



House of Commons  
Public Administration Select  
Committee

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**Propriety and Peerages**

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**Second Report of Session 2007–08**

*Report and Annex, together with formal  
minutes, oral and written evidence*

*Ordered by The House of Commons  
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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

### Committee staff

The current staff of the Committee are Steven Mark (Clerk), James Gerard (Second Clerk), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

### Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3284; the Committee's email address is [pubadmincom@parliament.uk](mailto:pubadmincom@parliament.uk).

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## Summary

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This report into questions of propriety in the awarding of honours and peerages was much delayed by a lengthy police investigation. We paused our inquiry in March 2006 because we did not wish to risk prejudicing any criminal trial. Once it became apparent, however, that there would be no such trial, we have hastened to complete our inquiry and publish our findings as quickly as possible.

We have been clear throughout our inquiry that our business was not to re-run the police inquiry or to judge the performance of the police. Our aim has been to examine the systems designed to ensure propriety and recommend improvements to those systems.

The public impression of covert patronage created by the ‘cash for honours’ affair is at odds with a system that is, on the face of it, more transparent than ever before, thanks to recent measures to improve the regulation of party funding and of appointments to the House of Lords.

More has been done since. Central to the affair was the regrettable loophole in the law which did not require parties to declare loans that were received on commercial terms, without adequately defining what those terms were. The passage of the Electoral Administration Act 2006 has closed this loophole. However, the spirit of the law on loan funding was very clear. If all parties had acted in that spirit, many of the subsequent difficulties could have been avoided.

A package of reforms is needed. Proposals relating to party funding are already being considered by the Government, hopefully in conjunction with other parties. The Electoral Commission’s role is to be refocused on enforcement of standards. Our proposals complete the package.

The Honours (Prevention of Abuses) Act was severely tested by the police investigation. In our view, its scope remains appropriate, even if the behaviour it criminalises is inherently difficult to prove to the necessary standard. In the longer term, we hope that these offences can be incorporated into a more general law on public sector corruption, a modern version of which is long overdue.

However, while the ability successfully to prosecute offences is essential, an effective system would act to prevent corrupt behaviour in the first place. The core of this matter is party leaders’ powers of patronage. Political patronage has been effectively removed from the honours system; its scope should also be greatly reduced in the awarding of peerages. This would, at a stroke, remove much of the room for abuse in the alleged link between donations and peerages.

Our main proposal is for an immediate House of Lords reform measure, clearly defined in scale and scope. Its primary purpose would be to put the independent House of Lords Appointments Commission onto a statutory footing, and empower it to take decisions on the size, balance and composition of the House against agreed and explicit criteria. A mechanism is also needed for peers to resign from the House—or, in some circumstances,

to be compelled to leave.

Although these proposals ought to be, and some need to be, set out in legislation, the Government should not wait where it does not have to. The Government could implement immediately our proposal for new peers to be chosen by the Appointments Commission rather than by political parties. Under our proposals, the Commission would choose candidates from “long lists” provided and published by the parties, with the qualifications of nominees made public. The methods used by the parties to choose candidates to put on those long lists would be for the parties themselves to decide, but we suggest that more transparent arrangements will be more likely to command public confidence.

Lastly, the report argues that the link between the honours system and the award of seats in the legislature—already significantly weakened—should be broken for good. Honours and titles should be for past service; a seat in Parliament for potential future service.

Our recommendations build on principles to which the major parties have already signed up. We hope that the experience of the last two years will provide the impetus to make them happen, and with a proper urgency.

# 1 Introduction

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## Background

1. This Committee has a longstanding interest in the administration of the honours system, the award of peerages and standards of conduct in public life. In 2004 our predecessor committee conducted a major inquiry into the honours system.<sup>1</sup> In 2005, we embarked on a wider inquiry into the entire field of ethics and standards in public life.<sup>2</sup> Subsequently on 14 March 2006, partly in response to allegations concerning the possible offer of peerages in exchange for financial assistance to political parties, we announced that, as part of our inquiry into ethics and standards, we would investigate whether the system of scrutiny for propriety of honours and peerages for political service was satisfactory.

2. Following the subsequent announcement by the Metropolitan Police that they were to conduct a criminal investigation into the allegations, we met privately with representatives of the police and the Crown Prosecution Service (CPS). They advised us of their concerns that our inquiry, if conducted wholly in public, might prejudice their investigations. Having taken legal advice, we agreed to a “short pause” in our inquiry, writing:

The matters alleged go to the heart of the political and parliamentary process, and we think it vital that Parliament should investigate as soon as possible. The sub judice rule does not apply in this case. No criminal charges have yet been made. We have discussed the implications of continuing a high profile inquiry for future court proceedings with the police and Speaker’s Counsel. In the light of advice, we have decided to have a short pause in our inquiry, of no more than a matter of weeks, to allow the police to tell us whether there is a realistic prospect of charges being brought. We wish to make it clear that we will resume our investigation as soon as possible.<sup>3</sup>

In the event, “as soon as possible” proved to be considerably longer than we had envisaged or the police had anticipated.

3. After careful consideration, we concluded that there were some elements of our inquiry, not dealing with the particular allegations, which could safely be conducted in public without potentially compromising any putative criminal proceedings. We took evidence in public from the Cabinet Secretary and members of the House of Lords Appointments Commission (HoLAC), and in July 2006 we published our interim findings.<sup>4</sup> As we explained at the time:

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1 Public Administration Select Committee, Fifth Report of Session 2003–04, *A Matter of Honour: Reforming the Honours System*, HC 212

2 Public Administration Select Committee, Fourth Report of Session 2006–07, *Ethics and Standards: The Regulation of Conduct in Public Life*, HC 121

3 Public Administration Select Committee, Third Special Report of Session 2005–06, *Inquiry into the Scrutiny of Political Honours*, HC 1020

4 Public Administration Select Committee, Fourth Report of Session 2005–06, *Propriety and Honours: Interim Findings*, HC 1119

We believe it is essential that allegations of criminal activity are properly investigated and, if prosecuted, result in a fair trial. However, these important principles must be balanced against the ability of the House and its Committees to investigate matters of direct concern to Parliament. This inquiry began before any police investigations were contemplated, and concerns matters on which Parliament may be asked to make decisions before any proceedings are concluded. We do not believe that the nature of our inquiry need pose any danger to the investigation or trial process. But we recognise the point made by the police and CPS that there may be a possibility that parts of our inquiry, if conducted in public, could jeopardise the investigation and the integrity of any trial process, not least because of the likely nature of the associated reporting and publicity.

It became our intention therefore to proceed in ways which minimised the risks identified by the police while still exploring the policy issues involved. For this reason we announced that we would hear evidence in public from the Cabinet Secretary and members of the House of Lords Appointments Commission and produce an interim report on our findings so far. We would take further evidence and produce a further report in due course.<sup>5</sup>

The Government has understandably awaited the outcome of the police investigation and of our own inquiry before responding to our interim report.

4. On 20 July 2007 Carmen Dowd, the Head of the Special Crime Division at the Crown Prosecution Service, announced that there would be no criminal proceedings arising out of the so-called “Cash for Honours” investigation.<sup>6</sup> The announcement followed the investigation by the Metropolitan Police which had commenced in March 2006 after they received a number of complaints, including one from a Member of this House. The CPS subsequently announced on 8 October 2007 that there was also insufficient evidence to charge any individuals in relation to the Conservative Party.<sup>7</sup>

5. Our interim report looked briefly at the question of whether political honours are appropriate, with particular focus on resignation and dissolution honours (explained in Chapter 3). It also touched on the appointment process for the House of Lords and the role of the House of Lords Appointments Commission. However, it did not, and could not, consider the appropriateness or otherwise of the legal framework in respect of the system of honours and peerages:

It is too early to explore the legal safeguards and remedies which should govern propriety in this area, and this report does not attempt it, since we do not know what the outcome of the current police investigation may be, nor how the way the 1925 Act is framed may affect that investigation. **We will review the law as it affects public life and corruption as part of a further report, once the police investigation**

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5 As above, para 20

6 Crown Prosecution Service, *CPS decision: "Cash For Honours" case*, 20 July 2007

7 Crown Prosecution Service, *Charging decision in Conservative Party Honours allegation*, 8 October 2007

**is complete and the lessons from it are available. We have invited the police to contribute to this review.<sup>8</sup>**

This report is the product of that review.

## Scope of the inquiry

6. The decision of the CPS not to bring any charges removed all of the reasons for delaying our inquiry. We recommenced our evidence sessions in October 2007, hearing from Rt Hon Lord Stevenson of Coddensham and Rt Hon Lord Hurd of Westwell of HoLAC; from Assistant Commissioner John Yates of the Metropolitan Police; from Carmen Dowd of the CPS; from David Perry QC, who led the team of independent counsel assisting the CPS; from the academic experts Dr Meg Russell, Professor Justin Fisher and Dr Michael Pinto-Duschinsky; and from the Cabinet Secretary, Sir Gus O'Donnell. We are grateful to all those who gave evidence to us, as well as to all those who submitted written evidence. We are particularly indebted to our legal advisor, Mr Christopher Sallon QC, whose contribution to our deliberations was invaluable.

7. On restarting our inquiry, we made it clear that it was not our intention to continue the police inquiry by other means. As our press statement in July 2007 said, the police investigation was thorough and exhaustive, and had access to material that would not have been available to us.<sup>9</sup>

8. Nor would it be right for us to use any material which was given to the police, unless already in the public domain. Although we gave this some consideration, it was ultimately our view, informed by legal advice, that information collected by the police, on the understanding that it would go no further, should not be disclosed in a public forum where it could be used against the people who provided it. We were unwilling to circumvent this by carrying out our inquiry in private, as we believed there to be an overwhelming public interest in these matters being examined in public. As such we were careful not to ask for information which should properly remain confidential, and all of our witnesses were similarly careful.

9. Just as we did not want to re-run the investigation, so it is not our role to scrutinise the performance of the police. We have not seen the evidence they collected and therefore cannot pass judgement on the way they went about their inquiry, although we were concerned about the sources of the running media commentary.<sup>10</sup> It is apparent, though, that the investigation was meticulous and thorough. We are grateful to the police for keeping us informed about the progress of their inquiry. In addition to the public evidence sessions already mentioned, we took private evidence from the police and CPS on two occasions. The transcript of our session on 15 May 2006 was subsequently published;<sup>11</sup> and

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8 Public Administration Select Committee, Fourth Report of Session 2005-06, *Propriety and Honours: Interim Findings*, HC 1119, para 21

9 "PASC Statement on Propriety and Honours", Public Administration Select Committee press notice 47/2006-07, 24 July 2007

10 We were assured by Mr Yates that he was confident that no evidence had ever been put into the public domain in an improper way (see Qq 256-258). Mr Yates has clarified, subsequent to his oral evidence, that he was incorrect to suggest to the Committee that he had never met a lobby journalist.

11 Public Administration Select Committee, Fourth Report of Session 2005-06, *Propriety and Honours: Interim Findings*, HC 1119, Ev 1-11

we are publishing the transcript of a further session on 13 July 2006 together with this report.<sup>12</sup>

10. Our purpose in this inquiry has been to consider the policy and regulatory issues arising from the matters investigated by the police. Notwithstanding the lack of charges, it is clear that real damage has been done by the whole episode to public trust in political life. The suggestion that peerages could be traded for donations or loans to political parties is a serious one, and deserves to be taken seriously. We set out to consider the systems that allowed damaging allegations to be made, and how to build a framework for the award of peerages in which the public could have confidence. In particular, we heard variously that some or all of the following deserved investigation:

- the conflation of honours with peerages;
- the adequacy of the legal framework for the prevention and detection of offences with respect to the sale of honours, loan funding and public sector corruption more generally;
- the role of the Electoral Commission in the regulation of political parties;
- the effects on political behaviour of donor-based funding;
- the patronage powers of party leaders; and
- the appointments process for the House of Lords.

11. We have not looked, except tangentially, at the matter of party funding, as this was the subject of a recent report from the Constitutional Affairs Select Committee and the review by Sir Hayden Phillips.<sup>13</sup> Aside from that, however, this report considers each of these areas in turn.

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12 Qq 1–143

13 Constitutional Affairs Select Committee, First Report of Session 2006–07, *Party Funding*, HC 163; Sir Hayden Phillips, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, 15 March 2007

## 2 Summary of recent events

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12. This report is concerned with more than just the events which gave rise to the police investigation into the possible sale of peerages. Nonetheless, our inquiry has clearly been shaped by those events. We set out here a brief summary of the generally agreed narrative. This summary then informs the discussion of options for reform which makes up the remainder of this report.

13. The first reports that certain nominees to the House of Lords had been blocked (or, more accurately, queried) by the House of Lords Appointments Commission emerged in newspapers in November 2005.<sup>14</sup> In March 2006, the identities of those nominees became public, as did the fact that the four nominees in question had all made undeclared loans to the Labour Party in 2005. The nominees in question were Barry Townsley, a stockbroker who also donated money towards a city academy school; Sir David Garrard, a property developer who also donated money to a city academy; Dr Chai Patel, chief executive of Priory Clinics; and Sir Gulam Noon of Noon Foods. The CPS later confirmed that the police investigation “subsequently revealed that the names of other individuals who had loaned money to the Labour Party appeared on earlier drafts of the working peers list.”<sup>15</sup>

14. The police investigation, by a team from the Metropolitan Police led by Assistant Commissioner John Yates, commenced in March 2006, following a complaint made by an Hon. Member belonging to the Scottish National Party that an attempt had been made to confer peerages in contravention of section 1 of the Honours (Prevention of Abuses) Act 1925 (“the 1925 Act”). The complaint alleged that a number of individuals had agreed to make substantial loans to the Labour Party on the understanding that they would be rewarded by the grant of a peerage. Mr Yates has also confirmed to us that he had more than 20 complaints made to him based on these same allegations.<sup>16</sup> The investigation was subsequently widened to consider charges under the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”), and further “whether certain events might be interpreted as acts tending and intended to pervert the course of justice”.<sup>17</sup> The investigation also looked into actions taken by the Conservative Party.

15. All of the events under investigation by the police can be traced back to the parties’ need for funding during the May 2005 general election campaign (although the general issue had been around for much longer). Some press coverage at the time reported that the two largest parties were heavily dependent on undeclared loan funding to get themselves through an expensive campaign.<sup>18</sup> Under the 2000 Act there was no legal requirement for parties to declare loans taken out on commercial terms. We now know from the retrospective reporting required under the Electoral Administration Act 2006 that the Labour Party borrowed £11,950,000 in undeclared loans from wealthy individuals between

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14 See for example “Inquiry launched as peers fiasco grows”, *The Independent on Sunday*, 6 November 2005, p 4

15 Crown Prosecution Service, *CPS decision: “Cash For Honours” case - explanatory document*, 20 July 2007, para 9

16 Q 265

17 Crown Prosecution Service, *CPS decision: “Cash For Honours” case— explanatory document*, 20 July 2007, para 5

18 See for example “Secret loans bolster Pounds 16m Tory election campaign”, *The Times*, 21 April 2005, p 1, or “Election watchdog to investigate party loans”, *The Guardian*, 21 April 2005

April and October 2005.<sup>19</sup> Other parties had also taken out undeclared loans from individuals and banks.

16. The police investigation was originally envisaged to be of short duration but eventually ran for sixteen months before the final file was handed over to the CPS on 2 July 2007. As at 13 November 2006 we know that the police had already conducted 90 interviews, including 35 within the Labour Party, 29 within the Conservative Party and four within the Liberal Democrat Party. Those numbers included prominent figures such as the former Leader of the Opposition, Rt Hon Michael Howard MP, Cabinet ministers and the then Prime Minister. We understand that this was the first time a sitting Prime Minister had been interviewed as part of a criminal investigation. Assistant Commissioner Yates told us that the cost of the investigation was “around £1 million” with three quarters of that being staff costs.<sup>20</sup> There will also have been costs to the public purse in terms of staff time in government and in the CPS.

17. Four arrests were made in the course of the investigation:

- Des Smith, the head teacher at All Saints Catholic School and Technology College, Dagenham. Mr Smith was a council member of the Specialist Schools and Academies Trust, which helped the Government recruit sponsors for the City Academy programme. He was alleged to have suggested that honours or peerages might be offered as rewards for sponsoring Academies.<sup>21</sup>
- Lord Levy, the Prime Minister’s Special Envoy to the Middle East and also a key fundraiser for the Labour Party. Lord Levy was arrested in July 2006 and subsequently again in January 2007.<sup>22</sup>
- Ruth Turner, the Prime Minister’s Director of Government Relations. Ms Turner was a Special Adviser reporting directly to Jonathan Powell as Chief of Staff in the Prime Minister’s Office.
- Sir Christopher Evans of Merlin Biosciences. Sir Christopher was a biotechnology entrepreneur who loaned £1 million to the Labour Party in 2005.

The decision not to bring any charges against Mr Smith was announced on 7 February 2007.<sup>23</sup> The investigation of Mr Smith turned out to be substantially unrelated to the other matters under investigation, and we have not attempted to draw lessons from the aspect of the police inquiry.

19 Statistics from [www.electoralcommission.org.uk/regulatory-issues/](http://www.electoralcommission.org.uk/regulatory-issues/)—includes loans from Barry Townsley, Gordon Crawford, Lord Sainsbury, Sir David Garrard, Sir Gulam Noon, Andrew Rosenfeld, Professor Sir Christopher Evans, Dr Chai Patel CBE, Derek Tullett CBE, Nigel Morris and Rod Aldridge. A further £2 million loan from Richard Caring was reported in the *Guardian* on 21 March 2006, but the Electoral Commission’s register does not record this as having been taken out until June 2006.

20 Q 338

21 “Revealed: cash for honours scandal; Insight”, *Sunday Times*, 15 January 2006, p1

22 Reported in various newspapers, e.g. Andrew Grice and Colin Brown, “Levy arrested again—and this time on suspicion of perverting course of justice”, *The Independent*, 31 January 2007, p2

23 Crown Prosecution Service, *CPS Statement: Mr Des Smith*, 6 February 2007

18. As already stated, the CPS confirmed on 20 July 2007 that no criminal proceedings would be taken forward against anyone connected with the inquiry. This was followed by an announcement in October that no charges were to be brought against anyone linked to the Conservative Party. No investigations are being pursued with regard to any other party.

### 3 Honours and peerages

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19. The events which have become known as the ‘cash for honours’ affair actually concerned the award of peerages. A peerage is more than just an honour. A peerage does of course convey an honorific title on the person to whom it is awarded, but it also bestows a seat in the House of Lords, and a vote on proposed legislation (albeit in a revising chamber). While any sale of honours is deplorable because it devalues the honours system as a whole, and hence all deserving recipients of honours, it is nonetheless less constitutionally significant than the sale of peerages. The sale of peerages is the sale of seats in Parliament.

20. The lessons to be learned from the alleged sale of peerages in 2005 can only be understood in the context in which the events happened. Central to that context is the whole system for the giving of honours and the award of peerages.

#### The Honours system

21. Between 2000 and 3000 honours are awarded annually, usually at New Year and on the Queen's Official Birthday in June.<sup>24</sup> A small number of awards (such as those in the Orders of the Garter and the Thistle) are in the personal gift of the Queen, but the great majority are recommended to the Queen through three lists. The Diplomatic Service and Overseas list is submitted by the Foreign Secretary and contains about 150 names. The Defence Services list is submitted by the Secretary of State for Defence and has some 200 names. The remainder, providing the largest part of the overall total of national honours, make up what is known as the Prime Minister's list.

22. Our predecessor committee conducted a comprehensive review of the honours system in 2004.<sup>25</sup> Several changes were made to the machinery for allocating honours following this report and the concurrent review commissioned by the Government and led by Sir Hayden Phillips.<sup>26</sup> The revised system for creating the Prime Minister's list is now centred on eight specialist Honours Committees such as those for Arts and Media, Sport, or Science and Technology. Each committee comprises a non-civil service chair and a majority of non-civil service members, all selected after open advertisement. There are also Permanent Secretaries and other civil servants on the specialist committees, depending on the subject matter. These committees examine the merits of all candidates put forward, and from these the committees select candidates for recommendation to a Main Honours Committee.

23. The selections are then referred to the Main Honours Committee, which is made up of the eight Chairs of the specialist committees and four senior Permanent Secretaries including the Cabinet Secretary, who chairs it. The Main Committee reviews the work of the specialist Committees, reassesses any sensitive or controversial recommendations or

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24 The exceptions to this are the “resignation” and “dissolution” lists, explained at paragraph 25.

25 Public Administration Select Committee, Fifth Report of Session 2003-04, *A Matter of Honour: Reforming the Honours System*, HC 212

26 Cabinet Office, *Review of the Honours System*, July 2004

omissions and seeks to ensure that the balance between the various sectors is satisfactory. The Chair of the Main Committee then submits a list to the Prime Minister along with a personal report. The deliberations of these Committees are confidential, although on occasion there have been leaks to the media of documents relating to the selection of candidates. The Prime Minister subsequently makes recommendations to the Queen. Broadly similar processes are followed for the creation of the Diplomatic Service and Overseas list and the Defence Services list.

24. The three lists submitted by the Prime Minister, Defence Secretary and Foreign Secretary are composed partly of names generated by Government departments themselves through their networks of public bodies and other contacts, and partly of those who have been nominated directly by the public. The present public nomination system dates from 1993, when the then Prime Minister John Major concluded that “the means of nomination for honours should be more widely known and more open”.<sup>27</sup> There is a standard nomination form, setting out the type of information which is required to assess candidates. Some criteria for judging candidates for awards are now published, although these are necessarily value judgements, and some generic examples of what might be necessary for each award are also available online.<sup>28</sup>

### *Scope for patronage*

25. The Prime Minister and his office play a significant theoretical part in the production of the list that bears his name. It passes through Downing Street’s hands before it goes to Buckingham Palace, and the Prime Minister can add and subtract names at that stage. The Foreign Secretary and the Secretary of State for Defence have parallel responsibilities for their own, much smaller lists. The Prime Minister has traditionally also had two opportunities to make personal nominations for honours without going through selection committees: a “dissolution list”, published when Parliament is dissolved, and a “resignation list” published when he or she leaves office.

26. The Political Honours Scrutiny Committee was set up in the 1920s in order to scrutinise any candidates put forward by the Prime Minister personally through any of these mechanisms, and to decide if there was anything in the past history or character of the individual which rendered him or her unsuitable for an award. Its only concern was with propriety; it did not comment on the merits of an award. Following our predecessor Committee’s recommendation,<sup>29</sup> the Political Honours Scrutiny Committee was abolished in 2005. The majority of its functions had already been transferred to the House of Lords Appointments Commission (discussed below at paragraphs 31–33).

27. Faced with unfolding controversy, Rt Hon Tony Blair, the then Prime Minister, announced on 23 March 2006 that he would no longer make any additions or subtractions from the list of names produced by the independent Honours Committees.<sup>30</sup>

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27 HC Deb, 4 March 1993, col 455

28 <http://www.honours.gov.uk/nominate/>

29 Public Administration Select Committee, Fifth Report of Session 2003–04, *A Matter of Honour: Reforming the Honours System*, HC 212, para 173

30 HC Deb, 23 March 2006, col 34WS

The effect of this undertaking has been to take politics and patronage out of the honours system. Our predecessor Committee had sought the same outcome when it called for the creation of a new Honours Commission, to replace the honours selection committees and to take on the remaining functions of ministers and of the Political Honours Scrutiny Committee in the honours system.<sup>31</sup> The current Prime Minister, Rt Hon Gordon Brown MP, has confirmed that he and the Foreign and Defence Secretaries will follow this precedent:

In March 2006, the Prime Minister's predecessor made a statement in which he committed neither to add to nor subtract from the final list of names recommended to him by the Main Honours Committee. The Prime Minister restates this commitment and the Secretaries of State for Foreign Affairs and Defence will do likewise.<sup>32</sup>

28. However, in the same announcement in which he removed himself from the honours system, Mr Blair made clear that the system for appointing working peers would remain unchanged pending the second stage of House of Lords reform. It is this system, and not the honours system, which was at the centre of the affair which is misleadingly referred to as “cash for honours”.

### Appointments to the House of Lords

29. Currently, there are a number of ways into the House of Lords. Members include 92 remaining hereditary peers, bishops and Law Lords. The great majority, however, are life peers. Formally, all life peers are appointed by the same mechanism: the Queen appoints them on the advice and recommendation of the Prime Minister. In practice there are a number of routes to being nominated by the Prime Minister as a life peer, including a small number appointed as ministers, an even smaller number of former public servants (10 in any one Parliament), and a smaller number still of former Speakers of the House of Commons. Prime Ministers have also traditionally allocated peerages as part of their resignation honours lists, usually to fellow politicians, political advisors or others who have supported them, and their dissolution honours lists, when peerages can be given to Members from all parties who are leaving the House of Commons.

30. However, most entrants to the House of Lords come through one of two mechanisms—they are either appointed by the House of Lords Appointments Commission as non-political “working peers”, or they are appointed as political “working peers” by their respective political party.

### *The appointment of working peers*

31. The House of Lords Appointments Commission (HoLAC) was established by Tony Blair as Prime Minister in May 2000. Its role is to recommend individuals to the Queen for appointment as non-party-political peers and to vet for propriety party nominations for peerages, as well as some nominees for higher honours. It is an advisory non-departmental

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31 Public Administration Select Committee, Fifth Report of Session 2003–04, *A Matter of Honour: Reforming the Honours System*, HC 212, paras 168–173

32 Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, para 85

public body sponsored by the Cabinet Office. The Commission has six members—three from the three largest political parties, and three who are non-partisan, including the Chairman, Lord Stevenson of Coddenham, who is a crossbench (non-partisan) peer. The Commission is supported by a small office which forms part of the Independent Offices Management Unit of the Cabinet Office.

32. Lord Hurd of Westwell, the Conservative member of HoLAC, told us that the bulk of the Commission’s work is devoted to appointing crossbench peers.<sup>33</sup> The Prime Minister informs the Commission of the number of nominations sought for non-party-political peers, and he then puts forward the Commission’s recommendations to the Queen. He will not intervene except in the most exceptional cases (such as a danger to the security of the realm). The Commission therefore has the freedom to choose nominees from almost any walk of life. The two most recent appointments were Professor Haleh Afshar, the founder and Chair of the Muslim Women’s Network, and Sir Nicholas Stern, the economist who led the 2007 review of the economics of climate change. Both were appointed on 18 October 2007.

33. The controversies of 2005, however, surrounded the Appointments Commission’s other role—the vetting for propriety of party nominees as working peers. The Commission explains its own role in this way:

The Commission plays no part in assessing the suitability of those nominated by the political parties, which is a matter for the parties themselves. Its role is simply to advise the Prime Minister if it has any concerns about the propriety of a nominee.

The Commission takes the view that in this context, propriety means: first, the individual should be in good standing in the community in general and with particular regard to the public regulatory authorities; and second, the individual should be a credible nominee. The Commission’s main criterion in assessing this is whether the appointment would enhance rather than diminish the workings and the reputation of the House of Lords itself and the appointments system generally.<sup>34</sup>

This remit is similar to that of the former Political Honours Scrutiny Committee with regard to honours—and indeed, HoLAC now fulfils this role with regard to certain higher honours as well as with regard to working peers. The difficulties arising from this remit are discussed at Chapter 6.

34. The processes for nominating political “working peers” to be vetted by the Appointments Commission are entirely internal matters for the political parties themselves. The three largest parties use three different processes to choose their nominees.

## Honours and peerages: a comparison

35. In most respects, the systems for allocating honours and peerages are very different. This is entirely appropriate—an honour is a reflection of past achievement, whereas a peerage ought to be an appointment for future service. The fact that most working peers

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33 Q 179

34 <http://www.lordsappointments.gov.uk/vetting.aspx>

are chosen by political parties may not be widely understood, but it is central to the workings of a nominated House that parties are involved in the selection of legislators who serve as representatives of the parties.

36. However, some similarities between the two processes are harder to justify. One example of similarity is that citations are not published, whether they are for honours or for peerages. Our predecessor Committee called for the publication of citations for honours in 2004, in the interests of transparency—a call which the Government rejected:

The Government does not accept this recommendation. It is one of the central tenets of the system that the person being considered for an award should not be approached before a decision to offer it is made. Publication of the long citation would need clearance by the recipient; the finalisation of the list is simply too compressed a process to allow this to be completed. Publication of the information without the consent—or the input—of the individual concerned would be unwise since people are likely to have views on such personal information being made public. Consent could be obtained in the period after the list has been published but the obvious time for publication is when the award is announced, not several months after.<sup>35</sup>

37. Even if these arguments are accepted for honours, we do not believe they are valid for peerages. A peerage is not a prize; and nominees should not be surprised by the award. Nor is there any need for the same time pressures that apply to devising an honours list. As peers, successful applicants will be public figures with visible responsibilities. It does not seem inappropriate that the public should be informed why parties are putting forward certain individuals to carry out those responsibilities, nor that candidates should have their credentials discussed in public before their seat in the legislature is secured.

38. A further similarity between the processes for allocating honours and peerages is that they are both governed by the Honours (Prevention of Abuses) Act 1925. The adequacy of this Act specifically in relation to preventing the sale of peerages is discussed at Chapter 4.

## Conclusions

**39. A peerage is more than an honour. An honour is a reflection of past achievement, whereas a peerage ought to be an appointment for future service. The procedures for appointing peers have grown organically out of the procedures for allocating honours, but it is time that a clean break was made. There is no reason for any surviving overlap between the two processes.**

**40. The honours system itself is much improved in its independence since our predecessors' report in 2004. Some of this results from the new processes recommended by Sir Hayden Phillips' review, but the more important development may be the last Prime Minister's commitment not to put his own names forward, a commitment maintained by the current Prime Minister. It is our view that this commitment should be binding on all future Prime Ministers.**

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<sup>35</sup> Cabinet Office, *Reform of the Honours System*, Cm 6479, February 2005, p 8

**41. We have nothing further to add to the recommendations on changes to the honours system in our interim report. The Government understandably awaited this report before responding, but we expect a response to those recommendations now.**

## 4 The legal framework

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42. As already noted, it is the Honours (Sale of Abuses) Act 1925 (hereafter referred to as the 1925 Act) which criminalises the sale of honours or peerages. We have previously stated that we would review this law as it affects public life and corruption based on the lessons we could learn from the police investigation once it had concluded.<sup>36</sup> The unspoken question was whether an Act which was now over eighty years old, and under which only one successful prosecution had ever been brought, should still be on the Statute Book in its original form.

43. A caveat is needed, that an Act cannot reasonably be judged by one case alone. Professor Justin Fisher told us that:

when we look at the laws surrounding political life—and, indeed, more broadly, public life in general—the success or failure of a law should not be judged against whether or not there have been any prosecutions. One way of looking at a law is in terms of setting the boundaries of what is acceptable.<sup>37</sup>

He gave us the example of the legislation which debarbs political parties from taking out advertisements through broadcast media. Calling it “one of the finest pieces of legislation on our statute book”, he noted that the fact that there have been no prosecutions under that piece of legislation did not make it a bad piece of legislation, as it had successfully set the boundaries of what constituted acceptable behaviour.<sup>38</sup>

44. We accept Professor Fisher’s point. Nonetheless, there are questions which arise out of this individual case which do, at the very least, cast doubt on the continued usefulness of the 1925 Act. We comment on these below.

### The CPS decision and the 1925 Act

45. Section 1 of the 1925 Act creates two offences:

(1) If any person accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, or for any purpose, any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.

(2) If any person gives, or agrees or proposes to give, or offers to any person any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.

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36 Public Administration Select Committee, Fourth Report of Session 2005–06, *Propriety and Honours: Interim Findings*, HC 1119, para 21

37 Q 416

38 As above

The penalties under this Act are imprisonment for a term not exceeding two years, or an unlimited fine, or both.

### *The evidential test for prosecution*

46. The explanatory note from the Crown Prosecution Service helpfully expresses the offences under the 1925 Act in slightly plainer English:

An offence is committed if :

an unambiguous offer of a gift, etc, in exchange for an honour, is either made or solicited by one person to or from another, even if that other person refuses either to accept or to make such an offer; or

one person agrees with another to make/accept a gift, etc, specifically in exchange for an honour.<sup>39</sup>

This seems very clear. We note that nowhere in the CPS explanatory note do they dispute that loans can be considered to be a “gift, money or valuable consideration”. We support this implicit assessment.

47. The CPS go on to explain that without a complaint concerning the first of the two options above, namely, an unambiguous offer, they concentrated on seeking evidence of an agreement between two people:

There is nothing in the circumstances of this case to suggest that the first of these routes to the offence has been taken. There is no complaint from any person that they have been offered a gift, etc, in exchange for an honour. There is no complaint from any person that they have been asked to make a gift, etc, in exchange for an honour. The investigation has therefore necessarily focused on the question whether there was any **agreement** between two people to make/accept a gift, etc, in exchange for an honour.<sup>40</sup>

We understand this argument. An offer is hard to investigate if nobody admits to having made, received or witnessed one. An agreement is more likely to leave evidence, such as a donor subsequently being put forward as a nominee for a peerage.

48. The CPS go on to state that:

For a case to proceed, the prosecution must have a realistic prospect of being able to prove that the two people agreed that the gift, etc, was in exchange for an honour. Such an agreement might be proved either by direct evidence, or by inferences that can be drawn from the circumstances of the case. Such inferences must be so strong as to overwhelm any other, innocent, inferences that might be drawn from the same circumstances.

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39 Crown Prosecution Service, *CPS decision: "Cash For Honours" case*, 20 July 2007, para 23

40 As above, para 24

There is no direct evidence of any such agreement between any two people subject of this investigation.<sup>41</sup>

Not having seen the evidence, we must accept the assertion that there is no direct evidence of an agreement. In that case, as the CPS say, the case must rely on circumstantial evidence, which must be very strong to meet the criminal standard.

49. Chris Sallon QC explained to us why this placed a high evidential burden on the prosecution:

There must be an agreement between the parties. Merely hoping to receive an honour in exchange for making a loan is not enough to constitute an offence. Even where one individual “A” decides to award an honour to another “B”, and when doing so, takes into consideration the fact that B made a loan, this is still not enough to constitute an offence. The link between the offer of the loan and the award of the honour must be explicit.<sup>42</sup>

50. Mr Sallon then went on to explain how this was especially difficult to prove if the CPS would have to rely on circumstantial evidence, as in this case:

Strong, circumstantial evidence will therefore be required for a successful prosecution, suggesting that the terms of any loan offer or agreement were kept hidden or secret, suggesting that the people making or receiving the loan discussed the receipt of honours or suggesting a large overlap in timing between individuals making loans and receiving honours.<sup>43</sup>

Some of these elements were clearly present in this case, based on evidence that was in the public domain before the police investigation even began. However, the inferences drawn from this circumstantial evidence need to be strong enough to overwhelm the possibility of alternative explanations for the behaviour, as Mr Sallon went on to explain:

Even if the police can find such evidence, they will still need to effectively discount any credible, innocent explanation for loans being made (for example, an act of personal generosity, or a purely politically motivated act, or for honours being awarded where say, the individual in question was a credible candidate for an honour, regardless of the fact that he or she had made a financial contribution to a political party).<sup>44</sup>

51. It was on the inability to discount alternative explanations that the grounds for prosecutions fell down. The eventual decision of the CPS not to prosecute anyone under the 1925 Act was based on the following analysis:

It is the case that each of those who lent or donated money to the Labour Party and who have been interviewed during the course of the investigation has denied that any improper agreement was made, as have all those concerned within the Labour Party

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41 As above, paras 25–27

42 Annex, para 16

43 Annex, para 17

44 As above

and in Downing Street. There is furthermore substantial and reliable evidence that there were proper reasons for the inclusion of all those whose names appeared on the 2005 working peers list, or drafts of that list: that each was a credible candidate for a peerage, irrespective of any financial assistance that they had given, or might give, to the Labour Party.

Against that backdrop, the CPS is satisfied beyond doubt that the available evidence is not sufficient to enable an overwhelming inference to be drawn, such as to afford a realistic prospect of convicting any person for any offence contrary to Section 1 of the 1925 Act.<sup>45</sup>

52. Many commentators noted the apparent disparity between the CPS assessment that each of the candidates was a credible candidate, and the House of Lords Appointments Commission's assessment that none of them passed its credibility test. However, the task of the CPS is different from that of HoLAC. The Appointments Commission was looking to satisfy itself beyond doubt that the candidates *were* credible, which it was unable to do—so they opted for a policy of “if in doubt, keep them out”. The CPS had the reverse task, to demonstrate beyond doubt that the candidates *were not* credible, and this too was not possible. Seen in this context, the two bodies' assessments are not incompatible.

## An impossible test to pass?

### *The decision to investigate*

53. It is clear that the framing of the 1925 Act makes it extremely difficult, barring any direct evidence of explicit agreements, to put together a case which the CPS would be willing to prosecute. Indeed, such was the challenging nature of the evidential test set out by the CPS after their decision not to prosecute that it invites the question whether the CPS might have been able to advise the police earlier that their investigation was unlikely to bear fruit. The CPS's Carmen Dowd told us that this would not have been possible:

A case of this nature cannot be looked at in a piecemeal fashion. There are lots of pieces of evidence in any case that, when put together, look very different from when they sit alone, and so it was not until the investigation had been concluded that we sat and looked at all of the evidence and made our decision.<sup>46</sup>

54. The Cabinet Secretary suggested that the right time to have thought about the likelihood of conviction was in fact before the police investigation began:

I would say the most important thing is that the best place to think about this is right at the start and to say, “Actually, is this an investigation that is worth starting?” It is at that point that you really need the judgment applied. Given the nature of the legislation, given the nature of what would constitute something which the CPS would say is worth taking to trial, then you would need to say it is at that point that you need maximum judgment.<sup>47</sup>

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45 Crown Prosecution Service, *CPS decision: "Cash For Honours" case*, 20 July 2007, para 28

46 Q 277

47 Oral evidence taken before the Public Administration Select Committee on 15 November 2007, HC 92–I, Q 15

55. It is clear that Assistant Commissioner Yates did give consideration as to whether it was right to start an investigation based on the complaints he had received. When he gave evidence before us, he read out words he had written on 21 March 2006, before commencing the investigation:

It is difficult at this stage to consider the evidential criteria in any detailed sense because an investigation has not commenced. There does appear, however, to be sufficient material available to suspect potential criminal wrongdoing by one, other or all the major political parties or those acting on their behalf. The public interest, should such matters be proved, is clearly a very high one and, thus, justifies an impartial police investigation to establish whether or not any offences have been committed.<sup>48</sup>

We went on to discuss with Mr Yates at some length whether he could have foreseen at the start of the investigation that, in the absence of any explicit agreement, any evidence he might unearth would be unlikely to meet the 1925 Act's very high evidential test. He was insistent that, given that he had a *prima facie* case, and that there were inferences that evidence might be available, the right thing to do was to seek that evidence and to continue seeking if that evidence was not immediately forthcoming as "you never know what you are going to find out".<sup>49</sup>

56. The Metropolitan Police were not entirely without experience of investigations of alleged breaches of this particular law. Mr Yates has furnished us with details of a previous case, that of Mr Derek Lord (or Laud):

This was based on an investigation by the 'Observer' newspaper into an individual connected to the Conservative Party who was alleged to be 'endeavouring to procure' honours for two named individuals using his contacts within the Conservative Party who were at that time in power. The newspaper passed all the material gathered to the MPS who conducted an investigation.

The investigation was initiated in April 1997 and concluded in January 1999. The case was referred to the CPS who concluded ... that 'there is insufficient evidence to provide a realistic prospect of convicting any person.'<sup>50</sup>

It is interesting that in this case too the investigation took well over a year, and yet did not lead to any charges. Mr Yates tells us that there is no record of any other such allegations being made to the Metropolitan Police, although we do not know for certain that allegations have not been made to other UK police forces.

**57. There is a legitimate role for the police in investigating allegations that honours or peerages have been sold. Criminal offences serve no purpose if allegations that they have been committed cannot be investigated.**

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48 Q 260

49 Qq 261–266

50 Ev 63–64

58. In order to avoid any possibility of prejudicing any prosecutions, we agreed to pause our original inquiry. This was on the understanding that, given the nature of the evidential test, the police investigation would be relatively brief. The fact that it turned out not to be brief meant that we were unable to carry out our inquiry in the way that we had originally intended to. In retrospect, it is not clear that the inability of a parliamentary committee to examine in public serious allegations of misconduct has served the public interest.

### *Historical and hypothetical prosecutions*

59. Moving from the particular to the hypothetical, we have considered whether there are any plausible circumstances in which a conviction might now be secured under the 1925 Act. The observations already cited from the CPS and from Chris Sallon QC indicated that the evidential test was nearly impossible to pass based on circumstantial evidence alone, but Assistant Commissioner Yates suggested otherwise:

Let me give you an example what I would think, and Mr Perry [David Perry QC, independent counsel for the CPS] might say, "Nonsense." An overwhelming inference would be, for example, somebody lending a political party £10 million and getting an honour and never having a record of public service or political contacts in whatever form. That, I would say, from an investigator's perspective, could be construed as an overwhelming inference.<sup>51</sup>

Mr Perry did not say "nonsense" to this suggestion. Instead, he told us that there were circumstances in this as in any other fields where prosecutions could be brought based on a mosaic of evidence—although he did not furnish an example.<sup>52</sup> Lord Hurd concurred, observing that "clearly you could write a novel in which this happened".<sup>53</sup>

60. Mr Perry also elaborated helpfully on what had been deliberately excluded from the 1925 Act:

Parliament when it enacted the 1925 Act was very careful to capture the type of corrupt bargain which should properly fall one side of the line and attract criminal liability, but it was also careful to exclude from criminal liability the type of practice which people would not think is necessarily wrong. As you have mentioned, people donating to parties who become recognised as supporters of parties and are properly then given peerages because they do support the party in question and they have demonstrated their support in the past is not necessarily wrong.<sup>54</sup>

61. The circumstances of the only successful prosecution under the 1925 Act, that of Maundy Gregory in 1933, are illuminating. Maundy Gregory worked as an honours broker under Conservative, Liberal and Coalition governments, securing funds for their parties and significant profits for himself. As Prime Minister, David Lloyd George established a general tariff for titles, with knighthoods costing £10–12,000 and baronetcies £40,000,

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51 Q 307

52 Q 322

53 Q 215

54 Q 322

which Gregory enforced and from which he took commission. In this period titles were given to ex-convicts, including one man convicted of trading with the enemy in the First World War, and un-discharged bankrupts.

62. Even during this peak period, the sale of honours was found offensive by the public and the press. In September 1927, the *Banker* (a newspaper) argued that many of those obtaining honours were “gross illiterate profiteers, doubtful in their reputations, vulgar in their lives...shovelled into the House of Lords, created baronets and knights, merely upon the strength of the money they had obtained in preying upon England in the most awful crisis of her affairs”.<sup>55</sup> It was in this climate that the 1925 Act was passed, but even so Maundy Gregory was not prosecuted until 1933—most likely because the high profile of many of his clients afforded him protection.

63. Significantly, even in a case where the accused’s guilt was plain, a whistleblower was required to secure the conviction. In December 1932 Gregory and his aide approached Lieutenant-Commander Edward Whaley Billyard-Leake, promising a knighthood in exchange for £12,000. On receipt of a letter from Gregory, Billyard-Leake handed it to the Treasury Solicitor and made a statement on his dealings with Gregory. He later gave evidence against him, and Gregory eventually pleaded guilty. Nonetheless, the police did not pursue charges against anyone who had bought an honour.

64. If the case against Maundy Gregory was much clearer than any subsequent case, it is also true that the sins of Maundy Gregory and of the Lloyd George era were very different from anything that is alleged to have happened in recent years. Nobody to our knowledge is claiming that there is a general tariff for any title, available indiscriminately to anybody who is willing to pay. While we deplore the possibility of individual honours or peerages being awarded on the basis of ability to pay, we must acknowledge that today’s honours and Lords appointment systems are fundamentally different from those of the 1920s. There are checks and balances which ensure that never again could an honours broker live off the commission of the titles he sold.

65. Nonetheless, the behaviour of which Maundy Gregory and his clients were guilty in the 1920s is rightly still criminal even if the chances of successful prosecution are extremely low. Lord Hurd told us that the 1925 Act served a purpose as a longstop,<sup>56</sup> as “you could conceive of circumstances in which a prosecution could be brought.”<sup>57</sup> We accept this point, and the already cited similar views of other witnesses.

**66. The Honours (Prevention of Abuses) Act still serves a purpose as a long stop. It defines behaviour which was totally unacceptable in 1925, and is totally unacceptable now. The failure of the police to secure a prosecution in recent years is not necessarily a failure of the Act – we do not know that anything illegal took place. We would therefore resist any proposals that suggested the Act should be repealed in the absence of more comprehensive legislation coming forward.**

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55 Cited in Tom Cullen, *Maundy Gregory: Purveyor of Honours*, (London, 1974)

56 Q 206

57 Q 218

67. It does appear, however, that the likelihood of securing prosecutions under the 1925 Act will always be very low even if peerages or honours are covertly traded. The behaviour which the Act criminalises is deliberately very limited. One effect of that limitation is that to secure a conviction in practice, the police would almost certainly have to catch someone red-handed. Given the nature of clandestine deals, this seems unlikely to happen. We must therefore look for ways to improve the law in this area.

## Refining the 1925 Act

### *Potential new offences*

68. We have seen that the 1925 Act deliberately delimits what is criminal behaviour and what is not. For example, it is not illegal to nominate someone for an honour or a peerage on the basis of past contributions to a party, as long as those contributions were not made on an explicit understanding that they would lead to any specific reward. While the House of Lords Appointments Commission might block anyone who was put forward to be a peer purely on the basis of past financial contributions, parties are free to nominate whom they like without setting out any reasons. Indeed, they could explicitly state that a particular nominee is being put forward for their past financial contributions. Put simply, it is not illegal for parties to appoint donors to the House of Lords purely on the basis that they have made donations in the past. Nor is it illegal to give cash in the hope of one day being honoured.

69. One option for reform would be to extend the types of behaviour which are considered criminal. Parliament could act to make it illegal to take into consideration past financial contributions when nominating someone for a peerage. However, it is not clear what that would achieve. It may not be a crime to nominate someone to the House of Lords based solely on a financial contribution to a party, but if a convincing case cannot be made that they are in any event a credible candidate, the Appointments Commission should prevent their nomination being passed to the Queen. If the Appointments Commission can be so established that people can have confidence that it will block the appointment of prospective peers whose main qualification is a financial contribution, then it matters less if parties nominate such people. If there can be a transparent nomination process, as we discuss in chapter 7, then the only people who will be hurt if the parties nominate under-qualified donors are the parties and the donors themselves.

70. Another possible extension of prohibited behaviour would be to ban people from making political contributions in the hope that they will be nominated for an honour or peerage. It is, however, legitimate for rich individuals to donate large sums of money to political parties, so long as they do not do so in the expectation of any reward. **What is rightly regarded as reprehensible is the idea that donors are seeking, and getting, something in return for their donation. It is impossible to legislate for motivations. However, while it would be desirable to prevent people from even trying to buy favour, it makes more sense to ensure that even if they do try, they cannot succeed. This must be the objective of any reform.**

71. Having established that it is deeply unlikely that a circumstantial case could be put together which convinced a jury that an explicit agreement had been made, the other theoretical possibility is to make it easier to prosecute *implicit* agreements or offers.

Implicit agreements to exchange money for reward are odious; but they are also by their very nature likely to be impossible to prove to the criminal standard. Lord Hurd told us that he suspected we would be hard pressed to draft in legislative form a criminal offence that covered an implicit agreement.<sup>58</sup> Dr Meg Russell of University College London agreed:

I think your inquiry has uncovered quite well the difficulties of legislating in this area, and if there are nods and winks going on then it is difficult to prove a case, and so on. I do not necessarily believe that there are nods and winks going on, actually, but if there were that would make it difficult to prosecute.<sup>59</sup>

Dr Michael Pinto-Duschinsky, of Brunel University, agreed with this analysis,<sup>60</sup> as did his colleague Professor Fisher:

[Dr Russell] makes a very important point that you cannot legislate on a nod and a wink, unless you have a CCTV camera in the room; it is simply absurd to do so.<sup>61</sup>

**72. It is hard to see what would be gained from seeking to criminalise any additional forms of behaviour beyond those already caught by the 1925 Act. An offence of giving money in the un-stated hope of some reward would never be possible to prove. It is already illegal implicitly to agree an exchange of cash for honours or peerages; the difficulty lies in the low likelihood of proof. If the police cannot find evidence of an unambiguous agreement, we can hardly make an offence out of an ambiguous one.**

### *Changing the burden of proof*

73. If it is too difficult to secure convictions under the current offences, and there are no sensible new offences to create, the remaining possibility is to make some change to the burden of proof to make it easier to secure convictions under the current offences. Chris Sallon QC has advised us that the obvious way to do this would be to reverse the burden of proof so that it falls on the defendant:

The primary problem in establishing any corrupt activity is proving to the requisite standard the intentions of and agreements between the relevant parties. In the “Cash for Honours” investigation, it was clear that some of those who had made significant loans to the Party were subsequently recommended for honours. The primary problem with the potential prosecution of those involved was showing the necessary intention and agreement ...

The offence of corruption is inherently clandestine. Acts of corruption rarely take place in the presence of witnesses and evidence is rarely recorded. Considered in this context, it is difficult to argue with the conclusion ... that the presumption of corruption in the 1916 Act [Prevention of Corruption Act 1916] should be extended throughout the law of corruption.<sup>62</sup>

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58 Q 218

59 Q 419

60 As above

61 Q 423

62 Annex, paras 57–58

74. Under such a presumption, Mr Sallon tells us that the prosecution would merely have to demonstrate (albeit to the criminal standard of “beyond reasonable doubt”) that “some money, gift or consideration was provided to a public body”, and that “the person providing it (or the person whose agent provided it) was holding or seeking to obtain an advantage” from that public body. No proof of an agreement between two parties would be needed. The defendants would then have to convince a jury that their innocent explanation was more plausible than any suggestion of corruption.<sup>63</sup> We note Mr Sallon’s suggestion that this reversal of the burden of proof could apply to all accusations of corruption and not just to offences around the sale of honours and peerages.

75. However, Mr Sallon also noted that expanding the presumption of corruption would be an infringement of the presumption of innocence guaranteed in Article 6 (2) of the European Convention of Human Rights. Such an infringement can be justified in certain circumstances, and Mr Sallon gave us an argument which could be used, including the fact that the 1916 Act does not appear to have been challenged. However, his personal opinion was that this argument was not as strong as the counterargument that private sector corruption, in the form of criminal fraud, is regularly prosecuted without the benefit of the presumption of guilt. This suggested to him that “the phenomenon of under-prosecution on the part of the CPS [with regard to all forms of corruption in the public sector] might be accounted for by underlying and more sensitive problems than to genuine evidential difficulties”. For these reasons, his opinion was that a more robust presumption of corruption would be unlikely to be considered as Human Rights Act compliant.<sup>64</sup>

76. Our witness from the legal sphere, David Perry QC, while avowing that he was not sure he possessed the appropriate expertise to comment, seemed to agree with Mr Sallon’s analysis:

One of the matters which was mooted with me before today was, whether there should be an attempt to impose a burden of proof on the defence ... what I would say in relation to that is that any such suggestion would first of all involve political and moral questions, given the pre-eminence of our law to the presumption of innocence, and although Parliament would have primary responsibility for deciding where the appropriate balance would lie, it would have to do so taking into account and giving proper weight to human rights considerations and the overriding need to ensure that any person charged with a criminal offence has a fair trial.

The most important matter, whatever the public interest might be in the investigation and uncovering of crime, it might be thought is that people should not be improperly convicted or stigmatised with criminal wrong-doing merely for the sake of expediency.<sup>65</sup>

77. For the sake of completeness we note there is also a hypothetical possibility that allegations of sale of honours could be tried on the balance of probabilities rather than to the criminal standard of being proven beyond reasonable doubt. This might increase the

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63 As above, paras 59–60

64 Annex, para 63

65 Q 324

willingness of the police to investigate complaints and the likelihood of convictions. However, there are good reasons why criminal offences are generally tried at the criminal standard, not least of which is that to do otherwise is a potentially significant infringement of human rights. We do not see that the results of this particular crime are so significant as to warrant what would be a highly unusual departure from the criminal standard of proof.

**78. The legal advice we have received is that it is probably not compatible with the European Convention on Human Rights, and hence with the Human Rights Act, to change the burden of proof for offences under the 1925 Act. While we must ensure that corrupt behaviour is effectively prevented or, failing that, effectively punished, this has to be balanced against the human rights of those accused. In this case, we do not believe the case for changing the burden of proof is sufficient to justify the human rights implications.**

### Reforming the general law of corruption

79. The discussion of the legal framework so far raises the interesting suggestion that the offences covered by the 1925 Act ought in any event to be covered by general laws against corruption in the public sector. There is nothing particularly special about the sale of honours—these acts are comparable to any other attempt to purchase influence or specific favours. It is not clear that for the acts of attempting to purchase an honour or a seat in the legislature there is any case for specific offences, methods of investigation or punishments which are different from those for public sector corruption in general.

80. Chris Sallon’s paper raises interesting issues around the law of corruption which arose from this investigation. While some of these go beyond the matters which have been the subject of our inquiry, they are all nonetheless relevant, in that they lead him to believe that none of the current corruption laws could have been applied to the recent “cash for honours” case. It is a common opinion that the present law is in an unsatisfactory state. The statutory offences of corruption date from 1889, 1906 and 1916, and so are understandably out of date. They and the common law offences of bribery should be replaced by a modern statute. Such is the belief of the Law Commission and of a Joint Committee which scrutinised the Law Commission’s draft Bill in 2003.<sup>66</sup> That Joint Committee was not entirely satisfied by the draft Bill, and invited it to be revised and re-entered into Parliament. After a further Government consultation which found no consensus on how to achieve reform, the Law Commission has been asked to look again at these matters, this time focused on the law of bribery, and to publish a revised draft Bill in autumn 2008. A consultation paper was published on 29 November 2007.<sup>67</sup>

81. Mr Sallon makes three suggestions of provisions a revised statute should include. His contention is that if these were applied, the need for the 1925 Act would disappear:

- A rationalised definition of public body: this was potentially a problem with the recent police investigation as some of those involved were not civil servants. There is also a

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66 Law Commission No 248; Joint Committee on the draft Corruption Bill, Session 2002–03, *Draft Corruption Bill*, HC 705

67 Law Commission, Consultation Paper No. 185, *Reforming Bribery*, November 2007

question of whether Members of Parliament should still be excluded from corruption laws. Mr Sallon suggests several ways of effecting such a change.

- All corruption offences should have a common, modernised definition of “bribe”: under some, including the 1925 Act, it would be possible for a defendant to advance a technical argument that a loan falls outside the relevant definitions.
- A broader definition of what constitutes a corrupt act: definitions range from the very specific, such as under the 1925 Act, to the very wide, such as under the Prevention of Corruption Act 1906 which defines the corrupt act as “more favourable treatment”.

We publish Mr Sallon’s advice in full as an annex to this report.<sup>68</sup>

## Conclusions

**82. Consideration should be given to subsuming the specific law on abuses around honours and peerages into a new general Corruption Act. The need for such an Act is not disputed. The Law Commission is currently working on something along these lines, at least with regard to bribery. We recommend they should consider incorporating the behaviour outlawed by the 1925 Act in their new draft Bill, and give serious attention to the points raised in this part of our Report.**

**83. When a Bill is produced, we hope the Government will soon find time for it in the parliamentary schedule. The last Corruption Act was in 1916—a modern law is overdue. We would also suggest that this Committee or its Members should be invited to play some part in giving pre-legislative scrutiny to the draft Bill.**

**84. However, corruption in the public sector remains very rarely prosecuted, and it may always be difficult to secure convictions. Any attempt to bribe or to solicit bribes of any kind ought to be effectively punishable; but our first priority ought not to be refining the law to punish offenders. It must be preferable to take steps to prevent offences from being committed. In the case of preventing the sale of peerages, this should be approached through better regulation of political parties and their funding, and a better appointments process for the House of Lords. These issues are dealt with in the remainder of this report.**

## 5 Loans and electoral administration

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85. As we made clear at the outset of our inquiry and of this report, it is for other Committees to consider proposals relating to the system for party funding. Before the machinery of government changes which created the Ministry of Justice, the Constitutional Affairs Select Committee (CASC) produced a report which set out a possible direction of travel, a package which included an increased element of state funding, some tax relief on political donations, and lower caps on spending and individual donations.<sup>69</sup> At the same time, the Government commissioned Sir Hayden Phillips, responsible for its review of the honours system, to conduct a similar exercise with regard to party funding. Sir Hayden's report was published on 15 March 2007 and its prescriptions followed much the same direction as the CASC report.<sup>70</sup> Following publication of Sir Hayden's report, the parties were involved in talks to try to agree a way forward, although at the time of writing those talks are suspended. We did not take evidence on the future of party funding and do not intend to make suggestions to influence those discussions, except to note that if there are more effective mechanisms to prevent donations producing rewards, then part of the funding issue is easier to resolve.

86. However, given the allegations which triggered the police investigation, our inquiry inevitably touched on questions of how parties acquired donations, and whether the legal and regulatory frameworks around party funding were working, irrespective of how they might be altered in future. This chapter summarises our findings.

### Loan funding

87. Some political commentary implies that the act of donating money to a political party is inherently dubious behaviour. There is certainly now a school of thought which holds that the parties' reliance on a few wealthy donors has skewed political behaviour. We heard arguments along these lines from Dr Pinto-Duschinsky.<sup>71</sup> There may be truth to these assertions—we have not tested them—but if so, it is not necessarily the fault of the donors themselves. David Perry QC offered a qualified defence of political giving in the context of suspicion over donors subsequently being ennobled:

People donating to parties who become recognised as supporters of parties and are properly then given peerages because they do support the party in question and they have demonstrated their support in the past is not necessarily wrong.<sup>72</sup>

88. We would go further. In a system where political parties rely on donations to fund their continued existence, it is nonsensical to distrust instinctively the act of donation. The logic of a donor-based funding system is that we should move in the opposite direction, to make it more commonplace to give money to political parties in the way that people do to

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69 Constitutional Affairs Select Committee, First Report of Session 2006–07, *Party Funding*, HC 163

70 Sir Hayden Phillips, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, 15 March 2007

71 Q 364

72 Q 322

philanthropic organisations. We believe that political giving can and should be akin to charitable giving. Dr Meg Russell gave us an interesting observation:

In a funny sense, if you have someone who is at the top of their field who is being considered for membership of the House of Lords, you have to be a little bit suspicious as a party if they have not given a significant amount of money to the party because when you are a wealthy individual, it is one of the only ways that you can show your commitment, particularly when you are extremely busy. The House of Commons is full of donors to political parties and we do not tend to think that that is corrupt.<sup>73</sup>

Donating should not in itself be controversial. It should not be assumed that every donor to a particular cause does so in search of preferment or reward.

