



# HOUSE OF LORDS

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## **The Select Committee on the Constitution**

Inquiry on

### **THE CONSTITUTIONAL IMPLICATIONS OF COALITION GOVERNMENT**

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*Questions 58 - 73*

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10.30 am

Witnesses: Rt Hon. Paul Burstow MP, Rt Hon. Cheryl Gillan MP and Tim Loughton MP

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### Members present

Baroness Jay of Paddington (Chairman)  
Lord Crickhowell  
Lord Cullen of Whitekirk  
Baroness Falkner of Margravine  
Lord Hart of Chilton  
Lord Irvine of Lairg  
Lord Lester of Herne Hill  
Lord Lexden  
Lord Powell of Bayswater  
Baroness Wheatcroft

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### Examination of Witnesses

**Rt Hon. Paul Burstow MP**, Minister for Care Services, 2010–12, **Rt Hon. Mrs Cheryl Gillan MP**, Secretary of State for Wales, 2010–12, and **Tim Loughton MP**, Parliamentary Under-Secretary of State for Children and Families, 2010–12

**Q58 The Chairman:** Good morning, and thank you, all three of you, for coming. This is going to be a very valuable perspective because the committee has heard considerable theoretical, and what I might describe as academic, evidence from people about the operation of the coalition and coalition governments. As you will observe, looking around the table, several people here have either sat on or assisted governments of one party. Of course, Mrs Gillan was also in a one-party government so she is familiar with both. We thought it would be helpful to have a view from a parliamentary and political perspective of what all this is about, from the internal workings of individual departments to collective responsibility, et cetera. I might as well start off with a basic question, which I put to all three of you. Perhaps you, Paul Burstow, would start. Did you find any anomalies, from a constitutional point of view, in serving in a coalition Government of which you had not expected and might have thought would be different in a one-party government?

**Paul Burstow MP:** My first response is that for most, if not all, Liberal Democrat members of the Government there was no expectation that we would be ministers in the first place. Our preoccupation in the early days was to make sure that we were well supported and inducted into the job, and able to do it. Worrying about constitutional matters was perhaps not to the fore. Having said that, pretty much from the day that I arrived in the Department of Health, I was clear that things would work only if there was a symmetrical relationship between the two coalition partners, in departments and across the Government. In that sense, I was very well supported by the permanent secretary. The Secretary of State at the time was also very supportive of the idea that that should be how it worked, but that inevitably created a great deal more work for me as a minister because it meant that I had to be right across the department and not just my individual brief.

**The Chairman:** In a way, that is a familiar situation for a minister from this House. If you are a department's single minister—for example, when I was a minister in the Department of Health, there were five ministers from the Commons—you have dispatch box responsibility in this House for the whole of its policy. It was quite tricky, as you say.

**Paul Burstow MP:** I am full of admiration for people like Baroness Northover, who was my colleague in the Department of Health at the time and was having to cover many bases while she was doing the job here.

**Mrs Cheryl Gillan MP:** I think I am slightly different because of the department for which I had the privilege to serve as Secretary of State. Dealing with a devolved administration, which I think you will get on to in later questioning, as well as being a very small department and having to cover the whole gambit of government policy meant that it was rather difficult. I did not have a Liberal Democrat minister in my department, other than having a very able spokesman in the Lords, so I did not really face that immediate issue of having a minister from the other coalition party permanently in my department. However, I thought it was

particularly difficult for the civil service, as it had to get used to a modus vivendi between ministers and between departments when not everybody was necessarily singing from the same hymn sheet, despite the coalition agreement.

**Tim Loughton MP:** It was interesting to hear Paul's point about experience and, perhaps, surprise among our Liberal Democrat partners. In the Department for Education, we had an advantage in that three of the ministers—the Secretary of State, Michael Gove, the then Schools Minister, Nick Gibb, and myself—had all been in those roles in opposition. In my case that was for seven years and in Nick Gibb's for five years, or whatever, so there was a fairly seamless transition. That was a huge advantage to us. You can hit the ground running and start to tell the civil servants what you would like them to do rather than receive instructions from them. We had Sarah Teather as the Minister of State who was working with me. She had the added challenge, as Paul said, of all of a sudden having to revert to ministerial mode and learning how to become a minister, as we had to. She also had to take on a new brief, having not shadowed it, and to be the sort of insider for the Liberal Democrats in a department where she was in a minority of one. That, I think, was a challenge for Liberal Democrats, particularly where there are areas of contentious policy and fault lines can emerge outside the coalition, yet you are the one minister who is also looking out for the other side. I have to say that Sarah Teather carried it off extremely well as our Liberal Democrat partner and, in our department, I cannot ever remember a case where just the Conservative ministerial team would have meetings. She and the Liberal Democrat support team were always part of that.

**The Chairman:** There was an information-sharing arrangement.

**Tim Loughton MP:** As far as I knew—I was not privy to all the meetings—she and I, and others, were treated equally and were always at that top table. That was very important in making it an effective team, rather than two parts of a team.

**Q59 The Chairman:** Cheryl Gillan spoke about a modus vivendi. What happens when you move off the brief? There was a coalition agreement; there was the subsequent policy agreement. What happens when you go beyond that in creating policy within a department with two sets of ministers?

**Mrs Cheryl Gillan MP:** I did not really have two sets of ministers but I would never have meetings which excluded any member of the Liberal Democrats. In fact, I used to meet Liberal Democrat MPs regularly who were not in government—and Conservative MPs and even Labour MPs and peers, if they wished to meet—so there was always an opportunity for other people to feed in. When I tried to do something that was not under the coalition agreement it would fall under the auspices of the Deputy Prime Minister, who is responsible for constitutional matters. So I had the added hoop of having to get past the Deputy Prime Minister, who did not always stick to the coalition lines when it came to Wales. That was quite tricky.

