HOUSE OF LORDS

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Inquiry on

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Witnesses: Richard Gordon QC and Professor Sir John Baker

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Members present

Baroness Jay of Paddington (Chairman)
Lord Crickhowell
Lord Goldsmith
Lord Hart of Chilton
Lord Irvine of Lairg
Lord Norton of Louth
Lord Powell of Bayswater
Lord Rennard
Lord Renton of Mount Harry
Lord Rodgers of Quarry Bank
Lord Shaw of Northstead

Examination of Witnesses

Witnesses: **Richard Gordon QC**, [Brick Court Chambers], and **Professor Sir John Baker**, [Downing Professor of the Laws of England, University of Cambridge].

Q1 The Chairman: Good morning. Thank you very much to both of you for coming and taking part in this new inquiry that we are undertaking.

We are, as I said in the corridor, sound recording this, so I would be grateful when you speak if you would not mind identifying yourselves for the record. We will be not, as it were, proceeding in a particularly formal way round the table. We have found that a discussion is very useful in these areas of evidence. I know you have both had the opportunity to look at the areas that we are concerned with, so I wonder if the best way to start is to ask you whether either of you would like to make a brief opening statement to the Committee?

Richard Gordon: Well, I think we probably both would. My name is Richard Gordon QC. Very briefly, it seems to me that there are, in the context of improving the machinery for constitutional reform, several different models. One is obviously, at the very top of the pyramid, the idea of a written constitution. Below that, perhaps, is the idea of some form of

new constitutional settlement. Both of those options depend probably upon constitutional reform being seen more as an event than a process. Then the last two models are perhaps simply continuing with the present programme of reform or a possible constitutional reform framework position statement.

None of these options are mutually exclusive. The last two options obviously see constitutional reform as a process rather than an event, and I have to say I favour a constitutional reform statement of all those options.

Professor Sir John Baker: Thank you. I thought it might be helpful just to try to explain my guiding philosophy before giving evidence as it might colour what I am going to say. It seems to me that it is a golden principle that a constitution, any constitution, should stand above government and should define and limit what a government can do. It is about controlling power, and if a government takes over the constitution and manages it by making piecemeal reforms at its own behest, it seems to me we no longer have a constitution because it is doing precisely what it is supposed to stop. It seems to me that we have started going quite a long way down that route recently, and some of us have become rather concerned about it. I am very pleased that this Committee is looking into the question because it seems to me essential to do something about the problem before any more constitutional reform is carried out, in particular the reform of the House of Lords.

Q2 The Chairman: I am grateful to you for making that opening comment, as you say on your philosophy, Sir John. You will have noticed, I am sure, from the reports that we have issued on a whole series of pieces of what you described as piecemeal constitutional reform, not just within this Government but in the previous Government as well, that we have concerns very much about the process. Our problem has been that when we have tried to identify what we meant by constitutional reform in the context of this country we found it

very difficult to put a particular series of issues in what you might describe as a strategic pigeonhole.

Professor Sir John Baker: Yes. I suppose there are two ways of tackling this. It relates to some extent to what Richard Gordon was saying: whether one has a general strategy for dealing with all constitutional change or just manages it as an ongoing process. It seems to me it would be far better if some body, either this body or a Royal Commission, were to take a look at the constitution as a whole and decide what needs changing and, if anything needs changing, how to go about it, because everything is interrelated and picking off individual pieces is like pulling the kingpin out of a building without asking a structural engineer for his opinion first.

Richard Gordon: I tend to think slightly differently. I did, as some members of the Committee may know, attempt to draft a constitution for the United Kingdom and the great difficulty in doing so was that it probably engendered more disagreement about minutiae than agreement over principle. It does seem to me that what is really needed is some form of incremental development that captures the present mood of greater constitutional awareness, hones in on it and persuades Parliament—and by Parliament I probably really mean, catching the moment in time, central government—of the need for very clear principles to be laid down and for, if not an enforcement mechanism—and it probably would not amount to enforcement for all sorts of constitutional reasons—a mechanism by which independent scrutiny could be achieved, and not only achieved but, and I put this in notional inverted commas, "entrenched". What I have tried to do, if the Committee is interested in seeing this document when refined, is to draft a possible model for a constitutional reform framework.

The Chairman: I am sure we would be extremely interested to see it. We have, as it were, slightly avoided the question of the move to a completely codified or written structure but I am sure we want to come back to that.

Q3 Lord Norton of Louth: I can see the point you are making, Sir John, which is the distinction between what should be in the constitution and how should it be put in. There is the proper process and deciding actually what it is we are talking about. When this Committee was formed 10 years ago, one of our first inquiries was into the process of constitutional change and we spent a lot of time defining what it was we were talking about: how do we distinguish what is constitutional change from the rest? If we were taking that as our starting point, how would you distinguish what we should be doing from other governmental activity, given as you say, Sir John, that constitutional measures are qualitatively distinctive from legislation that is in the gift of the Government?

Professor Sir John Baker: Thank you. That is the most difficult question of all, of course, because it is more of a sliding scale than a precise definition and I think it may be that one needs a different definition for different purposes. One might have different safeguards in place to apply to one set of changes and other more important safeguards for the more major changes, but I think it is possible to identify the kinds of measure that ought to receive different attention, which perhaps require a larger majority in Parliament, more scrutiny, more consensus generally. I tried to formulate these and I am afraid it cannot be done in one sentence because it would be a meaningless sentence. I came up with a sort of draft Magna Carta of heads of legislative activity that I think ought to require special treatment, perhaps different sorts of different treatment. I am prepared to read those out if it would help. There are, I am afraid, eight of them.