89. Nonetheless, transparency is essential, which was the purpose of the 2000 Act. The problems arise more when donations are not declared on receipt. It is scarcely surprising that when the existence of undeclared loans to political parties became public knowledge, searching questions were asked as to why they had not been declared in the first place. It would have been far preferable with hindsight for the transparency regime introduced by the Political Parties, Elections and Referendums Act 2000 to have extended to all loans to political parties, and not just be limited, as it was, to those which were not made on commercial terms. This was put right by the Government when it acted swiftly in 2006 to add provisions on declaration of loan funding to the Electoral Administration Bill, now an Act; and the then Lord Chancellor, Lord Falconer of Thoroton, admitted that such provisions should have been in the earlier Act.<sup>74</sup>

**90. In retrospect, it was a mistake for the Political Parties, Elections and Referendums Act 2000 not to require the declaration of all loans, whether commercial or otherwise. The Government was right to acknowledge that mistake, and right to take swift steps to rectify it in the Electoral Administration Act 2006.**

## A regulatory failure?

91. The passage of the Electoral Administration Act closed the loophole which was at the heart of the long police investigation. But we heard some evidence that even with this loophole, however regrettable, the 2000 Act was nevertheless workable. In this version of events, the failure was not just one of policy in 2000 but also subsequently one of implementation. The charge laid is that the definition of “commercial loan” was never satisfactorily clarified, meaning that parties were unable to judge the legality or otherwise of their actions. At fault, if we accept this hypothesis, is the Electoral Commission.

92. The argument that the police investigation flowed from an Electoral Commission regulatory failure was put to us most forcefully by Dr Pinto-Duschinsky:

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73 Q 374

74 Quoted in Andrew Grice, “Parties forced to disclose all loans in wake of cash for honours affair”, *The Independent*, 27 April 2006, p26

The Conservative Party approached the Electoral Commission to ask if their interpretation of the law was correct and they met with a refusal to give any guidance. Now, having asked for, and been refused, guidance by the Electoral Commission and having asked its lawyers, as indeed Labour had, for their guidance and been told that they were acting within the law as the lawyers saw it, it would have been, I think, iniquitous if the parties were then hauled before the courts with criminal penalties since they had done what they responsibly should have done to check what the law was.<sup>75</sup>

In other words, the charge is that by failing to give any guidance on the definition of a commercial loan, the Electoral Commission gave the parties no chance to demonstrate that they were clearly working within the law.

93. This absence of a clear definition of commercial loan would prove problematic for the police investigation. We know that the police, unable to put together a case under the 1925 Act, turned to the 2000 Act in pursuit of a charge of failing to declare a loan on non-commercial terms. We also know that in the end they failed to convince the CPS that charges could be brought on these grounds. On deciding not to prosecute, the CPS wrote that:

In relation to possible breaches of the 2000 Act, we are satisfied that we cannot exclude the possibility that any loans made—all of which were made following receipt by the Labour Party of legal advice—can properly be characterised as commercial.<sup>76</sup>

In our evidence session with the police, Assistant Commissioner Yates seemed to ascribe this inability to prosecute at least in some degree to a failure on the part of the Electoral Commission:

At the moment, there is no definition of a commercial loan, which I know of, the Electoral Commission cannot provide me with one and I think it is a big gap in the law...<sup>77</sup>

I think there is an absence of guidance as well. Without a definition there should be some guidance to help people.<sup>78</sup>

94. Carmen Dowd of the CPS, though, argued that we should not be too quick to attach all the blame to the electoral regulator:

I think that is slightly unfair in that the Electoral Commission have not been in a position to define what a commercial loan might look like.<sup>79</sup>

We put to our panel of academic experts the suggestion that the Electoral Commission should simply have pronounced on what constituted a commercial loan. Professor Fisher,

75 Q 378

76 Crown Prosecution Service, *CPS decision: "Cash For Honours" case*, 20 July 2007, para 30

77 Q 350

78 Q 358

79 Q 354

who has worked closely with the Commission in the past, gave us a robust defence of the Commission:

They were not able to. That pronouncement would have had no legal standing. There is no legal definition of what constitutes a commercial loan and, therefore, whatever pronouncement they made could have been open to legal challenge.<sup>80</sup>

However, this defence was challenged by Dr Pinto-Duschinsky:

In many countries electoral commissions do give advisory opinions which can indeed be challenged afterwards in a court of law, but which nevertheless help political parties. In fact, when the Chief Executive of the Electoral Commission was questioned about this by the Committee on Standards in Public Life, he said himself that he favoured the giving of such advisory opinions, despite the fact that they could then be challenged in the courts later on, so the Electoral Commission itself now agrees that it is desirable to give advisory opinions, as are given in the United States, as are given in Canada, et cetera.<sup>81</sup>

95. We see validity in the points made by all of our witnesses. The position is complex. Section 10 of the 2000 Act provides that the Commission can provide certain people with advice and assistance. The section lists certain people such as registration officers and registered parties to whom the Commission is specifically empowered to provide advice and assistance, and also provides that the Commission can give advice and assistance to other persons if this is incidental to or otherwise connected with the discharge by the Commission of its functions. The question is therefore whether the Commission could have issued advice and assistance either generally to registered parties, or in response to a particular request from the CPS in respect of the specific investigation. In our view, although the Act would have empowered the Commission to issue advice to parties generally about what loans were or were not to be treated as donations, such advice would have had no legal standing. It would simply have been the Electoral Commission's view of what the statute meant, and would not have been binding on any court that had to consider the matter.

96. In fact, the Commission was in an invidious position. Able to advise but not authoritatively, it ran the risk of sinking potential future prosecutions if it *did* pronounce on what it believed commercial terms to be. Let us take a hypothetical example, based on the assumption that guidance did exist on what constituted a commercial loan. If a party received a loan and, based on Electoral Commission guidance, did not declare it, this would not prevent others complaining to the police that the party treasurer had committed an offence because the loan should actually have been treated as a donation. The court might then be minded to find against the party, but even if the court thought that the Commission's guidance was wrong, because the treasurer could point to the advice from the Commission, it would be impossible to say that the treasurer "knowingly or recklessly" failed to include a donation in the report. In short, if Parliament had wanted the

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80 Q 377

81 Q 377

Commission to be able to give definitive advice in this area, then it should have provided for that in the statute.

**97. Our understanding of the 2000 Act is that it did not give the Electoral Commission the power to publish binding guidance on what would constitute a commercial loan. Therefore, the Commission's decision not to give advisory guidance was quite defensible, as to do so would not have given helpful clarity over the legal position. Instead, it might even in some circumstances have prevented justified prosecutions. The Commission was damned if it did and damned if it didn't. The failure to define a "commercial loan" was in the drafting of the 2000 Act.**

98. The criticisms we heard of the Electoral Commission are consistent with a wider criticism levelled at it—which is that it has failed to be a proactive body, defining and enforcing standards of acceptable behaviour by political parties and those acting in the political sphere. Again, we think this is harsh—the Commission was not designed to be that kind of body. Although it has some regulatory functions, it has also been responsible for encouraging people to take part in the democratic process, promoting voter awareness, advising and reporting. However, we do note the impressive consensus behind the opinion that it is time the Commission was refocused so that it is primarily a regulatory body. This was the central recommendation of the eleventh report of the Committee on Standards in Public Life.<sup>82</sup> It was recommended by the Constitutional Affairs Select Committee and by Sir Hayden Phillips.<sup>83</sup> The Commission itself responded to these reports by affirming that this course of action was in line with its own corporate plans,<sup>84</sup> and the Government has now indicated that it too agrees.<sup>85</sup> We note that the Commission and the CSPL agree that legislation is necessary to ensure that the Commission is able to carry out its envisaged enhanced role.

**99. The Electoral Commission's inability to give binding guidance was entirely consistent with the way the Commission was set up. There is now a striking consensus behind the need to make the Electoral Commission into a more effective, proactive regulator. We add our voice to that consensus. The Government is currently considering what steps to take next. One of these steps might need to be changes to legislation to give new powers to the Commission.**

100. The conclusions above suggest that if there was any failure in the regulation of funding, it was not a failure of the regulator, but of the regulatory framework set in statute, and of the parties themselves. There was a loophole in the law which allowed parties wider discretion than was presumably envisaged to receive loans without declaring them publicly. We note, as Dr Pinto-Duschinsky made clear, that at least two of the parties took legal advice on how not to breach the provisions of the 2000 Act regarding commercial loans, and he tells us that the Conservative Party went as far as asking the Electoral

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82 Committee on Standards in Public Life, Eleventh Report, *Review of the Electoral Commission*, Cm 7006, January 2007

83 Constitutional Affairs Select Committee, First Report of Session 2006–07, *Party Funding*, HC 163, p25; and Sir Hayden Phillips, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, 15 March 2007, p7

84 Electoral Commission, *The Electoral Commission response to the recommendations of the eleventh report of the Committee on Standards in Public Life*, 19 March 2007, p2

85 Ministry of Justice, *Government Response to the Committee on Standards in Public Life's Eleventh Report*, Cm 7272, November 2007, p1

Commission for advice.<sup>86</sup> However, it is hard to understand the decision to seek legal advice as representing anything other than a desire to secure the most favourable rates possible without declaration—especially in the light of the subsequent failure to declare the loans that were made. The parties could easily have played safe on the question of law and simply declared the loans if there was any doubt as to whether they were commercial or not. Having designed the loophole, the parties did not have to dive through it so assiduously.

101. Lord Stevenson, who in addition to chairing HoLAC is also the Chairman of HBOS plc, was clear that, while not necessarily declarable, the loans not declared by the parties did not correspond with his understanding of “commercial”:

I personally was and am quite shocked by the expedient of loans. I am not saying they were illegal but I was quite shocked, it is a bit like tax avoidance, and second, there are some real shades-of-grey territory as to what is commercial and what is not.

You try coming to my bank and getting an unsecured loan with interest rolled up at one or two points over base, and I would hate to disappoint you, Chairman!<sup>87</sup>

102. He also argued that, while HoLAC’s financial disclosure forms did not ask directly if nominees for a peerage had ever made loans to the party nominating them, they were phrased in such a way as to make it “perfectly obvious” that loans were relevant:

It is important to say that quite a lot of nominees had told us about loans, as indeed I would expect them to. It is pretty obvious that they should, irrespective of what the 2000 Act said.<sup>88</sup>

Pushed further, he suggested strongly that he would have expected candidates to mention the loans if in any doubt whatsoever as to whether they were relevant:

The fact is, Chairman, that an awful lot of our nominees, I am glad to report, tend to throw everything in at us. If they so much as bought an ice-cream for a politician's child, they will put that in. I am exaggerating a little bit, but half a dozen bottles of beer featured...<sup>89</sup>

In this light, it seems unlikely that not one but four nominees should all be so sure of their interpretation of the Appointments Commission’s disclosure requirements as to decide independently that their loans—in three cases of £1 million or over—were not relevant. It seems clear that the non-disclosure of undeclared loans was deliberate.

103. The question of non-disclosure of undeclared loans arose in a letter sent to the Chairman of this Committee by Sir Gulam Noon, which we publish with this Report. The letter reads:

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86 Q 378

87 Q 228

88 Q 228

89 Q 231

When I was approached in relation to the possible peerage, I completed what I understand to be the usual form and disclosed on an attached document my schedule of donations including the £250,000 loan. I was, thereafter, reminded by Lord Levy that this should not have been declared because it was a loan, not a donation.

At his suggestion, I telephoned Richard Roscoe, the appropriate civil servant at 10 Downing Street, and, following discussion, I wrote enclosing the revised schedule. I thought that I was correcting an error and am embarrassed and upset by the nature of some of the publicity which has resulted.<sup>90</sup>

Sir Gulam's letter also states that he initially offered a gift but was asked for a loan.<sup>91</sup> As our inquiry became the subject of a police investigation, we have been unable to test these allegations on other witnesses. We cannot therefore judge their veracity. We understand that Lord Levy does not agree with the account given by Sir Gulam.

104. The suggestion that undeclared loans should have been declared is not entirely without difficulties. The most important of these would have concerned the privacy and confidentiality of the lender. The lender (which in some instances would have been a bank) might not have wanted to make public the fact that they had made a commercial loan to a political party because they might not have wanted to be associated with a particular political party. Where the loan came from an individual there could have been personal data protection problems with the party making the loan public in a situation where there was no statutory requirement to do so. We acknowledge that parties would not have been acting improperly in choosing not to declare genuinely commercial loans.

105. Nonetheless we see no reason why any parties could not have made it their policy to declare all of their loans (as of course they are now compelled to do). If either banks or individuals had not wanted to make loans under those terms, there would have been no compulsion for them to do so. Data protection would presumably not cause any problems if donors were aware that their loans would be made public. In the event, despite their acknowledgement in the 2000 Act of the principled case for transparency, this was not the route that parties chose to go down. With hindsight, the failure to do so was, at the very least, misjudged.

**106. The pattern of events is clear. While legal advice was taken to ensure that no law was broken, a deliberate attempt was made to stretch the loophole on commercial loans as far as it would go. Having agreed legislation to make party funding transparent, parties appear to have gone to some lengths to get around it.**

**107. If there was any doubt about whether it was legally necessary to declare their loans, parties should have done so. If there was any doubt about whether it was legally necessary for candidates for peerages to disclose their loans, they should have done so. Even if there was no doubt on either of these matters, there is a strong ethical case that loans should have been declared. The letter of the law may not have been broken, but the spirit of the law was quite clear.**

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90 Ev 74

91 Ev 73

## 6 House of Lords appointments

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108. In Chapter 3 we set out the arrangements for the appointment of party working peers, including the remit of the House of Lords Appointments Commission. We noted that some elements are a hangover from the system for allocating honours—which is inappropriate because a peerage is not just an honour but also a seat in the legislature. However, this is not the only reason why there are flaws in the arrangements for appointments to the House of Lords. Fundamentally, the House in its current shape—dominated by appointed peers rather than their hereditary counterparts—has existed for fewer than ten years. It is scarcely surprising that work is still needed to continue the reform of the second chamber.

109. This chapter begins with a survey of reforms to the function of, and appointments to, the House of Lords. We then go on to consider the current appointments system, especially in the light of current events, before making suggestions as to how the system could be improved.

110. The history of House of Lords reform is a long and tangled one, which we do not propose to set out in full here. Our purpose in providing this brief chronology is to draw out the events which led to the particular character of today's House—a largely nominated revising chamber with a plethora of entry routes. We are particularly interested in the reasoning behind the current appointment processes. On the other hand, we are not concerned here with the history of debate on an elected element in the new second chamber. An argument could be made that the best way to solve the problems of appointment processes would be to remove all elements of appointment from the House of Lords and have an entirely elected chamber. Indeed, in March 2007, the House of Commons in a free vote decided by a large majority in favour of a wholly elected House of Lords. The Government has indicated that it will develop reforms for a substantially or wholly elected second chamber and we wait to see how this evolves. This is not the place for these arguments, however. **Experience shows that the failure to find consensus on a comprehensive reform package can prevent progress on the running repairs that are needed now. We recommend that the next stage of Lords reform should not wait for a consensus on elections.**

### House of Lords reform: how we got to where we are

111. The modern history of House of Lords reform began in 1911 with the passage of the Parliament Act. Following the Lords' rejection of Lloyd George's "People's Budget" of 1909, the Act ensured that the House of Lords could no longer prevent a Bill becoming law if the House of Commons agreed it in three consecutive sessions (later reduced to two). From this moment on, the upper House has effectively been a revising chamber. Other principles have flowed from that: that the Lords should be complementary to, and not a rival to, the Commons; that its strength should lie in its range of specialist expertise to be used for scrutiny; and that therefore heredity was not the correct principle for determining membership of the chamber. The Life Peerages Act of 1958 allowed the government to appoint non-hereditary peers for the purpose of putting qualified individuals into the House of Lords. It thereby allowed a measure of greater party balance to a traditionally

Conservative-dominated House. The mechanism by which peers can take a voluntary “leave of absence” was also created in 1958.

112. The next significant reforms were those of the Labour Government elected in 1997, which came into power pledged to remove the hereditary peers from Parliament.<sup>92</sup> Its stated objectives included maintaining an independent cross-bench presence in the Lords, and ensuring that while the party composition of appointed members better reflected the spread of political opinion in the country, there would nonetheless never be a single party with overall control of the House. In 1999 Parliament passed a House of Lords Act, altering the composition of the House. An amendment was accepted to secure the Act’s passage which allowed 92 hereditary peers to continue to sit “until the second stage of House of Lords reform has taken place.”<sup>93</sup> As the 2007 White Paper on House of Lords reform noted, the Government did not say what this second stage would be, in particular not committing itself to any element of election.<sup>94</sup>

113. At the same time as taking legislation through Parliament, the Government also commissioned a Royal Commission on the Reform of the House of Lords (usually known as the Wakeham Commission after its Chairman, Lord Wakeham) to consider what a future House should look like. The Wakeham Commission published its report in January 2000.<sup>95</sup> Its proposals, too many to list here, informed subsequent Government proposals, but there were significant differences too—not least in the powers of a proposed new statutory appointments commission. Wakeham had argued that all appointments should be made through the commission, including party political appointments, but the Government’s proposals left these appointments within the control of political parties. On this and other issues, the proposals produced only deadlock, culminating in the free votes on composition of February 2003 in which the House of Commons endorsed none of the seven options put before it. During this period our predecessor Committee produced a report on the future of the second chamber, recommending a mixed membership, which continues to be relevant today.<sup>96</sup>

114. That survey brings us to the present day. Early in 2007 the then Leader of the House of Commons, Rt Hon Jack Straw MP, attempted to revive the process with the publication of another White Paper and subsequent further free votes on the composition of the new House.<sup>97</sup> While the results of those votes did not settle the vexed issue of composition, they did give confirmation of the House of Commons’ desire to remove the remaining hereditary peers. A cross-party working group has been established which is looking at the future of the Lords one more time, and the Government has stated its hope that all parties will make manifesto commitments to an agreed proposal for reform before the next general election. However, with that general election all but ruled out for 2008 and not

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92 Labour Party General Election Manifesto, 1997

93 HL Deb, 30 March 1999, col 207 (quote is from the then Lord Chancellor, Lord Irvine of Lairg)

94 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 3.28

95 Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000

96 Public Administration Select Committee, Fifth Report of Session 2001-02, *The Second Chamber: Continuing the Reform*, HC 494

97 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007

assured for 2009 either, comprehensive Lords reform seems to be not an immediate prospect.

## The House of Lords Appointments Commission

115. The House of Lords Appointments Commission (HoLAC) was established by the then Prime Minister in May 2000. We have already set out its three roles in chapter 2—to select non-party-political peers, to vet some nominees for higher honours for propriety, and to do the same for prospective party working peers. It is crucial to note that this design of an Appointments Commission was never intended to be permanent; the Government clearly envisaged that the second stage of Lords reform would have happened by now.<sup>98</sup> It was therefore a pragmatic decision not to spend legislative time on the creation of an Appointments Commission which would be replaced soon after its inception (especially as it could be created without legislation). **The intention was always to create a Statutory Appointments Commission as part of the second stage of Lords reform. This inquiry has demonstrated why it is now important that this happens sooner rather than later.**

### *The 2005 draft working peers list*

116. We have already cited the Appointments Commission's interpretation of its own role with regard to party nominees—that it checks them for propriety, not suitability.<sup>99</sup> We do not know, because the Commission considers it to be confidential, precisely why the decision was made to query the names on the Labour Party's list of nominations in 2005. We do know, however, from Lord Stevenson that the names on the list were queried with the Prime Minister *before* the Commission became aware of the loans:

What happened was we got the list in October or something like that, and we went back to the Prime Minister at the beginning of February, there or thereabouts, and we only discovered a very few weeks after that that there had been a loan from one of them, and we then moved very fast to ask the political parties to tell us what other loans there were and if there was anything else we should know.

It is quite an important piece of fact that we had given our advice to the Prime Minister without knowledge of the loans which subsequently came to light.<sup>100</sup>

117. Lord Stevenson put it to us that this showed that HoLAC was doing its job quite well:

I hope—and it is for other people to judge this—the view would be taken that the regulatory system worked pretty well on the matters which led up to the police investigation. There is evidently a transparency to it that has not existed before (when these things were done from within No 10 or wherever) ... I think it became evident—I would say that, wouldn't I?—I think broadly it has acted in the public interest.<sup>101</sup>

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98 Prime Minister, *The House of Lords: Completing the Reform*, Cm 5291, November 2001

99 <http://www.lordsappointments.gov.uk/vetting.aspx>

100 Q 228

101 Q 145

118. We are not sure that we take his point about there being a transparency to the system; it strikes us that there is only transparency in this case because the draft list of working peers was somehow leaked to the press. But on the more important point, Lord Stevenson's assertion that the regulatory system worked well, he was supported by Dr Pinto-Duschinsky:

In my opinion, the procedure did work broadly as intended. The House of Lords Appointments Committee [sic] (HoLAC) scrutinised the suitability of the Prime Minister's nominees for peerages and rejected several of them.<sup>102</sup>

119. In our interim report we noted the complaint made by Dr Chai Patel to the Appointments Commission that he had never had a chance to present the evidence from his standpoint.<sup>103</sup> This does suggest a flaw in the system—perhaps a hangover from the honours system, where candidates who failed a propriety test would never know they had been nominated in the first place. Based on his letter to the Chairman of this Committee, Sir Gulam Noon was clearly equally upset by the fact that he was unable to defend himself publicly.<sup>104</sup>

120. On the other hand, the four people whose appointments were blocked were only impugned because the list was leaked, which does not imply a systemic failure of regulation. If nobody else had known that HoLAC had advised against them, it would have been less important that the reasoning was not made clear to them. We believe it is quite commonplace in other fields of work for prospective employees who fail security checks not to be told on what grounds they were rejected. We have received a letter from Lord Stevenson, again published with this report, reporting that the Commission has in its seven years of life asked further questions about ten nominees, and advised against five.<sup>105</sup> Presuming that this includes the four who were at the centre of the police inquiry, that means there has been one other nominee who was put forward and subsequently withdrawn (as we know that HoLAC's advice has never been rejected<sup>106</sup>). As we do not know who this person was, we can safely say that he or she has not suffered undue reputational damage from HoLAC's decision to advise against their nomination.

**121. It appears that the regulatory system for assuring the propriety of party nominees to the House of Lords had the right outcome, in that those who made undeclared loans to a party were blocked from becoming peers. It would certainly have cast the House of Lords in a very bad light if the four nominees had become peers and the loans had subsequently come to light after they had been ennobled.**

**122. We do not know on what grounds the House of Lords Appointments Commission advised against these four candidates being ennobled, or what the source of the leak of the names was, but we commend the Commission for the robust performance of its scrutiny role.**

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102 Ev 65

103 <http://news.bbc.co.uk/>

104 Ev 73–74

105 Ev 64

106 Public Administration Select Committee, Fourth Report of Session 2005–06, *Propriety and Honours: Interim Findings*, HC 1119, Q 103

### *The powers of the Commission*

123. We have seen that the regulatory process for appointments to the upper House appears to be providing broadly satisfactory outcomes. Yet our inquiry uncovered real doubts over the processes which led to those outcomes. These can be summarised in one question: from where does the House of Lords Appointments Commission derive the authority to act as it does? We put this question in various forms to several of our witnesses.

124. One easy test of this question is the Commission's decision that new peers have to be tax resident in the United Kingdom. We entirely agree on the principle that members of the UK legislature should pay UK taxes. However, it is not illegal to go into tax exile deliberately. It is not illegal to serve in the legislature and not be tax resident, even if maintaining this status does mean that the person in question must remain outside the UK for a substantial proportion of the year. There is no minimum attendance requirement for peers in the law or in the Standing Orders of the House of Lords.

125. The question therefore arises of from where the Appointments Commission derived the power to advise against potential peers on these grounds. We are told by the Commission that they check nominees only for propriety, not suitability, so they must consider it improper not to be tax resident even though it is perfectly legal. They also tell us that to them propriety means that "the individual should be in good standing in the community in general and with particular regard to the public regulatory authorities"; and that "the appointment would enhance rather than diminish the workings and the reputation of the House of Lords itself and the appointments system generally."<sup>107</sup> We asked Lord Stevenson on which of these grounds they had decided that nominees had to be tax resident, and he replied:

The truth is it is based on a fundamental view which I think PHSC<sup>108</sup> had before, and we have and I certainly feel. I would not go so far as to say I would agree with everything Mr Prentice said a little time ago, but I rather agree with the direction that it is inappropriate for people to be in the Lords who do not pay UK taxes. It is as simple as that.<sup>109</sup>

We rather suspect that it is indeed "as simple as that" for the Appointments Commission effectively to make up the rules as it goes along. One of its members, Lord Hurd, appeared to agree:

We have been working out our own criteria. We have had to, in order to do the job which we have been asked to do.<sup>110</sup>

Lord Stevenson did note that the Commission had not started from a blank sheet of paper in working out its criteria, but had inherited and adapted the working practices of the now defunct Political Honours Scrutiny Committee.<sup>111</sup>

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107 <http://www.lordsappointments.gov.uk/vetting.aspx>

108 The Political Honours Scrutiny Committee

109 Q 174

110 Q 151

126. We agree with Lord Stevenson that it is inappropriate for people who are not tax resident in the UK to serve in the legislature, and we understand that the Commission has had largely to make up the rules as it goes along, because it is operating in an area where there are no rules. We make no criticism of the House of Lords Appointments Commission. But it cannot be right that the rules for entry to one half of our legislature are made by just six people, whoever they may be, and can be unmade or re-made at any moment without any proper process.

### *Suitability, Propriety and Credibility*

127. Although we are largely content with the outcomes of the Commission's work, another example demonstrates a central confusion in the Commission's role which in our view is near impossible to sustain. That confusion derives from their claim to assess potential non-party candidates for their suitability, and to vet party nominees for propriety only.

128. We acknowledge that on paper there is a distinct difference between those two roles—especially as in the case of the non-party peers, the Commission is choosing its own candidates, whereas the candidates for party peerages come from the parties themselves. A system could be devised without ambiguity where HoLAC carried out its current role with regard to non-party peers and also vetted party nominees for propriety. However, the Commission's interpretation of propriety seems to us to go well beyond our understanding of the word, or what we believe to be the public understanding. We have already cited their definition, but it is important enough to set out again:

The Commission takes the view that in this context, propriety means: first, the individual should be in good standing in the community in general and with particular regard to the public regulatory authorities; and second, the individual should be a credible nominee. The Commission's main criterion in assessing this is whether the appointment would enhance rather than diminish the workings and the reputation of the House of Lords itself and the appointments system generally.<sup>112</sup>

129. We take no issue with the requirement that the individual should be in good standing in the community in general and with regulatory authorities in particular; that seems to us to be the very essence of what propriety is. It is the second half of the Commission's definition that we have continually questioned—that the individual should be a “credible nominee”. **We believe there is a fundamental problem with the House of Lords Appointments Commission's aim to judge party nominees to the House of Lords on their credibility but not on their suitability. We do not see a difference of anything but degree between suitability and credibility. A candidate is credible if he or she is sufficiently suitable; we see no other means of measuring it. We cannot visualise a candidate who is credible but unsuitable.**

130. When we put to Lord Stevenson that the claim to judge party nominees for credibility but not suitability was unsustainable, the HoLAC Chairman defended their criteria:

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111 Q 226

112 <http://www.lordsappointments.gov.uk/vetting.aspx>

We are responsible for propriety but the political parties and the political system at this point in time are responsible for saying this chap or this woman is suitable. We might privately think that some such person is not particularly suitable but it is not our job to comment on that.<sup>113</sup>

However, he later conceded the point to an extent:

You could argue—I would not like to have to cross words with you and definitions—and it is at the heart of what you are saying: “Does that not get you into a bit of suitability?” and you would have a point.<sup>114</sup>

It is interesting that the description of the Appointments Commission’s role in relation to party nominees, as set out in the 1999 White Paper describing the Government’s plans for HoLAC, reads that “the Appointments Commission will also take on and reinforce the present function of the Political Honours Scrutiny Committee in vetting the *suitability* of all nominations to life peerages.”<sup>115</sup> There is clearly an unsatisfactory confusion.

**131. The House of Lords Appointments Commission seems to us to be judging party nominees for their suitability as well as non-party nominees. The difference would appear to be that the bar is set lower—whereas non-party peers have to be the most suitable candidate of many, party peers only have to be suitable enough to not diminish the workings and the reputation of the House of Lords and the appointments system.**

**132. We are not surprised to find ambiguity in the Commission’s rules. Rules need to be consulted on in draft; and rules of this nature ought to be made through proper Parliamentary processes. The criteria used in vetting prospective peers must be clarified.**

### ***A statutory Appointments Commission***

133. Most of our witnesses argued that the best way to clarify the remit of the Appointments Commission would be through putting it onto a statutory footing. Certainly the two members of the Appointments Commission who gave evidence to us were entirely of the view that this was necessary. Asked if he would favour the Commission being put on a statutory footing, Lord Stevenson answered simply “yes”.<sup>116</sup> Lord Hurd told us that he was sure there should be a statutory Appointments Commission if there was to be any nominated element in the House of Lords.<sup>117</sup>

134. It is not just the Commission’s members themselves who favour the statutory model. Dr Russell told us she had been involved in a survey of peers which found that 91% favoured the Commission becoming statutory.<sup>118</sup> We have already seen that the Government itself indicated in its last White Paper on the Lords that it supports this

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113 Q 149

114 Q 151

115 Prime Minister, *Modernising Parliament, Reforming the House of Lords*, Cm 4183, January 1999, Chapter 6, para 10

116 Q 210

117 Q 151

118 Q 390

approach in principle.<sup>119</sup> Indeed, we have not heard a single dissenting voice. Our experience, however, tells us that the challenge is not just to persuade the Government in principle, but to find the parliamentary time.

**135. One of the major lessons to be drawn from the events of the last two years is that the rules for entry to the House of Lords are far too ad hoc. They must be clear; they must be widely agreed; and they must be of unquestionable legitimacy. In short, they must be statutory. We call upon the Government to legislate as soon as parliamentary time allows to put the House of Lords Appointments Commission onto a statutory footing.**

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119 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 8.15

## 7 An interim House of Lords Reform Bill

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136. The previous chapter has made the case for producing a Bill to put the House of Lords Appointments Commission onto a statutory footing, and for doing it soon. The next question is what such a Bill should contain. We do not intend to be too prescriptive. The last century has shown that the detail of Lords reform is hugely contentious, and that large scale packages of reform simply flounder. Incremental changes may not be ideal, but as Dr Russell told us, in this area they have been the only ones that have ever happened:

I have changed my views on this rather. I think that the history of Lords' reform shows us that attempts at major reform throughout the last 100 years have consistently failed, whereas the reforms which have managed to succeed are the small, incremental steps which are relatively uncontroversial.<sup>120</sup>

An interim House of Lords Reform Bill must be relatively concise, and it must be relatively non-contentious. We believe the package of reforms we set out in this report can meet those criteria.

### Reforming appointments processes

137. Three particular problems with the appointments processes have been continually mentioned to us throughout our inquiry (and indeed previous inquiries into these matters). The first is the continued link between the honours system and a seat in the legislature; the second is the lack of an exit route from the House of Lords; and the third is the party leaders' continuing power of patronage. We consider the first two briefly here; fuller consideration of the third follows later in the chapter.

#### *Honours and peerages: breaking the link*

138. As we made clear at the beginning of Chapter 2, a peerage is much more than an honour, not a prize but a duty. A seat in either House of Parliament should be sought for one reason only—to serve the people. It is not always clear whether all putative peers are attracted by the chance to improve the law or provide better scrutiny of the business of government. We doubt it is overly cynical to suggest that some people might be tempted more by the title of Lord or Lady. In our view such people have no place in Parliament.

139. The Cabinet Secretary told us that, in his view, the honours system and the granting of peerages were already totally separate processes:

As far as I am concerned, I have them in two separate areas ... what is important about the House of Lords is that the right people go there who can make a contribution to the House of Lords. That is why it is different from the honours, which recognise contribution in society.<sup>121</sup>

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120 Q 392

121 Public Administration Select Committee, Fourth Report of Session 2006–07, *Ethics and Standards: The Regulation of Conduct in Public Life*, HC 121, Qq 256–258

We accept Sir Gus’s point that the systems for allocating honours and peerages are separate—or largely so—but we are not convinced that the public entirely understand the distinction. Lord Hurd suggested that “if you ask most people in the street or in the newspapers what a peerage was, they would say it was an honour”.<sup>122</sup> We agree. It is surely inevitable that the titles of Lord or Lady will continue to be seen as honours. Lord Stevenson happily conceded this point, insisting that we should refer to him as Mr Stevenson or even Dennis:

I personally—and I think we are rather in the same place on this—think it would be a good idea to separate the honorific side from the working legislative side.<sup>123</sup>

Dr Russell also agreed:

I think that could be part of the solution here because, if what people want is an honour, if there is a trade in honours, and I am not commenting on whether there is, to me that is a great deal less problematic if that honour does not win you a seat in the Legislature.<sup>124</sup>

140. The Government has indicated in its last White Paper not only that it agrees that the link between the honour and the seat in the legislature should be broken, but that this idea had support from the cross-party group convened by Mr Straw before that White Paper was published.<sup>125</sup> The White Paper’s suggestion was that the peerage should continue as an honour unconnected with a seat in the legislature.

**141. One of the simplest ways to reduce the potential market value of peerages would be to separate the honour and the title from the seat in the legislature. The Government has already indicated it supports this, and that a cross-party group on Lords Reform has endorsed the principle. We recommend the inclusion of provisions along these lines in an interim House of Lords Reform Bill.**

**142. Consideration will have to be given to both the name of the House and how its members are referred to—clearly a linked question. We hope that the discussion will not get bogged down on this question of etiquette. The principle of the change is far more important than nomenclature.**

### **An exit route**

143. One of the reasons why it is currently so crucial to make the right appointments to the House of Lords is that once people become members there is no way of removing them if their conduct subsequently is unacceptable. Peers cannot be disqualified. They cannot even resign from the House. The only practical way in which a peer can formally withdraw from the House’s proceedings is to take a “leave of absence”, which is taken voluntarily and can be terminated voluntarily at any time with one month’s notice, allowing that peer to resume their seat and full voting rights. Obviously, the goal of the system should be to

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122 Q 172

123 Q 182

124 Q 390

125 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 2.10

ensure that the wrong people do not get into the House of Lords in the first place, but sometimes misconduct will inevitably either come to light or even take place after the relevant person has already taken up a seat in the House. In that circumstance it seems unduly complacent to expect that person to police themselves.

144. The House of Lords Appointments Commission reluctantly cited the case of Lord Laidlaw of Rothiemay in its last annual report:

During spring 2004, the Commission vetted a list of party-political nominees. One of the individuals on the list, Irvine Laidlaw (now Lord Laidlaw of Rothiemay), was not resident in the UK for tax purposes. Following an exchange of correspondence and a face-to-face meeting, the Commission accepted an assurance from Lord Laidlaw that he would become resident in the UK for tax purposes from April 2004.

On the basis of this assurance the Commission found no objection to his appointment. The Commission would have taken a different view on Lord Laidlaw's nomination if it had known that he would not be resident in the UK for tax purposes from April 2004. In June 2004 he was appointed to the House of Lords.

Lord Laidlaw has not become resident in the UK for tax purposes. The Commission has drawn the Prime Minister's attention to the situation.<sup>126</sup>

Lord Laidlaw is currently on leave of absence; he takes no part in the proceedings of the House of Lords, but it is of course within his power to rescind that decision. Lord Hurd told us that as the Commission had no penal power, it had decided that its only option was to effectively name and shame Lord Laidlaw—and so that is what it had done.<sup>127</sup>

145. Lord Stevenson would not be drawn on whether the system was unsatisfactory, but he did acknowledge that a case could at least be made:

I do think, in the light of that case and other things that happened, there is a legitimate question as to whether the arrangements whereby people can voluntarily leave the Lords or involuntarily leave the Lords should be reconsidered.<sup>128</sup>

The Government has been less equivocal on this matter. Their White Paper suggested that peers should be able to resign on any grounds whatsoever, and that disqualification provisions should be brought into line with those of the House of Commons—meaning that the idea of leave of absence would no longer be necessary.<sup>129</sup> In the House of Commons, Members are disqualified automatically if they are convicted of a criminal offence and sent to prison for over 12 months. Peers in the same circumstances are free to resume their seats. **It is illogical that while HoLAC can require that a putative Member of the House of Lords should be a UK resident for tax purposes, there is no provision to enforce this once someone is an actual Member.** The White Paper also indicates that the

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126 House of Lords Appointments Commission, *Annual Report 2006-07*, June 2007, paras 57–58

127 Q 156

128 Q 171

129 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, paras 9.30-9.32 and 9.39–9.41

cross-party group convened by the Government were in agreement over the need for disqualification provisions.<sup>130</sup>

146. **Even with the best appointments mechanism in the world, there will be occasions when the conduct of members of the House of Lords will be such as to warrant their removal from the House. The example of Lord Laidlaw shows that the Appointments Commission cannot enforce the undertakings given by prospective peers—it took the Commission years to persuade him to relinquish his position in the House, and even now he can change his mind at any time. Leave of absence provisions are clearly not sustainable in a modern second chamber.** A Private Member’s Bill is currently before the House, brought in by a Member of this Committee, which would disqualify a person from membership of Parliament if he or she is not a UK resident for tax purposes.<sup>131</sup>

147. **We do not suggest that the Appointments Commission should necessarily have the right to remove members of the reformed House. But it is surely right that as a general principle disqualification provisions are broadly consistent with the House of Commons. It is surely also right that there should be some mechanism for resignation from the House of Lords – on grounds of impropriety or on any other grounds.**

### Limiting party patronage

148. The reforms we have listed so far are essential for a working system, but we do not believe they will in themselves satisfy the public that appointments to the House of Lords are ‘clean’ or remove the basis for future allegations of impropriety. The fundamental concern surrounds patronage. Dr Russell was clear that in her view this was the central issue for our inquiry:

If you are looking at revising the 1925 Act you are looking in the wrong place, because that, in a sense, is trying to treat the symptoms rather than the cause, and the cause is that the Prime Minister has these patronage powers over putting people into the legislature. If you deal with that then these problems will not arise.<sup>132</sup>

It is essential to a nominated chamber that political parties are involved in putting forward prospective members. Yet the perception, right or wrong, of unfettered patronage clearly plays a large part in public unease about the Lords appointment process. This is the key balance that has to be struck—between party influence and appointment on merit.

### Setting out the criteria

149. One part of securing public confidence, as we have seen, is having transparent criteria against which candidates are judged. These criteria will need to be carefully considered, agreed by Parliament through primary legislation so that there is a chance for them to be amended at several stages. We will not attempt to draw them up here. However, the artificial distinction between suitability and credibility should certainly be dropped. We

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130 As above, para 2.10

131 Disqualification from Parliament (Taxation Status) Bill, [Bill 24, Session 2007–08]

132 Q 419

can also suggest that there ought to be, as now, separate criteria for suitability and for propriety—but both ought to be applied equally to all prospective peers whether partisan or crossbench. Our inquiry has not covered the question of what makes a person suitable to be a peer, and so we make no suggestions as to the criteria to apply with regard to suitability.

150. Criteria for propriety will doubtless include much that is already considered by the House of Lords Appointments Commission. Their criterion that a candidate should be “in good standing in the community in general and with particular regard to the public regulatory authorities” seems to cover much of the right ground. But it is far too vague. This is a chance to be explicit about what constitutes acceptable behaviour and what does not. For example, one of the new statutory criteria could be that candidates for peerages must be resident in the United Kingdom for tax purposes. We understand that this rule is already being applied, but as we have noted, we are not sure from where the Commission derives the authority to do so.

151. There is another question of propriety which has exercised us and could be addressed in the new statutory criteria for prospective peers. It would be possible to have a rule that nobody who had donated money to a political party could be nominated by that party to the House of Lords. That rule could also be nuanced so that it only applied to donations over a certain size, or another alternative would be to put a compulsory time period between donations and entrance to the Lords, so that for example the rule might be “no candidate can have made a donation to the nominating party within the last five years”. The argument for any of these rules would be to give the public confidence that donating large amounts of money to a political party cannot buy a place in Parliament.

152. On balance, we are minded against the creation of such a rule. Donating to political parties is, to quote a former Member of this Committee, “an act of civic virtue”.<sup>133</sup> As long as parties are dependent on donations for funding, it will be both legitimate and necessary for people to make those donations. There is nothing inherently suspicious about wealthy individuals making large donations to causes they believe in. Indeed, if someone is wealthy and a strong supporter of a political party which is in need of funds, it would almost be odd if they did not donate. Certainly it would be perverse to discourage it in law. Dr Russell noted that sitting and prospective Members of the House of Commons also donate to political parties,<sup>134</sup> and we observe that there are no limitations on that. We are also concerned that preventing all former donors or even all recent donors from entering the Lords would serve only to stigmatise further the giving of money to political parties.

**153. The criteria to be used in deciding who sits in the House should be set out in the interim House of Lords Reform Bill. They should include criteria on both suitability and on propriety, to be applied equally to all prospective peers whether partisan or crossbench. On propriety, there should be enough detail to make it an objective judgement for the Appointments Commission and not a subjective one, in order to be fair to all candidates.**

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<sup>133</sup> Public Administration Select Committee, Fourth Report of Session 2005–06, *Propriety and Honours: Interim Findings*, HC 1119, Q 119

154. **The Bill should make it explicit that one of the criteria for appointment to the House will be residence in the UK for tax purposes.**

155. **On balance, we do not believe the Bill should put any kind of limit on donors to political parties being nominated by those parties to the House of Lords. Donating to a cause you believe in can be virtuous—it should not be stigmatised. The Bill should formalise the current stipulation that a donation is neither an advantage nor a bar towards being appointed.**

### ***The role of the statutory Appointments Commission***

156. The corollary of setting out transparent criteria for entry to the House of Lords is that it also needs to be transparent who is making the judgement against those criteria. In our view, that can only be done by a new statutory House of Lords Appointments Commission.

157. The Wakeham Commission argued that the independent Appointments Commission should be the only route into the second chamber.<sup>135</sup> It saw a continuing role for political parties, but only in making suggestions:

While the political parties will have an important role in suggesting names to the Appointments Commission, we see no reason why they should have total control over the selection of party-affiliated members of the second chamber. When suggesting names to the Appointments Commission, the political parties should make a case for the appointment of each individual. The Appointments Commission should then make the final decision, in the light of its published criteria, its judgement of the suitability of each nominee and the needs of the chamber.<sup>136</sup>

This arrangement would give the Commission the right to disregard the nominations of the party leadership entirely, even in selecting members of the second chamber from their own party. This would have the effect of allowing those whose views were out of line with the leadership of their own party to nonetheless find their way into the upper House if they were deemed to be suitable by the Commission.

158. The Government's proposals in its last White Paper were subtly different from this. They give more powers to political parties, without removing the ability to select from the Appointments Commission. The White Paper suggests that:

As the Wakeham Commission proposed, the parties would put forward recommendations for suitable members to the Statutory Appointments Commission ... It is proposed that the Statutory Appointments Commission would perform a more extensive role in relation to the party members than it does now, and assess the suitability of those put forward by the parties against its published criteria. The Statutory Appointments Commission would therefore have the power to refuse to recommend a person for appointment on more than simply grounds of propriety.

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<sup>135</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, p131

<sup>136</sup> As above, p 141

The Statutory Appointments Commission could ask the political parties for a list of candidates, perhaps ranked in preferential order, which would include more candidates than there were spaces. Should the Statutory Appointments Commission reject a candidate, it could refer to the next candidate on this list. It would be for the Statutory Appointments Commission to make the final selection in terms of its published criteria.<sup>137</sup>

This proposal can effectively be summarised as a “longlist” system. Parties submit longlists to the Commission, who choose a certain number of people from it against explicit criteria to become members of the reformed House. We note that these proposals are no longer live, following the votes in the House of Commons against an appointed party element remaining in the Lords.

159. The advantage of the longlist system is that it significantly lessens the element of party patronage, in that the parties cannot guarantee who will get into the Lords and therefore are in no position to “sell” places in it even if they wanted to, while maintaining a strong role for parties in choosing their own Lords candidates. The Wakeham suggestion, allowing the Commission to choose some candidates for party peerages who were not put forward by their own party, raises trickier issues, but is also worth considering as a safeguard against crude patronage.

160. Our predecessor Committee called for a longlist system to be introduced back in 2001–02.<sup>138</sup> Dr Russell is also an advocate, and gave an additional advantage:

I think the parties need to have some control over who their members are in Parliament, but I certainly think that the Appointments Commission could be given more discretion which would help to avoid some of these difficulties and it would also help it to carry out its duty which it has been given by the Prime Minister to ensure that there is diversity in the House, diversity of expertise, diversity in terms of gender and so on.<sup>139</sup>

161. There is a further advantage to the longlist, and that is that it allows the party’s nominations and their reasoning to be made public. We explained at paragraph 36 that the Government’s reasons for not publishing citations were perhaps defensible for honours—where recipients should be surprised by the award—but not for peerages. On the other hand, as things stand there is an argument against publishing citations, in that as we have seen it can be damaging to a person’s reputation to have their candidacy rejected by the Appointments Commission and have no opportunity to defend themselves. Longlists take away that problem, as Dr Russell explained:

On the point about people suffering damage, I think the damage would be far less if, for example, a party was to have 10 new peerages and to provide a list of 30 names, because there would be no suggestion that 20 of those people were corrupt; it would be simply that they were not the best people for the job. Employers select from

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137 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, paras 8.30–8.32

138 Public Administration Select Committee, Fifth Report of Session 2001–02, *The Second Chamber: Continuing the Reform*, HC 494

139 Q 382

shortlists all the time; there is no discredit to the people who do not get the job, they just want the best candidate.<sup>140</sup>

162. We did hear one word of warning from Dr Pinto-Duschinsky:

May I make one comment about long lists? I have looked into this matter with relationship to nominations of members of the European Court of Human Rights, and each country, for example, Lichtenstein, can propose one justice, we can propose one justice as well, and so can Monaco and so can Armenia. They go to make up the court. What happens in certain countries is that they will put forward three nominees and one has been the minister of justice, and the second has been detective sergeant Smithsky, and the third has been the same; it is quite obvious that the long list has just been made up of people whom they hope will be included and others who have very little chance of being included.<sup>141</sup>

163. The possibility raised by Dr Pinto-Duschinsky is real, but we believe that ways could be found to mitigate it. **We recommend that the Bill introduces a longlist system for political party nominees to the House of Lords. Parties should publish a long list of candidates, explaining how they believe each one meets the criteria for membership. It should then be up to the Appointments Commission to choose those candidates from that list who they believe to be the most suitable against agreed criteria, as well as conducting the current propriety tests. All nominated candidates would then be chosen by the Appointments Commission. The scope for party patronage and hence sale of peerages is thereby dramatically reduced.**

164. **However, this will not work if parties are asked to list their preferences in order, as in that scenario non-selection would be a public slur. We believe the objective of transparency is more important than allowing parties to rank their nominees in order of preference. We therefore recommend that this one element of the Government's proposal is reconsidered.**

### *Internal party practices*

165. There is one other element of the appointment system we have not examined, and that is how candidates find their way onto party lists in the first place. This could continue to be an issue even if there were longlists and published citations from the parties, as it seems inevitable that at least some nominees will be considered contentious.

166. Assistant Commissioner Yates raised this as the part of the system which, from his perspective, was most in need of clarifying:

At the moment with the three major parties you have three entirely separate processes operating, either by committee, consultation or by the party leader's choice. So that is the problem from our perspective, the lack of transparency and consistency in the process which gets it to HoLAC ... it is the actual process

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140 Q 424

141 Q 425

beforehand which we think could do with reviewing so there is something consistent and transparent and can stand some tests.<sup>142</sup>

Mr Yates explained how he had found one system at least hard to navigate:

At the heart of this case was trying to understand how the list in 2005 came to be put before the House of Lords Appointments Commission ... That proved pretty difficult, and it was only until January of this year that we actually found out how that list was put together.<sup>143</sup>

167. Dr Russell also suggested that more transparent internal party processes might improve public confidence, citing the Labour Party but making a general point at the same time:

A lot of this is focused on the Labour Party and, for example, the names which are put up by the Leader of the Labour Party are not approved by the National Executive Committee of the Party. That would be a small element of democracy introduced which might make it appear a little more transparent, but, as I say, I think that is a matter for the parties themselves.<sup>144</sup>

We agree both that a bit more transparency might help, and that it is a matter for the parties themselves—especially if this leads to questions about internal party structures. We note only that greater transparency of selection processes may prove popular with the electorate, and that what is done in the name of parties should at least have been properly agreed by the parties through an agreed procedure. **The more robust and transparent the parties' nomination processes, the more credible and legitimate will be the names put before the Commission.**

168. **How parties choose their candidates for nomination to the House of Lords is rightly a matter for them to decide. We note, however, the observations of our witnesses that it does not reflect well on the public perception of politics and of individual parties if their processes are seen to be less than fully transparent.**

## Remaining elements of the Bill

169. There remain a few crucial ingredients to a successful reform package that we need to mention. The first of these is that the Appointments Commission, when put into statute, must cease to be even technically only advisory. We know that the Prime Minister has never overruled any of its advice, and we applaud that—but it is not acceptable that he even has the opportunity to do so. We note that the Government agrees with this position.<sup>145</sup>

170. We also repeat our call for the Appointments Commission to be made entirely independent of the executive. As we have noted, the current Appointments Commission was designed to be a transitory body, and there was always an intention for a statutory

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142 Q 325

143 Q 238

144 Q 385

145 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 8.35

commission to be set up at a later stage. It is for this reason alone that HoLAC is currently an advisory non-departmental public body sponsored by, and supported by, the Cabinet Office—with appointments made by the Prime Minister. Our predecessor Committee called for the Commission to be statutory and independent of the executive in 2002;<sup>146</sup> and we reiterated that call in our recent report on Ethics and Standards.<sup>147</sup> The Government has now accepted this suggestion, with the 2007 White Paper stating unequivocally that:

The body should be established by primary legislation. The Statutory Appointments Commission would be independent of Government and should be accountable to Parliament, rather than Ministers.<sup>148</sup>

171. Dr Russell made the point that another Wakeham recommendation to guard against patronage was well overdue—removing the power of the Prime Minister to determine the size and party balance, excluding the independent element of the upper House:

I do not see that it is defensible really for the Prime Minister of the country to be deciding how many people are appointed to the Legislature and when. I do not see that it is defensible for the Prime Minister to be deciding what the balance between the parties is and in fact I think you could quite easily devise a formula for that, if not indeed for the first one as well, so I would give both of those powers to the Appointments Commission, as has been suggested by various groups over the years making proposals on Lords' reform.<sup>149</sup>

We agree entirely with this, and note again that the Government accepts the suggestion that party balance, excluding the independent element, should be decided by a formula and administered by the Appointments Commission.<sup>150</sup> The proposal is that the balance of party seats should be connected to the proportion of votes received by each party at the last general election, which seems a fair starting principle. The actual implementation is complex because seats in the House of Lords do not become vacant *en bloc* at a set time, and so we do not propose a precise formula here. The important principles would seem to be that the formula is public, agreed by Parliament, and administered by the Appointments Commission.

172. Lastly, we note that interim legislation is an opportunity to remove the last of the hereditary peers. The House of Commons has already voted in principle to do so;<sup>151</sup> we see no reason why this should remain controversial. We note that a Bill containing this and many other relevant provisions is currently before the House of Lords, having been proposed by Lord Steel of Aikwood.<sup>152</sup>

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146 Public Administration Select Committee, Fifth Report of Session 2001-02, *The Second Chamber: Continuing the Reform*, HC 494, paras 140–141

147 Public Administration Select Committee, Fourth Report of Session 2006–07, *Ethics and Standards: The Regulation of Conduct in Public Life*, HC 121, para 64

148 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 8.15

149 Q 382

150 Leader of the House of Commons, *The House of Lords: Reform*, Cm 7027, February 2007, para 8.27

151 HC Deb, 7 March 2007, col1632

152 House of Lords Bill [HL], 14 March 2007

173. A House of Lords Reform Bill must ensure that the role of the Appointments Commission is no longer only advisory. There is no excuse for a remaining Prime Ministerial veto over the Commission's decisions, even if that veto is only theoretical.

174. The Bill should also remove the Prime Ministerial role in appointing members of the Appointments Commission, and the role of the executive in sponsoring and supporting the Commission. The statutory Commission should be entirely accountable to Parliament.

175. Provision should be made to ensure that the Prime Minister no longer determines the size of the House of Lords and the party balance of the nominated element. The size and the proportion of non-partisan members may be determined in statute, but the party balance should be variable along with the prevailing mood of the nation. A formula should be devised, as the Government suggests. This formula should then be administered by the Appointments Commission.

176. Lastly, we note that it has now been agreed in principle by the House of Commons that the remaining hereditary peers should be removed from the House of Lords. This should also be part of the Reform Bill.

## 8 Concluding thoughts

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177. Recent events have undoubtedly been damaging to trust in British public life, already in decline since the early 1990s. The Cabinet Secretary told us that they had also been a major distraction for the last Prime Minister in his final period in office.<sup>153</sup> No doubt many others were distracted too. More than one party was investigated. The fact that no charges were brought did not diminish the damage that had been done.

178. It fed the perception that British public life was mired in corruption. We do not believe that this is so. The evidence suggests that standards are generally higher than they once were, and that Britain ranks creditably in international comparisons. However this episode is a sharp reminder that there are certainly no grounds for complacency. There are issues that need attention if public trust is to be restored and high standards of conduct in public life are to be strengthened.

179. Our hope is that out of this affair there will be a renewed impetus for reform. Proposals on party funding are already being considered. The Electoral Commission is to be refocused on enforcement of the rules. Our proposals complete the package. Corruption legislation will close loopholes in the legal framework around dishonest behaviour in public office. Breaking the link between honours and seats in Parliament will discourage much temptation. Most important, reforms to House of Lords appointments of the kind we describe can restrict patronage and remove the room for abuses.

180. We believe that we propose a package that can be supported by all major parties—many of its elements have already been supported—and by those who have very different views of the future of the second chamber. We hope that recent events will provide the impetus to make these proposals, much discussed but never implemented, the political priority they need to be. We intend to campaign to get them enacted.

181. There is one final point. **Although we have made legislative proposals, and believe this is the right way to proceed, it would be possible to achieve much of what we recommend without legislation. If there are problems about parliamentary time, or concerns on the part of the Government that a limited Bill might get derailed by wider issues of second chamber reform, there is a remedy to hand. Just as the last Prime Minister set up the House of Lords Appointments Commission without legislation, the current Prime Minister could make changes without needing Parliamentary approval. For example, he could implement tomorrow all the changes we suggest to House of Lords appointments procedures. He could call on all parties in future to submit longlists of nominees to the Appointments Commission, and give the Commission the formal power of selection. He could undertake never to veto or change any decision on either honours or peerages, effectively withdrawing himself from the process. He could allow the Commission to determine the size and party balance of the second chamber, on agreed principles. All of this ought to be formalised through legislation as soon as parliamentary time allows, but the point is that it could be done now if the Government**

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<sup>153</sup> Oral evidence taken before the Public Administration Select Committee on 15 November 2007, HC 92-I, Q 7

wanted to. We believe that it should, as an immediate and proper response to the lessons to be learned from recent events.

