

# HOUSE OF COMMONS

oral EVIDENCE  
TAKEN BEFORE THE

POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE

## **Lessons from the process of government formation after the 2010 general election**

Thursday 28 October 2010

Dr Catherine Haddon, Professor Robert Hazell and Dr Ruth Fox

Evidence heard in Public Questions 116 - 159

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## **Oral Evidence**

**Taken before the Political and Constitutional Reform Committee**

**on Thursday 28 October 2010**

### **Members present:**

Mrs Eleanor Laing (Chair)

Mr Christopher Chope

Sheila Gilmore

Simon Hart

Tristram Hunt

Mr Andrew Turner

## **In the absence of the Chair, Mrs Laing was called to the Chair.**

### **Examination of Witnesses**

*Witnesses:* **Dr Catherine Haddon**, Institute for Government, **Professor Robert Hazell**, Constitution Unit, University College, and **Dr Ruth Fox**, Hansard Society, *gave evidence.*

Q116 Chair: Good morning, Dr Fox, Professor Hazell, Dr Haddon. Thank you very much for coming to see us this morning. As you know, this Committee—before I say anything else, may I give the apologies of the Chairman, Graham Allen, who is genuinely very sorry that he’s not here this morning? He’s been unwell and been forbidden from attending the meetings. He’s not very mobile, so this is a problem. He will undoubtedly be watching our proceedings and keeping a beady eye on what his Committee is doing. This is, as you know, part of our inquiry into the formation of the coalition Government and we’re very grateful to you for giving us your time this morning, and also for having given us papers and your submissions to the Committee in advance. That is extremely helpful of you; thank you.

May I also apologise for the fact that there are some members of the Committee missing? We are in some sort of state of flux where some members are leaving the Committee and new members are being elected or are about to be appointed. Therefore we are without some of our members at present. But we have plenty of vociferous members here, and plenty of questions for you.

Before we begin, would you each like to introduce yourselves, and say anything you would like to say by way of introduction, or as a summary of what you have given to us in writing?

Dr Fox: I’m Ruth Fox, Director of the Parliament and Government Programme at the Hansard Society. You have my evidence, so I don’t think it’s necessary to go over things.

Professor Hazell: I’m Professor Robert Hazell, Director of the Constitution Unit, University College, London. I too have submitted written evidence. The only thing I would add, in one sentence, is that I do think the draft Cabinet Manual is a very useful advance. I look forward to seeing the publication shortly of the whole Cabinet Manual, and I hope the Committee will support that.

Q117 Chair: We do. We have asked for it, and we did ask Oliver Letwin, who was before us last week, about it and he indicated that he considered it would be published sooner rather than later.

Dr Haddon: Dr Catherine Haddon from the Institute for Government, and likewise I have submitted written evidence with my colleagues.

Chair: For which, thank you very much. In that case, let me begin with Tristram Hunt, who has some obvious questions.

Q118 Tristram Hunt: Good morning. Can I add my apologies? I’ll have to leave at 10.30 am to go to a debate. One of the binding threads of the coalition Government is that they faced an

unprecedented economic crisis and had to unite together in the face of remarkable financial pressures. During the period of the formation of the coalition, we've heard that Gus O'Donnell was very worried about the effects of the markets on Monday if a Government weren't formed, even though the Government weren't formed and the markets were okay.

We've also heard that there were fears of a Greek-style sovereignty crisis, even though the new Nobel Laureate has said that's not the case. What do you think the role of Mervyn King, the Governor of the Bank of England, was during the period of the coalition formation? Do you think the Governor of the Bank of England does have a role to play, in terms of advising parties and development of a coalition during this sort of post-electoral period of nature, as it were?

Professor Hazell: None of us knows directly what the role of Mervyn King was, but you can call him before this Committee and ask him. The role of the Cabinet Secretary, in the period immediately after the election, was to ensure an orderly process of formation of a new Government and, as we know, he facilitated negotiations between the political parties. He had set in hand arrangements whereby all Whitehall Departments could offer advice to the negotiating parties, if they needed it, on any aspects of policy. That advice could have included advice about the economic situation, which could have been asked for from the Treasury or possibly from the Governor of the Bank. I don't know whether any advice was asked for in the days immediately after the election. But everyone was on standby to be in a position to offer advice if the negotiating parties wanted it.

Q119 Tristram Hunt: So from everything you understand, as it were, the Bank of England simply operated as another Government Department, ready, if called upon, to assist in terms of information?

Professor Hazell: Certainly I have no knowledge whether the Bank played any more direct role, but you're quite right in your introductory remarks: everyone was very anxious about what the reaction of the markets might be and, as you rightly reminded us, in the event the markets didn't panic.

Q120 Tristram Hunt: Do you think that provided, as it were, a false environment within which to pressurise these negotiations, or was this simply just a sensible, precautionary approach to the economic context?

Professor Hazell: There were two sets of pressures bearing down very hard on the negotiating parties. One was the worry about the reaction of the markets. But the other was media and public expectations. Don't let us forget that historically, after a British general election, it's normally clear within 24 hours that there is an overall winner, and a new Government are formed extremely quickly. The media, therefore, I think were themselves impatient for a result, and they had to wait five days to get one. As I said in my written evidence, I hope that might establish a new norm, and possibly a new minimum, if we have further hung Parliaments, because as you will know, in Continental Europe, where hung Parliaments are the norm, it's also the norm to take weeks, not days, to negotiate a new Government. In fact, the European average is about 40 days.

Now, I'm not suggesting that the UK is likely to extend negotiations to that kind of time frame, but I do think five days was extremely short in which to negotiate something so important. I hope that in future the norm might creep up to the length of time it has taken typically in Scotland or Wales, which is 10 days to two weeks. Forgive me, I'm aware I've been doing a lot of talking. My colleagues-

Q121 Chair: Very good; I was just going to ask Dr Fox if she'd like to say something.

Dr Fox: I broadly endorse what Robert has said. I think if you look at what the Cabinet Office has made available, in terms of the detail about what logistically and operationally they were making available to the parties as part of the negotiating process, there were three elements to it. One was constitutional advice, which was, as I understand it, to be offered to all parties at the start of the process. There was then the option for policy advice from Departments, which was not going to be offered to them, but which parties would request; that was available. Then there was the logistical support.

Now, it doesn't seem to me that inserting economic advice from the Governor of the Bank of England naturally fits into any of those, in terms of that being proactively offered. It would fit into the policy advice if requested. But it doesn't seem to me inappropriate if the Governor of the Bank of England himself felt that it was important for him to convey to the party leaders and the politicians that he had some issues that he wanted to draw to their attention; he, as the Governor of the Bank of England-an independent body separate from Government-could approach the party leaders and offer that. I'm not sure, though, given what the Cabinet Office was setting out as what it was offering, that it should naturally be a part of that. But, as we know, if it was offered, the party leaders didn't feel it was necessary.

The other element of this is, of course, that we know that Alistair Darling, as Chancellor of the Exchequer, consulted with both the two Opposition finance heads-the shadow Chancellors-in advance of going to the Finance Ministers' meeting about the Greek situation. So we don't know what was conveyed in those discussions. It may well have been that there was sufficient information about what the situation was and they didn't feel it was necessary or appropriate to have the Bank of England talk to them.

Dr Haddon: I echo both of those points. I would just say, as a sort of general issue around all of this, one of the things we were most concerned with-certainly myself and Peter Riddell when we were doing our report on change of government, looking backwards-is that there's a real concern, because we had such long periods of majority rule. The planning, and the contingency planning, particularly, for eventualities that might be worse than one would obviously hope-and thankfully nothing like that occurred-still needed to be done. They needed contingency planning for all sorts of issues relating to: potential political crisis; potential constitutional crisis; logistical problems, in terms of simply managing those five days; and also the possibility of a financial crisis, which in that period of uncertainty wasn't so unreal as a possibility, given everything going on in Greece at the time, given the world situation, and also given the experience of the financial crisis of the previous two years. So I think planning for the worst case is not the worst thing they could have done at that time.

Q122 Tristram Hunt: Could you see, though, if you are of a suspicious frame of mind with a historical mindset, the Governor of the Bank of England suggesting to parties what the best way forward is-it's not as if they're inviting the leader of the trade unions to advise them either, is it? There's a certain species of advice coming in here, which is from one element of thinking. That's just my suspicious mind.

Dr Haddon: Maybe we're not so suspicious.

**Chair:** It's fair enough to have a suspicious mind when you conduct an inquiry.

Dr Haddon: We just simply don't have enough information on it. I'll have to wait until the history records are opened up and have a look properly.