For example, in opposition I had pulled together ministers shadowing each department to focus specifically on the issues concerning Northern Ireland, Scotland and Wales. In government I thought that having a junior minister from each of those departments together would mean that we had a much better co-ordinated approach to devolution, where we would share experiences and where, within each department, that aspect of life in the United Kingdom—of what was going on in the devolved administrations—would not get overlooked. I think the Deputy Prime Minister allowed that meeting to take place once. He chaired the first meeting; the second he handed to Danny Alexander and then he allowed it to wither away. There were double hoops for those areas that were not in the coalition agreement and it was not always possible to try innovative things.

**The Chairman:** Paul Burstow, perhaps I could ask you about one particularly contentious Act, as it now is, that was not in the coalition agreement but which must have been handled

within the Department of Health bipartisan-ly, as it were. The Health and Social Care Act 2012 was not in the coalition agreement, so how was the policy developed on that?

**Paul Burstow MP:** It was not in the three-page coalition agreement that was published initially but it was set out, in some detail, in the more detailed policy statement. The one departure from the policy document published by the coalition around the white paper in the legislation that followed was about the proposal in my party's manifesto to have directly elected health boards. We departed from that. It was one of the few occasions when the coalition committee met. It took a decision on that, which led to a retuning of the legislation to establish what are now called health and well-being boards. Internally, presented with the product of the discussions that took place on the policy statement, you can track through from the white paper and to the legislation. That did not change the nature of the handling which we subsequently had experience of during the first 18 months or two years. However, in terms of it not being part of the agreement, I think it was very clearly part of what we set about.

In that sense, going back to Cheryl's answer about where policy departed from the coalition agreement or had not been conceived of as part of it, my experience in the Department of Health was that there was flexibility and the ability to share information, so that we were sighted as to what was going on, and initiate the formulation of policy. It is critical for both sides of a coalition to be able to do that, so that you can take forward ideas within the Government.

**Q60 Lord Lester of Herne Hill:** I am a Liberal Democrat backbencher, so my questions are informed by my experience. One problem is how to have a system which is not so bureaucratic as to slow up government decision-taking but, on the other hand, which fully involves the junior and senior partners in a coalition. It is my impression that, especially in a department where there is no junior-partner minister, the role of special advisers is much

more important in this coalition because when decisions are taken they are a way of providing information, and perhaps influence, across the two parties. From your perspective, do you find that correct—about the role of the special adviser in providing oil to the machine—or not?

**Mrs Cheryl Gillan MP:** I had only one special adviser.

**Lord Lester of Herne Hill:** Sorry, I did not mean your special adviser. I meant special advisers—

**The Chairman:** As a group.

**Lord Lester of Herne Hill:** Yes, as a group. In other words, because you did not have a Liberal Democrat minister or Liberal Democrat special adviser, my impression is that to find out what was going on in Welsh policy and how it affected the coalition, there would be a special adviser in, say, Nick Clegg's office providing some cohesion. I am not putting it very well.

**Mrs Cheryl Gillan MP:** I know what you are getting at, but I cannot honestly say from my own experience that that is either what happened or whether it would assist. Special advisers have their own network and I am not sure how regular the meetings were. At one stage, my special adviser was particularly exercised because we were not having regular meetings across the board. A lot of the special advisers were quite heavily focused in their departments and, in the early days, were getting used to the new way of operating. I think that a special adviser has an important role to play in being the eyes and ears of a minister, particularly in a small department like my own, but from my experience I cannot say that there was that much added to the picture for me and my department by that network. I cannot speak for others.

**Paul Burstow MP:** To answer the question from a Department of Health perspective and from the junior partner's perspective, it is important for both sides of the coalition in each

department to have timely access to special adviser support. I think the same could be said in the case of the BIS department, where the junior ministers are Conservative. One thing that was not done as well as it might have been in the early stages of the coalition, because the focus was on policy rather than process, was to put in place a symmetrical arrangement for special adviser support. This meant that in some government departments, where there was a desire to get on with implementation, there was not that support at an early stage for having a legitimate debate and co-decision on some of these things. Because ministers did not have that support, they were having to do a lot more of that heavy lifting or find workarounds.

I will give an example in my case. For us to have a view across the department, which Andrew Lansley was keen for us to have, it meant coping with every single submission that was going out of the department. My private office was slightly reconfigured so that one of its members—operating not in a political way but as a civil servant—was helping to manage that workload. Without that, it would have been even more difficult to manage that part of my role.

**Tim Loughton MP:** Paul's point on the symmetrical side is important. We had a slightly strange position in the Department for Education. We had two special advisers and two policy advisers. As somebody who had been critical of special advisers in opposition, I came to appreciate how important and essential a resource they are, although I might have taken issue with particular special advisers within our department who had been high profile and terribly partisan. In the Department for Education, I think we now have double the number of special advisers. The problem was that I did not really have a special adviser; the special advisers worked almost exclusively for the Secretary of State. The policy adviser on our side of the department, which was the children's social care side rather than education, was a former Liberal Democrat councillor. She was exceedingly good at her brief but she was,

obviously, predominantly working with Sarah Teather. I have no reason to think that she did not get as much access to the Secretary of State as the others, but it was really important to have a special adviser who could cover that whole department and then inform the Liberal Democrat side so that they felt that they had an equal look-in. I am not sure that that was the case but it has now been corrected. There was a special adviser appointed with David Laws, who you have heard evidence from, working to his brief on the education side of the department.