## Conclusions and recommendations

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### Honours and peerages

1. A peerage is more than an honour. An honour is a reflection of past achievement, whereas a peerage ought to be an appointment for future service. The procedures for appointing peers have grown organically out of the procedures for allocating honours, but it is time that a clean break was made. There is no reason for any surviving overlap between the two processes. (Paragraph 39)
2. The honours system itself is much improved in its independence since our predecessors' report in 2004. Some of this results from the new processes recommended by Sir Hayden Phillips' review, but the more important development may be the last Prime Minister's commitment not to put his own names forward, a commitment maintained by the current Prime Minister. It is our view that this commitment should be binding on all future Prime Ministers. (Paragraph 40)
3. We have nothing further to add to the recommendations on changes to the honours system in our interim report. The Government understandably awaited this report before responding, but we expect a response to those recommendations now. (Paragraph 41)
4. There is a legitimate role for the police in investigating allegations that honours or peerages have been sold. Criminal offences serve no purpose if allegations that they have been committed cannot be investigated. (Paragraph 57)

### The legal framework

5. In order to avoid any possibility of prejudicing any prosecutions, we agreed to pause our original inquiry. This was on the understanding that, given the nature of the evidential test, the police investigation would be relatively brief. The fact that it turned out not to be brief meant that we were unable to carry out our inquiry in the way that we had originally intended to. In retrospect, it is not clear that the inability of a parliamentary committee to examine in public serious allegations of misconduct has served the public interest. (Paragraph 58)
6. The Honours (Prevention of Abuses) Act still serves a purpose as a long stop. It defines behaviour which was totally unacceptable in 1925, and is totally unacceptable now. The failure of the police to secure a prosecution in recent years is not necessarily a failure of the Act – we do not know that anything illegal took place. We would therefore resist any proposals that suggested the Act should be repealed in the absence of more comprehensive legislation coming forward. (Paragraph 66)
7. It does appear, however, that the likelihood of securing prosecutions under the 1925 Act will always be very low even if peerages or honours are covertly traded. The behaviour which the Act criminalises is deliberately very limited. One effect of that limitation is that to secure a conviction in practice, the police would almost certainly have to catch someone red-handed. Given the nature of clandestine deals, this seems

unlikely to happen. We must therefore look for ways to improve the law in this area. (Paragraph 67)

8. What is rightly regarded as reprehensible is the idea that donors are seeking, and getting, something in return for their donation. It is impossible to legislate for motivations. However, while it would be desirable to prevent people from even trying to buy favour, it makes more sense to ensure that even if they do try, they cannot succeed. This must be the objective of any reform. (Paragraph 70)
9. It is hard to see what would be gained from seeking to criminalise any additional forms of behaviour beyond those already caught by the 1925 Act. An offence of giving money in the un-stated hope of some reward would never be possible to prove. It is already illegal implicitly to agree an exchange of cash for honours or peerages; the difficulty lies in the low likelihood of proof. If the police cannot find evidence of an unambiguous agreement, we can hardly make an offence out of an ambiguous one. (Paragraph 72)
10. The legal advice we have received is that it is probably not compatible with the European Convention on Human Rights, and hence with the Human Rights Act, to change the burden of proof for offences under the 1925 Act. While we must ensure that corrupt behaviour is effectively prevented or, failing that, effectively punished, this has to be balanced against the human rights of those accused. In this case, we do not believe the case for changing the burden of proof is sufficient to justify the human rights implications. (Paragraph 78)
11. Consideration should be given to subsuming the specific law on abuses around honours and peerages into a new general Corruption Act. The need for such an Act is not disputed. The Law Commission is currently working on something along these lines, at least with regard to bribery. We recommend they should consider incorporating the behaviour outlawed by the 1925 Act in their new draft Bill, and give serious attention to the points raised in this part of our Report. (Paragraph 82)
12. When a Bill is produced, we hope the Government will soon find time for it in the parliamentary schedule. The last Corruption Act was in 1916—a modern law is overdue. We would also suggest that this Committee or its Members should be invited to play some part in giving pre-legislative scrutiny to the draft Bill. (Paragraph 83)
13. However, corruption in the public sector remains very rarely prosecuted, and it may always be difficult to secure convictions. Any attempt to bribe or to solicit bribes of any kind ought to be effectively punishable; but our first priority ought not to be refining the law to punish offenders. It must be preferable to take steps to prevent offences from being committed. (Paragraph 84)

## Loans and electoral administration

14. In retrospect, it was a mistake for the Political Parties, Elections and Referendums Act 2000 not to require the declaration of all loans, whether commercial or otherwise. The Government was right to acknowledge that mistake, and right to take swift steps to rectify it in the Electoral Administration Act 2006. (Paragraph 90)

15. Our understanding of the 2000 Act is that it did not give the Electoral Commission the power to publish binding guidance on what would constitute a commercial loan. Therefore, the Commission's decision not to give advisory guidance was quite defensible, as to do so would not have given helpful clarity over the legal position. Instead, it might even in some circumstances have prevented justified prosecutions. The Commission was damned if it did and damned if it didn't. The failure to define a "commercial loan" was in the drafting of the 2000 Act. (Paragraph 97)
16. The Electoral Commission's inability to give binding guidance was entirely consistent with the way the Commission was set up. There is now a striking consensus behind the need to make the Electoral Commission into a more effective, proactive regulator. We add our voice to that consensus. The Government is currently considering what steps to take next. One of these steps might need to be changes to legislation to give new powers to the Commission. (Paragraph 99)
17. The pattern of events is clear. While legal advice was taken to ensure that no law was broken, a deliberate attempt was made to stretch the loophole on commercial loans as far as it would go. Having agreed legislation to make party funding transparent, parties appear to have gone to some lengths to get around it. (Paragraph 106)
18. If there was any doubt about whether it was legally necessary to declare their loans, parties should have done so. If there was any doubt about whether it was legally necessary for candidates for peerages to disclose their loans, they should have done so. Even if there was no doubt on either of these matters, there is a strong ethical case that loans should have been declared. The letter of the law may not have been broken, but the spirit of the law was quite clear. (Paragraph 107)

### House of Lords appointments

19. Experience shows that the failure to find consensus on a comprehensive reform package can prevent progress on the running repairs that are needed now. We recommend that the next stage of Lords reform should not wait for a consensus on **elections**. (Paragraph 110)
20. The intention was always to create a Statutory Appointments Commission as part of the second stage of Lords reform. This inquiry has demonstrated why it is now important that this happens sooner rather than later. (Paragraph 115)
21. It appears that the regulatory system for assuring the propriety of party nominees to the House of Lords had the right outcome, in that those who made undeclared loans to a party were blocked from becoming peers. It would certainly have cast the House of Lords in a very bad light if the four nominees had become peers and the loans had subsequently come to light after they had been ennobled. (Paragraph 121)
22. We do not know on what grounds the House of Lords Appointments Commission advised against these four candidates being ennobled, or what the source of the leak of the names was, but we commend the Commission for the robust performance of its scrutiny role. (Paragraph 122)

23. We agree with Lord Stevenson that it is inappropriate for people who are not tax resident in the UK to serve in the legislature, and we understand that the Commission has had largely to make up the rules as it goes along, because it is operating in an area where there are no rules. We make no criticism of the House of Lords Appointments Commission. But it cannot be right that the rules for entry to one half of our legislature are made by just six people, whoever they may be, and can be unmade or re-made at any moment without any proper process. (Paragraph 126)
24. We believe there is a fundamental problem with the House of Lords Appointments Commission's aim to judge party nominees to the House of Lords on their credibility but not on their suitability. We do not see a difference of anything but degree between suitability and credibility. A candidate is credible if he or she is sufficiently suitable; we see no other means of measuring it. We cannot visualise a candidate who is credible but unsuitable. (Paragraph 129)
25. The House of Lords Appointments Commission seems to us to be judging party nominees for their suitability as well as non-party nominees. The difference would appear to be that the bar is set lower—whereas non-party peers have to be the most suitable candidate of many, party peers only have to be suitable enough to not diminish the workings and the reputation of the House of Lords and the appointments system. (Paragraph 131)
26. We are not surprised to find ambiguity in the Commission's rules. Rules need to be consulted on in draft; and rules of this nature ought to be made through proper Parliamentary processes. The criteria used in vetting prospective peers must be clarified. (Paragraph 132)
27. One of the major lessons to be drawn from the events of the last two years is that the rules for entry to the House of Lords are far too ad hoc. They must be clear; they must be widely agreed; and they must be of unquestionable legitimacy. In short, they must be statutory. We call upon the Government to legislate as soon as parliamentary time allows to put the House of Lords Appointments Commission onto a statutory footing. (Paragraph 135)

### **An interim House of Lords Reform Bill**

28. One of the simplest ways to reduce the potential market value of peerages would be to separate the honour and the title from the seat in the legislature. The Government has already indicated it supports this, and that a cross-party group on Lords Reform has endorsed the principle. We recommend the inclusion of provisions along these lines in an interim House of Lords Reform Bill. (Paragraph 141)
29. Consideration will have to be given to both the name of the House and how its members are referred to—clearly a linked question. We hope that the discussion will not get bogged down on this question of etiquette. The principle of the change is far more important than nomenclature. (Paragraph 142)
30. It is illogical that while HoLAC can require that a putative Member of the House of Lords should be a UK resident for tax purposes, there is no provision to enforce this once someone is an actual Member. (Paragraph 145)

31. Even with the best appointments mechanism in the world, there will be occasions when the conduct of members of the House of Lords will be such as to warrant their removal from the House. The example of Lord Laidlaw shows that the Appointments Commission cannot enforce the undertakings given by prospective peers—it took the Commission years to persuade him to relinquish his position in the House, and even now he can change his mind at any time. Leave of absence provisions are clearly not sustainable in a modern second chamber. (Paragraph 146)
32. We do not suggest that the Appointments Commission should necessarily have the right to remove members of the reformed House. But it is surely right that as a general principle disqualification provisions are broadly consistent with the House of Commons. It is surely also right that there should be some mechanism for resignation from the House of Lords—on grounds of impropriety or on any other grounds. (Paragraph 147)
33. The criteria to be used in deciding who sits in the House should be set out in the interim House of Lords Reform Bill. They should include criteria on both suitability and on propriety, to be applied equally to all prospective peers whether partisan or crossbench. On propriety, there should be enough detail to make it an objective judgement for the Appointments Commission and not a subjective one, in order to be fair to all candidates. (Paragraph 153)
34. The Bill should make it explicit that one of the criteria for appointment to the House will be residence in the UK for tax purposes. (Paragraph 154)
35. On balance, we do not believe the Bill should put any kind of limit on donors to political parties being nominated by those parties to the House of Lords. Donating to a cause you believe in can be virtuous—it should not be stigmatised. The Bill should formalise the current stipulation that a donation is neither an advantage nor a bar towards being appointed. (Paragraph 155)
36. We recommend that the Bill introduces a longlist system for political party nominees to the House of Lords. Parties should publish a long list of candidates, explaining how they believe each one meets the criteria for membership. It should then be up to the Appointments Commission to choose those candidates from that list who they believe to be the most suitable against agreed criteria, as well as conducting the current propriety tests. All nominated candidates would then be chosen by the Appointments Commission. The scope for party patronage and hence sale of peerages is thereby dramatically reduced. (Paragraph 163)
37. However, this will not work if parties are asked to list their preferences in order, as in that scenario non-selection would be a public slur. We believe the objective of transparency is more important than allowing parties to rank their nominees in order of preference. We therefore recommend that this one element of the Government's proposal is reconsidered. (Paragraph 164)
38. The more robust and transparent the parties' nomination processes, the more credible and legitimate will be the names put before the Commission. (Paragraph 167)

39. How parties choose their candidates for nomination to the House of Lords is rightly a matter for them to decide. We note, however, the observations of our witnesses that it does not reflect well on the public perception of politics and of individual parties if their processes are seen to be less than fully transparent. (Paragraph 168)
40. A House of Lords Reform Bill must ensure that the role of the Appointments Commission is no longer only advisory. There is no excuse for a remaining Prime Ministerial veto over the Commission's decisions, even if that veto is only theoretical. (Paragraph 173)
41. The Bill should also remove the Prime Ministerial role in appointing members of the Appointments Commission, and the role of the executive in sponsoring and supporting the Commission. The statutory Commission should be entirely accountable to Parliament. (Paragraph 174)
42. Provision should be made to ensure that the Prime Minister no longer determines the size of the House of Lords and the party balance of the nominated element. The size and the proportion of non-partisan members may be determined in statute, but the party balance should be variable along with the prevailing mood of the nation. A formula should be devised, as the Government suggests. This formula should then be administered by the Appointments Commission. (Paragraph 175)
43. Lastly, we note that it has now been agreed in principle by the House of Commons that the remaining hereditary peers should be removed from the House of Lords. This should also be part of the Reform Bill. (Paragraph 176)
44. Although we have made legislative proposals, and believe this is the right way to proceed, it would be possible to achieve much of what we recommend without legislation. If there are problems about parliamentary time, or concerns on the part of the Government that a limited Bill might get derailed by wider issues of second chamber reform, there is a remedy to hand. Just as the last Prime Minister set up the House of Lords Appointments Commission without legislation, the current Prime Minister could make changes without needing Parliamentary approval. For example, he could implement tomorrow all the changes we suggest to House of Lords appointments procedures. He could call on all parties in future to submit longlists of nominees to the Appointments Commission, and give the Commission the formal power of selection. He could undertake never to veto or change any decision on either honours or peerages, effectively withdrawing himself from the process. He could allow the Commission to determine the size and party balance of the second chamber, on agreed principles. All of this ought to be formalised through legislation as soon as parliamentary time allows, but the point is that it could be done now if the Government wanted to. We believe that it should, as an immediate and proper response to the lessons to be learned from recent events. (Paragraph 181)

## Annex: advice to the Committee from Christopher Sallon QC

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In the Matter of the Law of Corruption

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ADVICE

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1. I am asked to advise the Public Administration Select Committee “the Committee” which is currently considering issues of Propriety and Ethics in Public Life in the context of the recent “Cash for Honours” scandal. In particular, I am asked to consider:
  - 1.1 Whether the current law prohibiting the sale of honours is framed in a way which makes it extremely difficult to bring about successful prosecutions?
  - 1.2 Whether the sale of honours is theoretically caught by the wider law of corruption?
  - 1.3 In the light of the above, whether the law of corruption needs to be reformed?
  - 1.4 Whether, by ordinary legal means (i.e. ignoring any inherent parliamentary power or procedure) the Committee can gain access to papers and information in the police’s possession as a result of their recent inquiry?
  
2. In summary, my advice is that:
  - 2.1 The law prohibiting the sale of honours creates evidential difficulties, and is therefore difficult to apply. In particular, it is difficult for prosecutors to prove the existence of an agreement to provide an honour in exchange for a reward.
  - 2.2 Whilst the sale of honours is theoretically caught by some aspects of the wider law of corruption, none of the common law or statutory offences offers a precise fit for the facts of the “Cash for Honours” controversy.
  - 2.3 Reform and rationalisation of the laws of corruption are required. However, there remains the risk that such reforms will be unlikely to overcome the evidential and practical problems that face prosecutions of high-profile, political scandals.
  - 2.4 Any attempt by the Committee to gain access to papers and information held by the police by ordinary legal means is unlikely to be successful.

3. My reasoning appears in the body of this Advice below.

A) Factual Background

4. On 5 May 2005, the Labour Party won a general election. It is widely agreed that the election campaign involved a high level of expenditure by the main political parties. About a month later, Downing Street officials began work on the preparation of a list of suitable candidates for nomination as Labour working peers.
5. Throughout the summer of 2005, Downing Street officials prepared a series of drafts of a list of suitable candidates for nomination as Labour working peers.<sup>154</sup> The final list (which included candidates proposed by other political parties) was sent for scrutiny to the House of Lords Appointments Commission “HoLAC” in early October 2005.<sup>155</sup>
6. Shortly afterwards, reports began to appear in the press that some of the
7. Labour Party nominees had made “secret” loans to the Party, which had not been disclosed to HoLAC<sup>156</sup>. On or around 20 March 2006, the Labour Party published the names of the individuals from whom the Party had received loans<sup>157</sup>. The individuals included four of the nominees who appeared on the list submitted to HoLAC.
8. The official investigation into “Cash for Honours” commenced in March 2006, following a complaint made by the Scottish National Party MP, Mr Angus McNeil, that laws regarding the sale of honours had been broken by the Labour party giving peerages in return for donations and loans. The investigation was carried out by a team of the Metropolitan Police led by Assistant Commissioner John Yates.
9. On 13<sup>th</sup> April 2006, Mr Des Smith, who until January 2006 had been an adviser to the body that finds wealthy sponsors for the government's city academies program, was arrested. Reports allege that he had suggested that backers of a flagship Labour schools policy could expect to be rewarded with honours. On 12<sup>th</sup> July 2006, Lord Levy was arrested for the first time. He was later re-interviewed and re-bailed without charge. On 20<sup>th</sup> September 2006, Sir Christopher Evans, a businessman who had made a £1m loan to Labour, became the third person to be arrested. He was bailed without charge, and insisted that he was innocent. Over the following months, the police arrested and/or interviewed a series of senior politicians and political aides, including former prime minister Mr Tony Blair on two separate occasions.

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154 CPS decision, 20<sup>th</sup> July 2007, paragraph 7.

155 “Lords nominees are blocked in Labour loan row”, *Times*, 10 March 2006

156 “Cronyism inquiry holds up new peers”, *Daily Telegraph*, 27 December 2005

157 “Labour reveals secret loans list”, *BBC*, 20<sup>th</sup> March 2006

10. The Crown Prosecution Service [“CPS”] assisted the police with their enquiries from the beginning of the investigation. Following a series of discussions with the CPS, the police submitted their final submission of evidence on 2 July 2007<sup>158</sup>.
11. In February 2007, the CPS announced that Mr Smith would not face charges. On 20<sup>th</sup> July 2007, the CPS confirmed that it had insufficient evidence to charge anyone in the case.<sup>159</sup>

## B) The Current Law on the Sale of Honours

### i) Honours (Prevention of Abuses) Act 1925

12. Section 1 of the 1925 Act creates the following two offences:

(1) If any person accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, or for any purpose, any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.

(2) If any person gives, or agrees or proposes to give, or offers to any person any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.

13. The penalties under the 1925 Act are imprisonment for a term not exceeding two years, or an unlimited fine, or both.
14. In *R v Braithwaite* [1983] 2 All ER 87, [1983] 1 WLR 385, the Court of Appeal considered the meaning of “valuable consideration” for the purposes of s.1 of the Prevention of Corruption Act 1906. At 92, Lord Lane CJ held that the “classic definition” in *Currie v Misa* (1875) LR 10 Exch 153 at 162 should be applied:  
“A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other ... “
15. It follows that a loan is likely to fall into the category of “any gift, money or valuable consideration” for the purposes of s.1 of the 1925 Act. As a short-term transfer of money, a loan could be considered as “money” (which is undefined in

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<sup>158</sup> CPS decision, 20<sup>th</sup> July 2007, paragraph 3.

<sup>159</sup> ‘CPS Statement in Full’, *Guardian*, 20<sup>th</sup> July 2007

the 1925 Act). It is also likely to fall into the category of “valuable consideration”, as the person making the loan forbears from re-paying his money for a period of time, and suffers a short-term detriment of loss. The person receiving the loan gains a short-term right, interest or benefit from it. It is my opinion therefore that the 1925 Act is sufficiently flexible to cover the receipt of gifts, cash, or the making of a loan.

16. As the CPS made clear in their final decision, at paragraph 23, in order to establish liability under the 1925 Act, it would be necessary for the police to show either that:
  - 16.1 an offer of a loan in exchange for an honour, was either made or sought by one person to or from another, even if that other person subsequently refused either to accept or to make such an offer; or,
  - 16.2 one person agreed with another to make/accept a loan in exchange for an honour. The loan must have been made or accepted as an inducement or reward for the honour. The use of the term “consideration” implies that a bargain must have been struck.
17. This places a high evidential burden on the prosecution, who will, in practice, have to prove the terms of deals that are made in respect of loans. There must be an agreement between the parties. Merely hoping to receive an honour in exchange for making a loan is not enough to constitute an offence. Even where one individual ‘A’ decides to award an honour to another ‘B’, and when doing so, takes into consideration the fact that B made a loan, this is still not enough to constitute an offence. The link between the offer of the loan and the award of an honour must be explicit.
18. It is clear that it is difficult to prove these ingredients to the requisite criminal standard, especially in the absence of any direct evidence of an offer of a loan being made or solicited in exchange for an honour. Strong, circumstantial evidence will therefore be required for a successful prosecution, suggesting that the terms of any loan offer or agreement were kept hidden or secret, suggesting that the people making or receiving a loan discussed the receipt of honours or suggesting a large overlap in timing between individuals making loans and receiving honours. Even if the police can find such evidence, they will still need to effectively discount any credible, innocent explanation for loans being made (for example, an act of personal generosity, or a purely politically motivated act, or for honours being awarded where say, the individual in question was a credible candidate for an honour, regardless of the fact that he or she had made a financial contribution to a political party).
19. Finally, under the Code for Crown Prosecutors, the CPS will then need to consider how reliable the evidence is, whether all the evidence can be relied on at

court and whether there are concerns over the accuracy or credibility of any witnesses, in order to have a realistic prospect of conviction. I believe this is currently expressed in percentage terms as over 50%.

ii) Political Parties, Elections and Referendums Act 2000

20. The 2000 Act formed a part of the constitutional reform programme implemented by the 1997 Labour Government, and it largely followed the recommendations of the Neill Committee on Standards in Public Life<sup>160</sup>. It introduced a series of controls on political party registration and finances.

21. Part IV of the Act makes provisions for the control of donations to registered parties and their members. At the material times, s.50(2) defined “donation” in relation to a registered party for the purposes of Part IV of the 2000 Act as:

- (a) any gift to the party of money or other property;
- (b) any sponsorship provided in relation to the party (as defined by section 51);
- (c) any subscription or other fee paid for affiliation to, or membership of, the party;
- (d) any money spent (otherwise than by or on behalf of the party) in paying any expenses incurred directly or indirectly by the party;
- (e) any money lent to the party otherwise than on commercial terms.

22. It is clear therefore, that any loan which could properly be characterised as commercial falls outside the scope of the 2000 Act. In order for the police to establish liability under the 2000 Act in respect of any individual involved in the “Cash for Honours” investigation, they would need effectively to exclude the possibility that any loans that were made had been made, in fact, on commercial terms.

23. Section 50(2)(e) of the 2000 Act has since been repealed by the Electoral Administration Act 2006, s.74, Schedule 1, Part 7, paras 138 144(1), (2), and Schedule 2. This removes the loop-hole which brought the loans in the “Cash for Honours” investigation outside of the scope of the 2000 Act.

### C) Additional Laws of Corruption

i) Bribery at Common Law

24. Where a person in the position of trustee to perform a public duty takes a bribe to act corruptly in discharging that duty, it is an offence in both parties.<sup>161</sup> The offer of a bribe is an attempt to bribe, and is also an offence<sup>162</sup>. The purchase and sale of public offices is regarded by the common law as bribery.<sup>163</sup> The offence of

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<sup>160</sup> Fifth Report of the Committee on Standard in Public Life, Cm 4057, 1998

<sup>161</sup> *Archbold 2007*, at 31–129. *R v Whitaker* [1914] 3 KB 1283

<sup>162</sup> *R v Vaughan* (1769) 4 Burr. 2494

<sup>163</sup> *R v Pollman* (1809) 2 Camp 229n

bribery is punishable by fine and/or imprisonment, whether the bribe is accepted or not.<sup>164</sup>

25. For the purposes of common law bribery, a “public officer” is defined as “an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public”.<sup>165</sup> It therefore only arguable that any approach to an official carrying out a role in the government, such as party political aides like Lord Levy and Ms Ruth Turner, would be covered by this offence. In Lord Levy’s case, it is unclear if he was an official civil servant, or even if he was paid for his role. An approach to these individuals could only constitute common law bribery if it could be clearly shown that they were public officials.
26. A bribe has been defined as an “undue reward”<sup>166</sup>. It could be argued that a loan could constitute such a reward, albeit a reward that is only enjoyed in the short-term.
27. It should, however, be noted that, under the present law, the offence is limited to the acceptance of a bribe or reward. Many prosecutions therefore fail, because whilst there may be evidence that the public official carried out an act of favour, there is no evidence that a bribe or reward was actually agreed.

ii) Public Bodies Corrupt Practices Act 1889

28. Section 1 of the 1889 Act, provides:

(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of an offence.

(2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect

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164 *Archbold* (2007) at 31–129

165 *Whitaker* [1914] 3 KB 1283, per Lawrence J at pp 1296–7

166 *Russell on Crime* (12<sup>th</sup> Edition 1964), at p381

of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of an offence.

29. The penalties under the 1889 Act are extensive. They include imprisonment or a fine (or both), as well as an order to the defendant to pay to a public body the amount, or value of the gift, loan, fee or reward received. Under s.2, the Court may also disqualify the Defendant from public office or order his or her forfeiture of office.
30. The bribe must take the form of “a gift, loan, fee, reward, or advantage”. It follows that the receipt of a loan is explicitly covered by the 1889 Act. However, under the 1889 Act, the “advantage” paid must be connected to a particular “matter or transaction”. While the definition of “any matter or transaction” is wide enough to include the grant of an honour, the requirement for the “advantage” to be made or solicited as an inducement for this particular “matter or transaction” gives rise to the same problem I have already identified in relation to the 1925 Act (see paragraph 15.2 above), namely that it is necessary to prove that the individuals in question entered into an agreement.
31. The 1889 Act sets no limits on the category of persons who may be charged with soliciting or receiving a bribe. It includes in section 7, not only a member, officer or servant of a public body but also any third party who solicits or receives a bribe in respect of the conduct of a member, officer or servant of a public body. This provision might at first blush be thought to be particularly useful for any investigation into “Cash for Honours”, since it covers not only public representatives, but also the aides and agents who represent them. However, it appears from section 7 of the 1889 Act that neither House of Parliament is a public body for the purposes of the Act. Rather, the definition of “public body” appears to be focussed on local government bodies. As a result, it is unlikely that the sale of honours is caught by the 1889 Act.

iii) Prevention of Corruption Act 1906

32. Section 1(1) provides in part:

“If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or

forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business

... he shall be guilty of a misdemeanour.”

33. The penalties under the 1906 Act are imprisonment or a fine or both.
34. The 1906 Act applies to all “agents”, whether in the public or the private sector. “Agent” is defined at sections 1(2) and (3) as including “any person employed by or acting for another” and “a person serving under the Crown” or for “any local or public authority”. The traditional approach to this legislation, however, is that a Member of Parliament is not an agent for the purposes of the 1906 Act. It is therefore unclear, if someone acting on behalf of a Member of Parliament could fall into the definition of an “agent” for the purpose of this Act. In determining whether a person is “serving under the Crown” however, the question is not whether he is employed by the Crown but whether the duties he performs are performed by him on behalf of the Crown<sup>167</sup>. Therefore, while civil servants are likely to fall into this definition, it is unlikely that party political aides would.
35. The definition of the “bribe” in the 1906 Act is closer to that in the 1925 Act than that in the 1889 Act. It uses the expression “gift or consideration”; and “consideration” is defined as including “valuable consideration of any kind”. Therefore, as above, it is submitted that the receipt of a loan could fall into this definition.
36. As under the 1889 Act and the 1925 Act, the “bribe” must be given or received as a “reward” or “inducement”. However, under the 1906 Act, there is no requirement to link the “bribe” to an individual act on the part of the agent, as generally more favourable treatment will suffice. Once again, this requirement of a link between the “bribe” and any more favourable treatment raises the difficulty of proving the fact that the parties entered into a corrupt agreement.
- iv) Prevention of Corruption Act 1916
37. Section 2 of the 1916 Act introduced the “presumption of corruption” into law. It provides:

“Where in any proceedings against a person for an offence under the Prevention of Corruption Act 1906, or the Public Bodies Corrupt Practices Act 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of [Her] Majesty or any Government Department or a

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167 *R v Barrett*, 63 Cr.App.R. 174, CA

public body by or from a person, or agent of a person, holding or seeking to obtain a contract from [Her] Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.”

38. The onus of proof lies upon the defendant and the jury should be directed that it may be discharged by evidence satisfying the jury of the probability of that which the defendant is called upon to establish.<sup>168</sup>
39. As section 2 makes clear, the “presumption of corruption” only applies to the employees of government departments, as defined, and not to members of such bodies (such as local councillors or Members of Parliament). It is therefore unclear if this definition will include party political aides or advisors, especially where such persons hold only voluntary positions.
40. The second problem is that the 1916 Act applies only to the issue of obtaining contracts, and not to appointments to public bodies, such as the award of peerages or the award of a lesser honour. As a result, though the “presumption of corruption” provides a useful aide to proving the existence of an agreement, it is unlikely that it would apply to the facts of the “Cash for Honours” controversy.
- v) Misconduct in the Public Office
41. The ingredients of the common law offence of misfeasance in the public office were set out by the Court of Appeal in *Att-General’s Reference (No. 3 of 2003)* [2004] 2 Cr.App.R. 23, CA. At paragraph 61, Pill LJ, giving the judgment for the Court, stated that an offence is committed when:
- 41.1 a public officer acting as such;
  - 41.2 wilfully neglects to perform his duty and/or wilfully misconducts himself;
  - 41.3 to such a degree as to amount to an abuse of the public's trust in the office holder;
  - 41.4 without reasonable excuse or justification.
42. The receipt of a bribe constitutes misconduct in the public office.<sup>169</sup> It follows that the receipt of a loan from an individual on the understanding that that individual would be rewarded with an honour is likely to fall into the scope of this offence.
43. As above, the requirement that the misconduct is carried out by a “public officer acting as such” raises a difficulty in the context of the “Cash for Honours”

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<sup>168</sup> *R v Carr-Briant* [1943] KB 607

<sup>169</sup> *Llewellyn-Jones* [1968] 1 QB 429

investigation. Many of the individuals who were allegedly involved were party political aides, and so, may not be considered as “public officers”.

#### D) Difficulties of Prosecution

44. Whether as a result of the legal and evidential difficulties referred to above, or for other reasons, statistics suggest an historical lack of enthusiasm in prosecuting offences of corruption.
45. On average, 21 people were prosecuted in each year between 1993 and 2003 under the Prevention of Corruption Acts referred to above. By comparison on average, some 23,000 defendants were prosecuted each year for fraud between 1997 and 2001<sup>170</sup>. Though these figures may not be entirely accurate, it is clear that there is a considerable difference between those prosecuted for public sector corruption and those prosecuted for private sector fraud.
46. It is also likely that the police and the CPS adopt a pragmatic approach to prosecuting political representatives. Though corruption in Parliament has not wholly escaped punishment in the past, with MPs having been punished by expulsion for accepting bribes since at least 1667<sup>171</sup>, it is difficult to point to a successful prosecution of a high-profile political figure in recent years.
47. One of the few examples of an attempted prosecution of a politician in modern times bears witness to this pragmatic approach. In 1992, an attempt was made to prosecute a Member of Parliament for common law bribery, as he had allegedly accepted bribes from a company in his constituency “to show such favour as might be within his power as a member of Parliament” to the company and its directors in relation to their business and contracts with British Rail. Though the judge ruled that MPs were subject to the common law offence<sup>172</sup>, the case never came to a full trial as the Crown later offered no evidence against the MP.
48. Though the Joint Committee on the Draft Corruption Bill concluded<sup>173</sup>, that it had “received little evidence that any MPs and peers have avoided prosecution for corruption either because of their status or because parliamentary proceedings cannot be questioned in court”, it is difficult to avoid a suspicion that a pragmatic approach has been taken to the prosecution of members of the Executive. This is illustrated by press reports about the interview of Tony Blair in relation the “Cash for Honours” investigation. On 25<sup>th</sup> June 2007 Channel 4 news reported that the police had originally asked Mr Blair for an interview under caution, but that Mr Blair said that this would require him to resign as

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170 Report of the Joint Committee on The Draft Corruption Bill, 17 July 2003, at para 11.

171 See Oliver & Drewry, ‘Parliament and the Law relating to Parliamentary Standards’ in O. Gay and P. Leopold (eds), *Conduct Unbecoming: The Regulation of Parliamentary Behaviour*, (Politico’s Publishing, London), pp. 181–212.

172 *R v Greenway and others*, Central Criminal Court, 25<sup>th</sup> June 1992 (unreported). See the discussion in *Public Law*, Autumn 1998, at p.356

173 Report of the Joint Committee on The Draft Corruption Bill, 17 July 2003, at para 105.

Prime Minister. The police then allegedly re-considered and interviewed him as a witness, rather than as a suspect.<sup>174</sup>

E) Is Reform Necessary?

49. As the above analysis makes clear, the failure to bring successful prosecutions due to the “Cash for Honours” controversy only offers further evidence of the need for a modern, rationalised corruption law. Having considered the current law in the light of the facts of this investigation, I have seen nothing to suggest that the Salmon Committee on Standards of Conduct in Public Life, the Law Commission and the Joint Committee on the Draft Corruption Bill were incorrect in their conclusions that wholesale reform of the law of corruption is necessary<sup>175</sup>.

50. In particular, the present law of corruption is drawn from a bewildering array of sources, including overlapping common law offences and at least 11 statutes<sup>176</sup>. Whilst the “Cash for Honours” allegations potentially fall into the scope of some of these offences, none of them provides a precise fit and there are evidential and practical difficulties with all of them. Each offence applies to different groups of people. Each offence uses differing definitions of what constitutes a “bribe”. Each offence applies different penalties. It is therefore clear that rationalisation of the current law would be helpful.

51. In 1998 the Law Commission published a report and draft Bill which recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889–1916<sup>177</sup>. In 2000 the Government consulted on the Law Commission’s proposals and in 2003 presented a draft Corruption Bill to the Joint Committee on the Draft Corruption Bill for pre-legislative scrutiny. The Joint Committee advised abandoning the Commission’s recommendations, proposing an alternative scheme which the Government then rejected. In an attempt to build a new consensus, the Government issued a consultation paper in December 2005. In March 2007 the Government announced that the outcome of the consultation process was that there was broad support for reform of the current law but no consensus as to how it could be best achieved. As a result, the Government has asked the Law Commission to undertake a thorough review of the bribery law of England and Wales.<sup>178</sup> The Law Commission intends to publish an issues paper in November 2007 to be

174 “The times Blair nearly resigned”, Channel 4, 26<sup>th</sup> June 2007

175 See the Report of the Salmon Commission on Standards of Conduct in Public Life, at para 87, and the report of the Nolan Committee on Standards in Public Life, at para 2.104, the Report of the Joint Committee on the Draft Corruption Bill at paragraph 13 and the Law Commission Report No 248, at paragraph 2.33

176 See Legislating the Criminal Code: Corruption (1998) Law Com No 248, at paragraph 1.2. As well as the offences set out above, see also Sale of Offices Act 1551; Sale of Offices Act 1809; Licensing Act 1964, s 178; Criminal Law Act 1967, s 5; Local Government Act 1972, s 117(2); Customs and Excise Management Act 1979, s 15; Representation of the People Act 1983, ss 107, 109 and 111–115.

177 Legislating the Criminal Code: Corruption (1998) Law Com No 248.

178 *Hansard*, 5 Mar 2007 : Column 116WS

followed by the publication of a final report together with a draft Bill in autumn 2008.

52. In the light of this long and detailed process of consultation on legislative reform, it should be made clear that the suggestions for reform contained in this advice are framed solely in response to the problems in the current law of corruption arising from the “Cash for Honours” enquiry. This advice does not attempt to reach a comprehensive conclusion on the overall reform of the law of corruption in general, such as may be necessary, for example, to bring the law of England and Wales into line with its obligations under relevant international agreements. Such a conclusion will be provided by the Law Commission in its pending report.

#### F) Suggestions for Reform

53. The first recommendation should be a rationalisation of the definition of public body. The differing definitions of “public body” in the relevant statutes and common law offences may have caused problems in the “Cash for Honours” investigation, in which many of those allegedly involved were party political aides, and so, may not have been official civil servants. Moreover, as the controversy caused by the “Cash for Honours” investigation shows, there is little justification for keeping Members of Parliament outside the scope of the laws of corruption<sup>179</sup>. The distinction between public and non-public bodies also causes difficulties outside the “Cash for Honours” investigation, due to uncertainty in the Acts as to what constitutes a public body. Many former public bodies have now been privatised, and it is uncertain which of them, if any, can still be regarded as public bodies for the purpose of the relevant offences.
54. There are several ways of putting such a reform into effect:
- 54.1 The definition of “public body” could be rationalised, perhaps by using a definition similar to that in s.6 Human Rights Act 1998. This would bring the actions of all civil servants into the scope of the law of corruption, and provides a useful function-based approach to privatised “public bodies”.
  - 54.2 The approach to agents in some of the corruption legislation should be applied throughout. Keeping the focus on a “member, agent or employee” of a public body might ensure that party political aides are not able to escape liability.
  - 54.3 The unnecessary distinction between public bodies and others could be simply abandoned.

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<sup>179</sup> See also the Home Office discussion paper, *Clarification of the law relating to the Bribery of Members of Parliament*, December 1996.

55. The second suggested reform is to clarify the concept of the “bribe” itself. Under the present legislation, the “bribe” is described in many different ways -as a “gift, loan, fee, reward or advantage” (the 1889 Act), as a “gift or consideration” (the 1906 and 1916 Acts) and as any “gift, money or valuable consideration” (the 1925 Act). For the purposes of this advice, it has been presumed that a loan will fall into the wider definition of “money” or “valuable consideration”. However, it is still possible for a defendant to advance a technical argument that the receipt of a “loan” falls outside the relevant definitions.
56. The following amendments could be incorporated into a revised corruption statute:
- 56.1 The wide definition in the 1889 Act (“gift, loan, fee, reward or advantage”) could be adopted.
- 56.2 Rather than the narrow and specific legal definitions of what in current law constitute a “bribe”, a more general term, such as an “advantage” could be used. The approach suggested by the Law Commission is as follows<sup>180</sup>:
- “a person should be regarded as conferring an advantage if,
- (a) he or she does something or omits to do something which he or she has a right to do, and
- (b) the act or omission is done or made in consequence of another’s request (express or implied) or with the result (direct or indirect) that another benefits.”
57. The third suggested reform to the law of corruption is to clarify the nature of the act carried out as a result of receiving the “bribe”. In the various acts, definitions vary from the precise (the receipt of honours in the 1925 Act) to the wide (more favourable treatment in the 1906 Act). In order to ensure greater consistency, the nature of the act carried out could be defined more broadly, extending perhaps to “performing functions corruptly”. The reference to the performing of “functions” may be considered to be sufficiently wide in scope, and has the added advantage of fitting within the definition of a “public body” as set out in s.6(3) of the Human Rights Act 1998.
58. However, as noted above, the primary problem in establishing any corrupt activity is proving to the requisite standard the intentions of and agreements between the relevant parties. In the “Cash for Honours” investigation, it was clear that some of those who had made significant loans to the Party were subsequently recommended for honours. The primary problem with the potential prosecution of those involved was showing the necessary intention and agreement.

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180 Legislating the Criminal Code: Corruption (1998) Law Com No 248, at paragraph 5.43

59. This problem applies to many of the corruption offences set out above, particularly as the offence of corruption is inherently clandestine. Acts of corruption rarely take place in the presence of witnesses and evidence is rarely recorded. Considered in this context, it is difficult to argue with the conclusion of both the Redcliffe-Maud Committee Report and the Salmon Committee Report that the presumption of corruption in the 1916 Act, which shifts the burden of proof to the defendant, should be extended throughout the law of corruption.<sup>181</sup>
60. Under such a presumption, the prosecution would have to prove to the criminal standard of proof (beyond reasonable doubt):
- 60.1 that some “money, gift or other consideration” was paid or given to, or received by, a “public body” (as defined above), and
- 60.2 that the person providing (or the person whose agent provided it) was holding or seeking to obtain an “advantage” (as defined above) from that member.
61. It would then fall to the defendant to offer an innocent justification, which would only need to be proved to the civil standard (on a balance of probabilities).
62. However, it is submitted that expanding and strengthening the presumption of corruption would be an infringement of the presumption of innocence, which is guaranteed in Article 6(2) of the European Convention of Human Rights [“ECHR”] and given effect by the provisions of the Human Rights Act 1998. Such a reversal of the burden of proof should be confined within “reasonable limits which take into account ... what is at stake and maintain the rights of the defence”<sup>182</sup> and it could only be justified if it relates only to matters which are difficult for the prosecution to prove because they are peculiarly within the defendant’s own knowledge; if it only creates a rebuttable presumption of fact and if it is restrictively worded.<sup>183</sup>
63. It may be possible however to argue that a shift in the presumption of corruption to the defendant is not incompatible with Article 6(2) guarantees:
- 63.1 Corruption is an elusive crime which cannot be proved without information that is purely within the defendant’s own knowledge.<sup>184</sup>

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181 Redcliffe-Maud Report, at para 161; Salmon Report at para 61

182 *Salabiaku v France* (1988) 13 EHRR 379. See also the comments of Lord Woolf in *Attorney General of Hong Kong v Lee Kwong-Kut* [1993] AC 951

183 *X v United Kingdom*, App 5124/71, (1972) 42 Collection of Decisions 135.

184 *Legislating the Criminal Code: Corruption* (1998) Law Com No 248, at paragraph 4.28

- 63.2 Empirical evidence as to the level of prosecutions suggests that it is extremely hard for the Crown to adduce sufficient evidence to prove corruption.
- 63.3 Though the presumption of corruption has been in force since 1916, and (I assume) charges brought since the implementation of the Human Rights Act 1998, it appears that it has not been challenged in the European Court of Human Rights<sup>185</sup>.
64. However, none of these arguments overcomes the fact that private sector corruption, in the form of criminal fraud, is regularly prosecuted without the benefit of the presumption. Considered in this context, corruption is no more or less difficult to investigate than other forms of financial crime<sup>186</sup>. This suggests that the phenomenon of under-prosecution on the part of the police and the CPS might be accounted for by underlying and more sensitive problems than to genuine evidential difficulties. For these reasons, it is my opinion that a more robust presumption of corruption is unlikely to be considered as Human Rights Act compliant.

#### G) Access to Papers and Information

65. I am instructed that the Committee seeks to gain access to any papers and information in the police's possession as a result of the recent "Cash for Honours" investigation. Any such request is likely to be considered under the principles in the Freedom of Information Act 2000 ["FOIA 2000"] and in the context of the Data Protection Act 1998 ["DPA 1998"]. Whilst these Acts have provided enhanced accountability from public bodies, they do not provide a guaranteed method of extracting information.
66. Under s.1 FOIA 2000, any person making a request for information of a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if so, to have that information provided to him. "Information" is defined at s.84 FOIA 2000 as "information recorded in any form". This means that the Committee could request access to any written memoranda, photographs, plans, video and sound recordings and to data held on any computer. An applicant under FOIA 2000 must describe the information which he or she is seeking with sufficient particularity to enable to the public authority receiving the application to be able to identify it.<sup>187</sup>
67. These rights are not confined to "natural persons", and can also be enforced by bodies enjoying a legal personality, such as public authorities. The fact that the

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185 Legislating the Criminal Code: Corruption (1998) Law Com No 248, at paragraph 4.29. Although this could be the result of the dearth of successful prosecutions rather than to a lack of merit in the argument.

186 This was the view of the General Council of the Bar, the Criminal Bar Association and the SFO in their submissions to the Law Commission. Legislating the Criminal Code: Corruption (1998) Law Com No 248, at paragraph 4.71.

187 ss.1(3) and 8 FOIA 2000

Committee might qualify as a “public authority” for the purposes of the Act<sup>188</sup>, does not prevent it from being an applicant under FOIA 2000. Under FOIA 2000, the motives of the person seeking the information are irrelevant.<sup>189</sup> The Committee is therefore likely to be able to request information, either in its own name, or in the names of individual members.

68. However, any request for information from the Metropolitan Police could be refused under the following exemptions:

- 68.1 Under s.24(2) FOIA 2000, information can be withheld if this is “required for the purpose of safeguarding national security”. It is highly unlikely that this exemption will be relied upon, but it could be used to cover personal details relating to the former Prime Minister.
- 68.2 Under s.30 FOIA 2000, information held for the purposes of investigation and proceedings can be withheld. This covers any investigation which the police had a duty to conduct with a view to ascertaining whether someone should be charged with an offence and also any investigation which may lead to a decision to institute criminal proceedings. This is the most important exemption for the purposes of any request by the Committee. It covers the police and the CPS, and includes any information held “at any time”. It follows that information will be withheld even where an investigation has been concluded.
- 68.3 Section 31 FOIA 2000 provides an additional exemption for information which is not covered by s.30 but which is nevertheless connected with law enforcement functions. It covers any information of which the disclosure would be likely to prejudice, inter alia, the prevention and detection of crime and the administration of justice.
- 68.4 Under s.37 FOIA, a public authority is exempt from the duty to communicate information where information relates to communications with Her Majesty, any other member of the Royal Family or with the Royal Household or to the conferring by the Crown of any honour or dignity.
- 68.5 Under s.42 FOIA 2000, any information covered by legal professional privilege can be withheld. This covers any communications between a client and his legal adviser for the purposes of giving or obtaining legal advice, and is likely to cover any professional legal advice provided by in-house lawyers at the police and CPS, as well as the details of the advice

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<sup>188</sup> See s.3, schedule 1 and schedule 5, FOIA 2000

<sup>189</sup> Hansard, House of Lords, 17 October 2000

provided to the CPS by a the team of independent counsel, led by David Perry QC, on whether or not individuals could be charged.

69. These are qualified exemptions under FOIA 2000, and so they are only effective in exempting a public authority from compliance with the duty to provide information where the public interest in maintaining the exclusion of the duty outweighs the public interest in disclosing whether the public authority holds the information.<sup>190</sup> There is undoubted public interest in the “Cash for Honours” controversy, and in the efficiency and effectiveness of the police inquiry into it. Few other issues have provoked such intense speculation in the press and other public forums. However, there is also a strong public interest in the protection of witnesses who have given evidence to police. If information relating to the investigation was disclosed to the Committee, the Metropolitan Police could legitimately claim that such a disclosure would make it extremely difficult for the police to gather information in future. As a result, it is my opinion that the balance of the public interest is likely to come down in favour of the protection of the police sources in this case.

70. The following, absolute exemptions may also apply:

70.1 Section 23(3) FOIA 2000 exempts the disclosure of any information which was “directly or indirectly supplied to the public authority by” or “relates to” a listed body with a security function. This exemption would cover any intercepted communications or any information provided by the security services.

70.2 Under s.41 FOIA 2000, information can be withheld if its disclosure would constitute an actionable breach of confidence, and it would not be in the public interest to breach this confidence. The Information Commissioner considers that for a breach of confidence to be actionable it must meet the established tests in *Coco v Clarke* [1969] RPC 41<sup>191</sup>. The requirements are that the information must have the necessary quality of confidence; it must be imparted in circumstances giving rise to an obligation of confidence; and there is an unauthorised use of that information. A duty of confidence can arise when the police photograph a suspect at a police station in circumstances where the suspect's consent was not required. Where such a duty arises the police are not free to make whatever use they liked of the photograph but are under certain obligations to the suspect, the breach of which would be actionable by him at private law.<sup>192</sup> Though this exemption is not limited with

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190 s.2(1)(b) FOIA 2000

191 *Public Authority: The Parades Commission*, Information Commissioner's Office Decision Notice, 14 Aug 2007, Case Ref: FS50146463, at paragraph 25

192 *Hellewell v Chief Constable of Derbyshire* [1995] 4 All ER 473, per Laws J. at p.478 *h j*, p.479 *b d f* and p.480 *f*

reference to the public interest, the Commissioner recognises that where there is an overriding public interest in any particular case in disclosing the information the courts have accepted that no duty of confidence is owed. However, as noted above, there is a strong public interest in protecting the identities of those who give evidence to the police and regulatory bodies.

- 70.3 Under s.40 FOIA 2000, information can be withheld if it is “personal data”. Such information can only be released if allowed under the DPA 1998.
71. Under s.1 DPA 1998, “personal data” is defined as data which relates to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller. It includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, that it shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met. It also requires that, in the case of “sensitive personal data”, at least one of the conditions in Schedule 3 to the DPA must also be met (in addition to at least one Schedule 2 condition) before processing can be fair and lawful.
72. The introductions to police witness statements generally contain the names, ages, occupations and addresses of witnesses. In the statements themselves, witnesses tend to give this same information as well as their interpretations of events and their own observations, opinions and views which were provided in order to assist the police investigation. This is likely to be classed as “personal data” for the purposes of the DPA 1998, and could also be considered as “sensitive personal data”.
73. Processing the “personal data” in accordance with the principles of Schedule 2 DPA 1998 requires, amongst other conditions, considering if the data subject has given his consent to the processing<sup>193</sup>, and considering whether the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.<sup>194</sup>
74. In any police investigation, it is likely that the individuals in question would have had no reasonable expectation that the information would be processed for any

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193 Paragraph 1, Schedule 2, DPA 1998

194 Paragraph 6, Schedule 2, DPA 1998

purpose other than those related directly to furthering that investigation. Rather, they would expect, reasonably in the circumstances, that it would be held only for that purpose and held in confidence. Any person who provided information to the “Cash for Honours” investigation would therefore have a strong legitimate interest in the information not being disclosed.

75. It therefore follows that much of the information contained in police witness statements is likely to be considered as personal data for the purposes of the DPA 1998 and that release of the information would be a breach of the data protection principles contained in Schedule 2 to the DPA 1998.
76. Recent decisions of the Information Commissioner underline my preliminary opinion that a Committee request to the Metropolitan Police is unlikely to have any success. In Public Authority: The Parades Commission, Information Commissioner’s Office Decision Notice, 14 Aug 2007, Case Ref: FS50146463, the Commissioner emphasised again, at paragraph 29, the importance of the public interest in protecting the identities of those who give evidence to regulatory bodies.
77. These concerns are also well illustrated by the recent decision of the Scottish Information Commissioner in David Leslie and the Chief Constable of Northern Constabulary<sup>195</sup>. Mr Leslie, a journalist, had emailed Northern Constabulary requesting all documents, reports and relevant material concerning any investigations by Northern Constabulary into the death in April 1985 of Mr William MacRae. In response, Northern Constabulary did not disclose the following:
- 77.1 A book of photographs of deceased;
  - 77.2 A list of thirty four witnesses and thirty two witness statements;
  - 77.3 The Post Mortem report;
  - 77.4 Newspaper cuttings;
  - 77.5 Six documents relating to the investigation.
78. Following an investigation, the Scottish Information Commissioner found that generally Northern Constabulary had dealt with Mr Leslie’s request for information in line with Part 1 of the Freedom of Information (Scotland) Act. Even though there had been intense speculation in the press and other public forums about how Mr MacRae died and there was a public interest in providing accountability in relation to the efficiency and effectiveness of the Force or its officers, the Scottish Information Commissioner still held that the public interest was not best served by placing the information into the public domain.
79. In assessing the public interest, he took into consideration the likely upset that the release of the information would have on the deceased’s family, the fact that

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195 Scottish Information Commissioner Decision, 27 August 2007, Decision No. 155/2007

the interests of third parties that assisted the police in the investigation might be compromised by disclosure, and that disclosure could make it more difficult for the police to gather information in future. The Scottish Information Commissioner also considered that to release untested, verbatim witness statements into the public domain was likely to be unfair to those to whom the statements relate as it risked provoking a form of summary justice.

80. It follows that it is highly unlikely that a request under FOIA 2000 for information relating to the investigation into the “Cash for Honours” controversy will have any success.

#### H) Conclusion

81. For the reasons set out above, it is my initial impression that the “Cash for Honours” investigation provides further evidence of the need to reform the law of corruption.
82. However, even with the necessary reforms in place, it may not be possible to overcome the evidential problems that prosecutors face when dealing with clandestine offences of this kind, or the pragmatic approach to prosecuting high-profile, political personalities.
83. It should also be noted that previous attempts to correct and clarify the law in this area in response to public scandal has resulted in confusion and inconsistencies.<sup>196</sup> In order to avoid such problems arising again, a more suitable response might be a structural reform of the legislation as it currently stands, rather than seeking to extend still further the scope of the criminal law.
84. I hope that the Committee will not hesitate to contact me should further advice or assistance be required.

CHRISTOPHER SALLON QC  
Doughty Street Chambers  
10-11 Doughty Street  
London WC1N 2PN

27<sup>th</sup> September 2007

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<sup>196</sup> As noted by the Law Commission at paragraph 1.2 of *Legislating the Criminal Code: Corruption* (1998) Law Com No 248. The 1889 Act was introduced following revelations of malpractice made before a Royal Commission appointed to inquire into the affairs of the Metropolitan Board of Works. The 1916 Act was prompted by wartime scandals involving contracts with the War Office, and was passed rapidly through Parliament as an emergency measure.

# Formal minutes

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**Tuesday 11 December 2007**

Members present:

Dr Tony Wright in the Chair

David Heyes

Kelvin Hopkins

Mr Ian Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Paul Rowen

Mr Charles Walker

Jenny Willott

Draft Report (*Propriety and Peerages*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 181 read and agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

*Ordered*, That the transcript of the oral evidence taken by the Committee on 13 July 2006 be reported to the House.

[Adjourned till Thursday 10 January at 9.45 am]

## Witnesses

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<b>13 July 2006</b>	
<b>Deputy Assistant Commissioner John Yates</b> , Metropolitan Police Service, <b>Carmen Dowd</b> , Head of Special Crime Division, Crown Prosecution Service, and <b>Asker Husain</b> , Crown Prosecution Service	Ev 1
<b>11 October 2007</b>	
<b>Lord Stevenson of Coddenham CBE</b> , Chairman, and <b>Rt Hon The Lord Hurd of Westwell, CH, CBE</b> , Member, House of Lords Appointments Commission	Ev 14
<b>23 October 2007</b>	
<b>Assistant Commissioner John Yates</b> , Metropolitan Police Service, <b>Carmen Dowd</b> , Crown Prosecution Service, and <b>David Perry QC</b>	Ev 27
<b>25 October 2007</b>	
<b>Professor Justin Fisher</b> , Deputy Head of the School of Social Sciences, Brunel University, <b>Dr Meg Russell</b> , Senior Research Fellow, University College London, and <b>Dr Michael Pinto-Duschinsky</b>	Ev 45

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1	Assistant Commissioner John Yates	Ev 62
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3	Dr Michael Pinto-Duschinsky	Ev 64
4	Sir Gulam Noon	Ev 73

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2007–08

First Report	Machinery of Government Changes – A follow-up Report	HC 160
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## Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 ( <i>Cm 7154</i> )
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 ( <i>HC 88</i> )
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 ( <i>HC 922</i> )
Sixth Report	The Business Appointment Rules	HC 651 ( <i>HC 1087</i> )
Seventh Report	Machinery of Government Changes	HC 672 ( <i>HC 90</i> )
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006-07	HC 922 ( <i>HC 1048</i> )
Ninth Report	Skills for Government	HC 93 ( <i>HC 89</i> )
First Special Report	The Governance of Britain	HC 901

## Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 ( <i>HC 1076</i> )
Third Report	Legislative and Regulatory Reform Bill	HC 1033 ( <i>HC 1205</i> )
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 ( <i>HC 91, Session 2007–08</i> )
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081 ( <i>Cm 6961</i> )
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 ( <i>HC 1088, Session 2006–07</i> )
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690

# Oral evidence

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## Taken before the Public Administration Select Committee

on Thursday 13 July 2006

Members present

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
David Heyes  
Kelvin Hopkins

Mr Gordon Prentice  
Paul Rowen  
Grant Shapps  
Jenny Willott

*Witnesses:* **Deputy Assistant Commissioner John Yates** QPM, Metropolitan Police, **Ms Carmen Dowd**, Head of Special Crime Division, and **Mr Asker Husain**, Crown Prosecution Service, gave evidence.

**Q1 Chairman:** Thank you very much indeed for coming along. As you know we agreed we would do this before Parliament ended for the summer just so we kept in touch with what was going on. We did not know you would offer a nice juicy prelude to the meeting in the way you have, but that is how these things go! It is just an opportunity to catch up really. You will know that we have produced today a report. I do not know whether you have had a chance to see it?

*Deputy Assistant Commissioner Yates:* I have not.

**Q2 Chairman:** We will give it to you to go away with—

*Deputy Assistant Commissioner Yates:* That would be very useful.

**Q3 Chairman:**—it may help you with your inquiries. It is our account of what some of these issues are. Presumably you would like to say something, would you, in opening?

*Deputy Assistant Commissioner Yates:* I think it might be helpful.

**Q4 Chairman:** Please do.

*Deputy Assistant Commissioner Yates:* Firstly, thank you for seeing me again. I want you to be aware that we clearly remain committed to providing and carrying out a thorough and professional investigation, whilst being acutely conscious of some of the sensitivities that surround these particular issues. Our aim, as ever, is to establish the facts and follow the evidence. We remain on course to submit the full file to the CPS in the autumn, and I would respectfully suggest that a full judgment around the investigations should be suspended until that has been done and until the CPS have provided their view on the weight of the evidence. I would like, if I could, just to reassure the Committee on a number of points and then provide a full update about the investigation. Many of the issues that you perhaps require reassurance on are due to the events of the last 24 hours. Firstly, can I talk about the balance of the inquiry. As ever, the investigation will go where the evidence takes us but I would say that the focus of the inquiry is on the two

main parties, and if it helps you for this private briefing you ought to know that, in fact, we have interviewed more Conservative lenders than Labour lenders, although where this takes us I cannot judge yet. Secondly, there has been much speculation about the use of arrest powers. The decision to arrest is not one that is taken lightly; indeed, I sought advice from a number of legal sources prior to doing so. The final decision to arrest is an operational one, and thus is mine. It is to ensure the prompt and effective investigation of the offence or offences, and there are certain matters or certain legal powers that cannot be exercised unless the power of arrest is instigated. I would want you, the Committee, to be absolutely assured that in my professional judgment the decision to arrest yesterday was the correct one, it was proportionate, it was necessary, and it will enable us to investigate this offence properly. I would also say that, in my view, the actual methodology around the way the arrest was managed was handled as sensitively as possible. There are of course several ways we can exercise the powers of arrest. Can I assure you, the Committee, that this was considered extremely carefully and I chose the option that kept the embarrassment to an absolute minimum whilst not reducing the opportunity to achieve its purpose. I was very disappointed to hear Lord Levy's legal representative suggest otherwise last night. It had been made absolutely clear prior to the event exactly what process would be adopted when Lord Levy attended the police station. To suggest otherwise is wholly wrong and, as I say, very disappointing. There is also speculation that this was a symbolic arrest designed to coincide with the meeting this morning. I absolutely refute this. Of course, the arrest of Lord Levy is symbolic, and I think, Dr Wright, when I met you on Friday I used that very word. However, to use the term "symbolic" in the sense that this is theatrical, in the sense this is making a point, this is police strutting their stuff, is an allegation I utterly and absolutely refute. It was a proportionate and necessary response designed to progress the investigation in a prompt and effective way. It was certainly not designed to try and influence this Committee around whether you would

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13 July 2006 Deputy Assistant Commissioner John Yates QPM, Ms Carmen Dowd and Mr Asker Husain

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take further evidence or not. Indeed, I was aware from my meeting with you last Friday that you had no intention of taking evidence until autumn at the earliest. There can, therefore, in my view, be no inference drawn that in making this arrest and the timing of same I was attempting to influence you, the Committee, in your decision-making process. As you will recall in my opening, I intend to have most, if not all, of my inquiries done by that October date. There has also been speculation that matters could have been dealt with on a voluntary basis. I am bound to say that is the obvious riposte. My previous experience from other investigations and on this investigation is that simply does not work, nor would it stand any scrutiny should matters be reviewed later. I will now, if I may, outline where we are with our inquiry. To date the investigations involve the following. There have been two arrests and both subjects are currently on bail, although I will refer to one subject later. Thirteen people have been interviewed under caution and these include Labour leaders and Conservative leaders, party officials and a civil servant. Thirty-five others have been interviewed; these include Labour and Conservative leaders, officials from the Conservative, Labour and Liberal Democratic parties, and civil servants. Three people have refused to be seen; these are all Labour Party leaders. Two submissions have been made to the CPS containing approximately 1,500 pages of documents. A further submission containing approximately a thousand documents is being prepared as we speak. A request for assistance from the Electoral Commission has been made regarding their position on possible Political Party, Election and Referendum Act 2000 offences, and I am awaiting their reply. There remain a number of suspects and witnesses yet to be interviewed. Significant material has been and continues to be gathered from the Cabinet Office, and I would say that the Civil Service has been fully co-operative in this respect. In the past few days a number of fresh lines of inquiry have been identified and are being pursued, and I would specifically say that is not a reference to Sir Gulam Noon and what he has said in the papers recently. As I said from the start, our inquiry will go where the evidence takes us. As each new line of inquiry is opened up others will naturally follow, so it is difficult for me to speculate about exactly where we are from an evidence perspective, but as this is a private briefing I will say to you now that if the evidential test of the CPS is a 50% or more chance of a conviction, or they would say a realistic chance of a conviction, then I would say we are at or around 35–40%. This can, of course, drop very suddenly or alternatively increase, but I would assure you that the inquiry remains very focused and very disciplined and I have recently asked an independent senior officer to review progress in order to provide that particular check. Lastly, the issue of the media around this. Operational security around our investigation has been extremely tight. I am confident that we have not been responsible for one single leak or any loose talk. I note in recent days there has been much speculation and talk about Scotland Yard sources.

Some of the material produced or quoted as a result is not material I recognise; some of it, I am prepared to tell you, is completely wrong. Finally, the issue of bail. Lord Levy returns on bail this morning, to be further interviewed about these matters. That is not something that is sinister: you may have seen in the papers or media last night there was a massive fire up in Colindale which required the police station to be evacuated, so it is simply that; there is nothing sinister. The best laid plans of mice and men sometimes do not work out. There were various other processes done yesterday, there was disclosure given, and he returns today to be interviewed, and it is simply that. So to dampen any speculation that more evidence has come to light, it is simply not that. Is that helpful?

**Q5 Chairman:** That is extremely helpful. I think you have been as frank as you can be—

**Deputy Assistant Commissioner Yates:** As I dare.

**Q6 Chairman:** —about the state of play. Obviously we are not going to ask questions that you cannot or will not answer but we want to ask general questions picking up things that you have said. Could I ask you first how much of what you have just said to us now are you either going to say outside this room or are you prepared to have said outside this room?

**Deputy Assistant Commissioner Yates:** I personally cannot say anything at the moment and I think it would be wrong for me to say anything. This is a private briefing but there is not much there that I would not be prepared to have said outside this room, to be honest.

**Q7 Chairman:** Not much that you would not be prepared?

**Deputy Assistant Commissioner Yates:** Yes. This is all fairly straightforward stuff.

**Q8 Chairman:** So if Members of the Committee were asked some of these things and if we said “This was our understanding” that would not cause you difficulties?

