

HOUSE OF LORDS

SESSION 2002–03
REPORT

SELECT COMMITTEE ON
THE SPEAKERSHIP OF THE HOUSE

THE SPEAKERSHIP OF THE HOUSE OF LORDS

WITH EVIDENCE

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**SELECT COMMITTEE ON THE SPEAKERSHIP OF THE HOUSE: EXTRACTS
FROM THE MINUTES OF PROCEEDINGS OF THE HOUSE OF LORDS**

Thursday 3 July 2003

17. Speakership of the House—It was moved by the Lord President (Lord Williams of Mostyn) that it is expedient that a Select Committee of 11 Lords be appointed to consider the future arrangements for the Speakership of the House in the light of the Government’s announcement that it is intended to reform the office of Lord Chancellor, and to make recommendations; and that the Committee shall report by the end of the session; then it was moved by the Lord Elton, as an amendment thereto, after “Chancellor” to insert “and any undertakings given by the Government as to the future allocation of places in the Cabinet to members of the House of Lords”; after debate, the amendment was (by leave of the House) withdrawn; then the original motion was agreed to.

Wednesday 9 July 2003

12. Speakership of the House—It was moved by the Chairman of Committees that, as proposed by the Committee of Selection, the following Lords be named of the Select Committee to consider the future arrangements for the Speakership of the House in the light of the Government’s announcement that it is intended to reform the office of Lord Chancellor, and to make recommendations:

- L. Alexander of Weedon
- L. Ampthill
- L. Carter
- L. Desai
- L. Freeman
- B. Gould of Potternewton
- L. Lloyd of Berwick (Chairman)
- L. Marsh
- B. Miller of Chilthorne Domer
- L. Tordoff
- L. Trefgarne;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Reports of the Select Committee from time to time shall be printed, notwithstanding any adjournment of the House;

That the Committee shall report by the end of the session;

And that the Committee do meet on Tuesday 15th July at 11 a.m.;

the motion was agreed to.

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REPORT

18 NOVEMBER 2003

By the Select Committee appointed to consider the future arrangements for the Speakership of the House in the light of the Government's announcement that it is intended to reform the office of Lord Chancellor, and to make recommendations.

ORDERED TO REPORT

THE SPEAKERSHIP OF THE HOUSE OF LORDS

INTRODUCTION

1. We were appointed by the House on 9 July 2003 and asked to report by the end of the session. Our terms of reference required us "to consider the future arrangements for the Speakership of the House in the light of the Government's announcement that it is intended to reform the office of Lord Chancellor".

2. Our appointment arose from the Prime Minister's announcement, in a press release on 12 June 2003, that "the post of Lord Chancellor" would be abolished. This was followed by two statements by the then Leader of the House, the late Lord Williams of Mostyn, on 16 and 25 June. In the second statement he announced his proposal to set up this Committee.

3. On 18 September the Lord Chancellor, Lord Falconer of Thoroton, made a further statement accompanying the publication of two consultation papers. One of these related to the office of Lord Chancellor.¹

4. Our terms of reference refer to the Government's intention to "reform the Office of Lord Chancellor". But the press announcement on 12 June 2003 and the first sentence of the Lord Chancellor's foreword to the consultation paper refer to the "abolition" of the Office of Lord Chancellor, and this was the line which he took in oral evidence (Q 4). In view of this ambiguity there are those who argue that the whole exercise is premature, and that we should wait until the legislation is on the statute book, or at least until the Government's intentions have been clarified (for example Lord Strathclyde (QQ 119 and 135) and Lord Craig of Radley (QQ 153 and 160)). But this is not our reading of the debate which took place on the motion to set up the Select Committee on 3 July 2003.

5. Obviously we cannot predict the outcome of the proposed legislation, and even if we could, it would fall outside our terms of reference. Still less should we express any view on the merits. Since we have been instructed to report by the end of the session, we can make progress only by making an assumption. The assumption we have made is that the office of Lord Chancellor will indeed be abolished. If that assumption proves to be incorrect, then the House will have to think again. In the meantime the Lord Chancellor has indicated that until the office of Lord Chancellor has been abolished he will continue to fulfil the role of Speaker, under Standing Order 18, so long as the House so wishes (Q 4):

"If the House of Lords wishes me to remain until then – and I believe it is a matter for the Lords rather than for the legislation as to how long I remain Speaker – I will, as best I can, perform that function. I should say – and I think this has been made clear by me as well – I hope that the Lords would feel able to make different arrangements to allow me to cease to be Speaker, but that is a matter for the Lords, not a matter for me. I make it clear I will go on doing the job of Speaker of the House of Lords for as long as the House of Lords want me to do

¹ The other related to reform of the House of Lords.

it. Again, I make it clear my own personal view is that, subject to proper alternative arrangements being made, it would facilitate other things that I do if I cease to be Speaker but, as I say, that is a matter for the Lords.”

EVIDENCE

6. We invited views in writing from Members of the House. We had some 60 replies. We also held four meetings at which we heard oral evidence. The names of those giving written and oral evidence are set out in Appendix 1.

7. The overriding theme which has emerged consistently from all the evidence is that the House wants to continue with self-regulation. It has served the House well in the past, and will, Members believe, continue to serve us well in the future despite any foreseeable changes in the make-up of the House. Thus it is clear that the House does not want a Commons-type Speaker. The responsibility for maintaining order must continue to rest with the House as a whole. But as there are other aspects of self-regulation, we start with a consideration of what self-regulation means in practice.

SELF-REGULATION

8. The Companion to the Standing Orders describes self-regulation as follows:

“The House is self-regulating: the Lord Speaker has no power to rule on matters of order. In practice this means that the preservation of order and the maintenance of the rules of debate are the responsibility of the House itself, that is, of all the Members who are present, and any Member may draw attention to breaches of order or failures to observe customs.”²

On three occasions since 1971, Working Groups have examined the concept of self-regulation.

9. In 1971 a Group on the Working of the House, under the chairmanship of Lord Aberdare,³ commented as follows:

“Self-Government

During our deliberations we have repeatedly been reminded of the fact that the House of Lords is a unique institution in that all its members are equal and that there exist no powers of control by the Speaker....

While the Leader of the House has a responsibility for reminding the House of the rules, the exercise of his office demands great tact lest he should over-step the mark and act as something more than the first among equals. The fact that the Leader is a Cabinet Minister and a member of the governing Party means that his role is obviously a delicate one, especially when matters of party-political controversy are under discussion. We would therefore stress that it is for all members of the House to see that its procedures are followed....

The Case Against an Effective Speakership

A few Peers, mainly ex-MPs, have suggested that the time has come for there to be an effective Speaker of the House of Lords. We consider that there are the most powerful reasons against this. The large majority of those who offered evidence are not in favour of such a change at present....

The “sense of the House” is the decisive factor in the conduct of our business, and in the main this works well.”

² Companion to the Standing Orders, 2003 edition, paragraph 4.01.

³ The other members were Lord Byers, the Earl of Perth and Lord Shepherd. The Report was made to the Leader of the House (Earl Jellicoe) in May 1971 and published in August 1971 with the 10th Report from the Procedure Committee 1970–71 (HL 227).

10. Seventeen years later, in 1987, another Group on the Working of the House, again chaired by Lord Aberdare,⁴ commented:

“The House has the power to make a fundamental change in its customary way of proceeding, by replacing the present system of self-regulation with a Speaker possessing effective powers: this would, at once, enable a number of restrictive measures to be taken to expedite business, as in the Commons.

The case for a Speaker with controlling powers received virtually no support and was argued by only one Peer, who believed it less surprising that the system was flawed than that it worked at all ...

The overwhelming majority of the House opposed the introduction of a Speaker with controlling powers....

For most, the reasons against such a change are positive; Peers have pride in our system of self-regulation and the “liberal spirit” it embodies. The introduction of a Speakership with powers would encourage time-wasting points of order, worsen conduct, and curtail the ancient liberties of the House.”

11. Finally in 1999 the operation of self-regulation was considered by a Group chaired by Baroness Hilton of Eggardon.⁵ We quote two paragraphs from their valuable report:

“7. Procedure in the Chamber has traditionally been marked by a degree of courtesy, good manners and good will across the various political divides, which is rare in parliamentary proceedings. This may be due partly to the role and composition of the House, which enable us to stand back a little from the rough-and-tumble of party politics; if these were to change, the style of the House might well change too. In the meantime, however, we have been asked to consider whether the traditional courtesies can be better maintained. We believe that they can; we believe that the House should be proud of its capacity to conduct good politics with good manners, and should do its best to continue to set an example in this way. We make recommendations accordingly ...

8. Courtesy should not be seen as an optional extra. Without a high degree of courtesy and self-restraint, self-regulation will become unworkable, and the freedoms which enable the House to do its job will be forfeit.”

12. There are many aspects of self-regulation which distinguish the procedure in the House of Lords from the procedure in the House of Commons. The most important of these are as follows:

- (a) Lords address the House, not the Woolsack.
- (b) The Lord Speaker (we return later to the question of the title) has no power to rule on points of order.
- (c) The Lord Speaker has no power to call on Lords to speak in debates. In theory the House decides whom it wishes to hear. In practice a list of speakers is usually determined through the “usual channels”.
- (d) There is no selection of amendments; all are debated unless not moved.
- (e) The Lord Speaker has no power to adjudicate at question time when two or more Members rise together, and neither gives way. This is a matter for the House, advised when necessary by the Leader of the House, or in her absence by the Deputy Leader or Chief Whip.

⁴ The Earl of Perth was again a member, and the other members were Lord Aylestone, Lord Belstead, Baroness Llewelyn-Davies of Hastoe and Lord Wigoder. The Report was made to the Leader of the House (Viscount Whitelaw) in April 1987 and published in July 1987 as HL Paper 9 of Session 1987–88.

⁵ The other members were Lord Brightman, Baroness Carnegie of Lour, Baroness David, Earl Ferrers and Baroness Hamwee. The Report was made to the Leader of the House (Baroness Jay of Paddington) in February 1999 and published in March 1999 as HL Paper 34 of Session 1998–99.

- (f) The Lord Speaker has no power to intervene if a Member speaks too long in a time-limited debate, or comments at undue length on a Ministerial Statement, or strays from the point or is repetitious. These are matters for the House as a whole, again advised as necessary by the Leader, the Deputy Leader or a Government Whip.
- (g) The Lord Speaker has no power to rule on Private Notice Questions. The initial decision is taken by the Leader of the House, but subject to the wishes of the House as a whole.

13. Thus it is true to say that virtually the only power of the Lord Speaker is to bring time-limited debates to an end at the appropriate time.⁶

14. The question which now arises on the evidence is whether any of the very limited functions currently performed by the Leader, the Deputy Leader or a Government Whip on behalf of the House (see paragraph 12(e), (f) and (g) above) could usefully be transferred to the new Speaker. Before coming to the details, we should make certain more general observations as to how we see the office of Speaker.

THE OFFICE OF SPEAKER

15. In the course of his oral evidence, the late Lord Williams of Mostyn said (Q 29):

“I would see that the new Speaker or Deputy Speakers would have fundamentally two responsibilities. One, to be the guardian of the ethos of this place and, two, to be the guardian – if it does not sound too pompous – of *The Companion*. Now at the moment at question time it is for me, subject of course to the House’s wishes, to select the speakers on supplementary questions. I literally keep a list, as you know, and write down the parties but, of course, sometimes one has a very senior member of the Conservative Party and a relatively new member of another party, and it is sometimes rather invidious. I do not think I should be doing that – although I enjoy doing it I have to say – I think the Speaker should be doing that....

I think to be the guardian of *The Companion* it seems to me is perfectly proper. Now I have had complaints recently, and they may well be justified, that the Whips on either side do not discharge their duty vigorously enough at the moment, but sometimes that is just a matter of courtesy. A very junior Whip on either front bench is very reluctant to say something to someone who has been here 30 or 40 years. Those types of things, I think, are in the overall context of self-regulation, and the person chosen to do this work would be chosen because he or she was capable of working in the spirit developing from but consistent with the way we choose to work.”

16. We agree with Lord Williams of Mostyn that the Speaker should be seen as the guardian of the *Companion*. We regard this as a helpful approach, provided always that he exercises such functions as he may be given with a lightness of touch, and subject always to the wishes of the House, to which he must be sensitive. In the report of the Aberdare Group in 1987 the procedural role of the Leader was described as being “compatible with and not injurious to self-regulation”. We would say the same about the Speaker, who should be seen not as an alternative to self-regulation but as an essential part of it. Thus the question is not a choice between regulation and self-regulation. Nobody from whom we have heard supports regulation. The question is how we make self-regulation effective.

⁶ This is provided for in Standing Order 38(1): “If a balloted debate or a time-limited debate is continuing at the end of the time allotted to it, the Clerk at the Table shall rise and thereupon the Lord Speaker shall ask the mover whether or not he wishes to withdraw his Motion. If the mover does not ask leave to withdraw, or if leave to withdraw is refused, the Lord Speaker shall, notwithstanding the provisions of Standing Order No. 19, put the Question forthwith.”

Standing Order 22 contains a further power, but it is little used: “If any Lord has occasion to speak with another Lord while the House is sitting, they are to retire to the Prince’s Chamber, and not converse in the space behind the Woolsack; or else the Lord Speaker is to call them to order, and, if necessary, to stop the business in agitation.”

17. We will come back later to other functions which the Speaker might perform, such as representing the House abroad, receiving and entertaining overseas dignitaries, and, most important, looking after new Members and helping them to learn the customs and traditions of the House. The Lord Chancellor has not always been able to perform these functions, because of the multitude of his other duties. We see great scope here for expanding the role of Speaker, in order to help the smooth running of the House at home, and to be a worthy representative of the House abroad. For all these purposes the Speaker will need to be a person of considerable stature. The point was well put by Lord Lucas, that the Speaker should be seen as a person of “great influence but few real powers”. We would only question whether “powers” is the right word. We see the role as one of performing functions rather than exercising powers.

18. Baroness Boothroyd and Lord Weatherill were both of the view that, once elected, the Speaker should give up party politics for life (QQ 57 and 105). We agree.

FUNCTIONS WITHIN THE CHAMBER

Private Notice Questions

19. There seems to be widespread agreement that the decision to allow Private Notice Questions should not be taken by the Leader since they are often politically sensitive, especially at times when the House of Commons is not sitting. That was the strongly held view of Lord Williams of Mostyn (Q 29).⁷ We agree. Nor are Private Notice Questions suitable for the usual channels. The role of the Leader should therefore be given to the new Speaker. If the decision is challenged then it would be for the House to decide, as now (see paragraph 4.99 of the *Companion*).

Question Time

20. Supplementary questions during Question Time, when two (or more) Members rise together, and neither gives way, raise a different problem. As already mentioned, Lord Williams of Mostyn was in favour of transferring his limited functions at Question Time to the Speaker. He found it at times rather invidious to choose between “a very senior member of the Conservative Party and a relatively new member of another party,” (Q 29). This view was supported by about fifteen of those who replied to our letter, and by Baroness Boothroyd (Q 78) and Baroness Williams of Crosby (QQ 144 and 152) among those who gave oral evidence.

21. The contrary view was expressed by Lord Strathclyde in oral evidence (QQ 122 and 130) and by Lords Chalfont and Chadlington in written evidence with which 16 other Members expressly agreed. Many others expressed the same view in individual replies.

22. The arguments in favour of some of the functions performed by the Leader, the Deputy Leader or the Whips being transferred to the new Speaker are as follows:

- (a) Choosing among those seeking to ask a supplementary question can be difficult in the Leader’s position on the front bench, especially when two or more Members rise behind her. The Speaker has the best view of the House as a whole.
- (b) When the House is in a fractious mood, choosing the next question can be “invidious”, to use Lord Williams of Mostyn’s word. It is therefore better that the choice should be made by an experienced Speaker from the Woolsack.

⁷ “I have always found it objectionable in principle that private notice questions should be at my gift.... I do not think it is right for a member of the Executive to dictate or attempt to determine what pressing issues of the day should be discussed even for those short periods by a sovereign House of Parliament, and I find that objectionable.”

- (c) When, later in the day, difficulties arise in debates or proceedings on bills, it may fall to an inexperienced Government Whip to advise the House. Again, it is best that the task should fall to an experienced Speaker or deputy.
- (d) If we are to get a person of stature to serve as Speaker, and if he is to earn the respect of the House, he must be seen to perform at least some functions in the Chamber.

23. Arguments put to us against the Speaker being given any of the Leader's functions, other than in relation to Private Notice Questions, are as follows:

- (a) The existing system works well. There is no need to change it at a time when so much else is being changed.
- (b) The Leader is well placed to receive advice from the Table, unlike a Speaker on the Woolsack.
- (c) If the Speaker is given any functions at all, Members will be quick to push their luck, instead of exercising self-restraint. This was one of the points made strongly by Lords Chalfont and Chadlington.
- (d) If the Speaker is given any functions at all, they are likely to increase over time, thus diminishing self-regulation.

24. Our own view is that the transfer of the Leader's limited functions at Question Time would be in the best interests of the House in securing a suitable candidate to fulfil the role of Speaker, and would be fully consistent with self-regulation. We were much influenced by the evidence of Lord Williams of Mostyn in this respect. We do not share the view that so limited a change would prove to be the thin end of the wedge, provided always the House remains alert to any further changes in the future. Nor are we so pessimistic as to believe that the House will forget the traditional courtesies that have, by and large, prevailed until now. But this again depends on the Whips and other senior Members of the House playing their part in upholding those traditions (see Lord Brabazon of Tara at Q 195).

25. We are not in favour of the Speaker calling members by name. Rather, he should ensure that questions come from each of the parties in turn, including the Crossbenches and Bishops, by saying "I think it is the turn of [say] the Liberal Democrats", or words to that effect. Where two Members of the same party rise at the same time the choice should not be made by the Speaker, but by the House or the front bench of the party in question.

Other functions as guardian of the Companion

26. Should the Speaker be allowed to intervene on other occasions, for example if a Member is speaking on the wrong amendment, or overruns his time in a time-limited debate, or strays too far from the point? This is largely a question of degree and "feel". When, as occasionally happens, the House gets into a muddle as to which amendment is being debated, we see nothing wrong with gentle guidance from the Speaker. The same applies if a Member grossly overruns his time, or if a Government reply is much too long, since this all tends to reduce the time available to other Members (see Lord Brabazon of Tara at Q 176). A tactful reminder should be sufficient, provided it is backed up by the Whips. There may be occasions when an unguarded intervention is not in accordance with the wishes of the House, in which case, of course, the wishes of the House will prevail.

27. This is as far as we would go. It may be said that it is illogical to allow the Speaker to intervene on some occasions but not others, and that it is difficult to draw the line. But this is a familiar problem in other fields. We see no reason why, with experience and goodwill, a sensible line should not emerge. We emphasise again that we see the transfer of these functions from the Leader to the Speaker not as an encroachment on self-regulation but as an inherent part of it.

28. For completeness, we would also suggest that another function currently exercised by the Leader should be transferred to the Speaker, namely the rarely exercised role of

determining whether the *sub judice* rule may be overridden “where a ministerial decision is in question, or a case concerns issues of national importance such as the economy, public order or the essential services”.⁸

29. We propose no transfer of the role of the Leader in leading tributes, nor of her formal role in relation to the production of groupings and lists of speakers.

30. The Lord Chancellor at present has the role of authorising the recall the House during a recess (under Standing Order 17), and we propose that this very limited function should be transferred to the new Speaker.

Committees of the whole House

31. In one respect we recommend an addition to the range of duties performed by the Lord Chancellor in the Chamber. The new Speaker will be expected to preside for a substantial period every day when the House is sitting. But at some times of year the main business on two or three days in a week may be committee stages. So we accept the suggestion made to us by the Chairman of Committees (QQ 190–2) that the Speaker should be empowered to take the chair in Committee of the whole House as well as to sit on the Woolsack.

Communication within the Chamber

32. In paragraph 23(b) above we mentioned that the Leader is better placed to receive advice from the Table than the Speaker on the Woolsack. To overcome this difficulty, we recommend that an electronic system should be installed so as to enable messages to be passed discreetly between the Speaker, whether in the Chair or on the Woolsack, and the Clerk at the Table.

Deputies

33. The new Speaker would continue to need a team of deputies, but we believe that the present panel of 28 deputies is too large. A smaller panel would have the advantage of ensuring that all deputies had the opportunity to gain plenty of experience.

34. We received some evidence to suggest that we might follow the example of the House of Commons, where the Speaker is supported by three salaried deputies and other Members preside only in Westminster Hall and in Standing Committees. This House already has two salaried Deputy Speakers, namely the Chairman of Committees and the Principal Deputy Chairman. But we do not think that it would be right to ask them to take a greater role. The Chairman of Committees has a considerable amount of work outside the Chamber, and the Principal Deputy Chairman perhaps even more so, chairing the European Union Committee and supervising the six – soon to be seven – sub-committees. He also has numerous meetings both in London and in other European Union countries. It would be unreasonable to ask him to undertake more than an occasional token stint on the Woolsack.

35. So we propose to leave the number of salaried deputies as it is. In addition there should be a panel of 16 unsalaried deputies who would support the Speaker in the Chamber and would also take the chair in all Grand Committees. A panel of this size would, we think, ensure that an undue burden need not be placed on the Speaker and the two salaried deputies, and would give its members the opportunity to undertake regular duty on the Woolsack or in the Chair (in Grand Committees as well as in the Chamber).

FUNCTIONS OUTSIDE THE CHAMBER

36. The new Speaker will have much more time to involve himself in the affairs of the House than the Lord Chancellor. He should be an *ex officio* member of the House Committee and the Procedure Committee, and Chairman of the former. We received some evidence

⁸ Companion paragraphs 4.58 and 4.59.

proposing that the office of Speaker should be merged with that of the Lord Chairman of Committees. We do not agree. In our view there is more than enough work for two. The offices should therefore be kept separate, and the Lord Chairman should continue to be the spokesman of the House Committee when presenting its Reports and answering questions on administrative matters.

37. Other functions to which we attach great importance are as follows:

- (a) Ceremonial role.
- (b) Representing the House abroad.
- (c) Receiving and entertaining overseas dignitaries.
- (d) Looking after new Members.

Ceremonial role

38. We recommend that the ceremonial role of the Speaker should remain as similar as possible to that of the Lord Chancellor. There should be a procession into and out of the Chamber at the start and end of business. The Speaker should be appointed a Privy Councillor and should take part in the Royal Commissions at the start of each Parliament and the end of each session. The Speaker would take over the Lord Chancellor's role of presenting Addresses to Her Majesty the Queen on ceremonial occasions.

39. The Speaker's dress should be dignified, and should include a gown. We assume that the Purse will no longer form part of the trappings of office since its purposes are to hold the Queen's Speech and (in theory) to hold the Great Seal – both purposes relating to the Lord Chancellor's ministerial functions.

Representing the House abroad

40. There is an annual meeting of European Union Speakers, and there are biennial meetings of Commonwealth Speakers and Council of Europe Speakers. In recent years these, and other ad hoc international meetings of Speakers, have more often than not been attended by the Chairman or Principal Deputy Chairman of Committees rather than by the Lord Chancellor himself. We hope that the new Speaker will be able to participate in such gatherings in person.

41. We do not foresee the new Speaker playing any special role in relations to visits to other Parliaments, since there are already well-established arrangements for such visits under the auspices of the Commonwealth Parliamentary Association and the Inter-Parliamentary Union.

Receiving and entertaining overseas dignitaries

42. We hope that the new Speaker will play a significant role in receiving and entertaining overseas Speakers and other Parliamentarians visiting Westminster.

Providing guidance to Members

43. The new Speaker should play a leading part in welcoming new Members to the House and in ensuring that they are aware of our customs and traditions. Longer-serving members could also on occasion benefit from the Speaker's guidance.

Residence

44. Certain of the rooms in the Lord Chancellor's residence will be needed for official entertaining by the new Speaker and could continue to be available at other times for charitable and other functions. The House will in due course wish to consider whether the

other rooms should continue to be used as a residence for the exclusive use of the new Speaker or whether they should be used for other purposes.

Miscellaneous statutory functions

45. We recommend that the following statutory functions should be transferred, when a legislative opportunity permits, from the Lord Chancellor to the Speaker:

- under the Church of England (Assembly) Powers Act 1919, the appointment of the Lords members of the Ecclesiastical Committee;
- under the Statutory Instruments Act 1946 and the Laying of Documents before Parliament (Interpretation) Act 1948, the role of receiving notifications in cases where a statutory instrument comes into operation before being laid;
- under the Exchequer and Audit Departments Act 1957, the giving of authority for an authorised officer to perform functions of the Comptroller and Auditor General;
- under the Ministerial and other Salaries Act 1975, the power to determine who is the Leader of the Opposition in the House.

46. Certain other statutes already refer to the Speaker of the House as such, and thus will not need amendment. They include the Clerk of the Parliaments Act 1824, the Parliamentary Papers Act 1840⁹ and the Insolvency Act 1986 (section 427, and section 426A inserted by section 266 of the Enterprise Act 2002).

47. We recommend that those statutory functions which are given to the Speaker in relation to the House of Commons and to the Clerk of the Parliaments in relation to the House of Lords should remain unchanged. The functions in question relate to parliamentary copyright and freedom of information.¹⁰

APPOINTMENT OR ELECTION

48. Three Members suggested that the Speaker should be a member of the Cabinet appointed by the Government. The purpose of this suggestion was to secure at least two Members of the House as members of the Cabinet. However, the great majority of those replying favoured election.

49. We recommend a system requiring only a single secret ballot, by means of the alternative vote. Such a system was successfully used in the first by-election to elect a hereditary peer, in March 2003.

50. Candidates would be proposed and seconded by two Members. Voters would rank candidates in order of preference. If no candidate received at least half the first-preference votes then the candidates with fewest votes would be progressively eliminated until one candidate had at least half the remaining valid votes.

51. The name of the successful candidate should then be submitted to Her Majesty the Queen, who would be invited to make the formal appointment.

52. We propose that a Speaker should be elected for a period of five years, with the possibility of renewal. As in the Commons, a simple motion of appointment would suffice if there was only one candidate. We consider it important that an election should not coincide with the start of a new Parliament, because of the practical difficulties that would arise.

53. A factual statement of the service in the House of each candidate would be prepared by the Clerk of the Parliaments and made available to Members.

⁹ These two Acts refer both to the Lord Chancellor and to the Speaker, so it would be appropriate in due course to remove the references to the Lord Chancellor.

¹⁰ Copyright, Designs and Patents Act 1988, section 167, and Freedom of Information Act 2000, sections 34 and 36.

54. To avoid a hiatus in the event of the death or resignation of a Speaker we propose that Standing Orders and statute should provide that the Chairman of Committees may act during any vacancy in the office of Speaker.