Q123 Chair: Do you all think that the situation would have been quite different if nothing happened in Greece? If there had been no crisis looming, would that have changed your view of the time taken? We have had some evidence in previous sittings of this inquiry that has suggested that the whole matter was conducted much more quickly than it otherwise would have been had there not been pressures from the financial crisis, or perceived crisis, in Greece.

Professor Hazell: I think they clearly did feel under intense pressure to try to come to an early agreement. All the parties found themselves in a rather unexpected outcome in terms of the exact numbers. I think it's generally known that they hadn't anticipated or necessarily desired to negotiate or enter into a coalition. My reading from discussions with the political parties before the election was that if there were a hung Parliament, the most likely anticipated outcome would be a minority Government.

So, that was one rather dramatic circumstance, which I think they weren't fully prepared for. Of course, negotiating a coalition agreement requires far more detailed negotiation in working together a common agreed programme than the lesser negotiations required simply for a supply and confidence arrangement, where the minor party, agreeing to offer support on supply and confidence, retains the freedom to oppose the Government on all other things, and so it's not necessarily in the agreement to specify very much else.

Dr Fox: I think we're operating in an environment in which, as far as the public domain is concerned, particularly in terms of media perceptions of it, and some of the political perceptions of some of the MPs, the benchmark was 1974, and it was three days. So I think to some extent that also played a part, because the perceptions are, "How much more can it run beyond that? How much time do they need?"

It would be expected that they would be very mindful of the financial pressures and the economic situation. Clearly, what was happening in Greece was part of the backdrop to this, but in terms of the actual British financial situation, the markets didn't have much of a response to what was happening. I think a reasonable reading of that from the negotiator's perspective was that there was no specific pressure in respect of the British situation to that extent. But I think once they'd gone beyond the three days you did see a ratcheting up of media pressure and media comment about how long it would take. That goes to Robert's wider points about the fact that we perhaps now have the new norm at five days, and we may go beyond that in future.

Dr Haddon: Certainly the difference with 1974 was that that didn't get beyond the first point of, "Do we want to negotiate with this?" Thorpe went back to his party and then came back and there was no possibility of a negotiation with Heath, at which point it moved on, so it was quite clear by the Sunday night. The difference here was as soon as it became clear that actual formal negotiations over a coalition were going to be entered into, that sort of changed everyone's perceptions. In the period before the election, before the election campaign, we were very keen to look at international examples and to point out that we've had no desire to go anywhere near what some models tend towards-several months of negotiation-but that comparable democracies such as Canada and New Zealand do spend sort of a week, almost two weeks, negotiating in this period.

But to go to the point about the financial pressures upon them, I agree with Ruth. I think at one point on that Monday/Tuesday, it was just becoming the point at which the pressure was increasing. I think if we hadn't had a financial crisis over the last two years, maybe it would have been a different situation. But it's impossible to know whether that meant it would have been longer or shorter.

Dr Fox: Can I just add to that as well? It's quite remarkable to what extent there were no leaks at all from the negotiations and discussions, and quite clearly the media were well behind the cycle of discussions and negotiations, in terms of reporting what was going on. I think possibly-I don't know, it would be for them to say-that might also be an issue in terms of the parties, and the degree to which the party leaders and the negotiating teams could take their parties with them, without it being the case that the longer it went on, the more people appeared in front of the media commenting on this and commenting on that, and it therefore becoming a more difficult scenario to manage. Had you then gone on longer, you may have had leaks and more difficulties, and the political process just becomes more difficult. So I think there are a range of factors that were pressuring down on them.

Chair: Yes, what you've just said fits very well with previous evidence that has been given to the Committee. Simon?

Q124 Simon Hart: As you know and have probably read, we've taken evidence from David Laws, Lord Adonis and Oliver Letwin. In particular, Oliver Letwin stressed, when we asked him whether five days was enough, that he thought it probably was, and he didn't think the end result would have been any better if they had had 10 days or 15 days, or some other multiple. The others slightly reflected that too.

What did come across, though, from the three individual evidence-givers was a slight concern that there was a sense of crisis about the media coverage, and that this might have resulted in uncertainty across a range of different fields, the financial one being the most obvious. Does all of this, and the discussion this morning, lead you to the conclusion that perhaps there should be some kind of written protocol that comes into effect in the event of a hung Parliament? It could be a "not less than" or a "not more than" period during which time a coalition could be reasonably easily formed, so as to suppress market volatility and speculation and, indeed, unreasonable pressure on the politicians who are trying to put this thing together. Would something in writing be of help to us?

Professor Hazell: In effect, there was a written protocol, and that was the hugely useful contribution made by Sir Gus O'Donnell and the Cabinet Office, who published in advance the draft chapter from the new Cabinet Manual about elections and Government formation. That was published in February. That did set out very clearly what would happen in the event of a hung Parliament, and it had a separate section specifically about a hung Parliament and Government formation.

If the drift of your question is, in part, "Should there be a specified timetable within which a new Government must be formed, as, for example, is the requirement in Scotland and in Wales, where a First Minister must be elected within 28 days?", I don't myself think it's necessary at this stage to have a specific timetable, because I think the expectation will continue to be in the British tradition, if you like, that Governments are formed relatively swiftly.

Q125 Simon Hart: Wales is perhaps not a particularly good example because it doesn't have primary law making powers, but I remember the situation quite clearly when that coalition was formed, and indeed there was quite a lot of speculation towards the end of the period about whether they were going to be able to reach a decision at all, and that did lead to a certain amount of uncertainty, and speculation in the press about the need for another Assembly election. But the question, really, if one is worried about market volatility-this follows on from Tristram Hunt's question-is whether the relevant chapter or paragraph from the Cabinet Manual published in February was sufficient, because it wasn't particularly specific. It gave general and sound advice, but how could you suppress market volatility?

Professor Hazell: Two points, I think. Wales, in a way, I think, does help to make the case, because after the formation of the last Government in 2007, when they were getting close to the 28-day period, there was discussion about whether they should elect an interim First Minister. That would have been the way round it, rather than to hold a fresh election. But that brings me to my next point, which is the importance of a caretaker convention, because let us not forget that during the negotiations there is still a Government-the incumbent Government. Ruth has already referred to the very important Brussels meeting that Alistair Darling went to on the Saturday immediately after the election. We had a Government and the Government were continuing to do necessary business. But here I agree with you-the February draft of the Cabinet Manual was a bit vague.

We believe, and we've strongly urged this in our evidence-the Justice Committee in its report in March made the same point very strongly; I hope this Committee might reiterate the Justice Committee recommendations-that the caretaker convention does need to be more specific in its guidance.

Dr Fox: If the question is how do you suppress market volatility and you believe that the provision of clear, detailed information helps, in terms of public education, media education, education of people in the City, and so on, then there is a good argument for that, in the sense that I do think the Cabinet Manual did help in that process. I think the work that our three organisations did and the work that we were doing, particularly with the media, for example, in terms of trying to outline what would happen, helped in that process.

In a sense, we have a time frame to a degree anyway, because ultimately the Queen's Speech is the point of deadline where things have to be clear. What is not clear is necessarily when the Queen's Speech will occur. That is, of course, once the proclamation is issued announcing the Dissolution and the formation of the new Parliament, you have the meeting date of the new Parliament, but you don't necessarily have the date of the Queen's Speech. I think that's where possibly the uncertainty may lie. Should that be formalised? I do think that there is a case for saying that the convening date of the new Parliament should perhaps be more formal, and create that transitional period, so that it's not necessarily always done at the behest of the Executive through the proclamation. I think there's a case for that.

In terms of having the date of the Queen's Speech as the time frame, you then get into questions about whether the final date was the date on which the Queen's Speech was announced, or the date on which the Queen's Speech votes took place, which, from memory, was something like 8 June. So, you have a kind of extended timetable. I think the question is whether it would be better to formalise that and in effect to agree that there is a natural administrative function, and there should be a transition period formalised before the new Parliament meets, which could be what it was this time, which effectively was a fortnight.

Dr Haddon: I think you need to separate out financial crisis of an acute kind-if the markets had moved, or if we had had more of a constitutional crisis-and the general excitement that surrounded the first hung Parliament election result in such a long period of time, and also the possibility of a coalition in this Government after so many decades. So there was that sort of feverish anticipation and excitement and desire to know.

I think, looking back, a lot of the statements that were coming out of the senior politicians about what was going on about the process, and also obviously the statements beforehand-the Cabinet and the draft Cabinet Manual setting out what the process would be, what support there would be, and so forth-were all very reassuring. I think that probably contributed to a general level of calm that certainly in the months beforehand we had been concerned might not have occurred.