**Mrs Cheryl Gillan MP:** There has been a change in the role of the special adviser from when I was last in government, in the Major Government. The significance and role of the special adviser today, in a coalition government, has even moved on from that during the last Labour Government. They have become much more important in the managing and smooth running of a department, and in policy formation and communications. I am sure that some members of the committee will remember the old days of the Department for Education. When I was in there, our special advisers were like children: seen but not heard, until you were in a ministerial conclave. Of course, that is not the case now and, from the perspective of the minister within any department, the management of that role therefore has to be much more active than it used to be.

**The Chairman:** I think we will come on to the civil service. I know that Lord Powell wants to talk about it.

**Q61 Lord Crickhowell:** I want to pursue with Cheryl the question of obtaining and sharing information in her former department. I am thinking particularly of departments with importance for Wales, such as industry or energy, where there were Liberal Democrat secretaries of state. In my day, when I was doing her job as Secretary of State in a rather different world, I served on most of the cabinet committees that dealt with such matters. I used to be pretty well briefed in preparation for cabinet committees. How well briefed did

she find herself in dealing with those departments which might have been of considerable importance to her but with which she had no direct political connection?

**Mrs Cheryl Gillan MP:** That is where one of the problems arises because in the initial stages, the cabinet sub-committees were carved up. I sat on two of them, one being the PBL committee which looked at future legislation, and the other being the home affairs and constitutional committee. If I wanted to know what was going on in other departments, I would be reliant on not only my civil servants but my special adviser. I had a slight advantage in so far as I had been around for rather a long time. I had been a shadow in the Department of Trade and Industry; in fact, I am even married to a former senior civil servant in that department. I did not feel that I was particularly isolated although, as I said in an earlier response, I wanted to make sure that policy was co-ordinated for the devolved administrations across all areas of government. I was open to suggestions other than those of my cross-departmental committee, because it is important for the devolved administrations that those secretaries of state are well plugged in to other departments, particularly as you are having to face up to other administrations—the Welsh Assembly, the Scottish Parliament or the Northern Ireland Assembly—which are dealing with those issues for which there are implications both in legislation coming through from here or in problems that might occur, for example, on and across the Welsh border.

For the nearly two and a half years that I was there, it was not a perfect system and there are huge ways in which we could improve it. However, I would also say that there is room in our constitution for more intergovernmental operations. I have my own theories about the fora in which Assembly Members and MPs should meet, and in which MSPs and MPs should meet, as well as with members of the House of Lords. We are operating constitutionally within too many tramlines and not allowing what I would consider to be better

communications—those communications which could be improved and developed within our constitutional arrangements as they stand.

**Q62 Lord Crickhowell:** This Committee has to try to make recommendations about future coalition governments, should they occur. That is one suggestion but I think you were implying that you might have some other practical suggestions, which you would like to see recommended by the committee, about improved arrangements for coalition. I wonder whether you could add to what you just said.

**Mrs Cheryl Gillan MP:** With apologies to my colleagues, I always thought that the Welsh and Scottish Grand Committees could be much better used. I hope that your committee will have time to explore that area of our existing constitutional architecture. For example, there could be joint meetings between MPs in Wales and AMs in Wales under the auspices of something like the Welsh Grand Committee, and likewise in Scotland. Devolution is here to stay and we have to make it work a lot better. We have to think of innovative ways that will not turn us, heaven forbid, into some federal set of states within the United Kingdom, which is not what I want. There should be something which improves communications and the exchange of information, above and beyond what I call the dispute-settling arrangements that exist.

**Tim Loughton MP:** May I come in on that?

**The Chairman:** Please do.

**Tim Loughton MP:** Interdepartmental working and the business of joined-up government—a line entirely without foundation in government process, as I found—was deeply frustrating. It could have helped in coalition as well. I have two instances. When Sarah Teather and I were trying to develop within education a policy around early intervention—an important area of government policy which transcends the Department for Education—we tried, through civil servants and the department, to link up meetings and get a forum together. It

proved impossible, so what happened one night is that Sarah Teather and I used our mobile 'phones to ring colleagues in the Home Office, Justice and Health and arranged to have supper in the Adjournment restaurant. We sat around the table, both sides being there, and decided what our policy was. Then we went back to our departments the following day and said what we were going to do, to which there was outrage from all the civil servants, who said, "This is not the way we do it", but we did it. It was ridiculous that it took us having to organise that meeting.

I was responsible for youth policy, a subject on which the Department for Education is, regrettably, no longer the lead. On a subject like that which, again, transcends all departments, there is no real forum where you can bring those departments together. The previous Labour government tried to do it with green issues. I was on the Environmental Audit Select Committee; every department nominated a minister who was the green lead for that department. The trouble was that it usually ended up with a senior civil servant going in place of the minister, so it did not work. I set up the youth action group, where we had nine departments represented and six outside youth organisations, led by the Prince's Trust. We would meet regularly and the organisations would bring problems to us, which we would try to solve and, where there were overlapping issues, nominate certain departments to go away and solve them. I never had fewer than five ministers attending in person, along with their officials. That made all the difference because the ministers and officials were on the case, and it transcended the coalition. We had Lib Dem and Conservative ministers, and it worked well.

**The Chairman:** Do you think that was easier because of the coalition?

**Tim Loughton MP:** Perhaps it made it slightly easier because one would not want not to turn up, in case they were all Lib Dems there and we became named and shamed. There was an element of not wanting to be outdone.

**The Chairman:** That is what I wondered.

**Paul Burstow MP:** There are some general machinery of government points which any ministers who have had a taste of government and then come out and reflect on it would probably comment on. My experience over the two and a half years was that some inter-departmental and inter-ministerial approaches worked very well. There was very good cross-governmental work led by the Home Office on developing the action plans on troubled families.