TITLE

55. In relation to the new Speaker's title, the starting point is that the title of Lord Speaker already exists. It is used in paragraph 4.01 of the *Companion* quoted in paragraph 8 above. It is also used in Standing Orders 22¹¹, 38(1)¹² and 58¹³.

56. It has, however, been forcefully argued by Lord Strathclyde (Q 121), Lord Craig of Radley (Q 153) and others that the title of "Lord Chancellor" should be retained for the Speaker of the House. It was pointed out that the Office has evolved over many centuries. It is an Office of great dignity, and the retention of the name would add dignity to the Office of the new Speaker. Other names have survived such as that of Lord President and Lord Privy Seal, even though the holders of those Offices now fulfil very different roles. The same could be true of the Lord Chancellor.

57. We have sympathy with this argument. For in the words of Lord Chief Justice Crewe in the Oxford peerage case (1625) there is no man but that "his affection would stand for the continuance of so noble a name, and would take hold of a twig or twine thread to uphold it". But we must not let "affection press upon judgment". It seems to us that there is an essential difference between the Lord President and the Lord Privy Seal on the one hand, and the Lord Chancellor on the other. The former Offices were never abolished. They have merely withered away. If the legislation goes through as the Government intends, the great Office of Lord Chancellor will have been abolished by statute. To revive the name to describe a very different and inevitably lesser Office might be seen as pretentious, and might even lead to confusion. See Lord Brabazon of Tara's evidence (Q 194). So regretfully we cannot support the title of Lord Chancellor.¹⁴

58. It has however been suggested that if there is to be a new supreme court then "Lord Chancellor" might be a very suitable title for the senior judge.

59. So we come back to "Lord Speaker". It is not only the existing title, but it is also in our view the natural title. The only argument against it is that it might lead to confusion with the Speaker of the House of Commons. We do not regard this as a serious risk. Both Houses of the Canadian Parliament have a Speaker.¹⁵ Baroness Boothroyd, who approved the title "Lord Speaker", did not foresee any confusion (Q 76). We were impressed by her evidence. Accordingly we recommend that the existing title be retained, and that the new Speaker should be known as the Lord Speaker.

¹¹ "If any Lord has occasion to speak with another Lord while the House is sitting, they are to retire to the Prince's Chamber, and not converse in the space behind the Woolsack; or else the Lord Speaker is to call them to order, and, if necessary, to stop the business in agitation."

¹² "If a balloted debate or a time-limited debate is continuing at the end of the time allotted to it, the Clerk at the Table shall rise and thereupon the Lord Speaker shall ask the mover whether or not he wishes to withdraw his Motion. If the mover does not ask leave to withdraw, or if leave to withdraw is refused, the Lord Speaker shall, notwithstanding the provisions of Standing Order No. 19, put the Question forthwith."

¹³ "If, on a division upon a Bill, or upon a Question for the approving or disapproving of subordinate legislation, less than thirty Lords have voted, the Lord Speaker shall declare the Question not decided, and the debate thereon shall stand adjourned to a subsequent sitting; and, if such division take place when the House is in Committee, the Chairman shall declare the Question not decided, whereupon the House shall resume, and shall be again in Committee at a subsequent sitting."

¹⁴ It is not an argument that has weighed with us, but for the sake of completeness we should point out that if the new office of Speaker is established before the office of Lord Chancellor is abolished by statute then there will in any case be a transitional period during which the title "Lord Chancellor" will not be available.

¹⁵ In the Canadian Senate the title used is "Speaker of the Senate".

Salary and pension

60. We recommend that initially the Speaker should be paid a salary equal to that of a Cabinet Minister in the House of Lords, currently £96,960.¹⁶ That would give an appropriate lead over the Chairman of Committees, whose current salary is £75,706. In the longer term it would be appropriate for the Senior Salaries Review Body to advise on the Speaker's remuneration.

61. When a legislative opportunity permits, we recommend that provision should be made for the new Speaker's salary, like that of the Lord Chancellor and the Speaker of the House of Commons, to be paid out of the Consolidated Fund.

62. We also recommend that appropriate statutory provision should be made for the new Speaker's pension, as is already the case for the Lord Chancellor and the Speaker of the House of Commons.

Staff support and office accommodation

63. The Lord Speaker will need personal staff, but we leave it to the House Committee to determine the appropriate number and grading.

64. We note that the rooms recently occupied by the Lord Chancellor, his private office and his Permanent Secretary are likely to provide more than enough space for the Lord Speaker and any staff, and we leave it to the Administration and Works Committee to settle the arrangements.

¹⁶ We have not attempted to estimate the total annual cost of our proposals. The costs of office accommodation and the residence are in any case hard to measure, the more so in the absence of any clear indication as to the alternative use to which the accommodation might be put. If the Lord Speaker were to entertain a substantial number of guests on behalf of the House then that could add to the total cost, but that is a matter for the House Committee to consider.

APPENDIX 1

List of those who gave evidence

Those marked with an asterisk gave oral evidence.

Lord Ackner	Baroness Lockwood
Lord Armstrong of Ilminster	Lord Lucas
Lord Beaumont of Whitley	Lord Mackay of Clashfern
Lord Berkeley	Lord Mackenzie of Framwellgate
Lord Blaker	Lord Maclennan of Rogart
Baroness Blatch	Lord Marlesford
* Baroness Boothroyd	Baroness Miller of Hendon
Lord Boston of Faversham	Lord Monro of Langholm
Lord Bowness	Lord Moran
* Lord Brabazon of Tara	Lord Naseby
Lord Campbell-Savours	Lord Palmer
Lord Chalfont and Lord Chadlington	Lord Peston
Lord Cockfield	Lord Phillips of Sudbury
Viscount Colville of Culross	Baroness Platt of Writtle
Baroness Cox	Baroness Ramsay of Cartvale
* Lord Craig of Radley	* Lord Roper
Lord Donaldson of Lymington	Lord Saatchi
Lord Dubs	Lord Sainsbury of Preston Candover
Earl of Dundee	Earl of Sandwich
Lord Elton	Baroness Sharples
Lord Ezra	Lord Stoddart of Swindon
* Lord Falconer of Thoroton	Baroness Strange
Earl Ferrers	* Lord Strathclyde
Baroness Flather	Lord Thomas of Swynnerton
Lord Gibson	Lord Vivian
Lord Glenarthur	Lord Wakeham
Baroness Goudie	Lord Walton of Detchant
* Lord Grocott	Baroness Warnock
Lord Habgood	* Baroness Williams of Crosby
Lord Hanson	* Lord Weatherill
Lord Haskel	Baroness Whitaker
Lord Hylton	Lord Williams of Elvel
Lord Inglewood	* Lord Williams of Mostyn
Lord Jenkin of Roding	Lord Williamson of Horton
Lord Kingsdown	
Baroness Knight of Collingtree	The Hansard Society
Lord Levene of Portsoken	

APPENDIX 2

Amendments to Standing Orders

We list below all those Standing Orders which mention the Lord Chancellor and indicate what amendments, if any, we propose in implementation of our proposals:

Standing Order 11: Register of hereditary peers

11. Any hereditary peer (not previously in receipt of a writ of summons) who wishes to be included in the register maintained by the Clerk of the Parliaments pursuant to Standing Order 10(5) shall petition the House and any such petition shall be referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register.

Recommendation

We recommend no change. While the Register remains in existence the Lord Chancellor or his successor, with responsibility for the Crown Office, remains the appropriate person to consider petitions.

Standing Order 17: Recall of the House

17.—(1) If, during any adjournment of the House, the Lord Chancellor is satisfied that the public interest requires that the House should meet at a time earlier than that appointed, he may signify that he is so satisfied and notice shall be given and thereupon the House shall meet at the time stated in the notice, as if it had been duly adjourned to that time.

(2) If the Lord Chancellor is unable to act for the purposes of this Standing Order, the Chairman of Committees, after consultation with Her Majesty's Government, may act in his stead.

(3) Notwithstanding any adjournment of the House, the House may meet for judicial business at a time earlier than that appointed if the Lord Chancellor or, in his absence, the senior Lord of Appeal in Ordinary is satisfied that it should do so and has signified that he is so satisfied and has given notice to such Lords as he thinks fit.

Recommendation

In Standing Orders 17(1) and (2), the reference to the Lord Chancellor should be amended to refer to the Lord Speaker. Standing Order 17(3) will no longer be needed if and when the new supreme court is established, and in the meantime no amendment is required.

Speaker of the House

18.—(1) It is the duty of the Lord Chancellor ordinarily to attend the Lords House of Parliament as Speaker of the House; and in case the Lord Chancellor be absent, his place on the Woolsack may be taken either by a Deputy Speaker, authorised under the Great Seal from the Queen to supply that place, or by a Deputy Chairman, appointed by the House; and if neither a Deputy Speaker nor a Deputy Chairman be present, the Lords may then choose their own Speaker during that vacancy.

(2) In order better to discharge his duties as a Minister of the Crown, the Lord Chancellor may, if he thinks fit, leave the Woolsack and sit in such other part of the House as he may find convenient; and in such circumstances his place on the Woolsack shall be taken by a Deputy Speaker or Deputy Chairman.

Recommendation

In Standing Order 17(1), both references to the Lord Chancellor should be amended to refer to the Lord Speaker. The words "or in the Chair" should be inserted after "Woolsack". Standing Order 17(2) should be repealed.

The Lord Chancellor

19. The Lord Chancellor, when he speaks to the House, is always to speak uncovered, and is not to adjourn the House, or do anything else as Mouth of the House, without the consent of the Lords first had; and any matter on which there is a difference of opinion among the Lords is to be put to the

Question; and if the Lord Chancellor will speak to any thing particularly, he is to go to his own place as a Peer or such other part of the House as he may find convenient.

Recommendation

This Standing Order should be repealed. The new Speaker will be given no powers to act in the House without consent, and no Standing Order is needed to curtail powers which will not have been granted.

Joint Committee on Consolidation Bills

52. There shall be a Select Committee consisting of twelve Lords, who shall be appointed on the recommendation of the Lord Chancellor at the commencement of every session, to join with a Committee of the House of Commons as the Joint Committee on Consolidation etc. Bills, to which shall be referred: ...

Recommendation

The words “on the recommendation of the Lord Chancellor” should be left out. The effect would be that the members would be nominated in the usual way by the Committee of Selection.

Committees of the Whole House

63. To have more freedom of debate, and that arguments may be used (pro and contra), Committees of the Whole House are appointed, sometimes for Bills, sometimes to discuss matters of great moment. Whenever the House resolves itself into a Committee, the Lord Chancellor leaves the Woolsack and the Lord Chairman of Committees presides over the Committee; Standing Order No. 31. (No Lord to speak more than once to a Motion) shall not apply when the House is in Committee.

Recommendation

The words “Whenever the House resolves itself into a Committee, the Lord Chancellor leaves the Woolsack and the Lord Chairman of Committees presides over the Committee;” should be left out.

Notifications

72. In cases where it has been necessary to bring a Statutory Instrument into operation before it has been laid before Parliament, the notification thereof (which is required by the Statutory Instruments Act 1946 to be sent to the Lord Chancellor) shall be laid upon the Table of the House.

Recommendation

This Standing Order should be left as it stands while the Lord Chancellor retains his role under the Statutory Instruments Act 1946.

Proceedings upon opening the Parliament

76.—(1) At the beginning of Parliament, after prayers shall have been said, the Lord Chancellor shall take the oath appointed to be taken, according to the Act of Parliament made for that purpose, and then all the Peers and Lords of Parliament present shall in like manner take and subscribe the said oath.

(2) After Her Majesty’s Speech from the Throne, some Bill (pro formâ) is to be read; which being done, the Lord Chancellor is to report Her Majesty’s Speech, and then the House shall proceed to nominate the Chairman of Committees.

(3) At the beginning of every other Session during the same Parliament, after prayers said, some Bill (pro formâ) is to be read, Her Majesty’s Speech reported and the Chairman of Committees nominated.

Recommendation

Both references to the Lord Chancellor should be amended to refer to the Lord Speaker.

Claims of Peerage

79. In claims of Peerage the following directions shall apply in regard to claims by Petition which have been referred to the Committee for Privileges:

(1) The Petitioner shall lodge his case, pedigree and proofs with the Clerk of the Parliaments within six weeks from the date of the presentation of his Petition to the House.

(2) Records and documents in public custody may be proved before the Committee by copies officially certified as in ordinary legal proceedings. The production of originals of such documents shall not be required except on an order of the Lord Chancellor or Chairman of Committees.

Originals of records and documents in private custody, together with copies thereof, must be produced and proved before the Committee.

(3) In unopposed claims the record of the documentary evidence given before the Committee shall be examined by an examiner appointed by the Crown Agent. The Crown Agent may, if he think fit, similar appoint an examiner in opposed claims. The cost of the examination shall be borne by the claimant.

(4) The fees to be charged shall be such as shall be authorised from time to time by the House.

Recommendation

The reference to the Lord Chancellor should be amended to refer to the Lord Speaker.

Claims of Irish Peerages

80. A claim to any Peerage of Ireland shall be made by Petition to the House, which Petition shall be referred to the Lord Chancellor to consider and report upon to the House.

Recommendation

As in relation to Standing Order 11, we propose no change.

Appellate and Appeal Committees

87.—(1) For the purposes of its appellate jurisdiction, the House shall have Appellate and Appeal Committees, of which all Lords qualified under the Appellate Jurisdiction Acts 1876 and 1887 shall be members.

(2) These Committees shall be:

(a) two Appellate Committees, which shall hear any cause or matter referred to them and shall report thereon to the House;

(b) two Appeal Committees, which shall consider any Petition or application for leave to appeal that may be referred to them and any matter relating thereto, or to causes depending, or formerly depending, in this House, and shall report thereon to the House.

(3) In any criminal matter, or in any matter concerning extradition, an Appeal Committee may take decisions and give directions on behalf of the House.

(4) In any Appellate or Appeal Committee the Chair shall be taken by the Lord Chancellor or, in his absence, by the senior Lord of Appeal in Ordinary present, such seniority being determined in accordance with the Commission for the time being appointing Speakers for the purpose of the hearing and determination of Appeals.

(5) For the purposes of section 8 of the Appellate Jurisdiction Act 1876, any Appellate Committee may sit and act while Parliament is prorogued.

Recommendation

This Standing Order will no longer be needed if and when the new supreme court is established, and in the meantime no amendment is required.

**EXTRACT FROM THE PROCEEDINGS OF THE COMMITTEE RELATING TO
THE REPORT****SESSION 2002–03**

Tuesday 18 November 2003

Present:

Lord Alexander of Weedon
Lord Ampthill
Lord Carter
Lord Desai
Lord Freeman
Baroness Gould of Potternewton
Lord Lloyd of Berwick (Chairman)
Lord Marsh
Baroness Miller of Chilthorne Domer
Lord Tordoff
Lord Trefgarne

A draft Report was proposed by the Chairman, brought up and read.

Paragraphs 1 to 5 were agreed to.

It was moved by the Lord Trefgarne, after paragraph 5, to insert the following new paragraphs:

“Before going further, we should record that two members of the Committee (Lord Trefgarne and Lord Freeman) take issue with the whole basis on which the rest of this report has been drafted. The proposal for new arrangements for the Speakership did not come from within the House, nor was it the subject of any consultation within the House. It was announced out of the blue as the result of a Government reshuffle and did not, they feel, have the benefit of adequate preconsideration.

The fact that the role of the Speaker is almost entirely ceremonial makes it appropriate, if not essential, that it should be combined with other duties of a high office. Thus, if a specific new post of Speaker is to be created, then it becomes necessary to search for functions to give to the Speaker in order to make the role worthwhile and to attract candidates who will command respect. The only significant additional duty which has been suggested is that of Chairman of the proposed Judicial Selection Commission but that proposition was rejected out of hand by the Lord President of the Council and the Lord Chancellor when they gave evidence to us.

Furthermore, Lord Trefgarne and Lord Freeman believe that, if a new post were to be created, powers would soon accrete to the job to the steady erosion of the principle of self-regulation which we seek to support.

In a House that operates by self-regulation – and we wish it to continue to do so – there is an overwhelming case for continuing the present practice of relying on the Leader of the House and other members of the Government to give guidance when necessary. Their role as Ministers leaves no doubt that they have no power and can only offer guidance. Passing such functions to a new independent Speaker would soon create a situation in which members were expected always to defer to the Speaker. In turn, Peers would cease to give way at Question Time on the basis that there was no point in doing so if there was a chance that the Speaker might choose them to ask the next Supplementary. In short, the ethos of self-regulation would progressively disappear. It would be far better to retain the present arrangements unchanged.

Attention has been drawn to the (it is said) anomalous role of the Leader in allowing Private Notice Questions. In truth, this is not a problem since any unpopular decision by a Leader can be corrected by a decision of the House, although this has only very rarely been attempted. Furthermore, we know of no case when a Leader has in fact wrongly disallowed a PNQ, since

they are always guided by the Companion. But, if this is thought still to be a problem, then perhaps the Leader should consult through the usual channels before making his or her decision.

Lord Trefgarne and Lord Freeman make one final point. There is a case for strengthening the present self-regulation arrangements by persuading Peers to follow Standing Orders more closely, particularly as regards to the relevance of speeches and related matter. They therefore believe that Whips and, indeed, other senior Peers, should be ready to intervene more frequently when a less experienced Peer is contravening Standing Orders. To assist this process provision should be made for the Clerks to guide the Government Front Bench more proactively.”

Which being objected to, the question was put thereupon, and the Committee divided:

<i>Contents</i>	3	<i>Not-Contents</i>	8
Lord Alexander of Weedon		Lord Amphill	
Lord Freeman		Lord Carter	
Lord Trefgarne		Lord Desai	
		Baroness Gould of Potternewton	
		Lord Lloyd of Berwick	
		Lord Marsh	
		Baroness Miller of Chilthorne Domer	
		Lord Tordoff	

The amendment was disagreed to.

Paragraphs 6 to 57 were read and agreed to with amendments.

It was moved by the Lord Freeman, in paragraph 58 (*now 57*), to leave out “To revive the name to describe a very different and inevitably lesser Office might be seen as pretentious, and might even lead to confusion. So regretfully we cannot support the title of Lord Chancellor.” and insert “We believe that once the non-speakership functions of the Lord Chancellor have been transferred, by statute, from him, then the Lord presiding as Speaker should be called Lord Chancellor.”

Which being objected to, the question was put thereupon, and the Committee divided:

<i>Contents</i>	2	<i>Not-Contents</i>	8
Lord Freeman		Lord Alexander of Weedon	
Lord Trefgarne		Lord Amphill	
		Lord Carter	
		Lord Desai	
		Baroness Gould of Potternewton	
		Lord Lloyd of Berwick	
		Baroness Miller of Chilthorne Domer	
		Lord Tordoff	

The amendment was disagreed to.

Paragraph 58 (*now 57*) was agreed to.

Paragraphs 59 to 65 (*now 58 to 64*) and Appendices 1 and 2 were agreed to with amendments.

MINUTES OF EVIDENCE

TAKEN BEFORE THE SELECT COMMITTEE ON THE SPEAKERSHIP OF THE HOUSE

MONDAY 15 SEPTEMBER 2003

Present:

Alexander of Weedon, L.
Ampthill, L.
Carter, L.
Desai, L.
Freeman, L.
Gould of Potternewton, B.

Lloyd of Berwick, L. (Chairman)
Marsh, L.
Miller of Chilthorne Domer, B.
Tordoff, L.
Trefgarne, L.

Examination of Witnesses

THE RT HON. LORD FALCONER OF THOROTON, a Member of the House, Lord Chancellor, THE RT HON. LORD WILLIAMS OF MOSTYN QC, a Member of the House, Lord President of the Council and Leader of the House of Lords, and THE RT HON. LORD GROCOTT, a Member of the House, Government Chief Whip, examined.

Chairman

1. Lord Chancellor, Lord President and Chief Whip, first of all, may I welcome you on behalf of the Committee to what is our first public meeting and obviously we look forward to your views on this difficult and interesting topic. May I just mention at the outset that we had a very good response to the notice which we sent out in July and replies are still coming in and those letters, of course, raise a number of questions which in due course we will want to discuss with you and get your views. Can we begin by asking you, in whatever order you like, whether there is anything which you would like to start by telling us before we ask you the questions? I think we would value that, if I may say so.

(Lord Falconer of Thoroton) No. Certainly speaking for myself, and I am sure for Gareth and Bruce, we have come to help you with any questions you have, but I think an opening statement would not be that helpful. I have no plans to make any statement of any kind.

2. What about you?

(Lord Williams of Mostyn) No, thank you.

3. Chief Whip?

(Lord Grocott) Ditto.

4. I can see you are three in harness, a troika, as it is called. Now if I can just start with a preliminary question, which I think underlies all the rest, and that is we are assuming, Lord Chancellor, from something I think you said to the Select Committee in the House of Commons, that you are willing at any rate to stay on fulfilling the functions of Speaker until the new legislation is in force.

(Lord Falconer of Thoroton) My position is I will do whatever the House of Lords wants in my role as Speaker. The abolition of the role of Lord Chancellor requires a statute. We can all speculate how long it would take for the statute to pass and when it might become law. If the House of Lords wishes me to remain until then – and I believe it is a matter for the Lords rather than for the legislation as to how long I remain Speaker – I will, as best I can, perform that

function. I should say – and I think this has been made clear by me as well – I hope that the Lords would feel able to make different arrangements to allow me to cease to be Speaker, but that is a matter for the Lords, not a matter for me. I make it clear I will go on doing the job of Speaker of the House of Lords for as long as the House of Lords want me to do it. Again, I make it clear my own personal view is that, subject to proper alternative arrangements being made, it would facilitate other things that I do if I cease to be Speaker but, as I say, that is a matter for the Lords.

5. That is very helpful indeed. Perhaps as a supplementary to that, when is your best estimate of when the legislation will be in force?

(Lord Falconer of Thoroton) I think it is very difficult to estimate. I cannot give in advance of the Queen's Speech any commitments to legislation. We want to legislate as quickly as we can, but it will take time to go through both Houses of Parliament. Eighteen months has been given as an estimate from June at the time the original announcements were made. I do not think that is particularly off-beam, but I am not very keen to be pinned down – I do not think it would be right or sensible to do so – to a date at which the abolition takes place.

Chairman: Very good. Now some of my colleagues may wish to take up on this.

Lord Ampthill

6. Lord Chancellor, if the House, resulting from whatever we reported to them, decided they would like the idea of having a Speaker who could be here obviously rather longer than you will be able to with the very heavy burden you are going to have to carry in Victoria Street, is it not a possible thought running through your mind that it might be nice not to have to come here, dress up, appear for questions, then undress and return to your nest where you will be doing all the work?

(Lord Falconer of Thoroton) I think the importance of the ministerial as opposed to speakership responsibilities make it pretty sensible that somebody does that on a full-time basis. The job of being Speaker is also an important job that requires

time and time most days that the House is sitting. It does not seem a sensible arrangement. Broadly I agree with the proposition underlying your question, which is these are two quite important jobs and perhaps they should have two people doing them.

7. Could it be achieved by you applying for leave of absence which, of course, you could rescind if you felt the urge?

(*Lord Falconer of Thoroton*) Gareth is inevitably helping in most of this. Standing Order 18 makes it clear that the Lord Chancellor has a duty to be the Speaker of the House. I would have thought – although, again, it is a matter for the Lords – that it is much more sensible that the matter, as it were, be taken head-on rather than dealt with by some process by which the Lord Chancellor continues as Speaker, in some devices it might come to that. Again, I think it is a matter for the House of Lords, but far better the issue is directly dealt with rather than by that kind of manoeuvre.

Lord Marsh

8. Following that, given that we are talking probably about 18 months to two years before legislation is around properly, are there any interim arrangements which you could propose yourself in its meaning that would enable changes to make it at least easier, because there is always a danger in circumstances like this you finish up not being able to do either job properly?

(*Lord Falconer of Thoroton*) Yes. I have not thought in detail about what specific procedural or other proposals that could be made. If there are some interim proposals such as leave of absence and sharing the duty with other people, then of course I would be happy to consider them and indeed I would co-operate, if that is what the Lords think. I have only been doing this job for two and a half months and it would be quite presumptuous in a way for me to start saying: “What about this for an idea? What about that for an idea?” I would follow other people’s ideas in relation to that and see whether they worked. For what it is worth, I think it is far better if clarity about the arrangements emerges as soon as possible. Certainly I think it is good from the point of view of my ministerial function, but tentatively I would suggest from the point of view of the Lords, it is probably quite sensible that there is clarity about who is – if it is not the wrong metaphor – in the driving seat in relation to this rather than there being some uncertainty about it.

Lord Desai

9. Can this be done without statute?

(*Lord Falconer of Thoroton*) Yes, it can. I am Speaker as Lord Chancellor, not because of statute, I am the Speaker of the House of Lords because of Standing Order 18. Having said that, there are certain things that the Lord Chancellor does as Speaker which are plainly as Speaker. I can provide you with a list of those specific things, but they are things such as receiving notification of a Member of the House of Lords becoming bankrupt; they are things such as

resolving any dispute that there might be as to who should be paid as the Leader of the Opposition in the House of Lords; they are things such as performing certain specific functions in relation to the appointment of the second and third Clerk in the House of Lords. Plainly they are the Lord Chancellor by statute performing a role as Speaker. Without downgrading them – and I am sure the Leader of the House and the Leader of the Opposition would regard them as very important – they are technical things that you do as Speaker. Obviously, if I cease to be Speaker because Standing Order 18 is changed, we would have to think how one could co-operate to ensure that those matters are dealt with as well.

Lord Carter

10. From what you say, Lord Falconer, it is clear that as a matter of practice, of course, a large part of that responds automatically?

(*Lord Falconer of Thoroton*) Correct.

11. The functions are performed by the Deputy Speaker. From what you say, it would in fact be possible if the Government had decided not to make all these changes to the role of Lord Chancellor, the judiciary and the rest of it, if the House of Lords had decided it would sooner have its own Speaker rather than have the Lord Chancellor as Speaker, it would have been able to do it?

(*Lord Falconer of Thoroton*) It would, correct.

12. It would not require statute?

(*Lord Falconer of Thoroton*) It would not require statute, correct.

13. It would just order the Standing Order and with general agreement that the person who then became Speaker could act as Speaker and you would continue as Lord Chancellor as you are Lord Chancellor now?

(*Lord Falconer of Thoroton*) Yes, that is absolutely correct. I am sure if that was the view that the House of Lords took, there would be absolutely no difficulty dealing with these statutory technicalities that also have attached to the fact that the House, as a matter of practice, has had the Lord Chancellor as its Speaker.

Lord Tordoff

14. So, if it was decided to have a Speaker elected or whatever from the body of peers and if the legislation abolishing the Lord Chancellorship in its present form was to fail, it would be possible to reverse the process if the House wished?