On the issue of whether or not you need more of a timetable or, indeed, some kind of hiatus, I probably tend towards Robert's points that there are some difficulties involved in that. I do think it's worth looking at other countries that normally, whatever the election result, would have that period of hiatus, and don't rush to an overnight change of Government, but at the same time it is part of our political culture, and managing public expectations, and the impact upon them, would be very difficult. This might have set a precedent in doing so.

But in all of this, I also think it's important that we consider not only the specific circumstances that occurred this time round, but potential circumstances. If we're revisiting the whole question, the issue becomes about whether-as happened in Scotland, when the SNP eventually got in-you have election results where you have so many different permutations of negotiating possibilities; that requires so much more time. Or indeed if you got to a situation where the three main political parties got much closer, so you had a situation like 1923, when it was almost a sort of across-the-board result that almost any one of them could have taken on. So those are very different circumstances.

It's not so much that we need to now look back and think, "How could we have done it differently?" We need to be, while it's all fresh in our minds, thinking forward so that in future we're not starting from scratch and trying to scramble through the files again.

Chair: That is exactly our purpose in this Committee, and we're finding what you are saying very helpful, very constructive. Simon, do you have more questions on that?

Simon Hart: No.

Q126 Chair: Before we go on to the next sets of questions, you were talking about the caretaker Government and the purdah period. This is also relevant to the timing of the resignation of the former Prime Minister. *[Interruption.]* Let's just give it a moment, until the bell stops. "For whom the bell tolls"-in this case, the former Prime Minister. The timing of his resignation was quite controversial at the time. Do you see that as significant? Did he resign at the right time, constitutionally?

Professor Hazell: I think there are two things to be said. One is that the draft Cabinet Manual could be clearer in stating in terms that it is the duty of the incumbent Prime Minister to remain in office until it is clear who can command confidence in the new Parliament. If it had been stated clearly in that way, those, I thought, very unfair headlines in *The Sun* and the *Daily Mail* about "the squatter in Number 10" could more easily have been rebutted.

As to the precise timing of Gordon Brown's resignation, we know that by the time he did go to the Palace to offer his resignation it was clear that Labour as a party, and he as the Labour leader, could not command confidence in the new Parliament, and that it was therefore very likely that the Opposition leader, David Cameron, could. What was not clear at that stage was what kind of Administration David Cameron might form-whether it would be a minority Conservative Government, or, as it turned out, a coalition.

Q127 Chair: That's very helpful, thank you. Dr Fox?

Dr Fox: I probably take a slightly different view from Robert, in the sense that he's talking about clarifying the Cabinet Manual a little more, with regard to when it is clear who can command confidence. It seems to me that late Tuesday afternoon, early Tuesday evening, when Gordon Brown took that decision to resign, it was clear at that stage who could command confidence. It was

not Gordon Brown, and the only person who it was, was David Cameron. What was unclear was whether it be a coalition, or a minority Government of supply and agreement. It seems to me that the constitutional position was that he was going to be the person who was Prime Minister and form a Government in some form. Was it necessary at that point, constitutionally, to know what form it would take?

Q128 Chair: That's the key question.

Dr Fox: That goes to my point in the written evidence I've submitted. There is a difference, it seems to me, between clarity about the identity of the Prime Minister, and how you define, in fact, readiness for Government. At what point do you regard the transition to have been made from just knowing that identity to feeling that the Government are ready to take office? Is that the point at which all the t's are crossed and the i's are dotted in the coalition agreement? Well, there was an interim agreement and then there was a further agreement, so would you have waited a week until that was ready? Is it when you have appointed all your Ministers and you've therefore agreed all the deals between the two parties? Well, that took quite a while. Would you wait for that point? Would it have been when the Lib Dem triple lock had come into place? They had a deal, but they couldn't be absolutely sure until the triple lock process had gone through. Now, on this occasion, it was a fact that it went through very smoothly, from their perspective. In future that need not be the case. They could have had difficulties; they may have had to have a special conference. Do you wait until that point?

I take Robert's point about "maybe a little longer", but I think there is an issue about how you define it, and I'm not sure that that language necessarily gets you to a sufficient point of definition.

Q129 Chair: But you consider that the transfer of the responsibility of Prime Minister-who the Queen sends for-is the relevant point?

Dr Fox: Yes, the relevant point is that the constitutional position is: who can command the confidence of the House? If the incumbent Prime Minister determines that he cannot, and therefore there is no prospect for him to go, he would have had the right to have continued to try and face the House, if he wanted, in a sort of Baldwin scenario, but that obviously wasn't an option. If he determines that he cannot command the confidence of the House, and cannot form a Government, the constitutional position is to advise the monarch to call on someone else, the Opposition leader in this case. It seems to me that how you then go beyond that and define Government readiness becomes highly complex, because it will depend upon what the arithmetic calculations were, in terms of the parties.

Professor Hazell: May I just add one thing? Dr Haddon can then elaborate on it. There is an alternative tradition in the Westminster world. In a sense, in Britain, it's regarded as undignified for the Prime Minister to remain in Downing street as soon as it's become clear that he cannot command confidence in the new Parliament, but in places like Australia, Canada, and New Zealand, they allow a week or so, even when it's clear that the incumbent Prime Minister has lost the election, for the new Government to be formed in a more deliberative, reflective and orderly fashion. That new Government are typically sworn in after about 10 days. This is in Ruth's report rather than mine, so she's the expert.

Dr Haddon: I'll go on to Robert's point in a minute.

Professor Hazell: Sorry, Catherine's report.

Dr Haddon: Yes, thank you, Robert. I would first go back to Ruth's point. I think, yes, you have to keep remembering that the way in which a Government are formed is on the basis of that individual who can command a block of confidence in the House of Commons, and then it is for them to form a Government, both for appointing Ministers and for being able to carry votes in the House of Commons.

To go back to the issue about whether or not you want to have that certain and clear formation of Government before that process of a change of Prime Minister occurs, that's a separate question from the constitutional position that Gordon Brown found himself in. That goes to points about whether or not we want to have that delayed period, and whether or not we would have a fixed period where you have a Prime Minister elect, with clear caretaker rules surrounding what the caretaker Prime Minister does while the Prime Minister elect goes through the process of forming a Government, of considering in greater depth, and perhaps with a greater amount of rationality-more sleep, and so forth-whom he will appoint to which post. Those Ministers can go through a process of induction, and you can have sort of political vetting. You can have a clearer process of relationship with officials. In Canada, that's the process that they largely go through. Unlike our system, they have a much clearer divide; they don't have a long period of pre-election contact before an election campaign. It's only through the Leader of the Opposition that any such contacts occur. So in that period of around 10 days to two weeks, they go through the process of working up how their plans for Government would translate into action. That would occur whatever the result. Obviously, Canada has experienced a large number of minority Governments, so it's well versed in doing it under this period as well.

Q130 Chair: Can you just confirm that that would mean, though, that effectively-because we've been talking about caretaker Government, purdah, and so on-the country would have no Government?

Dr Haddon: No, it would have a Government; it would have a caretaker Government.

Q131 Chair: It would still have a caretaker Government. For example-am I right in saying this?-nobody objected to Alistair Darling as the outgoing Chancellor of the Exchequer representing the country in international meetings.

Dr Haddon: No, and this comes to the importance of the caretaker conventions. You have to remember that they are no different-well, they vary in a couple of small details around use of Government cars and so forth, but they are not wholly different in essence to the period of purdah in the six weeks before the general election. So it's the same sort of restrictions upon signing major contracts that might tie the hands of a future Government, making major appointments, and, in that period, using the Government machine for party political purposes; that is the essence of why they sort of restrict it in that way.

It's very clear that if anything has to be done-if any actions have to be taken of major significance-either a short term measure or solution should be looked for first, and there should be the possibility of consultations with the leader of the Opposition parties. That also occurs with Privy Counsellor status for all sorts of other issues around national security and defence, and so forth. So, these things are well versed.

Q132 Chair: Do you consider that the rules for pre-election purdah and now for post-election purdah are sufficiently clear?

Professor Hazell: I think they're slightly confused because of the use of the term "purdah". That's why we are trying to encourage the Government to use the term "caretaker convention", which is the term used in Australia and New Zealand. We think that conveys more clearly the rationale for the restrictions on Government activity and decision making, because there are two different sets of principles and rules in play. Purdah is a long-standing set of principles about the limitations that should apply, in particular to the Government's, if you like, propaganda machine-I'm using that term neutrally-the public announcements that Ministers can make, and that applies during any election; it applies when there are European elections, and it applies when there are devolved elections. It is in recognition of the principle of electoral fair play that during an election, not just a general election, the Government shouldn't use the Government publicity and information machine for their own electoral advantage. In particular, it applies to majority Governments. It applies to Governments that can and do command the confidence of the House of Commons.