**Tim Loughton MP:** There was the allocation of drugs programmes.

**Paul Burstow MP:** There were two programmes—the gangs programme and that on troubled families—which came together increasingly in the conversations. I was struck by some of the evidence that the committee has already had, where the survey of civil servants suggested that their impression was that there was a reboot of cabinet government, and of cabinet committee government. Those meetings were very productive and interesting on the occasions when I attended, in the sense that the debates were both within the parties—between ministers—and between the parties. That was a healthy part of how the coalition worked in those first two years.

**The Chairman:** Lord Powell, did you want to pursue any civil service questions?

**Q63 Lord Powell of Bayswater:** To start with, there was Mrs Gillan's original remark about civil servants perhaps finding it more stressful with the coalition. I ask because this does not really coincide with what we have been told so far, particularly by our academic witnesses who said that civil servants were virtually in paradise with the coalition because it was so wonderful. They do not seem to have raised any objections. I point out that we have not heard from them formally and that there may be more considered views, but why did you feel it was so stressful for them?

**Mrs Cheryl Gillan MP:** I can only speak from personal experience. I felt that the civil servants who I came into contact with were busy working out how they were going to manage certain elements of the coalition. It was challenging. I think it remains challenging in some ways for officials because there are issues between the two parties, which do not always come into the public domain and are behind the scenes. It depends on the permanent secretary and on the private offices to make sure that there is a modus vivendi, which from my observations was difficult in the early stages.

**Lord Powell of Bayswater:** Even in a single-party government there are considerable differences between departments and civil servants get used to managing them. I am a bit surprised that you feel this is such a big issue. Another aspect of the civil service that we have heard about is how in the coalition negotiations it was decided not to take up the offer of civil service support. We talked to David Laws about that last week. With hindsight, do any of you feel that it would have been better to draw on civil service support at that stage? More importantly, assuming that the same situation arises after the next election, with two parties negotiating a coalition, would it be a good idea to have civil service support if only to be able to record accurately and in detail exactly what has been agreed and said? It seems strange to exclude them when, in a way, forming a coalition is a process of government.

**Mrs Cheryl Gillan MP:** I am old-fashioned; I think it is important to have the civil service at all stages of government, not least because officials dealing with policy areas and with many years' experience will know what the practical difficulties are. If you exclude them, you may find yourself with elements of a programme for government that have some obvious problems attached to them, solving which will take up a lot of time. I would have thought it would have been useful to have civil service input, even to the point of them just sitting there and observing the negotiating process. It was obvious that that was not what took place. However, I think next time it will be different. A coalition government is hardly in our

living memory, is it? It is a peculiar and special thing that has happened. I really am not working towards a coalition government for next time, because they have lots of problems, but if there was one the civil service now has much more experience on which to draw—as do the politicians. The Liberal Democrats said that they never expected to be in government, but most of the politicians who are at the top of our parties did not have ministerial experience.

**Tim Loughton MP:** May I add that there was scepticism toward civil servants as well? If you think of the people on both sides who were part of that negotiation, virtually none, if any, had been in government before and therefore had not had civil servants working for them. Having been in opposition on our side for 13 years, one was suspicious about the civil service being able to move from serving one political master to serving a completely different one. That fear was exacerbated by the alleged politicisation of the civil service under various previous ministers. On becoming a minister, I saw the professionalism of the civil service and its ability to go one minute from serving one political master, and going full-pelt on a project, to serving a completely different minister and dismantling that same project. That is literally what happened in some of the things that I did. I never doubted their ability or dedication in doing a 180-degree turn, professionally and impartially.

**Lord Powell of Bayswater:** The fear of bias in the civil service was also a feature in 1997. It seems to be the result of a long period out of government.

**Tim Loughton MP:** It will not necessarily be so next time, if there is a Liberal Democrat–Conservative negotiation again.

**Paul Burstow MP:** I do not know that the time away from government is entirely relevant to this. Yes, you need to have advice on tap on costings and the practicability and implementability of policy. It was there just outside the room. The question is what takes place in the room—and in that room is where the space needs to be. Is it not the

Heisenberg principle by which something is changed by the process of observation? Having civil servants observe the process may have changed the nature of the process. The fact that there was that ability to have an honest conversation about where the give-and-take might be, and what the compromise could be, meant that it was more likely to happen. They were in a space where people were talking politician to politician but with the ability to go outside the room and have a conversation to test the veracity of the policy, and whether it would be deliverable.

**The Chairman:** Do you think that perspective would continue?

**Paul Burstow MP:** My advice would be yes, it should. In forming a coalition, at whatever level of government, it has to be about forming a practicable business relationship. That has to be between the main actors.

**Lord Powell of Bayswater:** But does all this discussion not go on in cabinet committees, where civil servants are present?

**Paul Burstow MP:** That is once you have secured the confidence of the House and a working arrangement. If you have secured a policy programme that you are attempting to implement then the nature of the conversation has changed. It is then entirely right. I agree with Tim about the support given and the effort made, during what was a long general election period, by the civil service to prepare themselves for the possibility of a different administration.

**Q64 Lord Powell of Bayswater:** Would it be different next time, if there is a next time? Do you not think that after five years of coalition government, if it were the same two parties, you would find it more useful to have civil servants engaged from the beginning? There is otherwise a risk of handing over processes of government to special advisers.

**Paul Burstow MP:** It depends on the combination of parties engaged in those talks and who is sitting round the table. The key actors have to be sitting round the table. I think that David

Laws will have set out his involvement in that process when he spoke to you last week. The lesson which I draw from that and from our experience in Scotland, and which I drew from the experience in New Zealand when I was chief whip, was that you needed a process enabling trust to be built between the key actors.

**Baroness Falkner of Margravine:** Mr Burstow made this point earlier but I wanted to come in to seek clarification from you, Mrs Gillan, when you said that you believed it was important to involve the civil service from the outset in government. That is perfectly fair and legitimate but we were talking about the formation of government. There had not yet been a government formed and what we were trying to get at, as a committee, was whether you felt that the involvement should be from the beginning. I think that we are now content with the fullness of Mr Burstow's answer and do not need to labour that point any longer.