(*Lord Falconer of Thoroton*) Yes, if that was the wish of the House to reverse the process, plainly that would be possible. I wonder, once other arrangements have been put in place, whether or not both from the point of the view of the Lords but also from the point of view of the minister then holding the relevant office, that would appear sensible. That would depend upon precisely what the situation was then.

15 September 2003]

LORD FALCONER OF THOROTON, LORD WILLIAMS OF MOSTYN
AND LORD GROCOTT

[Continued

15. I am sure that is the case, but I just wanted to search out whether, in fact, we were finding ourselves in a cul-de-sac in some way or another?

(*Lord Falconer of Thoroton*) No, you most certainly were not.

Baroness Gould of Potternewton

16. If I can just follow Lord Carter's question about the distinction and how you would be able to separate out your duties as Lord Chancellor and Speaker. Can I ask about things such as ceremonial and representative duties? Would they be easy to separate out, or do you find that there is an overlap of duty there?

(*Lord Falconer of Thoroton*) Ceremonial and representative are two different things. I think there is a very significant role that the Speaker of the House of Lords has in representing the Lords in various interparliamentary bodies, both of a national and international kind. It is plain that in the last decades as the ministerial role for the Lord Chancellor has gone up, it has become harder for him to perform. In representational terms, that is a role that has gone down, I suspect, in significance over the years. In ceremonial terms, the ceremonial role of the Lord Chancellor, it is pretty easy to identify those things as Speaker of the House of Lords which are not that many, and those which are other things, for example, being head of the judiciary or being part of the household dealing with the royal family. It would not be difficult to identify those things which should be done by the Speaker and those things which should be done by the minister or Lord Chancellor in a different guise.

(*Lord Williams of Mostyn*) My Lord Chairman, could I just add to that. Certainly in the travels that I have made to upper chambers all over the world, it struck me particularly that, as a House, we have been losing out because when they think of the Speaker at Westminster they only think of the Commons' Speaker, and I think that is a significant loss to us in the international representative function that Lord Falconer just spoke about.

Chairman

17. Is that an argument when we come on to the question of title for calling the Speaker, the new Speaker, Lord Speaker, or whatever it may be rather than Lord Chancellor? What are your views on that and obviously we would want to hear Lord Falconer's views?

(*Lord Williams of Mostyn*) I know that colleagues, particularly those with previous convictions having served in the Commons, are quite firm that they do not wish the new office to be that of Speaker. There is virtue in Lord Speaker it seems to me on a personal basis because the duties are plain and the distinction between the Commons and this House is plain. I do think if it were to be Lord Speaker, if that is what the House decides, we would be able to raise our profile significantly and importantly in these international gatherings.

18. What is the Lord Chancellor's view about the use of that title as the Speaker of the House of Lords even if the office is abolished?

(*Lord Falconer of Thoroton*) I think the importance of the reforms that we are proposing in relation to the role of Lord Chancellor is that it is facing up to the problems about the separation of powers that exist in relation to the office of Lord Chancellor and trying to focus the person, who currently holds that office, on doing the ministerial function. Having decided that is what you want to do, I think the critical question then is to make sure you deliver that change in legislation. After that, the issue of who, if anybody, has the title of Lord Chancellor is one about confusion. If the Speaker of the Lords is called Lord Chancellor does that give rise to confusion or not? I fear that it might, but Gareth has quite clearly said – and I agree – we have not ruled it out and there is feeling here that it would be a possibility for the role of Speaker. I think one has got to see where we are at the end of the process and see whether or not it will give rise to confusion. Also, whilst the Lord Chancellor has performed the role of Speaker, his history has a whole different kind of origin and I wonder what the effect of calling the Speaker Lord Chancellor would be on people's perception of what has happened, and whether it would then give rise to problems in relation to the role performed by the Speaker in the Lords afterwards.

Lord Freeman

19. Just following on Lord Falconer's thought process here. If there is to be a Minister for Constitutional Affairs, or whatever the title is called, presumably to avoid confusion we would want the title of Lord Chancellor abolished completely rather than, as you say, to pass to the Lord Speaker. If I am following your thoughts clearly, I think you are an abolitionist of the name?

(*Lord Falconer of Thoroton*) I am making it clear that we do not rule out the title being used by somebody, but in doing that we would need to be sure that we were not creating confusion by giving it to one or other of the roles which had previously been performed by the Lord Chancellor. We need to be clear that by giving the title to some holder of a particular office, in addition to the confusion, we do not give rise also to the question: "Does this person now perform that function?" I am not ruling it out, but I think we just need to look and see what the consequences are.

20. Surely, if the ministerial function carries the title Lord Chancellor, does that not imply sitting in the upper House?

(*Lord Falconer of Thoroton*) The reason I sit in the upper House on the woosack is not because of the ministerial function, it is because Standing Order 18 says that I must. That is not because I am a minister, it is because that is what the Lords over time have believed to be the right position.

21. If the ministerial function carried the title Lord Chancellor does that not imply, with a slight

distinction, that minister would be sitting in the House of Lords?

(*Lord Falconer of Thoroton*) Yes, it would. I think the reason I am having difficulty with your question is because I am not sure if I am making the same assumptions as you are. Have you in your question factored in that the role of Lord Chancellor has been abolished by statute by then?

22. My question is based on the premise that the ministerial function could be performed by a minister in either House?

(*Lord Falconer of Thoroton*) Yes, agreed.

Lord Freeman: If the title Lord Chancellor is retained that somewhat limits the choice of the Prime Minister in which chamber the minister sits?

Lord Amptill

23. You are a Member of this House until death overwhelms you.

(*Lord Falconer of Thoroton*) Yes, personally I am. I think Lord Freeman has in mind, not me but the holder of the office of Lord Chancellor.

Lord Tordoff

24. Can we have that in writing?

(*Lord Williams of Mostyn*) My Lord Chairman, the Chief Whip I think wants to intervene.

(*Lord Grocott*) Only just to make the observation, my Lord Chairman, if this is basically what Lord Freeman is referring to, that if the name Lord appears in the title, one assumes that position is in the House of Lords, certainly I can see the logic of that, but we do have a position, Lord President of the Council, for example, which can just as easily be in the Commons or in the Lords.

Baroness Miller of Chilthorne Domer

25. That is slightly the line of thinking I was going down. If in the future there is further reform, then should this role be called Speaker and the title Lord be abolished it will be very confusing between this House and the other. I wonder if you would comment as well, the Speaker is understood to regulate both in the Commons, as he does, and internationally, and whether you have thought of any other titles that might be more suitable? I wonder if you would comment on my first point first?

(*Lord Falconer of Thoroton*) Can I pass that one to Gareth on the basis it is difficult?

(*Lord Williams of Mostyn*) We could move forward, as my Lord Chairman mentioned, in a transitional phase before the statutory tidying up that Lord Falconer has referred to. We could start by having either Lord Speaker or Lords Speaker. Whatever the Committee and the House decides about the extent of the Speaker's powers, he or she will plainly have a degree of power, and my very strong sense is that it should be minimalist. Now there is no reason it seems to me why we should not develop incrementally, we are bound to do that over a period of months, as my Lord Chairman mentioned. It does seem to me that we can go, as we have historically, at

the process of reform organically and incrementally. I am not sure myself whether the title is necessarily of first importance, but Lord or Lords Speaker seems reasonable because peers in the chamber would be addressing my Lord Speaker, as I am addressing my Lord Chairman here.

Chairman: I think perhaps we ought to move on from the title.

Lord Marsh

26. As I understand it, the issue is not unconnected with what was called the Government argument, seeking to retain as the precedent the appointment of two Cabinet members within the House of Lords. I may be the only one who thinks that is what it is all about, but I think that is one of the arguments behind the title.

(*Lord Williams of Mostyn*) I think the Chief Whip is right. The Lord Privy Seal at the moment is Peter Hain and, as it happens, I am Lord President and happen to be here, but until June it was the other way round, Robin Cook, of course, was Lord President, as I frequently reminded him. In any event, I think we all know that the Lord Chancellor, when it was Viscount Simon who held that position, was not in the Cabinet. At the moment we have three Cabinet Ministers and, of course, the Chief Whip attends on a regular basis and speaks.

Chairman

27. Perhaps if I can just elucidate the point to which there has been some support, but not a lot. The House might want, in order to be sure of having two members of the Cabinet, to allow the Government to appoint a minister other than the Lord Chancellor – it does not matter what he is called – to sit on the woolsack. There is some support for that, but I do not know what your reaction is?

(*Lord Williams of Mostyn*) I think it would be wrong to have a Speaker of an independent House of Parliament to be a member of the Executive. That is our fundamental principled approach at the moment.

28. Now I suspect I have got one sweeping-up question following on something that Lady Gould asked earlier. What about the very minor functions of the Lord Chancellor such as the Crown Office, the Keeper of the Great Seal and so on? Do you have any views about that, Lord Chancellor?

(*Lord Falconer of Thoroton*) We do not think that any roles, apart from those which are strictly speakership roles, should be transferred to whoever the new Speaker is. The principle that underlay the changes on 12 June was a proper separation of the powers. It really echoes very much what Gareth has just said about the idea of having a regime whereby the House could require a Secretary of State presumably to become the Speaker of the House of Lords. In a sense, it feels neither sensible nor consonant with the idea of a proper separation of powers. I have indicated that there are certain statutory functions that the Lord Chancellor currently fulfills *qua* Speaker and they must plainly go to the new Speaker. I do not think anything else should go, in

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particular, the Great Seal. For example, the Great Seal is held by the Lord Chancellor as a means of the Executive establishing that Executive decisions have been made. I think that is a very good example of things that must stay with the Executive rather than go to the parliamentary part of his functions. I think the most helpful thing is for me to provide as comprehensive a list as I can of those statutory functions that are plainly speakership functions. The answer to your question, "Is there anything else that goes from the Lord Chancellor to the Speaker?" is no.

Chairman: Good. Now it is perhaps time we moved on to questions primarily directed to the Leader and above all questions appropriated by Lord Carter?

Lord Carter

29. I am sure you will understand that there is a great responsibility in the House for our system of self-regulation. If there were any changes with the length of the speakership for the present system, what would you like to see and would those changes be in the context of the introduction of new arrangements? If the system – which I am sure it will be – of self-regulation is fundamentally retained, which of the present roles would you wish to retain and which, as a Leader, might be passed to a new Speaker and also, of course, to the Deputy Speaker?

(Lord Williams of Mostyn) I would see that the new Speaker or Deputy Speakers would have fundamentally two responsibilities. One, to be the guardian of the ethos of this place and, two, to be the guardian – if it does not sound too pompous – of *The Companion*. Now at the moment at question time it is for me, subject of course to the House's wishes, to select the speakers on supplementary questions. I literally keep a list, as you know, and write down the parties but, of course, sometimes one has a very senior member of the Conservative Party and a relatively new member of another party, and it is sometimes rather invidious. I do not think I should be doing that – although I enjoy doing it I have to say – I think the Speaker should be doing that. I have always found it objectionable in principle that private notice questions should be at my gift. It is not the position in the Commons, although Robin Cook really thought that our system was preferable. The fundamental – again, I hope without being pompous – is I do not think it is right for a member of the Executive to dictate or attempt to determine what pressing issues of the day should be discussed even for those short periods by a sovereign House of Parliament, and I find that objectionable; so that is two. I think there is a very strong feeling about the ethos being self-regulation. We do not wish to have Points of Order. On the other hand, there are occasions – and many peers have told me this – where there are abuses. People overrunning; people – despite the fact that it is quite plainly regarded as a discourtesy and improper – not staying until the end of the debate and very often not taking any part in the debate, even listening to the speeches before and after theirs. That type of thing, I think, could be guidance, but much of this depends on tone. We do not want – certainly I do not want – a mailed fist here, as I think it would make the work we do very

difficult and it would diminish it, but there are things of that type. I think to be the guardian of *The Companion* it seems to me is perfectly proper. Now I have had complaints recently, and they may well be justified, that the Whips on either side do not discharge their duty vigorously enough at the moment, but sometimes that is just a matter of courtesy. A very junior Whip on either front bench is very reluctant to say something to someone who has been here 30 or 40 years. Those types of things, I think, are in the overall context of self-regulation, and the person chosen to do this work would be chosen because he or she was capable of working in the spirit developing from but consistent with the way we choose to work.

Chairman

30. Before we ask questions, I think Lord Grocott would like to say something.

(Lord Grocott) Yes, my Lord Chairman. Just simply to endorse wholeheartedly what the Leader said and to add that in practice, of course, day in, day out, particularly late at night and Committee stages of bills and so on, it is the Whip on the bench who has responsibility of exercising the functions which are primarily the responsibility of the Leader. It is often a very difficult thing for a Whip on the bench to do, partly simply physically because of where you are sitting. It is not the best position to be in when half the people that you need to address are sitting directly behind you, but also – without wishing to evoke any sympathy for Whips, because that, in my experience, is a non-existent characteristic of members – the fact is that the Whips are very busy doing other things. I will give you a practical example. One of the abiding things in terms of Whips is to make sure that the next government speaker is ready for the next business when it is coming up, and sometimes that means leaving the chamber and going out and looking for someone. Obviously it is extremely difficult to be responsible for the maintenance of order in the House within the loose framework which the Leader has described – which I entirely support – and do all those other things as well. I think that the kind of functions which the Government front bench at the moment exercise on behalf of the Leader – and the Whips exercise – the same logic that applies to the Prime Minister not appointing the Chairman of one House of Parliament, equally I think it could always be seen to be invidious, the Government having responsibility for adherence to procedural rules in a sovereign body of parliament.

31. To summarise, your view, as I understand it, is that you would think it would be an improvement for those functions of the Government Whip to be transferred to the new Speaker, providing the Speaker exercises those functions with a light touch?

(Lord Grocott) Absolutely, emphatically and precisely. From the Commons, the idea that a Speaker is anything other than, if you like, a friend of parliamentarians would come as a complete shock. I do not know whether evidence is being taken from Lord Weatherill or from Baroness Boothroyd, both of whom were outstanding Speakers, but every one of

them would have defined their primary role almost, despite where they may have come from in the political spectrum, as being one of defending the rights of parliamentarians, particularly backbenchers.

Lord Tordoff

32. We have been talking about jobs that might be lost by the Lord Chancellor or by the Leader. May I suggest a job that the Leader perhaps ought to take on? That is the presentation of the Queen's Speech to Her Majesty at the state opening. If there is no Lord Chancellor, it seems proper that this should not be done by the Speaker but by a member of the executive and presumably by the Leader of the House.

(*Lord Williams of Mostyn*) Certainly that is, I think, a most attractive idea. It is not one that has been put to me specifically, but if we are going to change as we do over a period of time that is certainly something that is worth considering. I know it is not unanimous; it may not even be a majority, but there are some who say that Her Majesty is put in something of an invidious position at the moment in having to read out government proposals which everyone knows are government proposals rather than her own views. That is just a general thought. I stress it is not government policy, but I know a number of people think that she may be put in an invidious position in those circumstances. It may be that Lord Tordoff's suggestion could be developed and thought about.

33. It would also avoid you having to carry the cap of maintenance.

(*Lord Falconer of Thoroton*) There is an aspect about this which is quite important, which is that the gracious speech is a statement of the government's, the executive's, intentions for the forthcoming parliamentary session. The reason why the Lord Chancellor presents the gracious speech to Her Majesty is because it is the executive presenting to the monarch its proposals for the forthcoming parliamentary session.

34. Therefore, it would not be proper for a new Speaker of the House of Lords to do that job?

(*Lord Falconer of Thoroton*) One has to think about that aspect of it. I do not want to express any precluded views in relation to it but that is the nature of why the Lord Chancellor currently does it.

Lord Carter

35. There are certain things in the chamber which will be for the Speaker such as question time and PMQs. There are other things like when people are over-running in timed debates and people are insisting on making a speech rather than asking a question. That would often be the job of the Deputy Speakers perhaps rather than the Speaker. Would you be concerned if the Deputy Speakers who were on the woosack, who might not have the command or authority of the Speaker, were having to do that sort of thing?

(*Lord Williams of Mostyn*) If we have a new Speaker, there is a very powerful case to be made for at least considering having Deputy Speakers who would acquire more experience because the Deputy

Speakers at the moment are of variable experience and therefore, almost inevitably, variable quality. I am responding in the House's interest; I am not speaking governmentally. There is some virtue in having perhaps a more focused induction course for new Deputy Speakers, which I am sure the Clerk of the Parliaments will be able to do. They might be able to take on some of the outside representative functions, where appropriate, and it may be that a modest salary could be attached to what will become a much more intensive and burdensome job. We might have fewer Deputy Speakers, more training and possibly a modest salary, as has been floated for chairmen of committees in the Commons.

Lord Freeman

36. Lord Williams talked about the role of Speakers as being guardians of *The Companion*. Could he kindly elaborate a little further as to how this is going to be discharged, perhaps in terms of when new peers are introduced, explaining the nature, culture and ethos of the House; but more importantly during the course of questions and debates. How is this light touch in practice going to be applied?

(*Lord Williams of Mostyn*) Very, very rarely in my experience here does one get personal discourtesy in the chamber. On one or two occasions that I can remember we have had to have a motion on asperity of language which frankly does the House no advantage. It may be a Speaker might say, "I do think the noble Lord has perhaps expressed things rather too strongly" and if the body of the House agrees that is a pretty important and effective sanction, though it does not sound to be either. If we have a timed debate and someone has gone well over the eight minutes into 12 or 15 minutes, I think it is legitimate for the Speaker to say that because one does get the mutterings and the grumbings in any event on occasions. When one of our colleagues fails to ask a question, sometimes some Members are able to say "Question" and that works. I do not see why the Speaker should not say, "Please could we have the question?" because time is very limited at question time. It is very important to bring the government to account. If anyone asks a very long question which is not a question but a statement of perceived prejudice, I do not see why the Speaker should not very gently do that, but I think it is tone that is critical. That is why the person who is elected ought to be elected, among other things, for those qualities.

Chairman

37. One argument which is used in favour of keeping the present system exactly as it is is the close contact between the Leader or the Government Whip and the table. Does that present a problem when the Lord Speaker is sitting on the woosack?

(*Lord Williams of Mostyn*) I do not think it would because it is very useful to be close to the Clerk of the Parliaments, but it is not very often that one needs advice, except a hurried reference to *The Companion*. Quite often, problems are foreseen and one is already prepared for them when one goes into the chamber.

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On the podium, on the left of the Lord Chancellor, I do not see why there should not be very unobtrusive electronic communication. There is no earthly reason why we should not do that, even if it is only the Clerk of the Parliaments saying, "Sit down and shut up" or something like that.

38. That very thought had already occurred to us but is it practical?

(*Lord Falconer of Thoroton*) I am very reliant on those at the table to tell me what to do at particular moments for obvious reasons. It is much easier than you think to be directed to the bit in your script that will tell you what to do. Beside me there are all manner of learned works that I can easily be referred to. I would not have thought it would be very difficult to do that. I am not sure that that should be a critical point in determining how it is dealt with.

39. To summarise, it would not be a rearrangement of the chamber but some electronic device might be thought about?

(*Lord Falconer of Thoroton*) Exactly.

Lord Trefgarne

40. If we decide that there should be a Speaker of the House who takes over those roles presently discharged to an extent by the Lord Chancellor and to a further extent by the Leader of the House, we may add to those the tasks in the list that you are going to prepare for us, Lord Chancellor. Does that add up to a sufficient job for a sufficiently distinguished whole to make it worthwhile?

(*Lord Williams of Mostyn*) I think so. First of all, it would be the proper expectation that the holder should be in the chamber a good deal more. There would be a heightening of the profile in the interests of the House and the representative functions, not simply internationally. There is a large reservoir of ignorance about what the Lords do in this country. I think he would have possible duties on House committees and so on. He might not have to discharge them all himself. The first Deputy Speaker might be doing that but it seems to me that there is quite a substantial amount of work for such a Speaker to be doing in the interests of the House.

(*Lord Falconer of Thoroton*) I would have thought, again from very limited experience, that there would be absolutely no doubt that somebody discharging that job properly, having regard to what I think would be a pastoral role in relation to members of the House of Lords, a representational role, a role in relation to what was done in the chamber, would play a significant leadership role in relation to the second chamber. It would plainly be a full time job plus, plus, in certain circumstances.

(*Lord Williams of Mostyn*) It has always struck me as being odd and objectionable that it is the Speaker who has the decision to make on recall of the Commons on grounds of urgency but a government minister in the House of Lords. I just do not think that is right.

Chairman

41. What about the residence?

(*Lord Williams of Mostyn*) If the role is to be representative and to expand significantly in the way that I described in answer to Lord Trefgarne's question, there should be accommodation here. One of the minor irritations of going all over the world is that people always say, "What sort of accommodation do you have?" I say, "I go home every night." I do not need the accommodation because I only live ten minutes away but I think it should be available to entertain people from abroad and to raise the profile of the chamber, which I hope will become increasingly important.

42. You mentioned the role of the House Committee. Do you think it would be possible for the new Lord Speaker to be chairman of the House Committee?

(*Lord Williams of Mostyn*) I think he could be chairman but not necessarily to chair on every occasion. That would have to be something that would develop as part of the learning that we would all have to do, with the experience that we would all have and partly the relationship between the First Deputy and the Speaker.

43. Who would then answer housekeeping questions?

(*Lord Williams of Mostyn*) It seems to me that there is a lot to be said for the First Deputy to answer housekeeping questions or, where appropriate, the Leader. I do not think there is any difficulty there. I personally would prefer the Speaker not to be answering questions of that sort but that is just my own feeling.

Lord Tordoff

44. Do you see any change in the role of the chairman of committees, albeit perhaps a change in the title? Would the chairman of committees still continue to do the job he is doing at the moment?

(*Lord Williams of Mostyn*) I believe so, yes.

45. What about the chairmanship of the Procedure Committee?

(*Lord Williams of Mostyn*) The Procedure Committee is far too large and it works ineffectively, but there is no reason why the present chair should not continue to do that.

Lord Amphill

46. I would have thought that that one stood out much more importantly than the House Committee for the new Lord Speaker to chair because the Procedure Committee is what he is going to be in charge of supervising.

(*Lord Williams of Mostyn*) I think this is just something that we work forward. Give him the titular headship of the committees and then decide, as experience suggests, who actually chairs them.

Lord Amphill: I do not want to emasculate the job of the Lord Chairman because I think he has plenty on

his plate but I think that is the one I would think the new Speaker would be the best person to take over.

Baroness Gould of Potternewton

47. Can I ask whether the Speaker should be appointed and, if he was to be appointed, who would make the appointment, or elected by the whole House? If elected, what sort of procedure should there be?

(Lord Williams of Mostyn) I believe adamantly that such a creature should be elected by the whole House for the term of a Parliament or part Parliament, renewable, if the House wished it, and then the formalities would not be dissimilar to the Commons Speaker in that a recommendation would be taken forward to the Palace and the Palace would make the formal announcement, following an election. I think the election we had on the death of Viscount Oxfuird, although it was ridiculed in theory, worked perfectly well and brought about the outcome that I think was satisfactory to the House.

48. You prefer that sort of election procedure, as opposed to the procedure for the Speaker in the Commons?

(Lord Williams of Mostyn) I think the Commons did themselves significant harm, not about the outcome, but about the process, on the last occasion.

Lord Carter

49. There is a practical argument as to why a speakership term should be from mid-Parliament to mid-Parliament and there is a practical argument for a Commission at the end of the Parliament and a Commission at the start of the next Parliament. You need a Speaker to do that. Technically, the Speaker does not have to be a Member of the House to start the new Parliament. Lord Havers did it. He was introduced into the Lords the following week. If there were any indefinite term, in practical terms, would it not be better for it to run from mid-Parliament to mid-Parliament?

(Lord Williams of Mostyn) I would be against an indefinite term. I do not think that is right. I think the term should be elected but renewable.

Lord Tordoff

50. We have been talking about the Commission. Would you suppose that the new Speaker would become a Privy Councillor?

(Lord Williams of Mostyn) Ultimately, of course, that is a matter for Her Majesty but I would have thought it would be inevitable and appropriate.

Lord Freeman

51. Would the Leader have any comments on the new procedures agreed by the House of Commons for electing future Speakers, so far not used?

(Lord Williams of Mostyn) I have not sufficient knowledge of what they have agreed at the other end. I thought their last performance was pretty poor and I thought that our election was done in a much better

way. I have not put my mind to the details of their new arrangements.

Lord Freeman: Which would seem much closer to what the Leader has in mind, a secret ballot procedure that does not involve many different stages. Perhaps we might return to this issue at a separate time.

Baroness Miller of Chilthorne Damer

52. If the position, to go back to a previous statement, is a fixed term but renewable, would you see any danger that, because the House has elected an obviously very well respected figure who has served perhaps for four years, no one might wish to challenge them so they would be *de facto* renewed anyway and that situation could lead to one individual holding the position for 16 or 20 years? Do you think that is a danger?

(Lord Williams of Mostyn) No, I do not. I think the one characteristic of this House is independent mindedness. If someone were in a position of holding it for 16 or 20 years, I think there would be someone to stand against them. If no candidate put themselves forward, that is a form of democracy in the same way as having 20 candidates. Let us look at what happened in the Commons. The Chief Whip mentioned two distinguished former Speakers. They did their term and then thought it was time to go. Baroness Boothroyd said, "Be happy for me". She had served a long time. So had Bernard Weatherill. I think the sort of person we are talking about would come to the conclusion, "This is enough now. I will do something different."

Baroness Gould of Potternewton

53. Would you think that every member of the House of Lords should be eligible to stand for Speaker or would you put any restrictions on it in terms of time that they have to be in the Lords or experience before they could stand? Should they have a number of supporters? Should they be people who, in order to stand, ought to have, say, 10 or 20 people who are going to back them?

(Lord Williams of Mostyn) I do not think that one ought to put any restriction on how long you have been here. Some people come and make an enormous contribution very early. Some take time and some have been here for 20-odd years and make no contribution. I do not think one ought to restrict it, except by the vote of the House. I am not entirely teasing but it might be unwise to let any of the bishops stand for Speaker. I personally do not think that one ought to have a large number of people to support you. It sounds too managerial and too Tammany Hall, both of which I use as terms of disapproval.

Chairman

54. I am still slightly concerned that we may not make the job sufficiently attractive to get a person of sufficient stature to fulfil the representative role abroad and so forth. One thought occurred to me. If we are going to be looking for an independent chairman of the Judicial Appointments Board, which we may be if that legislation goes through, would this

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be the sort of job that the obviously independent Lord Speaker might be able to do?