The caretaker convention, I think, rests on a different principle-this is argued in the written submission that I put to the Committee-namely that although the Government are in office, are the lawful Government, and can exercise all the powers of a lawful Government, they no longer have the political authority, because they don't command the confidence of the House of Commons. By definition, once Parliament has been dissolved for a general election that must be the case, and after the election, until it's clear who can command the confidence of the new House of Commons, we argue that the incumbent Government must remain in office but should be subject to what we call the caretaker convention.

There is a third context in which the caretaker convention should also be triggered, and that is if, mid-term, a Government lose confidence because they lose a confidence motion.

Q133 Chair: That is very helpful. I think that does take us on a stage. Dr Fox?

Dr Fox: Just very briefly, this is a question for consideration, and I don't know the answer. Robert and Catherine may have a view on this. It did occur to me that the differential between the pre-election purdah period and the post-election caretaker status, particularly around the Alistair Darling situation of going to the Finance Ministers' meeting, is this: what if a Cabinet Minister in a Government who then become a caretaker Government, because they haven't won the election, is not re-elected, and loses their seat? In the purdah period, it's kind of acceptable because no one is an MP; you are all candidates. But once the election has taken place, some are MPs. What happens to that individual who isn't? Had Alistair Darling, say, lost his seat, in those scenarios you could say, "Well, some people in Cabinet are more equal than others." It may well be an acceptable thing to continue on a caretaker basis, but I do wonder at that stage if he had been going to the Finance Ministers' meeting, and had lost his seat, what would public and media opinion have been about that? I don't know what the answer is.

Q134 Chair: One would guess that he wouldn't have, but the Chief Secretary to the Treasury would have stepped in, because it's "The King is dead; long live the King." There's always another Minister.

Professor Hazell: Constitutionally, the position is quite clear-that he remained a Minister in the incumbent Government, subject to the caretaker convention. Ministers remain in office because they've been appointed as Ministers, not because they're Members of Parliament.

Chair: That's very helpful, thank you very much.

Dr Haddon: Robert's right, that's the constitutional position. It's the political ramifications that Ruth pointed out.

Dr Fox: That is the position, but that could come under immense political pressure, media pressure, if that were to arise.

Chair: Of course, you've made a point that is clearly constitutionally correct, and we all appreciate that, but one wonders what the headlines in *The Sun* would have been had that happened. But that's not the question for the Committee now. Andrew, sorry, you've been waiting a long time to make your points.

Q135 Mr Turner: Answering that last question, the Earl of Home, of course, became Prime Minister, then got rid of his peerage. Then there was a by-election; then he was elected, and then he came into the House of Commons, so there was a period when he was not. But what I was going to ask on this particular subject, almost all of which you have dealt with, is this: is the difference between the system in Britain and the system in the other Commonwealth countries that in our case we are dealing with the Queen, whereas there we are dealing with someone halfway between the Crown and the Prime Minister? Is that in any way relevant?

Professor Hazell: I don't think so. The Governor General represents the Crown in Australia, Canada and New Zealand, and I think for this purpose is in exactly the same position as the monarch, in terms of the constitutional powers that are being exercised, and the powers we are talking about—we talked about the power to dissolve Parliament but, in particular now, there is the power to appoint a Prime Minister. Again, Catherine is more expert on this than I am, and she can tell you more about the conventions that have led to the practice in Australia, Canada and New Zealand of a more deliberate and slightly slower process of Government formation.

Dr Haddon: Thank you, Robert. Going back to your point, the answer, in essence, is no, not at all. I was at an event last night with Professor Margaret Wilson, who is a former New Zealand Speaker, talking about the Cabinet Manual, and talking about the processes they've gone through. If you look at some of the past, more recent constitutional crises in that country, and also in Canada, there is clearly an acute feeling that the sense of constitutional crisis is because the Governor General represents the Head of State, and it is all around that representation of that role, not around the specific individual.

To go back to the point about the role of the Cabinet Secretary in this, not just as an adviser to the Government of the day, but also as a constitutional custodian, traditionally the process has been marshalled in some respects by the Cabinet Secretary, the Prime Minister's principal private secretary as the link to the existing Prime Minister, and through the Queen's private secretary, who also plays that role. So one shouldn't invest a sort of personal role of the monarch in this. It's really around that role as Head of State, which is why we often refer to the monarch, the Head of State or to relations with Buckingham Palace, in that sort of general sense.

Q136 Mr Turner: Could I just follow up with another question that goes back to February, when part of this booklet was published? Was that a civil service decision, or was it a Prime Ministerial decision?

Professor Hazell: It was a civil service initiative, which I applaud, and, as I have said, in the event it was extremely useful that the draft Cabinet Manual had been published three months or so before the election. But it was a civil service initiative that had the authority of the Prime Minister. You can ask the Cabinet Secretary about this next week, but my understanding is that Sir Gus O'Donnell

was persuaded that it would be very useful to make much clearer the rules on Government formation, particularly in the event of a hung Parliament. He saw the need to do that and decided that the Cabinet Office should do that. I think he then approached the Prime Minister and asked for his authorisation.

Dr Haddon: I'd just add that there is some confusion around the role of a Cabinet Manual in this country. Obviously, when we use that title we are referring particularly to the New Zealand one and, as Robert pointed out in his evidence, that took many years of development from very limited documents up to the one that exists at the moment, whereas we are going through that process in a rush.

The idea that equivalent documents didn't exist to advise officials in their advice to the Government of the day, the monarch or whoever, as custodians, again, of official records, and so forth, is misleading. We had some documents that bear great similarities to that, particularly one that was called the precedent book, which is very similar to the Cabinet Manual in the specific issues that it covers and in the specific role that it's supposed to play, not as a treaty or a legal document, but merely as an accumulation of various advice gathered over the years, in which the constitutional position is explained and added to. It's a living, breathing document that does not change events, but changes to reflect what has already occurred. We do already have that; we just didn't have it written up in such a succinct and practically useful way, or have one that was made publicly available. The precedent documents that I've seen that exist in the National Archives go back to the 1960s, and are incomplete and obviously out of date. To have something like that published and made available for the media and the public, and for the politicians to be held to account by-that was the importance of it, rather than as any kind of new edition to the lexicon of official documents.

Professor Hazell: May I make one further comment? In supporting the case for publishing the Cabinet Manual I'm also, in effect, supporting the case for more clearly recognising that the Cabinet Secretary has a constitutional role. Catherine has, in part, referred to this. What I mean by a constitutional role is that for some purposes, he should not be regarded simply as the most senior civil servant serving the Prime Minister of the day. There are two particular respects, I think, in which this might apply. One is in authorising the pre-election contacts with the opposition parties. Normally a Cabinet Secretary seeks the permission of the Prime Minister before that happens. I hope that it is becoming a sufficiently well-established practice that in future the Cabinet Secretary might, as a courtesy, inform the Prime Minister that he has authorised pre-election context in the usual way, and at the usual time in the electoral cycle, without feeling that the Prime Minister has to give his permission and therefore implicitly might be able to veto pre-election context.

Similarly, after the election, the Cabinet Secretary has a constitutional role as the custodian of due process. He explains the constitutional rules to all the political parties, and as Ruth described earlier, he-and this was a new departure for Whitehall-facilitated the negotiations between the parties by providing meeting rooms and by providing staff, and is on standby to offer policy advice as well.

Q137 Chair: If the Chairman, Graham Allen, were here, I know that this is a matter on which he would wish to take you further. I am putting words into his mouth, but I think he would want to ask you this. I think he is of the opinion that the Cabinet Secretary arguably might have had too much power in the process that took place earlier this year, and that it ought to be up to elected representatives-Members of Parliament-to undertake the whole formation of Government process. It does appear that the Cabinet Secretary played a larger role than he might have. This is not my opinion; I'm trying to put the question that I think Graham Allen would wish to put to you, which is: from what you have said, do you surmise that those two particular duties, which you have rightly

outlined, give the Cabinet Secretary, or the post of Cabinet Secretary, possibly a greater standing than has heretofore been recognised?