**Deputy Assistant Commissioner Yates:** No. I am particularly concerned around some of the speculation around the way we have managed this process in terms of the arrest and those issues. It is simply not balanced, it simply does not provide the full context, and is not helpful.

**Q9 Chairman:** Just to clarify things, because I do not understand, when you say you have already made two submissions to the CPS and you have another one in the offing, what does that precisely mean?

**Ms Dowd:** Essentially that just means an updating in relation to the evidence that has thus far been gathered. So there have been two submissions, we have considered it, we have had full discussions around what that material contains, and we are waiting for a further submission, and as Mr Yates said, in the autumn he will be in a position to say, “The investigation is now concluded; here is a full file which contains everything we think is relevant to

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the matters that you now have to consider”, and it will be at that point that we can then make our assessment in relation to the code tests.

**Q10 Chairman:** But the two submissions do not mean two cases?

**Ms Dowd:** No. It is report containing material.

**Deputy Assistant Commissioner Yates:** It is a sort of rolling process so you do not dump a huge file at the end. It allows the CPS to provide on-going advice and counsel to provide on-going advice on the basis of where we are at that particular moment in time.

**Q11 Chairman:** I just want to ask you about the background again before colleagues ask perhaps more particular things. We are dealing all the time, as you keep saying when you make statements, with these two pieces of legislation, the 1925 Act and the 2000 Act. I still cannot quite get my mind around, but perhaps you can help, what material you would have to discover to be able to use those pieces of legislation fruitfully. Now, presumably the 1925 Act would require you either to get someone to say: “Oh, I said to someone ‘You give us a million pounds and I will give you an honour’”, or someone who says “Oh, he said to me you can have an honour if you give us a million pounds”, and/or corroborative material. Now, that seems to me, when you state it, to be an unlikely test that you are going to meet?

**Deputy Assistant Commissioner Yates:** I will be careful what I say but if we had the first statement that you made it would be ideal but we do not expect to get that type of material. The case builds up in a variety of ways, be it from documentation, e-mails, what other witnesses are saying which may dispute what another witness says—there is a variety in the way a case will build to an evidential test that will either meet the standard or not.

**Q12 Chairman:** Yes. We know that you are more likely to get a peerage if you give large amounts of money to a political party, that is just a historical fact, so discovering that would not be a revelation. Finding people who will say that they engage in transactions of that kind as discovered by the 1925 Act seems to me not entirely likely, but are you telling us you are making progress in that direction too?

**Deputy Assistant Commissioner Yates:** I do not want to comment on that at the moment. It could be a very difficult case to prove but we are some way down the line in terms of the investigations and we have to analyse everything in the final—

**Q13 Chairman:** I understand. Let me ask the same question, then, about the 2000 Act because, again, it is pretty clear that some pretty dodgy things have been going on in terms of avoiding disclosure of things that may be difficult, particularly on the soft loan business, and there have certainly been offences against the spirit of that legislation, if not the letter, but it is the letter that you are dealing with and when I look at the outcome and I look at what we have now done to correct one of the loopholes in the Act subsequently and I see what the Electoral

Commission have been saying—for example, on 6 April they said: “We believe that the current legal requirements are not sufficient to ensure that the spirit of full public disclosure is met, hence we have called the parties to do various things”, so in a sense you have the Electoral Commission saying that the law does not stack up in this area, so if they say the law does not stack up in this area, although you can find dodgy stuff going on, how are you going to make the law bite?

**Deputy Assistant Commissioner Yates:** I go back to what I said at the start. We will go where the evidence takes us; if the evidence produces sufficient weight of evidence to enable the CPS to make a decision on prosecution so be it; if it does not, then I think, as we discussed privately, I would be more than happy to come back to this Committee to lay out what I think the problems have been and if the Electoral Commission, if, say, the issues around commercial loans simply is not strict enough to be able to make our decisions and the CPS to make theirs, then that is something I would want to bring back to you to say—it is certainly not my role in life to provide recommendations but it is certainly my role in life, I suspect, to say: “These are the problems we uncovered”.

**Chairman:** Yes. We shall certainly ask you to do that and I am glad you have responded so positively to it. Let me ask colleagues now to come in.

**Q14 Mr Prentice:** You told us that the investigation will go where the evidence takes you and you have also told us you want to hand the file over to the CPS in October. How confident can we be that you are going to close the investigation in October?

**Deputy Assistant Commissioner Yates:** I can never be over confident but from the progress we have been making, where we are at now, and the people I think we still require to see, it is a reasonable judgment for me to make.

**Q15 Mr Prentice:** So is it 50% chance? You have already given us percentages when talking about the evidential test. Is it 50%, 60%, 70% that you are going to meet this October deadline, because we cannot have this thing dragging on indefinitely?

**Deputy Assistant Commissioner Yates:** I do not want to give a percentage but I am very confident I am going to make the deadline. If something transpires from a particular interview, or someone says something that is incredibly interesting which requires us to go in a different direction, of course I am going to be knocked off that date, so I am not going to ask you to try and hold me to it but I am pretty confident I can manage that.

**Q16 Mr Prentice:** Can I ask what the purpose of arresting Lord Levy was, because his lawyer told the world that he was prepared to give voluntarily whatever information the police required?

**Deputy Assistant Commissioner Yates:** I am not going to go into details of why we arrested him on the basis of evidence, but it is to ensure the prompt

and effective investigation of this offence. There are certain powers I cannot use unless I exercise the power of arrest.

**Q17 Mr Prentice:** That begs the question what are these powers that you need which can only be exercised when you arrest someone?

**Deputy Assistant Commissioner Yates:** Specifically the power to arrest and search premises, the power to give special warnings on arrest, as in an interview when you want to bring something to someone's attention that they must comment on and inferences could be drawn if they do not; these are very significant powers which I believe were necessary to use in this particular case. People will always say: "I would have done it voluntarily", but my experience going back 25 years is that that is not the case. We have to do it properly, and in a way that is proportionate and minimises embarrassment, as we did in this case, but if I was to be in front of you in six months' time and say "We missed an evidential opportunity because we did not arrest somebody", then I think you would quite properly scrutinise me for that. It was my professional judgment, and absolutely the right course of action to take.

**Q18 Mr Prentice:** You say you were disappointed in what Lord Levy's lawyer said last night. Why would Lord Levy's lawyer say such a thing publicly when you had outlined the process to him?

**Deputy Assistant Commissioner Yates:** I have absolutely no idea.

**Q19 Mr Prentice:** Now, is there any comeback? Do you get back to Lord Levy's lawyer and say, "Hang on a minute, we explained exactly what was in our mind, we explained exactly what the process would be, and yet you go on television and you give this completely distorted, misleading account"? Or do you just shrug your shoulders and say: "That is one of those things"?

**Deputy Assistant Commissioner Yates:** I think that is for me to sort out, to be honest.

**Q20 Mr Prentice:** You tell us that three people have refused to be seen?

**Deputy Assistant Commissioner Yates:** Yes.

**Q21 Mr Prentice:** What happens in those circumstances? They refuse to be seen and that is it, or what?

**Deputy Assistant Commissioner Yates:** Well, you try and encourage them, you try and persuade them, I have written to them several times to indicate that this is the process, and at the end of the day unless I can exercise powers of arrest, which I did not think I could do, and when I have discounted the process, there is nothing I can do about it.

**Q22 Mr Prentice:** I am not asking you to name names but are these peripheral people or are they absolutely central to the case?

**Deputy Assistant Commissioner Yates:** It would have been very helpful to see them.

**Q23 Chairman:** Might you arrest them?

**Deputy Assistant Commissioner Yates:** If further additional evidence came to light to enable me to consider that, yes, I would.

**Q24 Mr Burrowes:** On the decision of arrest, are you saying the decision to arrest was predominantly about, in terms of the evidence that you needed to gain, not necessarily an interview but in terms of seizing documents. Is that the primary reason?

**Deputy Assistant Commissioner Yates:** It is about the prompt and effective investigation of the offence. It is about ensuring the best opportunity to get the best possible evidence to build the best possible case.

**Q25 Mr Burrowes:** And in some ways you would have said to Lord Levy's solicitor that that gives him protection as well in terms of being formally arrested?

**Deputy Assistant Commissioner Yates:** Yes.

**Q26 Mr Burrowes:** In terms of the charges, you say you are 35–40% close to a charge without naming an individual but, just to cover it, would you be able to specify what that charge would be?

**Deputy Assistant Commissioner Yates:** No, and, as I say, I make it absolutely clear it can drop off to nil per cent in terms of opportunity or it can climb dramatically, depending on where the evidence takes us.

**Q27 Mr Burrowes:** And would it be fair to say that charge would not necessarily just be to do with the two offences that were mentioned but could be conspiracy?

**Deputy Assistant Commissioner Yates:** It could be.

**Q28 Mr Burrowes:** In terms of interviews, how many interviews have been under caution?

**Deputy Assistant Commissioner Yates:** Thirteen, I think.

**Q29 Mr Burrowes:** They have not been witness interviews? They have all been suspects?

**Deputy Assistant Commissioner Yates:** Two people have been arrested so they would have been interviewed as well, so 13 people have been interviewed under caution without exercising a power of arrest thus far, and 35 people have been further interviewed, as in witnesses.

**Q30 Mr Burrowes:** And of those who have refused to be interviewed, that is interviewed under caution?

**Deputy Assistant Commissioner Yates:** One was certainly. If Graham was here he would have been absolutely spot on but I think one was certainly, I think two others simply as witnesses, but often you can be interviewing someone as a witness and they then become a suspect because of what they have said, so you never know, in other words.

**Q31 Mr Burrowes:** And perhaps of that one that was due to be interviewed under caution, obviously that is classically a case of civil arrest?

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13 July 2006 Deputy Assistant Commissioner John Yates QPM, Ms Carmen Dowd and Mr Asker Husain

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**Deputy Assistant Commissioner Yates:** Yes. That is being considered and at this stage discounted.

**Q32 Chairman:** Does that answer the question that might have been asked about how many arrests we think there might be still in the offing?

**Deputy Assistant Commissioner Yates:** I cannot say.

**Q33 Jenny Willott:** Can I just ask about the things that Sir Gulam Noon was supposed to have said in the media last week? Were they things that you were already considering? You made a specific point that new issues that had come up last week were not related to him. Were you already considering that, or are you discounting what has been said?

**Deputy Assistant Commissioner Yates:** Whilst he said it himself on record I am not sure I am in a position to confirm or deny whether that is accurate or not, at the moment, and I do not think it would be wise for me to do so, but there are further matters in addition to that that have come to light this week which are of great interest to us, separate to Gulam Noon's disclosure on Saturday.

**Q34 Chairman:** But the question would be, though, if that happened in the way it was described would an offence have been committed?

**Deputy Assistant Commissioner Yates:** I do not want to speculate on that. It is a very broad question on the basis of what was in *The Times* newspaper last weekend and further reported. I do not think it would be wise for me to try and say whether that is an absolute offence like that, not at this stage. I just do not think I can say on the basis of what was in the newspaper whether that is an absolute offence or not because there could be a variety of reasons, a variety of quite innocent reasons, why he was or was not, if he was, requested to omit the information that has or has not been omitted, and there could be some quite logical innocent explanations. On the other hand, there could be some very sinister explanations.

**Q35 Chairman:** But what I am asking, though, is even if the explanation was a dodgy one, that is to avoid disclosure or embarrassment or whatever, I cannot see that there is an offence there.

**Deputy Assistant Commissioner Yates:** Well, let us examine all of it in the course of the investigation and put up the papers to the CPS for them to consider.

**Q36 Jenny Willott:** You also said that there were still people that you were hoping to interview. How many more people are you expecting to interview at the moment?

**Deputy Assistant Commissioner Yates:** I have no idea. It becomes a diminishing number. As the inquiry moves towards a conclusion the number of witnesses reduces, but I can go and see a witness today which could cause me to see ten further witnesses because of what that particular witness says, for example.

**Q37 Jenny Willott:** What is the political balance of the people you are still intending to interview? What type of people are they?

**Deputy Assistant Commissioner Yates:** I have no idea.

**Q38 Jenny Willott:** The ones you still have on your list, are they more party officials than civil servants?

**Deputy Assistant Commissioner Yates:** I do not want to comment on that, sorry.

**Q39 Grant Shapps:** Can I return to this question of why now, or yesterday, or what was relevant about the timing yesterday, because it did seem to many of us when you knew you were coming in today, yet you are saying the things are completely disconnected, and it is just a coincidence, is it?

**Deputy Assistant Commissioner Yates:** Completely disconnected. As the investigation progresses clearly very careful thought was given to the actual action we took—

**Q40 Grant Shapps:** So it was a chance thing?

**Deputy Assistant Commissioner Yates:** Yes.

**Q41 Grant Shapps:** Because I was surprised to hear you say before that you knew we were not going to continue calling in witnesses. That is not my understanding of what the Committee had actually decided; indeed we never said we were putting our investigation on hold, only that we would try not to interfere by interviewing witnesses that you would want to obviously speak to, and I think we understood who those witnesses were, so my understanding was very much we would have been had there not been a fairly high profile move—

**Deputy Assistant Commissioner Yates:** I hope I have not disclosed a conversation I should not have disclosed, but that was the clear indication you gave me on Friday.

**Jenny Willott:** Until the autumn.

**Chairman:** I think we are talking slightly at cross purposes. We took a view that we would not come across your investigation by interviewing certain witnesses and we have stuck with that, and there seemed no reason to depart from that until it was clear what your investigation produced.

**Grant Shapps:** Just to be clear, though, we were clear amongst ourselves that we would come to a further decision having met you today.

**Q42 Chairman:** No. This is part of the review process which is what we are engaged in.

**Deputy Assistant Commissioner Yates:** That was what I had in my mind so—

**Q43 Grant Shapps:** There is no need to be obsessed about that. We are, as we have said, in our minds continuing with the investigation—indeed, issued a report today, and are at liberty to continue to interview other witnesses around the subject of propriety and honours, so would it cause you a problem if we asked the Prime Minister to come and be interviewed and be our witness?

**Deputy Assistant Commissioner Yates:** It would cause me a problem for you to take any evidence of that nature at the moment, yes.

**Q44 Grant Shapps:** Because you may need to speak to him at some point.

**Deputy Assistant Commissioner Yates:** It would cause me a problem for you to take any evidence about this matter at the moment whilst this is under investigation—

**Q45 Grant Shapps:** Hold on, because we agreed last time that we may well continue with, I suppose, what we call low level witnesses who would not obviously cause you a problem so we have to be able to make a distinction between those who would cause a problem and those who would not. The Prime Minister, you are saying, would be on the list of those who would cause you a problem?

**Deputy Assistant Commissioner Yates:** I think it would be unwise to see anybody in connection with this matter at the moment.

**Q46 Grant Shapps:** Are you going to speak to the Prime Minister at some point?

**Deputy Assistant Commissioner Yates:** I am not going to discuss that.

**Q47 Grant Shapps:** But you have certainly not ruled it out?

**Deputy Assistant Commissioner Yates:** I am not going to discuss that.

**Q48 Grant Shapps:** Because it seems to me that if this Committee wants to have the Prime Minister in front of it then it can, and if he is out of the frame, as it were, then there is no reason why we should not be doing that. Yet you are saying it would be unwise to cause a problem and so on and so forth—

**Deputy Assistant Commissioner Yates:** What I have said is that it would be unwise to see anybody in connection with this investigation at the moment. We are clearly at a very delicate stage; it would be very unwise, in my view.

**Q49 Chairman:** I think we did what you asked; we took you on trust which is that you were doing a serious investigation and there were some possibilities of danger if we were to take evidence from certain people; we took legal advice on that and I think we have stuck with that view. We discussed whether we might take the evidence privately or not; we decided on balance there would be more disadvantages than advantages in doing that; so my view is, as I have said to you already, that we took a correct view on that and these are parallel investigations, but I think you will find that what we have done here is useful context for the work—

**Deputy Assistant Commissioner Yates:** Can I respond to that? I am very grateful for the entirely responsible way that this particular Committee has approached this. It has been very helpful in terms of how we have been able to progress our inquiries. Thank you.

**Q50 Grant Shapps:** You have not read our report yet, have you! Finally on this, what I am struggling with slightly here is, in my mind at least, you were coming back today—I think—to convince us that this was moving in some sort of direction, and you must have been aware that in the arrests taking place yesterday, if not us then at least the media would think that that was a move in some way related to you coming in today. You have already referred to that so you obviously were very acutely aware of it. So why yesterday? Why not distance it, or make it after this, or a week ago?

**Deputy Assistant Commissioner Yates:** As I say, it is the evidential point in time. It is, and I come back to this, the prompt and effective investigation of the offence. As I say, in my mind I did not think there was a threat from this Committee taking evidence, and you have to be assured on that point. So it was not designed to try and influence, sway you—any of those considerations at all. It is simply around that is the moment we considered it appropriate and a professional judgment to exercise the power to enable this investigation to continue.

**Q51 Kelvin Hopkins:** Very briefly, you said at the beginning that you were not worried about the Committee referring to what you said in your first statement, but you did not intend to issue that yourself. I was just wondering, would it not be helpful all round if you did issue a statement, or at least used it as a response to journalists who may ask you questions?

**Deputy Assistant Commissioner Yates:** Whilst an investigation is on-going, particularly where we have someone being interviewed today, it would not be appropriate for me to do anything in a public way.

**Q52 Chairman:** But you are happy for us to be your parliamentary spokesmen?

**Deputy Assistant Commissioner Yates:** No. I am just saying it is a matter for the Committee.

**Q53 Paul Rowen:** You said you had arrested two people. The first was obviously to do with the Academy programme. Have you completed your investigations on that area?

**Deputy Assistant Commissioner Yates:** No. It is all part and parcel. Parallel but clearly linked.

**Q54 Paul Rowen:** Clearly linked, in your view?

**Deputy Assistant Commissioner Yates:** Yes. It is parallel and linked.

**Q55 Paul Rowen:** Right. Do you envisage opening up any other lines of inquiry?

**Deputy Assistant Commissioner Yates:** Not at the moment.

**Q56 Paul Rowen:** You say you have interviewed members of the Conservative Party as well?

**Deputy Assistant Commissioner Yates:** Yes.

**Q57 Paul Rowen:** And do you think there is cause for concern?

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**Deputy Assistant Commissioner Yates:** Well, lenders. One assumes they are members of the Party but I do not know.

**Q58 Paul Rowen:** Is there anybody likely to be arrested from that investigation?

**Deputy Assistant Commissioner Yates:** I do not want to speculate on that, sorry.

**Q59 Chairman:** Did I miss a question which asked you how many further people you thought you were going to have to interview?

**Deputy Assistant Commissioner Yates:** It was really “How long is a piece of string”. I do not know. They are becoming smaller numbers but I can suddenly interview someone tomorrow which will require me to go and see X number.

**Q60 Mr Prentice:** Is the investigation going according to plan? Because when you came to see us before you talked about scoping and sequencing the investigation, and presumably keeping the important people to the end. Have you been kind of blown off course by these three people who have refused to be seen?

**Deputy Assistant Commissioner Yates:** No. And is it going to blow off? It is very difficult to plan an inquiry. You put lines of inquiry round it and parameters round it but you have to be flexible and have a plan blown off course occasionally. It has not been, to this date.

**Q61 Mr Prentice:** Can you tell us how many people you have working on this operation, and the cost, and whether the numbers have increased as the investigation has progressed?

**Deputy Assistant Commissioner Yates:** It is around 9 or 10 working on the investigation. Again, I pull people in occasionally to do specific bits of work, analysis or the like. It has not grown; it is a very small team, deliberately small, for operational security reasons. I could not tell you what the cost is; I will be at some stage. It is not cheap.

**Q62 Mr Prentice:** That is why you are still confident that the leaks are not coming from Scotland Yard because there are only nine or ten of you?

**Deputy Assistant Commissioner Yates:** Absolutely.

**Q63 Mr Prentice:** You told us that you are getting material from the Cabinet Office. Has any material been withheld for whatever reason, or are you getting absolutely everything that you have asked for?

**Deputy Assistant Commissioner Yates:** We are getting full co-operation.

**Q64 Mr Prentice:** And the story about this software firm in California that allows you to recover deleted e-mails, the leak was presumably over in California?

**Deputy Assistant Commissioner Yates:** I have no idea. It is not a company I believe we are using.

**Q65 Mr Prentice:** It is not a company you are using?  
**Deputy Assistant Commissioner Yates:** No.

**Q66 Mr Prentice:** So that was complete fiction?

**Deputy Assistant Commissioner Yates:** Complete fiction—as far as I understand—

**Q67 Mr Prentice:** So the front page of *The Guardian* was like an April Fool, a big hoax?

**Deputy Assistant Commissioner Yates:** We are not using that company.

**Q68 Mr Prentice:** That is astonishing. I do not want to go off on a tangent but have you, the Metropolitan Police, corrected that by getting in touch with *The Guardian* saying: “Hang on a minute, your front page story was a spoof”?

**Deputy Assistant Commissioner Yates:** I think my Press Officer would say that we do not confirm or deny anything around these things. Why would we? It is instead of using something else, potentially. That is why we never identify an informant because you get the process of elimination: “Who are you using?”

**Chairman:** David Hencke is not entirely reliable!

**Q69 Mr Burrowes:** I have a question for the Crown Prosecution Service. In terms of the decision to prosecute, who would that be made with? Would that involve the DPP? Is there any need for consent to him or the Attorney General?

**Ms Dowd:** It would be dependent on the charges that we consider are supported by the evidence, but Asker and I are the reviewing lawyers in the matter and will be consulting with the DPP and possibly the Attorney, I imagine the Attorney. He is our supervising Minister.

**Q70 Mr Burrowes:** Yes, so depending on the offence and whether he formally has to give consent as the Attorney General, would he in any event be involved in the consultation to decide on prosecution?

**Ms Dowd:** If his consent is required he will have to make that decision, yes.

**Q71 Mr Burrowes:** And if it is not?

**Ms Dowd:** With the nature of the investigation and the subject matter, I imagine we will be consulting with the Attorney General in terms of our decision. That is not to say the Attorney General will be making the decision; it will be a CPS decision.

**Q72 Kelvin Hopkins:** Moving back to the three people who have refused to give evidence, refused to be interviewed, you seem relaxed about that because presumably you can take their evidence all in good time as necessary, and you did not require them to come and see you?

**Deputy Assistant Commissioner Yates:** I cannot put the thumbnails on and say “You have to talk”, because I cannot do that, but if it was appropriate to exercise that power I think we would consider and do it but at this stage it does not merit that.

**Q73 Kelvin Hopkins:** But you are relaxed about that, all in good time?

**Deputy Assistant Commissioner Yates:** I would rather they came and saw us, but these things happen.

**Q74 Mr Prentice:** As far as the CPS is concerned, let's say you get to this 50%, the evidential test, 50% chance of bringing a successful prosecution—why are you smiling?

**Ms Dowd:** Can I just say that we do not have 50% tests. The code is whether there is evidence that discloses a realistic prospect of conviction. If you look back, Mr Yates said, "If there was a test that the CPS said 50%, then . . ." but we never use percentages. Our test is quite clearly enunciated in the code, "realistic prospect".

**Q75 Mr Prentice:** To what extent does the consideration of the public interest come into this when deciding to go ahead with a prosecution? It is either in the public interest or it is not in the public interest.

**Ms Dowd:** Well, the first stage is the evidential test so if you do not pass that then there is nothing to consider.

**Q76 Mr Prentice:** You pass it but then you still have to make that judgment whether taking the matter to court is "in the public interest" or not, and I just wondered if you could say a few words about that?

**Mr Husain:** It is like any other offence that we would be considering. There are a number of criteria which are set out in the code for Crown Prosecutors which highlight or point to certain indicators which we would take into account and make a decision on the basis of.

**Q77 Mr Prentice:** But it would be a CPS decision not the Attorney General, because we just heard the Attorney General might be called in?

**Ms Dowd:** No. If the offence we are considering requires the Attorney General's consent then he will be asked for his consent and it will be up to him to give that. Otherwise it is our decision, a CPS decision.

**Q78 Mr Prentice:** I see. What about the offences that require specifically the Attorney General's consent?

**Ms Dowd:** There is a whole raft of offences that require Attorney General's consent—

**Q79 Mr Prentice:** But in relation to this inquiry?

**Ms Dowd:** The difficulty is until we consider all the evidence we cannot say what are the raft of offences we would be considering and might be supported by the evidence.

**Mr Husain:** You are asking us to pre-judge the situation—

**Mr Prentice:** I am just trying to find my way through this. This is all new to me.

**Q80 Chairman:** But are there offences under these two pieces of legislation we are talking about that will require—

**Deputy Assistant Commissioner Yates:** No.

**Ms Dowd:** The two that have been quoted do not need AG's consent.

**Q81 Grant Shapps:** I thought I was clear and now I am possibly confused. Your 35–40% bar, or level, actually is not out of 100 but out of 50, which is an imaginary 50% which you would need to be at in order to produce evidential proof. Is that right?

**Deputy Assistant Commissioner Yates:** It is going up on the bar to 100%. 50% I should not talk about because it is not a realistic possibility of conviction, so I correct myself on that, as I think I did correct myself in my opening statement. It is where I believe in my professional judgment the weight of the evidence is.

**Q82 Grant Shapps:** Yes. What we are saying is you have to be over halfway before you would think you would be putting this case to the CPS?

**Deputy Assistant Commissioner Yates:** Yes.

**Q83 Chairman:** I was going to ask you this, because in terms of your authorisation for us to say things, I was going to particularly ask you about this aspect, whether you are happy for me or any of us to say anything.

**Deputy Assistant Commissioner Yates:** I would say that bit should be private.

**Q84 Chairman:** You would not like . . .

**Deputy Assistant Commissioner Yates:** No.

**Q85 Chairman:** That is helpful. Are there any more points? If not, can I just ask you, just so I am clear again, my understanding is that your power of search can be exercised before arrest.

**Deputy Assistant Commissioner Yates:** It can be exercised in a number of ways under the Police and Criminal Evidence Act: at the time of arrest or post arrest having been taken to a police station. Alternatively, you can get warrants, but we have a power of arrest, therefore that is the way you use it.

**Q86 Chairman:** You see the point: this is the argument that you can do all these things anyway and you can search without arresting.

**Deputy Assistant Commissioner Yates:** If I went to a magistrate and sought a search warrant prior to that, it would be to arrest as well, more than likely. It does not have to be, but there is a way of going through these processes.

**Q87 Chairman:** So you just behaved in the normal way.

**Deputy Assistant Commissioner Yates:** We just behaved in an absolutely standard way, but we have considered the options around the way the arrest was carried out and, be assured, acutely aware of the sensitivities, and it was done in a way to minimise all of that, which is why I was so surprised to hear Lord Levy's legal representative talk in the way he did last night.

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**Q88 Chairman:** Because he knew he was going to be arrested before he went to the police station.

**Deputy Assistant Commissioner Yates:** Absolutely knew.

**Q89 Grant Shapps:** And his comment was “I was shocked”, “We were shocked when he was arrested.” I think that was his quote on . . .

**Deputy Assistant Commissioner Yates:** I think I have made it clear.

**Q90 Mr Prentice:** When you told us earlier the decision to arrest was yours, you must have discussed this matter with the Metropolitan Police Commissioner and the top team at Scotland Yard, given the sensitivity of this, given its ramifications.

**Deputy Assistant Commissioner Yates:** Firstly, I did not discuss it with the Commissioner.

**Mr Prentice:** You did not. OK.

**Deputy Assistant Commissioner Yates:** Secondly, I consider myself reasonably experienced, reasonably senior, and I am quite capable of making these sorts of judgements on my own, with support, with legal advice, but . . .

**Mr Prentice:** I was not suggesting that you were not capable of doing this.

**Deputy Assistant Commissioner Yates:** That is what I am paid for.

**Mr Prentice:** I just do not know how these decisions are taken in Scotland Yard. But it was you and you alone. OK.

**Q91 Chairman:** Arresting the Prime Minister’s big buddy is a big call, is it not?

**Deputy Assistant Commissioner Yates:** We go where the evidence takes us.

**Mr Prentice:** Anyone for tennis?

**Q92 Kelvin Hopkins:** Following on from what you have just said, Chair, it is a question one has to ask. We live in the political world, where we are aware that pressures are exerted, and I am absolutely confident that you are doing a professional and independent job, but are you aware of any political pressures, subtle or surreptitious, on you in this investigation?

**Deputy Assistant Commissioner Yates:** Clearly there are, because you read it every day in the papers, but personally, on me, no. I think the general view I take and the general feedback I get is people want us to do a thorough, professional job and to conclude this matter as quickly as we possibly can.

**Q93 Chairman:** On the loans business, are you looking at loans documents, terms of?

**Deputy Assistant Commissioner Yates:** Yes.

**Q94 Chairman:** And you are getting good access to those, are you?

**Deputy Assistant Commissioner Yates:** Yes.

**Chairman:** Good.

**Q95 Jenny Willott:** Can I ask one other question? Are you expecting to make any more arrests in the next couple of weeks?

**Deputy Assistant Commissioner Yates:** I cannot comment on that.

**Jenny Willott:** It was worth asking.

**Q96 Chairman:** Can I just go back to where I started but do it this time with the CPS, if I may. You remember at the outset I was asking about these two pieces of legislation, and although all kinds of disreputable behaviours may be discovered of the kind that politicians engage in, that is different from breaking laws. As a lay person looking at these two pieces of legislation, it is difficult for me to see how you would reach the kind of evidence that you would need to have to be able to do that. I would quite like to hear from the CPS side whether, looking at the law and being faced with that question—not the question of whether policemen can discover all kinds of interesting material but whether actually that next bit can happen because of what the law says—and given what we know to be the loopholes in this law that we have now had to correct and we are operating with the law as it was, on the face of it, it just seems to be not do-able.

**Ms Dowd:** I do not think we could ever comment upon that until we know what evidence there is submitted to us to consider. It would be purely speculative.

**Q97 Chairman:** It is not speculative to say what evidence would have to be accumulated, what offences would have to have been committed in order to make these Acts work.

**Ms Dowd:** What acts would have to be committed you mean?

**Q98 Chairman:** No, to make these pieces of legislation work, to stand up.

**Mr Husain:** I am not quite sure what you mean by “work”.

**Q99 Chairman:** To work in terms of prosecuting anybody.

**Mr Husain:** If you are saying is it possible for somebody to be prosecuted under this legislation, the answer, hypothetically, is yes. Whether it will in these particular circumstances we will not know until we have had a chance to review the material that has been provided to us by the police in due course. It is difficult to go beyond that.

**Q100 Chairman:** I think what I am asking you is to give us a judgment on how tricky it is to operate these bits of legislation. Policemen are used to dealing with law that is pretty straightforward. They see what the law says, they see if someone has committed an offence, and you can put one against the other and you can go to the CPS and say, “Here we are, blah, blah, blah.” All I am saying to you is this is funny old legislation, dealing with funny kinds of behaviour, and I just think you are in different territory here, and you must be aware of this.

**Mr Husain:** It is certainly not run-of-the-mill.

**Ms Dowd:** We certainly have not dealt with them before but there are lots and lots of tricky pieces of legislation that we deal with all the time,

unfortunately for us, and we have to work through them. We have to look at the law and look at the evidence that has been gathered and see whether they marry up and that we can prosecute. It is not unusual to have a tricky . . .

**Q101 Grant Shapps:** Both these pieces of legislation are unusual in that they have almost never been exercised: the 2000 has not at all and the '25 once.

**Mr Husain:** Which says a great deal about the country and how well it has operated, I suppose, in one way.

**Deputy Assistant Commissioner Yates:** Good answer!

**Q102 Grant Shapps:** Or that you are going to find it virtually impossible to . . .

**Mr Husain:** Or we will find otherwise.

**Ms Dowd:** We do not know that yet.

**Deputy Assistant Commissioner Yates:** The legislation is not that old. Considering we use the Offences Against the Person Act 1861 every day of the week for assaults and GBH, this is not all that old in terms of legislation.

**Grant Shapps:** Yes, but just not used—that is what I am saying—probably because it is difficult to secure prosecutions under it.

**Q103 Kelvin Hopkins:** Can I suggest it is not the age of the legislation . . .

**Deputy Assistant Commissioner Yates:** Quantum leap there, I think.

**Paul Rowen:** What evidence would you be looking for?

**Q104 Chairman:** What offences might be committed to make this legislation stick?

**Mr Husain:** That is a circuitous comment, is it not, because you are saying what acts may be committed to make these offences stand up?

**Q105 Chairman:** Yes.

**Deputy Assistant Commissioner Yates:** I do not think you can ask people to comment on that. There are several ways a case is built, from absolute direct eye-witness accounts through to documentary evidence through to hearsay through to all sorts of particular . . .

**Q106 Mr Burrowes:** What are the particular offences, to clarify, that you would have in mind?

**Deputy Assistant Commissioner Yates:** There are a number. There is the Honours (Prevention of Abuses) Act, there is PPERA. We do not discount any of them.

**Q107 Mr Burrowes:** The particular offence?

**Deputy Assistant Commissioner Yates:** It is within the Act. It can be Honours (Prevention of Abuses) either way, so it is offering or seeking. It depends on a number of issues. There are also other offences that could come in, in terms of conspiracy. You mentioned it yourself, Chair.

**Q108 Mr Burrowes:** You have submitted a couple of documents to the Committee. You must be talking about a number of specific offences within the Act. It would be useful just to clarify exactly those offences that you are dealing with.

**Mr Husain:** Part of the problem is that you should not be limiting yourself in any specific way. What you would do is you look at the evidence and see where that takes you, and if the acts point towards a particular offence being committed, you go in that direction. If you come with a mind that is already closed, saying, "These are all the acts I am going to look at", then you are in difficulty.

**Q109 Mr Burrowes:** But plainly, we know the general arena that we are talking about. Could you just list what offences we could be dealing with?

**Mr Husain:** I think Mr Yates already has in the sense of the broad spectrum of the Acts that are involved and then you would look within that and see how the information that you have, the evidence that you have, fits within that, if at all.

**Q110 Mr Burrowes:** But in the Act—and we have these two Acts—I am sure you must have a clear idea. You have now been investigating for a number of months. There must be some offences that you can quite clearly say, let us say, within those two Acts, the offences that you are focusing on.

**Deputy Assistant Commissioner Yates:** That is the focus, those two Acts.

**Q111 Mr Burrowes:** But within those Acts, I am just trying to clarify exactly the offence.

**Deputy Assistant Commissioner Yates:** I just do not think it is wise for us to speculate, because the investigation is not concluded. There are some key people still to see. When we have done all that, I will present, hopefully, a balanced picture to the CPS to enable them to make the best decision, to consider all the offences that in their professional judgement should be considered. I just do not think it is wise for us to say which specific subsection of which Act we are considering at the moment.

**Q112 Chairman:** David is a lawyer, you understand.

**Deputy Assistant Commissioner Yates:** I can feel it.

**Q113 Chairman:** I do not think he is just trying to be clever and to get you really answering other questions. He is just genuinely asking about what would be the kind of offences under these Acts that you might have some prospect of bringing some action in relation to. That is what I think is the genuine query that we have.

**Ms Dowd:** I do not think we have sat down and said specifically sections, subsections. We have discussed the submissions and we know which broad ball park we are in in terms of those Acts but, as Asker has already indicated, we have not closed our minds to anything.

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**Q114 Chairman:** No, it is just that we hear information and obviously it is probably unreliable. We all ask ourselves whether we think this would bite in terms of legislation. You said conspiracy just now.

**Deputy Assistant Commissioner Yates:** That came from the floor. Potential.

**Chairman:** You said that I had suggested conspiracy. That was presumably in terms of non-disclosure . . .

**Mr Burrowes:** I suggested conspiracy.

**Q115 Chairman:** That takes us off in a direction other than the direction of these two Acts, does it not?

**Deputy Assistant Commissioner Yates:** Nothing is impossible. The focus of the inquiry is on these two Acts. If at the end of the day, on the totality of the evidence, there are further matters to be considered, such as conspiracy, but do not let us fly that one too high, then clearly the CPS will consider that. I think I mentioned in my first briefing to you in relation to the Corruption Act, corruption is not ruled out. Nothing is ruled out until we have actually finished the inquiry.

**Q116 Chairman:** Conspiracy to do what?

**Mr Husain:** That is part of the problem. You raised it, and now you are asking us, because we have not raised it. That is part of the problem. If you start asking questions . . .

**Deputy Assistant Commissioner Yates:** Mr Burrowes, I said “yes”, but I wish I had not.

**Ms Dowd:** Had Mr Yates discounted it, you would have wanted to know why it had been discounted and what had been discounted. The difficulty is, if things are thrown into the discussion, just a general “Are you thinking about conspiracy?” All Mr Yates is saying . . .

**Q117 Mr Burrowes:** We are quite a few months down the line, and to be in a position to conclude the matter in the autumn, you must have a fair idea as to the general nature of the offences that you are dealing with and, if conspiracy is an option, you must have a general idea what area of conspiracy. You are fairly confident you are going to conclude it, and so you must have a fairly good idea.

**Deputy Assistant Commissioner Yates:** I do not think it is . . . Sorry.

**Q118 Mr Burrowes:** You do not need to obviously lay all your cards out by any means, but in general terms, I am sure there can be some clarity.

**Deputy Assistant Commissioner Yates:** I do not think it is fair to press us on that point. I think I have been as open as I can be, bearing in mind the status of the investigation at the moment. Please do not go outside this room and say, “The police are considering conspiracy” because I just do not think that would be fair. We have not discounted . . .

**Q119 Chairman:** That is why it is important that we ask you about it now, so that such slippages do not happen.

**Deputy Assistant Commissioner Yates:** Can I say we have a hundred per cent discounted it? Of course we cannot, because we have not finished.

**Q120 Mr Prentice:** I am sorry if this sounds like we are pulling teeth.

**Deputy Assistant Commissioner Yates:** It does.

**Q121 Mr Prentice:** That is tough! On this business of when everything is going to conclude, because this matters to the Committee, when you are going to wrap things up, and you said you have got key people still to see, when will you end the investigative bit of your inquiry? You will need a few weeks to pull it all together before handing it over to the CPS. When will you finish interviewing these key people?

**Deputy Assistant Commissioner Yates:** I would hope—a lot of it depends on what other lines of inquiry come up, but as I say, my professional judgment is we can have this wrapped up by October. I would imagine some time in the middle of September. I would imagine; I cannot be held to that. Clearly, you do go through a review process, analyse the evidence, and present it in the best possible format to enable colleagues in the CPS to make their decision.

**Mr Husain:** Can I just add to that, just to avoid any ambiguity or whatever, once we have the papers, the final papers, obviously we will need some time to give them due consideration. So albeit that the investigation stage may have come to an end September/October, there will be time required for the CPS to consider the evidence, take a view. As you would expect in a matter such as this, you need to be very careful about the decision that you take, and depending again on the type of offence eventually, if there is an offence, if the Attorney’s consent is required, that takes time as well. So there are a number of steps after the investigation has come to an end.

**Q122 Mr Burrowes:** That will be a priority, will it, in terms of the reviewing lawyer? I know you have other competing cases. When the file comes to you, will that be the priority to determine, given that you have other serious cases? This is of great public interest but there are probably other, in the scale, serious cases that you are probably dealing with as well.

**Mr Husain:** There are others. Part of the problem with being a Special Crime Division is that nearly all our cases are quite big and voluminous and high-profile, so it is obviously a question of juggling balls at times, but you have to do your best. That is why it is very difficult to speculate on the exact time that will be needed for it and how long and when exactly will the decision be made and all the rest of it.

**Q123 Grant Shapps:** If the file came to you in the middle of October, it is reasonable to assume, based on your experience, that we would not hear anything back from you till January, something like that?

**Mr Husain:** I just indicated that it would be very difficult for me to give a . . .

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**Q124 Grant Shapps:** But with a huge amount of respect, that is a bit of a fudge. You have a lot more experience of this than I have and I am just asking how long a large case like this might take to come to the CPS. Is it days, weeks, months?

**Mr Husain:** It certainly will not be days. I can say that.

**Q125 Grant Shapps:** If a case like this comes to you in the middle of October, you must be able to give us a steer as to whether we are looking at the New Year or the same year.

**Mr Husain:** Hopefully, as soon as possible after that.

**Q126 Chairman:** You have had two submissions to you already and there is another one coming, so this is not waiting until the end. You are reviewing this material as you go along. Now presumably, if you get to the point where the remaining material comes in and it is conspicuously short of the evidential test threshold, then it is pretty clear, is it not, about making a decision? Surely, the protracted element comes if it is in a grey area. It may be that it could be resolved quickly, if it is clearly one side of a line or another.

**Mr Husain:** Certainly, it is not a case that we would want to sit on, for obvious reasons—not that we sit on any other case, but particularly with a matter such as this, you give a great deal of attention and prioritise as much as you possibly can.

**Q127 Mr Burrowes:** You have arrested two people, who are on bail. Would you be able to be robust in coming to a decision if they are not in the frame when it comes to submitting a file, that you would be releasing them from being on bail? In other words, if they are still on bail, they are presumably in the frame when the file goes through.

**Deputy Assistant Commissioner Yates:** If a person is on bail, and clear evidence comes to light that should indicate that he or she should be released from that bail, then we are under an obligation to do just that. But I would imagine in these circumstances it will require the totality of the evidence to be considered first before we could properly make that judgment.

**Q128 Mr Prentice:** Once you have finished interviewing all your key people, there is nothing to stop this Committee, if we were so minded, just starting up our inquiry again and interviewing these very same people.

**Deputy Assistant Commissioner Yates:** There might be, because you may indeed be prejudicing any future criminal prosecution by having them here in public, being examined, for the reasons I outlined before.

**Q129 Mr Prentice:** Even though you have finished your investigation?

**Deputy Assistant Commissioner Yates:** It is only one stage in the process. We have got to go through CPS consideration, potential prosecution.

**Q130 Chairman:** If you decided, when you get to the right stage, that there is no prospect of conviction under this legislation, whatever practices you have discovered, how would you announce that? Who would announce it and how would it be announced?

**Ms Dowd:** We would inform the police of our decision in relation to the review and give detailed reasons for that.

**Q131 Chairman:** So it would be Mr Yates who would announce that?

**Ms Dowd:** Yes.

**Q132 Grant Shapps:** I am still very unhappy—sorry to come back to this briefly—about this idea that you cannot give us any steer at all, based on all your experience of large cases, whether it is going to be this year or next year, that you are able to come back with information, assuming that the file is handed over to you in the middle of October, and yet at the same time, and we have been very cooperative to the request from Yates, we are prepared to provide that space and not carry on with our own parliamentary duty, which is to look into a matter of parliamentary responsibility, and I just ask you again, can you not just give me some kind of idea? I do not know how the CPS operates in a case like this. Is it a month, two months, four months, sometimes does it reach six months? Tell me something.

**Mr Husain:** As I said, it depends, for example, if I give you a date . . .

**Q133 Grant Shapps:** I am not asking for a date. I am not going to hold you to it. I want to understand your process.

**Mr Husain:** No, I appreciate that but one of the things that obviously it is difficult for us to anticipate at this stage is potentially what sort of offences you are going to finally think towards, and if it is, for example, one which requires the Attorney's consent, let us say, as a matter of argument, then obviously that adds to the process. At this stage, do I build in that process or not?

**Q134 Grant Shapps:** OK, if it comes to the CPS by December 2006 or by January or by February.

**Ms Dowd:** I think the Committee can be assured that, given all the sensitivities around this and everything else that is going on in the other committees, examining some of the issues, we will give this our utmost priority. We cannot really say to you it will take two weeks. We are looking at the material that is being gathered as it is gathered and we will continue to do so, and I anticipate that when the full file is submitted, we will hopefully be in a position where we have looked at pretty much most of it in advance of actually the full file—there will be some other material—and we would therefore be in a better position to review that fairly quickly, but it will have to be a detailed analysis of the evidence.

**Chairman:** I think you have said as much as you can.

**Q135 Paul Rowen:** Just one quick one: what circumstances will require the Attorney General's consent?

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**Ms Dowd:** It would be an offence that requires the Attorney General's consent. If we considered that there is evidence to support an offence that requires his consent, then we would have to seek it. There is a list of offences that require it.

**Q136 Chairman:** We have established that neither of the Acts in question . . .

**Ms Dowd:** No, but we have not closed our minds to what other offences, so we cannot say that . . .

**Deputy Assistant Commissioner Yates:** Corruption, for example, does require the Attorney-General's consent.

**Q137 Chairman:** Into other corruption legislation. OK. I think I am going to draw this to a conclusion. I think you have been as frank as you can be, to be honest, and I think you have really given us a sense of where you are at. Are you going to make a statement? No. OK. Just so that we are clear, I thought I was going to say something merely bland, but now that you have indicated that we might say something more substantial, I think you have told us that you repudiate strongly the idea that the arrest that was made yesterday was a merely symbolic act but that it was actually a proper and necessary part of a serious investigation. You have told us that both main parties are involved in the investigation. You have told us that you have conducted 13 interviews under caution, 35 other interviews, and there are three people that have refused to see you and you are still working on that; that you have made some submissions to the CPS already, others to follow; that you are working to an autumn, possibly October deadline for completing the investigations and then it will go to the CPS and they will make it a priority to come to a view on that as soon as possible; and that we have invited you, whatever the outcome of this investigation, to share some of your findings with us and that you have responded positively to that. With your permission, I would say all of that. The bit I would not say is the percentage bit about the balance of probabilities and so on. Is that all right?

**Deputy Assistant Commissioner Yates:** That is absolutely fine.

**Chairman:** Thank you very much indeed.

**Q138 Jenny Willott:** Can I clarify one further point which is something that you just mentioned then? You said at the beginning that you had interviewed under caution people from the Conservative and the Labour parties, and that you had interviewed not under caution from the Conservatives, Labour and

Liberal Democrats. Are you considering anybody in the Liberal Democrats in terms of taking it further in terms of potentially charging? You said "the two main parties". I was just wondering if it was . . .

**Deputy Assistant Commissioner Yates:** I cannot say definitively but I think it is unlikely.

**Q139 Chairman:** I was ferociously attacked by Alex Salmond last night for saying "all parties", drawing on what you had told us. I am grateful that you have allowed us to say what we can say because I think that does help.

**Deputy Assistant Commissioner Yates:** If you wanted to expand on why we arrested, it is the prompt and effective investigation of the offence, it is to exercise powers that we cannot exercise otherwise. It was considered most carefully, done in a way to minimise embarrassment, which is why I was so disappointed about what the lawyer said yesterday.

**Q140 Chairman:** I am happy to say that, relaying what you have said.

**Deputy Assistant Commissioner Yates:** What I have said to the Committee?

**Chairman:** Yes.

**Q141 Grant Shapps:** Is Mr Yates coming back to see us again?

**Deputy Assistant Commissioner Yates:** I would love to.

**Q142 Chairman:** I suspect we shall meet again. Whatever happens, you have sort of said that you will come and give proper evidence to us, public evidence to us.

**Deputy Assistant Commissioner Yates:** Should this matter not proceed, then yes.

**Q143 Chairman:** There will be lessons from the inquiry that I think will be very helpful to us. I think we are grateful for that. We certainly hope that that is the kind of time period we are talking about, given what you have been saying today, but at least it keeps us informed about where we are at. As I say, we started our inquiry before yours and, as I say, we have looked at some of the issues and produced an interim report. It may well be that as a result of this there will be calls for the whole legislation in this area to be reviewed and I am sure that is something that you can absolutely help us with.

**Deputy Assistant Commissioner Yates:** I would like a copy of the report if I could do.

**Chairman:** We have got one to give you. Thank you very much indeed, all of you.

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**Thursday 11 October 2007**

Members present

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
David Heyes  
Mr Ian Liddell-Grainger  
Julie Morgan

Mr Gordon Prentice  
Paul Rowen  
Mr Charles Walker  
Jenny Willott

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*Witnesses:* **Lord Stevenson of Coddenham CBE**, a Member of the House of Lords, Chairman, and **Rt Hon Lord Hurd of Westwell CH CBE**, a Member of the House of Lords, Member, House of Lords Appointments Commission, gave evidence.

**Q144 Chairman:** May I welcome our guests and witnesses this morning, Lord Stevenson and Lord Hurd, from the House of Lords Appointments Commission. You have been able to help us in the past and we thought you may be able to help us again. As you will know, we are trying to complete an inquiry, that was interrupted by the Metropolitan Police, into propriety and honours. We are now able to resume that inquiry and so resume the conversation that we started with you quite a long time ago. That is the context in which we would like to talk to you. Would either of you or both of you like to say anything by way of introduction?

**Lord Stevenson of Coddenham:** I have a very short introduction, in the nature of these things, which I think would be very helpful. We received the message that you were, as it were, seeking not to continue the police inquiry by any other means but to consider the policy and regulatory issues coming out of it. We are very anxious to help you in any way we can. As you know and as, indeed, you acknowledged in your report, we cannot provide details of personal information about individuals, but, subject to that, we will give our advice. We have a duty of confidentiality to them and our advice to the Prime Minister is confidential, but, within that constraint, we want to help in any way we can. It might be useful to summarise our role and the criteria we use in the scrutiny of nominees to the House of Lords. If you feel I am going over old territory, please interrupt me, but I thought it sensible to write it down. We have two roles. We recommend to her Majesty non-party political peers to join the crossbenches. To date we have recommended 42 individuals and we are in general pretty pleased with their contribution to the House and our work continues. Our second role is to advise the Prime Minister on the propriety of the working peers put forward by the political parties. Of course, we vet our own nominees before we put them forward. The essential difference between the two roles is that in respect of the non-party political nominees we are responsible for selecting the names; and in the case of the party political peers the Commission is not involved in the choice of individuals put forward: the political parties choose their own nominees and make their own judgment upon their suitability. On propriety: propriety is one of these words that mean different things to different

people and the Commission have defined as clearly as we can, and publicly, what we take it to mean. First, we say the individual should be of good standing in the community in general and with particular regard to the regulatory authorities with whom we do checks. Second, the nominee should be a "credible nominee". This applies to all nominees but is, for obvious reasons, rather important for those who have made donations or loans. The Commission takes the view that donations or loans are not of themselves a bar to a peerage but nor are they a reason for one, and so we must be able to satisfy ourselves that if the donation or loan was placed on one side the individual would be a credible nominee. To state the obvious: credibility is in the eye of the beholder and is a matter of judgment. We have tried to be as precise as we can in defining criteria for it. The Commission's main criterion in assessing credibility is that nominees should enhance rather than diminish the workings and reputation of the House of Lords and the honours system more generally. The only other thing is to remind the Committee that we are an independent body made up of three independent members: myself, Angela Sarkis (who accompanied me last time but could not today) and Felicity Huston; and three nominees from the political parties: Lord Hurd, Brenda Dean and Navnit Dholakia. Lord Hurd and Lady Dean were members of our Predecessor Honours Scrutiny Committee and have served on the Commission since we started in 2000. That is my initial bromide. Please ask questions.

**Q145 Chairman:** Thank you very much for that. Obviously the events of the last year or so provide the context for us talking to you today. Is it the case that if the regulatory system had been working well, there would have been no need for a police investigation? Or is it that the regulatory system was working so well that it revealed the need for a police investigation?

**Lord Stevenson of Coddenham:** I do not think, Chairman, it would be appropriate or proper for us to be drawn into making judgments about whether there should or should not have been a police investigation. I will however make an observation, and perhaps I can preface it by saying that we are not complacent about the job we do. As I have told this Committee before, we constantly review what we are

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doing and try to make incremental improvements, so I do not want you to misunderstand what I am saying. If you regard us as a key part of the regulatory system in this, I hope—and it is for other people to judge this—the view would be taken that the regulatory system worked pretty well on the matters which led up to the police investigation. There is evidently a transparency to it that has not existed before (when these things were done from within No 10 or wherever). And, in our case, as a body that has acted completely independently—I think it evidently has—there was, understandably, some scepticism in our early years as to whether we were independent but I think it became evident—I would say that, wouldn't I?—I think broadly it has acted in the public interest. To that extent, I would say we can always improve the regulatory system. I hope it will be improved, but I think it is improved and has worked reasonably well. I cannot follow you into whether that justifies or does not justify a police inquiry.

**Lord Hurd of Westwell:** To sum up that point, the regulatory system was acting—and I think it was acting energetically and effectively in this case—and along came something which was not regulatory but a legal accusation that was made and the police have to deal with that. But I imagine they look at the whole scene, including what we are doing and not doing, before they decide how to handle such an accusation, which goes to them and not to us because it is a legal matter.

**Q146 Chairman:** At the heart of the matter was the accusation that it was possible to buy and sell honours and to buy and sell peerages in particular. The reason I put it in the way that I did is that you are the body that ensures that it is not possible to buy and sell peerages, are you not? I am asking you how, in a sense, could it have been possible for anyone to pursue that proposition, if your mechanism was robust enough to ensure that it did not happen?

**Lord Stevenson of Coddendam:** It is kind of you to put it that way and I would hope it is true—I think it is, but nemesis follows hubris and there is not any hubris here because this is difficult work—that the Commission's procedures and processes would be pretty good at giving the right advice to the Prime Minister of the day which would stop honours being wrongly bestowed. I hope that is the case. I think it is fair to say, however, as Douglas pointed out, that it is entirely conceivable that we might be doing our job correctly and that might end but the process that we had studied and on which we had given some advice to the Prime Minister could involve legal issues which would involve judgments by the police, advised by lawyers, as to whether a crime had taken place—which we would not have a locus in. We are not there, we are not a court of law, we are not making judgments about what is legal or illegal; we are making judgments about advice to give to the Prime Minister about the propriety of people going forward for peerages.

**Lord Hurd of Westwell:** It is for the police obviously to investigate an allegation that the law has been broken, but they would have had two points in mind:

first of all, that we are only advisory, as the Appointments Commission, so theoretically it is conceivable that the Prime Minister might disregard our advice, but, secondly, that in practice he has never done so.

**Q147 Chairman:** You sent back some names, did you not? This was part of the origins of this story. When the names came in for the 2005 working peers list, you raised doubts about some of them and you sent them back, and for whatever reason this became public and that became part of the genesis of the police investigation. I was slightly puzzled when I read the CPS account, when they announced that there were no charges to be brought and then they went through the whole story. They talk about this 2005 list and they say, "There is, furthermore, substantial and reliable evidence that there were proper reasons for the inclusion of all those whose names appeared on the 2005 working peers list, or drafts of that list, that each was a credible candidate for a peerage irrespective of any financial assistance that they had given or might give to the Labour Party". You apply the credibility test—and we shall no doubt get on to that in a moment—but some of these people, for you, failed the credibility test, did they not, although the CPS is saying that they all passed it?

**Lord Stevenson of Coddendam:** I wondered whether you would raise that. Could I put a background point which I think is a very important one, which Douglas made rather eloquently when we last met—or rather two background points. First, it was deeply unfortunate that the list, whatever it was, draft or otherwise, got in the public domain. Apart from the fact that it made our job much harder, it was very tough on the people on it, as I think I said to you last time. Second, our job is to give the Prime Minister advice as to the names put forward. The fact that we might advise the Prime Minister against someone does not necessarily mean that he or she is not an upright citizen, *et cetera, et cetera*. There could be all sorts of reasons coming from our criteria which would lead us to give advice—which is one of the reasons it is doubly unfortunate the list got in the public domain. In discussing the relationship between this and the public inquiry, it is an important point to make; if only out of respect for the people whom we advised about. On your point: I read that too, but, frankly, the CPS is doing one job, we are doing another. I do not know how they judge credibility but the context in which they are talking about credibility is very different from ours. I think it is "apples and pears", that we are simply doing different jobs.

**Q148 Chairman:** But this is at the heart of your criteria. In your description in your annual report of how you apply the vetting process you say: "The Commission plays no part in selecting or assessing the suitability of those nominated by the political parties, which is a matter for the parties themselves". That is the basis for, I think, what was being run for a time as the "Downing Street defence"; which was: "If we want to fill the House of Lords with donors,

that is up to us. It is perfectly our right to do that". That is, in a sense, true. But then the other part of your statement says that you "vet the nominations for peerages, including those by the political parties, for propriety" and you take the view, in this context, that propriety means, firstly, that individuals should be in good standing in the community and, secondly, that the individual should be a credible nominee. The Commission's main criterion in assessing this is whether the appointment would enhance rather than diminish the workings and the reputation of the House of Lords itself and the appointments system generally. I do not understand—and I know we have had this discussion before—how on the one hand you can say it is entirely up to the parties themselves who they want to put in the House: if they want to fill the Lords with donors, that is up to them—you could have a special donors bench, if you like—and at the same time you are saying that you are applying these propriety tests and all these reputational issues. These things are *prima facie* incompatible, are they not?

**Lord Stevenson of Coddendam:** Let me try to put that one to bed as precisely as I can by using the two nouns "suitability" and "propriety". It is our perception and view that the political parties, through the Prime Minister of the day, put forward people whom they regard as being suitable in the House of Lords and it is not part of our job to vet or check that. I remember you pursued me quite hard, Chairman, when I was last here—and I venture to quote—something to do with "deadbeat MPs getting into the Lords" or some such—

**Q149 Chairman:** I hope I did not say that. There is no such category.

**Lord Stevenson of Coddendam:** Indeed. I am so, sorry. I said that it was not part of our remit to vet people for their suitability. That is entirely what is rendered unto the political parties. In the sense that you extracted that from what we are saying, that is what we mean. We are there to vet for something called propriety. Propriety, as I said in the beginning, is in the eye of the beholder. We have tried to go quite far in defining what we mean by propriety. It is a matter of judgment as to what we mean by propriety and then exercising that judgment involves a judgment. We are responsible for propriety but the political parties and the political system at this point in time are responsible for saying this chap or this woman is suitable. We might privately think that some such person is not particularly suitable but it is not our job to comment on that. It is only our job to quote if that person "fails" our propriety test.

**Q150 Chairman:** If someone is a donor, they then get your special attention, do they not, because then it activates the certificates and all that and you do the inquiries? If they send party hacks up the line, people who are not going to enhance the workings and reputation of the House and so on, you just nod them through, do you not?

**Lord Stevenson of Coddendam:** No. We vet them for propriety. But we do not vet them for suitability.

**Q151 Chairman:** I wonder if there is a bit of a muddle here. I wonder if, out of all that has happened, it would not be useful—rather like you do when you are appointing the non-party people, when you have a more explicit criteria set—certainly if we were to put you on a statutory basis, that we would not have to equip you with a more defined set of criteria that we would expect to be applied to appointments.

**Lord Stevenson of Coddendam:** I think the case can be made—meeting your point and then Douglas can chip in—that we do say, where people are donors or lenders, that we have to satisfy ourselves that they were credible nominees. You could argue—I would not like to have to cross words with you and definitions—and it is at the heart of what you are saying: "Does that not get you into a bit of suitability?" and you would have a point. But I think this is a practical matter and I would say it is the right thing for us to do. We do this small job: we take the lists that come, put them through the processes which we have defined and let them out the other end. So it is ours not to reason why, it is for the Prime Minister, if we are an independent, non-departmental public body, to change the remit or if we are a statutory Commission, the same. I think what you have said is entirely feasible.