(Lord Williams of Mostyn) I would be dead against that myself. I know that Lord Falconer has his consultation paper about judicial appointments but I think it would be extremely foolish to try and confuse these two matters. I have no doubt at all – I think my nose tells me correctly – that there will be significant interest among well qualified members of this House who would wish to be Speaker because it would be a great honour and an opportunity to serve and put something back into a House which has been extremely generous to all of us. I have no fears about that. It would be a very important role but to try and confuse it with anything to do with the judiciary would be a serious mistake.

(Lord Falconer of Thoroton) I thoroughly endorse that. From where I sit now, the speakership job is a pretty full time, pretty serious job. The idea of this House having to decide not just who is going to be a suitable Speaker but who also is going to be the person chairing the appointment or being heavily involved does not look remotely sensible. Quite separately, it completely goes back to the confusion and one of the things we are trying to do is to separate that confusion.

Lord Alexander of Weedon

55. Without debating the issue of the independence of the judiciary, to which you are very firmly committed and which is one of the Lord Chancellor's present roles, there is clearly a debate to be had as to how that is to be secured. That is in the

consultation paper and it is not a debate for today. Is the implication of what you say about the Speaker not being chairman of the independent commission or the judiciary that you consider that no part of the influence and authority of the Lord Chancellor in promoting the independence of the judiciary flows from the fact that the Lord Chancellor is presently Speaker of the House of Lords?

(Lord Falconer of Thoroton) The Lord Chancellor's role in promoting the independence of the judiciary comes in part from the fact that he is currently the head of the judiciary and partly from the fact that he is a member of the Cabinet. He is no longer going to be head of the judiciary. Therefore, in order to make sure his successor, the Secretary of State for Constitutional Affairs, has the impact required to secure the independence of the judiciary, you need to make it clear that that is one of his roles. The way that you do that is through statute. I do not think it comes from him being Speaker of the House of Lords.

56. The rest of the debate on this is really outside this Committee, because you would accept that there would be no argument to be advanced that, because the Lord Chancellor has ceased to be Speaker, that is a relevant consideration in determining how judicial independence is preserved?

(Lord Falconer of Thoroton) I think that is right. It is a separate debate and I do not think it is that helpful, with respect, to confuse the two.

Chairman: Thank you all very much indeed.

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Present:

Alexander of Weedon, L.	Lloyd of Berwick, L. (Chairman)
Ampthill, L.	Marsh, L.
Carter, L.	Miller of Chilthorne Domer, B.
Freeman, L.	Tordoff, L.
Gould of Potternewton, B.	Trefgarne, L.

Examination of Witness

THE RT HON BARONESS BOOTHROYD, a Member of the House, examined.

Chairman

57. Lady Boothroyd, on behalf of the Select Committee I welcome you. As you probably know we are meeting in public. We very much look forward to hearing your views on the future of the speakership of the House of Lords if and when the office of Lord Chancellor is abolished. The Lord Chancellor has already told us that in the mean time he is perfectly willing to continue acting as Speaker of the House of Lords so long as the House itself wishes him to do so. I am sure that there are a lot of question that we want to ask, many of them for information about your experience in the House of Commons, but you may want to start by addressing us briefly before we ask those questions.

(Baroness Boothroyd) Thank you, my Lord Chairman. I do not wish to make a statement, but I would like to make one or two comments so that you and your Committee know where I am coming from, as it were. I do not seek to have a Speaker in this House with a high profile approach. I believe that with a little adjustment to what we have at the present time in our procedures, perhaps by taking some examples from the House of Commons and adjusting them to our culture and historical method of doing things, we can find someone who will command wide support in our House. That is what I hope. I would want the Speaker to be elected by the whole House, to be totally impartial once elected and, if he came from a political party – I use the word “he” as shorthand – I would want him to leave his political party for the remainder of his life to show that impartiality. The Speaker would become the servant of this House. The period of office, which I think is important to us all, is very difficult to determine. I have thought about it. I do not think that we can set a time factor, but I would want continuity in something like six or eight years. I think that would give continuity, but at the same time he should not stay for life. Sometimes we need a new face and a new voice as things can become tedious, and we would need a chap or a woman who knows when the time to go has arrived. None the less, there would be continuity. To my mind the Speaker would be the champion of the backbenchers, the guardian of our Companion and Standing Orders. That is very important. In this House we pride ourselves on being self-regulatory, and to some extent that is true. We have Standing Orders that I find from time to time are not carried out and I would look to a Speaker to see that they are carried out. Perhaps I may give a couple

of examples. From time to time at Question Time supplementary questions come in the form of statements. I would look to a Speaker to have a light touch though be firm enough to remind Members that it is a question that is required and not a statement. More often I find in general debates and at Second Readings that interventions – interventions are hugely important in a debating chamber – take a long time. They must be pithy comments, seeking explanation or development of the points made, or a question. Often they are a two-minute speech. I would look to the Speaker to be the kind of person who, with discretion, was able to intervene and be able to put the Member in his or her place on that point. I also believe that the Speaker should draw up the list of speakers. I am not sure who does that now. I put my name down in some office or other and sometimes it comes out at the top of the list and sometimes at the bottom – it does not matter very much which. But I believe that the Speaker should be responsible for drawing up the list of speakers. I believe that the Speaker should be remunerated. I make no suggestion as to how much the pay should be, but I think he should be remunerated. I move on to one other point which is on the deputy speakers. I have in mind three deputies, although I am not firm about that. I do not know whether there should be two or three. This House sits very long hours – longer than most people think – and it would be for the Clerks to look at the number of hours that we sit and to give some advice on whether there should be two or three. I do not expect those deputies to leave their political parties. I expect that when they are in the Chamber that they sit on the Cross Benches and not to participate at all in debates. I would also expect them to have all the authority of the Speaker once they are on the Woolsack. With those very broad comments I shall leave it to you, my Lord Chairman.

Chairman: We all want to thank you for those extremely comprehensive and well thought out comments, if I may respectfully say so. You have almost covered all the matters that we have been considering ourselves. Thank you very much indeed. I suspect that we may go back to some other points in relation to your experience as Speaker of the House of Commons as we are very interested in that. We are interested to know to what extent you have noticed any differences. Perhaps I can ask Members of the Committee to start the ball rolling.

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Baroness Gould of Potternewton

58. You mentioned the position of the Speaker being as the servant of the House. How did that work in the House of Commons and do you see it working in the House of Lords? How will the new Speaker, or whatever the person is called, actually protect the interests of the House, particularly those of the backbenchers, *vis-à-vis* the Government or the Executive?

A. I do not look to the election of a Minister as Speaker, but I look to the Speaker to protect the interests of the backbenchers. It is extremely difficult to express this. Sometimes a statement from the Minister goes on for a very long time and it is a very wise Speaker who lets it be known in advance to the Permanent Secretary in a department that the House has a right to ask questions and that the statement should – I would not say be curtailed – not go on too long so as to give the House the opportunity to ask questions. There are a number of things like that. There is also the House Committee. You will forgive me, my Lord Chairman, because I know little about the House Committee, but it would seem to me that where administration and expenditure are concerned the Speaker should be chairman of the House Committee and as a servant of the House be aware of all that is taking place there.

Lord Tordoff

59. But not presumably responsible for reporting the matters from the House Committee to the House. I think in the Commons a Member of the Commission has that role and not the Speaker.

A. Yes, you are quite right. The House of Commons' Commission is a smaller body than I believe is the House Committee. I have to say that I rather favour a smaller committee.

60. I have tried to get it smaller.

A. With great respect, one can get quality decisions from a smaller committee. I favour a smaller committee. One person was nominated from a minority party – the Liberal Democrat Party – who answers questions in the House of Commons on behalf of the Commission and if necessary will deal with the media. That seems to work very well.

Lord Marsh

61. Can I pursue the relationship between the backbenchers and the Speaker on this? I would like you to consider your experience of the House of Commons' Commission and the House of Lords' House Committee. You are not alone in knowing little of what it does.

A. I thought I was in isolation.

62. I managed to get something from the website this morning. The House Committee, as I understand it, is still effectively dominated by the nominations that come frequently in reality from the usual channels. To what extent are the Commons' backbenchers independent and to what extent do they act independently of the party leaders – the usual channels – and what about the relationship with the

Speaker for their welfare and the views of the backbenchers?

A. I do not think I follow your question. Do you mean the welfare of the backbenchers in relation to the House of Commons' Commission?

63. As I understand it, the House of Commons' Commission reflects the views of the House of Commons in the totality of how the House of Commons is run.

A. Yes. We do it through six departments – I think you know the six departments and I do not want to be tedious about them – and the Board of Management and that is then reflected to the House of Commons' Commission. The welfare of the Members comes through those particular committees.

64. I have confused you by using the word "welfare". How do the backbenchers reflect their views into the Commission?

A. The annual report of the Commission is tabled for debate and the estimates are there for debate.

65. How are the members of the Commission appointed?

A. There is the Leader of the House, the shadow Leader, the Chairman of Finance and Services (who is a crucial member of the Commission – the estimates go to that Committee), a senior backbencher who is in Opposition, appointed by the usual channels in consultation with the Opposition, and there is a minority party representative. So it is quite small. There is the Finance and Services chairman, the Leader of the House, shadow Leader, minority party representative and a senior Opposition backbencher, if I recall correctly.

Chairman

66. For information, I think I should say that I am the only member of the House Committee present on this Committee. In fact there is a majority of backbenchers on the House Committee. That is an important consideration.

A. On our House Committee, yes. There is not a majority of backbenchers on the House of Commons' Commission.

Lord Carter

67. You mentioned the role of the deputy speakers, or their potential role in this House. How does the relationship between the Speaker and his or her deputies work in the Commons? Is it done on a timetable or on the business before the House?

A. It is done on a rota system. The Clerks work out the rota, which is available in advance. They are wise enough to see that the Speaker is in the Chair at important times: for Question Time and when a Minister is making a statement. As a courtesy to that Minister the Speaker is always in the Chair. The rota system means a maximum of three hours in the Chair. It is usually two to two-and-a-half hours with a maximum of three hours. We had 10 o'clock divisions when I was in the Commons. Then the Speaker always went back for the major division of the day. It is the Clerks who work out the rota. Every morning the

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Speaker meets with the three deputies and also with the Clerks of the House and the Serjeant at Arms for a briefing meeting which is crucially important.

68. In the Lords we have the Speaker who is at the moment the Lord Chancellor and the Chairman of Committees and the Deputy Chairman of Committees and 28 of us are deputy speakers who actually work the rota. You are implying that if we change the role, that the role of the paid deputy speakers would increase, but I think in this House that we would still need a panel of unpaid deputy speakers.

A. I am not the one to ask the question, but I wonder why? I say there should be remuneration because it would be almost a full-time job. They would be here long hours. I cannot put a figure on it, but that would be their duty the whole time. If the Speaker had to go on occasions to the City or to the Palace, then a deputy would have to be there.

69. I think I am correct in saying that when the House is dealing with legislation, if there is a Committee on the Floor of the House, the Speaker does not sit in the Chair.

A. The Speaker is also in the Chair for a Committee. Sorry, can I correct that. The Speaker does not sit in the Chair for a Committee stage. I beg your pardon.

Lord Trefgarne

70. Lady Boothroyd said that she saw the Speaker of the House of Lords as the champion of the backbenchers and the guardian of the Companion. Does she think that he or she may chair the Procedure Committee as well as the House Committee?

A. I do not see why not. I think that might be a good idea. I regard a new Speaker as the servant of this House and, therefore, should be aware of everything that takes place in this House. As well as chairing the House Committee he could chair the Procedure Committee. I do not think that that would be too onerous for a Speaker.

Baroness Gould of Potternewton

71. Perhaps I may follow Lord Carter's point about the duties of a Speaker. What happens in respect of Standing Committees which would be the equivalent of the Grand Committees where we have the unpaid speakers to chair them?

A. There is a list of what is known as Speaker's Chairmen. They are nominated by the parties, agreed by the Speaker and those people would always chair the Standing Committees. There are about 18 or 20 of them.

72. But they do not do anything in the Chamber?

A. They do nothing in the Chamber in terms of chairing, just upstairs on the Committee Corridor during Committee stages. By custom when a Member has chaired a Standing Committee they do not speak on that legislation at Report and Third Reading.

Lord Freeman

73. I would like to ask Lady Boothroyd about her role as Speaker of the House of Commons and her relationship with the Members inside and outside the Chamber, first, in welcoming them to Parliament and, secondly, providing guidance on procedure in terms of providing a gentle warning off the Floor of the House about the length of speeches and so on.

A. I think the relationship as far as I was concerned was extremely good. As soon as there was an election I called in all the new Members for a briefing session, where they would have a drink and I would tell them what to expect. I cannot say that I would expect all new Members to absorb everything that was said about procedure at that little gathering, but at least it was there. My door was always open to Members to come in and seek advice. If I felt that a Member was not understanding things in the Chamber, I would just send a message to him to come and have a word with me after I have left the Chair and that always worked out rather well. I would give them a cup of tea and try to be helpful. I think good relationships are formed in that way. Of course, every session all Members and their spouses were invited to dinner in Speaker's House.

Lord Tordoff

74. I have quite a small but important point. One major difference between the two Houses is that people speaking in the House of Commons address the Speaker, whereas in the House of Lords we address the House. Do you think that there should be any change to our present habits?

A. I think much depends on what we actually call the Speaker. If we were to say "My Lord Speaker", if it is "Lord" in the singular, I think you would address the Lord Speaker. Or it could be left exactly as it is now. Much depends on what is determined as to what the Speaker is called. I have not thought about it clearly, but I rather like addressing one person, "My Lord Speaker". That is very positive.

Chairman

75. On that point, what is your view as to what he should be called?

A. On the name, I like "Mr Speaker", but you can understand that. I am a compromiser and I think "My Lord Speaker" is quite appropriate.

76. Do you think that there would be any confusion if we called him the "Lord Speaker" when there is a Speaker of the House of Commons?

A. No, I think if he was known as "Lord Speaker" there would not be confusion, but if it was Mr or Madam Speaker there may be confusion.

Lord Carter

77. On the relationship with the Members of the House of Commons, besides the occasions that you call them in, how much did you mix in the House once you became Speaker and how much did you withdraw and not go into the bar or the dining room?

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A. The tradition is that the Speaker does not go into the public rooms of the House of Commons. I call the bar and the dining room public rooms. I think the House of Commons says to its Speaker, "Look, we have given you facilities here, you have a beautiful house, you have a dining room, you have everything you want, so get on with it and leave us alone and we can gossip about you if we want to". That is absolutely right. The Speaker opens his home very frequently to Members and to their spouses on lots and lots of occasions. Weekly in fact they come into the Speaker's House.

Lord Alexander of Weedon

78. Lady Boothroyd, I sense that you favour very much a light regulatory touch and that you clearly administered very sensitively. Do you think that if we have in this House a formal Speaker with responsibility for that regulatory touch that it will encourage Members at Question Time, more than they do at present, to stand on their feet rather than give way to others until the Speaker rules? In other words, will the existence of the Speaker's role lead to expectations that there will be regular adjudication?

A. I would have thought that Members of this House would change very little. Certainly they would rise, but I do not see the Speaker calling a Member by name. I think that would be awfully difficult. You may think about that in the years when I have passed on, but not for a very long time. You mentioned Question Time and not a general debate. I think the Speaker generally will say that we must hear from the Liberal Democrat Benches now and the Speaker whom we elect will be a fair and just person and able to do that.

Baroness Miller of Chilthorne Damer

79. I think it would be true to say that the role of Speaker in the Commons has been crucial in raising the awareness of the public and in maintaining some knowledge of what goes on in the Commons. I think you played a very big role in doing that. What role do you think a similar person could play in the Lords and how would you advise him to go about it?

A. That is a very big question. I think they have to be natural and I think this House is wise enough to choose the right sort of person to carry out this kind of work. I do not quite understand your question because I think anyone who is elected will be quite capable.

80. Perhaps I could explain it. On the outside of the House, the public who look in at Parliament know much more about what the Commons is about and what the Commons does than what the Lords is there for. It would seem to me that perhaps there is a role for a Speaker to be the advocate of this House to the public outside.

A. Perhaps if we have the Speaker that some of us are thinking of, without taking too high a profile, that Speaker would be invited to academic institutions, to various outside bodies and there would be general information there. I do not know how much our Lord Chancellor or the great list of deputy speakers that we have are invited out to tell people how the House of Lords operates. I wonder whether they have been

invited out anywhere to discuss it. It could be that greater invitations may come to a reformed House of Lords to explain matters and perhaps television would give us more exposure and therefore more requests from outside bodies to the Speaker's Deputies interested in learning more about us.

Chairman

81. I think we are nearing the end of the questions that we want to ask on basic information as to how the Speaker works in the House of Commons. There is one question in particular that is outstanding and that is about the arrangements for receiving advice from Clerks. How did that work and how could or should it work in the Lords?

A. What was absolutely crucial was that each morning we had a meeting with the three Clerks of the House, the Serjeant at Arms, my three deputies and my secretary. That was when a wash-up session was conducted on the day before. Mistakes may have been made so how could we improve on them; the dossier would be gone through in very great detail; and the advice of the Clerks was then sought. That is the most crucial meeting of the day that no deputy speaker or anybody else would dare to miss. That set the pattern for the day.

82. Not while you were Speaker.

A. No. That was where you did your wash-up session, you learned about that day's business and you anticipated the points of order, although we do not get those in this House, but we might and that is where the work is done.

83. What about advice while you are in the Chair?

A. That is difficult because of the geographic location. It will be even more difficult, of course, in this House. May I be flippant and tell you a story about the Australian Parliament's Speaker? He did not know what to do and the Clerk turned to him and said, "Tell him it's hypothetical", so the Speaker said, "That is too political". You do get a whispered word from the Clerks at the Table not too far away and they make a good fist of it. In this House of course it would be difficult to do that, but I do not expect the challenges that come in the Commons. Often when there is a major or serious challenge that comes by means of a point of order. Sometimes the Member is decent and polite enough to let it be known that he would like to make a point of order and gives information of what it is about. While the Speaker is not totally aware, he has an indication of what it is about. In this House major challenges do not seem to come, but I think we just have to be prepared for it. With a Speaker who has been in the House for some time and knows what to do he will be able to cope, I have no fear of that.

Lord Marsh

84. On the matter of public relations of the two Houses, you have experience of both. Is the reality that the media and the public will always be more interested in the Commons than in the Lords because the Commons has Prime Minister's Question Time and it is where the Government governs? I wonder

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what your experience of the two Chambers is in that direction?

A. I would certainly agree with that. There is no doubt about it, the real interest is in the Commons. Since I have been a Member of this House, which has not been for too long, there has been enormous interest developing in this House and in the way that things are done here. I will not go into that because it can become political and this is not a political matter. There is a great deal of interest in this House, but not as much as in the other.

Lord Trefgarne

85. In this House the advice of the Clerks to the Peers is much more practically based. In theory it is possible to challenge the advice of the Clerks but I do not remember a case when that was done. In the House of Commons it is done and it is the ruling of the Speaker that prevails. I am thinking of the matter of whether an amendment is within the scope of a Bill.

A. The ruling of the Speaker is always maintained.

86. Does the Speaker seek the advice of the Clerks on such matters?

A. Yes, I would take the advice of the Clerks, but, of course, the decision rests with the Speaker.

87. Did you ever disregard the advice of the Clerks?

A. No, I did not disregard the advice. I argued with their advice and I won. I would not disregard them. They would give the best possible advice and I have the highest regard for them. Sometimes one needed to argue and sometimes they won and sometimes I won.

88. Did you take advice from anybody outside the House?

A. I would listen to lots of people.

89. There is no one outside the House who has a formal role to advise the Speaker?

A. Not that I am aware of.

90. The Lord Chief Justice?

A. The Clerks reign supreme. They are the people who gave me advice and very good advice it was too.

Chairman

91. Can we move back to some of the matters that you mentioned in your opening – I cannot call it a statement – non-statement, in particular any changes you see in the current role of the Leader of the House and the Speaker?

A. Changes between the Leader of the House and our Speaker?

92. Yes, any functions that are currently performed by the Leader of the House. In your opening remarks you touched on matters that may be performed by the Speaker.

A. Of course, the Leader of the House would not determine who was to follow when there was a challenge. At the State Opening there must be a complete change because the Speaker of the House is a non-partisan person. Therefore, it would be the Leader of the House. I am a new girl on the block in

terms of the House of Lords, but it would have to be the Leader of the House who played the major role. Does that answer your question?

Chairman: Yes.

Baroness Gould of Potternewton

93. Another point that Lady Boothroyd raised in her introductory remarks was the Speaker being responsible for the list of speakers.

A. Yes.

94. Here we just put our names down and everybody is invited to speak. Are you suggesting that we should limit the speakers and that the Speaker should have responsibility for limiting the number of speakers and should call the speakers or would we continue with the current system and put our names on the list and just stand up when the previous speaker has sat down?

A. I think that is reasonable, but when I put my name down I never know where in the list I am until that day, which I suppose is pretty reasonable. I do not know how the powers that be move the names up and down the list. I am a new girl and I am not sure about that. I am asking that the Speaker should do the list because the Speaker would know how many times a Member has spoken previously; he would know whether that speaker was a chairman of an important committee dealing with the subject and, therefore, he would have some right, some authority to speak on that matter. That is why I am suggesting that. As Speaker, along with my deputies, I did the list. I am telling secrets now that perhaps I should not tell, but I have to speak openly on these occasions. My deputies and I did the list of speakers, therefore, those who were chairmen of Select Committees of the particular issues of course had priority as they were knowledgeable about the subject. Those Members who had not spoken very much also had a right to speak. They may not have great expertise on the subject, but they should come in. That is why I say that the Speaker, who is impartial, should draw up that list, keeping in mind how many times a Member has spoken before. I imagine that records would be kept as they are in the Commons.

Lord Amptill

95. I do not know how but so far we have managed to avoid using the two dreadful words the “usual channels”. They play quite a large role. I was happy to hear you say that the new Speaker should really be regarded as the main guardian of the backbenchers’ interests and of the Companion. But the usual channels exercise real power and that causes backbenchers to be extremely unhappy because they are the ones who concoct the list and the batting order of the speakers, regardless of the order in which one puts one’s name down. I think they do it reasonably fairly. They take the names in party order and I do not think it is a matter that causes many problems. One can always say, “Please may I speak very late in the debate?” because one may want to know whether one can cut the speech. You say, with great pleasure to all of us as it is what we are thinking, that the new

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Speaker is to be the guardian of the backbenchers and of the Companion and not necessarily the guardian of the usual channels. Does that shock you?

A. No, not at all. I think the usual channels play an important role. I have not tripped over them yet. I think the Speaker should be responsible for the speaking list. The Speaker will be a very wise person and with the help of the Clerks or secretary he will have records on how many times a person has spoken before and what Select Committees he is on, and whether he has been away in Timbuktu so he should be on the list. That is the Speaker's responsibility, as far as I am concerned.

Lord Carter

96. It is less mysterious than it appears.

A. I have never had any complaints.

97. The Government Whips' Office do the Government list and the Crossbench list and the Tory Chief Whip does the Tories' list and the Liberal Democrats do their list and it is all done almost haphazardly.

A. That is what I feared.

98. One advantage of the Speaker having the responsibility is that we have tried hard through the usual channels to deal with the issue of people not staying until the end of a debate. If the Speaker had the ultimate responsibility it would be a brave Member who spoke and did not stay until the end.

A. Absolutely.

99. That may help. The Speaker of the Commons is able to exclude people from the list.

A. No, the Speaker has no right to do that. The Speaker could limit the time allocated to speakers so as to involve as many Members as possible. According to Commons Standing Orders the Speaker knows how many people need to get in and, therefore, Standing Orders are used to get in as many Members as possible. It is not always possible to get them all in, therefore, the Speaker is in trouble, but nevertheless those Members have to be kept in mind for another time and given priority on another occasion. There is administrative work to be done – not a lot – but there are records to be kept and, Lord Carter, it is not to be done in a haphazard way.

Chairman

100. What about Private Notice Questions which are currently dealt with by the Leader?

A. I am rather naive about Private Notice Questions in this House. A Private Notice Question should certainly go to the Speaker. It is the Speaker who must determine whether it meets the criteria. The Speaker is the servant of the House, champion of the backbenchers, and PNQs tend to come from backbenchers, and the Speaker is the only individual with authority to make the decision.

Lord Freeman

101. Could you comment on some of the details about election frequency. Should elections be secret

and do you have any comments on the new procedure in the House of Commons, the Standing Order amendments that were made after the present Speaker was elected?

A. I did not think that we were to go into the detail of how to elect. Perhaps I can make some general points about it. I think that anyone nominated should get a fair number of supporters from the Cross Benchers, the Liberal Democrats, the Opposition and the Government. I will not get into the numbers game. I am not in favour of secret ballots. I think we are all courageous enough to put our cross against the candidate of our choice. I hope that answers your question.

Chairman

102. Are there any further questions on elections or anything else? I have a question that you may not have considered. How would you view, if it should ever arise, precedence operating between the Speaker of the House of Commons and the House of Lords' Speaker?

A. In the future it should be the Speaker of the House of Commons who must take precedence. You are thinking, no doubt, of City functions to which they are both invited or when they are both invited to Buckingham Palace. As you know, probably better than I do, at present the Lord Chancellor takes precedence. But with this development I think it will be the Speaker of the House of Commons who will take precedence. We have not moved into the international arena and I will not do so, but there is something to think about there. You have not asked me about representation internationally. You may do so at the end, but if not I may want to make some comment on that. That impinges on the question that you have just asked me.

103. It is one of the questions we had intended to ask you so perhaps you can answer it now.

A. I am very keen that the Speaker of this House should attend international conferences. By that I mean the Commonwealth Parliamentary Association, the Interparliamentary Union, meetings at the EU and meetings of European Speakers. When I was Speaker and a little before that time we let it be known to our friends in other Parliaments that this Parliament sat longer than any other and would they, therefore, please be considerate in calling these meetings either on Fridays so that we could manage Fridays or the weekend, Easter recesses, spring bank holidays or summer recesses when we were available so that the Speaker could be present. During my time as deputy and as Speaker I once went to represent Speaker Weatherill – only once. When I was Speaker I think I attended most of the conferences that were called simply because we let it be known that they should call them when it was convenient to us and they respected that. I feel that there has been some slippage and they are called now at any time. Other Parliaments sit for three weeks and have a break for a week, or two weeks and have a break for two weeks, so it is easy for them, but not for us. So we have to let it be known through our Clerks and through our Speaker when

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people from this Parliament are available. It is crucial to me that our Speaker is there taking the UK chair. But I make it clear I am really irritated when I hear the Lord Chancellor say, "I hope the House will not mind if I have two days off; I have two meetings in Paris next week and a meeting in Poland". I mind very much. The first priority is this House and that is what I trust it will be with a Speaker. In nearly nine years as Speaker I had one Friday morning off when the Queen came to my constituency. I expect the Speaker of this House to do the same here. We must bring the other Parliaments much more into line with the way that we sit. Does that answer your question?