**The Chairman:** I should have asked you to come in earlier.

**Lord Lester of Herne Hill:** This is not the question I am coming to but I wanted to say for the record that in my experience as a special adviser, in the Wilson Government in 1974, there was great obstruction by the civil service. I am sure that it no longer is so, but I had to be sent away home by Roy Jenkins to write the white paper because of the total obstruction on women's rights.

My question is less controversial. Do you think one lesson we might think about is that of the training of special advisers? They have no proper training as special advisers at the moment, at least on the Liberal Democrat side. Would it not be sensible to train all special advisers, from whichever party they come, in some common way so that when they come in—they are often quite wet behind the ears—there is at least some common understanding of what their role should be?

**The Chairman:** You mean that it would be more effective if they replaced the civil service.

**Q65 Lord Lester of Herne Hill:** No, it is not that. I am very sceptical about special advisers, as a former one myself. All I am saying is that if you need them, as you probably do, it seems that they need to be more professional in how they are trained when they come into this strange new world.

**Mrs Cheryl Gillan MP:** It depends where the special adviser comes from and on what their experience and CV is. Richard Hazlewood, who was my special adviser, was superb. He had worked in the Welsh Assembly for the Conservative group as a press officer. He was a trained journalist and always behaved in a professional manner. I like to think that he was Gillan-trained. If I had been allowed a second special adviser it would probably have been my research assistant, who had been working on the brief for several years in my office. I think that special advisers need training of some sort, even if it is just about the process of government. In the same way, ministers need training; you cannot just come off the backbenches with no experience and expect to walk in and know everything about being a minister—quite the reverse. So I agree with that but it needs to be tailored to the individuals concerned, depending on their experience. A lot of special advisers and policy advisers have unique, often academic, knowledge of the subject matter of the department, so training is needed more on the rules and regulations and that sort of thing.

**The Chairman:** Is it not your experience that quite a few ministers have been special advisers in their past? That has certainly been my experience.

**Mrs Cheryl Gillan MP:** I believe that is so.

**Q66 Baroness Falkner of Margravine:** I want to take you to the process of policy formation within departments under a coalition, where you have a secretary of state from one party and a junior minister from another. Under the current system, there is no capability for the junior minister to commission civil service advice on areas outside his or her remit. We heard from one of our witnesses that Whitehall had considered a protocol

whereby a junior minister could have commissioned a briefing for his or her eyes only on an area of policy other than his or her direct area of policy. Apparently, that was in effect abandoned. Forgive me, Mr Loughton: I know that you have not served under a Lib Dem secretary of state, but if you were serving under a different secretary of state what would your view be as to the ability to commission civil service briefings on areas for your eyes only?

**Tim Loughton MP:** It rarely happened and I never felt any problem if I wanted something on an issue that was more to do with education than children's social care. The problem we had in the Department for Education was that it was split into two parts. There is the education side, which has been dominant, and the children's social care side, which is less contentious politically. I would occasionally ask civil servants to provide research. I would assume that the Secretary of State would hear about it and see it, if he took an interest in it, but I never felt constrained in that respect. I do not think that Sarah Teather had any problem with that either. Why our team worked particularly well, on the face of it, was that the Liberal Democrat partner was always at the top table and the Secretary of State was particularly aware of the sensitivities of certain aspects of education policy—exams, the curriculum and free schools—which have been contentious. He probably appeared more in front of groups of Liberal Democrat MPs than groups of Conservative MPs, to give them every opportunity to question what was going on. I do not think that was an issue within our department. We always felt that we could have whatever resource we required.

**Baroness Falkner of Margravine:** Even if you had not had as forthcoming a secretary of state? I am trying to move you from your experience to the theory. In theory, would you find that there might be situations where it was useful to commission briefings?

**Tim Loughton MP:** Yes, I would, but it needs to be transparent. One does not want to be doing this behind the back of one's ministerial team. If you are going to be such a team then

you need to have regular ministerial meetings where everything is on the table so that we all know what each other is doing, rather than reading about it in the press.

**Paul Burstow MP:** That last point is key: if a minister is able to commission policy work that is not then immediately sighted to the secretary of state in the department, it has to be the case that that cannot be publicised. It only becomes something that can be publicised at the point where there has been a collective decision, when it becomes the government's policy and can then be communicated. It is about having that line clearly drawn. While I did not encounter difficulty in being able to commission work, the ability to have a policy initiative and a free flow of information are two things which good relationships have in most cases allowed to happen. Having clarity, whether in the Cabinet Manual or wherever, as part of the modus operandi of a coalition government is very important because the underlying principle of a coalition administration is that it has co-decision-making. Securing the confidence of the House comes from two parties working together, and that necessitates a different way of working.

**Q67 The Chairman:** Can we turn to something that has been an obvious constitutional change, which is the Fixed-term Parliaments Act 2011? Lord Lexden.

**Lord Lexden:** Has your experience left you with the conviction that fixed-term Parliaments are the right basis on which to operate a coalition administration, since it gives certainty and allows for planning, but above all because it gives both sides absolute confidence that there is a span of years in which to conduct the business? I wonder what conclusions you have reached in the light of your ministerial experiences.

**Paul Burstow MP:** Perhaps I can bring one other experience to that question, which is that before my time in the House of Commons I ran the Liberal Democrats' local government department for a time. One of the things that we had to do from time to time was to give advice to Liberal Democrat groups on local authorities when the council became hung after

an election—or balanced, as we preferred to call it. In those circumstances, the dynamic of the relationship and the formation of coalitions and other forms of agreement at a local level were at least in part contingent on the certainty that the council would continue to be there for a fixed term. So for me it is a logical extension of the principle already applied in local government whereby coalition formation takes place routinely, for it to be, if you like, a context in which a relationship of confidence and trust can be built with some certainty that one side cannot pull the plug on the other.