Professor Hazell: Yes, it would be a greater standing than has heretofore been recognised. But to take a real example, and show the risks if the elected politicians remain in charge, after the first elections to the Scottish Parliament in 1999 the Liberal Democrats, who were one of the political parties negotiating about a possible coalition, formed the impression, rightly or wrongly, that the civil servants who were on hand to advise the negotiations appeared to be leaning too strongly towards the, if you like-this is slightly confused terminology now-incumbent. Well, I mean the First Minister elect, because Donald Dewar had been the Scottish Secretary of State, and all the officials in Scotland had been working directly for Donald Dewar. But it's not entirely inapposite, because in Whitehall the whole of the civil service machine has been working for the incumbent Government, and the Cabinet Secretary has been the chief official for the incumbent Prime Minister.

What I'm arguing is that, particularly in the immediate post-election period, the Cabinet Secretary should be recognised as being the holder of the ring. In particular, he should afford absolutely equal treatment to all the negotiating parties. He is clearly accountable directly to the parties, because if they feel they're being unfairly treated they can say so, and no doubt it may come out afterwards if there's any substance to their sense that they have been unfairly treated. I think any Cabinet Secretary in this position will take extra care to ensure that there is a completely level playing field and all the negotiating parties are treated absolutely equally.

Dr Haddon: I'd add a few points on that. I think one thing is you have to remember that the role of the Cabinet Secretary in this country more generally has become so much more public than it would have been the last time we had a hung Parliament result. In particular, around the election this time, the Cabinet Secretary's role was much more public, and because it was more visible, I think there's a danger of confusing that with "more powerful".

I would also add to what Robert has just said about his role as a custodian. This comes to the heart of the role of the civil service itself as a sort of permanent bridge between the impermanence of the elected Government. We have this system and that balance precisely because we don't go through what, say, the Americans go through; they have a three-month transition process. So that's part and parcel of the system. If you're going to have that bridge and that process of overseeing and making sure there is seamless continuity of government then you need to have somebody who can oversee that process.

Dr Fox: Can I just add to that? I agree with what Robert and Catherine have said, but I do think there is the issue of accountability to Parliament that then arises in terms of the documents, and in terms of the Cabinet Secretary. We know, for example, that when the Justice Committee published its recommendations, there was then no formal response to those. It may have been that time ran out, but there was no formal response, so we don't have the new drafted version, assuming that it did make the changes to the draft that was published. Once we get the whole Cabinet Manual, there has to be a consultation process on that and what would be the accountability function. Obviously, if, for example, the Fixed-term Parliaments Bill goes through, there would need to be some further changes to the Cabinet Manual, to make clear that in the event of the emergency valve mechanism being enacted-in the event of a no confidence motion-you would have, potentially, a 14-day period where it would have to be made clear in the manual, I think, that the caretaker convention applies in those circumstances. So what is the accountability function there, in that context, to make sure that it happens and that MPs obviously have the opportunity to scrutinise?

Chair: Fortunately, we have the current Cabinet Secretary coming before the Committee next week, when there will be plenty of questions for him. Chris Chope?

Q138 Mr Chope: Can I follow up on that issue of lack of accountability? Nothing you said today, or in your written evidence, has examined sufficiently, in my view, the role of the parliamentary parties in the formation of Government where there's a hung Parliament. Obviously, if there is a minority Government, that minority Government are able to be formed on the basis of the manifesto on which they were elected. They may not be able to implement everything in their manifesto, but it's pretty clear to the MPs supporting that party that that is what it's going to be about, essentially.

What we had this time was a Government formed on a completely new manifesto that wasn't the subject of consultation in the Conservative party at all. There are probably about half a dozen Conservative MPs involved in this, out of over 300 elected in that election. It seems to me that what happened was that the leader of the Conservative party was able to exploit the absence of any requirement in the Conservative party constitution or in the rules of the parliamentary party to require accountability. So he wasn't constrained in the same way as the Liberal Democrats were because, through a previous experience, they had changed their rules to ensure that the MPs weren't going to be left in the dark, as Conservatives were on this occasion.

Surely this is absolutely fundamental to the issues of accountability, and to the issues of the timetable for setting up such a Government. Would you accept that it's most unlikely that a parliamentary party is ever again, in the future, going to allow the wool to be pulled over its eyes in the way that happened this time with the Conservative parliamentary party? They will want to have a much bigger say in any negotiations, particularly as it emerges gradually that something far short of what the best deal could have been was obtained in negotiations in this particular Parliament.

Can I ask you whether the longer time scale that is involved in setting up a coalition Government on the continent is a result of enabling the political parties and the parliamentary parties to have an iterative discussion about the possible contents of a coalition agreement? If that's so, then I can understand why it should take longer. Would you accept that that is a desirable thing—that there should be more discussion with the people's representatives who had only just got elected? That would improve the connectivity between the people and Parliament, and there is, therefore, a case for having a longer time where there is a setting up of a coalition rather than a minority Government.

Professor Hazell: The honest answer is—forgive me—I don't know enough about the practice in European countries to know the reasons why it takes so much longer and whether one of the main reasons is consultation within the party.

If part of your question implies that the consultation within the Conservative party was inadequate, that's a matter of internal party democracy within the Conservative party for the Conservatives to resolve if there are sufficient Conservative MPs who feel the rules or the tradition needs to be changed.

Q139 Chair: Perhaps we will need advice on the constitution of the Conservative party itself, but that's another matter. I don't expect you to comment on that.

Professor Hazell: But I will only add that the Liberal Democrat parliamentary party was consulted, and I think you've had evidence on that from David Laws. That happened very swiftly.

Dr Fox: I would simply add this. I think if you had been asking this a year ago, most political party members in the Labour and Conservative party would have been ridiculing the Liberal Democrats for the triple-lock mechanism. Most of the other parties thought it was madness. In this instance it worked, but quite conceivably, had it gone pear-shaped through the triple lock mechanism, and had it created problems, people might have had a different perspective on it.

Robert is right—it's a matter for the internal party democracy of the Labour and Conservative parties to resolve. Clearly there were concerns in the Conservative party in some quarters. Likewise, I think there were some concerns in the Labour party in some quarters about the negotiations being led by some unelected peers as opposed to elected Members. So there are things that the parties are going to have to grapple with.

Dr Haddon: Just to echo that point, I'd say yes; I can only imagine that were there more strengthened and stricter processes to go through in terms of those iterations, as you put it, of various negotiations, yes it would take more time, and you would therefore need to deal with both of the problems we've discussed previously about managing public expectations, about the time involved in these changes of Government or, indeed, a continuation of Government, as well as possibly clarifying it in some fashion, whether through changes to the actual statutory process of general elections, or through changes to the conventions in a more informal sense.

Q140 Mr Chope: Just one quick supplementary. None of you has really picked up on the sort of constitutional issue—whether it's desirable that following a general election, if no party has an overall majority, the people's representatives should be able to have a say publicly in the contents of a new coalition agreement that is not the basis of any of the individual party manifestos. What happens, as happened this time, is that the people are kept in the dark. Their votes for a particular manifesto count for nothing, and the people they've elected don't even have a say in discussing openly what the revisions to the deal might be. Do you think that's bad for democracy, and for the link between the people, Parliament, and its representatives or not?

Professor Hazell: Formally, you, the elected representatives, do have a say on the new programme for Government. You have it in the five-day debate on the Queen's Speech, and that happened in this new Parliament. There is a different point—Madam Chairman, you must say whether or not you want this to be canvassed—which is, in terms of the link between the people, the elected representatives, and the process of forming the new Government, whether the debate on the Queen's Speech represents a sufficiently clear process for the people to understand that this is how the new Parliament expresses confidence in the new Government. We do trail in our written submission the possibility having instead of what is called an investiture vote, namely that as the first piece of parliamentary business in a new Parliament, the new House of Commons should be invited to nominate the new Prime Minister, which is the practice in Scotland and in Wales. That person is then formally appointed First Minister by the Queen, but after the legislature has signified, "This is the person in whom we have confidence." But that, I appreciate, wasn't your question.

Chair: You anticipated the next question. Let me ascertain if Chris has finished his line of questioning.

Q141 Mr Chope: I accept that obviously in the Queen's Speech debate all you have got is a group of Bills that are brought forward. It's a very inadequate substitute for a debate on the whole of the new coalition agreement, to which you could, for example, move amendments. There was no formal system for facilitating that.

Dr Haddon: To address your point more directly, it's part and parcel of the representative system of democracy that we have that if you elect an MP whose party contains a manifesto and they then break manifesto promises, at the moment the only possibility you have is of going to the next general election and not voting for them again. Whether or not we introduce recall, and whether or not coalition agreements become part and parcel of that whole process, in the way that manifestos have. But it's a political part of it. It's not the constitutional parts, which we're focusing on.