104. If I may say so, that is a splendid and typically robust answer to my question. I think we have covered almost all the matters that we hoped to cover. Is there anything else that you would like to say?

A. There is one thing on representation. I have a note of caution that once we move into the changes, there will be a great deal of interest in this House from

overseas. Whatever the people of this country feel about our Parliament, I can tell you from personal experience that it is held in very high regard everywhere in the world; everyone wants to come to Westminster. When I was Speaker I kept aside half an hour each day from 12.30 to 1 o'clock for visiting VIPs, ambassadors who wanted to say hello or goodbye, speakers and ministers. Our Speaker will find, I am sure, that there is a similar demand on his time. The Speaker of the Commons entertains speakers from other countries. Presidents of Senates I expect will be entertained by our Speaker. So we have to be prepared for that. People will want to meet our Speaker and they will want to know more about us and the changes that have been made. Some thought must be given to that.

Chairman: You have given us very helpful evidence this morning. We are very grateful. We are now about to hear your predecessor, Lord Weatherill. I hope that you will remain just to ensure that he does not say anything different.

Examination of Witness

THE RT HON LORD WEATHERILL, a Member of the House, examined.

Chairman

105. Lord Weatherill, I welcome you to the Committee. You have a hard act to follow, but perhaps you would try.

(Lord Weatherill) I am well aware of that. Betty was a friend and a colleague and in my day in the Speaker's office we were a team. I reckon that if I had been in the Labour Party for a thousand years I would not know as much about it as Betty and Harold Walker. I do not have much to add to what Lady Boothroyd has said. Perhaps I should give you my credentials. The House of Lords today is very much more like the House of Commons was up to the time of my speakership. I was a Whip for 12 years and I was a Deputy Chief Whip to Margaret Thatcher and to Ted Heath. For the last six years I was in charge of the awkward squad so I know about that lot! I had a very valuable apprenticeship as Chairman of Ways and Means under George Thomas before becoming Speaker in 1983 to 1992. I agree with what Lady Boothroyd has said. The Speaker, in my opinion, in the Lords should be chosen or elected. There is a difference. I was chosen to be Speaker. That is to say there was no contest. I was well aware that not everyone agreed but fortunately I never knew their names which is quite an advantage. The Speaker in the House of Lords, like the Speaker of the House of Commons, as Lady Boothroyd has said, should give up party politics for life and not just for his term in office. There should be continuity. I think she suggested eight years and I think that is probably about right – i.e. two Parliaments. In the Commons the tradition is that the Speaker goes before the end of his or her term. I did not do that for reasons that I need not explain to your Lordships at the moment. I did nearly 10 years. The Speaker here should have a public face,

as Lady Boothroyd has indicated, particularly as regards receiving Speakers from upper houses of other parliaments, and he or she should represent the House of Lords on overseas visits. I agree with what Lady Boothroyd said about the difficulty of leave of absence. I do not think that I ever sought leave of absence, largely as a result of hearing George Thomas on one occasion ask the House if he could have leave on a quiet Friday to receive a degree from a university in Wales and it said "no", so I never risked it. The Speaker should always be accessible to backbenchers. Like Lady Boothroyd – I do not know how she managed it – I used to dispense "love and whiskey" after 10 o'clock at night, in whatever portion they liked for anyone who wanted to see me. Then there is the diplomatic role. Perhaps I could speak on some of the other questions to save time. On deputy speakers, I heard Lord Carter say that there are 28 deputy speakers. I would have thought that if it is the intention to pay deputy speakers, three or maybe four would be sufficient. I cannot deal with the Commission in quite the same way that Lady Boothroyd did because the Commission only started about half way through my term of office. Up to that time the Speaker was responsible for absolutely everything. Almost my first action was to sort out a strike in the catering department. The usual channels are very important, mentioned by Lord Amptill. I used to see the party Whips every week in rotation. Then there is the matter of the PNQs. The Speaker of the House of Lords should have the right to decide which Private Notice Questions should be granted. It is the role of Parliament – we all agree on this – to hold the Government to account and that is as true of the House of Lords as it is of the House of Commons. Finally, I think that the Speaker of the House of Lords should be equal with the Speaker of the elected House of Commons, but I agree with Lady Boothroyd that in

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public events outside the House the Speaker of the Commons should always be the first.

Chairman: Thank you very much. That is very helpful.

Lord Alexander of Weedon

106. Lord Weatherill, what do you think of the proposal that the Lord Speaker should chair either the House Committee or the Procedure Committee or both?

A. My knowledge of those committees is not great. I would have thought that the House Committee is more or less equivalent to the House of Commons Commission and that certainly should be chaired by the Speaker of the House of Lords. I do not know about the Procedure Committee, but it seems reasonable that if the Speaker of the Lords is to be guardian of the Companion that he or she should also chair the Procedure Committee.

Lord Carter

107. You referred to the possibility of the Speaker having three or four deputies. Would you think that that may be a change a bit too far and too fast at the beginning? Would it be better to move to a system of Speaker and we already have the Chairman of Committees and the Deputy Chairman of Committees who are paid? Perhaps that would be a change that may be too much overnight and it may be better to do it gradually over time.

A. There may be a case for that, but if the reform of the House of Lords continues and our numbers are to be cut down, it will be more difficult to find people to be deputy speakers. Maybe the Committee should consider whether it would be wise to have designated deputy speakers.

Baroness Gould of Potternewton

108. Lord Weatherill, Lady Boothroyd referred to addressing the Speaker as opposed to addressing the whole House. Could we have your thoughts on that and whether we should continue with the way that we operate at the moment or whether we should address the Speaker?

A. I am very much in favour of self-regulation. I hope that whatever happens we can continue with that. I would prefer to see the tradition in the House of Lords continue, that we address each other and not the Woolsack.

Chairman

109. In connection with that, at Question Time where two or more people get up at the same time, currently the Leader of the House or the Government Chief Whip decides who should speak. What do you think of the suggestion that that function should be performed by the new Lords' Speaker?

A. I would like to see the present tradition continue. I do not think that the Speaker of the House of Lords should nominate by name, but I see no reason why we should not continue as at present when the Leader of the House says, "I think it is the turn of the

Liberal Democrat Benches" or "I think it is the turn of the Cross Benches", without nominating names. If two or three Members of the Cross Benches get up he may say, "Perhaps we should hear Lord Wright first on Iraq" by pointing to the Crossbench. Pointing is quite important. It was the old tradition in the House of Commons. Members were never called by name until Speaker Sir John Trevor, who was cross-eyed. It was only then that Members were called by name.

Chairman: The advantage of that is that you do not need to know the names.

Lord Alexander of Weedon

110. Do you think that if the Speaker is there, known to fulfil that function, that Members in the same party will stand their ground, whereas most of us give way generally to other speakers? In other words, if there is the supply of speaker services, will the demand that they be exercised grow?

A. If that were to happen they should be jumped upon by their Whips. The old courtesies should continue. One of the problems that I have encountered in my brief experience here is that the old conventions are sometimes being abused. I think we should get back to the old tradition of consideration and courtesy.

Baroness Miller of Chilthorne Damer

111. Lord Weatherill, you mentioned in passing the method of election and the option of being chosen. If there were to be an election and it were contested, do you have any views on the method of election?

A. I really do not think that in a civilised House like your Lordships' House that it would matter if a Speaker knew that X or Y had not voted for him. It matters in the Commons because it is entirely in the Speaker's eye whether Members are called or not called and in what order they are called. As Speakers are now elected in the Commons, they could be elected in the Lords. However, I think that it is a pity that they are elected in the Commons. I think the old traditions of emerging by consensus is both sensible and wise.

Chairman: We are getting towards the end, but I think Lord Trefgarne and Lord Amptill have two final questions.

Lord Trefgarne

112. Just a quick one. I asked Lady Boothroyd whether she had ever disregarded the advice of the Clerks. Did you?

A. On one or two occasions.

113. She said she never did.

A. I used to say to my Clerks in my time that Erskine May was not a bible, it was a guide. You can change precedents, and we did change precedents. One case was when the Scot Nats interrupted the Budget on one occasion and I got through by intelligence – by the way, my Lords, intelligence is very important for whoever is going to be Speaker in either House and the Serjeant at Arms, or Black Rod here, would often provide very good intelligence – that they were going to do it for a second year running,

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so I summoned the Leaders of the three political parties and said “Would it not be a good idea to take the Budget on a Private Notice Question?”, so Mr Kinnock asked if I would grant a Private Notice Question, which was whether the Chancellor would make his Budget Statement. Up jumped the Scot Nats saying “Point of Order”, which enabled me to say “I do not take Points of Order until after Question Time, and we are still on Question Time”. Thus for the first time in history the Speaker was in the Chair for the Budget rather than the Chairman of Ways and Means.

Chairman: Very ingenious. Perhaps we should end with Lord Amphill.

Lord Amphill

114. Very briefly, on this business of Deputy Speakers, they are more numerous than they have ever been in the history of this House at this time and one of the reasons for that is that they chair all the meetings upstairs now which are technically committees of the whole House. There should be a pruning I think without a doubt, but we will need more because there are as many designated speakers as there are designated committees to look at legislation in the other building.

A. That is a point but, on the other hand, the select committees in the House of Commons have nominated chairmen.

115. The whole of the membership is nominated.

A. Membership is nominated but they elect their own chairmen.

116. We cannot do that in this House, I do not believe.

A. Should we not make a change then?

117. I think it would be unwise to, an amateur House.

A. One other thing, my Lords. Overseas visits are quite important. I think I, probably more than any of my predecessors, was used by the Foreign Office to put a foot in the door and I think in my time, although never during term time, I undertook 39 overseas visits to countries like Russia, the Soviet Union and others. I think that is quite an important role for a Speaker in the Lords as well as a Speaker in the Commons.

Lord Tordoff

118. At the beginning of a new Parliament the Commission calls the Members of another place and orders them to go and choose a Speaker. Would it be thought a bit invidious if the head of that Commission was, in fact, the Speaker of their Lordships' House rather than the Lord Chancellor?

A. That is an important point, my Lords. I think he should not be the Speaker of the Upper House because that might then indicate that the Speaker of the Upper House was superior to the Speaker of the House of Commons and I would not wish that to be the case.

Chairman: With that very tricky question perhaps that brings us to an end. Thank you very much indeed for all the help that you have given us, and to Lady Boothroyd.

MONDAY 20 OCTOBER 2003

Present:

Alexander of Weedon, L.	Lloyd of Berwick, L. (Chairman)
Ampthill, L.	Marsh, L.
Carter, L.	Miller of Chilthorne Domer, B.
Desai, L.	Tordoff, L.
Freeman, L.	Trefgarne, L.
Gould of Potternewton, B.	

Examination of Witness

THE RT HON. LORD STRATHCLYDE, a Member of the House, Leader of the Opposition Peers, examined.

Chairman

119. Lord Strathclyde, perhaps I can start by giving you a very warm welcome on behalf of the Members of the Committee. We much look forward to hearing what you have to say. You will be glad to hear that we are making good progress and we are nearly at the end of taking oral evidence. We are on the last lap of the evidence which we will be hearing. Would you like to start the ball rolling?

(*Lord Strathclyde*) Chairman, thank you very much indeed for seeing me. I know that there was a little bit of confusion about the timing today, caused by the Statement, but we have managed to solve all of that. I do not have a great statement to make, but perhaps it might be worthwhile spending a couple of minutes in laying out the stall, beginning by saying how much I deeply regret the reasons for us all being brought together in this manner. The Government's reshuffle in June was badly handled in almost every single respect, and by the low standards that we have increasingly seen from the Government, even by those standards it surpasses anything seen before. I deeply regret that. Of course, there should have been a proper debate through a white paper or a green paper, and it may be that your Lordships' Committee might still consider that is the best way forward. I also think it was very strange, since I believe that the House has long cherished and benefited from the present arrangement of Lord Chancellor, and I am aware of no call for the abolition of the office of Lord Chancellor. In fact, the dignity of the House is enhanced by the existence of the Lord Chancellor, the higher secular office under the Crown presiding, presiding in the House. My Lords, I hope that you will consider whether we should continue to have as our presiding officer a figure called the Lord Chancellor, though I understand that some functions could, if necessary, be handed off to a new government department. My Lords, I do not really see a difficulty with a presiding officer being a member of the Government; the US Senate, after all, is not cowed because its presiding officer is the Vice President of the United States of America: nor am I convinced that the actual role of the Lord Chancellor as a speaker is that onerous. You said, my Lord Chairman, that this is the last lap of evidence-taking; I wonder if you have taken evidence or considered taking evidence from the two previous Lord Chancellors, who might give you a very fair view of the role and how much time it takes up. My

view is that it is not onerous at all. I should like to keep a Lord Chancellor, retaining most of the existing roles, as Speaker of the House, and other parts of his powers that the Government deem should be passed elsewhere can be in due course. I think we should wait for the legislation to be in place, abolishing the post of Lord Chancellor, if that is what the Government still decides today, before making any changes on the Woolsack.

120. Perhaps I should have made that quite clear at the start. The whole of our consultations are based on an assumption, namely that the office of Lord Chancellor has been abolished. If it has not been abolished, the Lord Chancellor has indicated to us that he is perfectly content to continue acting as Speaker of the House. At the moment we are acting on an assumption.

A. At some stage in the future it might be abolished.

Chairman: Yes.

Lord Ampthill

121. The title of Lord Chancellor is not really available to us in as much as there is apparently two years of legislative work ahead before that title could be used by our Speaker, unless the occupant of the job is willing to dress up and come on over here or come on over here and then dress up and then sit for question times and then go back home, which is a waste of time, which is incredibly precious to him I would imagine, because he has an awful lot on his plate, and the legislation will take at least two years. Therefore, it is an interim period that we are talking about. Then perhaps the title of Lord Chancellor could be used by the House to designate its Speaker.

A. Lord Falconer of Thoroton has indicated I believe publicly and to this Committee that he is willing to continue on the Woolsack for as long as the House of Lords deems it. It may be that it should not deem it until the legislation is in place removing the post of Lord Chancellor, in which case the Speaker, the person on the Woolsack, could still be called Lord Chancellor. I am not hugely drawn to a Lord Speaker. I am conscious that other parliaments in the United Kingdom, like the Scottish Parliament, do not have a Speaker but a Presiding Officer. I do not much like that either, although it may suit the Scottish Parliament. That is why if we find a way of keeping the name "Lord Chancellor" who presides over the House of Lords, it would be consistent with the

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customer and traditions of this House and also would be recognised as an authoritative figure, which I believe is important to preserve.

Lord Trefgarne

122. Chairman, I wonder if I could ask Lord Strathclyde what he would think about transferring some of the duties presently exercised by the Leader of the House at Question Time to some new occupant of the Woolsack.

A. My Lords, I think this is the central question that needs to be answered. The Clerk of the Committee was kind enough to furnish me with the unedited evidence given by Lord Williams of Mostyn in this respect, who said that while he much enjoyed having the disciplinary powers, he was not himself convinced that they should continue to be carried out by a leading figure of the executive. My Lords, I stand very firmly opposed to this suggestion. I think that the Woolsack position should be held by somebody who does not have any disciplinary powers *vis-à-vis* the rest of the House, and there are a number of reasons for saying so. First of all, my Lords, I think people sometimes make the mistake of comparing the House of Lords and the House of Commons; they are entirely different animals. In the House of Commons, the government governs by virtue of having a majority in the House of Commons, and therefore they need a Speaker as some sort of Convenor for what goes on in that chamber. The position is not at all the same in the House of Lords, where there is no majority for any party, and therefore I think it is entirely right and proper for the party of government to have a slight advantage, and to be seen to be in a senior position in the negotiations through the usual channels and on business. Secondly, my Lords, it is a system that works. Leaders in the past have had no trouble or difficulty in keeping discipline and using their authority in controlling the House. I can think of very few instances where it has not worked; and where it does not, there are systems built in to our procedures to deal with that eventuality. Thirdly, my Lords, I heard it suggested that perhaps there might be power of calling a name at Question Time. What would then happen in a difficult statement or a difficult amendment at a committee stage of a bill? Once you start this process, it is very difficult not to end up very quickly with a fully fledged Speaker. What that would mean, every day in the House, is that instead of peers giving way to each other as they normally do, they would all stand up hoping to catch the Speaker's eye. This changes utterly the atmosphere and the way that we do business in a way that I believe is detrimental to the reputation of the House and the way in which it does its business.

Lord Tordoff

123. Forgive me, Lord Strathclyde, but when you say at committee stage, I presume you mean the report stage or third reading because the occupant of the Woolsack does not get involved at committee stage.

A. That is my point. If you gave away these disciplinary powers, a Lord Chancellor could not be

limited from using them just for Question Time. He would have to be using them at every stage of our procedures. I do not think it necessary, and I think the whips and the Leader are perfectly capable of using the powers that they have most adequately.

Baroness Miller of Chilthorne Domer

124. Whatever one thinks of this process and how it is arrived at, it has enabled the House to have a period of self-reflection on how self-regulation works. Do I take it from your remarks, Lord Strathclyde, that there is no part of self-regulation that you feel could be improved by the House itself?

A. Almost by definition, self-regulation can always be improved, but it has to be improved by the people who are involved. Every now and then you see the House getting slightly out of control at Question Time or behaving particularly badly on a statement, and you will find in succeeding weeks that whips and leaders are reminding people of the rules and how to behave, and the atmosphere immediately improves. I think that is a far better example than having a genuine presiding officer with power and authority over aspects of the House, with all the complications that that would bring in on the geography of the House and communication with the clerks, as well as this practice of catching the Speaker's eye, which I think would be detrimental to the way the House operates.

Lord Freeman

125. Lord Strathclyde, you drew our attention to the practice in the United States Senate where the Vice President presides. Is there any advantage in moving towards an independently elected Speaker by the House, perhaps by secret ballot, along the lines used from now on by the House of Commons?

A. If we are to end up with a Lord Chancellor who is not a member of the executive, we would naturally have to find a way of selecting him. I would like to think that in the House of Lords we have, over time, created an excellent post, Chairman of Committees, for instance – our European Committees, our Science and Technology Committees, their sub-committees and chairmen of committees themselves – which is approved by the House but is achieved through a series of soundings through the usual channels. I can think of very few occasions when we have got it wrong. I am not abreast entirely of the way the House of Commons plan to do it in the future; all I can say is that the way they did it in the past did nothing for the reputation of the House of Commons, and I think that that would not be a good way to go about it. I would broadly keep a system rather similar to the one we currently have for the Chairman of Committees.

Baroness Gould of Potternewton

126. Lord Strathclyde, you talked about the possible role or non-role of the Speaker within the Chamber. If the legislation does go through and we have the changes that are envisaged, what do you think should be the external role of the Speaker? Should they continue to play an international role, representing the House?

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A. Very much so. I think that the role of the Lord Chancellor figure should be to represent the House at important ceremonial occasions, national occasions, and at international bodies. They should continue to have the full splendour of the office and to use the apartments, if they so wish, to entertain, as well as to do the charitable works that former Lord Chancellors have done. In fact, this role can be extended. As I have said, I do not think that the job of Speaker *per se* is terribly onerous. I think there is a whole development of work that can be done, an ambassadorial role for a Lord Chancellor figure that I think would go down very well.

127. Obviously, you have identified a very key role for whatever the person is called, the Lord Chancellor or Lord Speaker, but in terms of the relationship with the Commons, should the Speaker in the Lords take precedence over the speaker in the Commons?

A. I think the current rule is that the Lord Chancellor takes precedence. I am looking around for confirmation of that! Therefore, that should continue. It is an extremely good tradition. The House of Commons clearly does not mind it, and in the absence of them asking for any change, I would leave it exactly the way it is.

Lord Carter

128. Lord Strathclyde, you realise that our terms of reference require us to report on the assumption that there is a Speaker, who is not Lord Chancellor? If I could say in passing, if there were a Speaker in place before the final decision on the role of the Lord Chancellor is agreed judicially, so that there will be a Lord Chancellor, if such a person were the Lord Speaker and then the title of Lord Chancellor became available, it would be easy to drop "Speaker" and insert "Chancellor". I think we are the only two Members here who have been Chief Whips and have sat next to the Leader of the House during Question Time. First, it is a little odd when Question Time is required to call the government to account and the executive to account, that a member of the executive has to decide who has to speak or not speak when they call a name; but in our two cases, it would be entirely hypothetical – and I emphasise that. Would it be unknown for a Chief Whip to whisper, "keep number 3 going; number 4 is a bit tricky"?

A. I suppose hypothetically that sort of thing might happen, but I do not think it does. We stick to the rules pretty well. I do not think that the House needs defending from a Leader of the House; and a Leader of the House who behaved in that way I do not think would last for very long. If I can reverse it, what would happen if we have a Speaker doing that job is that we would see more and more people standing up, less willing to give way and all hoping to catch the Speaker's eye, which is exactly what happens in the House of Commons.

129. I would have thought it would be much the same as it is now, with the Speaker instead of the Leader saying "I think it is time we heard the Liberal Democrats", and then you would find that—

A. My Lord, Chairman, I wonder if thought has been given to a two-stage process, to start off with a Lord Speaker/Lord Chancellor who did not have these disciplinary powers; and then after two or three years, if it was the view of the House that the system with the Leader having discipline no longer worked, then this Committee could examine whether at that stage it was important to hand over some of the disciplinary powers.

Chairman: To go back to something you said earlier, this is one of the key questions, if not the key question.

Lord Marsh

130. I think you have a bit of a problem probably because we have not reached any decisions, obviously, yet, and you have not been present at the discussions. Not surprisingly, areas of consensus begin to emerge, and I think that if there were a Speaker – and nothing has even been discussed – the phrase that has been used is that he or she would be the custodian of the *Companion* and a creature of the House, meaning the backbenches, by whatever process that was. So it would not be a Speaker that was all-powerful and behaving how he or she wanted. There is a strong view, which is contrary to yours, in the House certainly that we have heard that all is not well with the current system; that in fact it is being very much abused, and most people complain about it in terms of second reading speeches all the way through because a lot of people do not even know what is in the *Companion* (and I speak as one of those). So we seem to have two problems: one is the Government's somewhat muddled decision on the role of the Lord Chancellor, which we cannot ignore – it is there and they have a majority, as has been said; and the other one is that there is a need in terms of the self-regulation to ensure that if people intervene unfairly in a debate, it is made quite clear that he or she speaks on behalf of the House and says, "this is just not acceptable".

A. My Lord Chairman, I think Lord Marsh puts his finger on something that is very important. Can I respond to it? This phrase "guardian of the *Companion*" is a good phrase because it sounds extremely worthy and important. I am not entirely certain what it means, because the House, I suppose, in the end is the keeper of the rules through the Procedure Committee and through the front benches. What I remain to be convinced about – and nobody I have spoken to has successfully done this – is why we believe a figure sitting on the Woolsack will carry very much greater weight or authority than the Chief Whip or one of his whips on the government benches standing up and intervening. The problem that I perceived over the last few years, which has got better, is first of all that there has been a massive influx of new peers into this house, and the induction system has been overloaded in order to deal with that, and therefore the old customs and practices of the past have left us. That will be solved by time. Secondly – and this is something that needs to be dealt with – there seems to be more unwillingness by the Government front bench and the whips to intervene at

the appropriate time. If they did, in my experience, as soon as a Government whip stands up and says “you are breaking the rules”, that is it. Therefore, we already have the means to deal with the problem that Lord Marsh correctly identifies, and I do not think that it would be improved on necessarily by having a central figure, with their own independent authority, doing it.

Lord Amptill

131. Whilst the late Leader of the House, Lord Williams of Mostyn, did it beautifully, he was very firm in his evidence to us, which you may have read, that he wanted to dispense with the job of wagging his finger, especially when most of the people came up from behind him and he had no eyes in the back of his head, and therefore he was unable to identify which had pointed or wagged. But it is later in the day that the breaches of standing orders takes place. The junior whips on the government front bench are very often – and I wag no particular finger at the present incumbents – they do not want to do it, and the Table is begging them to do so very frequently. They say, “we do not know quite how to do that” – in order to restore some semblance of order, and getting us all to bed a bit earlier, which is one of the ambitions we all share – this is the difficulty about it. Leaders have other things to do, and they are off like a rabbit down the hole as soon as Question Time is over – and rightly so because of the other things they have to do. It is the later stages, which can go on to midnight or one o’clock in the morning, as we do at the moment, without the Leader being on view at all.

A. My Lord, some Government whips do it very well. It is invidious to name names, but I will! Lady Farrington, for instance, when she gets up and ticks people off—

132. She is terrific.

A. They simply do as they are told. Lord Bassam also does it, and it should be part of their function. These Whips are paid as whips of the House; it is their job. If they are not up to the job, then they should be removed and replaced with somebody who can. In sense, my Lord Chairman, that this Committee is trying to invent a role for the Speaker that is already being done by other people. Perhaps in some instances it is not being done well and could be done a lot better.

Lord Desai

133. Apart from adding to the functions, your idea that the Speaker should emerge from consultation gives me the view as a backbencher that the whole thing is run by the usual channels, and they will never give up power. Is it not desirable that the Speaker should be someone representing backbenchers rather than front benchers, and that is why an election, or a transparent procedure – let us put it that way – of choosing the Speaker would be better?

A. My Lord Chairman, I have an interest to declare, having been a member of the “usual channels” for nearly ten years now; so naturally I do think that that is a good way of doing things. I am not averse to elections, and I was struck at how Lord

Williams of Mostyn said that the election of the hereditary peers had gone so much better than anybody had imagined. The House of Lords can have elections and we know how to do it, but once we start going down that road, it is more a housekeeping point than a principle point – it would be very difficult to resist, and perhaps we should not resist having a Lord Chairman of Committees, Chairman of the Refreshment Committee and all the other committees that exist. It can happen that way. I just wonder if the way the House of Lords has done things up until now has not been perfectly adequate.

Lord Alexander of Weedon

134. Lord Strathclyde, can I take you right back to the beginning? You said it might be interesting to have the views of the two previous Lord Chancellors still in the House. We have not been offered a view from Lord Irvine, nor have we invited him to attend. We have a view from Lord Mackay, who said two things. He said there was time for the Lord Chancellor to sit as Speaker, and that the office of Lord Chancellor should be retained. As I understand your evidence, you agree with both those views.

A. I do, My Lord Chairman. I very much agree with that, and that is why I regret the reasons why we have come to this. I am not sure from what Lord Carter said earlier on whether you are even supposed to discuss these issues within your Committee, but I think that if I was starting on a blank piece of paper, I would start with the premise of Lord Mackay of Clashfern and the question that Lord Alexander of Weedon put.