**Tim Loughton MP:** It has to be a stabilising influence. If we did not have a five-year fixed term, the capacity for probably—but not necessarily—the junior partner to throw toys out of the pram and play brinkmanship would be greater, on the basis that it is going to bring the government down. Under the fixed term, you know that the government are still going to be there, so you can only push it so far.

**Mrs Cheryl Gillan MP:** I think the five-year term was the scaffolding for the coalition-building, and it is certainly designed to avoid the government failing beforehand. In that way, it underpins the coalition better. Whether a five-year fixed term is a good thing or not is another question, but in this case it has prevented, as Tim said, toys being thrown out of the pram. I also think that the agreement to go for a five-year fixed term consolidated the reasons why the two parties came together, which were to solve an inherited economic crisis, in their views. That was, possibly in this instance, a good thing.

**Q68 Lord Crickhowell:** That leads quite neatly to the question of collective responsibility. For a particular reason we all know Mrs Gillan would have found the issue quite difficult even in a single-party government, but she would have been faced with the fact that if she wished to part company on the issue that concerned her constituency, apparently she would have had to resign. We have had situations in this administration that have been very surprising to those of us who served in single-party governments. We have had

powerful evidence from academics, supported by political witnesses, that breaches of collective responsibility should be rare—that ideally they should be agreed collectively by Cabinet in advance and publicised in advance, with everyone knowing what the rules are in advance.

For example, I suppose we got used to the Prime Minister and the Deputy Prime Minister making different statements at the dispatch box, but much more surprising to many of us was the episode after the failure of the House of Lords Reform Bill where the Deputy Prime Minister put on halt the change in the boundaries, although that was legislation that had passed through both Houses of Parliament and was not scheduled in that way in advance in the collective agreement. Do you think it would be helpful to have something clearly laid down? There has to be a degree of flexibility; we understand that. Individuals are going to make public positions fairly obviously clear, in a way to keep their own troops on side. But when it comes to Cabinet responsibility, do we not need some fairly clear rules about how to operate if we are not going to have a pretty chaotic situation?

**Mrs Cheryl Gillan MP:** Until being part of this Government, I had always firmly believed in Cabinet collective responsibility, but I am afraid that it is a belief system that is no longer modern or relevant. We have to deal with the situation as it is, and it is quite obvious that Cabinet collective responsibility does not exist in the pronouncements made on various policy areas. I can give you a little example, again of Wales, when the Deputy Prime Minister did a broadcast expressing a personal view on wanting a federal United Kingdom, which was certainly not coalition policy.

I was reminded of my position with Cabinet collective responsibility over the matter of a small railway that is going through my constituency called HS2. Some people will know that I have made it part of my regular work in the House to see whether we can bring about some changes to it. I think that Cabinet collective responsibility is getting increasingly difficult to

claim for individual members of the Government on areas, particularly such as HS2 where it affects their constituency, for the simple reason that you are seeing the two parties that form the coalition Government expressing themselves in very different terms on areas of policy.

I agree with you: this area needs refinement. It needs examination. I do not think it needs a revolution, but it needs addressing so that individuals who are part of the Government have a certain amount of freedom to speak and express differences. The Government have not been brought down because different views have been expressed on different subjects. It may cause some confusion with the public, but we have not found it impossible to work within those parameters. Perhaps being more adaptable to the reality of policy and the issues would assist in this area.

**Q69 The Chairman:** Do you agree that you need clarity about precisely what it is?

**Mrs Cheryl Gillan MP:** That is right. I think it needs to be made clear as to where it applies, otherwise you risk confusing people who observe this place and the way in which government operates. Goodness knows they can be confused enough with things as they are, let alone as they will be in the future.

**Paul Burstow MP:** I agree with a lot of that. It is important in framing any rules around this, or any principles that you think are relevant to an understanding of collective responsibility in a coalition, that the lens you use is constitutional and not majoritarian or single-party. It is easy to mistake one for the other. Understandably, if one looks at it through a majoritarian or single-party lens, some of the things that have happened during the time of the coalition will be almost distasteful to some, because they break the conventions that have applied in a majority government. But that is the point: it is not a majority government, it is commanding confidence in the elected House on the basis that two parties have an agreement to govern

together and secure that through the fact that they are working together and sharing their sovereignty, in effect.

It is important to recognise that there needs to be that give and take around articulating difference. A good example of that occurred a couple of weeks ago when David Laws got duffed over in the House of Commons for having the temerity to honour collective responsibility in setting out the Government's position in a forceful way while at the same time acknowledging that our party had a different view on these matters. In a mature democracy, that sort of difference and the ability to articulate it is very important. Framing rules that allow the articulation of those differences is an important part of what I hope this committee can do.

**Q70 Lord Crickhowell:** In putting my question, I think I indicated that I understood the need to articulate differences. The question is: should we have clearer rules, perhaps in the Cabinet Manual, about where complete changes of policy are taken unexpectedly? The example I have given is obvious. The view has been taken, and I repeat it, that there is merit in trying to reduce substantial legislative differences to as few as possible in order to keep public confidence, and that you need to decide, preferably collectively, what the issues are going to be and announce that you are going to have a difference in advance, so that everyone is aware that this is an issue where the parties are going to differ.

**The Chairman:** Which happened in a single-party government on, for example, the European referendum in 1975.

**Mrs Cheryl Gillan MP:** Exactly. There have been times when a single-party government have agreed that their people can campaign on different platforms. It is not as though we are creating a precedent; it is just a question of getting it in line.