**Lord Hurd of Westwell:** We have been working out our own criteria. We have had to, in order to do the job which we have been asked to do. I think what we have been saying and acting on is perfectly reasonable. It is not for us to say whether Mr X or Mrs Y, nominated by a party leader, is the best person who might have been chosen, or that Mr Z or Ms P would have been better, but we are entitled to look beyond any question of donation (which is neither a justification nor a bar) for other evidence that they would enhance the reputation of the Lords. And we have said that. You made a recommendation in your last report that we should discuss criteria with the parties, and I can see a case for that, but that would be in the context of having an Appointments Commission which was set up by Parliament—which was one of your other recommendations which I strongly agree with—which was statutory and where these things were thrashed out and discussed. It is a bit difficult for us, in our position, which is a temporary, holding position. It is constantly being prolonged, because reform of the House of Lords never seems to happen, so we coast along doing our best in the job that we have been set to do, but if it were a statutory Appointments Commission—which I am sure it should be if there are going to be any nominations to the House of Lords—then, yes, the criteria should be discussed. They should be debated and discussed with the parties and worked out, and there might well be other criteria beyond the ones on which we ourselves have said we are operating.

**Q152 Chairman:** This is the final question before I hand over. There is a perception, which is based on good historical evidence, that there is a strong correlation over time between giving money, large amounts of money, to a political party and finishing up in the House of Lords. The evidence of the

correlation is incontrovertible. It has been demonstrated statistically over and over again. The police investigation went into that, as it were, correlation through looking for example, failed to find enough to stack up evidentially, and yet we know the connection is there. I think people have difficulty reconciling the historical evidence about the connection between donation and peerage with the statement that says, "The system for preventing that happening is a robust one". As it were, the two things cannot both be true, can they?

**Lord Stevenson of Coddendam:** I am not sure that this is ground that is really our job to enter and I would rather avoid that question. I think you could reconcile the two, Chairman, but it is getting us into a sort of metaphysical discussion. Perhaps I might just talk about our role in that. Our role, which is a relatively minor, small one, is to take the nominations, to get the tightest possible assurances from the parties—and you will notice that over the years we have tightened that up, and tightened it up—putting themselves behind the coincidence of the connection between money and award—and you can be as cynical or uncynical as you like about it—and to satisfy ourselves of two things (a) that the human being who has made the loan or the donation was a credible nominee even if they had not made their loan or donation—which is not the same as saying they would have been nominated; we cannot judge that—and (b) satisfy ourselves that they would pass our propriety tests. That is our role. It is quite a narrow one. If I put it in the context of what you have said, that could be consistent—and I have no knowledge of this—with a rather sinister interpretation of the relationship between money and honours. It could be consistent with a society where, yes, people give money, perhaps it brings them to attention, but there is no causal effect. It is not for me to judge. That is our role: checking to satisfy ourselves that the human beings were credible nominees in their own right and to satisfy ourselves that they pass our propriety tests. I think we have tightened up quite hard on both of those. That is as far as we can go without change in the system.

**Chairman:** I agree about the tightening up. Tightening up has been important in this whole process, and it should not be underestimated. In some sense, the lesson of what has happened is how more effective the regulatory system has become, which is not often said. I think you have played a large role in that. Let me bring some colleagues in, if I may.

**Q153 Jenny Willott:** You were just saying that candidates must be in good standing with the regulatory authorities. What sort of information from the authorities would disbar somebody from being a candidate?

**Lord Stevenson of Coddendam:** I am loath to get specific. Let us just talk about what we do. Candidates sign to give us permission to make inquiries, whatever we want, and we will use common sense about where to go to within government. I am making it up, so I hope there has been no one like it, but if you are a large arable

farmer, big in bio-fuels in East Anglia we would certainly go to Defra to take the case, and then we would certainly go to the Revenue and the security services and look at police records, the Home Office, *et cetera*. In its most general form, if one of the security services raised questions about someone, we would want to look at them very hard. We all have our moments with the Revenue—at least, speaking for myself, I do, and I am sure others too—but if it became plain that there were some big, big issues with the Revenue, we would just want to look at that. We would take our time, being very thorough. It is just obvious feedbacks of that kind. We of course believe in the rehabilitation of the offender, *et cetera*, *et cetera*, but, clearly, if someone has a criminal record for doing a number of things we would reasonably want to look at it a bit more. If there had been some great scandal or somebody in the department said this had happened 10 years ago, we would want to understand it. So it is fairly major things.

**Q154 Jenny Willott:** You also talk about it being important for people to enhance rather than diminish the reputation of the House of Lords. I want to ask you about Lord Laidlaw and some of the issues his case raised, both in terms of the regulatory authorities and in terms of his contribution to the House of Lords. You changed the rules in 2005 in your vetting process so that people had to be already resident for tax purposes in the UK before you would vet them. Was that as a direct result of his nomination?

**Lord Hurd of Westwell:** I do not think so. It was something that was in there and we wanted to pin it down and make it clear. We have applied it before but we have not made it clear.

**Lord Stevenson of Coddendam:** Happily, we do not come across many people who are nominated who have that problem. If something had been in the air, we could. It is obviously something I could check out with the officials and let you know, but I do not think so.<sup>1</sup> I think we were on our way. But that sure settled it.

**Q155 Jenny Willott:** Has that change meant that some potential problems with other nominations have been avoided?

**Lord Stevenson of Coddendam:** I do not know. I think it is fair to say that the world is not full of people paying tax offshore who nominate themselves to the House of Lords. That is mainly because they tend to live offshore. The world is full of some quite rich, powerful people who are clever about their tax arrangements. I would guess, but I cannot ever prove it, probably yes, over time.

**Q156 Jenny Willott:** We are looking at what needs to be done and the lessons that can be learned from some of the incidents that have happened already. From the situation with Lord Laidlaw, are there lessons that could be learned from his behaviour that could be taken into account in future when looking

<sup>1</sup> Ev 64

at nominations for peerages? It seems that the system so far is: a gentleman's word is his bond. I am not sure whether that is accurate or that is reliable, but are there things that could be done to tighten up the system that should be as a result of this particular case?

**Lord Stevenson of Coddendam:** I think the main lesson is a simple one—and I am not quite sure of the cause and effect—which is that we can avoid there ever being this situation again by doing what we have done, which is saying we will only consider people who are tax resident in the UK. Beyond that, not really. It raises issues. You could say that our job stops with the nomination, and we took the view in this situation that it should not and we followed through. That might raise questions about our powers and our roles. There are questions which I would rather consider in the general than the specific, very interesting questions, that it is very difficult for anyone to leave the House of Lords either by his or her wish or other people's, and there is an issue there. That would be my general view of the issues raised. I would make one point, by the way, at this moment we are doing what we fundamentally set our face against: talking about a particular person. I would like to make the point to the Committee this is the exception that proves the general rule: in the situation we found ourselves, we had virtually no choice, partly because Lord Laidlaw made certain things public, partly because there were FOI inquiries which resulted in *ad hominem* things being said. But I am just making that point: we do not, as a matter of agreement, and we are very unhappy about talking about individuals, precisely because of the effect it may have on future nominees not being completely frank with us.

**Lord Hurd of Westwell:** Obviously we have no penal power. The only power we had in a case like this was that of publicity and we exercised that. In one way or another, Lord Laidlaw no longer takes part in the proceedings in the House of Lords.

**Q157 Jenny Willott:** You have made it clear in some of the letters that have been released under Freedom of Information that had you been aware that his tax status would be changed and he would remain a non-UK resident, you would not have put him forward as a suitable nomination. Given that you feel that that was the case, do you feel there is a loophole there that does show there are problems in the system?

**Lord Stevenson of Coddendam:** There is not now because it can never happen again. If you are saying, ever so politely, were we naïve, was I naïve, to take that gentleman's word—it is in the eye of the beholder—this is a very odd situation. The answer to that could be yes, but I could also say, frankly, that the reasonable calculation would be that for someone to say, "I am going around to my accountants to come onshore now" when so much was at stake, if he or she—obviously generalising it—was then not going to honour that, would be such a stupid thing to do, why would they do it? However, it is now academic. If there was a loophole—and there was: it happened—there is not

now. By the way, just to be absolutely clear, I very much hope, and I do not really know Lord Laidlaw—I have met him a couple of times—that he will reflect on it and will see fit to pay whatever back taxes would have been due. I hope that is going to be the outcome.

**Q158 Jenny Willott:** You have already mentioned that your role is, you feel, finished when you have made a recommendation on the nomination. Given that you have been talking about the role that political parties have in making nominations and that it is their role to assess suitability, in cases where somebody's suitability or credibility comes into question after they have been nominated, is there a mechanism or something that should be put in place so that it gets referred back to political parties if it does not go back to you?

**Lord Stevenson of Coddendam:** I think you are asking the question of could or should the Commission's remit be widened—rather as the Chairman was implying 10 or 20 minutes ago—to include wider criteria, which would probably be criteria of suitability. We do not. It is not our job to have a view on this as a Commission—so I can talk personally and Douglas can talk personally—because we have this quite precise, small role. I would not use words like "political hacks" or anything like that, but I personally think it is entirely feasible to imagine, if we remain an independent body, the Prime Minister, or, if we are a statutory body, a statute to. I can imagine it being feasible and I can imagine some quite strong arguments for it, for our role being widened, in some sense, to exercise quality control, call it what you will, on people being nominated. I have read various suggestions that parties could give lists of more than the number of peerages to be appointed and so on and so forth, but, yes, I think it is perfectly feasible, personally.

**Lord Hurd of Westwell:** We mentioned all of this on the Royal Commission. The wheel goes round and round on this subject. You will see that we were very adventurous there. We made suggestions so that after consulting the party leaderships about all party nominations, people who are outside the respectable centre of a party, eccentrics of one kind or another, might find a perfectly good logical place in the House of Lords even though they remained strongly political. There is no reason why they should be outlawed from public life simply because they were out of favour with the whips or the leader. But that was more adventurous and our role is miles and miles from that, as Dennis Stevenson has been saying. Once we get around to discussing seriously, as opposed to cosmetically, the future of the House of Lords, the nominated element, if there is one, this should be one of the main subjects of discussion. I think there is room for a bit more sophistication in the choosing of political peers, working peers.

**Q159 Jenny Willott:** Should there be a way for people to leave the House of Lords?

**Lord Stevenson of Coddendam:** As Chairman of the Commission, I do not really have a view, and I personally have not really thought about it.

**Lord Hurd of Westwell:** There is, in effect. You ask for leave. It is an ancient way of doing it.

**Q160 Jenny Willott:** I wondered whether you had considered passing the papers you have about Lord Laidlaw to HMRC because there is quite a clear understanding that he gave to come on as a UK resident for tax purposes for 2004.

**Lord Stevenson of Coddenham:** The answer is no. Would we? I do not know, because it would be a legal issue. As a matter of fact, because of FOI, HMRC, who I am reliably told gets a lot of its leads from the newspapers, will be quite well informed because some of our correspondence has been quite publicly aired.

**Q161 Mr Prentice:** May I stick with Lord Laidlaw for a moment. He donated £2.7 million to the Conservative Party and loaned the Conservative Party £3.5 million—so there is a lot of money there—and he was elevated to the House of Lords in 2004. Why did you not rule him out in 2004 on the grounds that he was not a UK resident for tax purposes? Why did you not say to yourselves: “It is inappropriate to put someone in the House of Lords who is a tax exile”. I know the situation has been changed subsequently, but why did you not have that discussion in the Commission in 2004?

**Lord Stevenson of Coddenham:** For the simple reason that he told us that within a matter of days he would not be a tax exile.

**Q162 Mr Prentice:** No, that is not the point I am making.

**Lord Stevenson of Coddenham:** Let me finish. There is a perfectly reasonable question. Let us assume he had come onshore—and he has not, as far as I am aware, to date, but let us assume he had three days later—the question is, “Hold on, this chap had been a tax exile for a very long time, surely that is not an appropriate person to be in the Lords and you should have said no”. I would make the following observation to that: it is a matter of judgment. Second—and I am very anxious to be fair to Lord Laidlaw, I am uncomfortable about talking about him *ad hominem*, but it is in the public domain—first of all, he said very clearly, and I believe it to be true, that the reason he was not paying UK taxes is that he had built up a worldwide business that was largely not in the UK. He had, if you like, a legitimate reason: he was not living in the UK. He was building up one of the largest, whatever it is, businesses and it was based in other parts of the world, mainly apart from the UK. To be fair to him, he was retiring from the business and selling it, hence his ability to come back to the UK. That would be one reason. Second, as I said to you earlier, he is not a man I know very well but he is a man of great ability. It is quite clear, there is no question, he is a man of huge ability who, aside from his business interests, has done a great deal. Going back to the discussion we had with the Chairman about the system, his party said to us, “He is suitable”.

**Q163 Mr Prentice:** Yes.

**Lord Stevenson of Coddenham:** “He is a good guy and he will make a terrific contribution”. It is not for us to second-guess that beyond the judgment call, which is the one area where you might say, “Hold on a moment, is someone who has been outside the UK for all these years appropriate?”

**Q164 Mr Prentice:** I understand all that. In 2004, when you had your discussions with him, did you suggest to him that he should pay back to the Exchequer the tax that he had not paid because of his non resident status?

**Lord Stevenson of Coddenham:** No.

**Q165 Mr Prentice:** Why not?

**Lord Stevenson of Coddenham:** Because it would have been inappropriate. Here was a man who had been living away from the UK, quite legitimately paying tax in other countries because he was not living in the UK. It was a perfectly reasonable thing to do. If you went to live tomorrow in another country, they would quite soon ask you to pay tax there. He was now saying, “I’m coming back to the UK and I want to be in the Lords” and we said, “Fine, you jolly well pay tax here”. But I think it would have been inappropriate for us to do that.

**Q166 Mr Prentice:** Okay, here is this man who is building up a worldwide empire, not living in the UK, wants to be in the House of Lords as a working peer. What is your definition of a working peer in that context? He is not living in the United Kingdom?

**Lord Stevenson of Coddenham:** I would just stop and say that is not what was proposed. Here was a man saying, “I’m coming back to the UK. I am going to pay tax in the UK. I am at the end of the business career and I want give time to it” so I do not want to be drawn on to those things. I am slightly uncomfortable talking *ad hominem*, but I think I have explained enough about the situation.

**Q167 Mr Prentice:** I am still in the dark about what constitutes a working peer. It is part of the Commission’s remit to look at these propriety issues for working peers. Here we are being told that a man lives overseas, is a tax exile, and you wave him through as a working peer.

**Lord Hurd of Westwell:** On the basis that he was going to come back.

**Lord Stevenson of Coddenham:** He said he would not be a tax exile and he would not be overseas.

**Q168 Mr Prentice:** Three years later, he is still not paying UK taxes, still in the House of Lords—admittedly on leave of absence. What should happen to Lord Laidlaw? Have you been in discussion with the Prime Minister about Lord Laidlaw? You specifically drew it to his attention in your annual report.

**Lord Stevenson of Coddenham:** No, we have written to the Prime Minister. We have briefed the Prime Minister on what is happening. We are not in discussion with him. I come back to the fact that our

role is a relatively small, circumscribed one. You are proceeding, if I may say so, from a slightly false premise. This guy was a guy who had been living out of the country building up a business. He had come out of his business, sold his business, and was coming back to live here, to pay UK taxes, to work in the House of Lords. We discovered he was not, so, with the limited powers, we put pressure on and he has taken leave of absence. The rest is between him and the tax authorities.

**Q169 Mr Prentice:** I think it is quite a big deal for someone to be elevated to the House of Lords and to have given you an assurance way back in 2004 that from April 2004 he was going to become a UK resident for tax purposes and three years on he is still not paying UK taxes. I think that is a big deal. I wonder what the Government's view is. You have not discussed this with the Prime Minister, but what about Jack Straw, the Ministry of Justice? Do you have any idea what the Government's view is, given the fact that you flagged this up publicly in your annual report?

**Lord Stevenson of Coddendam:** May I say that we think it is quite a big deal too, which is why we went out of our way to draw attention to it, with the result—and result is the right word—that he took leave of absence from the House of Lords. I think your question is an entirely legitimate one but one to be asked of the Government and not us.

**Q170 Mr Prentice:** I have but I am not getting anywhere. I have written to the Prime Minister. He, in a strange kind of circular way, referred me back to your annual report which triggered the whole thing in the first place. I hope I am not doing the Ministry of Justice a disservice but I think I am still waiting to hear from them. Finally—I think I have almost squeezed the orange dry here—leave of absence. Is that good enough? Should we not just invite Lord Laidlaw to hang up his ermine and leave the House of Lords? What penalty is there?

**Lord Stevenson of Coddendam:** There is a legitimate question. It is not really for us. It appears to be that you cannot resign or be sacked from the Lords. There is a legitimate public interest question as to whether that is right, but, if I may say so, it is not for us doing our little thing, it is for you.

**Q171 Mr Prentice:** I think it is appropriate for you, with respect, to venture an opinion. I say, with respect, that in the circumstances of this case leave of absence is inappropriate. You recommended him for a peerage. You could make a recommendation to the Prime Minister, for example, in view of what has happened, that he was no longer a fit person to serve in the Lords.

**Lord Stevenson of Coddendam:** On the matter of fact, we did not recommend him for a peerage; we vetted him and did not advise the Prime Minister against it. The most you will be able to draw from me is to say that I do think, in the light of that case and other things that happened, there is a legitimate question

as to whether the arrangements whereby people can voluntarily leave the Lords or involuntarily leave the Lords should be reconsidered.

**Q172 Chairman:** Surely what does cause problems for you all the time is this running together of service in a second chamber and the honours system, because you are dealing very often with people who do not necessarily want to serve in a second chamber but they do want to be a lord. Is that not a difficulty which is at the heart of this?

**Lord Hurd of Westwell:** Yes. Of course it is. It is a problem of culture. It takes a long, long time to change. If you ask most people in the street or in the newspapers what a peerage was, they would say it was an honour, and you get into these difficulties. We struggle against this. I doubt if you will find anywhere in literature the concept that a peerage is an ability to perform further services. It will take a long time to change.

**Q173 Chairman:** Whatever else we do, we surely have to separate out service in the second chamber from the honours system, do we not?

**Lord Stevenson of Coddendam:** Speaking personally ... This is not a Commission matter. I keep repeating that boring thing: we do quite a small, narrow job that gets involved in this. It is kind of you to ask, but we have no locus on it. Speaking personally, I am rather inclined to agree with you, but that is a very personal view.

**Q174 Mr Burrowes:** On the issue of non-residency, on which you have decided you are not going to vet such nominations, is that based on the criterion of credibility or the criterion of whether it would enhance or diminish the House of Lords or both?

**Lord Stevenson of Coddendam:** The truth is it is based on a fundamental view which I think PHSC<sup>2</sup> had before, and we have and I certainly feel. I would not go so far as to say I would agree with everything Mr Prentice said a little time ago, but I rather agree with the direction that it is inappropriate for people to be in the Lords who do not pay UK taxes. It is as simple as that. That was a conclusion we decided very early on in our life.

**Q175 Mr Burrowes:** If you came to that conclusion there, have you thought about or would it be appropriate then to make a conclusion over those who have substantial financial links to a party? On that criterion, would you think those who do have substantial financial links and are committed to a party enhance or diminish the House of Lords?

**Lord Stevenson of Coddendam:** Our view is very similar, that making a donation or a loan absolutely should not be a reason for getting a peerage but should not be a bar. We can get back into the same discussion I think I had with the Chairman earlier on on that. We have a role to play, I think, but we cannot be sure it is absolutely 100% perfect, in satisfying ourselves by tightening up the reassurances we get from the parties about the

<sup>2</sup> Political Honours Scrutiny Committee

causality; we have a role in satisfying ourselves that the people who have been put forward are credible nominees, even without the money; and we have a role in satisfying ourselves that they are proper people, that they have passed the propriety test. But I do not think we have a role in saying if you have given money or lent money you cannot have a peerage.

**Q176 Mr Burrows:** With the controversy over cash for honours, the investigation and public concern, would you not agree that there is a concern whether financial links do, indeed, enhance or diminish the House of Lords and whether there is a case that could be made for, perhaps over a period of time, having a distance between that financial link and their nomination to the Lords.

**Lord Stevenson of Coddendam:** As a citizen and speaking personally, this is a key debating ground, a key issue and it is a jolly difficult one, way beyond my understanding, bringing up, as it does, the question of how parties are to be funded, *et cetera, et cetera*—the work that I think Hayden Phillips is doing. As a citizen, I would agree there is an issue there. Our role, in the situation we are in, is to try to make it as good as it possibly can be. But I would accept, speaking personally, that it is perfectly legitimate to say: “Would it not be a good idea if there was no possibility of anyone ever seeking any linkage between money and any honour”. But our role is in the situation we find ourselves to try to tighten things up and make it much, much, much less likely that the wrong people will get honours or peerages for the wrong reasons.

**Q177 Mr Walker:** Lord Stevenson, you have been Chair of HoLAC<sup>3</sup> since 2000, that is seven years. At what stage did you start to feel perhaps a little uncomfortable about the process or the type of people being put forward for peerages? I cannot imagine it was just when you sent some names back in 2005. I am sure prior to that you began to just say to your colleagues, “Look, I think we’ve got some problems brewing here”.

**Lord Stevenson of Coddendam:** It will be a slightly boring answer, but I want to be as helpful as I can, because we have this rule of not talking about particular things. The distinctive characteristic of what happened was the leak of the list, which meant—and I deeply sympathise with the people involved—that everyone knew who was being put forward and who did not get one. We have had the same processes—I mean we have been improving them and testing them, but roughly the same processes—for the whole of those seven years. It would be wrong to presume there had not been other situations where we had advised. We had given advice at different times. That is just one observation. Second, I think I can say for all my colleagues, we have not had a sort of gathering sense of unease. I think it is fair also to say that this was most unfortunate and it was unlike any other list we have had to look at.

**Q178 Mr Walker:** You are a business leader of a very large company and you understand merit and promotion on ability. I am sure, prior to 2005, you might have discussed it with your colleagues. I use an unscientific phrase “swinging the lead” but, for some of the people coming before you, really, quite frankly, it was a pretty marginal decision. You were made to feel uncomfortable about some of the people you were looking at. That is what I am saying.

**Lord Stevenson of Coddendam:** You are going on the same ground as your Chairman. Ours is quite a small role: vetting the political nominees for propriety. I cannot speak for everyone, but I am sure some of my colleagues and I might have had views about the suitability of particular people coming forward. That was not within our brief. We have already addressed the question as to whether perhaps it could or should be, and, speaking personally, I think there is an argument for that.

**Q179 Mr Walker:** You have seen a range of people who you have vetted and passed through who have become lords. Some of them—absolute no-brainer—are wonderful people. What happens amongst you when there is a question mark? Do you sit around? Does Lord Hurd join you and the other members of this board and put it to a vote? Do you discuss the pros and cons? Do you discuss your concerns and what other measures or investigations you can take to answer those concerns? How does it work? Do you have a vote at the end of the day and say, “Hands up who thinks Mr Bloggins should become Lord Bloggins”? How does that work?

**Lord Stevenson of Coddendam:** I do not think we have ever had a vote, have we?

**Lord Hurd of Westwell:** No. Of course most of our work has been on the non-party peers. That is the bulk of our work. Occasionally we get into this area in which the Committee is particularly interested and we have a thorough process. We can have many discussions on a particular proposal and come back to it again and again, until under the Chairman we reach agreement. That is what we do. I would just add one point: the psychology of all this has changed, particularly in view of recent events. Party leaders are neither stupid nor blind; nor, indeed, are party treasurers. They know, perhaps more clearly than before, that we are an effective regulatory body and I think that will affect/is affecting the way in which people think and the sort of assumptions that might lie in the background beforehand.

**Q180 Mr Walker:** I have one final question. In the seven years that you have chaired this—and I obviously do not want you to give names, that would be totally wrong—how many times have you written a note to the party leader or the Prime Minister saying, “I’m sorry, not this individual. We cannot approve this individual to the Lords” as a result of your investigations?

**Lord Stevenson of Coddendam:** Never to a party leader. We do write to the Prime Minister. We are advisory, so it is not quite like that. We do not say, “No, Prime Minister”; we say “You need to take

<sup>3</sup> House of Lords Appointments Commission

into account the following things” and I should not tell you how often. We have fed back on a number of people over the years, never to the party leaders. We have gone back to parties and asked them to give us more detail, the citation, *et cetera*.

**Q181 Chairman:** We may ask you to do slightly better than that. I think Charles is entitled to ask, simply numerically: “Over seven years how many people have you advised about?”—that is, made the warning lights flash about. That is what your job is, is it not?

**Lord Stevenson of Coddendam:** I do not know, I would have to come back to you about how many people we have advised about. “Warning lights” introduces an emotive phrase. Can I take that one back and I will try to be as helpful as I can.

**Q182 Chairman:** I wonder if you could write to us and tell us how many names over these seven years you have asked questions about and then perhaps another category of those you have advised against.

**Lord Stevenson of Coddendam:** We will reflect on it, discuss it with my colleagues and come back to it.<sup>4</sup>

**Q183 Chairman:** If we are testing the robustness of the regulatory system that is one of the tests that we might apply to it. I think we are entitled to ask for that.

**Lord Stevenson of Coddendam:** The point is noted and we will reflect on it.

**Q184 Paul Flynn:** How many divisions did you take part in in the Lords last year, Lord Stevenson?

**Lord Stevenson of Coddendam:** I think none, because I took the decision six years ago that, while I was Chairman of the Commission, unless there was some overriding reason, I would not take part in political or parliamentary life.

**Q185 Paul Flynn:** You do not consider, as a legislator, that you should.

**Lord Stevenson of Coddendam:** No, I am not saying that. I think I may have shared with this Committee before that it was an irony that a member of the House of Lords was appointed chairing this Committee. It was a post-Nolan, if you like, cock-up, because the Chairman was not supposed to be in the House of Lords. That is why they had nominees from three parties. I had just been put in the House of Lords. The head-hunters who were employed did not realise I was a lord, and I am given to understand that two other people on the shortlist were not. I was not appointed for my knowledge of the Lords at all, quite the reverse, and, having done the job for a year, I took the view—and in view of what has happened in recent years, I am extremely glad—that it would be best that I just played no part in political life or parliamentary life. When I am no longer Chairman of the Commission, please ask me the question again.

**Q186 Paul Flynn:** You are a member of this legislature. You do not vote there. Do you speak there at all?

**Lord Stevenson of Coddendam:** No. I told you, I took the view that, precisely so that I was completely independent—and, believe me, over the last year it has been jolly important to be independent—I should not play any part—and there has been no secret about this: I have said it to this Committee before—in either political or parliamentary life, and I have not.

**Q187 Paul Flynn:** I find that extraordinary. Would it not be the sensible thing to withdraw from the House of Lords?

**Lord Stevenson of Coddendam:** It could be. I am beginning to learn about being lapsed and things. I am not very sophisticated. It seemed to me that it was, if you like, morally and in terms of proper governance and behaviour the right thing to do not to take part. You could be right, but I did not.

**Q188 Paul Flynn:** It is not surprising people did not realise you were a lord if you have never voted or spoken.

**Lord Stevenson of Coddendam:** The reason they did not is I had only been a lord for a few weeks when they headhunted me.

**Q189 Paul Flynn:** What is your justification for calling yourself a lord and accepting the title?

**Lord Stevenson of Coddendam:** I was appointed as a lord, and then was head-hunted for this a few weeks later.

**Q190 Paul Flynn:** By someone who did not realise you were a Member of the House of Lords.

**Lord Stevenson of Coddendam:** Yes—which is not very surprising, because I had only been appointed for a few weeks.

**Q191 Paul Flynn:** Why do you like being a lord?

**Lord Stevenson of Coddendam:** Pass. I do not know.

**Q192 Paul Flynn:** This seems to be a very interesting point to me. I think we are all aware, all the ermine, the ritual humiliation that people go through when they are introduced, which anyone with a sense of the ridiculous would find a dreadfully painful experience, all the titles and the coats of arms and all that crap that is going on, has nothing at all to do with the legislature of running the country. It is all something that appeals to people’s vanity, is it not?

**Lord Stevenson of Coddendam:** There was a question from the Chairman earlier on to which we gave a personal view, because it is not part of the Commission. I personally—and I think we are rather in the same place on this—think it would be a good idea to separate the honorific side from the working legislative side.

**Q193 Paul Flynn:** Perhaps I can call you Mr Stevenson then.

<sup>4</sup> Ev 64

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*Lord Stevenson of Coddendam:* You may, indeed.

**Q194 Paul Flynn:** I would be happy to do that.

*Lord Stevenson of Coddendam:* You can call me Dennis.

**Q195 Paul Flynn:** Call me Citizen Flynn! I think we all know, from talking to people in the Lords, how important this is, what it means to people. Would it not be better if we did separate that and they were called Lord Perkins or Baroness Perkins rather than some member of the second chamber: MSC.

*Lord Stevenson of Coddendam:* Just to tell you, Citizen Flynn and Mr Stevenson, it might surprise you, have rather a lot of common ground. I personally think it is most unfortunate, the ermine type thing in the Lords, whereas the Lords is doing a hugely important job, 80% of which is amending legislation in the public interest. It is a hugely important job with a lot of detailed work. A lot of human beings work very hard at it. It would be much more appropriate to be in normal clothes and offices and so on and so forth. As I said earlier on, speaking entirely personally, I am basically in agreement with the direction you are moving in. Did you call them MOLs? Was it not put that Members of the Lords should be MOLs. Like MPs, MOLs. It is a rather interesting expression, MOLs.

**Q196 Paul Flynn:** You have said you are happy with the nominations that you have made so far, that you put forward for what we call the people's peers.

*Lord Stevenson of Coddendam:* No, we do not call them people's peers.

**Q197 Paul Flynn:** No, I am sure you do not. You call them lords.

*Lord Stevenson of Coddendam:* No. People.

**Q198 Paul Flynn:** With some of them—and we will give you Baroness Finlay, who is doing a splendid trade, not a find by you—

*Lord Stevenson of Coddendam:* Not what?

**Q199 Paul Flynn:** A find by you. I mean, she was someone who came along and you nominated her and she has been a very distinguished baroness in the Lords, but there were a large number of others who took months to make their speeches, who take a similar view of the number of times they need to vote as you do.

*Lord Stevenson of Coddendam:* I do not think anyone takes a similar view to me because I am the only Chairman of the Appointments Commission.

**Q200 Paul Flynn:** No, but—

*Lord Stevenson of Coddendam:* No, you have asked a perfectly reasonable question and I will give you a perfectly reasonable answer. I do not think anyone does. There are 42 people whom we have recommended to the Queen who were ennobled. While there is a small number of them who have gone there less than others, and, with no exceptions, those small number are all people who are or have been at the height of their working lives, we have said

from the beginning—it is clearly on our website—that in an effort to get people with a lot to contribute, we may get people at the height of their careers who will go there less often than others, but the vast majority of them go there a great deal. I think that if you were to read any major debate in the Lords or any major piece of legislation in recent times you would see that the peers from the Appointments Commission are making a great difference to what is going on and I will make you aware that one of the people we have put there is now a convenor of the crossbenches. They are making a huge impact.

**Paul Flynn:** Of the people you have selected, if you look at the politicians that come up, I think we all know. I remember sitting in a group of people just before the nominations were selected last year and I think we managed to pick exactly the number of people who were going to be appointed, and they were going to be appointed for loyalty, good service. We would also pick the very distinguished parliamentarians who were retiring at a young age who would never be appointed. I am tempted to mention some of their names.

**Mr Liddell-Grainger:** Please do. Go on!

**Q201 Paul Flynn:** A distinguished member of one of these select committees, who was a robust, very able, independently minded man, still a young man and still with a great deal to contribute but never will he get nominated to the Lords because he occasionally has an independent streak. Yet he is someone who could make a great contribution—and, as it proved, he made a great contribution. There are at least half a dozen who come to mind immediately from the last Parliament. Do you think it would be your role to put them in the Lords and to balance the excessive credit given to party blind loyalty in the nominations you get, where you tend to get the party hacks, the voting fodder.

*Lord Stevenson of Coddendam:* I would not express the view as Chairman of the Commission. We have a precise, quite narrow, small role to play. We have discussed in and around that in, I think, the discussion with the Chair and Jenny Willott. There is a perfectly feasible suggestion that I have heard along the lines that you are saying, that the Commission's remit and powers could be widened to help in that direction. It is not for us to suggest it.

**Q202 Paul Flynn:** They would be included in people's peers.

*Lord Stevenson of Coddendam:* Citizen Flynn, we do not have people's peers. If the powers of the Commission, either on a statutory basis or the independent basis that it is at the moment, were widened to nominate political peers, no doubt it would make nominations.

**Q203 Paul Flynn:** But you know you are getting the party hacks from both sides. You are not getting the characters—

*Lord Stevenson of Coddendam:* I would not admit any such thing.

**Lord Hurd of Westwell:** We can nominate people who belong to a party but we have to find people who are politically independent. That is our main job. We cannot go and comb through the backbenches and suddenly discover and christen them independent and put them in as crossbench peers. It would be absurd.

**Paul Flynn:** Thank you.

**Q204 Chairman:** Although you did acknowledge in your earlier remarks that there was a category issue here that you thought needed to be attended to.

**Lord Stevenson of Coddendam:** Yes, but not by us.

**Q205 Chairman:** Not by you.

**Lord Hurd of Westwell:** No, there is, absolutely.

**Q206 Paul Rowen:** In the light of the last 12 months, should the Honours (Prevention of Abuse) Act 1925 be abandoned? Does it serve any useful purpose in your view?

**Lord Hurd of Westwell:** I think it does. It is a longstop.

**Q207 Paul Rowen:** It clearly did not work. We have had a very expensive police inquiry.

**Lord Hurd of Westwell:** I do not think that is necessarily the fault of the Act.

**Lord Stevenson of Coddendam:** Just to be quite clear, we did what we did. We of course assisted the police in any way they wanted, but we are not lawyers, we are not making legal judgments. I wish I could answer your question but I cannot.

**Q208 Paul Rowen:** Have you had any discussions with the Prime Minister or party leaders about modifications to the system?

**Lord Stevenson of Coddendam:** No.

**Q209 Paul Rowen:** Would you welcome the opportunity to?

**Lord Stevenson of Coddendam:** In a sense, it is not ours to reason why and say. If we are asked questions—as indeed some of you have asked questions—about our personal views, or it would be possible for the Prime Minister to ask for the Commission's views on something, we have given evidence to august bodies like this but I do not think it is for us to take the initiative. We would always respond to people asking questions.

**Q210 Paul Rowen:** Would you prefer to see the Commission on a statutory basis?

**Lord Stevenson of Coddendam:** Yes. When Douglas and I were here before with Angela Sarkis, we all said that it should be statutory.

**Q211 Paul Rowen:** Are you vetting the former Prime Minister's list at the moment?

**Lord Stevenson of Coddendam:** There is not one, as far as I know. The Chairman threw a very fast ball at me the last time I was in front of you, when at least I told the truth and said (a) I did not know and (b) I

hoped we were. We took your recommendation on board and it has been confirmed that if there was to be one we would vet it.

**Q212 Mr Prentice:** Do you expect there to be a Blair resignation honours list?

**Lord Stevenson of Coddendam:** I have no idea.

**Q213 Mr Prentice:** Because, Lord Hurd, you said earlier that this whole process that we have gone through has alerted party leaders that they really ought to be more careful about the names that they put forward.

**Lord Hurd of Westwell:** We are not in Mr Blair's confidence in this matter.

**Q214 Mr Prentice:** It is kind of unusual, though, is it not? All these months after standing down, there is still no honours list.

**Lord Hurd of Westwell:** It is not compulsory.

**Q215 Mr Prentice:** Okay. Can I stick with you for a moment and go back to Paul's question about the 1925 Act. Do you think it is possible ever to secure a conviction under the 1925 Act, given that you have to show an explicit agreement between the two parties: the person who bribes and the person who has accepted the bribe, I suppose.

**Lord Hurd of Westwell:** Clearly you could write a novel in which this happened.

**Q216 Mr Prentice:** You probably will!

**Lord Hurd of Westwell:** It could conceivably happen.

**Q217 Mr Prentice:** It is a straightforward question, is it not?

**Lord Hurd of Westwell:** I have said that.

**Q218 Mr Prentice:** We have the report from the CPS telling the world why there was not going to be a prosecution, we have taken our own legal advice and the 1925 Act is, in my view, flawed because it is virtually impossible to secure a conviction, given that you have to establish an explicit agreement. I am reminded of *The Godfather* film, when Marlon Brando speaks to some person who has come to him for a remedy and the Godfather says, "This time I will help you. And maybe at sometime in the future you may be able to do a little service for me". It is a kind of a nod and a wink, is it not?

**Lord Hurd of Westwell:** I suspect, Mr Prentice, you would be hard pressed to draft in legislative form a criminal offence which covers that. But, anyway, the Act is the Act. The Act was produced in response to a particular situation in the twenties and you could conceive of circumstances in which a prosecution could be brought.

**Q219 Mr Prentice:** Are you telling us that we have to live with the 1925 Act? This is a question to both of you. Are you telling us that in view of what we have been through there is not a better legislative remedy,

perhaps by looking afresh at the whole law of corruption and so on, or do we have to stick with this 1925 Act.

**Lord Stevenson of Coddendam:** It is for you to decide.

**Q220 Mr Prentice:** But you have lived and breathed this for the past 24 months, have you not?

**Lord Stevenson of Coddendam:** No.

**Q221 Mr Prentice:** You must have thought—

**Lord Stevenson of Coddendam:** Of course, but we have been doing our job, which—boring as it is—is quite narrow and quite small scale, and we helped the police when necessary, but, no, we have not been living and breathing the 1925 Act. We have watched with interest.

**Q222 Mr Prentice:** You must have gone back to the legislation and looked at it and just talked amongst yourselves; you must have done.

**Lord Stevenson of Coddendam:** I regret to have to disappoint you; we are an unimaginative lot! Can I just say as a citizen I would hope that people like you are looking at it, which is what I think you are doing, because clearly there is a case for a helicopter view being taken on the whole thing, but I personally have no views on it.

**Q223 Chairman:** Could I just pick up a few loose ends on this before we end, on the honours system itself, because you have acquired this scrutiny role now for higher honours of certain kinds. What I am not clear about is exactly what your propriety checking is in relation to these higher honours. For example, if a political party decided that it had become more difficult to reward big donors with peerages but thought it could quite conveniently give them knighthoods, I am not clear that you are on the case there, are you?

**Lord Stevenson of Coddendam:** We were put on the case, whenever it was, three years ago or something, and my understanding—and I am looking around to my colleagues to tell me if I am right—is that Mr Blair took us off the case by saying, and I imagine he was speaking for the other parties, that the politicians would not toss honours in. It would go through these committees and the committee is chaired by the Head of the Civil Service. I think I am right in saying we have not been given any to look at since then. I am happy to write and confirm it, but I think that if there were to be political recommendations, they would go through our vetting processes for propriety and they would be, for the time being, exactly the same as we do for peerages, unless there was some good reason to the contrary, but I think it is academic because I do not think there are going to be any.

**Q224 Chairman:** Has the current Prime Minister repeated the undertaking given by the previous Prime Minister by taking himself completely off the honours system?

**Lord Stevenson of Coddendam:** I do not know.

**Lord Hurd of Westwell:** I rather think he did on the original statement on governance.

**Q225 Chairman:** I think he did, I wondered if you knew.

**Lord Hurd of Westwell:** My recollection is he did. What we do not know is how he would act on the convention that has grown up that the Prime Minister as regards peerages should have a right to a certain number in each Parliament. I am talking about non-party peerages, for example people like chiefs-of-staff and archbishops. I do not think we have heard from him on that. It is quite an interesting point and no doubt he will get around to it.

**Q226 Chairman:** Can I just return to one or two other things. You keep saying that your remit is a terribly narrow one and all that. I do not really buy that because it seems to me that it is extraordinarily wide because, as it were, you can make up things for yourself. The residency for tax purposes thing, which is a rather major thing to have inserted into the system, you have just done it, have you not? No-one has given you the authority to do it. These terms that you work to about “credibility” and “good-standing” are enormously capacious terms that enable you to make all kinds of judgments, so I think you are being disingenuous by keeping on telling us how narrow your remit is; I think it is extraordinary.

**Lord Stevenson of Coddendam:** That is a perfectly fair point. Within the really quite precise and, I would say, quite narrow remit, we had little briefing from on high as to what to do, except that we had inherited the PHSC’s<sup>5</sup> working practices and we have taken them on and modified them so we have not been quite making it up *in vacuo*. I would stick to it. I think it is important that we emphasise to people the precise nature of our brief, precisely because there will be those who think we can somehow have some locus on the police inquiries and the law, *et cetera, et cetera* and we do not. Within the areas which we are asked to look at, which are quite precisely defined, I hope we jolly well are thinking about it and, when you say “making it up”, we are very precise about doing it.

**Q227 Chairman:** Let us just take ourselves back to where we started, which is this 2005 list just so we are clear. Some of that turned on the inadequacy at the time of the legislation about loans. You are a man who knows about loans, you understand the money, which I think is an interesting dimension of this whole story. You were on the case about loans, were you not?

**Lord Stevenson of Coddendam:** Yes.

**Q228 Chairman:** Was that a factor in your scrutiny of these names even at the time, and did you feel then that there was a loophole in relation to commercial or non-commercial loans which you applied to these names that you were being given?

<sup>5</sup> Political Honours Scrutiny Committee

**Lord Stevenson of Coddendam:** First of all, it is important to say that quite a lot of nominees had told us about loans, as indeed I would expect them to. It is pretty obvious that they should, irrespective of what the 2000 Act said. It is important to know that quite a lot of people have told us about loans. And secondly the history: what happened was we got the list in October or something like that, and we went back to the Prime Minister at the beginning of February, there or thereabouts, and we only discovered a very few weeks after that that there had been a loan from one of them, and we then moved very fast to ask the political parties to tell us what other loans there were and if there was anything else we should know. It is quite an important piece of fact that we had given our advice to the Prime Minister without knowledge of the loans which subsequently came to light. The loans then came to light. Answering your question—and this is not something I have discussed with my colleagues so I am speaking personally—I personally was and am quite shocked by the expediency of loans. I am not saying they were illegal but I was quite shocked, it is a bit like tax avoidance, and second, I use my words advisedly, there are some real shades-of-grey territory as to what is commercial and what is not. You try coming to my bank and getting an unsecured loan with interest rolled up at one or two points over base, and I would hate to disappoint you, Chairman! That was the history as to what had happened. We did not know about the loans when we wrote the letter to the Prime Minister. We moved very fast when we found out about them, and answering your question—speaking entirely personally—I found them very shocking, and I am glad that loopholes have been closed.

**Q229 Chairman:** Just to finish the story, if amongst the individuals that you, as it were, put the black spot on at that time, one of them, say, had been a perfectly upstanding person, who had been advised to give a loan of a certain kind rather than a donation because that would be helpful to the party and had innocently done that, and had done it as it turns out within the terms of the law at the time, would that person not feel slightly aggrieved that you had marked him down?

**Lord Stevenson of Coddendam:** He might or she might. I would observe that within the spirit, although we have changed our wording to make it plain beyond peradventure that we expect people to

tell us anything and everything that might bear on a nomination for a peerage (which by the way 99.9% of people always have, to be quite plain), actually our previous wording was pretty strong and I would say to such a person, “Come on, it is perfectly obvious that you should have told us about that loan”. You can go back and read what we have asked.

**Q230 Chairman:** It was not necessarily obvious at the time, was it?

**Lord Stevenson of Coddendam:** I would say go back and look at it.

**Q231 Chairman:** Because you have changed your certification now to get catch-all information about any kind of—

**Lord Stevenson of Coddendam:** I could read it out to you. If you actually read the words we put on the previous form, they were pretty strong, and the fact is, Chairman, that an awful lot of our nominees, I am glad to report, tend to throw everything in at us. If they so much as bought an ice-cream for a politician’s child, they will put that in. I am exaggerating a little bit, but half a dozen bottles of beer featured, so, no, I would not. It is a matter of judgment and that person would be entitled to their view, but I would not be very sympathetic.

**Q232 Chairman:** All this has been fascinating and helpful to us. Can I just say as we end that I was first of all delighted to see that you cost the taxpayer only £125,000 a year, which for a regulatory body seems to me to be quite a modest sum. And, secondly, that, in my judgment, your role as a committee in recent events has been a rather impressive one because you have plainly developed a more robust system of scrutiny than I think historically has existed, so one of the things that has emerged from this is that far from our regulators being deficient it has actually rather proved itself, which takes us back to the conversation we had right at the beginning. I think we have had some very interesting exchanges which we shall make good advantage of, I hope, and thank you very much to both of you.

**Lord Stevenson of Coddendam:** Thank you, Chairman. I shall take the first of your very kind observations as approval from the Chairman to take my hard-worked staff, who have been utterly fantastic, out to lunch on the taxpayer. I will not—I will pay for it myself, it is all right! Thank you very much.

**Tuesday 23 October 2007**

Members present

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
David Heyes  
Kelvin Hopkins  
Julie Morgan

Mr Gordon Prentice  
Paul Rowen  
Mr Charles Walker  
Jenny Willott

*Witnesses:* **Assistant Commissioner John Yates**, Metropolitan Police, **Ms Carmen Dowd**, Head of Special Crime Division, CPS and **Mr David Perry QC**, gave evidence.

**Q233 Chairman:** Let me call the Committee to order and welcome our witnesses this afternoon. We are very glad to see Assistant Commissioner John Yates from the Metropolitan Police—

*Assistant Commissioner Yates:* Good afternoon.

**Q234 Chairman:** —Carmen Dowd, Head of the Special Crime Division, Crown Prosecution Service, and David Perry QC, who advised the CPS. By way of incident background, when we first met you in the spring of last year it was agreed then, you kindly said, in the event of there being no charges or prosecutions at the end of the inquiry that you had then embarked upon, that you would come back nevertheless and talk to us about any lessons that you had learnt from the inquiry, and we are very glad to be doing that today. The CPS, in the statement that it made announcing that there would be no charges, said with no understatement that “the investigation has involved an inquiry into the probity of senior political figures working at the very heart of government.” It has obviously been a hugely important investigation. We want to learn the lessons from it. We have said here that you asked us to put aside our own inquiry that we had embarked upon last March so that you could do your work, and I think we have done that fastidiously throughout and are now returning to it, but we do now want to try and learn the lessons of what has happened and to draw upon the experience that you have accumulated to be able to do that. I wonder if any or all of you would like to say something by way of introduction?

*Ms Dowd:* I think we would, Chairman, and I would be very grateful for that opportunity.

*Assistant Commissioner Yates:* Firstly, I am very grateful for the fact you did choose to suspend your inquiry yourselves so we could undertake the criminal investigation without the problems that we anticipated there would be should you have kept going. Would it be helpful if I read a very short opening statement to you? I can properly explain for the record what I think I can share with you and perhaps what I think I cannot.

**Q235 Chairman:** Yes, please do.

*Assistant Commissioner Yates:* I have always indicated that I would be happy to assist the Committee with its inquiry. I do share your view, the Committee’s view, not to pursue the police

investigation by other means and would hope that I can assist you in relation to the lessons learned and some of the future policy and perhaps regulatory issues. It is my view that it is neither appropriate nor fair for me to reveal any personal and sensitive information gleaned during the course of the police investigation, and it would be wholly improper of me to level personal accusations in this very public forum against individuals who have no right of reply and who are not in a position to defend themselves. On this issue I have received communications from lawyers representing all parties, both witnesses and people who came under suspicion, involved in this investigation, highlighting that this information that they provided was only provided for the purposes of a criminal investigation and expressing their concern that such information, that may now be referred to in this public forum, would be problematic. It is, I am sure you will appreciate as members of the Committee, important for the public to have confidence in its police and the protection of source material is one of those factors that can guide us in maintaining such confidence. I do recognise though the enormous public interest generated by this case and, thus, the proper need to account for our actions. You will be aware that the Metropolitan Police Authority, our statutory oversight body, has already requested a report under their own powers. This report is being prepared for their full Authority Meeting in November. That will outline the reasons for commencing the investigation, its length, its proportionality, *et cetera*. All this being said, I do wish to be as helpful and as open as I possibly can with the Committee today, and whilst I cannot divulge the actual details of the evidence against individuals, I can, I believe, talk about the case in a generic sense and do this in a way that will not breach the duty of confidentiality owed to those who we dealt with in this case. I hope that is helpful.

**Q236 Chairman:** Thank you for that.

*Ms Dowd:* Good afternoon to the Committee. I would like to thank the Committee for affording me the opportunity to address you from the outset. I think it is important to set out from the beginning the constraints which we, the CPS, and Mr Perry QC, independent counsel, will have to operate under this afternoon. We will, of course, attempt to assist the Committee wherever possible. However, as discussed with the Committee Secretary in the

summer, there are inevitably limits to what we can say. As you will no doubt fully appreciate, the statutory role of the CPS is to advise the police in certain circumstances and to decide whether or not a prosecution should follow an investigation and conduct criminal prosecutions wherever appropriate. The police provide evidence and information to enable us, the prosecutors, to carry out those statutory functions. We have to operate by the principle that the material we receive should be treated by us as having been supplied only for the purposes of carrying out our statutory functions and should not be used for any collateral purpose. For this reason, as well as the need to protect the legitimate interests of individuals not subject to criminal proceedings, we are unable to disclose to the Committee the nature of the evidence or information supplied by the police, nor details of the decision-making process over and above that which was provided during the announcement of the decision in July 2007. This principle is a matter of public policy to secure and maintain the proper administration of justice and maintain confidence in the independence, impartiality and fairness of the CPS. Those suspects who are prosecuted are entitled to have their guilt or innocence established with all the safeguards that a criminal trial offers, including, of course, strict rules of evidence. Those who are not prosecuted are entitled to the presumption of innocence. All individuals connected to this case are entitled to that presumption of innocence. We must take into account the interests of persons who may have been mentioned in statements, documents and interviews provided in the course of the investigation. The dissemination of that evidence and information in this case could undermine the presumption of innocence to which, as I have said, all the individuals related to this case are entitled, and that is by enabling material to be trawled through without the safeguards of a criminal trial and assumptions made about the aspects of that material. In addition to that, material has been provided by individuals to the police solely for the purpose of the police investigation. They have a reasonable expectation too of us that we will not put the material that the police have provided to any collateral use. Again, this is a matter of general public policy and to depart from this would have a detrimental impact on the effectiveness and operational efficiency of both the police and the CPS in that individuals would be discouraged from providing information to the police for fear that it might be used for other unrelated purposes. So, it is within these constraints that we, the CPS, and Mr Perry, who sits beside me, offer our assistance to the Committee.

**Q237 Chairman:** Thank you very much. Do you want to add a word, Mr Perry?

**Mr Perry:** I have nothing to add.

**Q238 Chairman:** That is very helpful, because it establishes that we are all playing by the same rules but it does not prevent us having some generic questions and some generic answers. It was on 27

March last year that this Committee agreed to what it called “a short pause” in its inquiry so that the police could undertake what it believed would be a fairly short inquiry into these matters. Indeed, when we met you in private session in July last year—the record of this can now be published—Assistant Commissioner John Yates said, “my professional judgment is we can have this wrapped up by October. I would imagine some time in the middle of September”, and we know, in fact, it went on for a year. Can you help us to understand how you could speak so confidently last July about it being wrapped up by September and yet it was not until the following April that you were able to make your final report to the CPS?

**Assistant Commissioner Yates:** Yes, Chairman, I think I can, and I am not surprised you have asked me that question. The law on this subject is necessarily complex and quite difficult—that is point one—and I was aware of that right from the start, but in commencing this investigation we did it, apart from a couple of notable exceptions that you will be aware of, in a spirit of co-operation—we sought co-operation from all sides—and, I have to say, that from the outset many people, from all parties, co-operated in full and I make absolutely no criticism of them at all. There were, however, instances when we received less than full co-operation. I do not say that now in the sense that it was deliberate in its intent, but I think there was a sense that they thought that we would ask questions, get some answers and simply go away. That is not how police investigations work. We seek views from witnesses, we seek an account, we then go away and we seek to corroborate that account. If that corroboration is not forthcoming, we will go back again, and we will go back again, and we will go back again, on some occasions up to five times. At the heart of this case was trying to understand how the list in 2005 came to be put before the House of Lords Appointment Commission (if I can call it HoLAC for the purposes of today). That proved pretty difficult, and it was only until January of this year that we actually found out how that list was put together. I do not want to go into the evidence, because I said I would not do that, but that was a principal problem. It is then a matter of public record that at that point we began to investigate other offences around perverting the course of justice. It is a matter of public record. As I say, I do not think people deliberately misled us, but I do think, on reflection and with hindsight, that we were treated as a political problem rather than a criminal problem. Here we are: the police. We will just do our job and we will follow the evidence. You have heard me say that a number of times, but that is our job and that is what we will do, and if we do not get a proper account or what we believe is a proper account, we will go back and try again, and that is what we did in this case, and that is why it took so long.

**Q239 Chairman:** When we had the meeting in July you told us it was all going swimmingly and it would all be over by September. You were paying tribute—it is all on the record—to the co-operation that you were receiving.

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*Assistant Commissioner Yates:* To certain aspects, Chairman. That was July of last year.

**Q240 Chairman:** So who stopped co-operating with you?

*Assistant Commissioner Yates:* That would lead me into the evidential barriers that I have said I do not want to cross; but not only are there those who stopped co-operating, also further evidence can come to light. It did in this case. Some crucial evidence came to light in this case which, in September, then led us down another path. July of last year is very different. I always said—it will be in the record—that I cannot guarantee it because I do not know where the evidence is going to take me.

**Q241 Chairman:** I am not asking you for individuals here but you can talk about institutions and structure. Which bit of the system stopped co-operating with you?

*Assistant Commissioner Yates:* You leave me in some difficulty there, but I would say who co-operated with me then: the Cabinet Office. I have always said the Cabinet Office co-operated in full throughout in my view. Some of the parties co-operated in full throughout in my view; others did not. I think it would be quite obvious to everybody who that was.

**Q242 Mr Walker:** Downing Street. Is it Downing Street that was not co-operating with you?

*Assistant Commissioner Yates:* Downing Street has a number of meanings to me, I have since found out, Mr Walker, so I am very careful what I say there.

**Q243 Mr Burrowes:** The Prime Minister's office?

*Assistant Commissioner Yates:* It is a matter of public record who was spoken to in this case and who was interviewed in this case and who was arrested in this case, so I leave you to draw your own conclusions. Please, I cannot be drawn, because that would take me into areas of the evidence which I think it would be inappropriate for me to go into.

**Q244 Mr Prentice:** You were investigating at the very heart of the British Government, and you must have had meetings with the Cabinet Secretary. You said the Cabinet Office was co-operative. How many meetings did you have with the Cabinet Secretary to discuss the way in which your investigation would impact on the workings of government?

*Assistant Commissioner Yates:* I had one meeting with the Cabinet Secretary, and it was not about the second part of your question at all. It was purely to set out the likely time-frames and the co-operation that we were seeking.

**Q245 Mr Prentice:** Surely the Cabinet Secretary would have said: this is a legitimate investigation that the police could carry out but it cannot be a fishing expedition, because the files in Downing Street would have material which is highly classified, perhaps about future reorganisations in the

Metropolitan Police, perhaps about bonuses for senior police officers, all sorts of things. Were there parameters that the Cabinet Secretary laid down?

*Assistant Commissioner Yates:* I am sure the Cabinet Secretary would answer that question himself, but he has no remit, nor statutory responsibility around that. The remit around the police investigation was both for me and for the team. The Cabinet Secretary never sought to do that; neither would he.

**Q246 Mr Prentice:** So you had free rein to trawl through Downing Street, the records and files of central government, to see where the evidence would lead? Is that what you are telling the Committee? There were no constraints, no parameters, you could just turn up and demand access to files, regardless of whether they might be relevant or not?

*Assistant Commissioner Yates:* We had a proper rein to carry out our inquiries within the confines of legal professional privilege and all those matters. So, we had the co-operation of the Cabinet Office in that sense, we were allowed to carry out our inquiries in the way we felt we ought to and we were bound, quite properly, by the rules of legal professional privilege, we had independent counsel to review material; so we did not encroach on those areas that you have suggested.

**Q247 Mr Prentice:** Perhaps my last point on this, because other colleagues will want to get in. At no point did you say to Sir Gus O'Donnell, the Cabinet Secretary, that you were being obstructed in any way. Your investigation moved from the straightforward examination of whether offences had been committed under the 1925 Act to conspiracy to pervert the course of justice. At no point did you say to Sir Gus O'Donnell you are not getting the fullest co-operation from all civil servants, because he is the head of the Civil Service, and all political advisers.

*Assistant Commissioner Yates:* I cannot recall the exact date I saw Sir Gus O'Donnell. I think it was probably in the early autumn. It was way before we went into the areas that we went into in January. I pointed out that we required full co-operation and eventually we got that co-operation.

**Q248 Chairman:** My understanding is, tell me if I am wrong, that he, as it were, opened up Downing Street to you.

*Assistant Commissioner Yates:* Within the proper confines and the limits and the investigative parameters that we required, and that is quite proper and I would expect that.

**Q249 Paul Flynn:** Did the Prime Minister ever lay down any conditions under which he agreed to be interviewed?

*Assistant Commissioner Yates:* Only his diary.

**Paul Flynn:** Thank you.

**Q250 Mr Burrowes:** Can I follow that particular matter up. In all honesty, not just the Prime Minister, but were there any of those around him who laid down conditions or warnings that if he was

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interviewed as a suspect he would be resigning, hence putting pressure on your method of investigating him?

**Assistant Commissioner Yates:** I would expect anybody looking after the interests of anyone at that level to set out a range of consequences to someone like me in my position, who is managing the entire investigation and the risk and the impact and the problems beyond. If there was an improper pressure put on the detective sergeant, for example, who ran the interview, then that would be wholly improper, but to say to me, "Mr Yates, there are a range of consequences you might want to consider here", quite proper, nothing in doubt about that. Did that pressure cause me to change any of my decisions? No, it did not. No, it never would.

**Q251 Mr Walker:** At any stage did you feel that you were coming under inappropriate pressure from certain quarters you were being led to? You rather ominously said, "Mr Walker, Downing Street has a number of meanings."

**Assistant Commissioner Yates:** Let me clarify that. Downing Street is both government, both party, both Civil Service; so what I would not want to do is lump all those into the one mixing pot of Downing Street, because there is absolutely nothing sinister, it is just that I have learnt what Downing Street means during the course of this inquiry.

**Q252 Mr Walker:** But did you, during the investigation, feel that you were being lent on in an inappropriate fashion? You do not have to name names or say who it was, but at any stage of the investigation were you made to feel uncomfortable as to what you were being asked to do?