135. My understanding, subject to the Chair saying “no”, is that we can discuss all these issues because the next question that I was going to ask you is in the context that we do not know as yet whether the role of Lord Chancellor will be unchanged, abolished, or modified. Do you think it possible for us to reach the right final decision until we know the outcome of this process?

A. My Lords, I am driven entirely down the direction of Lord Alexander of Weedon’s logic. I think that the House would rightly feel angry with the Government if, after all of this palaver, we created a new post of Lord Speaker, to find that the Lord Chancellor’s position was not changed very much, was not abolished, and legislation took far longer and ran into the sand, and all it did was to free up another Cabinet minister not to be present at Question Time, which I would personally very much regret.

136. One possibility, which some of us might wish to canvass in debate, was that the Lord Chancellor should cease to be a minister but should remain head of the group responsible for judicial appointments, ensuring total independence in that area. Would you see it inconsistent with the person holding that role of responsibility for judicial appointments accountable to Parliament but not a minister, to sit as a modified Lord Chancellor and Speaker?

A. My Lord Chairman, it is an intriguing suggestion, and it would certainly help preserve the role of a presiding officer of the House of Lords as

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being involved in the judiciary. Incidentally, my Lords, I also regret the demise of the Law Lords from this House. I do not know whether it is going to include retired as well as sitting Law Lords, but I think, again, they add to the reputation of the House. Even if Parliament or the Government did not feel that such a person should chair it, perhaps even being a senior member of such a commission, the Judicial Appointments Commission, would, I think, be a very important role.

137. Do you feel there would be value for the authority of the Speakership for the Speaker to have a role other than simply as Speaker?

A. My Lord, this is precisely the kind of thing that would be debated during the course of the parliamentary process, but I see no obvious reason to bar such a figure from playing a key role in a judicial appointments committee.

138. In terms of the light-touch regulation, is it Leader and Whips, if done properly, or does it pass to the Speaker? In your experience, have you ever known the wishes of the Leader or the Whip, if clearly expressed, to have been disregarded by any Member of the House?

A. My Lord Chairman, what I have seen is that where there is a disagreement with the advice given by the Leader or the whips, there is a process for that decision to be challenged, which is to have a vote. On very rare occasions, that is what is done – for instance on allowing a private notice question or trying to go on to the next business. These events do happen, but the rules of procedure allow for it to be dealt with in an amicable and disciplined way.

139. Subject to that process of appeal, if you like, is it your impression that the views of the Leader and the whips, when expressed, continue to be respected?

A. Very much so.

Chairman: Some of the matters we are dealing with will clearly be subject to lengthy debate when the Bill abolishing the office of Lord Chancellor comes before the House. I suspect that our task is somewhat narrower than that. Nevertheless we ought to start thinking of drawing questions of Lord Strathclyde to a close.

Lord Tordoff: It is my understanding that the purpose of this Committee is to look simply at the question of the Speakership of the House into the future, depending on what happens, and not to get involved in the whole question of the judiciary, the Lord Chancellorship and those sort of things. They are indeed, my Lord Chairman, a matter for the House or Parliament to decide when the various bills are brought forward; and I am quite sure that there will be a vigorous debate, and Lord Strathclyde will join in

that with great glee. Frankly, My Lord Chairman – and I hope you support this view – that is not the purpose of this Committee.

Chairman: The evidence has been brought out very skilfully by Lord Alexander and it will be for us to decide to what extent it is relevant.

Lord Alexander of Weedon: Chairman, can I clarify?

Chairman

140. If I may, I have one or two questions of a sweeping-up order to put to you. Supposing we do have to have a Speaker, and suppose he is, for example, called the Lord Speaker, do you think that he should serve also as Chairman of the House Committee?

A. No. I think he should be a member of the House Committee and play a part in its proceedings, mainly for knowledge and to know what is going on. It is very important for the Speaker to know exactly what is happening. The reason why I would not make them Chairman is that unless it is believed right to combine the role of Chairman of Committees with the Speaker, they are going to be kept separate and the Chairman of Committees should still continue to be the Chairman of the House Committee.

141. The Procedure Committee?

A. And likewise. I think it works well. Once you start muddling the role of chairing these committees without a Speaker, the House would be entitled to get reports from the Speaker, and that might not fit in with his other authority and other duties and impartialities.

142. You have touched on private notice questions. What in the end is your view about that? Should they continue to be dealt with by the Leader or by the new Lord Speaker?

A. My Lords, the more this kind of questioning goes on about removing the power of the Leader *vis-à-vis* the House, you do ask yourself why the Leader of the House would bother coming to Question Time at all, if he had no powers of discipline or to decide on private notice business and other matters. One of the reasons why so many peers turn up at Question Time is because we are all there; it is the time of day when we are all there. Therefore, I would leave that power very firmly in the hands of the Leader. In reply to Lord Alexander of Weedon, there is an appeals system in place, although one which is not used very often.

Chairman: That probably completes the list of things we wanted to ask you, Lord Strathclyde, but I hope you will remain behind while Lady Williams gives evidence.

Examination of Witnesses

THE RT HON. BARONESS WILLIAMS OF CROSBY, a Member of the House, Leader of the Liberal Democrat Peers, and THE LORD ROPER, a Member of the House, Liberal Democrat Chief Whip, examined.

Chairman

143. Can I welcome you both very warmly on behalf of the Committee. Would either of you like to start the ball rolling?

(*Baroness Williams of Crosby*) My Lord Chairman thank you very much for inviting us here. I am starting because then Lord Roper can fill in the gaps I will inevitably leave, he being a great authority on these matters, which I do not pretend to be. I will try to keep my remarks brief because I can see that the Committee has a great deal to get through. Let me therefore begin by being as precise as I can. I think the fundamental problem about the whole issue that has been raised – and I shall simply make an assumption about the legislation for the time being, without getting into the depths of the future position of the head of the judiciary and so forth – is that as we move towards the idea of a presiding officer of any kind, the issue of self-regulation, self-government, becomes more difficult. My view, as somebody who, like a number of your Lordships, was quite a long time in the House of Commons, is that once you get a presiding officer or a powerful speaker, inevitably the responsibility for good behaviour passes to the Speaker from the Members. That, in my view, is one reason why the Members of the House of Commons on the whole are not very self-governing. I do not think, with respect, the analogy with the US Senate works at all, because the US Senate is of course heavily bound by rules, which include not interrupting speeches, reading them into the record and reading them sequentially. It is a very different sort of house and one that is very much more formal than anything that either of our Houses has experienced. That being so, I think the central dilemma that this Committee has to resolve is how one can retain fundamental self-government, which seems to me, from conversations that I have had, something that most Members of this House very much want to retain, while having a number of functions that were once carried out by the Lord Chancellor, and which will not in future be, falling to some new person. There is also a related problem, which is how one makes sure that this person has a job that is worth doing, and not left with such an un-job that he or she spends a great deal of time thinking how to fill it, which is perhaps not the most desirable outcome. That being so, my argument would be very strongly that the new person – let us say the presiding officer, although it is not the title I would prefer—

144. Can you call him for the moment “Lord Speaker” without prejudice.

(*Baroness Williams of Crosby*) I will come back to the title if I may, My Lord Chairman. The first question is about what his functions are. My own view is that those functions should include decisions that fall more properly to a non-political figure than a political figure – and I happen to think that one of those is indeed the decision about private notice

questions. On that point, with great respect, I do not agree with the noble Lord, Lord Strathclyde, because I think that that is precisely the sort of question where people may think that the decision is invested with a certain political bias, whichever way it may go. That is something that ought to be dealt with by the presiding officer. With regard to the issue of self-regulation within the House itself, I actually think that the House is quite good at taking exception to people who misbehave – no names, no pack drill – but in the last couple of weeks I have been very struck by how quickly the House rises to people who exceed their time or try to pack more into a question than they should, or take too long answering questions. I think myself that this would be a proper role for a presiding officer, if it is necessary, although I think he or she should wait quite a long time to see if it *is* necessary; and in all instances I think they should call upon the Bench – e.g. “we have not heard from the Crossbenchers” – not a named person, which immediately gets one into the kind of problems faced by the Commons Speaker. My view is that among the other functions of the presiding officer is the representation of the House in other legislatures outside our own. There is another one, which I feel is rather underplayed and could be made a good deal more of. Owing to the fact that we have now committed ourselves to teaching young people about citizenship, it does seem to me that there is a quite substantial role here of a non-political kind for the person who presides over the House of Lords in explaining why the House of Lords matters. It is better done by a non-political person than by the Leader, where immediately the thought may be that they are trying to argue for the government or against the government. I hope that this is a function that this Committee will be looking at in the course of its deliberation. Let me move on from that very quickly because these are questions you have asked and I do not want to waste your time. On the issue of the title, Lord Roper and I agree that we are not particularly troubled as to whether the title should be “Lord Chancellor” again. There are advantages historically in doing that. A great deal obviously depends on what title is given to the person who becomes head of the judiciary. We do not much care for the idea of a title other than either “Lord Chancellor” or “Lord Chairman”. We do not think that the word “Speaker” should be part of that. We think that to make it part of the title is extremely deceiving, and would immediately be associated in people’s minds with parallels with the House of Commons, and that is exactly the way we do not wish to go because I assume this Committee would mostly wish to retain a much larger element of self-governance than is implied necessarily in the word “Speaker” because of the history of the Speaker in the other Place. On the question of how that person should be chosen, I am very strongly of the view that the person concerned should be elected, not appointed, because in a sense

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[Continued

that is going to be the basis of their authority over the House. If you do not give them very much authority in the formal sense, then what right have they to in any case raise questions about the behaviour of other Members of the House? The answer has to lie in them being elected by their peers, and I think the experience of the hereditary peers' election is largely a favourable one. It was of course conducted by the additional vote system, which enables one to get the maximum consensus in this difficult decision about a single person for a single post, which of course rules out the Liberal Democrats' favoured form of PR, STV, but it also makes "first past the post" extremely difficult because in the House, as it is constituted, you might well get a plurality, not a majority, for the person concerned, which would be quite difficult for him or her to handle. As for length of term, my view is that probably five years renewable is about right; in other words, not to coincide with General Elections. With the greatest respect, I do not agree with those who think that it should coincide with the term of Parliament. I do not think it has anything to do with what Parliament is elected, nor should it be thought to have. That means that a five-year term, which could be followed by the same person if elected, is desirable. It breaks the link, it seems to me, between general elections, which are not yet applicable to the Lords, and general elections in the other Place. I now give voice very briefly to a dream: if a majority in the Upper House were to be elected, then the question might be raised again – but I concede this is not the appropriate time to discuss that. On the other issues with regard to functions, it seems to me that it is worth the Committee carefully considering – I simply submit it to your Lordships and I am sure that Lord Roper will have more to say about this in a moment – whether the role of the Chairman of Committees should be brought together with that of – I shall call him the Lord Chairman, if I may. We think that there would be a great deal to be said for a single position, combining the chairmanship of committees with the role of presiding officer/chairman. Of course, the person concerned then carrying both responsibilities would need to be able to rely quite heavily on a deputy chairman or chairwoman, and that person would be largely responsible for the housekeeping elements of the House. They would certainly sit on the House Committee. We think that only the presiding officer should preside over the House Committee, but much of the detailed discussion of the business of the House would fall to that deputy chairman, who would be appropriately paid. This is bearing in mind always – and I trust that that might appeal to the noble Lord, Lord Carter – that we really do have to consider limiting public expenditure on ourselves. I think there is a very strong case for saying that a single chairperson, combining both jobs, with a deputy chairman largely responsible for housekeeping, and the present situation with regard to the deputy chairman who looks after the European Scrutiny Committee, which is a very important part of this House's functions, is a perfectly good structure for the future. In our view, the Procedure Committee would not be chaired – with one exception – by the presiding officer, because in many ways the Procedure

Committee has a certain responsibility to criticise the behaviour of the presiding officer, or at least be able to entertain criticism of how he or she has conducted themselves. That does not seem to us to be the appropriate one to belong in this constellation of committees. The only other thing I would want to add to this is that with regard to the Lord Chancellor's residence, my feeling is that the private quarters should be quite clearly specified, and that all the rest of the Lord Chancellor's area should be dedicated to public purposes. There should not be a fuzzy line. There is always the danger of that about somebody who is socially very keen on having lots of private entertainment; but our view is that as long as the delineation of the private quarters is quite clear, then everything outside that should be regarded as being in the public domain and so used. I think it is a huge asset for this House to be able to use it in the way it is being used – with the extension, I suggest, of the citizenship role, where it could be used very effectively for young people who would, I think, be very impressed by the surroundings and history that they encountered. Lastly, we have skirted slightly around the issue of "the champion of the backbenchers". My view is very straightforward. You do not need a champion of the backbenchers if you have a good chairman. The chairman would, I think, see himself as having to fulfil a role that is not available to leaders of parties, and therefore it follows that he or she should take a special interest or concern in backbenchers, and also Crossbenchers, who sometimes feel that they are a bit lost in the House and not fully aware of everything that is going on. I simply say that because it follows almost automatically in regard to a champion of the backbenchers, and there is no sense in trying to avoid the question.

145. We are all very grateful for that, which is much the most comprehensive statement we have had from all our witnesses so far, and we are all very grateful. Lord Roper, would you like to say a few words?

(*Lord Roper*) Very largely I agree with what Lady Williams has said. There are two or three points where we take slightly different points of view. The first point goes back to some of the general issues, which I am not quite sure are within the scope of your considerations. To some extent, the fact that we are having this Committee is that it was almost the side effect of a decision which the Government made about the relationship of the Lord Chancellor as head of the judiciary; and then as a side effect this all blew up. One idea we have may be totally impossible, but let me just try it out. The post of Chancellor of the Duchy of Lancaster circulates to a number of different ministers at different times. Why could not the post of Lord Chancellor in the future be attached to a second Cabinet minister who happened to be sitting in the House of Lords? He would no longer have the same responsibilities for the judicial matters, but he could on the other matters. That, as I say, is a possible solution, which could deal with some of the issues that Lord Strathclyde raised, but which nonetheless allow the Government to proceed as it wishes, with the separation of the Lord Chancellor's post from that of

the Government's role as far as the judiciary are concerned. It is perhaps a long shot, but I just raise it. A more serious point is this. There clearly are problems about the maintenance of self-regulation and discipline in the House. Obviously, anybody who has been a Chief Whip and has seen the difficulties knows what they are; and we have all had some caution, particularly about raising cases with our own backbenchers when they offend, and with our own front benchers when they offend. Nonetheless, I do think it would be very helpful if those who do occupy the Woolsack from time to time, particularly those who occupy it late at night, would, if there are particularly blatant things that happen, let the Chief Whips know. They would always be very happy to try and take it up, even though it would not put the thing right at the time; there would at least be a chance it could be put right. I believe we ought to be continually thinking about how we can maintain the important tradition of self-regulation; and there are clearly things which do need to be looked at. What I would be worried about would be if, while we are considering this other issue, the question of the occupant of the Woolsack, we were too quickly to make significant changes in the pattern of self-regulation, because even small changes might begin a process. As has been suggested by Lord Strathclyde, this could slip from a limited number of things to a greater degree of self-regulation, with the risk of the waste of time of points of order taking up a great deal of time. I do not think that a non self-regulated House behaves any better than our self-regulated one. I do not think that therefore one gets a well-ordered house just by giving powers to the occupant of the Chair. I would therefore hope that although some of these issues should at least be raised, some of them could be looked at again once we did have a presiding officer; but I think it would be a mistake for us to combine dealing with the choice of the occupant of the Woolsack after the end of the position in the judicial sense of the Lord Chancellor, with changes on the way in which we regulate this House. Therefore, I would be reluctant to see any significant shift of powers to the occupant of the Chair.

146. That is on the assumption at the moment that we have not yet enacted legislation abolishing the office.

(*Lord Roper*) Indeed.

Lord Amptill

147. One has to be careful about being caught with "all change automatically leads to a slippery slope". It is possible that changes can also go in the opposite direction and be advantageous. It is a nervousness that besets us largely because of the use of the word "Speaker", which gives the impression that we are – those who have been kind enough to give evidence – we would have a Speaker who was as bossy a speaker as the job requires them to be at the other end. We are not thinking along those lines at all in this Committee, I think it is fair to say. We are looking for possibly expanding the parameters of what the Speaker could do, or his or her deputies as the case may be, but the

expansion we have in mind is extremely small and is led only – the difficulties for the Leader, expressed to us; he did not want to continue to have to wag his fingers, especially when it came from behind, and he did not want to wag them at anybody else. The trouble is, nobody knows how a junior whip can exercise authority from the position that he is being a carrier pigeon largely to his minister.

(*Lord Roper*) Lord Amptill has laid out some of the current problems. I realise there are problems with self-regulation. What does worry me is that if you give the occupant of the Chair that sort of authority, you are moving away from self-regulation, and I really do not see where you stop once you begin that process. You may well say that you do not want a bossy Speaker, but once you have got somebody in the Chair with that authority, one does not know how it will proceed. I do believe that we have got to look at some of the things that go wrong with self-regulation. I have no difference on that, but I do not believe that we should necessarily make significant changes at this time, when we are really considering a different matter. I believe that the question of altering our procedures to cope with the move away from self-regulation is a much bigger issue, which ought to be considered over a longer period.

148. We are not moving from self-regulation, we do not believe.

(*Lord Roper*) That is a question of semantics.

Lord Carter

149. I agree with Lady Williams that the period of the term of Speaker should not coincide with the length of parliament for the practical reason that the Speaker or Lord Chairman, or whoever, has to be on the Woolsack to deliver the Royal Commission at the beginning of the parliament. It is easier to do that if it goes mid parliament to mid parliament. Lord Roper's concern about the growth of points of order could easily be dealt with if standing orders say that the Speaker is not able to rule on order, which is the case at the moment. If he or she were not able to rule on order, then there is no point of order, and in the House at the moment there is no such thing as a point of order, and that could certainly continue. I think we are perhaps slightly exaggerating, or Lord Roper is exaggerating the situation if the person on the Woolsack – at the moment, if there is a time-limited debate we all know what happens and a speaker is running over. It is very undignified: the Whip points to his watch and looks at the clock, and looks across. For the person on the Woolsack, the Deputy Speaker or Speaker or whoever, to stand up and say, "can I remind the noble Lord that the time limit is seven minutes" and then sit down – that would be equally effective. We understand that the role of Speaker, which is attached to the Lord Chancellor, is a discrete role and it is almost a historical accident and is not linked in any other way to being the head of the judiciary or the Lord High Chancellor or whatever; it is an accident of history. I put it the other way round to Lord Falconer when he gave evidence: suppose the Government had not produced all these proposals for

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[Continued

the judiciary and for abolishing the post of Lord Chancellor, but the House itself had decided that it did not want the Prime Minister to choose our presiding officer. It is a discrete role, and without legislation we could do it. If we wanted to start off at some point, and before the role of the Lord Chancellor is finally determined through legislation, and retained it under this tight role that we suggest, and self-regulation continues, he or she – they cannot rule on order, but perhaps at Question Time they could indicate whose turn it was and no more than that. Perhaps in a time-limited debate they could indicate if a speaker was running over, and also rule on PNQs. That is all you need to do, and you have the new role without encroachment on all the other things that concerned Lord Roper.

(*Baroness Williams of Crosby*) I think that that is a very attractive way to put it, and I like the idea of looking at it the other way round because, obviously, it is completely anomalous that the Lord Chancellorship grew up to be what it was. However, we would like to urge that we would slightly widen his role, not in terms of self-regulation but in terms of making him or her central in the housekeeping by making him or her Chairman of the House Committee. We think that that is quite important because with a business plan and the way in which the House of Lords is making itself more efficient as an administrative entity, there is a great deal to be said for having just one person who is normally, as it were, the permanent figure in the development of that business plan. The only thing I would add about the issue of order and behaviour – and I take your point very much, and I hope I am not treading on any toes by saying it – but there are probably serial offenders in the House. There are very few offenders, is my impression, but there are serial offenders and serious offenders. In that case, I think that Lord Roper's point that perhaps for the presiding person, the Lord Chairman, to have a word with the Chief Whip of the party, or the Convenor, which is more difficult with Crossbenchers, is a very appropriate way to deal with serial offenders. It really is not appropriate for the presiding officer to have to name the same one time after time.

Lord Marsh

150. I know very few people who are opposed to the maintenance of self-regulation. There is a view that if you are going to have self-regulation, then it is quite important that those to be regulated should know what the regulations are. The key problem, in my view, is that the *Companion* will never be described as sexy reading. It is rather large and covers all of the rules comprehensively; and very few people, in my view, or a large number of people, do not know what the rules are, particularly with this big influx of new people. It is not intended in any way as a criticism, but that is even true of some of the people who sit on the Woolsack in the evenings, again because it is a hefty thing. So people come in, breaking the rules without knowing they are breaking them, and they are judged by people who know as little about the rules as they do, and are not sure of them; and you get the rather

embarrassing occasions of people asking the clerk, "give us an idea of where we stand on this". One of the things that would recognise the problem, and has been considered, is that you have fewer people trying to keep law and order on the Woolsack; and those who are, are paid. You would reduce the number and have people whose job it is, as with a junior minister, to know what the rules are – as clerks do. I do think that it is unreal to think that at the present time self-regulation is working properly. At the moment, since I have been here, the evidence is that it is getting worse rather than better because that is seen as the norm.

(*Baroness Williams of Crosby*) I am sure Lord Roper will say more about the second part, but I will devote myself to the first part of your question. Let me briefly say that I was for several years responsible, rather curiously, for running an induction programme for new congressmen in the United States in the Kennedy School of Government in Harvard. I never cease to be amazed that so little effort is made about the induction of MPs and peers in the UK; it is as if we are so much a nation of amateurs that we think it is right for people not to know and then get very cross when they get it wrong. I think that it would be well worth having a whole day, or even a weekend, at which people who join this House – or even more perhaps the other Place where there are more – are actually taken through by the Clerk of the Parliaments and by one or two other people, about the way the House works, about the way bills are introduced, about the basic rules of procedure and behaviour, because then if somebody does transgress in the way you are suggesting, as they obviously sometimes do, it is more often likely to be because they mean to, not because they know no better. It is very harsh in this House that people only learn that they have transgressed – and it has happened to me time and again – by being shouted at, in terms of keeping order. I never knew what path I could or could not cross when I first came to this House, and people started getting very cross with me and I could never think why they were getting so annoyed. I would simply ask the Committee, when it makes its report, to think, if it is prepared to do so, a little bit about whether we could not be a little more professional about the induction process. I would rather that Lord Roper answered the second point in detail, but we are presenting to you a proposal on a rather limited core of reasonably paid people, that is to say combining the two top roles – Chairman of Committees with that of presiding officer – and then a significant role for the deputy chair, who will obviously have to be properly remunerated. Beyond that, I hand over to Lord Roper.

(*Lord Roper*) And the Deputy Chairman who looks after the European committees would need to be maintained on the present position. I know that proposals have been made quite recently for the chairmen of select committees in the House of Commons to be paid. It might be thought that that was an interesting question which should be looked at this end of the building. I think that this does need to be investigated, but I think that if we can we should probably maintain the range of chairmen that we have, not only for the sittings in the Chamber, but with the growing role of grand committees, there are a

significantly greater number of sitting hours for which one has to find chairmen, than before. As long as one can get volunteers to do it, then I believe we should work on that principle. I think that to move away from it probably would be a mistake, but I am a little concerned. I had not noticed myself the point that Lord Marsh makes about occupants of the Woolsack who are not aware of procedure. Occasionally, there may be some point of detail, but then that occasionally occurs to the Speaker at the other end of the building. I would have thought that training is probably important for them. How we make the *Companion* more reader-friendly, I am not sure. Various attempts have been made, and one two or three years ago. There have been particular sections that can deal with one item; and perhaps having it in sections to some extent can also be important. Apart from that, I am afraid I do not have anything else to add.

Baroness Gould of Potternewton

151. Can I ask two questions, which are quite distinct? The first relates to the point Lord Roper made about who this person should be. You have dreamt up this idea of it being a second Cabinet minister or whatever. Am I right in assuming that you believe this person should be political, that it should be a political appointment, which in a sense is a complete contradiction from having somebody elected, as identified by Lady Williams? The second question relates to the last point we discussed about the actual ability of the deputies in particular, or the person on the Woolsack, and the advice from the clerks. Do you think that the layout of the Chamber allows for advice from clerks? I make the point particularly, if I may, to Lord Roper and Lady Williams because I know when we are doing a committee the Liberal Democrats are behind us. I always find that an inconvenience, and I do not know how you feel about that, and whether there is a case for changing the layout of the Chamber.

(Lord Roper) On the first question, I think my idea of the Lord Chancellor being attached to another member of the Cabinet was merely a wild idea. I do not think it is likely that the Government is going to accept it, but it did seem to me that it was unfortunate that these two issues had been linked together, because they are different. They could have been treated in another way, and I was merely indicating a way in which they might have been. Most of what we have been saying is on the assumption that we are operating on the basis that it would no longer be a member of the government who would be the presiding officer of this house. I just suggest it as an alternative that could

have been approached, and which some people might find merit in. On the layout of the House, I think that there are possible problems here. I can see the point that when the House is in committee, obviously our benches are behind the Chair. We do not find that too much of a problem. I have never thought about it being a problem. The problem is of course at report and third reading, where there is a great distance between whoever is on the Woolsack and the clerks. Maybe one ought to have some sort of telephone, or earpiece. I am not quite sure how one could do it, but I was told by you my Lord Chairman that you had recently been to Lord Saville's hearing across the road to see the wonderful technology which can be introduced into a chamber. I do not think we should necessarily do all of that at once, but there may be some technological device which would avoid us having to do too much re-arrangement of the Chamber. I think we should examine it, but I would be reluctant to rush into such a change.

Lord Trefgarne

152. The core proposition we are considering, along with others, is that the role of the Leader of the House, particularly at Question time and perhaps in the signing of PNQs and reading of statements should go to this new presiding officer. Do you perceive, as the leaders of the smallest of the four political groupings of the House, any unfairness in the present arrangements?

(Baroness Williams of Crosby) No, I think there is not any unfairness, but I think it is the old problem of whether something is perceived as unfair in some way or other. We have had a Leader of the House, if I may say so, who has been exemplary in his willingness to be objective. My understanding, speaking to some people associated with this House, including one or two members of the House of Lords staff, is that this has not always been so much the case in the past. If that possibility exists, that people can see the Leader as being in some ways less than completely objective, we should not be so dazzled by the behaviour of the most recent Leader that we cannot see the possibility of that. That being so, I can see no argument at all why this should not be a function of the presiding officer. It seems to be a particular function appropriate to him or her, because they would not be elected and seen to be a political figure; they would be seen to be a servant of the House, and that seems to be the right person to make a decision of that kind.

Chairman: Thank you very much indeed. Please stay, if you wish.

