248. **William Utting:** Yes. Could I ask you about your understanding of the role of bishop in the House of Lords then?

3249. **Bishop of Portsmouth:** I think I would say that we are actually Lords Spiritual. We are not here to represent the Church of England. I would want to differ here from some of the implications of the Wakeham Report on that. We are not in the House of Lords to represent the Church of England or, even less, to argue for what has sometimes been referred to in the press as "an Anglican point of view". I would determine it quite loosely as Lords Spiritual. We are there to speak for and articulate the spiritual dimension of life which is still being accepted and extended in current debate. That means that whenever I would make a contribution in the House of Lords, I would take very careful briefing from people from other walks of life in the Portsmouth diocese as well as other religious leaders. But I would not see it as representing the Church of England.

3250. **William Utting:** No. And from what you said earlier, you would not confine your contribution to the House of Lords to spiritual or moral or philosophical matters but you feel able and entitled to speak on the full range of business that comes before the House of Lords?

3251. **Bishop of Portsmouth:** If I can be particular, because I think it is perhaps most useful for you. I have spoken on housing in the south east. I have spoken on asylum seekers. I have spoken on essential services in areas of need and in the debate on universities and higher education. I think that any bishop who speaks needs to know what he is talking about. So there would be topics about which I would be rather reluctant to speak, whereas there would be others where I would feel competent and able to speak.

3252. **William Utting:** It follows from that then, if you are participating fully in the business of the House of Lords, that you have no difficulty about accepting the general rules of conduct of the House of Lords?

3253. **Bishop of Portsmouth:** No, I do not.

3254. **William Utting:** They apply to you as much as to anybody else?

3255. **Bishop of Portsmouth:** Yes. As a newcomer, the slightly ritualistic atmosphere of the House and the formality of it makes it easier to speak. The fact that the microphones are so close rather reminds me of when I used to take the Daily Service on Radio 4. It is very immediate and, although bishops are obviously used to taking part in public rituals, I find that the formality of the House makes it easier to speak. It sets boundaries of style and behaviour which on the whole are very good.

3256. **William Utting:** Good. If I could bring it down now to purely personal issues. I was looking at the register of members' interests. I would not really have expected to find an entry for you under Categories 1 or 2 of the register. However, I noted that you did not have any entries under Category 3 and I am slightly curious about why that might be. Whether it is just simply taking advantage of the fact that you do not have to, or that it is a matter of principle, or that you actually do not have any interests that you think are relevant?

3257. **Bishop of Portsmouth:** I think that I do not have. Actually, to be honest, it was not until I read your report from cover to cover that I realised the full complexity of the areas with which you are dealing. I have had to fill in forms about interests of which I have none as a governor of Portsmouth University and as a member of the Education Business Partnership. I have had to declare that I have no interests, but I fill in the forms. I may well go away from this hearing deciding that I need to declare that I have no interests or, I may decide if I want to interpret that Category 3 in that way, to list the bodies of which I am a

patron.

3258. **William Utting:** Yes.

3259. **Bishop of Portsmouth:** Because I know that is a grey area.

3260. **William Utting:** Yes. I would not myself have seen listing bodies of which was one a patron as absolutely necessary.

3261. **Bishop of Portsmouth:** I would hope not but others might urge me so to do. I think that might be going too far.

3262. **William Utting:** At the moment, that part of the register is purely voluntary. Obviously one of the things we have to consider is whether the whole register should be changed and made mandatory. Would you have any difficulty about the concept of a mandatory register? Do you think there is any justification for that, or that we should leave things as they are?

3263. **Bishop of Portsmouth:** I would not have any difficulty with a mandatory register, provided it does not get out of hand. Overhearing what Lord Biffen was implying at the end of his evidence, I would resist the thing getting out of hand and becoming a society that is forever filling in forms and reporting because we do not trust each other any more. On the other hand, I could see that it would be good to have a kind of mandatory list: certain categories where people have to declare what they are involved in. In the last 25 years since I have been ordained and operating publicly, I have noticed in the last 10 years the number of times people have said - whether it is running a school or a university or whatever - "I must declare an interest here." It is clearly a character of life today to which we have to respond rather than bury our heads in the sand and pretend it is not there. People are just very curious. I cannot provide you with guidelines but I will say that I would support a kind of mandatory list but I could not envisage the details of it,
I am afraid.