Q142 Chair: That does open up the whole question about the validity or the weight of a coalition agreement, as compared with an election manifesto, one having been there for the voters to peruse, should they so wish, or having been, in some form, published in newspapers before an election. The coalition agreement was not at all in existence. Just before we come on to the issue of the investiture vote, would you suggest that there ought to be any formal recognition of a coalition agreement as a manifesto? As a programme of Government?

Dr Haddon: I don't know how it would work in practicality. You can't then re-have the election on the basis of voting for the coalition agreement. In essence, a coalition agreement would be, in part, based upon the two parties' manifestos. Obviously variations exist in how far they translate into it. But again, I think, these come down to the possibility of holding people to account politically through the system of Government; I don't know; you may have other suggestions, but I can't think of any strict process you could have that could sign off a coalition agreement in that way. But I don't know enough about how other countries deal with that specific aspect of coalition agreements.

Q143 Chair: Rather than that, would you care to develop the arguments about an investiture vote? You made a very good point that although we know that Parliament voting on the Queen's Speech is, in effect, a vote of confidence in the Government's programme for that Session of Parliament, it isn't presented as such. Are you suggesting that there should be an investiture vote on the Prime Minister?

Professor Hazell: In principle, yes, I find it a very attractive notion, because I do think it then becomes much clearer to the electorate that a parliamentary election, in effect, is a two-stage process in terms of forming a Government. First, we the people elect a new Parliament, and the new Parliament then selects the new Government. Voters in Scotland, when they elect a Scottish Parliament, can see in the first 28 days the next stage in the process, when, as its first item of business, the new Scottish Parliament elects the First Minister, or rather selects the First Minister, who is then formally appointed by the Queen.

I think in terms of democratic process and making the way in which Parliament operates more transparent to the people, it would be a significant step forward. But I do recognise-it was only in the process of writing my written submission that I worked this through for myself-that there is quite a serious practical difficulty in terms of timing. That's why we appended to our written submission a chronology of the last election and process of Government formation, leading up to the Queen's Speech as the last date.

The question that has to be raised for proponents of an investiture vote, amongst whom I include myself, is: where in this chronology would you try to place the investiture vote? It has to come quite early if it's going to be the first item of business and if people want to know who the new Prime Minister is. The difficulty is that there are conflicting principles here because I also support the small innovation in this Parliament whereby Parliament didn't meet until 12 days after the election, something I think we all recommended. Indeed this House recommended, through the report of the Modernisation Committee before the election, that there should be a longer period to induct new MPs and for the new House to settle in, and so on.

That's my dilemma. If Parliament is to meet a bit later, which I support, where in that more prolonged chronology would the investiture vote take place? I think it could only work if the UK were willing to move to the more leisurely process that we've described happening in Australia, Canada and New Zealand, where it becomes accepted that a new Government don't formally take office until 10 days or two weeks after the election, and during that longer period the incumbent Government remain in office as a caretaker Government. But for us that's quite a big change in our culture and our tradition.

Q144 Chair: If I may just clarify this point-I know that Simon wishes to go on to a different point and has to leave quite soon; I'll be quick-you would say that incumbent Government, the previous Government, would remain the caretaker Government even although the Queen had sent for someone else as Prime Minister. Or would the Queen sending for someone to be Prime Minister not happen until after the investiture vote?

Professor Hazell: It couldn't. The whole purpose of an investiture vote is for the new House of Commons formally to indicate, through its vote, in whom it has confidence. That's what happens in the Scottish Parliament, when they select the First Minister. If the investiture vote is the process through which the House indicates in whom it has confidence, the Queen cannot appoint anyone until the House has gone through the investiture vote. Hence my critical question that I direct back at myself: so when will the investiture vote take place in the chronology?

Q145 Chair: If Parliament didn't meet for 12 days, as happened this time-quite properly, as far as practicalities are concerned-*The Sun* would have a headline for 12 days, "Squatter in Downing Street".

Professor Hazell: Indeed. In Australia, Canada or New Zealand, 12 days would be regarded as nothing unusual, because that's the time they take, with a Prime Minister elect gradually forming his new Government, and so on, and the incumbent Prime Minister remaining in office. But that is not our culture.

Chair: Indeed, in the USA, it is two months, I suppose, for the President. Could we suspend this part of the session just for a moment, because Simon wants to raise a different question and he has to leave? You have been very patient in giving us so much time; thank you.

Q146 Simon Hart: It's a very quick, unrelated point about the constitutional validity of the coalition agreement in the context of the Salisbury convention. It's a point I think Dr Fox made in the Hansard Society evidence. We've tested this on politicians in front of us and not gone very far, but you've described the dilemma as having the potential for a political and constitutional crisis. I just wondered if you could expand on that and explain exactly what you mean by "crisis", because there are one or two things floating around this building at the moment that could trigger this crisis, we might suggest. I wondered if you had a view. You obviously do, but could you expand on it?

Dr Fox: If a piece of legislation that was not in the manifestos of the two parties in exactly the same way as it appeared in the coalition agreement-probably on a constitutional issue, I think, most likely-went to the Lords, and they objected to it so vociferously that they were minded to oppose it and to resist it, under the terms of the Salisbury convention they may have a case. Out of that, you could then have a crisis. My view, however, is that the peers would only want to push at that if they felt that they had public opinion on their side. They would have to have a very, very strong case to make. I think they would be politically mindful of the fact, on this manifesto problem, that at the end of the day, the public didn't vote for any of the manifestos in full. So what do the political parties do? There has to be some kind of deal, some kind of arrangement, so there has to be some

merging of manifestos, and out of that process not every party can get everything that it wants, and you have to negotiate around it. So I think they would be highly mindful of that and recognise that.

Do I think it is likely? No, in general, I don't think it's likely, but the risk is there in terms of the Salisbury convention, and in terms of therefore clarifying that for the future. The other way, of course, of dealing with it is that more peers will be created, so that may address it, and that brings on a whole different set of issues.

Q147 Simon Hart: You talk about a crisis. Surely, in a sense, the only crisis that would occur with this is that the House of Lords would simply reject what the House of Commons has sent to it. There's nothing particularly unusual about that, unless it is taken to its maximum extent, which is a potential threat to the Parliament Act. Is that the crisis you're talking about?

Dr Fox: That would be. If it was something of a major constitutional Bill that was at the heart of the agreement between the two parties, then you could see how a political crisis might become a constitutional crisis at some point in the future. But, again, I stress, I don't think it is likely for the reason that the peers would be very, very mindful, I think, of the politics that surrounded the negotiations and the situation that the parties found themselves in at the point of negotiation, and we then have this other option of the creation of additional peers, if it were to be problematic.

Professor Hazell: I would only add this, if I may: the thinking about the Salisbury convention has changed quite a lot in the 60 or more years since it was first enunciated in 1945. There's a very helpful report from the last Parliament that has almost sunk without trace, and so I gladly mention it to the Committee. It's an excellent report of a joint parliamentary Committee, the Joint Committee on Conventions, from 2006, and it has a whole detailed chapter about the status of the Salisbury convention, and how its interpretation has changed over the years and, in particular, how it should be interpreted in the post-1999 context when there isn't an overwhelming majority of one party in the Lords.

That report concluded by recommending that each House should adopt a resolution, in effect updating and clarifying the Salisbury convention, and their formulation was: "In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to 'wrecking amendments'...A manifesto Bill is passed and sent (or returned) to the House of Commons...in reasonable time," and "The House of Lords considers government business in reasonable time." That was their recommended updating and reformulation of the convention. The convention is essentially one about the relationship between the two Houses and underlying it is a general principle of self-restraint on the part of the second House.

Dr Haddon: I would only add a couple of points. One is that certainly in discussions about the Salisbury convention, this was all prior to us having the first ever coalition agreement, so there is no convention, because it has not yet occurred, so all of these questions about thinking about how it would work are important but they will be setting a precedent for the future.

But the other thing is to understand again what a coalition agreement is. It's the agreement between the two parties. It's not a manifesto per se. It's as much an agreement as to how the two parties will work together. My colleague, Akash Paun, in a recent report looking at the coalition, how it's come into being, and how it's working and going forward, and looking abroad, has pointed out the need

to renew and to reconsider the coalition agreement going forward for the parties in terms of how they continue to work together through the course of the Parliament.