Examination of Witness

THE LORD CRAIG OF RADLEY, a Member of the House, Convenor of the Crossbench Peers, examined.

Chairman

153. Lord Craig, would you like to start by addressing us generally?

(Lord Craig of Radley) If I may, my Lord Chairman. Thank you very much for inviting me. I think we all know each other well, but for the record, I was elected by my Crossbench colleagues as their Convenor in December 1999; I have been a Member of your Lordships' House since 1991, having been

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LORD CRAIG OF RADLEY

[Continued

awarded my peerage in the Gulf War Honours list of that year. I have been a fairly regular attender in recent years and been a member of numerous committees, including chairing a couple of inquiries for the Science and Technology Committee. Your terms of reference ask you to consider the future arrangements of the Speakership because of the intention to reform the office of Lord Chancellor. However, I noted in the forward and elsewhere in CP13/03, the Lord Chancellor's consultation paper, that he refers to the abolition of the office of the Lord Chancellor, and the Downing Street press release of 12 June said that the post of Lord Chancellor will be abolished. There is perhaps a little lack of clarity between those renderings. Your terms of reference allow you to consider and develop a number of options and I thought that I might just comment on three, although I am sure there will be others. It has been generally stated already and agreed that the present self-regulation and manner of conducting our business is valued and effective for a House which devotes much of its time to the scrutiny and detailed amendment of legislation, and worth retaining for a House that continues to be appointed and peopled by members who are largely voluntary and part-time, and often senior in years and experience. I think these are important considerations. I made the point in a letter to the then Leader of the House in June that it would be difficult to make progress until we had a clear idea and agreed understanding of what the duties and responsibilities of the Speaker or Speakers might be. Lord Williams had suggested in conversation that this might all start in a small way and develop with experience. I personally am not attracted to that approach. A further consideration, probably beyond your terms of reference but worth mentioning, is the value the House should attach to having at least two members of Cabinet who are active in the House, and thus able to keep the Prime Minister and his Commons colleagues aware of issues of important to our House. My first option is very straightforward, but would need careful thought about the method of implementation. It takes as agreed the present responsibilities of the Lord Chancellor as *ex officio* Speaker and then looks for a way to carry those on with another individual, but makes no change to the duties and responsibilities of other noble office-holders. An advantage would be a minimalist change for Members while the House was sitting, and continuity of what had gone before – well tried and tested on balance. Drawbacks would include of course not only getting agreement on how the new individual would be elected or appointed from the House, but whether other duties or responsibilities should be added to that post, certainly if it was to attract anything more than a minimum honorarium. My second option assumes that it is right to take this unique opportunity to examine first the role or roles of the Lord on the Woolsack, ranging from the minimalist to that of Speaker in the Commons style. There are many staging points in between these two extremes. I feel that once the individual on the Woolsack is given powers, albeit of a restrictive kind, there will be temptations and tendencies for the responsibilities to go further and further from the

minimalist end. Such moves would not sit well with the self-regulatory nature of our House and the make-up of its membership. The reversal or restriction of powers, once granted, might be difficult if not impossible to achieve, if they were judged to be excessive. An added complication would be how many deputy speakers there should be and whether they could or should exercise comparable powers as this empowered Speaker. No doubt you could devise strong checks and balances and if the House is prepared to take the risk, this option could be adopted. However, I think it will lack the stability of a new permanent arrangement. With so many other changes taking place or in prospect in your House a few sheet anchors are essential. I hope that that does not sound over-reactionary. My third option takes as a starting-point the assumption that it is not the Lord Chancellor who is leaving this House but that the executive and Cabinet responsibilities of present and past incumbents are to be handed over to a new Secretary of State, not necessarily a Member of your Lordships' House; and his, the Lord Chancellor's, judicial functions and responsibilities are also to be undertaken elsewhere. CP13/03, for example, envisages responsibilities for the Great Seal being transferred to the Secretary of State for Constitutional Affairs, and there are other examples. We would be left in this House with an individual, who might indeed still be called the Lord Chancellor, who would not only continue in the Speakership role but also continue to hold all the visitatorial, ecclesiastical and other non-government responsibilities identified in CP13/03. This option, like my option one, raised the issue of how the new Chancellor would be found from the membership of the House. Bearing in mind the constitutional relationship that has long existed between Monarch and Lord Chancellor, it would seem appropriate that whoever is selected, he or she should be appointed formally as Lord Chancellor by the Monarch on the recommendation of your Lordships' House. In short, this would be a reform of the office of Lord Chancellor, but not the abolition of the post of Lord Chancellor. Of my three options, this one I find the most attractive. The need for staff support and their number and duties would need to be examined. Maybe I have tried your patience My Lord Chairman but I hope in your report you will at least give consideration to the options along the lines that I have outlined. Of course, there will be many others, and I look forward to reading your report.

Chairman: You have not tried our patience at all. As I understand it, your own preference would be for what you describe as the third option. Can we start by asking you questions on your assumption that the office of Lord Chancellor has been abolished, and that we have therefore got to find somebody in some way or other to perform the simple task of being Speaker. I suspect that most of the questions will be on that assumption.

Lord Tordoff

154. Lord Craig, I do not think you were here right at the beginning when Lord Strathclyde was speaking, but the impression that he gave was that he felt that

the present arrangement, with the usual channels organising things, was by far the best, and it was not necessary to involve the backbenchers in the election or selection of their Speaker. I hope I am not doing him an injustice if I say that. It seems to me that that is not a point of view that the Crossbenches altogether agree with, since Crossbenchers have a very tenuous hold on the usual channels.

A. Let me leave that last comment to one side.

155. I am sorry. It has always been the case that the connection with the usual channels from the Crossbenches is rather more tenuous than from the political parties in their Lordships' House.

A. There are two aspects, if I may deal with the "usual channels" – and, watching Lord Carter's face, I hope he will agree with me. When it comes to the business of the House, in other words which bill should come first or second, or whether at committee stage, I can only speak for myself and cannot speak for colleagues; whereas the Leaders or the Chief Whips of the parties can. On the other hand, there are many things affecting business in this House where I do get involved. Perhaps you will remember very well as Chairman of Committees; there was some discussion in order to try and get a smooth path ahead for the rest of the House. Certainly, in my time as Convenor, I have been involved very much along those lines. I did not hear Lord Strathclyde and have not spoken to him, so I do not know anything about what he was going to say. However, if he was saying that only the usual channels should have any handle in finding the Speaker or the name of the Speaker, I would not go along with that. I would see it very much more on the lines that as happens now for Chairmen of Committees: there is some discussion in the usual channels and names are put forward; but they then do go on to selection by the whole House. For something as important as Speaker of the House, my approach would be that this is something which all Members of your Lordships' House should have a vote on, and candidates be put forward. In order to reduce the number of candidates, then there should be some requirement that any name put forward should be supported by at least ten or fifteen names – I leave it to you, my Lords. Indeed, in the very humble business of electing the Convenor, that has been the approach that we have adopted. A name does not go forward for consideration unless there is some apparent support for that name. I think that that ought to be the same approach.

Chairman

156. In other words, you favour election.

A. Yes, I do favour election. I do not think the usual channels would be the right way of doing it.

Baroness Miller of Chilthorne Domer

157. If somebody is chosen by election, do you have a view on what sort of length of time they should serve? Should it be an unlimited time? We have heard some evidence that they would be self-disciplined enough to give up the post when the time came.

A. I think there ought to be some sort of upper age limit because we are a senior house, but at the same time it does not do any harm – and this is partly to achieve a turnover gracefully without too much aggravation. I am talking about 80 or something like that.

Lord Tordoff

158. A fairly young age!

A. Maybe you think that is still too young! I was not attempting to define the age, but I thought that the concept of an upper age beyond which it would not be normal for the individual concerned – maybe you could go as far as to say that with the agreement of the whole House Lord X, who has been Speaker for five years, can go on for another year, or something like that. That would be in what I call the small print – but the principle is an upper age. You want somebody who is going to be active for a little while, so to pick somebody at the upper end and then expect them to go on for five or seven years may be asking too much, and you may find yourself with an unexpected election. I think there ought to be an upper age, and at least one parliament, maybe two. I take the point that has been made about not starting at the beginning of a parliament, so maybe after the first year or 18 months; and then you would be looking to do it the parliament after the next but with a cut-off at some age which I leave your Lordships to consider.

Lord Carter

159. That point has been made in the House and to the Committee about membership of the Cabinet. We should not forget that for the first time ever the Chief Whip in the House of Lords has been attending since the autumn of 1997 and I think that will now be a permanent arrangement. One is treated exactly as every other member of the Cabinet – except for the salary. That is the only difference. We should not forget that the Leader and the Chief Whip are effectively members of the Cabinet. On the point about the usual channels, the noble Lord, Lord Craig will remember that if it was something that required delivery, which was in a sense political, that was decided within the three Chief Whips. Everything else to do with the House, we used to meet with the three Chief Whips and the Convenor, and that seemed to work very well. On the third option, would you agree that there is at least a scenario in which the role of the Speaker attached to Lord Chancellor is a discrete role, and it is a historical accident. You can conceive that role being done, with the Lord Chancellor continuing, as he will be doing – doing everything else he has done for centuries. Stage one would be the speaker with a very, very limited role we have suggested, and alongside that would be the Lord Chancellor continuing to do all that he does now, until the acts of parliament sort that out; and at the end of it you would be left with certain functions and a title of "Lord Chancellor" which might then be attached to the Speaker. There has to be a staged process. On the role in regard to visitorial function, I had not realised that this involves a fair amount of legal responsibility, for example if a student

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is complaining about his degree or something like that. I was not aware that in the Lord Chancellor's Department there are a number of lawyers who have to sit and work on this. There is a staged process which could be adopted, which could mean that eventually the title of "Lord Chancellor" remains.

A. It may be desirable, but it does not strike me as essential that the role of Speaker in this new guise should be taken on before such time as all the necessary steps are taken to sort out the Lord Chancellor's current responsibilities. It might be very desirable for the Lord Chancellor today, as it is, but it does not strike me that it is essential.

160. If it is a discrete role, which it is now in a sense, what the Lord Chancellor does as Speaker now has no connection whatsoever with anything else he does.

A. But at the same time, it still does not seem to me that it is an argument for saying you have got to make this change now for the Speakership. I can see what you are saying, and of course it is a discrete role, but you also have to take into account where you are going to go. If you are going to do it somewhat in line with my option three, then why does the present Lord Chancellor have to give up being Speaker until such time as he is giving up all the other things, at which time the House agrees and takes on the Speakership and has an election and all the rest of it.

Chairman

161. In a sense this is so. The present Lord Chancellor has said he is perfectly happy to go on being Speaker until the office of Lord Chancellor is abolished, if it is abolished, or until the House otherwise wishes. In a sense, what you are saying is absolutely right. What we are asked to do by the end of November is in a sense a hypothetical question based on that assumption; but nevertheless it seems we ought to do the best we can to answer that question.

A. There was one other point which Lord Carter made, which was about the legal responsibility *vis-à-vis* visitorial function. I am no lawyer, so I do not know very much more than what I have read, but my understanding is that the issues that are really judicial are no longer handled by the Lord Chancellor; they are passed on to the courts. It is not, therefore, so essential that the Lord Chancellor, in my new guise, has to have a deep legal background. Presumably, he might have legal staff to advise him.

Lord Freeman

162. For the record, it would be very helpful to know what Lord Craig felt about possible powers that might pass from the Leader of the House to the presiding peer on the Woolsack, particularly his comments on choosing a party of whom supplementary questions should be asked, but ruling on PNQs and with a light touch reminding peers that they might have banged on too much.

A. We have a system for dealing with all of those. I am not persuaded that they are so ineffective – of course, they could be better – but so ineffective that you have really reached the end of the road, and we

must at all costs make a change. It may be that there is an option to do it, depending on what arrangements you eventually come to; but I do not see that as a good argument for making the change to this type of Speaker. It seems to me that it is peripheral rather than a main driver type issue.

Lord Alexander of Weedon

163. Listening to the exchange with Lord Carter and listening to your three options, it would certainly help me very much if you could perhaps amplify a little more your reason for preferring your option three.

A. One is that it is not too dissimilar to what we already are using and live with. At a time when the House is going through many other changes, and potential changes, a certain amount of stability in some areas, where we can achieve it, is not unattractive. The second reason was that I feel that my option one, where you just have a Speaker who does virtually nothing else – there is no change – I did not think that was properly loaded as an appointment. Therefore, I do not think it would hold much attraction. I was really looking for something which combined a bit of both of those but not too much change and also something that gave some focus on what more the Speaker or the new holder of this office could do. It seemed to me that the straightforward way of approaching it was by saying that the Lord Chancellor has not changed; he has shed his constitutional affairs and some other judicial responsibilities, maybe even Keeper of the Great Seal and so on, but he retains a lot of non-governmental responsibilities which have still got to be discharged. It would be a heck of a lot easier to have the Lord Chancellor in name continuing to do that, without having to go to every charity and church and ecclesiastical body and university body, and say, "I am terribly sorry, you no longer have a Lord Chancellor; now who would you like to do it?"

Lord Desai

164. To follow up on that, it seems to me that these other functions of the Lord Chancellor, non-judicial functions, could still be done by the executive somewhere else, not by the Lord Chancellor. But the important role, surely, for whoever becomes the presiding officer, is external relations, representing the House of Lords and parliament outside? Do you not think that should be given much greater prominence than it is given today?

A. The Lord Chancellor of today and yesterday has done that all round the world.

165. We have a feeling that it has not been done as well as it could have been done.

A. Maybe he has done it more as head of the judiciary than as Speaker of this House, but it is the Lord Chancellor who has been out there, to the extent that although it may have been with a Law Lord hat on, he has nevertheless been representing your Lordships' House.

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Lord Tordoff

166. From my own experience as Chairman of Committees, I can think of very few occasions when the Lord Chancellor went to speakers conferences and that sort of thing. He inevitably appointed a deputy, and I am delighted to say that on many occasions that was me. I got to some interesting places and met some interesting people. Lady Williams, in her evidence, suggested that perhaps the job of Chairman of Committees should be combined with the new Speakership. Would you agree – and again I am speaking from my own experience – that the Lord Chairman of Committees has got a big enough job to do already, without taking on the additional responsibilities that the enlarged Speakership would carry with it?

A. I bow to your great experience of that, Lord Tordoff, and I would humbly agree with you. It seems to me that the Speaker, who is supposed to be totally impartial, would be hard placed to stand at the Dispatch Box and defend some House or other committee's proposals or recommendations. I just do not see that as the right way to go, so I have not accepted, in my thinking anyway, any role for whoever is going to be the Speaker, as replacing or doubling up with the Chairman of Committees and all those responsibilities that the Chairman of Committees has. I just do not see that working.

Chairman

167. Would it not be possible to have a system whereby the new Lord Speaker, if that is what it is to be called, totally impartial, as you say, nevertheless sat as Chairman of the House Committee so as to keep the Speaker, as it were, involved in decisions affecting this end of Parliament, provided that the Lord Chairman of Committees actually answered for the decisions of the House Committee? I think everybody agrees that. What do you think about the Speaker?

A. It seems to me separating responsibility from authority. If the Lord Speaker is going to be Chairman of the House Committee, then he ultimately must carry responsibility for that, rather than just being a figurehead. If he is going to leave it all to the Chairman of Committees, to stand up and defend and argue points which have been put forward from that committee to the whole House – it may go through on the nod, but if it does not, what then? That is the fear that I have.

Lord Trefgarne

168. My Lord Chairman the Convenor of the Crossbenchers is unique in that he is himself a backbencher – a Crossbencher, but he is a

backbencher as well; he is not a member of any front bench; yet at the same time, he is a key member of the usual channels. I am wondering whether he thinks that the interests of the backbenchers collectively are adequately represented by the usual channels; or would they not be better represented by a champion of the backbenchers or guardian of the *Companion*, or however you like to call it?

A. I am not on all fours with that. I do not feel any sympathy with that concept, and therefore I find it difficult. I do not feel very confident to comment.

169. I have the honour to chair the Conservative backbench committees, and sometimes we feel that we are trampled to death by the usual channels. Do his backbenchers not feel the same sometimes? Would it not be a good thing to have a champion?

A. The concept of champion of the backbenchers sounds all right in theory, but I do not understand what it means. Does he have a shout at the usual channels on the backbenchers' behalf, where we cannot, as it were, shout for ourselves? Where is the value-added in this role?

170. The former Speakers of the House of Commons who talked to us said that they saw themselves very much as champions of the backbenchers in the face of a great powerful executive.

A. At the other end of the building?

171. Yes. Is there not a risk that the usual channels will carve things up in a way which does not adequately represent the needs and interests of the ordinary backbenchers, and is it therefore not a good idea to have a champion?

A. I have tried, for what it is worth, and you obviously tried – and I am sure you do it well – to champion your backbenchers in the Association of Conservative Peers. I try and do it in my role as Convenor, at times not very successfully I am sure, but at other times I hope occasionally with a little green card rather than a yellow or red one. I think that is the role of a Convenor. I do not think I want to be champion of all backbenchers, and I do not see how any individual, wherever he sits, can champion the backbenchers of all parties and us, the Crossbenchers. I may be missing something, but I do not think I am for it at the moment.

Chairman

172. Lord Craig, thank you very, very much indeed. I think I can say on behalf of those Crossbenchers who are present that we think you are a mighty fine Convenor.

A. That is nice to have on the record. Thank you.

MONDAY 3 NOVEMBER 2003

Present:

Alexander of Weedon, L.	Gould of Potternewton, B.
Amphill, L.	Lloyd of Berwick, L. (Chairman)
Carter, L.	Marsh, L.
Desai, L.	Tordoff, L.
Freeman, L.	Trefgarne, L.

The post of Chairman of Committees: memorandum by Lord Brabazon of Tara

Introduction

The Chairman of Committees is appointed at the start of each Session to “to take the Chair in all Committees for [that] Session”. This function is described in slightly more detail in the *Companion to Standing Orders*, which states that the Chairman “takes the chair in Committees of the Whole House and is also Chairman *ex officio* of all other committees, unless the House otherwise directs”. He is supported by a Principal Deputy Chairman (who acts as Chairman of the EU Committee), and a Panel of between 20 and 30 Deputy Chairmen.

The Chairman’s responsibilities have three main branches: first, he takes the Chair in Committees of the Whole House, sits on the Woolsack at other times, and oversees the other Deputy Speakers and Chairmen; second, he has general responsibility for supervising the passage of private legislation; third, he takes the Chair in Select Committees, unless the House otherwise directs. By virtue of his chairmanship of these committees he has a wide responsibility for internal administration and procedure, and answers on such matters on the floor of the House.

Historical background

The consideration of bills after Second Reading in a Committee of the Whole House dates back to at least 1700, and it appears that from the earliest days it was accepted that the Committee of the Whole House would be chaired by a Chairman, chosen by the House and sitting at the Table, rather than by the Speaker on the Woolsack. In the course of the early eighteenth century the post of Chairman of Committees evolved to fill this role¹. By the mid-eighteenth century the Earl of Warwick, Chairman from 1734 to 1759, occupied a clearly recognised, if not a formally acknowledged, position. Only in 1800 was the position formally recognised by a resolution stating that the House would henceforth, “at the Commencement of every Session, proceed to nominate a Chairman of Committees of this House”². Subsequently Lord Walsingham, who had held the post *de facto* since 1794, was formally appointed Chairman at the start of the 1800-01 Session.

In the course of the eighteenth century the Chairman also took on a central role in supervising the passage of private bills. The origins of this development are obscure, but by Lord Walsingham’s time the Chairman, in addition to chairing the Committee of the Whole House, chaired the vast majority of what might loosely be called “Select Committees”, most of which were connected with the consideration of local and private bills. This was acknowledged in the Resolution of 1800, which, as well as stating that the Chairman should “take the Chair in all Committees of the Whole House”, stated that he would “take the Chair in all Committees upon Private Bills”.

The Chairman also chaired other “Select Committees”, except where the House specifically directed otherwise. For instance, in 1824 a Select Committee, which included both the Lord Chancellor and the then Chairman of Committees, the Earl of Shaftesbury, among its members, was appointed to examine into the administration of the Parliament Office and Black Rod’s Office. It was Lord Shaftesbury who chaired the committee and reported back to the House on the its behalf. This committee subsequently evolved into the House of Lords’ Offices Committee (now replaced by the House Committee), and the Chairman of Committees has remained both its Chairman and the Peer principally responsible for supervising the work of the Administration.

A further role, which evolved somewhat later, is that of Deputy Speaker. Until the early nineteenth century those appointed to serve as Speakers in the absence of the Lord Chancellor were senior judges such as the Master of the Rolls. In their absence the House appointed a Speaker *pro tempore*, but only in 1827 did the then Chairman of Committees, Lord Shaftesbury, sit as Speaker for the first time in this way. Thereafter he was frequently called upon to sit as Speaker *pro tempore*, and in 1831 he was formally appointed Speaker by Royal Commission. When Lord Shaftesbury was succeeded as Chairman of Committees by the Earl of Redesdale in 1851, it took only months for a Royal Commission to appoint him too as Speaker. At the same time previous Commissions appointing Deputy Speakers were revoked, and from this time Lord Redesdale was formally acknowledged as the principal Deputy Speaker. Although more Deputy Speakers were subsequently appointed (four, in addition to the Lord Chancellor and Lord Redesdale, were appointed in 1882), a strict “pecking order” reflected the Chairman’s position as the Lord Chancellor’s principal Deputy. Today the Chairman of Committees of the time still stands at the head of the Deputy Speakers appointed by Royal Commission.

¹ See “The Origin of the Office of Chairman of Committees in the House of Lords”, by J C Sainty (House of Lords Record Office, 1974).

² House of Lords Journals, 23 July 1800.

The position today

The fundamental duties of the Chairman of Committees still resemble those that evolved in the eighteenth and nineteenth centuries. They may be summarised under the following headings:

Chairman in Committee of the Whole House and Principal Deputy Speaker

The Chairman still performs the task assigned to his predecessors in the early eighteenth century, that of taking the Chair in Committees of the Whole House. In this he is now supported by a Principal Deputy Chairman and a Panel of Deputy Chairmen (normally numbering about 25). The Chairman and Principal Deputy Chairman (who chairs the EU Committee) are appointed, on motions moved by the Leader of the House, on the first day of each session, and the Panel is subsequently appointed by the House on the recommendation of the Committee of Selection.

In addition, the Chairman is the Principal Deputy Speaker, and he appears *ex officio* at the head of the Royal Commission which every few years appoints Deputy Speakers. He replaces the Lord Chancellor on the Woolsack each day after starred questions, and generally remains there until relieved one and a half hours after the start of the sitting. He also sits on the Woolsack at other times, particularly when the House sits late or when it is difficult to find a Deputy to fill a particular “slot”. When the Lord Chancellor is absent the Chairman deputises for him, taking part in the daily procession. During recesses, if the Lord Chancellor is unable to sign a recall of the House the Chairman may sign it in his stead.

It will be clear from the historical summary above that the two roles of Chairman and Deputy Speaker evolved independently. However, they have now largely merged, as Deputy Chairmen can, like Deputy Speakers, preside on the Woolsack, not just in Committees of the Whole House. The distinction between the two offices is thus largely theoretical.

The Chairman, assisted by his office, is responsible for co-ordinating the Panel of Deputies, preparing a weekly rota of Deputies to preside over sittings of the House. The rota is announced at a weekly Deputies’ meeting, which normally takes place at 12.30 pm on Thursday.

Private Bills

The Chairman remains responsible for overseeing the progress of private and hybrid legislation. In recent years (particularly since the passage of the Transport and Works Act 1992) the volume of such legislation has been much reduced. However, there remains the possibility that controversial items of private legislation will be introduced in the future – for example there is the possibility of a major hybrid bill on the “cross-rail” project in the near future.

The Chairman’s duties with regard to private bills can be broken down as follows:

- Nominating the members of select committees on opposed bills and appointing their chairmen;
- Chairing unopposed bill committees (which have jurisdiction over the whole of every unopposed bill, taking decisions on such matter as the powers sought by local authorities, companies and other private interests in bills which they are promoting);
- Considering all unopposed clauses of opposed bills after the Select Committee has finished its work.

In all these duties the Chairman is assisted by the Clerk of Private Bills and Counsel.

The Chairman also exercises general supervision over provisional order confirmation bills, certain Scottish private legislation and hybrid instruments. He exercises certain other functions jointly with the Chairman of Ways and Means – for instance, sitting judicially to determine *locus standi* in certain cases of opposed special procedure orders.

The Chairman is expected to be present whenever private bills are considered on the floor of the House, though normally only speaking when procedural advice is required.

Select Committees

The Chairman continues to chair a number of Select Committees. It is important to underline that the Chairman chairs all the committees on which he sits. The one partial exception to this rule is the Privileges Committee: when sitting in judicial fashion to consider such matters as peerage claims, or, most recently, the references made to the committee with regard to the House of Lords Bill in 1999, the committee may (but is not obliged to) agree that a senior Law Lord should act as chairman for the duration of its hearings into that matter. This is followed by a motion, agreed to by the House, in such terms as: “The Chairman of Committees to move, That, for the purpose of hearing the references on the effect of the House of Lords Bill, the senior Lord of Appeal present be appointed Chairman of the Committee for Privileges”.

The Committees chaired by the Chairman of Committees are as follows:

- The *House Committee*, which replaced both the House of Lords’ Offices Committee and its Finance and Staff Sub-Committee at the start of the current Session, oversees the general administration of the House and the work of the Management Board. It is responsible for agreeing the annual Estimates and three-year

spending forecasts, and approves the House of Lords' Strategic Plan and Business Plan. The Committee meets monthly when the House is sitting.

- The *Administration and Works Committee* was originally set up in 1965, when the Speakers of the two Houses took over responsibility for administering the Parliamentary Estate, and since that time has exercised such responsibility for the Lords' part of the Estate on behalf of the Lord Chancellor. Within the financial limits set by the House Committee the Administration and Works Committee still considers all matters relating to administration (e.g. questions of access to facilities, postal services etc.) and works and accommodation. It meets some four or five times each session.
- The *Procedure Committee* reviews Standing Orders and the procedure of the House. It normally meets four or five times each session.
- The *Liaison Committee* reviews the resources available for committee activity, and makes recommendations on the setting up of new committees. It meets on average two or three times a session.
- The *Committee of Selection* meets at the start of each session to propose the members of all other select committees. This meeting normally confirms preparatory work that has been done in preceding weeks by the usual channels and the clerk of the committee. The Committee may also meet at other times when important or controversial new committees are to be appointed, but most work on filling *ad hoc* vacancies in the course of the session is done by correspondence between Members and the clerk.
- The *Privileges Committee* meets occasionally to consider a) the privileges of the House; and b) peerage claims.
- The *Hybrid Instruments Committee* considers hybrid instruments. These are so rare that the committee has not met since 1990.
- The *Personal Bills Committee* considers petitions for personal bills (also very rare).
- The *Standing Orders (Private Bills) Committee* examines questions of compliance with standing orders.