3264. **William Utting:** No, the content is the crucial thing, I agree. However, the actual principle is also important. I suppose one would justify it if one were to go in that direction on the basis that you are a member of the legislature and the public has a right to know what interests may be directing or influencing the view that you express and vote for. Could I conclude by asking you, as a newish member of the House of Lords, what impression the culture of the House has made on you? You referred to 'trust' just now and one of the crucial things here is the atmosphere of trust that supports the business of the House, and the concept of personal honour that underpins it. Have these made much of an impact on you?

3265. **Bishop of Portsmouth:** Having watched the House of Lords on television during lunch hour years ago - if I may be slightly humorous, during my post-lunch nap when I was a busy parish priest - I can honestly say that the House of Lords is pretty much as I expected it to be. I came in after the exodus of hereditaries. I came in 'in the swing doors', as one of my peer friends has said. There is an atmosphere of forbearance and trust. The self-regulating character of the debates that is supposed to represent the character of the whole House is something I would very much want to hold on to because it is very special. It is something that foreigners find quite astounding. When they see it, they admire it. I would want to hold on to that as a special feature of the House. But I would not see that as incompatible with a not-over-the-top, judicious way of saying, "Now, we have got to declare our interests."

3266. **William Utting:** Good. Thank you.

3267. **Bishop of Portsmouth:** I would not see the two as incompatible. But it is that indefinable expression, "having a sense of proportion".

3268. **William Utting:** Good. Thank you.

3269. **John MacGregor:** Most of my questions have been answered but I will follow up on them. Just following up your last point, the Bishop of Wakefield in his written submission to us gave overall the same impression as you have just given. He felt generally that we should not be recommending major changes to the system in the House of Lords. Perhaps just moving a little bit in the direction of a compulsory part (3) of the register, you said it must not get out of hand. Does this mean that you would wish it to be what some have described as "being of a light touch", not intrusive?

3270. **Bishop of Portsmouth:** I would not equate intrusiveness with reporting lots of things. It has to be decided what people should report. Just to take a theoretical example. I am going to Denmark for a weekend in September to help organise a theological conference next year. There might be a debate about something which I am asked to take part in in the House. This is purely theoretical. I would regard it as slightly absurd if I had to register that trip and the finances of it.

3271. **John MacGregor:** It is not theoretical. That is what we have to do in the House of Commons at the moment.

3272. **Bishop of Portsmouth:** Yes. I am trying to create a scenario which might apply to me. I cannot begin to create ones that apply to other members of the House of Lords. I face this as a bishop over the whole business about what we keep calling 'working costs'. We have to be properly accountable and most of us want to be. Where money is involved we need as much transparency as possible.

3273. **John MacGregor:** You referred to the fact that, reading our Issues and Questions paper, this led you to the view that perhaps you ought to put something in the register. Does this mean that when you joined the House of Lords, the existence of the register system and what it actually said at the time was not really drawn to your attention and that you were not given sufficient guidance?

3274. **Bishop of Portsmouth:** I think it was drawn to my attention but I think the implication was given - and I cannot remember who it was from, and that is not a smokescreen I hasten to add - was that it would not apply to bishops.

3275. **John MacGregor:** I see. So would you be suggesting that we should have any special rules for bishops if we made any recommendations?

3276. **Bishop of Portsmouth:** I would be happy to go along with the rules for other people. Every group of people says, "We're different": Lords Spiritual, Law Lords, hereditary peers, nominated peers, elected peers. It would be quite wrong and unworkable to have different rules for those different groups.

3277. **John MacGregor:** This may be theoretical too, but the Bishop of Wakefield suggested that if the ban on paid advocacy is extended carelessly, this could ban bishops from speaking on church matters as they derive financial benefit from the church!

3278. **Bishop of Portsmouth:** Yes, yes.

3279. **John MacGregor:** At a later point, he suggested - not directly in the context of the church (and this is a quote from the rules):

> "where peers have direct and pecuniary interests shared by few others."

Now that could obviously be said to apply to the bishops.

> "A large degree of wisdom is required to balance conscience and judgement."