**Assistant Commissioner Yates:** I think I felt uncomfortable a number of times in this investigation. This was a difficult investigation, operating under immense public scrutiny, immense speculation and comments in the newspapers, if I might say so, some fairly daft comments by politicians, who should know better, at particular stages of the investigation. Yes, there was pressure. Improper pressure? No, I do not think so. Would it have made any difference? No, it would not.

**Q253 Mr Walker:** Did you ever discuss your concerns with Sir Ian Blair, for example, in your telephone conversations and meetings with him as to what was going on?

**Assistant Commissioner Yates:** I would discuss a range of issues both with Sir Ian and other colleagues, with the Deputy Commissioner as well, who had the eventual oversight of this case because, as you know, Sir Ian did not recuse himself, but Sir Ian clearly had almost daily contact with the most senior members of government, so it would have been difficult for him to have detailed oversight of this case. A range of issues, but, as I say, this was a difficult investigation, I do not refute that at all, and of course there was pressure, but all I want to assure the Committee and other people is that at no time did that pressure improperly influence me or any of my decisions.

**Q254 Mr Walker:** Did Sir Ian Blair ever warn you of particular consequences of any actions you had taken?

**Assistant Commissioner Yates:** No, he did not and, no, he never would do.

**Q255 Paul Rowen:** You said that part of the reason you took so long was obviously resistance to providing information. Can you tell the Committee when you became aware of the existence of a separate email server, or certain emails, that you then subsequently used? Who actually informed you that that system existed?

**Assistant Commissioner Yates:** I think you are going into the evidence, which I have said I cannot go into, and it is a barrier I will not cross.

**Q256 Chairman:** One thing that caused some trouble along the way, and we are not going to look at all this in detail but I think it has to be mentioned, is that there seemed to be endless running commentary on this inquiry from various sources. I have got a dossier here of press cuttings which, as I say, give a kind of commentary on the proceedings of the inquiry, all of which refer to police sources, sources close to the investigation. I know that you assured us robustly that you had taken steps to prevent this happening. Where were they coming from?

**Assistant Commissioner Yates:** Let me reassure the Committee, or assure the Committee, that I am as certain as I ever can be that no evidence in relation to this investigation was ever put into the public domain in an improper way. We took the matter of leaks very, very seriously. The security around the operation was incredibly tight. We took unprecedented and highly intrusive steps around key individuals to actually prove that they were not responsible. We did some detailed analysis, Chairman. Let me throw this one back at you. We worked out that over 90% of that which was written was not written by police-related journalists at all, it was all written by political journalists actually, and that was up until January this year. So an awful lot of the commentary was from political journalists, and I say nothing more about that.

**Q257 Chairman:** Can I stop you there. I really do not want to get detained by this, but I have had respectable lobby journalists here, people who I have known and can trust who tell me that you were briefing them.

**Assistant Commissioner Yates:** I can honestly say I have never met a lobby journalist in my life, I do not think.<sup>1</sup>

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<sup>1</sup> *Note from the witness:* Whilst my answer to this question was accompanied by the caveat that I did not *think* I had met a lobby journalist, I was interpreting the term "lobby journalist" more narrowly than what I have since discovered is its current parliamentary meaning. I now realise I would have had contact with some of these individuals during the course of my career and up to and including the present time. I reiterate for the record what I said at the time, that I am as certain as I ever can be that no evidence in relation to this investigation was ever put into the public domain in an improper way by the investigative team.

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**Q258 Chairman:** Or spoken on the telephone to one?

**Assistant Commissioner Yates:** Do I speak to journalists? Of course I speak to journalists. It is part of my job. I speak to journalists about a wide range of issues which I have responsibility for, both in the Metropolitan Police and for ACPO.<sup>2</sup> So, do I talk to journalists? Of course I do. Journalists provide a great deal of perspective on some of these issues, but this was an investigation that was characterised by a lot of speculation, a lot of commentary. We would say that there were only two issues that came into the public domain in what we consider to be an improper way. That was the Christopher Evans diaries and the Ruth Turner note, and I am absolutely certain that we were not responsible for that. In fact, I would say in terms of the Christopher Evans diaries, we had those diaries for over three months before they came into the public domain; in terms of the Ruth Turner note, over six weeks. You need to realise the amount of people who have access to this type of material. If you interview somebody, you will disclose the relevant entries about which you are going to ask the questions to a range of people. Over the course of this inquiry up to 30 lawyers, legal advisors, suspects and witnesses would have seen that material. Some of the key material, for instance the Evans' diaries, was in the hands of the Serious Fraud Office way before we got them. I have no idea who saw them before that. So you see the problem we have. Numerous people see that material. It is not the team who just see it.

**Q259 Chairman:** I only know what I read in the newspapers and what people tell me, but there is only one bit of evidence that we have directly, which is that you wrote a letter to me on Friday 9 March this year and that letter was sent electronically by your PA, Karen Boorman, to the Clerk of the Committee on 9 March. The clerk did not pass that on to any Committee member, nor to me, until Monday 12 March. Despite that, the existence of that letter was reported in *The Financial Times* on the morning of Monday 12 March. The only certain thing in an uncertain world is that clerks of committees do not talk to the press, so how did that information appear in the newspapers?

**Assistant Commissioner Yates:** I think it is a pretty unfair question in terms. You are providing me with a forensic analysis of what you have found. I cannot even remember what the letter was, what the dates were, who else had access to it, who else it was copied to within my environment. I simply do not know, so I cannot answer that. If you want me to look into it, I will.<sup>3</sup>

**Q260 Chairman:** Okay; we will drop you a note. Let us go on to other territory. One of the things that people have asked consistently about all this is how you got into it really. What led you to think that it was worth supplanting a parliamentary inquiry with a police inquiry in this area and what kind of evidence did you have initially that made you think that it was worth embarking on a police inquiry?

**Assistant Commissioner Yates:** There are all sorts of things at the start of a police inquiry. There will be credible allegations, there will be evidence available in CCTV form, there are all sorts of things at the start of a police inquiry, but in this case we had a number of complaints, a number of other matters that were in the public domain, be it the city academies issues and the like. In preparing for this Committee, I went back to look at what I wrote on 21 March last year as to why I started that inquiry. It is fairly short. It may just be worth reading it in for the record in terms of what was going through my mind and the decision-making process. I will try and paraphrase it, but it will be fairly short. It says this. It is dated 21 March last year, signed by me: "I am in receipt of a letter from Angus MacNeil concerning possible abuses of the above Act, the Honours (Prevention of Abuses) Act, by one or several of the major parties. The political sensitivities around commencing a criminal investigation in these circumstances are obvious. There is a clear requirement for the police to act independently, impartially, with the quite proper need to react to well-founded complaints where it is proportionate to do so and where there is at least some inference, intelligence/evidence of criminal wrongdoing. Against this there is the risk that police action could be seen to be politicised or as being used for the purposes of gaining political advantage by one party over another." I then talk about your Committee running, I then talk about Hayden Phillips. I said, "In this case there appear to be *prima facie* breaches of the above Act in terms of the Honours (Prevention of Abuses) Act. Additionally, I am advised there may be wide breaches of legislation regarding PPERA<sup>4</sup> and corruption in public office." This was 21 March of last year. "Conscious of the sensitivities, I have taken advice from my own Director of Legal Services and have met today with the Director of Public Prosecutions and his assistants. As ever with such matters, the final decision is an operational one for the police. The DPP, whilst making this clear, recognise the sensitivities for the police but suggested it would be difficult in these circumstances to ignore what are clearly serious matters. The advice of our own legal services is that the police have an unfettered discretion as to whether to carry out an investigation or not. This is a very wide remit, and whilst I am not bound by the Code of Conduct for Crown Prosecutors regarding the evidential test and the public interest test, this does appear to me to be a sensible template approach to take in this case. Additionally, I am bound to consider issues around the proportionality of any police response. The media impact and reputational issues for Her Majesty's Government are not ones I take into account in reaching this decision, although these matters will clearly have to be considered in due course", and my decision, very briefly was to commence an investigation into the allegations made by the MP Angus MacNeil and repeated and contained with a national medium in relation to the

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<sup>2</sup> The Association of Chief Police Officers (ACPO)

<sup>3</sup> Ev 63

<sup>4</sup> Political Parties, Elections and Referendums Act 2000 (PPERA)

potential sale of honours for gain. “It is difficult at this stage to consider the evidential criteria in any detailed sense because an investigation has not commenced. There does appear, however, to be sufficient material available to suspect potential criminal wrongdoing by one, other or all the major political parties or those acting on their behalf. The public interest, should such matters be proved, is clearly a very high one and, thus, justifies an impartial police investigation to establish whether or not any offences have been committed.” That was completed on 21 March last year and that was the thinking I was going through around whether to start this inquiry or not. So I was trying to balance the proportionality of a response against the potential wrongdoing, the seriousness of the wrongdoing, bearing in mind this is allegations of the sale of honours to fund political parties, to purchase a vote in a legislative chamber. I considered that to be extremely serious. So, that is how a criminal investigation will start. We will then scope it, we will go and see what evidence we can obtain, see what evidence we need to obtain, see what evidence we must obtain, through whatever means, and then a constant period of review throughout the investigation. This investigation had a thorough review after three months by an independent person, it had a peer review by a very, very senior, very experienced chief constable from an outside force and throughout the whole process of governance was strictly adhered to to ensure that we did remain focused, we did remain proportionate and we did not go on a fishing expedition into areas where we should not have gone.

**Q261 Chairman:** That is very helpful. I want to stay with the genesis of this for the moment. You are clearly absolutely right to be robust in not letting political considerations intrude onto a judgment that you would make, but it turns out that you had a letter from an SNP MP and you had some press cuttings, and we now know from what the CPS has told us in its explanatory statement, when no charges could be brought a year or so later, explaining the nature of any evidence test that would have to be met, it seems to me, that you had nothing approximating an evidential test when you began.

**Assistant Commissioner Yates:** How would I get an evidential test when I had not investigated?

**Q262 Chairman:** No, but I am sure we shall talk more about this, we shall talk about the way in which this is a rather difficult test to pass. This is what the CPS statement has told us at the end of the inquiry. So, what I am asking you is: were these things not known at the outset?

**Assistant Commissioner Yates:** Of course they are not. How would I know what is going to be there when I have not investigated it?

**Q263 Chairman:** The nature of the evidential test was not known at the outset?

**Assistant Commissioner Yates:** Of course I know the nature of the evidential test, and that is a matter that the Crown Prosecutors and counsel—

**Q264 Chairman:** The CPS has now told us in its statement that, unless there is an unambiguous agreement, you cannot bring charges. What I am saying to you is: where was the evidence at the outset of an unambiguous agreement?

**Assistant Commissioner Yates:** How would I have known that? What we have, what I have said is there were inferences, there were indications that evidence may be available. If policing was that simple, we would not need many of us. If I just got an allegation and said, “There it is. That will do”—. We have to go and investigate.

**Q265 Chairman:** When we had our initial discussions with you we talked about some of these things and we said to you how difficult it would be to secure any kind of conviction.

**Assistant Commissioner Yates:** You never know what you are going to find out. What I would say is that my experience of conducting investigations, going back many years, is that you go through in a stage process. You may come across witnesses who suddenly want to tell you everything, there may be an inside trap. For instance, the greatest successes in police corruption have been around cops turning into super-grasses in terms of telling us what has happened. How do we know that is not going to happen in this case? What you do is you start your inquiries; you then follow the evidence. This is a case where that happened. I would not know from the start. Can I go back to one thing you said at the start in terms of one letter. We had over 20 complaints in this case in terms of the allegations.

**Q266 Chairman:** But those of us who are not lawyers but do have a sense of how this world works were fairly sure at the outset that, unless you had some evidence that we did not know about, this would go nowhere. Can I remind you of the exchange that we had here last July? I said to you this, “We know that you are more likely to get a peerage if you give large amounts of money to a political party, that is just a historical fact, so discovering that would not be a revelation. Finding people who will say that they engage in transactions of that kind as discovered by the 1925 Act seems to be not entirely likely”. And you say, “It could be a very difficult case to prove but we are some way down the line in terms of the investigations”.

**Assistant Commissioner Yates:** And we were.

**Q267 Chairman:** But it went nowhere.

**Assistant Commissioner Yates:** Look, I keep hearing this thing about an abortive police investigation. If this was an abortive police investigation, that is the template you judge us by, then, frankly, about 80% of our cases would be abortive. What we do is we have allegations, credible allegations, we investigate them, we find the evidence, we analyse it, we give it to our colleagues here and they then apply the evidence test and the public interest test. Many cases do not go beyond that point. It seems to me that this is a case where justice has worked pretty well.

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**Q268 Paul Flynn:** Can I contrast the investigation now to the allegations of Conservative Party honours that you received on 30 July this year.

**Assistant Commissioner Yates:** Which one is that; I am sorry.

**Q269 Paul Flynn:** This is a Crown Prosecution Service one, but it was brief and it was over in a couple of months, and that would seem to be proportionate and reasonable. No stories of dawn raids, no continual leaks to the press and hysterical reporting on this, in contrast to what happened in this case. When do you make a judgment, looking at the likelihood of a conviction, when we recall that there has only been one conviction in the 82 years since the 1925 Act has been in place, and, on the basis of that, the witness was willing to say, and said in writing, that he had been offered an honour for a bribe and for money? That is a really strong basis to go on, but we have seen this case go on and on and on and there seems to be to us, having looked at the Act in detail, very little chance of getting a conviction on this. Why on earth should it have gone on all this time and cost so much?

**Assistant Commissioner Yates:** You have that exact binocular of hindsight which you can look into. It is fair enough saying that now, but we did not know that at the time. You are not aware, and I will not disclose, the nature of the evidence we were gathering. There were a number of opportunities that provided us, we felt, with good chances of providing sufficient evidence for the prosecution to consider. It may be worth asking Carmen about the evidential test and those matters, because I do not think I have probably got the point across as well as I would have liked.

**Q270 Paul Flynn:** Can I take another point? When the case finished you said, "Some people have been surprised about the intensity and length of the police investigation, and I recognise that this has been an uncomfortable time for many of those who came under the investigative spotlight." I am not going to mention names here, but we have got letters from the people who were being investigated. They would not have described their experience as being uncomfortable; they have described it as an ordeal. They describe themselves as being deeply distressed by what happened—people hung out to dry with the dawn raids, the continuous publicity and the bewilderment at accusations that they say were unfair and untrue. Does it not suggest, if you use the word "uncomfortable", that you have a cavalier attitude to what these witnesses went through and these people who were suspects?

**Assistant Commissioner Yates:** Mr Flynn, when I joined this organisation I took an oath as an officer of the Crown and there are four guiding principles behind that oath. It is fairness, it is integrity, it is diligence and it is impartiality, and that is the touchstone that I used throughout this investigation, those four key issues. I am sorry if it was an ordeal. I suspect anybody under a criminal investigation finds it to be an ordeal, but I did my job. I am not sure I can say any more.

**Q271 Paul Flynn:** But there has to be a judgment. When this accusation was made originally, entirely properly, by the Scottish Nationalist MP he had made a political complaint and he advanced that by making a complaint to the police—an entirely proper thing to do—but some judgment had to be made whether there was a basis for this great Byzantine investigation, and surely it would have been obvious from the previous cases and the evidence you were getting that this was going to collapse?

**Assistant Commissioner Yates:** Mr Flynn, throughout this inquiry I worked from day one very closely with the Crown Prosecution Service and very closely with counsel. We sought their advice throughout. We challenged ourselves, and I challenged them: do we continue? Is it right? Is it proper? Is it proportionate? It is not just me going off on a wild goose chase thinking this is great fun, because it was not great fun at all, it was bloody difficult. We sought their advice, they provided their advice and, on their advice, whilst the operational matters are for me, we continued our inquiries to their natural conclusion.

**Chairman:** I am going to bring Carmen Dowd in in just a second, but in case anyone has any questions that relate to what Carmen may say, can I ask them to make them now.

**Q272 Mr Burrowes:** On the evidential test, back in July AC Yates was telling us that you were up to 35 to 40% looking at the bar of 50% in terms of sufficient evidence for a prosecution. Between July and the time of the decision did it go up? Was there a gap? Did we get beyond the 40%? Is there a piece of evidence that suddenly meant that it went down to nil, as AC Yates said it could go to? Or was there a judgment call that changed from the CPS?

**Ms Dowd:** I think you will find also in the record that we discussed the issue of percentages, and the CPS do not engage in an exercise in assessing percentages, and, in fact, Mr Yates almost retracted that sort of assessment.

**Mr Burrowes:** But that is the case. In July we were at about 35 to 40%. It is on the record. Did we move on from there or did we move away from it?

**Q273 Chairman:** I think what happened is that John Yates referred to 35 to 40% and you said in your evidence, "We do not do percentages." I think that is the context for it.

**Ms Dowd:** Yes, and the reality is that the CPS did not review the case with a view to making a decision until all the evidence was available. So, I think we made it perfectly clear at the private hearing in July that we had made no assessment about the prospects or otherwise of a conviction at that time and, therefore, on that basis, having not made an assessment, I cannot answer your question as to whether that non-assessment went up or went down because that was not my assessment.

**Q274 Mr Burrowes:** No, but like any investigation, particularly this investigation, you were involved at an early stage.

*Ms Dowd:* Yes.

**Q275 Mr Burrowes:** You came before the Committee, you were seized of the facts, papers were passed to you on a regular basis and you were not going to just be done with not giving any advice at all, you must have been communicating legal advice, as guidelines suggest you should do on any investigation?

*Ms Dowd:* Yes.

**Q276 Mr Burrowes:** You must have been giving advice that essentially gave a green light to continue those investigations since they were, obviously, heading towards a recommendation of a charge?

*Ms Dowd:* I think the line of questioning, if I may say, demonstrates a misunderstanding about what an investigation is actually about. If your assumption is that an investigation is in order to prove someone's guilt, then your assessment might be right, but if a complaint has been made, a police officer is duty bound to pursue all reasonable lines of inquiry. He might find evidence that exonerates or damns, and that information is passed to us to make an assessment. So, along the way when we are giving legal advice, of course we are going to give advice about pursuing lines of inquiry, where, as Mr Yates says, operational matters are for him.

**Q277 Mr Burrowes:** But where you say at the conclusion there is no evidence of any explicit agreement to form the basis of a charge, surely you had been advising AC Yates at an early stage about that and we would not have been dealing with 40%, close to 10% for a charge.

*Ms Dowd:* We were not dealing with percentages for a charge, we were dealing with waiting until the investigation had been concluded so that we could fully review the case. A case of this nature cannot be looked at in a piecemeal fashion. There are lots of pieces of evidence in any case that, when put together, look very different from when they sit alone, and so it was not until the investigation had been concluded that we sat and looked at all of the evidence and made our decision.

**Q278 Mr Burrowes:** But from July onwards did the evidence change in terms of admissibility or was there independent legal advice that came on board which changed the situation?

*Ms Dowd:* I think Mr Perry was on board in terms of advising all along the way, but I think you are straying into areas of the process that I am not going to engage in, simply because I think it is an erroneous position to suggest that we had a percentage of evidence in July.

**Chairman:** I do not think we are straying very far.

**Q279 Mr Walker:** Mr Yates, can you just explain to me, because I am a layman, what is the justification for dawn raids? I can understand if you are arresting a terrorist suspect or you are arresting a gang of dangerous drug dealers, but beating down the door

virtually of prime ministerial advisers. What possible threat do they pose to the safety of your officers, so why the six a.m. raids?

*Assistant Commissioner Yates:* Let me try and help you, Mr Walker, without talking in any way about that particular case. Let us talk generically. If you are presented as an investigator with what you believe to be an ongoing conspiracy to pervert the course of justice, what you do not do is put those who you suspect of that conspiracy on notice that you are investigating those matters. That would be ridiculous. What you do not do is say: "Why do you not pitch up at the police station on Thursday and bring all the material and the evidence that we might want with you so we can examine it on that Thursday morning?" What you do is you use your powers effectively for the effective conduct of the investigation, and on a conspiracy to pervert the course of justice people under suspicion of those type of cases will try and hide evidence, will try and mislead you, in my experience—I am talking generically here—and, therefore, you have the powers to use and you use them quite properly. When you say "beat down the door", well, occasionally you will beat down the door, and we did not in this case anyway. The other matter is six a.m. I am faced with a bit of a difficult choice here: because if individuals work in places that are extremely high profile, I am looking at the most proportionate, least intrusive way of conducting that type of arrest. Once I have made the decision that an arrest is necessary, I am looking at the least intrusive way to do that. Where do you think that is going to be? Of course it is going to be somewhere that is private, that is not in the full glare of publicity and where it is not going to cause further embarrassment for people who are already in a very difficult place. So, that is the choice I am faced with.

**Q280 Mr Walker:** I struggle with the second half of your answer. It seemed to many people that the press were given due warning and knew where and when to turn up and at what time.

*Assistant Commissioner Yates:* Absolute nonsense. You have got absolutely no evidence of that at all, and it did not happen. Absolute nonsense. Have you got evidence of that?

**Q281 Mr Walker:** Mr Yates, calm down for a second. Are you telling me that you never sat down with a senior communications adviser to the Metropolitan Police and discussed pending actions against individuals? You will tell this Committee that you never ever discussed pending actions against an individual with communications advisors, either advising the Metropolitan Police externally on contract or actually working internally for the Metropolitan Police? You never discussed it with them before taking action.

*Assistant Commissioner Yates:* Of course I did. We had a very, very small group of people who I brought together to advise me and others in these circumstances. One of those would have been a very trusted, very experienced press officer, who I had absolute confidence in.

**Q282 Mr Walker:** The role of a press officer is to talk to the press. So, if you tell a member of your press team that the following morning at six a.m. you are going to go and lift someone from their doorstep, there is a pretty good chance that they are going to tell someone in the lobby or someone who works for a national newspaper. Did you not appreciate that fact?

**Assistant Commissioner Yates:** Mr Walker, you have asked me to calm down, I have calmed down, and I have not got too excited anyway actually, but the comments simply do not merit a response, I am afraid, because we have people who work for us who we completely trust, working in highly sensitive cases, who we trust on a regular basis with these matters.

**Q283 Mr Prentice:** I am interested in why you investigated this complaint, because in six years, way back in the early 1920s Lloyd George sold, what was it, 120 hereditary peerages, 1,500 knighthoods. It was a real auction going to the highest bidder. We know that people who have given very large sums of money to all the political parties—Liberal Democrats, Labour, Conservative—have ended up in the House of Lords—that is the reality—and yet there has only been one successful prosecution under the 1925 Act. Mr Yates, when you came before us on 15 May 2006, I asked you this: “Has it happened before where a member of the public has been in touch with the police following the publication of an Honours List alleging there was corruption and demanding, that the police investigated it but it was never proceeded with?”, and your answer was, “It could have done. I do not know.” Presumably you know now if there were complaints made over this long period, stretching over many decades, to the Metropolitan Police to investigate alleged corruption but it was not taken up. How many complaints?

**Assistant Commissioner Yates:** There was one further allegation made, I think it was 1997, which took about two and a half years to investigate actually, which did not proceed anywhere in terms of a prosecution. I can provide you with the details after this Committee.<sup>5</sup>

**Q284 Mr Prentice:** We have annual honours lists, we are waiting for Tony Blair’s resignation list, we have dissolution honours lists, we have these lists all the time. How many complaints would the Metropolitan Police ordinarily get annually that there might have been corruption involved, because we have very high profile cases. Lord Ashcroft way back in 2000 was given a peerage. He gave loans to the Conservative Party, £3.6 million donations, 930,000. On the Labour side we are familiar with it. Michael Brown gave the Liberal Democrats £2.4 million. It happens all the time. How many complaints would you ordinarily get?

**Assistant Commissioner Yates:** I cannot comment on that, I do not know. I can only comment on the particular case that was before me when I have explained to you—

**Q285 Mr Prentice:** But something persuaded you to pick up the ball and run with it on this occasion, and it was a complaint from a Scottish Nationalist MP and some press cuttings from *The Sunday Times*. That is what persuaded you to set this hare running.

**Assistant Commissioner Yates:** I have told you what persuaded me to start an investigation. An investigation goes in stages. You initially scope it and you see what level of evidence is going to be available. We felt there was credible evidence potentially available in that case. Subsequent to Angus MacNeil’s letter we had a further 20 odd letters about similar matters from all parties, from members of the public and across the major political parties. I cannot comment on what happened or did not happen in the 1990s.

**Q286 Mr Prentice:** Okay. We know that the House of Lords Appointments Commission rejected four nominees. They will not give us the reasons why those four nominees were turned down, they will not tell anyone, but they would have told you. Did you ask Lord Stevenson, the House of Lords Appointments Committee, for the reasons that HoLAC rejected four of Tony Blair’s nominees?

**Assistant Commissioner Yates:** If they would not tell you, then I am absolutely certain I should not tell you because that is their process.

**Q287 Mr Prentice:** No, you misunderstand.

**Assistant Commissioner Yates:** As part of the investigative process we would have got into that sort of detail, I am absolutely certain, but I do not think I need to go into that detail here.

**Q288 Mr Prentice:** It is quite an important point, is it not? I am asking you if you contacted the House of Lords Appointments Commission and asked them to give you, in confidence, the reasons why they rejected four of the nominees put forward by the Prime Minister for a peerage?

**Assistant Commissioner Yates:** Can I turn over my right shoulder to make sure I give you the absolutely accurate answer. Yes, we got all that information. We have all that information.

**Q289 Chairman:** On the CPS statement again, after it all ended, you said of these people, “Each was a credible candidate.” The House of Lords Appointments Commission applies a test of credibility to candidates, and on the basis of that test it turned down these people. How can you decide that they were credible candidates?

**Ms Dowd:** I do not think I was saying—. I was not making that assessment, but I think the statement says that there is substantial and reliable evidence that there were proper reasons for the inclusion of all those whose names appeared on the 2005 working peers lists that each was a credible candidate for a

<sup>5</sup> Ev 63

peerage. I cannot stray any further than that statement into the evidence which caused me to reach that conclusion.

**Q290 Chairman:** It was not reliable evidence if HoLAC had said they were not credible.

**Ms Dowd:** You are straying into areas of evidence I am afraid I am going to have to decline to comment.

**Chairman:** Okay.

**Q291 Jenny Willott:** Could I ask a couple of questions going back to the point that you were discussing earlier. I am not asking about the specific evidence, but you said at the beginning of the investigation you thought that it would be possible to find enough evidence to possibly prosecute, depending on where the evidence led you, but it could be possible that the evidence was there; but in the CPS statement at the end of it all it says there is nothing in the circumstances of this case to suggest that this happened and there is no direct evidence. It is very categorical language that there is absolutely nothing there. If that is the case, that there was no evidence found, how long does an investigation go on for if you are not actually turning up stuff, or was it that there was evidence that was pulled together as part of the inquiry but it was not actually enough to pass the CPS evidential test?

**Assistant Commissioner Yates:** All I can say in response to that is we were in close liaison with both the CPS and counsel throughout the inquiry. We sought their advice at every step. We made numerous submissions—over 18 submissions over 14 months—to them. It is probably a matter for the CPS and counsel to ask in terms of the probative value of the evidence, but we were in discussions with them throughout. As I think I said earlier on, we set ourselves, I set ourselves challenges all the time: are we still on the right lines? Should this investigation stop? That was on a regular basis throughout this inquiry. I was absolutely conscious of the difficulties, the sensitivities, the publicity, the unwelcome intrusion into many people's private lives and business lives and the like, so I was absolutely conscious of the need for the inquiry to remain completely focused and proportionate as well.

**Q292 Jenny Willott:** So was there a point at which you felt that the evidence was not going to be forthcoming, or all the way through you felt that there was actually enough evidence there to consider putting forward?

**Assistant Commissioner Yates:** It is a stage by stage. I hope I have explained it fully earlier on. You never know what you are going to find. You start an inquiry off, you are provided with evidence, you go and seek corroboration, you seek further lines of inquiry to pursue.

**Q293 Jenny Willott:** I appreciate that. I mean later on in the inquiry rather than at the beginning, because obviously at the beginning you have started with nothing and you are gathering what you can. What I am trying to get at is: because the CPS

statement is very categorical that there was nothing there, is the issue the fact that you could not gather the evidence but the law is okay, or is there actually a problem with the underlying law that actually it would never be possible, however much evidence you would gather over 15 months, and so on, and so many different statements, to get enough evidence to be able to prosecute under this law?

**Assistant Commissioner Yates:** No, the law is pretty straightforward. It is challenging, because every law around corruption, small C or big C, is challenging, because by the very nature the bargains are made between two people who do not want them to come to light, two or more people, so they are secret, and so you have got to be more diligent in your investigation in order to try and uncover that evidence. It is probably one for Carmen and the CPS to say about the value of the evidence we uncovered. What we did was our job, which was a thorough and detailed investigation into the facts as we could find them.

**Q294 Chairman:** Was there a moment along the way where you thought: "We are going to get somebody. We have got enough to get somebody"?

**Assistant Commissioner Yates:** It does not quite work like that.

**Q295 Chairman:** If I was a policeman that is what I would be asking myself?

**Assistant Commissioner Yates:** You might think it privately, but you would be unwise to say so publicly because that normally comes and slaps you back in the face. We built the case stage by stage on the evidence, we presented that evidence to our colleagues on my left and it is for them to make the decision. That is how the system works. I may think differently occasionally, I may wish I could be judge and juror of cases, but that is not our role.

**Q296 Chairman:** But we are not talking about individuals. You can tell us whether you thought there was a moment when you were going to put up a case to the CPS that would lead to charges?

**Assistant Commissioner Yates:** I just do not think that is a fair question. I have told you what our role is. It is to amass the evidence and ask others to make the judgment about that with the quite proper prosecution test that they apply.

**Q297 Chairman:** But it went on for such a long time, and as you were asked already, presumably the CPS in a sense were giving you the green light that you had got enough here to continue, to keep your investigation going, so there must have been a belief that you were going to get somewhere with it?

**Ms Dowd:** As I said earlier, this was a case where the evidence had to be assessed in its entirety; it could not be assessed on a piecemeal basis. As I have said in my statement, one piece of evidence in one light against the wider backdrop might have a different significance; so it was not until the entirety of the evidence was before us, the investigation had been concluded, that we could actually make an

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assessment, which is ours to make—it is not for Mr Yates and his officers, and he has quite rightly said that—whether charges would follow or not.

**Q298 Paul Flynn:** There was one piece of evidence that has been described as dynamite by *The Sunday Times*, who claimed that news was leaked to them by a prosecution official, and that was the diary of one of people being investigated, but it is claimed that the evidence in that diary was proved to be inadmissible. Is that true? Why was it proved to be inadmissible?

**Ms Dowd:** Again, I think that is straying into the evidence and the decision-making process and I am going to decline to comment.

**Q299 Paul Flynn:** Is it true? Can you tell us whether it is true or not?

**Ms Dowd:** What, that *The Sunday Times* story is true?

**Q300 Paul Flynn:** No, whether there is evidence that would have a significant effect on the investigation?

**Ms Dowd:** On the investigation?

**Q301 Paul Flynn:** Yes?

**Ms Dowd:** I think that is probably for Mr Yates to say.

**Q302 Paul Flynn:** Mr Yates?

**Assistant Commissioner Yates:** I am not quite sure what the question is.

**Q303 Paul Flynn:** The question is: is there evidence that caused you to have this moment when you thought perhaps there is something there, described as dynamite?

**Assistant Commissioner Yates:** I said I did not have that moment.

**Q304 Paul Flynn:** The allegation is that there was something in the diary of one of the people involved which suggested that there was speculation, a conversation with himself and a person in a position of influence in all this to arrange that an honour would be made. Is it true that there was such a report? If there is, why was it declared inadmissible?

**Ms Dowd:** I think it is an inappropriate question in terms of the evidence and the facts of the case, *et cetera*, and we are going to have to decline to comment.

**Assistant Commissioner Yates:** Let me try that, with respect. All I would say is that in terms of those entries, did that cause to us make further inquiries and give us an increased confidence that there was something there? Yes, they did. It is not for me to judge about their admissibility or whatever, but did they cause us in early September of last year to say, “Hmm, this is very interesting” and raise our suspicions, then yes, they did.

**Q305 Paul Flynn:** Can we take it from that that this will strengthen your case for carrying on? It was based on far more than a political move by a Scottish

National MP. You were acquiring information that gave you reason to believe that there was some substance in them?

**Assistant Commissioner Yates:** Absolutely.

**Q306 Paul Rowen:** Could I ask a general question rather than specific. In your experience, having gone through all this process and perhaps now understanding in a lot more detail the Honours Act, what in your view would constitute sufficient material in order to mount a successful prosecution? A second point linked with that: what in your view constitutes inadmissible evidence?

**Assistant Commissioner Yates:** I do not know whether Mr Perry would like to have a go at this one. I can give an investigator’s view.

**Q307 Paul Rowen:** From your experience, first of all. If you were to go forward with a successful prosecution, what would you need?

**Assistant Commissioner Yates:** Let me give you an example what I would think, and Mr Perry might say, “Nonsense.” An overwhelming inference would be, for example, somebody lending a political party £10 million and getting an honour and never having a record of public service or political contacts in whatever form. That, I would say, from an investigator’s perspective, could be construed as an overwhelming inference.

**Q308 Paul Rowen:** Going back to Gregory, that is not what he was doing, was it?

**Assistant Commissioner Yates:** Sorry?

**Q309 Paul Rowen:** Going back to the original prosecution, it is not necessarily public servants. It is if there is an agreement to lend money and an expectation of an honour. Is that not really what you were looking for?

**Assistant Commissioner Yates:** Yes, that is why you have the Honours Act as opposed to the public sector corruption bit, because it is actually wider than a public servant, it could be anybody. As I said, these types of cases are very, very difficult to prove because they are bargains made in secret. Both parties have an absolute vested interest in those secrets not coming out.

**Q310 Paul Rowen:** What documentary evidence would you then want to be able to show that, yes, there is a clear link here between money being lent or given and an honour?

**Assistant Commissioner Yates:** That could be a range of things. It could be emails, it could be money moving, it could be all sorts of issues.

**Q311 Julie Morgan:** Surely the whole point of the CPS and the police working together closely, which has been emphasised very strongly and developed, is to stop very lengthy, very expensive investigations like this causing a lot of agony to people, which has also been mentioned today, and surely this is an example of where that working together has failed, in the fact that this was not stopped at an earlier stage. Most people said: “This is never going to get

anywhere. You will never get a prosecution under this”, and I think that was the general view, and yet, working together, this was failed to be stopped, causing a great deal of agony to many people. Can you comment on that?

**Ms Dowd:** Actually, I disagree entirely with that. I think this is an example where we have perpetuated best practice, we have worked closely together from the outset and we have discussed this case all along the process. Of course there are going to be cases that can properly be stopped and there are other cases where there are still lines of inquiry to pursue, and, as I said earlier, the nature of an investigation is not only about ensuring that you secure evidence to convict people; you will find along the way evidence that exonerates people too, and during the course of that investigation there might be opportunities to say that investigation is now concluded. I think what we did was an example of how it works in an excellent way. We worked closely together, the lines of inquiry were pursued, the full file of evidence was submitted to us and we made our independent assessment of that evidence in its entirety, made our decision and communicated that with Mr Yates and his team.

**Q312 Mr Prentice:** At what point did you decide that the investigation was in danger of becoming derailed and you started talking about conspiracy to pervert the course of justice? What was it that led you to talk about conspiracy to pervert the court of justice? Who was conspiring to pervert?

**Ms Dowd:** I think it is obvious that that strays into areas in relation to matters which we cannot comment on, but I am not sure I would agree necessarily with your idea that the investigation was being derailed.

**Q313 Mr Prentice:** Just thinking about the centre of government again and all these emails and files, are the emails in Number 10 and the Cabinet Office archived? Do they run in sequences?

**Miss Dowd:** I am afraid I do not know.

**Assistant Commissioner Yates:** Neither do I.

**Q314 Mr Prentice:** Was everything there and in sequence that you expected to be there?

**Assistant Commissioner Yates:** We were given access and full co-operation from the Cabinet Office to examine whatever aspect of that we wanted.

**Q315 Mr Prentice:** Because you went to California, did you not? Didn't you? To get a software company that could resurrect emails which had been deleted? No?

**Assistant Commissioner Yates:** I do not want to comment upon potential methodology or tactics we may use.

**Q316 Mr Prentice:** It is a very straightforward question.

**Assistant Commissioner Yates:** I am not sure whether we did or not, to be honest, but it would stray into methodology and exposure of methodology.

**Q317 Mr Prentice:** Yes, because if people were perverting the course of justice they might be deleting lots of emails which you might think would be relevant. So my question is, when you looked at the emails in Number 10, were they all in sequence, did email B answer email A and so on and so forth, or were there any gaps?

**Assistant Commissioner Yates:** You are taking us into evidential areas and I do not think it is proper for me to comment on it.

**Q318 Chairman:** I bet they are all in sequence now. Can I ask Carmen Dowd, because I think we are still trying to get into the legal side which interests us, we have not really probed yet on the adequacy of the law in this area which makes it difficult to get convictions for practices which we know are going on but because of the way in which they go on it is very hard to get charges to stick. That is at the heart of much of what this conversation is. When the police came to you with their final report in April of this year, you said in the statement you made afterwards, “Having considered that substantial report in detail, the CPS invited the police to undertake further inquiries.” You had the final report, what kind of further inquiries did you think would be useful in helping you to form a view on all this?

**Miss Dowd:** Again, you are straying into areas of evidence I am not going to comment on.

**Q319 Chairman:** I am not asking you to comment in detail—names, people—I just want to know what it means.

**Miss Dowd:** In order to answer your question I am afraid I would have to stray into things that I am not inclined to comment on.

**Q320 Chairman:** Was it the case that when they brought this final report to you, you thought, “It is pretty much the case, it is pretty much there, but we just need a little bit of something else, go off and do a little bit of something else”? Or was it, “This does not stack up unless you can do something else” which they then could not do?

**Miss Dowd:** It is inappropriate to actually comment on that.

**Q321 Chairman:** It is just hypothetical—

**Miss Dowd:** I cannot answer a hypothetical question about something when you are asking me whether I did or not. It is not hypothetical, is it?

**Q322 Chairman:** You are the lawyer, you will know the answer to that. Can I ask Mr Perry, you are the man who eventually explained the law to them, did you not? You are the basis I think of the statement in the CPS statement afterwards which says, “What you cannot get convictions for” and then you say, or the CPS says, “The essence of the offence lies in that unambiguous agreement”, and that takes us back to a conversation we were having a little while ago. We know this goes on, we know there is a trade in honours which goes on, it has been going on year in year out for as long as anybody can remember, but

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it goes on in covert ways. We knew all that when all this started and we said to you, "This is how the world is, that is what goes on", and unless you had at that point some evidence that would pass this very high evidential test which you told us about afterwards we knew you were not going to get anywhere. So I am asking you, Mr Perry, in the absence all along it seems of anything that would look like an unambiguous agreement, how could a prosecution in this area ever be brought?

**Mr Perry:** Well, I think a prosecution in this area could be brought in a number of circumstances. First of all, there is the Maundy Gregory type case where the seller of an honour or dignity unambiguously makes an offer to someone who then reports that and is a credible witness to the prosecuting authorities and a conviction then follows. The mirror image of the Maundy Gregory case would be the buyer limb being used as opposed to the seller limb, and the section is actually structured in such a way that the offences are committed by mirror images of each other, there is the seller limb and the buyer limb. They are cases which could be prosecuted where there is direct evidence but there are many, many criminal cases, not only in this field but in other fields, where prosecutions are brought not on the basis of direct evidence but more on the basis that the evidence is a type of mosaic that develops and builds into a picture that provides a prosecutor with the ability to say that the irresistible inference to be drawn from certain primary facts is that the ingredients of this offence are made out. In the circumstances of this case, Parliament when it enacted the 1925 Act was very careful to capture the type of corrupt bargain which should properly fall one side of the line and attract criminal liability, but it was also careful to exclude from criminal liability the type of practice which people would not think is necessarily wrong. As you have mentioned, people donating to parties who become recognised as supporters of parties and are properly then given peerages because they do support the party in question and they have demonstrated their support in the past is not necessarily wrong. In this case, without straying into the forbidden territory, the case was presented more as a mosaic type case or a jigsaw, if you like, and it is very difficult at the early stages when you are putting together the jigsaw or the mosaic to know exactly what picture you are going to get at the very end. That is why I would wish to associate myself with the comments made by Miss Dowd, that it was wholly inappropriate in these cases to look at the material in a piecemeal fashion. When it was looked at eventually, it was looked at independently and objectively in accordance with the code test and decisions were taken in accordance with the Code of Crown Prosecutors. So that would be the way, Mr Chairman, I would answer you and I hope I have answered your question. It is perhaps inappropriate for me to make any suggestions for how the law might be changed because it seems to me that would be a matter for Parliament rather than for an individual lawyer who may not have the expertise to inform himself or herself as to where the appropriate line of liability should be drawn.

**Q323 Chairman:** We have taken our own legal advice on some of this from Chris Sallon QC who has been through the whole raft of law in this area and demonstrated how very, very difficult, nay impossible, it is in the absence of definitive unambiguous agreements to secure any kind of charge or conviction. Now the CPS have said this too retrospectively. Were you saying that to them along the way or did you just see this at the end?

**Mr Perry:** The position was that we had looked throughout at the difficulties created by the structure of the legislation, but it was impossible to pre-empt what the eventual decision might be in the absence of knowing what the shape of the case would be when the evidence was presented to the prosecutors. The one constant in the case was the law and the ingredients of the 1925 Act offence and we were alert to the difficulty. But of course, and we fully accept, although perhaps I would not go so far to say, it is almost impossible. What I would say is the Act is very cleverly drawn to make sure that only particular conduct falls within its scope. But that is not to say that in appropriate cases if there was evidence, either of a direct nature as in the Maundy Gregory case, or of a more circumstantial nature which is very frequently the case in criminal prosecutions, that a prosecution would not be possible, but I say that just in general terms.

**Q324 Chairman:** You said it was not for you to say how the law should be different, it was for Parliament, well, you are talking to Parliament now and one of the things which interests us is whether there is a need for a change in the corruption laws so practices which are not caught by present law could be caught. That is something we would like your advice on.

**Mr Perry:** What I meant by what I said was that I am probably not as informed as a witness to express opinions on those matters. I am aware, for example, that the Law Commission is about to publish a paper on the scope of the offence of corruption particularly now as our corruption laws are looking rather worn and dated. Just as an example, it was mooted, or one of the matters which was mooted with me before today was, whether there should be an attempt to impose a burden of proof on the defence, just as an example to see whether it would be easier to prove an offence if you placed a burden of proof on an accused person. Again what I would say in relation to that is that any such suggestion would first of all involve political and moral questions, given the pre-eminence of our law to the presumption of innocence, and although Parliament would have primary responsibility for deciding where the appropriate balance would lie, it would have to do so taking into account and giving proper weight to human rights considerations and the overriding need to ensure that any person charged with a criminal offence has a fair trial. The most important matter, whatever the public interest might be in the investigation and uncovering of crime, it might be thought is that people should not be improperly convicted or stigmatised with criminal wrong-doing merely for the sake of expediency.

**Q325 Chairman:** Just while I have got you, could I try one further thing on you and it turns on this? We now have a regulator in this area in terms of peerages, which is the House of Lords Appointments Commission, and it is argued that the effect of that regulator means it is technically impossible to buy and sell peerages, all that you can do at most is to nominate someone to the body who decides, so in a sense a deal cannot be struck because you cannot enforce it. Does that matter at all or does the notion of offer in the law still capture what goes on?

**Mr Perry:** My response to that is that the law would still have a part to play even with a regulator because of the fact the law captures offers and valuable consideration given as an inducement either way. One of the things perhaps you received advice upon is that the 1925 Act does not require the inducement actually to be successful, and it may be that that is to ensure that standards in public life do not simply depend on whether you have been successful in getting your dignity or title but whether the process has been conducted properly and in accordance with what people would expect to be the standards in public life.

**Assistant Commissioner Yates:** Can I try and help you on that as well? One of the problems we encountered is that once it gets to HoLAC, the nomination has taken place, if you like, and then they are only looking at whatever the application looks like and make a judgment there. One of the lessons we would draw on that is in terms of the consistency and transparency of the nomination process to get to that point, because at the moment with the three major parties you have three entirely separate processes operating, either by committee, consultation or by the party leader's choice. So that is the problem from our perspective, the lack of transparency and consistency in the process which gets it to HoLAC. I have no criticism of HoLAC at all, they clearly do their job quite properly but they are actually presented with what looks like a *fait accompli* once they have the nomination. So it is the actual process beforehand which we think could do with reviewing so there is something consistent and transparent and can stand some tests.

**Q326 Chairman:** And what would that involve?

**Assistant Commissioner Yates:** You have that with the ordinary honours system, do you not, with OBEs and the like, you have a very, very structured, quite laborious process to get to that point, whereas it all felt a bit *ad hoc* in terms of how it got to HoLAC in terms of the working peers.

**Q327 Chairman:** The difference is that in the honours system the politicians have now taken themselves out of it completely, it is all done by independent bodies. Peerages are put up by party leaders, that is how the system works, so these are not comparable systems, are they?

**Assistant Commissioner Yates:** What I am saying is that the system of working peerages with party leaders nominating them, or whatever process they decide, is fraught with difficulties when you get

issues such as this because actually it is very difficult to find your way through it and see how it got there in the first place.

**Q328 Mr Prentice:** But did not the system work when the House of Lords Appointments Commission rejected the four nominees? Is that not a case of the system working?

**Assistant Commissioner Yates:** It is an example of it working, yes. But would you not prefer to have a system which was consistent across the board which HoLAC could review so they could go several steps further back, if you like, to say it is proper to get to that point?

**Q329 Jenny Willott:** Even if you have got to the nomination phase, actually by nominating someone you have still committed an offence if there has been an offer or agreement?

**Assistant Commissioner Yates:** Yes.

**Q330 Jenny Willott:** So whether or not they get the honour is irrelevant, the fact you have nominated them is what actually counts?

**Assistant Commissioner Yates:** Yes.

**Q331 Paul Rowen:** Mr Perry, what in your view—and again we are talking about generalities—constitutes evidence which might be deemed to be inadmissible when you are looking at these cases?

**Mr Perry:** Evidence is inadmissible when there is a legal rule which says it may not be relied upon by the prosecution.

**Q332 Chairman:** I do not want to lose the point you were making, Mr Yates, because you have obviously reflected on all this and thought where the process is deficient and where it could be improved, and therefore when you point to areas for improvement we get immediately interested. Because the peerage nomination now—unlike the honours system and of course there is confusion between the two but we are talking about peerages—comes from the parties and in a sense the parties can nominate who they like as long as they can get them through HoLAC, I am not sure what you think a more transparent process would be?

**Assistant Commissioner Yates:** It is how they get to that first nomination point.

**Q333 Mr Prentice:** Why should that concern you?

**Assistant Commissioner Yates:** It only concerns me if there are allegations of this nature when you are trying to fish your way back through and say, "How did they get to that point?" They are good people and they might have made a contribution to the House of Lords.

**Q334 Mr Walker:** Assistant Commissioner, what you are basically saying and I have some sympathy for it is that there seem to be a number of people getting peerages where the whole criteria for getting that peerage is the exchange of cash basically. If you were to look into their background, beyond giving cash they have done nothing really that warrants a

peerage? They are not great academics, they are not great film producers, there is nothing in their backgrounds which suggests they qualify for that peerage than the fact they have given a pile of money—

*Assistant Commissioner Yates:* And they may be perfectly good people.

**Q335 Mr Walker:** We are all very good people. You are a very good man. I do not know if you will get an honour out of this but you are a very good man! I would love a peerage as well but I do not think I am going to get one.

*Assistant Commissioner Yates:* It is the transparency of the process which has not helped. Either people say, “That was absolutely proper they went forward” or it just leaves a lingering suspicion when you have the ability to nominate like that. When you get allegations of this nature, we cannot find a way through which says, “How did it get there”. All I am saying is—it is a suggestion, take it or leave it—that some transparency and some records and detail would have been helpful.

**Jenny Willott:** We could all just copy the Liberal Democrat system of party members voting on a list.

**Chairman:** I was hoping to avoid that but was waiting for it! David, did you want to ask a question?

**Q336 David Heyes:** It is a different topic but something we perhaps should have picked up earlier when you talked about proportionality. In your earlier note to yourself proportionality was a strong thought in your mind. Was the cost of the investigation, and likely cost of it, the use of resources in the broadest sense, a factor which weighs in proportionality?

*Assistant Commissioner Yates:* It does occasionally, yes. If, for example, there is a shoplifting case and the suspect drives a red mini and you have not got a registration number and there are six million red minis, you are not going to investigate that because it is completely disproportionate.

**Q337 David Heyes:** Did you have a figure in mind at the start of this investigation of what would be proportionate given the indications you had?

*Assistant Commissioner Yates:* It was a very small team of vetted officers working very hard in order to get through various actions and lines of inquiry which we uncovered.

**Q338 David Heyes:** So how much have you spent on it?

*Assistant Commissioner Yates:* It is a matter of record what we spent in terms of the total cost, it is around £1 million but I would absolutely say that three-quarters of that is salary costs rather than actual extraneous costs.

**Q339 David Heyes:** But it is a lost opportunity to do—

*Assistant Commissioner Yates:* Yes. You say a lost opportunity but this is a criminal allegation of the most serious nature which I think we were duty bound to undertake.

**Q340 David Heyes:** Presumably when you report to the police authority you will give chapter and verse on this question of costs?

*Assistant Commissioner Yates:* Absolutely. It would be part of their statutory oversight that they would want to understand how the money was spent.

**Q341 David Heyes:** So at the end of it, was it good value for money?

*Assistant Commissioner Yates:* That is for others to judge. I think you, Chairman, described this as a disaster for the police, I take a wholly different view. I think a disaster for the police would be for me to be before you today having done a less than thorough job. I think a disaster for the police would be for me to have my operational independence compromised, so I do not think it is a disaster at all.

**Q342 Chairman:** In retrospect though, going back to March of last year, do you think the public interest might have been better served by you saying, “Actually this inquiry is a job for Parliament to get itself stuck into and not a job for policemen” in the absence of the kind of evidence we have talked about which would have provided the basis for any kind of charge?

*Assistant Commissioner Yates:* There is the law and the statute and this is a crime, and it is a crime as I described earlier at the more serious end in terms of involvement of political funding of parties and involving potentially buying a vote in the legislative chamber, so I think it is absolutely proper for the police to conduct these inquiries, absolutely proper that we should have done it thoroughly, absolutely proper that we should have provided the analysis of the evidence to the Crown Prosecution Service and for them to do their part and come to a decision.

**Q343 Chairman:** When you came to us last March and said, “If you take evidence from these people here it might possibly prejudice what we do and the investigation and any subsequent charges”, of course we listened to that and we followed your advice and did not because we thought it would prejudice your investigations, the perverse outcome is that what you have done has prejudiced our investigations because it now turns out that we are disabled from doing things we would have done at that point. Is that not a very funny outcome?

*Assistant Commissioner Yates:* It does appear to be, does it not, but we did not know then what we know now, did we? As I say, we performed our quite proper, statutory duty of undertaking what was a complex, sensitive investigation, we did it thoroughly, we did it properly and you can have confidence in the outcome.

**Q344 Paul Flynn:** You have said a number of times when you are going through the investigation that you never know what you are going to find, but does this not indicate that you were on a fishing expedition, waiting for the Crown Jewels to turn up?

*Assistant Commissioner Yates:* Absolutely not, absolutely not. We followed lines of inquiry, we saw witnesses, we followed lines of inquiry and some very interesting lines of inquiry developed, as we discussed.

**Q345 Paul Flynn:** I think we all understand the difficulties both of you are under, have you felt at any point that either of you were under political pressure?

*Miss Dowd:* No.

*Assistant Commissioner Yates:* On my left I hear no. From here, of course there was political pressure, but did it make any difference? It would have been inhuman of me not to have felt pressure around the speculation and the amount of commentary and the pressure of this Committee—most unusual—of course there was pressure, but I have assured you before, and I assure you again, it made absolutely no difference to the operational decision-making in this inquiry.

**Q346 Paul Flynn:** You said a part of the pressure was the line taken by Sir Ken MacDonal, the Director of Public Prosecutions who ruled himself out of any involvement in any decision and any future decision which might be taken because he had an involvement—a very tenuous involvement—with the wife of the witness, yet the Attorney General refused to rule himself out. Was that something that you would be concerned about and something which should be addressed in future investigations?

*Assistant Commissioner Yates:* I think that is a matter for the DPP and the Attorney to consider, I do not think it is one for me to comment on.

**Q347 Mr Walker:** Assistant Commissioner, this whole year of your life must have been like chewing a very large and angry mouthful of wasps, I imagine it was possibly one of the worst year and a halves you have ever had and I take it absolutely at face value that you are a committed public servant. I have two very brief questions. When you interviewed the Prime Minister, I believe he was interviewed as a witness and not under caution, why was he interviewed as a witness whereas if peerages were being handed out it would have been him who was signing them off, so then technically he could have been interviewed under caution?

*Assistant Commissioner Yates:* You are taking me into the evidence which I do not think is appropriate.

**Q348 Mr Walker:** Secondly, before you close your eyes at night to go to sleep, do you think your involvement in this case has advanced your career, hindered your career or had absolutely no bearing on your career? I hope it has not hindered your career. A personal question to you, and you may not want to answer it, what do you feel?

*Assistant Commissioner Yates:* I think that is for others to judge actually.

**Q349 Mr Prentice:** On the same kind of theme, given the experience you have had over the past 16, 17 months, does it make you more likely or less likely

to follow up a complaint which may be made in future? Let us say Tony Blair is going to bring forward his resignation honours list—

*Assistant Commissioner Yates:* I think it probably makes me less likely, but I do not think it would make the police less likely to respond to well-founded allegations which are made.

**Q350 Mr Prentice:** This is a question for all three of you, I suppose. How would you define a commercial loan?

*Assistant Commissioner Yates:* Good point. I think that is a very important point actually, the absence of a definition. As we have said earlier, the fact you lend money should be no debaring from receiving an honour, but people want to know exactly how they should lend it and under what conditions. At the moment, there is no definition of a commercial loan, which I know of, the Electoral Commission cannot provide me with one and I think it is a big gap in the law.

**Q351 Mr Prentice:** Does anyone else want to comment?

*Mr Perry:* I personally would think whether a loan is commercial or not is going to be fact-sensitive and there are going to be a number of considerations to look at. If the parties act in accordance with commonly accepted commercial practice and in good faith with a profitable return to the lender, I would have thought that would be something which would probably be commercial.

*Mr Prentice:* Yes.

**Q352 Paul Rowen:** Would that be standard base rate? Have you got a figure? Could you compare it with other commercial loans?

*Mr Perry:* I think it is going to be dependent on the particular circumstances of any case. Take a family, for example, who may enter into a family arrangement but it would nevertheless be commercial even though it was not—

**Q353 Paul Rowen:** With respect, that is not a commercial loan, that is a family loan. A commercial loan is if I go to a HBOS Bank. We had the Chairman of the bank here the other week and he said in no way could a loan at, say, 2% above base rate be deemed a commercial loan. What would be your view?

*Mr Perry:* That is why I think it is fact-sensitive and it is also something upon which reasonable people may differ as to whether a particular loan is commercial.

**Q354 Chairman:** I think what we are asking you is, why in this particular area did you fail to engage the law? Because again in the CPS retrospective statement you repeat the fact that “The relevant offence under the 2000 Act is committed by a failure to report the receipt of a loan made other than on commercial terms.” That seems fairly straightforward. When we had Lord Stevenson, the Chairman of HoLAC in front of us a week or so ago, he said he was shocked to discover what was going

on in this area and he said to me, "You try coming to my bank and getting an unsecured loan with interest rolled up at one or two points over base and I would have to disappoint you." If the chairman of HBOS, Lord Stevenson, can work out pretty quickly what is a commercial loan and what is not, and if the law is pretty straightforward, why could you not find a way in there?

**Miss Dowd:** I think that is slightly unfair in that the Electoral Commission have not been in a position to define what a commercial loan might look like. I think Mr Perry is right to say it is fact-sensitive and there might well be a number of factors you take into consideration. If you look further on in the explanatory statement what we have said is we cannot exclude the possibility that they were commercial loans, so there were factors we had to take into consideration and that is the conclusion we made in relation to them.

**Q355 Mr Prentice:** What did the accountants and the auditors say? Because in paragraph 30 which you have just referred us to, you say, "The loans were made following receipt of legal advice."

**Miss Dowd:** That is right.

**Q356 Mr Prentice:** The accountants and number-crunchers, auditors, know about these things.

**Miss Dowd:** I know, but you know what I am going to say, don't you?

**Q357 Mr Prentice:** No.

**Miss Dowd:** It is an area I cannot stray into, I am afraid.

**Paul Flynn:** It is a vast area; it is a sub-continent of an area.

**Q358 Kelvin Hopkins:** It seems to me rather odd that the Electoral Commission should be put in this position of having to make a definition. Given the Electoral Commission is to an extent in the political sphere and has been under a certain amount of pressure in recent years, one can understand that there might be a certain nervousness about making a definition, given where that could lead to. So the whole thing could have foundered simply because someone was nervous and they did not want to make a definition because they would then be right in the firing line.

**Assistant Commissioner Yates:** I think there is an absence of guidance as well. Without a definition there should be some guidance to help people.

**Q359 Chairman:** You have had the great privilege, Mr Yates, denied to most of us, in fact denied to almost everybody, of spending a year or so in the bowels of the political system. I think it is a system which is on the whole pretty clean but there are some murky corners of it, one of which is the whole business of honours and peerages and that is where you have been. We have discovered that because of these issues about evidential tests and so on, no charges were able to be brought, what I want to ask you though is, have you discovered there is a trade in peerages?

**Assistant Commissioner Yates:** I think, Chairman, I have done my job, I have followed the evidence, I have provided that evidence to the CPS and they have made their decision and I do not think I should comment further than that.

**Chairman:** You are denying the nation the opportunity to learn something about its political system.

**Mr Walker:** We will have to wait for the book!

**Q360 Kelvin Hopkins:** Can I ask one question on a separate issue? It has been suggested to me that right at the beginning it all started with apparently, allegedly, secret loans which Jack Dromey, Treasurer of the Labour Party, discovered. He raised the alarm because he did not want to be implicated in something which may or may not have been legal, and clearly he did absolutely the right thing. But at that point, as and when these allegedly secret loans were being made, bankers and accountants would have been involved. It has been suggested to me that had this been a commercial company in business the accountants and bankers and people who had been involved in the transactions would have been in some serious trouble if they had not behaved appropriately. I am not a lawyer and I am not an accountant, but surely there are laws governing accountants and the way they behave, governing the making of transactions of large sums of money. They were so large it was not a question of unmarked, randomly numbered fivers in your back pocket, even suitcases would not have carried these sort of sums, so clearly money was transacted? It has been suggested there was some pretty dodgy accountancy involved. Is that something which could be investigated further and are accountants to some extent culpable?

**Assistant Commissioner Yates:** A financial audit and a financial investigation was part and parcel of the inquiries we did, part and parcel of the evidence we provided to the CPS and counsel, and for them to make a judgment on and they have made that judgment.