All these committees have the power to report to the House (though the Administration and Works Committee has yet to do so, and others, such as the Privileges Committee, report only rarely). Reports of the Procedure Committee and Liaison Committee, and reports of the House Committee where there are issues requiring a decision of the House, are put before the House for agreement. In such cases the Chairman is responsible for moving the motion, and responding to points raised in debate. Although motions are sometimes agreed without discussion, at other times debates, which are not time-limited, may be protracted.

Reports of the Committee of Selection, which contain the names of members who are to sit on select committees, are not put before the House for agreement. Instead, the membership and terms of reference of each select committee have to be confirmed by the House's agreement to a motion moved by the Chairman.

It will be clear from the list of committees which he chairs that the Chairman is a key figure in the day-to-day administration of the House, and in particular that he is a crucial link between members of the House and the Administration. The Chairman keeps in close contact with officials, meeting weekly with the Clerk of the Parliaments and Black Rod. He also attends occasional meetings of Leaders and Whips. His office deals with a steady stream of correspondence from members on domestic and procedural matters, and in addition he answers oral and written questions on matters relating to the administration of the House (see below).

The Chairman chairs the Accommodation Steering Group, the other members of which are the three Chief Whips and the Convenor of the Cross-Bench Peers. This body has not met for some years, though it could become active once more.

Oral and written questions

The Chairman of Committees acts as the spokesman on administrative matters in the Chamber, speaking for all the domestic committees, including those (such as the Refreshment Committee) which he does not personally chair. Thus as well as moving motions relating to committee reports he answers oral questions from the dispatch box on a diverse range of subjects – for instance, security, emergency medical facilities, smoking policy and Christmas cards.

The Chairman also answers written questions on domestic matters, currently averaging between 40 and 50 each session.

Miscellaneous responsibilities

The Chairman or his Principal Deputy often stands in for the Lord Chancellor at official events, particularly at international Speakers' Conferences.

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Examination of Witness

THE LORD BRABAZON OF TARA, a Member of the House, Chairman of Committees, examined.

Chairman

173. Can I firstly welcome you very warmly to this Select Committee, one of the few Committees of which you are not Chairman. We have all read and were very grateful for the paper, which you sent us at an early stage, particularly the historical account of the office of Chairman of Committees, which I found very interesting. I note that one of your predecessors was Chairman of Committees for 25 years, which means that you have a few years to go. We are ready to ask you questions but is there anything that you would like to say first about the office of Chairman of Committees, and its relationship to the possible appointment of the Speaker? We are proceeding on the assumption, which we must at this stage, that the office of Lord Chancellor will be abolished, and that therefore some provision must be made for the Speakership.

(*Lord Brabazon of Tara*) Thank you, Lord Chairman, for inviting me today. I am glad that you found the note about the present responsibilities of the Chairman of Committees to be useful. I am very conscious that I am in the presence of two distinguished former Chairmen of Committees and four present working Deputy Chairmen, so I need to be careful what I say, as I am sure they will put me right if I go wrong. I do not have any statement to make to begin with and would be very happy to go on to questions. I would only say, Lord Chairman, that I think your Committee has a difficult job because the role of the Lord Chancellor at present, as Speaker of the House, is not a very onerous one, and therefore the role of whoever inherits the responsibility of being Speaker of the House – and I accept what you say and agree with you that we must work on the assumption that that indeed is going to happen – will have to be looked at quite carefully.

174. I think you have seen a list of questions that we might be asking you.

A. I have seen this, and I am very happy to deal with any of them – and others. I hope that I do not contradict myself too often.

Baroness Gould of Potternewton

175. The current situation, where we have the Lord Chancellor, two deputies – yourself and Lord Grenfell – and this whole range of deputy chairs – would you see any of those functions changing, if the structure changed, in terms of perhaps only the two senior deputies being responsible in the Chamber and the other deputy chairs just dealing with the committees? Could you envisage a situation where we went down a similar road to the House of Commons,

or do you think there is an advantage in having the whole range of deputy chairs doing the job that they do now in the Chamber?

A. I think, on the whole, it works quite well at the moment. Most of the deputy chairmen do a very good job. There are some perhaps who are better at it than others. It is my job, I suppose, to weed out the ones who are not so good and encourage the ones along who are better at it. I think the question depends on what role the new Speaker will have in the Chamber; whether he is going to exercise any kind of disciplinarian role, even if it were to do just what the Leader of the House does now at Question Time, or what the Government Whips do at other stages during the day. If whoever is in the Chair is going to have to do that, then I think it would be unwise to have such a wide selection of deputy chairmen as we have now. I think we have to have a more professional team, particularly if you have a case like, say, the Hunting Bill, where you could have somebody making a pretty controversial speech from the back benches, and five minutes later that person is sitting in the Chair and then going on to opine on procedure. That, I think, would be a very difficult situation. Depending on what the role of the Speaker is, we might have to have a professional panel. That is not to say that that would apply necessarily in Grand Committees; you would still have a panel, as we do now, taking the Chair in Grand Committee.

Lord Carter

176. I am sure it will not surprise you to hear that the weight of evidence we have received, and from speaking to people in the House, is that self-regulation should continue, without defining what is meant by self-regulation. We have also heard the phrase used in relation to the new Speaker “Guardian of the *Companion*”. There is a suggestion that self-regulation could work best with a very, very gentle steer. How, in practice, do you think we could maintain self-regulation, which we all want to do, but at the same time have a Speaker who could just give a gentle steer when the House was not working well?

A. I hope that would be possible, because I, too, would like self-regulation to continue as best it can. At the moment, I must say, there are certain times when it does not always appear to be working one hundred per cent. At Question Time, for example, where the Leader of the House sometimes has to arbitrate between different peers or different sides of the House. I would regard any intervention from the Chair as being always the last resort rather than the first, and only in cases of a dispute. We should not get into the situation where the Speaker was actually calling questions one after the other, from one side of the House to the next. That would be a bad thing. In time-

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[Continued

limited debates, at the moment it is the whip on duty who has to say that somebody has gone on for nine minutes when seven minutes was the limit. I can see the Speaker taking on that role, which I hope would not be controversial. Of course, once you start on this, whoever is Speaker, the House, I am sure, would suggest if something is not going right, and Members would be bound to begin to suggest that the Speaker should take a hand in things. Then you could go down – the phrase “slippery slope” has been vastly over-used – but there is a danger that whoever is doing the job, the House would expect the person gradually to acquire more powers.

177. If Standing Orders specifically exclude the Speaker from ruling on a point of order – and, as you know, in the House we do not have such a thing as a point of order because there is not anyone to rule on it – if that continued, would that meet the concerns, because the Speaker would not be able to intervene on these matters other than on the simplest things like reminders that the time limit is seven minutes and just sitting down. That could be done equally well and is done now by the deputy speakers, from what you are saying.

A. Indeed, it could be done. If you were restricting yourself purely to matters which were absolutely clear in the *Companion*, it should not be a problem.

Lord Tordoff

178. There are situations, are there not, where the House gets itself into a bit of a mess procedurally and needs a bit of help, and it is drawing the line between the Speaker intervening and saying, “my Lords, I think you will find that this is the position we are in” – and I have to admit that this is something that I have started to do myself, and I know that it is not within the rubric that I should do so – “we are debating amendment so-and-so which is an amendment to so-and-so minus whatever”. Do you agree that that could be more formalised? As I say, if one does that, you are strictly stepping beyond the limits of what you should be doing on the Woolsack or in the Chair.

A. I agree, Lord Tordoff. I would certainly want to do it when I was sitting in the Chair or on the Woolsack. Of course, you have to be absolutely right about what you are saying. The danger therefore would be if somebody got up and started arguing with you on the point.

Lord Marsh: One of the things that most of us are hoping will happen is that with an elected Speaker, the whole thrust of this is that, as Lord Carter said, he will be the Guardian of the *Companion* but also he would be more involved with the actual administration of the building and the problems there. I notice from your note, which is, if I may say so, very helpful, that you point out that the Chairman is a key figure in the day-to-day administration of the House. Quite a lot of us feel that this Place is completely run by the “usual channels”, which, not surprisingly, it is, and they would at least like the opportunity to say something. It is really the relationship between the House Committee and what is effectively the management group under the chairmanship of the Clerk of the

Parliaments which concerns me because the business plan, which in my view is very well structured, very simple and very clear, makes it quite clear that the various groupings each have a functional responsibility for six groupings and report to the Clerk of the Parliaments. He, presumably, when it comes up to the budget, which is £73 million, has somebody to work out this budget from the component parts. All of that is fine, but the actual authority lies with the House Committee which then has to approve that, as I understand it. That structure, as it currently is, would not be acceptable for any regulatory authority or any publicly quoted company in this country because the whole thrust is towards accountability. Here, if you take the analogy with the public company, which is not that different – and you are very familiar with it – where you have independent directors who are there precisely to keep an eye on the executive directors who have a conflict of interest inevitably, but perfectly legitimately, my concern is that on this basis the House Committee has no connection with the discussions that go on in the management group. That group puts together and prioritises the various things that go to make up the £73 million budget. Then it comes to the House Committee, the members of which have heard no part of the discussions that have gone on, and properly so, with various elements in the report; but yet it goes through and it is not that different from the previous Offices Committee, where everybody says, “that is terrific” and somebody says, “I am a bit worried about a meal I had in the dining-room last week”, and dealing with the £73 million they do not and cannot – and it is probably a question of getting the Chairman of Committees or possibly the Speaker, or the Chairman of Committees acting on behalf of the Speaker, present in that very important element.

Chairman: It may be that Lord Marsh’s question goes a bit wider than our terms of reference, but any help that you could give him on that, particularly describing how the House Committee – because I am the only member of the House Committee here – operates, would be very helpful.

Lord Marsh

179. With respect, Chairman, I do not see why it goes further. If we are trying to involve Members of the House, they want to feel that they could have some idea of the basis upon which some of the decisions which affect them are taken. That is my approach.

A. I am very conscious that I am in your presence, Lord Chairman; you are a distinguished member of the House Committee. The House Committee, as you know, is a new committee; it has only been in existence for the first time this Session, set up under the guidance of my predecessor, Lord Tordoff, and others. I personally think – and I would say so, I suppose – that it is a pretty good committee, consisting of, as it does, ten members: the three leaders of the parties plus the Convenor of the Crossbenchers, and six backbench members – one Crossbencher, yourself, my Lord Chairman, one Liberal backbencher and two Conservative and two Labour backbenchers. The two Labour backbenchers were, I believe, elected by the

whole of the Lords Parliamentary Labour Party. Others may have chosen a different way to appoint their representatives. However, I do not really recognise the description, Lord Marsh, that you have given. The management board has to report to the House Committee and at the end of the day it is the House Committee's responsibility to approve the business plan. We went through the plan, I would say almost since its inception, right the way through. It was certainly discussed at three or four meetings of the House Committee, and eventually it arrived – and I am glad that it has generally been found to be helpful. It is up to the House Committee to approve the budget, and that makes it really the most important administrative committee in the House. I said it had a membership of ten, but it is ten plus one – me, as Chairman. It is rather better than the Offices Committee was, which was a huge, rather ungainly committee, just as the Procedure Committee is now.

180. Can I apologise, Lord Chairman, on this, because I have obviously – I am not, frankly, interested in the composition of the Committee. What I am trying to get at is the basis upon which very large sums of money are to be spent on things that need doing, and the extent to which the House Committee is involved – as not heard in any of the previous discussions. I think it is sensible to leave it there.

A. I can only say that the House Committee is ultimately responsible to the House for its actions.

Lord Freeman

181. Lord Chairman, can I come back to the crucial issue that Lord Carter raised, which is how you can preserve self-regulation with allowing the Speaker on the Woolsack, whatever he/she is called, to exercise a light touch. I have two very specific questions. I am defining "light touch" to mean indicating which side should perhaps be heard next in supplementary questions and drawing the attention of their Lordships to overrunning of time, but nothing else. Standing Orders make it clear there is no disciplinary responsibility for sorting out procedural muddle responsibilities. First of all, would Lord Brabazon believe that the Speaker, the Lord Speaker or whatever he is called, should decide on the private notice questions, which seems to stick out as being something very different from the other issues that the Leader of the House performs? Secondly, would he envisage the deputy speakers having the same responsibility as the Lord Speaker on the Woolsack in being, as it were, assistant guardians of the *Companion* and assistant light-touchers, particularly when speeches are time-limited late at night?

A. On the first question, on PNQs, that is quite a difficult question. At the moment, as your Lordships are aware, they are in the gift of the Leader of the House. They do not happen too often, nor, I believe, are they requested too often either. If the Speaker – and I do not have a view about what that person should ultimately be called, other than one strong view which I might tell you later on – is going to rule on that. Presumably it would require quite a bit of back-up from clerks to decide on topicality, on the question

of whether it really is important enough to be allowed as a PNQ. I would hope the House does not move in the direction of wanting to have endless PNQs every day. We are supposed to be a revising chamber; we are not supposed to be an aggressive political chamber constantly trying to make trouble for the government of the day by asking PNQs. I do not know what proportion of PNQs in the House of Commons are on constituency matters, that does not apply here, but I hope that whoever decided what PNQs should be allowed would not go in the direction of having more and more of them. The danger, if the Speaker was given the authority to decide on them, is that people might be tempted to ask more and more, to test the Speaker out. Obviously, the opposition would regard him as not allowing enough and the government side would say he was allowing too many, so there is a danger there. On the second point, Lord Freeman, on deputy speakers being assistant light-touchers or assistant guardians of the *Companion*, I come back to what I said to Lady Gould earlier: if that were the case, I think you would have to have a small panel of professionals who did meet on a regular basis, probably each day; and it would be pretty well a full-time job.

Chairman

182. On the first question, you might be interested to know that Lord Williams was very much of the view that PNQs should not be a matter for the Leader. He said he found it very embarrassing to be in that position, and was therefore in favour that PNQs should be dealt with by the Speaker. He did not however express any view as to whether that would mean there would be more PNQs than there are now.

A. I must admit, talking off the top of my head, I have the feeling that there might be more tried for, even if there were not more granted.

Lord Trefgarne

183. Lord Chairman, Lord Brabazon referred to the panel of deputy speakers and how from time to time they have to be weeded out. The last weeding-out exercise, if I recall, was conducted by Lord Tordoff, which was not a straightforward process and caused much controversy. Is there any training provided to the present panel of deputy chairmen? If you were looking for a smaller panel of more professional ones in the future, what training could you provide to them?

A. If they were more professional for the future, there would have to be a good deal more training. The body, however it was made up, would all have to act together and all know exactly how to do it. For the moment, I think it is a shortcoming that there is no formal training whatsoever given to the current deputy speakers other than unofficially by colleagues. I am always very happy, if somebody comes on the panel, to run through what we do, but there is no formal training. I assume that those who put their names forward to become deputy chairmen do so knowing roughly how the House works and how you get a bill through committee stage, *et cetera*. There is nothing better than spending hours on end sitting in the

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Chamber, watching it being done before you take your first stint on the Woolsack or in the committee chair, and doing it that way. By the way, people should always start off doing third reading and then go backwards and do report next, and then lastly do committee, because that is the most difficult.

Lord Alexander of Weedon

184. Can I ask you, Lord Brabazon, about the potential interplay between the functions of the Speaker and Chairman of Committees? Do you see that any of the present functions of the Chairman of Committees should be assumed by the new Speaker?

A. There is a possibility there, yes. First of all, I would say I would hope that one of the functions of the Lord Chancellor which is currently usually taken by the Chairman of Committees, that is going on overseas official visits, to Commonwealth Speakers Conferences and so on, would go back to being done by the Speaker. At the moment it is nearly always either the Chairman of Committees or the Principal Deputy Chairman of Committees; so that is one thing that should revert to the Speaker. It has been suggested that the new Speaker should chair either the House Committee or the Procedure Committee or both. There are advantages and disadvantages in that. One of the things I have to do as Chairman of Committees is go to the Dispatch Box quite frequently, whether it is to answer questions or to give a report of the Procedure Committee or various other reports such as, as far as the House Committee is concerned, the rather vexed question of Members' expenses. I enjoy doing that actually, but it can be quite controversial and it can get quite aggressive at times. I remember very well one of my predecessors, before my immediate predecessor, reporting on what was then the Offices Committee, now the House Committee, on the restoration of Old Palace Yard. That was a £2 million project, which was highly controversial, and was thrown out the first time around by the House. It would cause some difficulty, I think, if that had the imprint of the Speaker on it. If the Speaker is going to be a dignified character who is the embodiment of the House and all that, it would be unfortunate if something he was putting forward as chairman of a particular committee was then thrown out by the House. I would envisage that if he or she did share either of those two duties, it would still be for the Chairman of Committees to stand up at the Dispatch Box when it came to make the report. The same thing goes for the Procedure Committee. Although, as we have said, we hope that the Speaker would be the Guardian of the *Companion*, there are often times when the reports of the Procedure Committee turn out to be pretty controversial on the floor of the House. We are currently looking at the vexed subject of the hours of Thursday sittings. I can be pretty certain that when I come to make the report of the Procedure Committee on that, there will be quite a considerable debate and there will be views on it both ways. The question is whether or not you want this thing to carry the imprint of the Speaker.

185. Following on from that, at the moment, as you point out, the role of the Speaker of our House is

really incidental to the other large parts of the job of Lord Chancellor, and he derives a lot of his authority from the fact that the Lord Chancellor has that other large job. How do you see us transforming the situation so that we have a Speaker who is not Lord Chancellor and yet has a large enough job that is satisfying, and a large enough job to carry some credibility in those parts of the outside world where he will represent us?

A. That is the question really. Certainly, the new Speaker would wish to spend a lot more time in the Chamber than just Questions. At the moment the Lord Chancellor, as you are all aware, is only present for half an hour or whatever it is at Question Time each day. He occasionally comes down when the House is not in committee; and he may sit on the Woolsack for the latter part of a division, but that is it really. I would envisage a Speaker certainly wanting to do rather more than just Question Time, probably doing a considerable stint on the Woolsack at the beginning and maybe at later stages during the day as well, probably wanting to come in if there was something which was known to be particularly interesting, controversial or whatever.

186. Is that on the assumption that the Speaker has a regulatory role, even though a light regulatory role, or irrespective of whether the Speaker has a regulatory role?

A. I think irrespective, in that he or she will want to be very much in touch with what is going on on the floor of the House, a lot of the time.

Chairman

187. Clearly, a new Speaker, if he is going to have a job at all and be respected by the House, should be a member at least of the House Committee as well as probably the Procedure Committee. I fully take your point that he cannot answer for the decisions of the House on the floor of the House. Could the new Speaker be, as it were, the titular chairman of the House Committee so as to make him central to decisions taken, and the Chairman of Committees be the vice chairman of the House Committee, who would probably take the proceedings of the House Committee and certainly answer—

A. I think it would have to be like that. He could indeed be, yes, subject to the possible dangers that I have outlined before.

188. He would not, as titular chairman, answer from the Woolsack.

A. No.

189. That would have to be done by the vice chairman to the Chairman of Committees.

A. As a matter of interest, the Lord Chancellor is at the moment a member of the Procedure Committee. I cannot remember when he last turned up, but in theory he is on it.

Lord Carter

190. If the Speaker was a titular chairman, just to guide the discussion, and had no vote on that committee – which is very important when it comes to

voting – and had no voice in the Chamber, that would seem to be the right balance. I should like to go back to the relationship between the Speaker and the deputy speakers. If you assume that the Speaker almost invariably would be there for Question Time, we have not mentioned the area of statements. That is a time, I am afraid, now when back benchers occasionally do get it wrong. I introduced a procedure whereby before the minister rose, a whip would read out just a sentence to remind the House what the *Companion* said about behaviour at statements. If that were to be done, if the Speaker were there for statements, he could give a gentle reminder about what the *Companion* says. On time-limited debates, I cannot see that it is the thin end of the wedge for whoever is on the Woolsack to point out that the time limit in the debate is, say, eight minutes, and then sit down. I assume the Speaker would not be chairing the committee stage but only report and third reading. What most of us do now is to give the gentlest guide when the House is on the wrong amendment. I do not think we would be able to stand up and remind a peer that he is making a second reading speech. That is the difficulty. If someone is speaking on the wrong amendment, one can quickly put them right. I am not entirely sure what we would then do on report, for example, if the Speaker was on the Woolsack and somebody is clearly making a second reading speech.

A. That would be very difficult. I agree entirely with what you have said, Lord Carter. It is very easy to do just the simple thing in relation to speaking on the wrong amendment. However, I was in the Chamber for quite a lot of the Hunting Bill last week and there were some classic second reading speeches being made in committee. If we are going to go down that slope, we really are talking about difficulties, about people arguing, inevitably. I believe that the Committee is so far thinking that the Speaker should not take the Chair when the House is in committee. I think it was a couple of weeks ago that the House went into Committee after Question Time all four days – Monday to Thursday – and stayed in committee effectively for the rest of the day each time. If the Speaker is not going to take the Chair in committee, then he is going to have a pretty blank day. I do not have the statistics about how many times the House does go into committee immediately after questions. I know there are proposals to have fewer committees on the floor of the House and more Grand Committees, but until that happens there will be instances like the week before last, when the Speaker would have a pretty thin week.

Lord Desai

191. When the Lord Chancellor is on the Woolsack, sometimes he steps sideways and becomes something else, and speaks. You have mentioned the Speaker not speaking on behalf of the House or Procedure Committee. Would it be a good idea to say that the Speaker never has to step sideways; that the Speaker does not speak?

A. When the Lord Chancellor steps sideways, he steps sideways to become a government minister, and now he actually does more going round to the

Government Front Bench, the Dispatch Box, to do that. I, as Chairman of Committees, when I am on the Woolsack, or any of my deputies, never step sideways to do anything, although I must say that sometimes it would be quite convenient, for example when moving the second reading of a private bill, to be able to do that and not to have to find a deputy to take over from me while I am going to the Dispatch Box.

Chairman

192. You said that it would not be appropriate for the Speaker to sit on the Woolsack during committees, but is there any reason why he should not chair committees from the Chair?

A. I am suggesting he should; otherwise, some weeks he will have a very thin time.

Lord Freeman

193. Lord Brabazon teased us a little earlier on by saying that he had a very strong view about the title.

A. My strong view is not what the title should be but what it should not be.

Chairman

194. If you start with that, we may make some suggestions—

A. It should not be “Lord Chancellor”. The Lord Chancellor is an ancient title and head of the judiciary. In my opinion – and it is purely a personal opinion – it would be quite wrong that whoever assumes the great role of Speaker of this House should be called “Lord Chancellor”.

Chairman: Without disclosing my hand, I entirely agree with you!

Baroness Gould of Potternewton

195. I should like to go back to the points raised by Lord Carter, particularly stressing that we want to continue with self-regulation. One of the problems that seems to be occurring in the House at the moment is that the whips, whether they do the job effectively or not, but even if they are attempting to do the job, have been completely ignored – and there have been instances in the last few days. Have you any thoughts about how we overcome that? The argument will be put that the Speaker should take on much more function because the House is not behaving in the way that it should. With your experience, do you have any thoughts about how we overcome that problem?

A. It sounds rather “golden age” but when I first came here it was not only the government whip who would bring people to order. The important thing is that the opposition whip or whips should immediately get up and support the government whip; and also I think there should be more of a role from the Privy Council benches too – senior distinguished Members, of whom I can see many sitting around this table. They should be not afraid of getting up and saying, “that is a second reading speech that you are making”. If we want to remain self-regulating, then we must exercise more self-regulation.

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Lord Carter

196. Of course, you do not stand up and say “that is a second reading speech”. You just remind the noble Lord that the *Companion* states that the debate should be relevant to the question before the House.

A. That is perfectly true. On this point, if you are going to have the Speaker doing more of that kind of thing, he is going to have to be given a great deal more advice from the clerks and the House authorities and others. I do not know how it works in the House of Commons, but somebody is going to have to say to him – because he presumably will not be expected to have read every word of *Hansard* for every day – that this actually was exactly the same speech that the noble Lord made at second reading. He will not know that necessarily unless he is told.

Lord Amptill

197. The Speaker in the Commons has a clerk breathing down his neck, telling him what to say and do and who the fellow is who is getting up, *et cetera*. We will not have that benefit but there is an idea that there will be some electronic communication between the table and the Woolsack; and it is thought to be a totally practical thing that there should be—

A. If that was the case, I think that is right. I hope that, whatever happens, we do not have to start re-designing the Chamber. On the other hand, sitting on the Woolsack can be quite a lonely occupation because you do not have anybody there to talk to, even to the small point that I cannot remember everybody’s names always, and you suddenly have a mental blank. If you had a little electronic screen where the clerk could—

Chairman: I thought for a moment you were thinking that the Lord on the Woolsack and the clerk would be doing the crossword puzzle together!

Lord Amptill

198. We are in this grey area of how much the fellow should be allowed to do, which makes everybody nervous. All change is automatically assumed to be a slippery slope, and you have allowed yourself to use that expression. I do not see that it necessarily need to, because the parameters of what

the new Speaker is allowed to do can be laid down by the House in the motion that will appoint him. Therefore, I do not think that everybody need get neurotic about it necessarily becoming a slippery slope. I am in favour of the parameters being widened very, very little, and I think that most of this Committee are of the same mind. I am a little worried that you, as Chairman of Committees, is that you may be in the job for another 24 years. Do you mind the fact that you might have to do what you might regard as the Speaker’s dirty work, which is going to the Dispatch Box to convey to the House the decisions that have been reached by the committees of which he may be in either case – and I am personally in favour of him chairing the Procedure Committee because that seems to be the one that he will be concerned with most. I am not alone in thinking that the House Committee is domestic, and therefore you are the right person to be in charge of that; but this is a matter for us to decide later. Are you content that for the next 24 years you do, as you march to the Dispatch Box and utter words—

A. Lord Chairman, first of all, some of your Lordships may be aware that I and a number of other Members of this House at the moment are under the guillotine as it is, so the possibility of doing this job for another 24 years is unlikely. I am perfectly happy, as I do at the moment, to answer for the Administration of this House, other than the business management. I am responsible for everything that goes wrong in this House other than the business management. I am not always happy, but I am willing to go to the Dispatch Box and attempt to justify the position.

Chairman

199. We have kept you for one hour of the 24 years. I think that perhaps we ought to let you go. Thank you very much indeed for coming. I think I would be expressing the view of the Committee if I said that we all hope that the Speaker should be as much like you as possible.

A. My Lord Chairman, thank you very much indeed. It has been a great pleasure to be here, and I look forward to reading your report with great interest, I hope before too long.