Do you find that there is any difficulty in this area, anything that we ought to be thinking about?

3280. **Bishop of Portsmouth:** If I got up and spoke about VAT on church buildings, it would be very obvious that I have a vested interest. It would not make difference to my stipend. I happen to regard it as a gross injustice and would say so, and I know that we get less from English Heritage than we pay in VAT. So I will argue that point. But in the House of Lords they would either agree or they would disagree and some would say, "Well he would say it, wouldn't he?" I would not say that I would have to declare an interest here because it would be very obvious.

3281. **John MacGregor:** That comes very much into the category of the next sentence that the Bishop of Wakefield mentioned which was,

> "An absolute prohibition might deprive the House of views expressed by members with special experience of the issues under debate."

This is the point one has to avoid: being prohibitive.

3282. **Bishop of Portsmouth:** Precisely. Because we will end not being able to say anything about anything. That is the logic. I am a fellow Scot, from Edinburgh. We will end up by not being able to say anything about anything because we will have to qualify everything and say this and that and these and those and why. Life would become rather boring.

3283. **John MacGregor:** Thank you.

3284. **Lord Neill:** Could I just ask you this about the Lords Spiritual? In the case of the Law Lords, who are another special category in the House of Lords, we have been told that in 1995 when the register was first adopted they agreed amongst themselves that no Law Lord would put anything on the register. Recently, they have given evidence here, through Lord Bingham, the senior Law Lord, expressing a collective view as to what the Law Lords think. Without any mystery, they think that if any recommendations are made, depending on the content, they would go along with them and treat themselves as being ordinary members of the House. That is a prelude to saying: Is there anything corresponding to that in the case of the bishops?

Do they meet to agree a point of view? We have not had a paper from the bishops. Were you told that there is a custom that no bishop should register an interest? I am just trying to see whether there is any form of collective view.

3285. **Bishop of Portsmouth:** There isn't. We do meet more frequently now, as Lords Spiritual. The last meeting was about tomorrow's amendment. I can honestly say that we have not dealt with this and perhaps we should. Perhaps we ought to talk about it.

3286. **Lord Neill:** It would not be too late if you did. I am not inviting you to have a special meeting but it is of interest to us that that should have been looked at.

3287. **Bishop of Portsmouth:** We are living public lives with quite a number of anomalous boundaries because that is the nature of the job in the church. But I suppose everybody says that as well. We do hear and listen to the clarion cries of, "We want accountability! We want accountability! We want accountability!" It may well be that we need to take a view on that. But I think it is right to say that there is a bishop who has declared an interest and that is the Bishop of Bristol.

3288. **Lord Neill:** Yes. So there is no general view about that. Thank you for that. Bishop, thank you very much for coming and for enlightening us.

3289. **Bishop of Portsmouth:** I wish you well in your work.[5]

3290. **Lord Neill:** We have now come to the end of six extremely interesting evidence sessions on the rules governing conduct in the House of Lords. Since we opened our hearings in June, we have heard from a total of 54 individuals giving oral evidence. I would like, on behalf of the Committee, to thank all those who helped us in this way and also those who have sent us written submissions, of which we have had over 80.

3291. As a Committee, we are particularly insistent that the taking of evidence should be carried out in public. However, we believe that it is equally important that deliberations on that evidence are held in private. We do not propose to make any further comment before the report is published, probably in October. We do not propose to respond to any speculation on what recommendations we may make. Thank you all very much.

MONDAY 17 JULY 2000 (AFTERNOON SESSION)

OPENING STATEMENTS

Opening statement by the Rt Hon Baroness Jay Of Paddington

My opening statement is very brief. It follows that I should make it clear that I am speaking on behalf of the Government and not on behalf of the entire group of Labour peers.

I should like briefly to summarise the position that the Government Front Bench has voluntarily adopted. Our practice is set out more fully in the written evidence that I sent to you in June.

The practice adopted by the current Government front-bench in the House of Lords significantly exceeds the actual requirements for registration of interests by peers. Ministers in the Lords declare their interests, we believe, to the same standard as is required in the House of Commons. We seek to declare interests according to the categories contained in the House of Commons Register of Members' Interests, and at least to the same standard as Members of Parliament, as well as adhering to the ministerial code.