**Q361 Chairman:** In terms of lessons to be learned, so we do not miss the opportunity to ask you, is there anything else you would like to say to us?

**Assistant Commissioner Yates:** We have covered the process issue and HoLAC. On the Electoral Commission's role, I do support Hayden Phillips' call about widening its remit from encouraging people to a much stronger regulatory role, which I think he has already advanced as a recommendation in that area. I think we have covered clarity around the law, clarity around the process and the Electoral Commission role, which would be the three big issues for us.

**Q362 Chairman:** You have been as open as I think you can be and I think we have had on the whole a positive relationship throughout this difficult period.

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23 October 2007 Assistant Commissioner John Yates, Ms Carmen Dowd and Mr David Perry QC

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*Assistant Commissioner Yates:* Yes.

**Q363 Chairman:** We are very grateful to you for keeping us in touch along the way and for the way in which you have been willing to come back

afterwards to talk to us and I think it is for us to then reflect on some of the wider lessons from this. We have had a very good generic discussion and I hope we shall be able to use that to produce some useful lessons. Thank you very much indeed.

*Assistant Commissioner Yates:* Thank you.

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Thursday 25 October 2007

Members present

Dr Tony Wright, in the Chair

Paul Flynn  
David Heyes  
Kelvin Hopkins  
Julie Morgan

Mr Gordon Prentice  
Mr Charles Walker  
Jenny Willott

*Witnesses:* **Professor Justin Fisher**, School of Social Sciences, Brunel University, **Dr Michael Pinto-Duschinsky**, Senior Research Fellow in Politics, Brunel University, and **Dr Meg Russell**, Constitution Unit, University College London, gave evidence.

**Q364 Chairman:** Welcome to our witnesses this morning. We are delighted to have Professor Fisher of Brunel, Dr Michael Pinto-Duschinsky, also from Brunel, and Dr Meg Russell of the Constitution Unit at UCL. You have come to help us with learning the lessons of what has been going on in terms of “cash for honours” and propriety issues surrounding the honours system which we have been inquiring into. Because you are all people who know about our political system in a variety of ways and we are interested in issues of standards, corruption, party financing and the House of Lords, we thought that, between you, you would have some things which you may be able to help us with. Firstly, do any or all of you want to make a short opening statement?

**Dr Pinto-Duschinsky:** Thank you for inviting me to give evidence to this important inquiry. Following your last session on Tuesday, I will be extending my memorandum of evidence to cover some broader matters arising from your Committee’s work, but I will do that after this session, but I would like to give four initial propositions.<sup>1</sup> First, the new system of scrutinising nominations for peerages has proved successful, although your Committee’s interim report gave useful proposals for some detailed changes. Second, to a considerable extent, the “loans for lordships” or “cash for peerages” affairs resulted from failures of electoral administration. It is clear that the Electoral Commission deliberately avoided giving guidance in the run-up to the 2005 election about the meaning of political loans on other than commercial terms, and I think there are important lessons to be learned from this. Third, recent problems about party funding have arisen because of the parties’ reliance on a small number or a relatively small number of large donors. Tightening the rules on nominations for peerages will not deal by itself with this problem, nor will a back-room deal between the parties to award themselves more public money and nor will a cap on donations since such a cap will fairly easily be avoided. Fourth and finally, the system of awarding peerages has its problems and there is no excuse for any shortcomings of the current system, but foreign experience shows that alternative systems of reward have more malign consequences. We must recognise that the root

problem is a decline in party membership and activity and unfortunately there is no easy legislative fix for this.

**Q365 Chairman:** Thank you. All of that we shall want to return to in just a moment. Would either of you two like to say anything?

**Dr Russell:** Well, unlike Dr Pinto-Duschinsky, I have not provided a written memorandum and I also have not prepared any significant kind of opening statement, but just to let you know what I know, as it were, I have been for the last nine years a senior research fellow at the Constitution Unit at University College London. I am not an expert at all in party funding, unlike my two colleagues here, but I have worked over the last nine years on issues around the House of Lords and its reform. During that time, I have had hands-on experience when I was seconded for two years as Special Adviser to the Leader of the House of Commons, Robin Cook, when he was grappling with this problem, so, aside from studying it academically, I have done that. I have written quite a lot on reform options for the House of Lords and I was an adviser to the Royal Commission when it was working and most recently I have been studying the Chamber as it is now. I am interested in the effects of the reforms which have already happened, so I have been looking at voting patterns in there and the extent to which it is having an impact on policy and how reform has changed the culture of the House, and I have conducted surveys of Members and interviewed a lot of Members of the House of Lords. So I think what I bring are some ideas about possible reform options for the appointments process and also I do have some data on peers’ views on some of the points that you are looking at in this inquiry.

**Q366 Chairman:** That is why we have invited you, for all those reasons. Professor Fisher?

**Professor Fisher:** I have a number of points that I would like to make, but I will begin with four. Firstly, I think what the “cash for peerages” episode has demonstrated is that British politics is not as corrupt as is commonly thought. Secondly, I feel that the media’s role in the entire episode was generally corrosive and often irresponsible. Thirdly, I think that the Electoral Commission has been unfairly criticised over the episode, particularly by

<sup>1</sup> Ev 64

the CSPL.<sup>2</sup> Finally, I think the Committee should bear in mind that good law and regulation is not necessarily law that results in prosecutions, but regulation and law which sets the boundaries for political life.

**Q367 Chairman:** Well, that is very interesting, not least because it opens up areas of potential disagreement. I would like to start with one rather general point and you mentioned it in your remarks just now, Professor Fisher. One of the undercurrents of this whole recent controversy has turned on the extent to which our government arrangements were or were not corrupt and where we stood on any sort of comparative analysis of these things. I sometimes got criticised for saying that I thought on the whole we were not corrupt, but that there were areas that needed attention. I notice in what Dr Pinto-Duschinsky says at one point that there is complacency around on this front. You are saying rather what I was saying, which is that it is not a corrupt system, but that there are problems that need attention. As political scientists, asked to give a dispassionate assessment overall of how our system rates in terms of cleanliness and corruption, where do we sit and where are the areas that require attention?

**Professor Fisher:** As a political scientist, I would have to say there are always measurement issues here, but insofar as one can measure perceptions of corruption which are of course in some ways as important as actuality and it is important that we consider the public and their confidence in public life, if you look at comparative evidence about perceptions of corruption, we are mid-table. We fall below the Scandinavian countries, but we come above many of our European partners, so we perform comparatively well.

**Q368 Chairman:** We had trouble with this when we did a report recently on standards that, although there was data on perceptions, that is soft data, and you have just told us in your opening remarks how corrosive the media is. If you get people being told all the time that the system is corrupt, that will feed through into perceptions, so what I am after really is some hard, analytical assessment of how corrupt we are.

**Professor Fisher:** Well, in terms of party funding and indeed the aspect of appointments to the House of Lords, it is a point worth making that there has only been one prosecution since 1925. That may be because the law is not working, it may be due to complacency, but in terms of hard, empirical evidence, the evidence for seeking selective benefits by virtue of making contributions to a political party is remarkably thin. If you were saying, "Give me some evidence of corruption that occurs around party finance", I would have to say that you could look at the 1920s and then, beyond that, it is very, very difficult to demonstrate corruption on a scale that we see in other European countries.

**Q369 Chairman:** Is that the area then that you would primarily focus on if we were looking for areas that needed attention in a system which, overall, is not corrupt?

**Professor Fisher:** No, no, it would examine a number of the other aspects in which party finance often falls into the areas of corruption, such as the award of contracts, legislation that favours donors over non-donors and so on and so forth. The evidence is simply not there. Now, one can make inference and it is something that I find very difficult to deal with—the idea that somebody who makes a contribution inevitably is seeking to make some personal gain, and I think that is quite the wrong way to look at issues of party finance or indeed appointments to the House of Lords. It is perfectly legitimate for someone to make a contribution to a party simply on the grounds that they share the beliefs of that party.

**Q370 Chairman:** Well, the police investigation ran into problems essentially between a correlation and a crime, but this is what we want you to help us with. If I can go to the other end of the table, in reading your memorandum to us, I think that you seem to be saying something rather different, that there is more complacency than there should be on this front.

**Dr Pinto-Duschinsky:** I think that British public life has been complacent for many years, that it should be remembered that when the press have brought up various cases, many of those cases have turned out to be quite justified. Going back quite a long way, not to do with party funding itself, if one looked at a local government committee in the late 1960s, there was a member of that committee who came out with the view that corruption did not exist in British public life virtually and a few years later he was in jail as a major player in the *Poulson* case. Before the *Poulson* case came up about corruption in local government, it was very difficult to get any credibility about that and we know now that local government contracts were rife with corruption at that time. If we look at the political funding area, it is certainly true that we cannot look inside the box recently because we just do not have the evidence and I think one should be very careful in that in the absence of that evidence, and in that respect I agree with Justin, that correlation and causation are different things. You must remember that in, say, the 1930s when the party leaders met about how to deal with Maundy Gregory, and this appears in David Marquand's biography of Ramsay MacDonald, it was under discussion that all the political parties had been involved in it and that, if it became public, there would be a scandal which would be like a sewer which would poison public life. The three parties' leaders agreed with each other that an illegal knighthood would be given to a donor who would give a slush fund which would keep Maundy Gregory silent for the rest of his life, so here you find that all of the party leaders were complicit in a cover-up, and British political culture is actually very good at cover-up and often a cross-party cover-up. I think that whenever there has been too much complacency in British public life, it has come back to haunt us, so I do believe that there is much more corruption in

<sup>2</sup> Committee on Standards in Public Life

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British public life in general than we often give credit for. As a final point, I should report, and I hope you will not ask me for names, that I was asked to see a government minister some years ago and the opinion was put that that minister knew of only one person who had given a large donation who had not asked for some favour in return, and that is the reality of public life, so I do not think we should be too naïve on this. On the other hand, this does not mean that we set up people to prosecute them and potentially send them to prison or destroy their reputation without very good evidence, so there I would agree with Justin.

**Q371 Chairman:** We know about the historical record. We also know though that we have regulated in many of the areas that you have pointed attention to just now, much more regulation and much more transparency altogether. You do comparative work as well, so on this issue of where we sit, on any objective test, do we sit mid-table or do we sit at one end? Where do we sit, do you think?

**Dr Pinto-Duschinsky:** Well, I have been studying political corruption in one way or another for many years and the recourse to perceptions, it has been done by an organisation called Transparency International and that is precisely because they have no idea of the objective facts, and cannot know about them, so you have a survey of perceptions which actually is a deeply flawed survey methodologically and, incidentally, Transparency International refuses to be transparent about the sources it uses.

**Q372 Chairman:** That is why I was asking you.

**Dr Pinto-Duschinsky:** There is not an objective test of this, but what we do know is that British public life time and again has come to sting us if we are too complacent.

**Q373 Chairman:** The warning against complacency is clearly a good one.

**Dr Pinto-Duschinsky:** The area where I think there has been special complacency has been in the area of electoral administration.

**Q374 Chairman:** Yes, your paper is very helpful on this. Can I just bring Meg in in case she wants to say anything on this.

**Dr Russell:** The only thing, listening to this conversation, that I would wish to comment on, because I am not an expert in corruption and all of that, is that I would agree with Justin, that, although it is difficult to find any hard evidence for this, I believe that probably most people who give money to political parties give it because they want to further the ends of those political parties rather than because they want to get something in return. It is very difficult to prove that, but certainly a very great deal of people do give money for quite proper reasons. At one level, I think it would be extremely surprising if there were not a lot of major donors in the House of Lords because the House of Lords is a chamber which is principally made up of people who have reached high recognition in their fields, be it in

business, in science, in the law, *et cetera*, and many of those people, by their nature, are well-paid individuals. In a funny sense, if you have someone who is at the top of their field who is being considered for membership of the House of Lords, you have to be a little bit suspicious as a party if they have not given a significant amount of money to the party because when you are a wealthy individual, it is one of the only ways that you can show your commitment, particularly when you are extremely busy. The House of Commons is full of donors to political parties and we do not tend to think that that is corrupt. Also I do think there is a problem here about perceptions and taking perceptions as a proxy for reality. Having studied the House of Lords, one of the things that we have done is study press coverage of the House of Lords since the 1999 reform and what that showed was that press coverage of the House of Lords has become gradually more positive. Our study ran from 1999 to, I think, 2005. Obviously people get their perceptions to a large extent from the media and the media was presenting the House of Lords increasingly positively following the removal of the hereditary peers, but then of course we have had just an avalanche of press coverage on this issue which I have not tested, but which I am sure has probably damaged people's perceptions of propriety around the House of Lords, done a disservice to the House of Lords and done a disservice to British politics generally. However, this has come to light in large part because actually the system is working, rather than because the system is not working, because it is the House of Lords Appointments Commission that brought this to our attention. So there is a great conundrum there.

**Q375 Chairman:** It seems to be said that, on the one hand, we have got regulatory success which is in terms of the House of Lords Appointments Commission, that it did its job and it turned down names that it thought were not credible, applying the test that it applied, and there is some difference there, by the way, from the Crown Prosecution Service who say that these people were credible, but that is a separate issue. The Electoral Commission, certainly in the evidence that Dr Pinto-Duschinsky has given us, is cited as an example of regulatory failure which produced the effect that it was not possible, it was said to us on Tuesday, to take action under the 2000 Act on loans. Is there agreement here, that there was regulatory success on one side and regulatory failure on the other?

**Professor Fisher:** No.

**Q376 Chairman:** Can you say why?

**Professor Fisher:** I think there are two reasons here. The difficulty the Electoral Commission had in respect of the declaration of loans is that there is no legal definition of what constitutes a commercial loan and, therefore, regardless of legal advice that may have been provided to parties, it was always open to challenge in court. That, therefore, is a failing of the legislation, not a failing of the regulator. That has been tidied up with the Electoral

Administration Act. Were that not the case, it would have been essential for a legal definition of “commercial” to be included in an amendment to the legislation. That being so, it would be unreasonable to ask a regulator to advise on something where there is no legal agreement as to the definition, so I think the Electoral Commission was hampered not by its own ineffectiveness—and I do not think it was ineffective—but simply because it was an area of law that was untested. In relation to that, I think what this episode throws up is uncertainty about the point at which the police should be involved in any breach of the Political Parties, Elections and Referendums Act. Initially, the complaint, as I understand it, was made about breaches of the 1925 Act and in the case of a possible breach of PPERA,<sup>3</sup> the Electoral Commission were unable to mount their own investigation and the police simply took over, so I think there are issues both in terms of the difficulties in the wording of the legislation and the procedure—the point at which the police become involved—as opposed to the Electoral Commission, in regulating political parties.

**Q377 Chairman:** The argument is though that the Electoral Commission should simply have pronounced on what a commercial loan was.

**Professor Fisher:** They were not able to. That pronouncement would have had no legal standing. There is no legal definition of what constitutes a commercial loan and, therefore, whatever pronouncement they made could have been open to legal challenge.

**Dr Pinto-Duschinsky:** Naturally, if you have a law that is untested, it is a matter of definition that it cannot be defined until it is tested in a court of law, so to that extent I completely agree. However, if you have a major new Act which sets up rules for our democratic life, it would be a shame, a sorry state of affairs if it would need a court case against at least one of the parties before we could have any guidance as to what the law was, and in many countries electoral commissions do give advisory opinions which can indeed be challenged afterwards in a court of law, but which nevertheless help political parties. In fact, when the Chief Executive of the Electoral Commission was questioned about this by the Committee on Standards in Public Life, he said himself that he favoured the giving of such advisory opinions, despite the fact that they could then be challenged in the courts later on, so the Electoral Commission itself now agrees that it is desirable to give advisory opinions, as are given in the United States, as are given in Canada, *et cetera*. The other point is that the Electoral Commission said that it had given what it called “comprehensive advice”, so it did not take the point in defence of its behaviour to say, “We couldn’t give advice because it’s not our role”, but they actually said that they had given comprehensive guidance, which were the words used by the Chief Executive. They said that they were sure that the parties knew what the laws meant, so they

did not need to give advice on that ground. When it turns out later on, when I asked the Electoral Commission and they acknowledged in answer to a freedom of information request, that they had not given advice, they said that during the period, the Commission and its Chairman did not issue any specific advice when they had previously said to the Committee on Standards that they had given comprehensive guidance. Now, you cannot have it both ways.

**Chairman:** Well, a clear thing is that the difficulty in this area meant that one arm of the police inquiry fell away pretty rapidly. I want to bring colleagues in now to explore these and other issues.

**Q378 Kelvin Hopkins:** If I may just follow this particular point a little further, two days ago we interviewed Assistant Commissioner Yates and Carmen Dowd from the Crown Prosecution Service and I asked Carmen Dowd about this very point. I asked whether it was really crucial that the Electoral Commission had failed to give a definition of a commercial loan which was a vital factor in the CPS deciding not to proceed towards prosecutions, and she vigorously agreed with me. I then also suggested that one of the reasons perhaps why the Electoral Commission was loath to do this was because they too could see how crucial this particular definition would be and that they might be in the firing line with government for having given such a definition. Indeed, the Electoral Commission—and I would like to know Dr Pinto-Duschinsky’s view on this—has been in the firing line with the Government for some time because the Government had disagreements—particularly on such things as individual voter registration, which the Government did not like because they thought it might damage their electoral standing, and on postal voting. There have been big differences on these and other issues. The Electoral Commission has to an extent been intimidated by central government and it could see that this might be a red rag to the Government if they proceeded in this way. They might be really in the firing line. Do you think all that is just in my imagination? Carmen Dowd certainly agreed with my view. What would your view be?

**Dr Pinto-Duschinsky:** Well, I am in a bit of difficulty here because I have had talks over the years that have been off-the-record talks. I agree with your interpretation and I think there is direct evidence that the Electoral Commission felt that, as a new body, it did not want to offend anybody in the early years, that it had to build up its organisation, it had to build up its budget and, therefore, it was unwise to stick its neck out on virtually anything and it certainly did stick its neck out, to its credit, on the question of registration and individual registration, but in general it was very cautious and I think there is not very much doubt on that. There was a specific point where this came up because on 21 April 2005, about two weeks before the election, it was reported in *The Times* that the Conservatives had taken out £16 million in loans. It was also reported from a Conservative Party treasurer that they had a rate below the rate that a commercial bank would have

<sup>3</sup> Political Parties, Elections and Referendums Act 2000

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asked for. Subsequent to that, the Conservative Party approached the Electoral Commission to ask if their interpretation of the law was correct and they met with a refusal to give any guidance. Now, having asked for, and been refused, guidance by the Electoral Commission and having asked its lawyers, as indeed Labour had, for their guidance and been told that they were acting within the law as the lawyers saw it, it would have been, I think, iniquitous if the parties were then hauled before the courts with criminal penalties since they had done what they responsibly should have done to check what the law was.

**Q379 Kelvin Hopkins:** It is interesting that the Electoral Commission, even though it was cautious, still became very unpopular with the Government, although not quite as unpopular as its fairly closely associated body, the Committee on Standards in Public Life, which undertook an inquiry into the workings of the Electoral Commission and to which I made a submission myself. It brings me on to my second point and that is about government in Britain and the essence of the Blair Government in particular. Even before that there was a very powerful, overweening Executive quite different from many other parts of the world. The Blair regime in particular used patronage at every level to try to ensure that its power, the power of Downing Street, held sway on all occasions. My question is really to Meg Russell because you worked with Robin Cook for some time and Robin made some very interesting observations about this and made some changes. I do not know whether that was with your advice. On the way the leaders of parties are elected, for example, Robin made the point shortly before he died that what had changed was that the Leader of our Party (I am a Labour Member of Parliament) was now elected by the mass membership in an electoral college rather than solely by MPs. The Leader of the Party therefore had to pay less attention to MPs because he was not elected by them and he or she did not have to balance political forces within the Government so the Cabinet has changed. Labour Cabinets used to have both Benns and Jenkins, a wide range of people, but now Cabinet members are ciphers in the image of the Leader. Do you think those things are significant?

**Dr Russell:** Those are interesting points but I think you might be taking us outside the scope of the inquiry!

**Q380 Chairman:** It is my job to say that!

**Dr Pinto-Duschinsky:** If I may make one response, I do not think that I would want to get into overall judgments on the Blair era or the Blair system of government because that would go beyond my knowledge and capacity. I do feel on the very specific issue of the loans that the situation having been as it was, namely that the parties had taken legal advice and that there had been a refusal by the Electoral Commission to give other advice, that it was unfortunate that prominent members of both parties and their offices were left during the police investigations in a period of a lot of tension where

the parties could not go ahead with their fundraising and other activities because of the suspicions about the non-disclosure aspect. I think that aspect should have been ruled out much earlier than it was in the absence of a satisfactory definition of “commercial loan”, so to that extent I would have sympathy with both of the political parties. If, however, there was a clandestine trade in peerages, that is quite a different matter and I would not like to comment on that because I do not know.

**Q381 Kelvin Hopkins:** Earlier, there was talk about corruption in government. Although corruption may be at a lower level than people suspect, could we not say that some of the things that are done within the law by government, by central government, are maybe not legally corrupt, but are actually undesirable, that is if we want to have a pluralistic system of government with a degree of push and pull between different forces within the sphere of government, instead of having what we now have, which is extreme power at the centre? Should we not actually try to change the law and change our Constitution to an extent to make it more plural in the way that it operates?

**Professor Fisher:** Well, it is almost certainly the case that there are some undesirable results, but the worst response to that would be to create more regulation and legislation because you end up with the dilemma of trust versus rules. If you create more and more rules, it creates incentives for actors to seek loopholes. It is far better, and British politics has been served far better, by relying principally on trust and applying rules where appropriate, and that applies to all aspects of public life. If we are saying, “Is the loans issue desirable? Has it brought credit to the British political system?” Absolutely not, it was against the spirit of the law. Was it nevertheless legal? Absolutely, and I think it would be a very bad road to go along to respond to this episode by a raft of unwise and ill-thought-out legislation, as is currently being proposed by both political parties.

**Q382 Kelvin Hopkins:** Well, one very simple way forward might be to take away all the Prime Minister’s powers of nomination for honours, for example, and to have much stricter rules about the links between business and government.

**Professor Fisher:** I think I would defer to Dr Russell on this.

**Dr Russell:** Yes, and coming back to the question about the Appointments Commission and whether it did its job, I think all the indications are that it did, but its job is rather narrow. What the Appointments Commission has said is that being a major donor to a political party is not a bar to getting a peerage, but neither is it a qualification for getting a peerage. The qualifications are a separate matter; you will be judged on your merits and then, if you have made a donation, so long as it is a clean donation and above board, that is not a problem. I do agree with the tone of what you are saying, that one of the things which might improve the situation would be if the Prime Minister’s patronage powers were further reduced and the Appointments Commission was actually

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given more power because it does seem to have been fairly successful. It does have fairly limited powers; it only selects the independent Members of the House and it has no real discretion, beyond the vetting for propriety, over the choice of party-political members. It is clear that the Prime Minister, in creating the Appointments Commission, gave up significant patronage power. He gave up patronage power largely over the appointment of independent Members of the House of Lords, but he retains three very important patronage powers. One is to decide how many Members are put in the House and when; the second is to decide what the balance between the parties of those Members are; and the third is to decide, on the Labour side, who the nominees for Labour should be. I think there is a case to look at greater Appointments Commission involvement in all of those three things. I do not see that it is defensible really for the Prime Minister of the country to be deciding how many people are appointed to the Legislature and when. I do not see that it is defensible for the Prime Minister to be deciding what the balance between the parties is and in fact I think you could quite easily devise a formula for that, if not indeed for the first one as well, so I would give both of those powers to the Appointments Commission, as has been suggested by various groups over the years making proposals on Lords' reform. I also think that we could look at giving the Appointments Commission greater power in the third area, which is greater discretion over who the party appointees are. Indeed, this Committee in 2001, when it issued a report on House of Lords' reform, suggested that the parties should put up long lists of members from whom the Appointments Commission should be able to choose who was appointed. That was not going as far as the Royal Commission which had suggested that the Appointments Commission should have complete control over who the party nominees were, which I think is rather unrealistic. I think the parties need to have some control over who their members are in Parliament, but I certainly think that the Appointments Commission could be given more discretion which would help to avoid some of these difficulties and it would also help it to carry out the duty which it has been given by the Prime Minister to ensure that there is diversity in the House: diversity of expertise, diversity in terms of gender and so on. It is very hamstrung at the moment when all it can do is control who the independent members are and it has to take the names of the party members from the parties.

**Q383 Jenny Willott:** On that particular point, in the session with the police and the CPS earlier this week, John Yates suggested that something that would help was that there should be more transparency in the way that the political parties choose who their nominees are. He did not make any suggestions about how that could be, but actually that there would be a transparent process so that the Appointments Commission could identify better

what the criteria were for nominating that individual. Do you think that would be enough?

**Dr Russell:** It is interesting to hear a member of the police making that recommendation.

**Q384 Jenny Willott:** I thought so.

**Dr Russell:** I think most political scientists and politicians might not dare to make that recommendation themselves because the way the parties go about their business is generally seen as an internal matter and they are largely seen as voluntary organisations. But it is interesting that two of the political parties do already have a pretty transparent process. The Green Party had a ballot of all its members to select who its nominee for the House of Lords should be, although that person has not yet been appointed, but it was rumoured that they would be, that they were due a seat and they went to the trouble of having an internal election. The Liberal Democrats have certainly an element of democracy, although their process is a bit more complex. Ultimately, though, this is a matter for the parties and the parties must defend the way that they choose their members. I am not sure it is a matter for regulation.

**Q385 Jenny Willott:** No, but we are looking at recommendations in general. It does not quite come to, I understand, the HoLAC's recommendation that nominations by political parties should be put forward almost with a CV of why they are a credible nominee, obviously it does not go as far as that, but if there was an element of transparency, would it—

**Dr Russell:** The Wakeham Commission effectively recommended, if I remember correctly, that the only route into the House of Lords should be via an application to the Appointments Commission, so, if you are a member of a political party and you want to sit in the House of Lords, you send your CV to the Appointments Commission and they will choose between you and the other members of your party, so the party bureaucracy is cut out of it altogether and I think that is rather unrealistic. I think we could move to a situation between that and what we have now where the parties put up lists of names from which the Appointments Commission can choose so that there are two levels of vetting, if you like, where the party vets the people and then the Appointments Commission vets the people put forward by the parties. I think there is room for more transparency in the parties, but a lot of this is focused on the Labour Party and, for example, the names which are put up by the Leader of the Labour Party are not approved by the National Executive Committee of the Party. That would be a small element of democracy introduced which might make it appear a little more transparent, but, as I say, I think that is a matter for the parties themselves.

**Q386 Mr Prentice:** Are you surprised that Commons' Members who retire in the immediate run-up to a general election very often find themselves in the House of Lords?

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**Dr Russell:** No.

**Q387 Mr Prentice:** You are not? They are selling the seat, that is what I am saying. They are selling the Commons' seat because the constituency party does not have time to look for a successor candidate, but a candidate is imposed by the centre.

**Dr Russell:** Well, I think there are all sorts of different cases of former MPs getting into the House of Lords. There are a lot of extremely distinguished former Members of this House who find themselves in the other House, not least people who have been in the Cabinet, but also chairs of select committees from the past, for example. There is nothing per se wrong with Members of this House finding themselves in that House after they retire.

**Q388 Mr Prentice:** That is not the point I am making. The point is that people tell their constituency parties that they are going to stand for election and serve in the successor Parliament and then decide in the immediate run-up to a general election that they are not going to do that. They invent an illness or something like that and a few months later they find themselves in the House of Lords. Now, I am not going to name names, but there are lots of examples where this has happened and I am inviting you to say that this is a corrupt practice with a small "c".

**Dr Russell:** I am not going to say that this is a corrupt practice. I will not be caught in that trap, but I would say that the kind of system which I am recommending would avoid any such corruption, should it exist, because it would no longer be in the gift of the party leaders to promise people a seat in the House of Lords. If they met the criteria, the party leaders could put Joe Bloggs MP forward to the Appointments Commission and say, "I would like this person to have a seat", the Appointments Commission would look at their qualifications, look at the other names in front of them and choose whether they were the best person for the seat, so I think that problem, if it exists, would be dealt with.

**Q389 Julie Morgan:** You have more or less answered my main question which was whether you think there is any scope for political patronage and I think you are saying that there is a bit of scope for political patronage. Would that be true?

**Dr Russell:** Well, I think there are bigger questions about whether you want an elected House or an appointed House and so on, but, if you have an appointed House or if you have an appointed element in the House which includes Members who represent political parties, then I do not think it is realistic to shut political parties out of choosing who those people are completely.

**Q390 Julie Morgan:** I was interested in your very commonsense comments, I thought, at the beginning, saying that it is not surprising that there are major donors in the House of Lords and that it is not surprising that there are probably major

donors in the Commons. I wondered if you could tell us a bit about the survey you have done of peers and what were the sorts of questions? Were you asking them about these sorts of issues and what was their response?

**Dr Russell:** We did not ask them a great deal about these sorts of issues, they were not the main focus of our survey, but when I looked back through the survey, I realised that there are a few questions which would probably interest you. We asked a small number of questions about future reform and what kinds of future reform they would support, for example. We know from the way they vote what their views are on election and our results obviously reflect that, but, for example, we asked them whether the Appointments Commission should be made statutory and 91% of peers believe that the Appointments Commission should be made statutory, so there is overwhelming support for that. We asked whether they thought it was doing a good job at picking independent Members and they were a bit more ambivalent about that: 44% felt it was doing a good job, but 68% amongst the cross-benchers, who were the ones that they are actually picking. There is a degree of ambivalence about the cross-benchers which I think is reflected in the responses coming from across the House. We asked whether, if any appointments continue, should party peers be chosen by the Commission rather than party leaders, and there was also ambivalence about that. It received majority support from Labour and the Liberal Democrats, but not from the Conservatives. We also asked whether the peerage link should be broken, and I think that could be part of the solution here because, if what people want is an honour, if there is a trade in honours, and I am not commenting on whether there is, to me that is a great deal less problematic if that honour does not win you a seat in the Legislature, and it has consistently been suggested by reform groups that the peerage link should be broken. There is ambivalence again about that, 44% across the House, but with a majority amongst Labour and Liberal Democrat Members, believing that the peerage link should be broken. Another question which we asked, and I regret that I have not brought the actual figures, but we asked Members of the House of Lords what they thought was important to the legitimacy of the House and we offered them a range of options which they could rank as important, very important, *et cetera*, things like there being a fair party balance in the Chamber, we included whether there were elected Members, the quality of the scrutiny process in there, and we also asked about trust in the appointments process as one of those options. Trust in the appointments process was the thing that they thought was most important for the legitimacy of the House of Lords, and I can send you those figures if you want. This comes back to the perception point. I think Members in the other House are very aware that there is a problem for them, there is a problem for their ability to do their job if there is mistrust in the way that people are getting into the Chamber, so I think they would very much want to see that changed.

**Q391 Julie Morgan:** One of the good things that has happened in the House of Lords is that there are more women there and more people from minority ethnic groups. Has that played any role in thinking how the Lords should be in the future?

**Dr Russell:** I think this is one of the things that people have not noticed very much. It is interesting that, amongst life peers, there is actually a higher proportion of women than there is amongst MPs, but the image of the House of Lords remains very much stuck in the past and this is something the Lord Speaker is trying to do something about. But I suspect this is taking us out of the scope of your inquiry.

**Q392 Paul Flynn:** Could I declare a lack of personal interest in a place in the Lords. Some people were unkind enough to think I was nominating myself, but such an impure thought never entered my head. We are in the Lloyd George Room today and a statue to Lloyd George is being unveiled at this moment. One of the things he said was, "It is foolish to try to cross a chasm with two leaps". In the reform of the House of Lords, we appear to be trying to cross a chasm with two or three leaps. Do you think it would have been better if we had gone for reform in one go?

**Dr Russell:** No, actually. I have changed my views on this rather. I think that the history of Lords' reform shows us that attempts at major reform throughout the last 100 years have consistently failed, whereas the reforms which have managed to succeed are the small, incremental steps which are relatively uncontroversial.

**Q393 Paul Flynn:** On the question of the MPs entering the Lords, a neighbour of mine, now deceased, wrote about the whole process of how "they came at me like elephants", when he suggested that he might retire, and they offered him a place in the Lords in exchange for virtually selling his seat to a former Conservative MP. Now, that has happened, it is there, he has given the record of it. We know of other undistinguished former trade union leaders and others who have found places in the Lords who will openly confess that they have been given their places because of favours they have done for party leaders in the past. On the Commission, it is suggested that HoLAC should have some kind of discretion on this. When they get a group of distinguished ex-parliamentarians, ex-Members of the Commons, fine, but when there is a group of party hacks who have been rewarded for favours they have done, should HoLAC have the discretion to eliminate them from the list—

**Dr Russell:** I am saying yes to that.

**Q394 Paul Flynn:**—and to add on to the list possibly, and we think it is unlikely we are going to see a Lord Skinner, for instance, but people who are distinguished back-benchers who have not always toed the party line?

**Dr Russell:** I think that last point is a tricky one. I think it is easy to say that the parties should put up more names than they are going to get seats and that

the Commission should have discretion on choosing between those names. Whether the Commission can add additional names is more tricky because ultimately a political party can choose whom it gives the whip to. But I think a case could be made, particularly in the case of former parliamentarians who have surely in some sense proved their worth, that, if the Commission feels that there is a name of a former parliamentarian missing from a list, maybe it should be able to put that person in even if they have not been put up by their party. You would have to draft that very carefully, I think, because I think the parties would resist it if the Commission could potentially bring in anybody.

**Q395 Paul Flynn:** On the roles of legislators and peers, if peers have a role, there are a number in the Lords who are extinct volcanoes and, if you look up the splendid website "theyworkforyou.com", and there should be a number on a website "theydontworkforyou.com"; one of them has not taken part in a division, he has not voted, he has not asked any questions or made any speeches since the year 2000, yet he is still a lord. Is it reasonable for these people to continue, and he is splendid in other ways, a remarkable man, but to continue as a lord when he clearly has no interest in the House itself or in taking part or doing the job for which he was appointed as a legislator?

**Dr Russell:** I think that touches on two reform issues. One is how people get in, and the Appointments Commission has become much keener on questioning the independent members going in as to whether they are going to play an active part, but of course they are not able to ask any such questions of party members going in. The other one is about whether Members can depart the House when they no longer feel able to play an active part and I think that would be a very sensible measure to, at the very least, allow people to retire if they want to, and that is part of, for example, the Bill being moved in the House of Lords by David Steel. I think that would be a perfectly sensible, again, minimalist move to move us a little further on from where we are now as perhaps an interim solution.

**Q396 Paul Flynn:** Do you think that there should be a divorce between the job as a member of a second chamber, that we stop calling it "the Lords", and the whole pantomime of going around, prancing around dressed in ermine and all the rest of it?

**Dr Russell:** I think the big constitutional issue is the peerage and I would say yes, break the link between membership of the Legislature and the peerage.

**Q397 Paul Flynn:** Professor Fisher, you talked about the corrosive role of the press in the recent inquiry and now we are coming to the end of that inquiry. We have seen the coverage over the last few days and I think many of us might have the view that that was a justified political stand by a Scottish Nationalist who took it up and reported it to the police, but it never really had any practical chance of going through to a prosecution, but it was handled by an ambitious policeman who took the view, as he told

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us the other day, that, “You never know what’s going to turn up”, and he mentioned that twice. He was going on a fishing expedition, elongated it to 16 months and before it all came apart and came to nothing, it damaged the reputation of people who were probably entirely blameless in that period. A parallel investigation was started on July 30 this year and finished on October 10 and that investigation involved Conservative donors which had no attention, no dawn raids, no excitement whatsoever. Do you think there is a lesson to be drawn in this, in the attention given to the Labour donors in this and the Conservative donors, the partiality and the malign interest of the press?

**Professor Fisher:** That is a big question. I cannot comment on the career aspirations of John Yates, but it does strike me that the case was taken up by the police remarkably quickly. I would like to think that, if I made a complaint, there would be a 16-month investigation into something that did not produce any evidence, I agree with that. I do not agree that there was a party-political aspect to it. The focus was on the Labour donors or Labour loaners simply because Labour was in government and it is fair to say that when the Conservative Party has been in government, its contributors have been subject to the same intrusive form of investigation, so I think it was unfortunate for the Labour loaners simply because Labour was in government. My comments about the media: in some ways of course it is an exciting story and of course we would expect the media to cover it, but the assumption of guilt and the implication of guilt throughout the coverage, I think, was quite scandalous. Looking at the reports of Mr Yates’ appearance on Tuesday, again I was struck by the same thing—that the headline, for example, in *The Guardian* was that Number Ten obstructed the inquiry. Well, to the best of my knowledge, that was not precisely what Mr Yates was saying. I do think that, if the Committee takes something away from this inquiry, it is that, whilst one would not want to regulate the media on this, they share a considerable part of the blame if there is any diminution in trust amongst the British people of the political system. I have brought one or two quotations and Simon Jenkins writing in *The Guardian* says, “Don’t give them an inch. Not one inch. They are a bunch of knaves.” Now, that, as a former editor of *The Times*, strikes me to be a quite disgraceful way of writing about party finance, and it goes on to accuse parties of having their hands in your pockets and so on. I do think that there is an issue and, if you were to call further witnesses, I would recommend you call the editors of *The Guardian* and *The Times*.

**Q398 Paul Flynn:** I think many of us were baffled by the press coverage of what happened, which was witnessed by millions of people because it was broadcast widely. I was puzzled by the stories that there had been conditions laid down by Tony Blair on his interview and I specifically asked Yates, “Were there any conditions that Tony Blair had laid down for you?” to which he said, “Only his diary.” He made a comment later on which was entirely

vague which did not refer to Blair, as I understood it, it referred to his staff, but the denial that there were any conditions laid down by Blair was not reported even at all, so I think we have seen their partiality in there. If we come back to the points being made, there have been analyses done, and they are weak, as we know, of which are the corrupt countries in the world and there are scales of corruption which have been published by the World Trade Organisation who have one for advising people, and certainly we are second only to the Scandinavians. The Scandinavians are at the top, we are second, the rest of Europe are next and then the rest of the world on that basis. I can see that Dr Pinto-Duschinsky is shaking his head. If that is truly the reality and that is about the position we are in, we are, in world terms, a clean democracy with little murky corners.

**Professor Fisher:** Of course I would agree absolutely with Michael’s previous points, that there have been episodes of corruption in the past, and we have mentioned the local government scandal, and in any large organisation or large democracy, there will be episodes when that occurs. If you look back at British politics and at party funding, in particular, which is my particular area of expertise, the actual episodes, the ones supported by empirical evidence, are surprisingly few when you compare them with other countries, so I would agree with Michael, that creating a perfect scale, a rank order of corruption is very, very difficult. I do not agree that perceptions are unimportant because I think that, whenever one regulates on these things, you have to bear in mind what the impact on public perception is going to be and of course public perception has been at the heart of not only the Hayden Phillips review, but also of the CSPL review of party funding in the late 1990s. I do think you are absolutely right, that actually one might go back further and congratulate Michael Portillo when he made a much-derided speech at the Conservative Party Conference which said that Britain was actually really rather clean, and he was derided for that, but, I have to say, he was right.

**Q399 Paul Flynn:** It was not a bunch of knaves which introduced the 2000 Act. The 2000 Act was well-intentioned and it was a major reform, but with a loophole in it about loans, but, all being said, no attention was given to the 2000 Act. It was not intending to do what it has done in order to make the system more transparent, but a wholly biased picture is given of a system which is certainly not corrupt.

**Professor Fisher:** Equally, I would respond to that, that it happened to be passed under a Labour Government, but it was not something that was subject to division in the House and it reflected the all-party fifth report of the Committee on Standards in Public Life, so yes, a Labour Government brought it in, but the credit for its introduction should not be Labour’s alone.

**Dr Pinto-Duschinsky:** I would actually not wholly agree with all of that. When one says, “The fact is we are rather clean”, there are no facts. The investigation of corruption in this country has been

held back by the assumption that we are all clean and there is nothing to investigate. It is rather a comfortable, self-perpetuating image. If you do not investigate because there is no need to investigate, then you will not find out. I think that consistently over time, when there have been some major press allegations, they have turned out to be correct. If one looks at the late 1960s with reports of lobbying by a Member of Parliament on behalf of the Greek colonels, well, that was not false, and it showed something about the parliamentary system that led to important reforms, so I am hesitant to attack the press to quite that degree, maybe because I sometimes write for the press, so do we all, but I do not think that they should be condemned for bringing up this issue.

**Q400 Mr Prentice:** On this point, we do not know how many complaints have been made to the Metropolitan Police, and Mr Yates could not tell me 16 months ago or two days ago, but have there been instances in the recent past, and I am talking about the 1980s, 1990s and 2000s, when you and your seasoned observers of these matters thought, "Goodness me, that looks a bit fishy. That warrants an investigation"? Have either of you ever lodged a complaint yourself with the Metropolitan Police?

**Professor Fisher:** No, I have not.

**Dr Pinto-Duschinsky:** I am in touch with a police force at the moment about a complaint which has been made by others and the question that is being debated is: what should trigger a police investigation? I felt that Assistant Commissioner Yates gave a very balanced and useful statement on this, that you do not start an investigation because there is any old rumour, but the barrier to starting an investigation must be lower than the barrier of prior proof because, if you only started an investigation if you already had proof, you would never start any investigations, so it is somewhere between. I think that too often actually the police, with allegations of, say, fraud to do with voting, for example, have been too reluctant in many cases to start an investigation.

**Q401 Mr Prentice:** But my question was quite specific. Have there been instances of appointments made where you thought to yourself, "Hang on a minute, this doesn't look right and perhaps the police ought to investigate it"? I ask you that question because you spend your whole lives looking at this sort of thing.

**Dr Pinto-Duschinsky:** I have not previously gone to the police on any matter because I have regarded the press and my writings as what I do, but I think that there has been an underlying change in situation that brings us closer to the 1920s, namely that in the 1920s and just after the First World War, the Liberal Party, and especially the Lloyd George wing, found that they did not have any more constituency support and they needed money, so they went to large donors. In recent years, the Conservatives who were suffering from the decline of corporate donations and Labour, for other reasons, have tended to go more to large, individual donors than was the case until, say, the 1987 election when it first

became noticeable that large individual donors were playing a part. I think that the point that Assistant Commissioner Yates was making was that, if you have a high correlation between large donations and the award of peerages to the donors, although that is no proof of anything, and if you also have parties relying on a smaller number of large donors, that creates a situation which maybe is more worthy of investigation, and that was all that he was saying. I think there is a point in that and I think the point of public policy is: is it desirable that we have British party politics so reliant on relatively few donations which, by international standards, are extremely large, and what are the implications of that? That, I think, is a policy point which, I think Justin would agree with me, does merit looking at.

**Q402 Mr Prentice:** A Conservative Party donor, Lord Laidlaw, was ennobled in 2004, he was a tax exile then and he is a tax exile now. He promised the House of Lords Appointments Commission that he would become a UK resident for tax purposes in 2004 and he broke that promise. He is still a Member of the House of Lords, but he slithered out of this by going on a leave of absence. My question is this: should we allow peers a leave of absence who are not prepared to pay taxes, but want to make our laws, or should we change the rules to exclude people who do not participate or are not prepared to pay UK taxes, although they serve in the UK Legislature?

**Dr Russell:** I think this comes back to some points which have already been made. The Appointments Commission has closed that loophole, so that situation will not arise again.

**Q403 Mr Prentice:** He is still on leave of absence though.

**Dr Russell:** He is still on leave of absence which brings us back to the point that there is no route out of the House of Lords, except in a wooden box unfortunately and maybe something should be done about that.

**Q404 Mr Prentice:** He can still come into the House of Lords, he can still sit on the steps of the Throne, he can still use the dining facilities.

**Dr Russell:** And he can come back from leave of absence, should he so wish. It is purely down to his decision to comply with that recommendation. It has been a factor in pretty much all of the reform proposals in the past, that there should be circumstances in which somebody should be able to lose their seat in the House of Lords, and that is another thing on the reform agenda, so I think there are two questions about people's ability to depart the Chamber, one being whether they should be able to do so voluntarily and another one is whether under certain circumstances they should be able to be forced to do so. With respect to this issue of where people are registered for tax, the Appointments Commission has closed that loophole and I am not sure whether that applies to party peers as well, but I imagine it does.

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**Q405 Mr Prentice:** I do not know how many current Members of the House of Lords, apart from Lord Laidlaw, are not UK residents for tax purposes. It rather sticks in my craw that people should be members of the UK Parliament that do not pay UK taxes. Perhaps I can move on slightly to the House of Lords Appointments Commission which, Dr Pinto-Duschinsky, you said worked broadly as intended. Well, tell Dr Chai Patel that and he would laugh. The fact is that the people who were blocked by the House of Lords Appointments Commission do not know why they were blocked, they do not know why they were turned down. Do you think it would improve the system if people who were putative Members of the Lords and were rejected could approach the House of Lords Appointments Commission and ask for the reasons?

**Dr Pinto-Duschinsky:** I think what was unfortunate and unfair in that case was that names leaked out while they were being considered, and that casts a cloud on persons being considered that is unjust. My understanding of the matter, and I read the evidence of Lord Hurd and Lord Stevenson two weeks ago—it was very interesting—is that quite unlike the Lloyd George cases (saying they could not become a member of the House of Lords because they had traded with the enemy or had been convicted of stealing, and various things that had happened in the Lloyd George period) there was nothing positively wrong about them (is my understanding); the implication is that the House of Lords Appointment Committee did not feel that, at the moment, they had a sufficient record of public service and other things to make it—

**Q406 Mr Prentice:** If it is public service—

**Dr Pinto-Duschinsky:** That was my impression, but I think all of those people whose names were disapproved do so without a stain on their character, and it is very important to mention that.

**Q407 Mr Prentice:** If it is public service, why can the nominations not go via the other route rather than the party political route? Were the nominees all members of the Labour Party? How long had they been members of the Labour Party? Two of the individuals who were blocked gave money to establish city academies. If that was a public good and a policy objective of the government to establish city academies, why were those individuals not nominated through the other route, rather than as a party political nominee?

**Dr Russell:** I think this is a difficulty which—I am sorry to keep coming back to some of the same points—is a product of the narrow remit which the House of Lords Appointments Commission currently has; it has the ability to select and put into the House people who will sit as independent, cross-bench peers; it does not have the capacity to pick people who may be upstanding members of the community, who may have done all kinds of public service but who are members of one of the political parties—any of the political parties. It is explicitly there to choose independent members only, and I think this is a bit of a problem. In a sense, it feeds this

distrust in the process that somehow there is a difference between people who are members of parties and people who have outstanding records in the community through voluntary sector organisations, and so on, who are the sort of people who go in as independent peers. That kind of firm dividing line does not exist. I think we all know that, but it is sort of institutionalised in the arrangement. So, I would say, broaden the Appointments Commission remit to allow it to put people in, to choose people from parties as well as independent members.

**Q408 Mr Prentice:** We are putting a lot of faith in the Appointments Commission. How many people are on the Appointments Commission? Five, six—something like that? They are going to exercise judgment, and it must be subjective—it must be—and who I think would be a proper member of the public to put in the House of Lords could be very different from someone else's assessment. My question is: can an appointments system which must, inevitably, be subjective, really deliver just outcomes?

**Dr Russell:** That is a big question and takes us to the question of election versus appointment, which has been long debated. I think, probably, the job here in this inquiry is to look at the appointments process and whether the appointments process, for so long as it exists, can be improved. I would suggest that it can be. Furthermore, if I could make this point, in case I do not get the opportunity to do so later, because I think it is an important one: I imagine that your inquiry will recommend that the Appointments Commission is put on a statutory basis, but I would simply make the point that you can achieve things without that statutory change. I would support the Appointments Commission being put on a statutory basis but legislation in this area is difficult; it is difficult to get legislative time, and something about the Appointments Commission would be liable to be amended to try and turn it into some bigger, kind of Lords reform package, and so on. However, the Appointments Commission that was created in 2000 was created by a Downing Street press release. The Prime Minister can, tomorrow, should he wish, say that he is no longer going to decide how many people are put in the House and give that power to the existing Appointments Commission; he can, tomorrow, should he wish, say that the Appointments Commission should decide the balance between the parties, that it should have greater power over selecting who the party members are. I do not see why he does not, frankly. I think you should invite him to do so.

**Q409 Mr Prentice:** We have got a big Constitutional Reform Bill coming up in January, and it could be in there, could it not?

**Dr Russell:** It could be in there, but until then (that Bill will not happen until, maybe, next year) we could do this tomorrow, by Downing Street press release.

**Q410 Chairman:** These are interesting, helpful and fascinating suggestions, but we had an exchange with Lord Stevenson about some of this a week or two ago, when he gave us the line about: “Oh, we’re just humble people doing this narrow task”. In fact, they are not, are they? They make up the rules as they go along. They just made up the rules about the nature of the financial declarations that they are going to ask of people—that is pretty straightforward; that comes out of what has been happening. They made up the rules about residency and residency for tax purposes—they just decided that is what they would do. They have these requirements about credibility. What is credibility? We know that the CPS and HoLAC have taken different views on credibility; they talk about adding “lustre” to the House. This is huge, subjective territory. All this is being done, as you say, on the back of a Number Ten press release. There is something intrinsically unsatisfactory about this, is there not?

**Dr Russell:** Things such you have mentioned are very difficult to legislate for, and we have had a conversation about, perhaps, some of the weaknesses of the legislation on loans—you have to pick your words extremely carefully and then they become rigid and they become contestable in courts of law. One positive way of looking at this is that this is in the best traditions of our flexible constitution, which relies on conventions and allows things to develop over time. However, I am not saying we should not have a statutory Appointments Commission; I am just saying we could have a better Appointments Commission immediately if the Prime Minister would decide to give up some of his patronage powers, and that could be underpinned by statute at a later date.

**Q411 Mr Walker:** I think democracy is a pretty good thing (I hope we all do), and I think that it is a good thing that people can support democracy by making financial donations. I was watching a programme on *Newsnight* last night; all these Americans queue up to throw vast sums of money at the candidates for the nomination to run for President for their particular parties. This whole thing has done a huge amount of damage, I think, to party funding. I would hate to see party funding thrown on to the State because I think people should have an option as to which party they support, but I would be interested to know from you three distinguished doctors and professors where you see party funding going over the short to medium term.

**Professor Fisher:** I actually think that you will be disappointed in the way that party funding will go. What we have seen in this country is a decline of grass roots members. They were never a huge source of income, it has to be said, but there has been a decline of those. As Michael rightly pointed out, there was a growth of large contributors; that has diminished somewhat because of the current episode. The reality is that political life is becoming ever more expensive, with more and more elections, and therefore, in the interests of providing the public with a choice of well-funded parties, and trying to

ensure as far as possible (and it is not a panacea) that difficulties such as the one we are examining today do not occur, I think it is probably inevitable that the State will play some role. It would be wrong for the State to fund parties entirely, but I do think the broad proposals made by Sir Hadyen Phillips’ review are defensible. In a sense, I would say that; I was the principal adviser on the review, although I do not agree with all of the conclusions that were drawn. So I do think there is a strong role for individuals’ continual involvement, but I do agree with Michael here that there is a case, to help avoid public concern, that there should be some sort of cap on very, very large donations. Where that cap is set is a matter for discussion; it could be £50,000, which is the figure that is currently being thrown around; it could be £100,000—it could be whatever. That is how I see it going. This is partly through realism (I think this is the only way in which parties will be able to function properly in the next 20 years) but it is also partly through preference because, rightly or wrongly, the public tends to perceive that where there are large donations from business, trade unions or individuals, that relationship is somehow unsavoury. In answer to your question, that is where I think things will go.

**Dr Pinto-Duschinsky:** Can I make one or two comments? I am slightly reluctant since Justin has said he was the principal adviser, but I do not think that he is responsible for all that was in Hayden Phillips’ report—

**Professor Fisher:** Not at all, no.

**Dr Pinto-Duschinsky:** If he had been I am sure that some of the defects of the report would not be there. The fact is that the report is woefully inaccurate on some of its basic facts and has not done its basic homework before coming to conclusions, because it was based on an assumption that it was trying to have a deal on public funding and, therefore, had very little interest in analysing the empirical situation. There is one assumption that the costs of politics have been going up. Curiously enough, there has not any comprehensive research to tell us whether they have been going up or not. There have been some odd quotations about the costs of General Elections at the centre, but that is not the same as all politics. There may well have been a decline in constituency funding, an increase in central funding—unless you look at it all you cannot tell what the trends are, and the evidence just is not there. The Phillips Committee muddled up central funding and overall funding, and did not know the difference between them, which I felt very surprising, in its main report. So we do not know about trends yet; although the costs may be going up, they may not be, but it is an unknown area until the research is done. We also do not know roughly how much State funding there is. To know what the Short Money is is just one tiny bit of the State funding that exists; we would need to know what proportion of money that goes to Members of Parliament is used for party political purposes; we would need to know how much MEPs’ money is used for party political purposes; we need to know about the “Widdecombe” money that goes to party groups on

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local councils. There are all sorts of aspects of State funding that we do not know about, and Hayden Phillips refused to go into that aspect. It was brought to his attention but they chose not to do it, and the effect of not doing it is to understate the dimension of public funding that already exists. So I feel that before recommending, look at the facts first. That has been the problem with most of the recent inquiries, including that of the Electoral Commission in 2004, and certainly including the Phillips inquiry.

**Q412 Mr Walker:** One last question: in your considered view, why is it that you feel politicians now are so despised? I have been here for two and a half years (I am a very new MP) and I am actually quite amazed at the amount of work my colleagues get through—the thousands of letters every year they answer, the vast number of constituency appointments they go to. My stepfather was an MP in the sixties and seventies and he said they simply did not get through the work we get through. Yet now, at this time, you have got MPs who spend Friday to Sunday, most of them, rushing around their constituencies, for actually very little political gain but out of a pure sense of duty and obligation to their constituents. Why is it that we are held in such low esteem?

**Professor Fisher:** I would agree. I think the portrayal of MPs is a very bad one and I would wholeheartedly agree with the picture of the overwork of MPs. I think it is partly because there is an unfortunate tendency to target those in positions of power and paint a very bad picture of them. I also think that the measurements of dislike are actually not awfully accurate; saying: “Do you trust X or do you trust Y?” does not actually tell you a great deal and does not get under the real meaning of “trust”. Unfortunate as it is, I think it is simply something that you have to deal with, and I do return very much to this idea of how politics is portrayed to the wider public. I go back to the quotation that says: “You are simply a bunch of knaves.” That sort of ill-informed and, frankly, irresponsible approach to reporting politics, unfortunately, gives you all a bad name. I wholly regret that and I fully support your views that MPs across all parties, 99.9% of the time, do an exceptionally good job.

**Dr Pinto-Duschinsky:** The trouble is that, even though you might not like what Simon Jenkins says, if there was not a tendency to believe that anyway then nobody would take any notice. There is a real problem of disengagement and lack of trust, and it is important that the cracks in trust are not papered over by just giving more and more money for central political education and propaganda that says: “You must vote; we will make it easy for you to vote” without tackling that base issue. In a way, a Member of Parliament is in an excellent position because he or she does have contact with real, live constituents. So, in a sense, you are in the best position to deal with that and answer that yourself, because that is one of your core roles in the political system. It is a

very important question that should not be brushed aside by artificial boosts to political education and funding without looking at the core problem.

**Professor Fisher:** Could I come back on this? I do not think this is a problem that is unique to Members of Parliament. In what Michael describes you could simply change the word “MP” for “NHS”; people are awfully critical of the National Health Service until they have some experience of it, and then they think the National Health Service is wonderful. Equally, when people encounter their MPs, working on a Friday and Saturday, turning up at school fetes, and so on and so forth, their vision of MPs changes. I have to say I think MPs face great difficulty because unless you work 36 hours in a 24-hour day you will not make much more progress. I think that is to be regretted.

**Q413 Chairman:** You talk about the lack of attention to these issues. The fact is, for the last 15 years in this country we have talked about nothing else but sleaze and distrust; we have been obsessed by it, which is why we have had endless new bits of legislation, we have had vast new regulatory bodies. The idea that we have not been attending to this—it is the leitmotif of this modern period! Has the effect been to increase trust because we have attended to it in this elaborate way? No, entirely the reverse, because, as we have been hearing, it is just too easy to keep pumping out stuff about everybody in public life, and knaves and fools.

**Dr Russell:** Can I make a point on this? I agree with all of what all of you have said on this, but I think it is worth pointing out that there is a danger of over-romanticising the past here. I think Justin would agree with me. There is constant talk about a lack of trust in politicians but it is not clear quite when the golden age of high levels of trust was, and it is a disputed matter in political science as to whether trust really has declined. Furthermore, I agree with Justin that it is not unique to politics, it applies to the NHS, etc; it is also not unique to Britain; it is going on all over the developed world. The greater aggressiveness of the media is one of the reasons for it. If you want to know my detailed analysis, I have written a pamphlet for the Fabian Society on this a couple of years ago, and I said one of the factors is our adversarial political system as well. As the Chairman said, the Labour Party spent the 1990s complaining about Tory sleaze and the Conservatives have rather picked that up and run with it once Labour got into Government, and there are some pretty terrifying quotes in my pamphlet, coming from people on both sides of the divide, about how fundamentally corrupt people on the other side are. I think you know that is not true, and I am afraid I had to say: “I think you should stop saying it to each other”.

**Mr Walker:** I will bring this to an end but this is obviously a great day for Members of Parliament; this is our favourite day of the year because it is allowances day, when our allowances are published. So tomorrow the world will be told that all of us—I,

Paul, Gordon—have been pocketing—pocketing—(pejorative word) £135,000. So all the money I pay to my staff I have been “pocketing” right here!

**Chairman:** There we are. We feel better now!

**Q414 David Heyes:** I want to go back to a point that Gordon tentatively touched on earlier, which is about objectivity. I wonder whether a lot of the difficulties that we have talked about today are down to an attempt to de-politicise and objectivise what really ought to be decisions that should be in the political arena. So we have given Hayden Phillips the difficult task of sorting out party funding, looking to the House of Lords Appointments Commission, and the difficulties that we have heard described with the timidity (to be polite about it) of the Electoral Commission. Just a few weeks ago we had the Charity Commission in here and they have been given some difficult political decisions to make around the charitable status of public schools. It is ironic because a significant proportion of the membership of the Charity Commission are themselves the product of public schools or send their children to public schools. I wonder whether what we are doing here, because of this lack of trust in politics, is attempting to de-politicise decision-making that ought to be in the political arena.