**Tim Loughton MP:** But there is a difference. I take as an example the married couples' transferable tax allowance, which I have been vociferous on. It was specifically referenced in

the coalition agreement and the Liberal Democrats could abstain on that issue. That is clearly understood, so the coalition Government can go ahead with it but the Liberal Democrats will not trump it, with party policy being against it. It is when issues come along that were not so clearly referenced in the coalition agreement, or even going against the understanding of the coalition agreement, that it becomes more difficult.

I do not want to cause too much mischief, but Paul made a point about the difference between Liberal Democrat ministers and Liberal Democrat policy. In that case, the problem was the difference between Liberal Democrat ministers and the Liberal Democrat Deputy Prime Minister, and between ministers themselves. That is slightly mischievous of me.

**The Chairman:** Could I ask Mr Burstow, as I was not quite clear: would you therefore suggest that we should have, as it were, a suspension of our understandings about collective responsibility, for example, for a fixed term—for the duration of this Government—or are we saying that we have abandoned that and are starting on a whole different playing field?

**Paul Burstow MP:** No, I am not. It is important that the idea of collective responsibility is taken seriously. It is taken seriously inside the Government. The number of exceptions outwith the coalition agreement over the last three and a half years has been very small. They have been high-profile, but the number has been very small. The vast majority of government and the communication of government policy across the coalition has been consistent. It is only those areas, if you like, which are about not the delivery of the Government's policy but the ability to articulate a difference. In some of the preparatory work for coalition, some of us spent time looking at other Westminster-style democracies. I visited and talked to a number of people in New Zealand about the approach they had taken. They had written a good deal of flexibility in the agreements they had between parties to allow for these sorts of eventualities. So our constitutional arrangement can be quite flexible in this area.

**Q71 Baroness Wheatcroft:** I would like to ask you about what is not articulated in public. We have talked about the coalition agreement and the policy document that followed that, but to what extent were you aware of major haggling over policy between the two parties: “You can have this if we have that”? There are instances that have leaked out. I wonder how many there are that have not.

**Mrs Cheryl Gillan MP:** I would not like to venture any response. I am sure there were areas like that, but I am not aware—

**Baroness Wheatcroft:** There certainly were.

**Paul Burstow MP:** In process terms, part of the mechanism to enable that sort of dialogue to take place and agreement about what is in and what is out is done routinely through the quad. It is a symmetrical arrangement. It enables that high-level discussion, often underpinned by Home Affairs Committee discussions and other cabinet committee discussions in advance of it, to sift out the things that are most difficult and most complex in reaching an accord across the two parties. I have not come with a list of the things that you are seeking, though, I am afraid—sorry.

**Tim Loughton MP:** The quad is very important and has not been mentioned so far. There is another dynamic. I do not think it was unique to the Department for Education. Sarah Teather and I agreed on most things, and if we wanted to push something and the Secretary of State was not as amenable to it, it could be escalated to being a coalition issue. That was the trump card, so it is very useful to be in with your Liberal Democrat partner in order—occasionally, if the requirement was there—to trump the Secretary of State. By it becoming a Liberal Democrat coalition issue, you might get the result you wanted. There were quite interesting internal dynamics as a result of that. The quad is the ultimate arbiter of that as well.

**Baroness Wheatcroft:** The quad seems to work very effectively.

**The Chairman:** And if I may say without raising a red herring—because we have talked about the quad in other sessions, and as you mentioned this morning we have also talked about the “revival” of cabinet committee government—the quad is in a sense the 2010–13 version of sofa government, is it not? I leave that in the air.

**Paul Burstow MP:** It certainly takes place around the Cabinet table.

**Mrs Cheryl Gillan MP:** But it is not entirely transparent.

**Q72 Lord Lester of Herne Hill:** I understand the importance of emphasising collective responsibility and accountability to Parliament and to the public, which is extremely important. As a lawyer, you would think I was in favour of a lot of rule-making, but I cannot understand how one could frame rules to encapsulate what the three of you have helpfully described, because what you are describing is politics—political processes that have to be resolved pragmatically. We could think of platitudes like “Exceptions to collective responsibility must be this, that and the other”, but surely it is not possible to think of rules or even principles that have any real meaning other than in some report that will have no practical value.

**Tim Loughton MP:** The coalition agreement is something of a bible in all this. If you have set out specifics within the coalition agreement, it is clearly breaking the rules to then go against it. I was looking through the policy side of the coalition agreement, and the trouble is that a lot of it is in waffly language. I shall take some examples on the education side: “We will help schools tackle bullying ... We will seek to attract more top science and maths graduates ... We will create more flexibility in the exams systems”. Any party could have signed up to a lot of those, but specifically they have come down to quite contentious interpretations, particularly around the reform of the exam system. Should you have a system whereby you have to be more specific in the agreement at the outset, and then you really can point the finger of blame if one of the partners resiles from that? I think that if

there is another coalition agreement, what is undertaken probably has to be far more specific.

**Lord Lester of Herne Hill:** What you are saying is that the coalition agreement becomes a kind of manifesto, which has been agreed by the parties and which should be treated in that way. I understand that, but my difficulty is that if you think of party whipping, for example, and of what happened in the House of Lords a couple of nights ago, you get me and others rebelling against our own whip to have some political cross-dressing with Labour on carbon capping. You will not find anything about that in the coalition agreement, but as government goes on issues like that arise, and whips have to understand that even party loyalty must sometimes give way to co-operation across parties if that is the will of the party at the time. This is all about give and take, and politics. I am still puzzled as to how one could go much further than what you have said about coalition agreement. That I understand, but to try and encapsulate this into a series of rules seems, to me, futile.