Much of the information we supply to the Registrar of Interests, Mr Vallance White, is not printed in the register but is held on separate file and available for inspection by peers or members of the public, should they be interested. Ministers would prefer all information to be more readily accessible, i.e. by being printed in the register.

Many of the items currently registered by Ministers in this way might be regarded as too trivial to be included in the printed register - for example, low value gifts. This is an issue on which we would find it helpful to have clear guidance from your Committee. I have, of course, read the reports that you are in the process of advising that the value of those gifts could be raised. At present, Ministers take the view that it is better that information about every gift or instance of hospitality is made available.

We recognise that peers are unpaid and can be expected to have other interests. In many cases, those outside interests allow peers to speak with both expertise and authority. Notwithstanding this, Ministers believe that registration and declaration of interests should be made compulsory for all peers. We are, after all, Members of Parliament, able to influence legislation and other affairs of state. It is right that the influences that might be thought to affect the way we conduct business should be transparent.

Opening statement by the Rt Hon Earl Ferrers

I have never been of the opinion that the conduct of members of the House of Lords is such that it ought to come under the scrutiny or the "protection" of some overriding force.

Likewise, I have considered it little short of pathetic that members of the House of Commons should be obliged to have a headmistress over them, saying what they ought or ought not to do, and what interests they ought or ought not to declare

The Houses of Parliament has always been the highest authority in the land and, in my view, it should remain so.

It is true that some unfortunate happenings in the middle 1990's made the then Prime Minister set up the Nolan Committee to make proposals as to how MPs should best conduct themselves. But that Committee was set up by one man, albeit the Prime Minister, and it was not a child of parliament, nor did it, or does it, have the authority of parliament.

It was a surprise, therefore, that the Nolan Committee was not to be an Ad hoc Committee which, having divested itself of its views, would then be disbanded, but that it was to be an on-going Committee.

It was then equally surprising that the present Committee, in considering what should be their next source of inquiry, should have turned their sights on to the House of Lords.

It is fair to observe that, in whatever walk of life one may find oneself, there will always be some who will abuse their position, and they will continue to do so however much the rules are tightened.

Whilst there may have been some aberrations in the behaviour of some members of the House of Commons, which disquieted some people, there had never been any acts of members of the House of Lords which had been a cause of concern.

Provided that a peer declared any interest which he may have had on a subject when he spoke, honour was satisfied. That is the way which I think that it should be.

I disapprove of the idea of peers having to register their interests in a book. There may be some argument - albeit, in my judgement, a bad one - for members of the House of Commons to do this. After all, they are elected and then they are paid.

The House of Lords is not elected and is not paid. Members have, therefore, to earn their living outside parliament. This is known and is understood.

I am against the implicit mistrust of peers which a register would insinuate. I am against the inevitable bureaucracy which such a register would create. I am against the nagging fear, which may abound in people, that they have not disclosed all which they should have.

The worst argument of all is that the House of Lords is not the same place as it was and therefore a register should be needed. This is a most disagreeable slur on the integrity of those who have been recently created peers.

I also consider that the suggestion that any opposition spokesman should divest himself or herself of any financial interests which he or she may have to be both unnecessary and unrealistic. Opposition spokesmen are not paid. They have to earn an income. If they were made to divest themselves of their financial interests, no one would be found to take up an opposition appointment - other than the very old or the very rich. That can hardly be desirable.

In short, in my view the present system works well. It should not become more prescriptive and invasive, and there is no need for some person - and his or her entourage - at very great public expense, to hover over the House of Lords to ensure that no one is cheating, and to make progressively intrusive regulations to try and discourage, though not to ensure, that that is unlikely to happen.

5. see evidence

comments

Transcripts of Oral Evidence

LIST OF SUPPLEMENTARY MEMORANDA RELATING TO TRANSCRIPTS OF ORAL EVIDENCE

The principal documents necessary to understand evidence given by witnesses in the transcripts of oral evidence are included at the end of this volume. Copies of other submissions received by the Committee, relating to the study on the House of Lords, are published on CD-Rom, and may be consulted at the Public Records Office in Kew, the Public Record Office in Northern Ireland in Belfast, the Scottish Public Record Office in Edinburgh and the National Library of Wales in Aberystwyth.