Q148 Chair: That's very helpful. Can I just clarify a point that Professor Hazell made when quoting from that 2006 report? It is indeed helpful, and we will all look at it as a Committee-thank you for pointing it out-but of course the phraseology there is "manifesto Bill", and if you have a Government who are based not upon a manifesto but upon an agreement made post-election, then there will be Bills-indeed we are considering them now-that are not manifesto Bills.

Professor Hazell: Indeed, and there's quite a lot of discussion in the report of the Joint Committee on Conventions as to whether the doctrine might be restated in terms of a Government Bill. I was slightly surprised, re-reading the report this morning, to find that its conclusion remained expressed in terms of a manifesto Bill, because if you read in particular the chapter of the report about the Salisbury convention, I think you'll find quite a lot of the discussion and argument does slightly undermine the manifesto doctrine. In terms of describing practice, in effect, it is Government Bills that have been recognised as having a legitimacy and authority that the House of Lords generally respects.

Q149 Chair: That's very interesting. Is it not the case that there is an enormous difference-

Simon Hart: I'm so sorry, I have to go. Thank you.

Chair: Thank you, Simon. Is there not an enormous difference between a piece of legislation that has been put before the electorate in a manifesto before an election, the result of which was a particular Government, and a Bill that could come out of nowhere in the third year of a Government that had never been mentioned in a manifesto or put before the electorate in any way?

Professor Hazell: As I'm trying, in effect, to restate it, my reading of the Salisbury convention is that it regulates, in a soft way-because conventions are flexible and they are unenforceable-the relationship between the two Houses and the respect that the House of Lords accords to legislation, in particular legislation that has been passed by the House of Commons, but of course there is a question as to whether the Salisbury convention should apply also to Bills introduced in the Lords. I think the current thinking now is that the convention does apply to those Bills as well. So it's recognising, in effect, a legitimacy on the part of Government Bills. In describing past practice, I think it accurately says that it is Government Bills that have that special respect accorded to them by the House of Lords, and it has some statistics in an appendix, and they show, I think, that in the 25 years previous to 2006, on only 13 occasions has the Lords opposed Second Reading, in the sense of holding a Division. On only five occasions has a Bill been defeated on Second Reading. So that is an indicator, I think, of the way in which the Lords respects the convention in practice.

Q150 Chair: That will be the convention that it is Government Bills and not only manifesto Bills?

Professor Hazell: Yes.

Chair: That is very helpful, thank you. Dr Fox?

Dr Fox: I just wanted to add to Robert's articulation of the self-restraint of the Lords, and my earlier points about the political context of this. I think it's also perhaps worth adding-this is a particular Hansard Society bugbear around the legislative process and improving scrutiny-that given that they are not manifesto Bills, there is also, it seems to me, an onus on the Government in terms of bringing forward its legislation to ensure that it does so in a way that allows for maximum scrutiny

of those issues, given the broader political and constitutional issues that surround this debate about that. Clearly, in terms of some of the legislation, at present it would not meet the test of that extra time and consideration.

Chair: That is helpful, thank you. Chris?

Q151 Mr Chope: That is a very useful comment. I'm sure members of the Committee will endorse that, and hope that it's taken up in the other place when some of the current Bills are considered there. Can I just ask Dr Fox this? She indicated that one way for the Government to respond to difficulties in the House of Lords would be to create more peers. Is there any constitutional constraint at all on the ability of the Prime Minister to nominate and appoint more peers, or could he just go ahead, as it seems this is being taken seriously by the coalition as an option to increase significantly the number of peers, pro rata to the votes that each of the coalition parties had at the last general election? Is there any constraint on that at all?

Dr Fox: I'm not aware of one. I don't know if Robert's aware of one.

Professor Hazell: In effect, there are two emerging new conventions. Formally, constitutionally, there is no limit on the number of new peers that the Prime Minister can recommend the Queen should appoint. But in terms of how successive Prime Ministers in recent times have indicated they will recommend the exercise of the prerogative power to appoint peers, there are two important emerging conventions, starting with Tony Blair as Prime Minister. He articulated the very important principle that no Government should seek an overall majority in the House of Lords. Secondly, that Labour Government, and more recently the new Government led by David Cameron, have both indicated that in appointing new peers to the party Benches in the House of Lords, they will seek to do so in rough proportion to the balance of votes cast at the previous election. Votes cast, not seats won.

So there's a second principle—a proportionality principle. I did some work on this in June, in a report that was published about the Conservative-Liberal Democrat agenda for political and constitutional reform. I worked out in a section of that report what the numbers of new peers might be who could be appointed to the respective party Benches. The greatest deficit is on the Liberal Democrat Benches. From memory, the deficit on their Benches, I think, was about 52. On the Conservative Benches I was surprised to find it was only about a dozen. So if David Cameron, as Prime Minister, follows the principle that he's enunciated he should, in appointing new peers to the party Benches of the coalition parties, appoint roughly four new Lib Dem peers for every one new Conservative peer, and we wait to see if he follows the proportionality principle.

Chair: That's an interesting gauntlet to throw down, thank you. Sheila?

Q152 Sheila Gilmore: First of all, Chair, apologies for not being here at the beginning of the meeting. I was in a Finance Bill Standing Committee, which I can assure you was considerably more—maybe I won't say what it's more. You can imagine. The point has been made at various of our sessions, and I think the Chair made this point earlier, that during the process we had in May, some of the pressure was put on by the media. I've asked this question before of some of the other people, and I'd be interested in your view. It's my view that it is partly the absence of a clear process—for example, having a set down process that you would have an investiture vote after a certain period, and so on—that worsened that media pressure, because there was no clear understanding of conventions in place. There might have been a Cabinet Manual, but certainly as far as the media were concerned, there was a lot of suggestion that we were in a constitutional crisis, and however much experts tried to say, "No, that's not the case", that impression was given.

So would it not be the case that, far from necessarily a long period encouraging that kind of press pressure, if we did have a clear process, and it was clearly understood and it was laid down, then a lot of that media pressure—there would be interest but not necessarily a kind of hysteria about, "You must get on with it. It's outrageous you haven't made up your mind yet" and that sort of thing, which did put pressure, I think, on the political parties, as well as everybody else in that—

Chair: We've covered some of those points earlier this morning, but this is still a good question.

Professor Hazell: I would only, if I may, venture a very brief response. I think at the last election we were in effect going through a transitional phase in terms of the new Cabinet Manual becoming recognised as the rules of the game. During the election, and in the immediate aftermath, it was left very much up to the experts. Dr Fox, Catherine Haddon, Peter Riddell and I all made a lot of media appearances trying to explain the process of Government formation and what was going on in Whitehall.

What I hoped might happen next time, if the new Cabinet Manual has been published and is much more accepted and understood as setting out the rules of the game, and if the Cabinet Secretary has a better understood role as the custodian of due process in Government formation, is that it wouldn't be left entirely up to independent people like us to try and explain what was going on. I hope that the Cabinet Office press secretary might be out there doing exactly the same thing, and he would be doing it, clearly, with all the authority of an official representing the Cabinet Secretary, rather than as an amateur expert like us.

Dr Fox: The only thing I would say to that is that it may have seemed perhaps to you as a media crisis—I don't know whether Robert and Catherine agree—but I thought the media response was more responsible than I anticipated and expected. I think in part that was the Cabinet Manual. In part it was a lot of the engagement that took place from organisations like our own with the media from pretty much February onwards, once the polls tightened.

In terms of educating the media about what the mechanics would be and what the issues and concerns might be, where the pressure points may arise—certainly, Robert's alluded to this—we all spent a huge amount of time between February and May talking to the media, both on and off the record, about what the process would be. So it was more responsible than I expected.

To echo Robert's point, this is the first time, and it will take time to bed in. There will be cultural change the more we go through this, if indeed hung Parliaments are going to be more of a factor in our system than previously. So next time I think it will be easier. You will see we've gone from three days to five days. I think you can then push the envelope a little further beyond that.

As for a formal timetable, one can see the advantages of that but, as Robert has said, you then do get into a debate about what that timetable should be, and I can easily see the media having just as much a bigger debate and concern about what that timetable would be if you tried formally to articulate it.

Dr Haddon: I thoroughly echo Ruth's point. Just to expand a bit upon it, one of our concerns in that period, and the reason why we were all engaged in this process, was that there would be some kind of 3 am making-up of the constitution, the morning after a hung Parliament. This was a very serious concern. I think it was the same sort of impetus that pushed the draft Cabinet Manual into being. I mean, again, looking at the very detailed files that we have available of the hung Parliament from 1974, which we were making available to the media, so that they themselves had something to hang all these constitutional technical points upon, such things occurred then. You had constitutional

experts out in the media trying to explain it, but to a public who were only then catching up, and at a time at which most of the constitutional understanding, most of the negotiations, were so much more behind closed doors. That just wasn't acceptable in our modern society with the kind of media that we have. So it was very necessary. So, no, I think it was a lot better than we had feared.