**Professor Fisher:** I would disagree with that entirely. I would be loath to move towards a more legalised state where you did de-politicise a lot of issues, but the experiences of the last week demonstrate very clearly to me why independent reviews of party funding are necessary because of the antics of both the Labour Party and the Conservative Party over the two aspects of the Hayden Phillips review on which they disagree; in the case of the Conservative Party on applying caps to trade union contributions and Labour’s attempt to over-regulate constituency spending for elections. In an area like party funding, I am afraid that if it is left to parties to legislate upon you will simply have a game of ping-pong. That is precisely what happened when the Conservatives drafted legislation in the 1980s which forced trade unions to ballot on an area that was up to the trade unions to ballot on, and that is the continuation of the political fund. As a result of that, Labour vowed to legislate and, indeed, introduced shareholder ballots. One of the great successes in the area of party funding has been the recommendations that came from the Neill Committee which brought about consensus between the parties and did lead to radical change. I think if that had come from a partisan basis we would have had a number of difficulties, so that if Labour now imposes aspects of legislation that the Conservatives do not agree with what will simply happen is if and when the Conservative Party returns to power it will react accordingly. I cannot comment on the Charity Commission—that is not my area of expertise—but on party funding, I think, broadly speaking, we have got it right, and it is better to take it out of the hands of politicians.

**Dr Pinto-Duschinsky:** I agree with both of you that in the arena of political funding there is an area of accuracy and expertise that should be there. For

example, I would hope that we would be able to reach agreement as to whether party expenditures have been growing or not. It is ridiculous that you cannot have some expert look and agreement on a matter of fact such as that. There also ought to need to be expert input into the small print of legislation. Although I agree with Justin that the general consensus that emerged from the Neill Committee in 1998 led to a lot of support for the 2000 Act, the PPERA, it is also true that PPERA has more pitfalls than just commercial loans. Wait until we have a referendum and see what the small print of the Act says on that, or wait about third party funding and see what the wording of PPERA does on that. So that we do need much more care about legislation. Having said that, there are issues of principle that say that, whether one wants to give priority to freedom of speech or to a form of fairness or equality, that is a difference of principle that is going to depend on people’s political views. That kind of choice, I think, must be made by a sovereign parliament based on good advice but on the political views of the members. There are fundamental differences of political choices that ought to be left to the politicians. So to that extent I agree with you.

**Dr Russell:** I agree with both of you as well. I agree with everything that Justin has said, but I think there is something in what you are saying about de-politicising to too large an extent the political. One of the examples which I drew attention to in my pamphlet (which I realise, for the record, I did not name; it is called *Must Politics Disappoint?*) was about the Electoral Commission itself, which was set up not only with a requirement that none of the Commissioners be members of political parties, but that nobody working for the Commission should be a member of a political party. This is the body which is set up to regulate the political parties, which clearly has no institutional knowledge of how political parties work. To me that is crazy, and it actually reinforces the view that political parties are, somehow, rather mucky, that it is a minority interest, and that you can easily construct an institution which has never had anything to do with them. However, I come back to the point that I made to you, that these rules were made by politicians. In fact, the rules on the tightening up of party membership amongst members of staff on the Commission were put in in an amendment—I think it was a non-government amendment—in the House of Lords, in an attempt to make it “cleaner than clean”. So I think it certainly can go too far, and it does not help to increase trust in the political process when you do that.

**David Heyes:** I will join in and agree with everybody as well. I used to think politicians were becoming increasingly timid-behaving politically.

**Q415 Mr Prentice:** Would it make any difference if members of the House of Lords Appointments Commission were not Lords—because they are all peers? If we had an Appointments Commission that was just Misters and Mses would it make a difference?

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**Dr Russell:** I think you could make a similar point, actually, that if you constructed an Appointments Commission that was putting people into the House of Lords, which included nobody who had ever been in the House of Lords, they might make rather ill-informed decisions. I think this is a matter of balance.

**Mr Prentice:** But the Chairman does not participate—he said that to us a couple of weeks ago.

**Chairman:** He explained why and we heard that explanation.

**Q416 Jenny Willott:** I wanted to get right back to something you were talking about at the beginning, which is to do with the laws in place around sales of honours and around this whole area, which is one of the fundamental parts of our inquiry. Given that there have not been any prosecutions since 1933 (whenever the last one was) is that because there have not been any cases of sales of honours since then, or is it because the law actually is impossible to prosecute because it is out of date or deficient in some way?

**Professor Fisher:** I could not tell you whether or not there have been sales of honours. The core fact is that there have been no prosecutions, and to the best of my knowledge there have been no subsequent accusations which were taken any further, other than a nod and a wink. So it is impossible to answer that question. I do return to the point I made at the beginning, and that is that when we look at the laws surrounding political life—and, indeed, more broadly, public life in general—the success or failure of a law should not be judged against whether or not there have been any prosecutions. One way of looking at a law is in terms of setting the boundaries of what is acceptable. A very good example of that is one of the finest pieces of legislation on our statute book, which debars political parties from taking out advertisements through broadcast media; we only have party political broadcasts and party election broadcasts. There have been no prosecutions under that piece of legislation, but does that make it a bad piece of legislation? Not at all, it sets the boundaries of electoral and political life. So, in terms of your question, I cannot answer whether or not there have been cases that should have been tried; I am not a lawyer and I cannot tell you whether the wording of the legislation is sufficient to allow for prosecution, but I think it is an erroneous assumption to assume that simply because there has not been a prosecution the legislation is itself at fault.

**Dr Pinto-Duschinsky:** It depends what kind of Act. Justin talked about broadcasting Acts. Well, there are very few broadcasting authorities, so you would not expect that there is so much of a scope and a need for prosecution for going right against the law on that. In, say, the case of overspending by Members of Parliament or, more than that, local government candidates, we have not had a Member of Parliament, I think, who has lost his or her seat since 1924, so that is 83 years, and I do not know of any prosecution, let alone conviction, of any local government councillor, although they may well exist

without my knowing it, for overspending at local elections. It does strain credibility as to whether that means they have all obeyed the law, or whether the law has not been enforced. In that case I would have thought it is a lack of enforcement. So lack of cases can be evidence in some cases. Coming to the Maundy-Gregory case in the early 1930s (I referred to this in my memorandum), and the view of John Ramsden in his work on the *The Age of Balfour and Baldwin*, not very much changed; he says that it seems clear that apart from tidying up the residue of the Lloyd George era the, in this case, Conservative Party Chairman, J C C Davidson, did not fundamentally change his party's attitude towards honours. In other words, they were—

**Q417 Jenny Willott:** Does that mean that the law was bad then?

**Dr Pinto-Duschinsky:** No. I slightly disagree with the stress in John Ramsden's work because I think there were some features of the Lloyd George system that were there and which then changed. One is that a number of the Lloyd George appointees were actually crooks—technically so. They are not alive so they could not have me up for libel but I would be fine if I could prove it. So they were crooks. The second was that the deal was extremely specific; that you pay so much and there is a tariff and you get a peerage. Third, there was a trader, a middleman, who would take a cut himself and then have lunch at his club, which was set up for the purpose, with the party chairman or the chief whip, and they would then do the deals. I think what we are suspecting now is that there is an uncomfortable correlation between large donations and honours, which is not the same as saying that we know of a trade that is as crude as it was in the Lloyd George era.

**Q418 Jenny Willott:** That is not, actually, what the police investigation was into. Everyone recognises there is a correlation between giving large amounts of money and becoming a peer, though it is not necessarily causation, as was discussed earlier. Actually, the allegations were that people were giving money in the expectation that they were going to be getting a peerage.

**Dr Pinto-Duschinsky:** An expectation is not enough; there must be a favour—

**Q419 Jenny Willott:** Absolutely, which raises the question as to whether the law is sufficient. Given that the allegations this time, whether true or not, are of a different nature from the allegations in the Act that were taking place in the 1920s and 1930s, if we are looking at our inquiry as to whether what is in place now is enough to make sure that it is not possible for there to be trade or a nod and a wink, or the sort of actions that have been alleged this time, if the law that was drafted in the 1920s does not cover the suggestions of what took place this time then, actually, is the law deficient and do we need to revise it?

**Dr Russell:** On that question, I think your inquiry has uncovered quite well the difficulties of legislating in this area, and if there are nods and winks going on

then it is difficult to prove a case, and so on. I do not necessarily believe that there are nods and winks going on, actually, but if there were that would make it difficult to prosecute. If you are looking at revising the 1925 Act you are looking in the wrong place, because that, in a sense, is trying to treat the symptoms rather than the cause, and the cause is that the Prime Minister has these patronage powers over putting people into the legislature. If you deal with that then these problems will not arise.

**Dr Pinto-Duschinsky:** I think that it was the correlation, or what was seen to be a high correlation, which led to an inquiry to see if there was an explicit deal that was against the 1925 Act. So it was a matter of the difficulty of evidence. So I do not think the Act is the right place to go. I agree with Meg about symptoms and causes, although I do not think the symptom is only the ability of the Prime Minister to appoint members of the House of Lords, because if one took that away there would be all the other forms of patronage that a Prime Minister would have, and new ones that would grow to fill the vacuum. The cause is the reliance on a few large donors, and that is what I see as the root problem here.

**Professor Fisher:** I would like to take issue with a term that has been used both today and on Tuesday, and that is the use of the term “correlation”, because in actual fact if you are arguing that there is a correlation you would need to demonstrate that people of a similar standing but who had not made contributions were somehow being denied a seat in the Lords. To the best of my knowledge, that analysis has not been conducted. So if there is a simple coincidence then that is what it is; it is not a correlation.

**Q420 Chairman:** Let us not explore at great length the difference between a correlation—

**Professor Fisher:** I am sorry, Chairman, but these terms are important.

**Chairman:** It is an important point for the record, I just do not want to explore it further.

**Q421 Jenny Willott:** Can I ask my final question, which you have picked up in your response to a previous question? Is there a need to look at the law or is it actually the regulation and the framework within which political parties are operating? Tweaking, for example, the House of Lords Appointments Commission, and so on, is that enough, if there are problems here, to deal with the problems without needing to look at legislation?

**Professor Fisher:** In respect of party funding or in respect—

**Q422 Jenny Willott:** In respect of the issues connected with cash for peerages; so the issues around patronage.

**Professor Fisher:** I do not think you can ever fully legislate for the fact that some individuals at some point in time may make contributions in the hope that there may be some pay-off.

**Q423 Jenny Willott:** That is not ever going to be illegal, is it?

**Professor Fisher:** You can never do that. As to the mechanics of making appointments to the Lords, I would defer to Dr Russell on this. However, I do think it is a mistake to imagine that you can legislate on everything. Meg makes a very important point that you cannot legislate on a nod and a wink, unless you have a CCTV camera in the room; it is simply absurd to do so. I am not familiar with all the details of the 1925 Act but it does seem reasonable to me that, given that there was a 16-month investigation and some considerable resource thrown at it, the utility of the Act was tested and it may be that the Act is in full working order and that, actually, the wrong-doing simply did not take place. Again, I go back to the point: the fact that there was not a prosecution does not mean to say that the law is wrong.

**Q424 Chairman:** Could I just ask one thing, as we end? When we were talking to Assistant Commissioner Yates on Tuesday and asking him, as it were, what he had learnt about the system or what improvements he could think of, I think I am right in saying that the only thing he really talked about was transparency in relation to the list of names that are put forward for peerages. Clearly, he had been trawling through all the draft lists before they had become the final lists and it was, obviously, a great sort of black hole which he had trouble navigating. I had trouble understanding quite how you could have transparency inside that system because, as other people have said, one of the problems arose because of the lack of secrecy around the names that went to the House of Lords Appointments Commission this time. No one is really proposing that all this should be a public process, even, presumably, if we have a system of nomination from the parties, with the House of Lords Appointments Commission deciding who the people should be. Presumably, these will not be published lists of nominees because, otherwise, you will have the consequence that we have talked about, which is people will suffer reputational damage if they are not selected, and so on. Surely, transparency, in this sense, is not quite the answer.

**Dr Russell:** To a great extent I agree with your point, but on the point about people suffering damage, I think the damage would be far less if, for example, a party was to have 10 new peerages and to provide a list of 30 names, because there would be no suggestion that 20 of those people were corrupt; it would be simply that they were not the best people for the job. Employers select from shortlists all the time; there is no discredit to the people who do not get the job, they just want the best candidate.

**Q425 Chairman:** So you think it would be possible and desirable for the list of nominees to be published?

**Dr Russell:** I am not sure about that, actually. There are limits to how far transparency is necessary, and these things involve a bit of political judgment, do they not, as well? If you take, perhaps, the

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comparison of appointments to Select Committees, where there has been a lot of debate about whether that should be made more transparent and whether it could be more democratic, some of the things that have been suggested are that people should have to formally apply and it might be possible to see who applied, and then to see who got on in the end. However, in the decision as to exactly which people are chosen—a whole range of factors are taken into account; a lot of the same factors that the House of Lords Appointments Commission will take into account, not just party balance but balance of interest, expertise, length of service, age, gender, part of the country, etc. It is not a slur on anybody who does not get on, it is just you have to come up with a group of people which is broadly balanced and useful.

**Dr Pinto-Duschinsky:** May I make one comment about long lists? I have looked into this matter with relationship to nominations of members of the European Court of Human Rights, and each country, for example, Lichtenstein, can propose one justice, we can propose one justice as well, and so can Monaco and so can Armenia. They go to make up the court. What happens in certain countries is that they will put forward three nominees and one has been the minister of justice, and the second has been detective sergeant Smithsky, and the third has been the same; it is quite obvious that the long list has just been made up of people whom they hope will be included and others who have very little chance of being included.

**Chairman:** Shrewd point.

**Kelvin Hopkins:** Just on the point about Select Committees, I am glad they have raised it because I was seriously concerned about this and it was our former friend, Robin Cook, who changed the system so that, in our party at least, now there is a greater chance of people who, perhaps, might have differing views from the leadership getting on to Select Committees. I want to broaden the whole debate about the patronage because it goes way beyond the

House of Lords; at every level in politics, in recent years, patronage has ruled and it is all about political power being secured at the centre. That is what is wrong. I do not know if you would agree that we ought to look at ways of building more checks and balances into our political system and making it more plural again.

**Chairman:** With respect, Kelvin, that takes us off into other territory, so can we leave that as an interesting observation?

**Kelvin Hopkins:** It was more a rhetorical question.

**Q426 Mr Prentice:** May I ask one final question? We have got the Cabinet Secretary, Gus O'Donnell, coming in front of us in a couple of weeks' time. When I asked Mr Yates about co-operation with the Cabinet Office, and so on, he said he had received the fullest co-operation but he had met the Cabinet Secretary only once. There were subsequently suggestions that there had been conspiracy to pervert the course of justice, emails being deleted, and so on and so forth. Do you think there are any changes at the centre that could have been made to tighten up the system so that 10 Downing Street could not run on a kind of parallel with the rest of the civil service—the role of special advisers?

**Professor Fisher:** I do not think I can comment on that.

**Chairman:** We will save the question for the Cabinet Secretary when he comes. Thank you so much, all of you, for that. If you think we have not asked you things that you would like to tell us, by all means drop us a further note. Anything you think, as we say, would be helpful in our inquiries we would like to know about. I think we have had some extremely valuable evidence from you today. I was slightly dejected when you gave us your initial list, Dr Pinto-Duschinsky, and then you said, at the end, your fourth point was “but alternative systems are worse”, which did not fill us with great constructive zeal. However, we will do our best, knowing that, to make some modest improvements. Thank you very much indeed for your help.

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# Written evidence

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## Correspondence from the Metropolitan Police Service

### Letter to the Chairman from Assistant Commissioner John Yates, dated 27 March 2006

RE: HONOURS (PREVENTION OF ABUSES) ACT 1925

I refer to our telephone conversation of Friday evening concerning the above. For the record, in that conversation I registered my concerns in relation to the proposed Public Administration Select Committee meeting commencing on Tuesday 28 March 2006. I indicated to you that many of the individuals that you wished to hear evidence from may be the very people that could be central to our criminal inquiry, either as witnesses or suspects. My concerns were that your scrutiny could be viewed as an abuse of process in terms of fairness in any future potential criminal trial. I have consulted closely with senior lawyers from the Crown Prosecution Service about this matter. They share my concerns and are happy for them to be articulated in this letter.

I do, of course, recognise that our enquiries are at a very early stage and that charges are not imminent. I therefore concede that these matters cannot be considered sub-judice at this stage. I also recognise the authority of Parliament to consider and scrutinise these matters under Article 9 of the 1689 Bill of Rights.

I would however ask you to take into account the recommendations contained in the report by the Joint Committee on Parliamentary Privilege dated 9 April 1999 (HC 214 1998/1999). In this report, the Joint Committee concluded that "corruption, a serious and insidious offence, could only be dealt with effectively by using the police and the courts. Prosecution through the courts is the only credible remedy and the only credible deterrent for any briber". Whilst it may be too early for us to widen our investigation into the arena of corruption, I certainly have not ruled this out. I would argue, therefore, that the principle articulated in the Joint Committee report remains a valid one for you to consider.

I am more than happy to assist you personally on these matters and would be content, if necessary, to provide a briefing around the structure and Terms of Reference of my investigation to the Committee if you thought this would be helpful.

I would be very grateful if you could inform me, at your earliest convenience, whether and to what extent you intend to continue with your inquiry.

Please do not hesitate to contact me if there are any other matters that require clarification.

### Letter to the Chairman from Assistant Commissioner John Yates, dated 13 November 2006

Thank you for your letter of 7 November 2006.

I have now had the opportunity to consult with the CPS on this matter and I am working to provide you with some further information that I hope will go some way to meeting the needs of your Select Committee.

Before I go into any detail, I thought it appropriate to comment on some of the publicity surrounding this investigation in recent days. Speculation about the outcome and progress of this inquiry is not something we welcome. It would seem perverse to suggest (as some commentators have) that it is the police inquiry team who are responsible for placing matters in the public domain. I say this in view of the very significant time invested by us in persuading you and your Committee to do precisely the opposite, firmly believing, as we do, that this may undermine the investigation.

I have, however, conducted a further review of our own operational security. I am confident that this remains very tight. This is endorsed by the fact that the major developments in this inquiry are not in the public domain. You can be assured that I will continue to monitor matters very closely. You can also be assured that this case is being closely monitored at the most senior levels of this organisation.

I will not turn to the further information required by your Committee. I would emphasise that what may appear to be the lack of detail I am able to provide at this time is purely a consequence of the overriding need to keep confidential operational matters which may be the subject of future criminal proceedings. I intend no discourtesy to either you or your Committee and, as I have indicated to you previously, I will be prepared to discuss all relevant details of the investigation when I am in a position to do so.

The inquiry continues to work within the parameters I outlined to you when I appeared before your Committee in May 2006. That is we are focusing on the 2005 Working Peerages List and any offences in that period relating to the 1925 Honours (Preventions of Abuse) Act and PPERA 2000 Act. This, you will recall, was in order to keep the inquiry in manageable proportions and is where the best and most recent evidence is likely to be found. These parameters are also set in the interests of timeliness. There is clearly a great public interest in resolving these matters as soon as possible. By keeping the parameters narrow and

focusing on where the evidence, if it is available, is likely to be, we will than be best placed to report our findings to the CPS at the earliest opportunity. None of the above prevents us from widening the scope of the inquiry should this be necessary or considering any offences under other legislation should these come to light.

We continue to liaise with the Electoral Commission in relation to the PPERA 2000 and that we have also received excellent co-operation from both the Cabinet Office and the House of Lords Appointments Commission in relation to our enquiries.

To date, my investigative team have conducted 090 interviews. They can be broken down as follows:

- Labour Party—35 interviews.
- Conservative Party—29 interviews.
- Liberal Democrats—4 interviews.
- Non-Party—22 interviews.

It is my view that considerable progress continues to be made. The investigative team have and continue to adopt a thorough, methodical and impartial approach to the investigation. This has resulted in the acquisition of significant and valuable material in relation to the development of the inquiry.

Due to the possibility of future criminal proceedings and the need for further inquiries to be undertaken, I do not believe it would be appropriate to comment further on the current status of the inquiry.

As I enter what I consider to be the final stages of the investigation, I understand fully the Committee's desire for a timescale. Assuming the co-operation of the Parties and individuals involved, then I hope to be able to forward a file to the CPS in January 2007. I would emphasise that this is dependent on a number of factors that are beyond my control. It will also be subject to any additional lines of investigation that may result from the inquiries I am about to undertake.

I would also emphasise that any submission to the CPS will then involve careful consideration by them of what are likely to be complex and sensitive legal issues. There may then also be the need to undertake further inquiries as proposed by the CPS.

I remain available to you should you wish to discuss any issues regarding the investigation.

#### **Letter to the Chairman from Assistant Commissioner John Yates, dated 13 November 2007**

Thank you for providing me with the draft, uncorrected transcript of my evidence to the Committee on 23 October 2007. There are several matters that need to be addressed as a result of my appearance.

Firstly, attached is a letter addressed to the Chair that deals with what I consider, on reflection, was an ambiguous answer I provided to a question he posed. The contents of the letter are self-explanatory.

Secondly, in terms of amendments, I can only see one and this is on page 26 and my response to Question 140 from Mr Prentice. I think I said which took about 2½ years to investigate (is the addition).

Thirdly, the Chair raised at Question 259 an issue about a letter to you as Clerk of the Committee, sent by my PA, Karen Boorman, from my E-mail account. The Chair, in essence, suggesting that we had been responsible for leaking information to *The Financial Times*. I have now had the opportunity to look at that letter and where it was sent to, including yourself as Clerk. It was copied to several people internally, as well as externally to the Police Authority. As I stated in my evidence, I remain as certain as I ever can be that no information was passed by the investigative team to journalists. I am unable to account for how this information reached *The Financial Times*. However, having reviewed the content of the letter and considered it in terms of any damage done to the inquiry, I do not consider it either necessary or proportionate to investigate these matters any further.

Fourthly, I referred in evidence (Question 283) to an earlier inquiry about similar matters from 1997. I am researching these matters further and am in the process of preparing a short note for the Committee to outline the relevant details. This will be forwarded to you in due course.

#### **Supplementary note received 29 November 2007**

##### **INVESTIGATION INTO MR DEREK LORD**

The only previous allegation made to the MPS in respect of the "sale of honours" related to a complaint made by an *Observer* journalist in 1997.

This was based on an investigation by the *Observer* newspaper into an individual connected to the Conservative Party who was alleged to be "endeavouring to procure" honours for two named individuals using his contacts within the Conservative Party who were at that time in power. The newspaper passed all the material gathered to the MPS who conducted an investigation.

The investigation was initiated in April 1997 and concluded in January 1999.

The case was referred to the CPS who concluded in January 1999 that "there is insufficient evidence to provide a realistic prospect of convicting any person".

There is no record of any other such allegations being made to police (with the obvious exception of the Maundy Gregory case).

I trust that you find this helpful.

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### **Correspondence from the House of Lords Appointments Commission (HoLAC)**

#### **Letter from HoLAC to the Chairman, dated 4 October 2007**

I am writing in advance of the meeting with you and your colleagues on the 11 October to update our memorandum of May 2006 setting out the scrutiny system and the changes made up to that date. As we have done throughout our seven year life, the Commission has reviewed its approach to the scrutiny of nominees in the light of the 2005–06 Working Peers List.

As a result of this we have introduced two changes:

- (a) The first was to clarify beyond any doubt that all relationships—financial or otherwise—that could reasonably be seen to have influenced a nomination must be declared. This is regardless of whether or not it has or should have been declared to the Electoral Commission. We believe that it was always clear from our guidance that we expected such relationships to be declared—indeed in the past nominees have declared loans to us—but we have now ensured that this expectation is explicit.
- (b) The second was to make clear that we would decline to vet nominees who were not resident in the UK for tax purposes. We are no longer willing to accept assurances from nominees resident outside the UK that they would become tax resident upon appointment to the House. This change was introduced in light of our experience of vetting a working peer who was not UK resident at the time of his nomination and who has subsequently taken leave of absence from the House. Nominees and the political parties are now asked to confirm not only that the nominee is currently resident but that he or she intends to remain so. A nominee's UK tax residency is verified with Her Majesty's Revenue and Customs (this has always been checked as part of our enquiries of HMRC).

Both these points have been emphasised in letters to the party leaders as well as in the updated guidance and forms for nominees and parties.

We will continue to keep our scrutiny process under review and will make further changes if necessary.

#### **Letter from HoLAC to the Chairman, dated 5 November 2007**

At the Committee's meeting on the 11 October you asked for details of how many individuals we have asked further questions about and how many we have advised against. This was in relation to individuals who have been nominated for a party-political peerage over the seven years of the Committee's life.

The Commission has asked further questions of either Number 10, the political party nominating the individual or the nominee him or herself, about 10 nominees. We have advised the Prime Minister against nominations of five individuals.

#### **Letter from HoLAC to the Chairman, dated 28 November 2007**

I am writing further to my letter of 5 November.

Before the case of Lord Laidlaw arose, the Commission had made it clear publicly that it was necessary for anyone appointed to the Lords to be UK tax resident. It was because of this that we decided that we should meet Lord Laidlaw and receive his personal assurance that he would become UK tax resident from a specific date before his peerage was conferred. We had already discussed the idea that we would not consider anyone unless they were already tax resident; the circumstances surrounding Lord Laidlaw's peerage convinced us that we should move in that direction.

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### **Memorandum from Dr Michael Pinto-Duschinsky**

#### **EXECUTIVE SUMMARY**

1. The Loans for Lordships affair of 2006–07 arose out of concerns that there may have been an improper exchange of nominations for peerages on the one hand and, on the other hand, financial inducements in the form of major, undisclosed loans to political parties.

2. The two main aspects of the matter are, therefore, (1) the process for nominating and appointing peers and (2) rules concerning the funding of political parties following the passage in 2000 of the Political Parties, Elections and Referendums Act.

*The process for nominating and appointing peers*

In my opinion, the procedure did work broadly as intended. The House of Lords Appointments Committee (HoLAC) scrutinised the suitability of the Prime Minister's nominees for peerages and rejected several of them.

*Problems of the Political Parties, Elections and Referendums Act 2000 (PPERA) and its non-implementation*

Some of the problems largely responsible for the Loans for Lordships affair concerned the system of political financing.

- (a) PPERA was a complex bill passed in a hurry and without due regard to the small print.
- (b) Laws are of little value unless they are properly administered and enforced. Standards of electoral administration in the UK—including the administration and enforcement of political finance laws—are a disgrace.
- (c) There is ample evidence that the Electoral Commission refused in the weeks before the general election of 2005 to offer any advice on the meaning of a loan on “commercial terms”. Under PPERA, loans on commercial terms—however large—did not need to be disclosed. In the absence of guidance from the Electoral Commission, the Labour and Conservative parties consulted their lawyers and apparently followed their advice on what constituted “commercial terms” for loans. Consequently, they were not worthy of prosecution for omitting to declare the loans. In the case of the Conservatives, their loans were in fact disclosed—albeit to the press—before the 2005 poll.

*Lesson Learned*

- (d) Political finance laws needed to be drafted and debated with greater care and patience and with greater consideration of possible unintended consequences. There are further, as yet unexplored, pitfalls in PPERA, especially regarding the rules for financing referendum campaigns, rules concerning the funding of Third Parties, and inconsistencies between rules for candidates under the Representation of the People Acts and for political parties under the terms of the PPERA.
- (e) The Electoral Commission should issue advisory opinions on untested, ambiguous aspects of legislation.
- (f) There a need for more active enforcement of election laws.
- (g) There needs to be a separate unit responsible for enforcing political finance laws. This should be EITHER a separate unit within the Electoral Commission (the Canadian model) OR a separate body altogether (the New York City model).
- (h) The Committee needs to be cautious about criticising the police or the press for the Loans for Lordships affair. The fact that no charges were brought and that those investigated are entitled to emerge without damage to their reputations does not necessarily mean that the law enforcement authorities acted irresponsibly.

## MEMORANDUM

*Personal Introduction*

I have specialised for many years in the academic study of the funding of political parties and election campaigns. My book on *British Political Finance 1830–1980* dealt with the history of nominations for peerages of donors to political parties and, in particular, on the events surrounding the passage of the Honours (Prevention of Abuses) Act 1925 and on the aftermath of the Act. I have advised governments, international organisations and public bodies in about two dozen countries on aspects of political financing, democratisation, anti-corruption measures and constitutional reform. In recent years, I have been a consultant to the Electoral Commission, the Committee on Standards in Public Life, the Council of Europe, the European Union, the World Bank and the Commonwealth Secretariat. [1]

During the general election campaign of 2005, I was in correspondence with the Electoral Commission about the meaning of loans to political parties on “commercial terms”. In 2006, I was called as a lead witness before the Committee on Standards in Public Life in its review of the Electoral Commission.

*The process for nominating and appointing peers*

Naturally, the Loans for Lordships affair of 2006–07 has given rise to questions about the system for nominating peers. In my opinion, the establishment of the House of Lords Appointments Committee (HoLAC) has proved valuable. The new scrutiny system worked well in 2005–06.

Recent concerns about alleged “sales” of peerages need to be seen against the context of the 1920s, when the Honours (Prevention of Abuses) Act 1925 was passed.

As John Ramsden described in his book *The Age of Balfour and Baldwin 1902–1940*, political parties continued after 1925 to reward large donors with knighthoods and peerages and the 1925 Act arguably permitted them to do so. In *British Political Finance* (109), I wrote that “Ramsden quotes several instances of peerages that were given to generous donors during Baldwin’s premiership of 1924–29. In some cases the expectation of an honor as the reward for a contribution was openly expressed. Ramsden concludes:

It seems clear that, apart from tidying up the residue of the Lloyd George era, [the Conservative Party Chairman] did not fundamentally change his party’s attitude towards honours. It is perhaps true that no bargains were made, and in this sense honours were not “sold”; but since subscribers received honours and a high proportion of honours went to subscribers to the Party, the net result was not very different. (347)”

I agree with Ramsden that the main effect of the 1925 Act was to replace a system of blatant sales of honours with a more subtle system. It should be noted that all the main parties have participated in what may be called indirect sales of honours ever since. However, the contrast between the Lloyd George system and that which emerged following the passage of the 1925 Act perhaps need to be given greater stress.

There are three main differences. First, as Ramsden points out, there no longer were blatant and direct deals to exchange money for an honour. Second, since the 1925 Act and the conviction shortly afterwards of the principal honours tout, Maundy Gregory, there have not been any known traders in honours. Gregory took a cut from the money contributed by rich men to political parties and based his livelihood on the trade. Third, some of the persons awarded honours by Lloyd George were crooks or were guilty of grossly immoral business behaviour.

It appears that in 2006 the House of Lords Appointment Commission rejected some of Prime Minister Blair’s nominees for peerages not because of dubious records but because the Committee considered that they lacked the experience and qualifications needed for appointment to the House of Lords.

In my opinion, the Crown Prosecution Service was right in its explanation of its decision against bringing charges following the Loans for Lordships investigations. It argued that prosecution under the terms of the 1925 Act required evidence of an explicit deal linking a contribution with the promise of a nomination for a peerage. However, for purposes of policy, PASC needs to take an opinion on whether it is desirable or practical to attempt to control *indirect* inducements or hints about possible preferment. In raising this question, I am not implying that there have been any such hints or implicit inducements in any particular case or by any particular person or political party.

Possible ways of eliminating the scope for indirect inducements to large donors include (a) a ban on honours for contributors, (b) a cap on political donations, and (c) the removal of patronage powers from party leaders. Such measures have problems and may not provide a satisfactory solution. In any case they should be considered only if the current problems relating to political donations are considered so serious that a draconian approach is required.

Among the practical problems of a cap on donations to political parties and of a ban on honours for donors to political parties is that they would probably lead to the re-direction of large donations to nominally independent off-shore islands of political parties. This process seems to be happening already. For example, some partisan think tanks and single issue groups supporting the policies of particular parties now attract the largesse of rich donors.

There is a natural tendency for legislators to pay attention to perceived existing ills and to give less attention to the ills of alternative systems. When it comes to issuing rewards to political donors and supporters, there is a natural tendency for political leaders to search for incentives. Admittedly, a special drawback of the typically British reward system of giving peerage to party supporters have been that peerages involve seats in the upper house of the legislature. However, reward systems in other countries have effects that are arguably more damaging still. Business contracts are typically awarded in some countries on the basis of the records of contractors as party contributors. A set percentage of the public contract awarded may be required as a kickback to the party in office.

Moreover, a system of public funding is not necessarily politically neutral, but will tend to reflect the interests of the ruling party or of a governing coalition of parties.

#### *Lessons learned about the system for scrutinising nominations for peerages*

In broad terms, the system for scrutinising nominations for peerages following the creation of HoLAC is working well, though proposals for detailed reforms such as those set out in PASC’s interim report deserve serious consideration.

#### *Problems of the Political Parties, Elections and Referendums Act, 2000 (PPERA) and its non-implementation*

This Act embodied the most extensive reforms of British political finance since the Corrupt Practices Act of 1883. It incorporated many—not all—of the recommendations made by the Committee on Standards in Public Life in its Fifth Report (1998).

However, lawmaking in the field of political finance is an especially perilous process. There are ample international examples of laws that produce unintended consequences and which include terms whose meanings are ambiguous. Such ambiguities create opportunities for evasion, which candidates and parties are then able to exploit and which they are entitled to exploit.

It has become clear, even to some of those directly involved in the enactment of PPERA, that its passage was undesirably rushed during the months before the general election of 2001. Its details could not be given sufficient attention. It is convenient to summarise the problems as follows:

- (a) there are problems and pitfalls concerning the wording of provisions of the 2000 Act.
- (b) Further problems result from the fact that important provisions of the Representation of the People Acts remain untested in the courts and have rarely if ever been enforced.
- (c) There are inconsistencies between provisions for donations to candidates (controlled by the RPA) and to political parties (controlled by PPERA).
- (d) As the Electoral Commission has justifiably complained, PPERA does not clearly set out responsibilities for administering and enforcing the Act.
- (e) The words “commercial terms” for loans to political parties contained in the PPERA proved problematic in 2005–06, as detailed below. Yet, they are by no means the only trap in the 2000 Act. If there were to be a national referendum on really contentious matter, the provisions on the financing of referendums in PPERA would lead to serious difficulties. Other problems relate to the provisions in PPERA for controls on political spending by Third Parties.

*Failure of the Electoral Commission to give an advisory opinion before the general election of 2005 on the meaning of a loan on “commercial terms”*

This matter will be presented in some detail since it proved significant in the Loans for Lordships affair and since the facts have been disputed.

The legal position concerning disclosure of loans under the terms of the PPERA was set out in a communication from the Electoral Commission to me dated 28 April 2005. (The exchange of correspondence between the Commission and me before the 2005 poll is published on the website of the Committee on Standards in Public Life in the section on its Eleventh Inquiry). The Commission wrote:

Section 50(2)(e) provides that any money lent to a party otherwise than on commercial terms, is treated as a controlled donation. The value of the donation is defined by section 53(4) as being the difference in monetary terms of the consideration that would have had to have been paid had the loan been made on commercial terms and any actual consideration paid. Where the requirement to repay any loan made to the party has been waived by the lender, the loan at that time becomes a reportable cash donation (if it exceeds the reporting thresholds).

This communication failed to address the core question: namely, what are “commercial terms”? On this, the Commission failed to give an opinion but merely stated: We would expect that the party and its auditors would consider what rate would have been charged if the party had obtained a loan on the normal commercial terms available at the time the loan was made.

In other words, the Commission explained the meaning of “commercial terms” for a loan to a political party as “the normal commercial terms available at the time the loan was made”.

On 21 April 2005, a fortnight before the general election, an article in *The Times* revealed that the Conservatives had received £16 million in loans. A Conservative Party treasurer acknowledged in the article that the Conservatives were paying a rate of interest below the rate they would have been obliged to pay had the lenders been banks rather than political backers.

The logic of this position was that someone who deposits money in a bank or building society receives a rate of interest lower than the rate someone who borrowed from a bank would be asked to pay. The difference between the rate demands from borrowers and that paid to depositors constitutes the bank’s business mark-up.

The Conservatives’ interpretation (backed by legal opinion) was that a “commercial” rate of interest was one that a depositor would expect to receive from a building society or bank—in other words, the lower rate.

Thus, by 21 April 2005, there was a clear and public distinction between two interpretations of a “commercial” rate of interest.

It is significant that a year after the 2005 poll, the Electoral Commission published a document in which it defined commercial terms as the rate which a bank would charge borrowers—that is, the higher of the two rates.

But it declined to give the same opinion—or any opinion—during the election campaign despite being asked about the matter by a Conservative official. The Electoral Commission gave a verbal reply to this inquiry that it was not the Commission’s job to be a referee in real time. I received the same verbal reply from the Commission.

The distinction between the rate of interest paid by banks to depositors and demanded from borrowers was not the only ambiguity about the meaning of “commercial terms”. When the Loans for Lordships affair subsequently became a matter of debate in 2006, some forensic accountants argued that a “commercial” rate of interest also needed to take account of risk factors. Since the main parties were in a poor financial shape, any commercial lender would need to have charged a premium rate of interest.

The problem with this view is that major political parties are not like business enterprises when it comes to the risk of bankruptcy. When they go into debt, they normally can rely on supporters to bale them out.

But whether or not “commercial terms” involved a risk premium for the rate of interest paid to lenders, this was a further uncertainty.

It follows that:

- (a) two weeks before the 2005 general election there were areas of genuine difficulty about the meaning of a loan to a political party on “commercial terms”. Indeed, the parties were obliged to take legal advice on the issue.
- (b) It was publicly known two weeks before the poll that one of the major parties—the Conservatives—had received loans of no less than £16 million.
- (c) The Electoral Commission was aware two weeks before the poll that the major portion of Conservative campaign expenses was being financed by these loans. Indeed, proof that the Electoral Commission was aware of the position is that the reaction of the chairman of the Electoral Commission was cited in *The Times* article of 21 April 2005 that broke the story of the loans.

These facts are relevant because they are at variance with statements made on behalf of the Electoral Commission in oral evidence before the Committee on Standards in Public Life on 13 June 2006.

The Chief Executive of the Electoral Commission asserted before the Committee on Standards in Public Life as a reason for not providing guidance before the 2005 general election about the meaning of a loan on “commercial terms”:

I had absolutely no doubt that any of the major parties was in any doubt as to what the law provided and was in any doubt as to what our guidance said at the time. I did not feel that it was necessary for us to go beyond that. I really do not think that the major parties, about whom these conversations were taking place, were unaware of what the law provided or of what our guidance said. (#188)

In fact, as explained above, there was room for genuine doubt by the parties on the meaning of “commercial terms” for the reasons set out in #23–26 above.

The Chief Executive of the Electoral Commission also said to the Committee:

We did not at the time [the run up to the 2005 poll] have any evidence to suggest that, as has subsequently been suggested, the parties were as heavily reliant across the board on loan finance as it is subsequently suggested they have been. (#188)

At the very least, the Commission was aware before the poll that one of the parties had borrowed no less than £16 million and was heavily dependent on loans. It is hard to understand the suggestion that it was only after the election that the Commission could have known that loans to parties had become highly significant.

Admittedly, Labour’s loans became public only later. But there were already strong reasons to believe before the elections that the Labour campaign was heavily dependent on loans since the total received by the party in donations (which were declared on a weekly basis during the campaign) were wholly insufficient to pay for its advertising and other expenditures.

According to the Commission’s evidence of 13 June 2006 to the Standards Committee, it issued “comprehensive guidance” about the provisions of PPERA on loans (#182). However, when subsequently asked under the terms of the Freedom of Information Act 2000 to produce this guidance, the Commission’s legal counsel failed, in a reply dated 4 June 2007, to produce any documentation issued before the 2005 election that gave any advisory opinion on the meaning of “commercial terms” for loans. He cited several documents, but none of them included any clarification of the matter.

Moreover, the legal counsel acknowledged that during the period between the publication on 21 April 2005 of the article in *The Times* revealing that the Conservatives had received loans to the value of £16 million and the general election two weeks later, “the Commission/its Chairman did not issue any specific advice in this regard.” (See Appendix 1).

On 21 April 2005, the Chairman of the Commission was cited in *The Times* as saying that loans to parties could be against the spirit of the PPERA 2000. But, as the Commission’s Chairman said on 13 June 2006 to the Standards Committee, this was not about saying to the parties, “We do not think you are complying with the legislation”. (#196)

It may reasonably be argued that the role of an electoral commission is not to give spiritual advice but to administer and help enforce the law. What was needed before the election and what one of the main parties specifically requested was advice about the meaning of an important aspect of what the Commission itself acknowledged was a “a piece of untested legislation with definitions that were untested”. (#189)

Using arguments broadly similar to those given in #21–32 above, the Committee on Standards in Public Life cited the failure of the Electoral Commission to give an advisory opinion as a case of regulatory failure. (Eleventh Report). It gave this verdict despite the fact that it agreed with the statement of the Chairman of

the Electoral Commission that the loans were against the spirit of the PPERA. (For the reason given in £32 above, I differ from the Standards Committee on this narrow point, though I concur with almost all of its recommendations).

The report of the inquiry commissioned by the Metropolitan police into the conduct of the loans for Lordship inquiry has reached a conclusion similar to that set out above. It too blames the Electoral Commission for its failure to issue any guidance about the meaning of a loan on “commercial” terms.

*Impact of the Electoral Commission’s failure to offer an advisory opinion on the meaning of a loan on “commercial terms”*

In the opinion of Sir Alistair Graham, Chairman of the Committee on Standards in Public Life, the Commission’s then policy of not offering advisory opinions on untested legislation contributed significantly to the subsequent furore over alleged sales of peerages. I agree with this view. Sir Graham said that, once the issue of ambiguity of the meaning of “commercial terms” had been raised with the Commission,

it does seem to me you are a pretty ineffective regulator if you are not at that time saying in a formal letter from yourself as Chief Executive or from the Chairman, “We have some fears and worries in this area. Can I draw your attention again to the guidance that we have issued?” or, “Here is the guidance that we are now issuing”. You might have saved those political parties from some serious embarrassment that has clearly occurred and also some loss of confidence amongst the public. (Committee on Standards in Public Life, 13 June 2006, #187)

Public criticisms of the parties—especially Labour—in 2006 were in considerable measure based on the assumption that they had acted in a clandestine manner and had evaded the law relating to the disclosure of political donations.

Certainly, they exploited a loophole in the 2000 law but they did not do so in an unreasonable or underhand way. They followed the advice of their lawyers and acted as one might expect them to act in the circumstances: namely in their own best interests as they saw them. There is no reason to believe that they would have refused to follow an advisory opinion from the Electoral Commission had the Commission been prepared to give such an opinion. There is no reason to believe that they were seeking to disobey the law. The new rules were unclear; the referee (the Electoral Commission) was mute.

According to press sources close to the Metropolitan Police investigation into “Loans for Lordships”, the police investigators assumed for several months that the non-disclosure of loans by Labour had been illegal.

In the early stages of its investigation into the alleged sale of honours, Scotland Yard intended—according to the same sources—to hang its case on charges against Labour and the Conservatives for failing to disclose loans as required by the Political Parties, Elections and Referendums Act 2000. This subsidiary offence was vital. The Yard reportedly predicted that it could prove hard to gather sufficient evidence to prove the central allegation—a direct trade of a donation (or loan) for a peerage contrary to the Honours (Prevention of Abuses) Act, 1925.

Once it was revealed in evidence to the Standards Committee that the Electoral Commission had refused to give an advisory opinion on the meaning of “commercial terms”, the prospect of prosecutions against the parties for non-disclosure of loans virtually disappeared. It has been reliably reported that the Yard was disappointed when it learned the Electoral Commission’s regulatory shortcomings had destroyed its strategy. The police now had to rely on proving another subsidiary offence, namely that there had been a perversion of the course of justice. Their failure to establish this meant that the entire case crumbled. (See *Progress*, 1 October 2007, [www.progressonline.org.uk/Magazine/article.asp?a=2003](http://www.progressonline.org.uk/Magazine/article.asp?a=2003))

In the words of the press release by the Crown Prosecution Service in which it explained why it had decided against bringing a prosecution for a breach of PPERA,

we are satisfied that we cannot exclude the possibility that any loans made—all of which were made following receipt by the Labour Party of legal advice—can properly be characterised as commercial.  
([www.cps.gov.uk/news/pressreleases/146\\_07\\_document.html](http://www.cps.gov.uk/news/pressreleases/146_07_document.html))

*Lessons learned from the failure of the Electoral Commission to issue an advisory opinion on “commercial terms”*

Though the primary objective of the current PASC inquiry is to derive lessons from the Loans for Lordships affair about the process of nominating peers, some of the most significant lessons concern the system of electoral law and administration in the United Kingdom.

Rather than repeat previous statements, I refer members of PASC to my first memorandum of evidence to the Eleventh Inquiry of the Committee on Standards in Public Life (May 2006) and to my initial evidence

before the Committee on 13 June 2007. The conclusion expressed there was that electoral administration in the United Kingdom is a disgrace. This was a judgement on the overall system and not just on the Electoral Commission.

A number of the points set out in this evidence were subsequently reflected in the Committee's Eleventh Report (January 2007).

#### More care needed about legislation on elections

The first lesson, which was beyond the remit of the Standards Committee's report, is the vital need to legislate with care about issues relating to parties, referendums and political funding. It is not sufficient to enact bills that set out objectives and principles, however worthy they may be. Legislation about matters that are highly contested—such as elections—will obviously be closely examined by candidates and by parties with a view to finding legal means to evade onerous or unwelcome provisions. Therefore, “the devil is in the detail” is a motto that applies especially to such legislation.

Even some of those closely involved in the enactment of the PPERA now recognise that the Act had gaps, ambiguities and unanticipated consequences.

Sometimes, new legislation is defended on the ground that, even if imperfect, it can easily be amended. This is a risky view. Even if it is later altered, imperfect laws can cause harm and confusion while they are in force.

I do not believe that the best way ahead is yet another piece of legislation to correct and extend the PPERA. There needs to be further detailed analysis by experts and practitioners of the detailed provisions of all the main existing legislation relating to elections before new laws are proposed.

This plea for better empirical analysis and greater caution applies also to the proposals emerging from the review of party funding by Sir Hayden Phillips. The factual analysis of trends in political funding set out in Sir Hayden's two reports as the basis for his recommendations contains important gaps and errors. It is, in my opinion, misleading.

#### The case for advisory opinions

Second, the Electoral Commission needs to give advisory opinions on unclear aspects of PPERA and on other electoral laws.

It should be noted that the Commission has issued inconsistent statements both about whether it has issued advisory opinions in the past and whether it intends to do so in the future.

Concerning its past practice about “advisory rulings”, the Chief Executive of the Electoral Commission stated on 13 June 2006 to the Committee on Standards in Public Life:

That is not something . . . that we have done in the past. It is something we need to consider and it is something we will be considering in our own consideration of the rules and our powers and the way we exercise them. [Concerning loans to parties] [w]hat we had was a piece of untested legislation with definitions that were untested and having to be quite careful as to what we said in terms of what was right or wrong in a situation where we did not want to be accused by one party or the other of coming up with an answer that may or may not have been convenient to one party or the other. We took the view that we would stand on the legislation and carry on with the view that the party had looked at the legislation, interpreted it and got on with compliance. (13 June 2007, #189, underlining added.)

By contrast, a legal officer of the Commission on 17 July 2007 answered a query under the terms of the Freedom of Information Act as follows:

Question:

Has the Commission issued any advisory opinions on specific aspects of laws relating to political finance enacted from 2000 onwards?

Reply:

The term “advisory opinion” can be interpreted in many different ways. In some jurisdictions, there is a formal legislative procedure for persons to seek and obtain a formal advisory opinion from an electoral commission. This does not exist in PPERA. However, the Commission has replied to informal advisory requests throughout its history in a variety of formats ranging from phone conversations, emails and letters. These requests have not been tracked specifically as “advisory opinions” for recording purposes.

Concerning the future, the position also remains unclear. In his evidence before the Standards Committee on 4 September 2006, the Chief Executive of the Electoral Commission accepted the case for advisory opinions:

I think the general principle with new legislation is [that] a regulated body [should] be able to approach the regulator and ask for the regulator's view on what would be a sensible approach to a particular issue that has arisen, particularly if the law is tricky on this subject or not clear, I think that is a good principle.

I think we should be more prepared in future to look at those questions and to say, "Well, in our view the issue here is full transparency, that is what we are here to ensure, it seems to us the sensible thing to do is X. Please do X and we will be happy". There is always a risk that in three year's time a court tells us that our legal judgment was wrong. That is a risk I think we should take . . . [a]nd it does happen internationally with other party funding regimes. (#334 and 336)

By contrast, the communication from a legal officer of the Commission on 17 July 2007 cited in £45, is more tentative

It should also be noted that the Director of Party and Election Finance has commenced a review of the advisory request process to see how it can be regularised in the absence of a statutory basis. (Electoral Commission FOI 58/07, underlining added).

Over a year after the Chief Executive of the Electoral Commission appeared to give a commitment to issuing advisory opinions and nine months after the Standards Committee published its Eleventh Report, the Commission has yet to move on the matter and has muddied the waters by suggesting that it already has issued such opinions throughout its history.

As the Chief Executive of the Electoral Commission acknowledged in his evidence of 14 September 2006, cited in #46, there are established systems of advisory opinions on election law in countries such as Canada and the United States.

There is an admitted disadvantage of advisory opinions. They may be seen as quasi-legal judgements which take power away from the legislature and from the courts. However, I believe that this danger is less than that of uncertainty and chaos following the passage of unclear laws.

#### The need for more enforcement

A third lesson is that the enforcement of election laws needs to be taken far more seriously. As Judge Mawrey rightly said in his judgement in 2005 on the Birmingham electoral fraud cases, public authorities are in a state of denial about electoral abuses. He made this remark in the specific context of electoral fraud, but there is a similar situation regarding political financing. (This is argued more fully in my first memorandum of evidence to the Committee on Standards in Public life).

One problem about the enforcement of political finance laws is that there is lack of clarity about which body is responsible for which aspect of enforcement. International experience shows clearly that the enforcement of political finance laws is an unpopular task for regulatory agencies. Therefore, if responsibilities are divided or are unclear, each regulatory institution will tend to pass the buck.

PPERA gives the Electoral Commission draconian powers of entering premises and taking away documents. But the power to bring prosecutions rest with the Crown Prosecution Service. Moreover, the Commission's powers are different with regard to the funding of parties and of candidates. The Chief Executive of the Commission justifiably pointed out in his evidence of 14 September 2007 to the Standards Committee that the regulatory framework "is not as well thought through as it might be" (#324)

Indicative of the confusion is that a leading public lawyer has asserted that the Commission is an enforcement body whereas the Commission itself wrote to a Yorkshire police force shortly before May 2007:

The Electoral Commission is not an enforcement agency. In my opinion, the confusion about legal responsibilities for enforcement of election laws in the United Kingdom does need to be addressed. Nevertheless, I do not think that this admitted confusion is the root cause of the problem of non-enforcement. It is a long-standing and deep-rooted culture of complacency that is mainly responsible.

#### The need for a separate unit responsible for investigation and enforcement of possible breaches of election laws

A fourth lesson is that it is hard for a single regulatory body to mix responsibilities for routine administration of laws with responsibilities for enforcing the laws. The skills needed to administrate and advise are different from those required to investigate and enforce.

In the past, the Electoral Commission has lacked a professional capacity to investigate and to enforce. For example, no forensic accountant has been a member of staff and there appear to be no plans to employ one in the future. (See reply by the Commission to FOI 58/07).

International experience demonstrates that self standing bodies with a special responsibility for enforcement are likely to be more active and effective than all-purpose electoral commissions. In an all-purpose commission, investigations are likely to be postponed because of the everyday pressures of administration. This is especially the case during an election campaign.

Two alternative models of enforcement that should be examined are the Canadian model and the New York City model. In the Canadian system, there is a self-standing, independent enforcement capacity within the electoral commission (Elections Canada). In New York City, the Campaign Finance Board is responsible for the enforcement of campaign finance rules. It is separate from the body tasked with administering elections. (Descriptions of each of these systems is included in the transcript of the international conference on political financing held in September 2006 by the Electoral Commission. They are to be found on the Commission's website).

In addition, the work and role of the Election Crimes Branch of the United States Department of Justice should be examined.

*The Metropolitan Police, the Press and the Loans for Lordships Affair*

In my opinion the decision of the Crown Prosecution Service not to bring charges against those investigated during the inquiry was correct. Those investigated are entitled to a presumption of innocence and to emerge with their reputations unscathed.

However it does not follow from this that the Metropolitan police should automatically be criticised for undertaking the investigation.

Policemen and prosecutors are not always angels. It is legitimate to ask about specific aspects of the investigation such as the source of leaks to the press while it was being conducted. If there is specific evidence of improper conduct on the part of the police, the Committee is entitled to point to this evidence.

By contrast, the Committee and its witnesses need to be restrained in criticising the police on very broad, insubstantial grounds. It is unhelpful to criticise the police—as some have appeared to do—on the ground that the British press is irresponsible or on the ground that it is common knowledge that there is little corruption or improper conduct in public life.

ENDNOTE

Dr Michael Pinto-Duschinsky: senior research fellow in politics, Brunel University; Uxbridge, United Kingdom, president, International Political Science Association research committee on political finance and political corruption, member of the board, IFES (International Foundation for Election Systems, Washington DC, former founder governor, Westminster Foundation for Democracy, former member of the steering committee, World Movement for Democracy.

APPENDIX 1

QUESTION:

*“... following the article in The Times on 21 April 2005, and especially in the period until the poll, what was the specific advice, if any, which you [the Commission/its Chairman] gave on the letter (rather than the “spirit”) of PPERA 2000 relating to what was acceptable as a “commercial” loan?”*

ANSWER BY THE LEGAL COUNSEL TO THE ELECTORAL COMMISSION—4 JUNE 2007

The position, based on the Commission's records and best recollection, and subject to the provisos and comment below, is that during the referred to period the Commission/its Chairman did not issue any specific advice in this regard. [Underlining added.]

However, this answer should be referred to in the context of:

The Commission having published written guidance for political parties on donations (attached), that includes at para 2.5 reference to treatment of loans that are made on other than commercial terms.

Correspondence of 28 April 2005 from the then Director of Regulatory Services to you responding to your enquiry of 25 April 2005 on *inter alia* what interest rates would be regarded as commercial (attached—see para no 4).

The evidence on this matter given by the Commission's Chairman and its Chief Executive to the Committee for Standards in Public Life, extracts attached, including for completeness of context from your evidence, with references to commercial loans indicated in bold. I also note that the correspondence at numbered paragraph 2 above was submitted by you to the Committee.

As you are aware, there is a current police investigation in relation to certain party loans and appropriate care is necessary not to prejudice such matters . . .

[The attachments to the letter are available on the Electoral Commission's website:  
www.electoralcommission.org.uk/templates/search/document.cfm/20210]

*November 2007*

### **Correspondence from Sir Gulam Noon**

#### **Letter to the Chairman from Sir Gulam Noon, dated 11 August 2006**

I hope that the Committee does not mind that I send it this personal letter. I write to the Committee because it is investigating the honours system in this country, because, some time ago I was asked to give oral evidence before it and because my profile in relation to a potential peerage is very much in the public domain.

I had hoped that, by now, I would have appeared before the Committee. For reasons of which I, of course, understand, that appearance has not taken place. In the circumstances, I think that it is right to provide this letter. I do not regard what I set out below as confidential.

I first of all would like to set out my background and my present life and business. My reputation is of great importance to me. It has been built up over 50 years of which 37 have been spent in this country. Through what I consider to be no fault of mine, I now find myself in the invidious position of having to defend it.

I have always acted honourably in my working life. I am in the business of ready made meals and I think I can claim the credit of creating Britain's favourite dish, chicken tikka massala. My factories are in the Ealing and Southall area and I employ over 1000 people in what is a semi deprived area.

I serve on various public bodies. The Covent Garden Market Authority from 1995–2001, London TEC and presently the Transport for London Committee appointed on 1 March 2004. I am on the board of certain charities—CARE International UK from 2002-2006 and The Advisory Council of The Prince's Trust since 1996. I am also a member of The Advisory Board on Nationalisation and Integration (ABNI) since November 2004.

I believe that every individual has a responsibility to give back to society, both in terms of time and money. That is our social contract. My own charitable trust, the Noon Foundation, was created in 1999 with a personal contribution of £4 Million. We do not actively raise any funds from the public. The Foundation has been engaged in several projects. As one example, it supported a mentoring scheme for young people at Tower Hamlets College for over three years—2000-03 with a contribution of £200,000. I do not limit myself to my own charity. I actively support the Prince's Trust.

I do not limit myself to charitable or political giving. I gave Norwich City Football Club £100,000. Delia Smith, a director, is a personal friend. I gave the same amount to Surrey County Cricket Club towards a new stand and underwrote a further £400,000 for the India Room. I hope these facts put my political loan in some context. The labour party needed funds before the next election. I was asked to help and was able to do so. To my mind, there is no connection between that loan and the eventual approach in relation to a peerage.

I would have been immensely honoured to be granted the opportunity to work in the House of Lords. I, perhaps immodestly feel that I have made a good contribution to society and, at now 70 years of age and at a stage in my business life where I would have devoted considerable time to the House, I would have been pleased to do the work. Certain issues would have been close to me. For example, although I am a Muslim, after the July 7th bombing, I wrote articles which criticised terrorists. There are a number of areas where I feel that I could have made a contribution to the work of the House.

Having said that, I am very anxious to make entirely clear that I have never made a political or any other donation or loan with a view to any kind of honour. I have been honoured before. In 1994, I was awarded the MBE under the Conservative Government, in 2002, I received a Knighthood and, in January this year, the President of India gave me a "Gold medal" award for my contribution to that society. I was involved in charitable projects such as the building of hospitals and schools in my native state of Rajasthan, India. I am quite certain that none of these honours was in any way connected to any loan given by me at any time. I hope that in the past, and, now in relation to the recommendation for a peerage, it has been my work over the years which is the real reason why I have been awarded or put forward.

My loan to the Labour Party came about because the party's need for general election funds. Lord Levy asked me if I could help. I was in a position to do so and offered a gift which would have been in the region of £50,000. Lord Levy indicated that he would prefer more and a loan of £250,000 was agreed with interest. The loan was repayable and the agreement contains terms as to interest which I regard from my point of view as commercial and the Party described it as such. The matter was agreed before the election and only arose when interest fell due. After correspondence and discussion, I added the interest to the capital sum.

I emphasise, there was no connection between this loan and the eventual recommendation of my name for a peerage.

When I was approached in relation to the possible peerage, I completed what I understand to be the usual form and disclosed on an attached document my schedule of donations including the £250,000 loan. I was, thereafter, reminded by Lord Levy that this should not have been declared because it was a loan, not a donation. At his suggestion, I telephoned Richard Roscoe, the appropriate civil servant at 10 Downing Street, and, following discussion, I wrote enclosing the revised schedule. I thought that I was correcting an error and am embarrassed and upset by the nature of some of the publicity which has resulted.

I have done absolutely nothing wrong with regard to any donations or this loan.

It takes years to build a reputation but only a few hours to destroy it. It is very hard to explain to my international business associates, particularly in India, what has happened in Britain in the past few months. I felt that, when the publicity became so great, it would be right for me to withdraw my consent to nomination for a peerage. I hope that the Committee will understand how I felt.

I hope that the above information contained in this letter assists the Committee. I regard this as an open letter and I make it in the spirit of cooperation and an attempt to help. I have intended to do that from the start. I am only sorry that I have not yet been able to assist the Committee by an attendance before them.

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