Supplementary Memoranda from Professor Dawn Oliver

20 July 2000

In my evidence to the Committee I expressed the hope that a light touch system of self-regulation without an equivalent of the Parliamentary Commissioner for Standards could be made to work. I indicated that a problem arising from detailed statements of standards and elaborate disciplinary systems is that they can encourage a legalistic approach, with people to try and get round them, and they can encourage the making of complaints, some of which will be trivial or ill founded. I would prefer a lighter touch, subject to the matter being revisited by the Committee on Standards in Public Life if it does not work.

A model for light-touch self regulation would be as follows: the House should adopt the Seven Principles and a Code. Guidance could be developed by the Committee for Privileges as and when problems arise. This could build up case law on standards of conduct. The Guidance could suggest that before any formal complaint may be made to the Committee for Privileges an informal approach should be made by the would-be complainant to the person alleged to have breached the Seven Principles or the Code or Guidance. This should discourage trivial or technical complaints and encourage those in possible breach to put matters right voluntarily, for instance by registering a previously unregistered interest or by writing to the Committee for Privileges pointing out the breach and giving an explanation, apologising and undertaking not to repeat the 'offence'. That ought to be sufficient in the vast majority of cases. In bad cases the penalties of fining or admonition could be imposed by the House on the recommendation of the Committee for Privileges, and if that is in contemplation a fair procedure with an impartial 'tribune' of politically neutral persons should be adopted. Statutory provision could be made for expulsion or suspension of members who are not peers as and when the Wakeham proposals are adopted.

I was also asked about whether outside involvement in the regulation of standards in the House of Lords was an interference with sovereignty. In my view it has nothing to do with sovereignty. The House has the privilege of self-regulation. The privilege does not exist for the benefit of the two Houses or their members, but to promote public interests. If the Houses cannot alone promote the public interest in high standards of conduct then outside involvement is surely required. I cannot see any justification for members of the two Houses being immune from prosecution for bribery or corruption - that immunity cannot possibly promote a public interest. Safeguards against members being harassed by threats of prosecution could be provided by a requirement for the consent of the Attorney General.

Dawn Oliver

Supplementary Memoranda from the Rt Hon Lord Wakeham

19 July 2000

I want to see in the House of Lords, as does the Royal Commission Report, a substantial number of non-political members and part-time members.

I majored on declaration of interest - that is very clear from my evidence.

However, not quite so clear is that the main reason why I advocated a Register of Interests prepared initially by the House authorities from publicly available information, is to help just those non-political part-time but highly desirable new members of the House discharge any obligations in this area, in an effective, but not quite onerous, way as starting from scratch themselves.

The House could provide this service and the member would be asked to add to it and confirm its correctness, but I fell that approaching it that way, eases the burden for new part-time members. It would be an effective way of having an accurate register but would be the minimum deterrent factor in getting the right sort of non-politicians to serve.

If the House authorities won't want the burden of doing the job, then put it out to a private contractor.

Wakeham

Supplementary Memoranda from Lord Chadlington of Dean

25 July 2000

In reviewing my oral evidence, I wish to add the following both to supplement and to complement what I said on that occasion.

We either require a mandatory list with every Peer declaring all their interests, including those for which they are not remunerated, or we rely on their honour to declare interests if they take part in any debate or other activity in the House.

We should not require a different process for lobbyists, company directors, merchant bankers or any other section represented in the House.

If a mandatory list of interests is introduced, the effect on the culture of the House will be significant. If we encourage Peers of the Realm to be honourable and waive the need for a list of interests, then the culture will tend towards one where a sense of honour is considered to be essential. If we encourage people to be honourable then they tend to be so and they excrete those who are not.

If, on the other hand, we pursue the line of a mandatory list, you will exclude those who regard such information to be personal and private and who believe you should trust their honour and this, in turn, will create an entirely different environment. It will also raise a whole series of issues about sanctions for submitting incomplete declarations of interests or failure to declare them. How would sanctions be applied? Who would administer them? What would they be?