Q153 Sheila Gilmore: Just for the sake of reinforcing some of that, I think now, whatever happens in the 2011 Scottish Parliament elections, that will be the fourth occasion we will have been through that process. I think it's definitely the case that people become more accustomed to these sorts of outcomes. It's absolutely inherent in the Scottish system because it's calibrated not to have a majority. Something very odd would have to happen before there was any possibility of having a majority. People, I think, will accept that. Even if it takes time, people say, "That's what happens." It's partly a learning experience.

Dr Fox: Can I just add to that and echo it to a degree? I recall the expressions that were put out by some of the media and, I have to say, by some of the politicians during the election campaign about what would happen in the event of a hung parliament-financial crisis, political collapse, disaster was nigh-but the reality is that didn't happen. So all the scare stories did not come to fruition. I think it would be very difficult next time around for anyone to advocate that kind of scare story and that sense of crisis with any degree of validity and authority. So I think the environment and climate in which the discussions will take place next time will, as a consequence, be very different.

Dr Haddon: Just to add to that point, I think also it will be interesting to see whether or not Westminster, and perhaps the public more generally across the UK, will take more of an interest in Scottish and Welsh developments than we have been finding in the period previously, and will try to use the experience-10 years of it-that we've had there of constitutional innovations to educate Westminster. Hopefully we will all learn from it.

Chair: I suppose so. Andrew, did you have a point?

Q154 Mr Turner: I'll believe it when I see it. People are not very interested in what is going on in the northern part of the country, let's put it that way, if they live in the south. I was going to follow up the questions about peers. First of all, am I correct still that you can only appoint two peers per day of sitting? Is that still the case?

Professor Hazell: Forgive me, I don't know. There is a procedure for the induction of new peers in the House of Lords, and sometimes there's a bit of a queue when a large batch have been appointed, but there is, in theory, nothing to prevent dozens, or conceivably even hundreds, of peers being appointed. It just might take the Lords a little time for them to take up their seats.

Q155 Mr Turner: Which, of course, would mean that the Prime Minister making the appointments isn't making the appointments all at once; that was my point.

Professor Hazell: Forgive me; in a sense, that procedural constraint, I feel, is much less important than the earlier principles that we were talking about, namely that no party and no Government should seek an overall majority in the Lords and that Governments, when making recommendations for appointments for new peers, should observe a proportionality principle. The other, more important, practical constraint in the House of Lords now is that because the numbers have crept up gradually in recent years, they are really, really short of facilities and accommodation.

Q156 Mr Turner: This is my second question: in 1910 there was a second election before the Prime Minister was allowed to make this threat that he would create or appoint more peers. Does that still have any relevance?

Professor Hazell: I don't think so, but I defer to Dr Haddon as the historian among us.

Dr Haddon: I also don't think so. I think that the issue around House of Lords reform has moved on so much, particularly with the latest coalition agreement, that I don't think so.

Q157 Mr Turner: Finally, earlier on in your answer, Professor Hazell, you said "the Government's representatives" and then you said "the parties' representatives" in the House of Lords. Now, which is it, the Government or the party? The Government are, of course, two parties.

Professor Hazell: Yes. Formally, the power to appoint peers is a prerogative power and it's exercised by the Crown on the recommendation of the Prime Minister. So that's what I meant when I was talking about "the Government". I then talked about the party balance in the House of Lords, in terms of appointing new peers to the different party Benches. I then talked about the coalition parties, namely the Conservatives and the Liberal Democrats, who, as it happens, are the two parties who could expect to see additional peers appointed to their Benches if the proportionality principle is observed.

Q158 Chair: We will conclude shortly. You've been very patient with us, giving us so much time, but it's been excellent being able to explore so many issues in depth with you; thank you very much. Can I take you back to the point that we were looking at when we stopped to consider the Salisbury convention, and that is the possible investiture vote for the Prime Minister and the chronology of that process? Supposing there was a situation where there wasn't a hung Parliament but where a general election had a decisive result, and it was very obvious to everybody who was going to be the Prime Minister, how would the chronology then work, and would it still work supposing it was the incumbent Prime Minister?

Professor Hazell: This is why, forgive us, we keep referring you to the practice in Australia, Canada and New Zealand. In Canada, the voting system is first past the post, in Australia it's the alternative vote, but in Australia, more often than not, a single party wins an overall majority. In Canada they've had plenty of majority Governments, as well as quite a lot of minority Governments. But my understanding, and again, this is much more Dr Haddon's territory, is that even where a single party has clearly won an overall majority, the process of Government formation typically takes 10 days or so, and it's the Prime Minister elect who is forming his Government.

Dr Haddon: Yes, that's absolutely right. The point is that the acceptance of having a caretaker Government in place is so much more imbued in their political culture, and that's the big difference-the big hurdle that we would face in all of that. But to go to your point directly, yes, it would mean that a Government would not be formed until after the point of the investiture votes. So it would automatically instil some kind of delay in the whole process of handover of Government, which again seems difficult for us to accept in terms of our political culture. That is why we keep coming back to the point that we are the only comparable parliamentary democracy that has that process-an immediate overnight one.

Speaking to people in Canada, New Zealand and Australia, they are often so surprised that we do it, that we can manage it. I think this comes back to points that we have been going through throughout. It's not so much what process we want to go to and which one we want to change. With all of the issues we've been discussing here-investiture votes, possibly a delayed handover,

allowing more time for all sorts of activities in terms of Government formation to occur-it is a question of how we address them. These issues will continue to exist whichever of the options we go for. If we choose to continue with an immediate, almost overnight, handover then we need to think through what other mechanisms we need to put in place for it. If we choose to go for an investiture vote, then we need to think, "Well, that means we must have a delayed handover." So it's about the issues behind all of these sort of constitutional changes that could occur on these conventions, as much as the debate around them.

Professor Hazell: If I could just add to that, there are separate arguments, very well set out in Dr Haddon's report on transitions and preparing for changes of Government, as to why it is reckless to expect a new Government to be formed with such extraordinary speed, as is the British tradition. The politicians involved are all completely exhausted because they've been on the stump during the election for the previous few weeks. They probably had little or no sleep the night before-election night. Last year, Lord Butler-or was it this year in evidence to the Justice Committee in February?-described very graphically greeting Tony Blair as the leader of the Labour party who had just won the election and discussing with him how to form his new Cabinet, and he described very graphically how completely exhausted Tony Blair was and, in effect, how he felt it wasn't right to be taking such hugely important political decisions in a state of such unpreparedness and exhaustion.

Q159 Chair: I think we can all, as elected Members of Parliament, attest to that exhaustion on the day after a general election. I'm sure you have an extremely good point there. It's been very helpful to explore those issues and you have opened for us this morning new lines of inquiry. I hope you will welcome it if we come back to you to discuss them further. Thank you. Does anyone else have anything to say? Is there anything you would like to say in conclusion, or are there any matters that we have failed to raise that you consider we ought to have raised in this context this morning?

Professor Hazell: There is just one question that I had expected you to possibly ask on behalf of Graham Allen.

Chair: Please tell me that because I don't want to miss that one.

Professor Hazell: We can deal with this, I hope, very briefly, but had he been here, I think he might have said, "Well, Professor Hazell, surely we wouldn't need all this business with a Cabinet Manual if we had a written constitution," to which my answer would be that I don't know of any country that has a written constitution that specifies in sufficient detail the rules of Government formation. Indeed, many written constitutions are completely silent about the process. They simply say, "The President appoints the Prime Minister", or in the case of Australia and Canada, "The Governor General appoints the Prime Minister". So the analogy, I think I would venture, is that a written constitution is, if you like, the architectural grand design, but the Cabinet Manual is the wiring diagram and the plumbing. We need that to understand how the process works.

Chair: That is extremely helpful. I am grateful to you for not having let that pass, as I want to make sure that any of Graham Allen's questions are considered. Of course, although this particular inquiry is into the formation of the coalition Government, we are undertaking, in the long term, a general inquiry into whether there should be a written constitution or not. That will be a very important point to consider then, and I'm sure that we will be in touch with all of you in that context in the near future. Thank you very much indeed for giving us such a long time this morning. We hadn't expected it to go on for so long but the points you raised were so interesting that it was very worth while, thank you very much indeed.

Professor Hazell: Thank you very much.