**Mrs Cheryl Gillan MP:** One of the problems is that because of the nature of the coalition, it is possible for a member of the coalition such as the Deputy Prime Minister, without any warning, to make a policy pronouncement or a pronouncement on another departmental area. You could have guidelines that would prevent that. You sit there as a secretary of state, and suddenly the Deputy Prime Minister says something that is completely outwith anything that has been discussed and is not his policy area, and he makes that pronouncement in public. That is difficult to deal with. It is difficult to deal with if you are in a one-party government, but it is even more difficult to handle when you are in a coalition.

Do not forget—going back to the civil service—that we were suddenly dealing with a government of a different complexion here in Westminster from the Welsh Assembly, which was also providing issues and problems as to how you would handle having a Conservative/Liberal Democrat coalition here and a Labour Government in the Assembly.

That in itself was a challenge to the civil service. You can almost cope with the political front within Westminster, but you are exposed on two fronts: an in-country front as well as internally. So “no surprises” would perhaps be my first rule. If it were to happen, at least make sure that your secretary of state in whatever department has at least a little bit of warning.

**Paul Burstow MP:** The “no surprises” point is a good rule. It certainly applied in the New Zealand context as part of confidence and supply agreements and coalition agreements. It has largely operated that way, but inevitably there will be occasions when it has not. There are two other areas where there is room for being clearer. The first is about information sharing and transparency within the government. The other is the ability to initiate policy formation, with the caveat that the junior partner in the department cannot then go off and publicise that—it has to be an internal process. In Scotland, they have an open space agreement, basically, within coalitions they have had, which allows that conversation to take place with civil servants on the understanding that that is kept within the government machinery.

**The Chairman:** We are going to hear some evidence from the devolved governments and assemblies, so hopefully that will throw light on that. I did not know, Mrs Gillan, if you wanted to make any other points about the experience of devolved government in Wales, and whether there was anything to be learnt from that. The open space agreement that Mr Burstow has just mentioned is an obvious one from Scotland, but I do not know whether there are any similar things from Wales.

**Mrs Cheryl Gillan MP:** No, except that there should be another forum whereby you can bring—

**The Chairman:** You mentioned that.

**Mrs Cheryl Gillan MP:** I mentioned that before.

**The Chairman:** You have been enormously helpful. I do not know whether any member of the committee feels there is something that they have not touched on that they wanted to raise, or whether any of you three feel that we have missed a point that you want us to be aware of. Members of the committee seem satisfied. I am not sure; Lord Powell is shaking his head slightly.

**Q73 Lord Powell of Bayswater:** In the light of some of the comments, do you think that the process of forming a coalition, if it is going to happen again, needs to be looked at thoroughly? Particularly in relation to collective responsibility, we have heard of the examples where it has not worked. The German method, for example, is interminably slow, I agree, and that may not be easily reconcilable with our constitutional processes. On the other hand, it is much more thorough, and they set up about five or six committees between the two parties, crawl over areas of policy and reach agreements, and then you do not get these breaches. The whole German government, having meticulously formed a coalition programme, stick to it, and everyone in the coalition sticks to it, whatever the position of their parties might have been originally. Do you think there is a case for a more structured and detailed negotiation next time? We know why it was so rushed the first time—because it was unexpected, it was new, it was different. Do you think there is a case for looking again?

**Tim Loughton MP:** I think it is essential. It should not take as long as Germany takes, but if we are left with a similar result after the next election as we have now, particularly if there are fewer Liberal Democrats and perhaps fewer Conservatives but still enough to make a majority, because there is a deal of dissatisfaction among Conservative backbenchers about the coalition and the relationship with the Liberal Democrats—whether that is justified or not is neither here nor there—and because there is some friction, I think, between the Liberal Democrat membership in the country and some of the things in the coalition

agreement, it is not going to be as easy to assume that we can have another coalition. Therefore I think it will be essential, in order to make it work if we are in that scenario, that there is a full and publicly transparent process by which certain compromises have been made, and the reasons for them, in order to sell them to our respective parties. That probably means that the agreement will have to be more specific, for the reasons I have mentioned, and we will have to have the fight up front as to why we or the Liberal Democrats have had to make certain compromises for the greater good, supposedly, of carrying on in government. If not, there will constantly be calls from backbenchers on either side and it will never get off the ground. We all knew why it had to happen last time: for the economic imperatives then. We do not have that emergency luxury, as it were, next time round.

**Paul Burstow MP:** My answer in simple terms would be no, because each election throws up its own parliamentary math that then determines quite a lot of the way in which coalition, if that were to happen, is formed. I do not see how you can corral and codify that into a strict set of rules when ultimately this is about the formation of relationships and sets of behaviour across two or more parties. What you need is exactly the point that Tim is making; you need processes that ensure that the parliamentary groups that are signing up to this feel a sense of ownership of it. One of the lessons that we drew was the value that we put on the idea that it was not just our parliamentary party in the Commons but our parliamentary party in the Lords, our Executive Committee and our whole party in conference that had to sign off on our agreement. I commend that to other parties who are engaging in these sorts of discussions, because that is the way you can build stability and manage the rebellions that inevitably will occur during the life of a government.

**Mrs Cheryl Gillan MP:** No party is going to go into an election saying, “We have a plan for a coalition.” Each of the parties will be standing on their own manifestos and moving them

forward. However much we fantasise about having a process, I agree with both my colleagues that it will depend on the personalities involved, on the arithmetic after the election, and on exactly where we are in the country. We said at the beginning that we brought this coalition together because the people voted for a coalition. They wanted us to govern as two parties in the interest of the country and the economic situation. We do not know where we are going to be by the time of the next election, but I am very much hoping that we will return to single-party government.

**Paul Burstow MP:** A note of discord to end on.

**The Chairman:** On which note of agreement to disagree, vigorously, we will thank you for your time and valuable insights, which are very helpful. Thank you, all of you, very much.