I would rather aspire to an honourable culture until it is proven that the new House of Lords is unworthy of that trust. If there is evidence to suggest that this already is the case, and a mandatory list is therefore necessary, then we should be careful that the new culture does not result in expulsion of several or many who would contribute to the House's honourable future.

Chadlington

Supplementary Memoranda from the Rt Hon Lord Mackay of Ardbrecknish

19 July 2000

For the avoidance of doubt, I should make it clear that my evidence on the registration of members of public bodies and the Addison Rules is (as follows from the context of para 8.7 of our written evidence in which John MacGregor had set it) supporting the idea of the government producing such a register, not of the onus being placed on the individual peer to do so by compulsion.

Voluntary registration of a quango chairmanship would have been an additional choice, although I would not want to impose a compulsory requirement on all colleagues to register every task force or working party. The easiest approach would be for the government to lay a list of all such appointments - paid and unpaid before both Houses and on the Internet.

As I made clear from my personal evidence, both written and oral, different peers interpret the Addison Rules in their own way. Clarification of guidance may be needed to avoid incidents such as that to which I alluded in my evidence.

Mackay of Ardbrecknish

Supplementary Memoranda from the Lord Bishop of Portsmouth, the Rt Rev Dr Kenneth Stevenson

18 July 2000

I have two unrelated supplementary points that occurred to me on my way home. The first relates to William Utting's opening questions; I can vouch for the fact that when a diocesan bishop is to be appointed, three factors are carefully weighed, namely the needs of the diocese, the needs of the national Church, and the national perspectives as a whole, which includes future membership of the House of Lords.

Secondly, in relation to John MacGregor's questions, I would strongly support a mandatory register of interests, and do not see this in any way incompatible with the self-regulating character of the House of Lords as it is. In fact, a case could be made that such a register would enhance it.

Kenneth Portsmouth

List of Individuals and Organisations Submitting Written Evidence

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all the submissions can be found on the CD-Rom which is included in Volume 2 of this report. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded.
All the evidence we received (including unpublished submissions) was given due consideration in our work. (The number in brackets relate to the reference number given to each submission and which can be found on the enclosed CD-Rom).

Parliamentarians

Rt Hon Lord Archer of Sandwell QC (19/50)
Baroness Ashton of Upholland (19/13)
Rt Hon Lord Baker of Dorking CH (19/22)
Nigel Beard MP (19/10)
Rt Hon Lord Biffen (19/31)
Lord Blake (19/24)
Lord Bradshaw (19/05)
John Butterfill MP (19/03)
Lord Campbell of Alloway QC (19/17, 19/48)
Lord Chadlington of Dean (19/96)
Lord Clement-Jones CBE (19/56)
Portsmouth,Rt Rev Lord Bishop of (19/97)
Lord Rix CBE (19/66)
Rt Hon Lord Rodgers of Quarry Bank (19/20)
Earl Russell FBA (19/21)
Lady Saltoun of Abernethy (19/16)
Lord Sandberg CBE (19/23)
Rt Hon Lord Selkirk of Douglas (19/11)
Baroness Sharples (19/42)
Rt Hon Robert Sheldon MP (19/80)
Lord Simon of Highbury (19/89)
Rt Hon Lord Stewartby RD FBA (19/44)

Lord Craig of Radley GCB OBE (19/83)
Rt Hon Lord Crickhowell (19/54)
Baroness David (19/40)
Lord Dearing CB (19/25)
Lord Dixon-Smith (19/19)
Rt Hon Lord Eden of Winton (19/49)
Lord Ezra MBE (19/41)
Rt Hon Lord Fellowes GCB GCVO (19/18)
Rt Hon Earl Ferrers (19/38)
Lord Flowers FRS (19/12)
Baroness Goudie (19/29)
Rt Hon Lord Griffiths MC (19/71)
Guildford, Rt Rev Lord Bishop of (19/72)
Rt Hon Sir Archibald Hamilton MP (19/04)
Lord Haskel (19/58)
Baroness Hilton of Eggardon QPM (19/36)
Baroness Hogg (19/91)
Rt Hon Lord Holme of Cheltenham CBE (19/28)
Earl of Home CVO CBE (19/32)
Lord Hooson QC (19/78)
Rt Hon Lord Howe of Aberavon CH QC (19/57)
Lord Hylton (19/02)
Rt Hon Lord Irvine of Lairg (19/90)
Rt Hon Baroness Jay of Paddington (19/60)
Rt Hon Lord Jenkin of Roding (19/62)
Lord Judd (19/52)
Fraser Kemp MP (19/98)
Rt Hon Lord Lawson of Blaby (19/06)
Rt Hon Robert Maclennan MP (19/88)
Lord Marlesford (19/33)
Rt Hon Lord Merlyn-Rees (19/35)
Baroness Miller of Chilthorne Domer (19/30)
Baroness Miller of Hendon MBE (19/63)
Rt Hon Lord Naseby (19/55)
Lord Newby OBE (19/61)
Baroness Nicol (19/67)
Lord Oakeshott of Seagrove Bay (19/79)
Rt Hon Lord Owen CH (19/37)
Oxford, Rt Rev Lord Bishop of (19/76)
Lord Pearson of Rannoch (19/82)
Baroness Platt of Writtle CBE (19/43)
Rt Hon Lord Strathclyde (19/68)
Lord Tombs (19/27)
Lord Tugendhat (19/51)
Baroness Turner of Camden (19/34)
Lord Vinson LVO (19/47)
Wakefield, Rt Rev Lord Bishop of (19/81)
Rt Hon Lord Wakeham (19/86)
Lord Walton of Detchant TD (19/14)
Lord Wigoder QC (19/53)
Lord Williams of Elvel CBE (19/07)
Lord Wright of Richmond GCMG (19/45)
Rt Hon Baroness Young (19/46)
Baroness Young of Old Scone (19/64)

Organisations

Association of Professional Political Consultants (19/69)
Association of Conservative Peers (19/70)
Conservative Front Bench in the House of Commons (19/59)
Conservative Party in the House of Lords (19/68)
Transparency International (UK) (19/73)

Others

G Andrews (19/39)
Edward J Armstrong (19/93)
Michael Davies, Clerk of the Parliaments (19/75)
Richard Heller (19/15)
David Hencke (19/85)
Pamela J Kennedy (19/65)
Lt Commander Duncan Macdonald RN (Rtd) (19/26)
Donnachadh McCarthy (19/94)
Professor Dawn Oliver (19/84)
Peter Riddell (19/87)
Corinne Souza (19/01)
Damien Welfare (19/92)
Graham Wood (19/09)

LIST OF ABBREVIATIONS

APPC	Association of Professional Political Consultants
ASTMS	Association of Scientific, Technical and Managerial Staffs (now part of MSF)
AWAC	Airborne Warning and Control System
BBC	British Broadcasting Corporation
BMA	British Medical Association
Bt	Baronet
CB	Order of the Bath
CBE	Commander (of the Order) of the British Empire
CH	Companion of Honour
CLA	Country Landowners Association
CV	Curriculum Vitae
Dr	Doctor
DTI	Department of Trade and Industry
ENO	English National Opera
EU	European Union
FA	Football Association
FBA	Fellow of the British Academy
FRS	Fellow of the Royal Society
GCB	Knight Grand Cross, Order of the Bath
GEC	General Electric Company
GLC	Great London Council
GMC	General Medical Council
IFAW	International Fund for Animal Welfare
ICI	Imperial Chemical Industries
ISA	Individual Savings Account
Ltd	Limited
MC	Military Cross
MEP	Member of the European Parliament
MORI	Market & Opinion Research International Limited
MP	Member of Parliament
MSF	(Union for) Manufacturing, Science, Finance
NGO	Non-Governmental Organisation
NSPCC	Nation Society for the Prevention of Cruelty to Children
OBE	Officer of the Order of the British Empire
PLC	Public Limited Company
PR	Public Relations
PS	Post Script
PS	Private Secretary
QC	Queen's Counsel
QPM	Queen's Police Medal
RIP	Regulation of Investigatory Powers Bill (now Act)
RNLI	Royal National Lifeboat Institute
Rt Hon	Right Honourable
SDP	Social Democrat Party

TD	Territorial Efficiency Decoration
TUC	Trades Union Congress
UCL	University College London
UK	United Kingdom
VAT	Value Added Tax

comments