The Chairman: Please do.

Professor Sir John Baker: Any alteration to the structure and composition of Parliament. Any alteration to the powers of Parliament, or any transfer of power, as by devolution or international treaty, which would in practice be difficult to reverse. Any alteration to the succession to the Crown or the functions of the monarch. Any substantial alteration [I put in the word 'substantial' from now on because it is very difficult to draw lines] to the balance of power between Parliament and the Government, including the conferment of unduly broad or ill-defined powers to legislate by order. Any substantial alteration to the balance of power between the central government and local authorities. Any substantial alteration to the establishment and jurisdiction of the courts of law, including any measure that would place the exercise of power beyond the purview of the courts, or which would affect the independence of the judiciary. Any substantial alteration to the establishment of the Church of England. Eighthly, any substantial alteration to the liberties of the subject, including the right to habeas corpus and trial by jury."

Even that list does not deal with matters that are currently dealt with under the prerogatives, such as the abolition of great offices of State, and it may be that those have to be dealt with in some way as well.

The Chairman: Lord Powell, did you want to comment on that or was it another matter?

Q4 ***Lord Powell of Bayswater:*** I was more coming back to Mr Gordon's opening statement. I was interested about his comments, both this morning and in his article about a written constitution. I wondered whether he has picked up any signs of, I was going to say bandwagon but perhaps a chamber orchestra wagon in favour of a written constitution, developing some of the comments made by the previous Prime Minister and the Cabinet Manual that has subsequently been developed. Are those steps towards a written constitution?

Richard Gordon: I have certainly become aware—in fact I spoke at an all-party group on the Cabinet Manual—of a concern that such a document might be justiciable. So, far from it being desired to jump on a constitution bandwagon, my fear is that if one were to go along the written constitution route too overtly at the moment it would probably be counterproductive, which is why I have come to a more moderate position.

But may I indicate that in terms of reaching a definition, which is, I think, Lord Norton's question, my starting point here was to keep the definition very open-ended. So my definition of constitutional reform was any change that affects the operation of the constitution. My definition of the constitution was that it comprises the arrangements by which the UK is governed.

You then have to dig deeper and in this framework statement, rather like Sir John—I think I have come down to seven rather than eight—I think I would emphasise that you have several different types of constitutional change; only some of them are legislative. So, some are legislative, some are, of course, primary, some are secondary legislation, but quite a lot are proposals for practices like the Cabinet Manual, which may have quite potentially significant constitutional effects, and some are a latent state of tension, unclarified, unarticulated. Sometimes statements are made that are quite dangerous—I have in mind the hunting case, reflecting a tension between different institutions in society, most notably between the judiciary and Parliament.

So my suggested categories were, this is refined more fully in the paper, essentially proposals for laws, rules or other practices—I also have a section dealing with the existing laws—which are presumed to have the potential to have a significant effect on the constitution and therefore subject to the appropriate monitoring and scrutiny procedures. "Include any of these proposals that are likely in a new way [and that is an important aspect I think] to affect, whether by legislative intent or by necessary implication, the constitutional

relationship between the Executive and Parliament, the Executive and the civil service, the Executive and the judiciary, or the judiciary and Parliament. The constitutional relationship between the Executive and any of the devolved institutions, Parliament and any of the devolved institutions, or the judiciary and any of the devolved institutions. The operational status of political parties in the United Kingdom, the civil liberties of the subject, the structure and powers of local government insofar outside England as they fall within powers reserved to Parliament, the position of the monarchy with the electoral system."

The Chairman: We have had two very comprehensive lists. We had a debate yesterday in the House on the European Union Bill about lists of subjects that are likely to be the matters for referendums. I can see that this list approach will always be nibbled at in some way or another.

Q5 Lord Norton of Louth: Mr Gordon, you were using the word "significant", Sir John it was "substantial", and I think then the question arises as to who decides—once it is triggered to be the significant and substantial, particularly as you say, Sir John, given the status you attach to matters of constitutional significance relative to the Government, if they are to be above government, who would then be the body that would determine whether it is substantial and therefore triggers, say, some extraordinary process for determining the issues?

Professor Sir John Baker: Well, of course, that is the main question with any definition, who gets to interpret it. It depends, I suppose, what kind of procedures it is decided to introduce as safeguards. I would imagine a lot of it could be done by this Committee.

Q6 Lord Norton of Louth: But do you assume the existing process, therefore, is not sufficient?

Professor Sir John Baker: I would suggest that for some measures, one ought to contemplate having a larger majority required on the footing that if you cannot achieve a reasonable level of consensus one should not do anything. There really is no case for pressing forward reforms simply because they happen to be government policy and you have a majority of one. A constitution ought to have a consensus of people generally.

Q7 Lord Crickhowell: Of course I am sympathetic to everything that has been said but we go back, surely, to a fundamental difficulty. Desirable as it may be to have safeguards, desirable as it may be for this Committee to have some greater role than it has, we go back to that relationship between the Executive and Parliament. We basically have a constitution at the moment in which the power lies with the government, the elected government, which can get a majority in the House of Commons. None of these things can be achieved under that principle unless the House of Commons is prepared to agree to what is proposed, and by and large, the House of Commons will agree on most issues with the government of the day, unless the government of the day loses the confidence of the House of Commons. So the fundamental question is how we get from the situation where these things are decided by the government of the day with a majority in the House of Commons, to all these desirable situations and possibilities that you described so eloquently.

Richard Gordon: I wonder if I might just accept the force of that question, first of all, and say that, from my perspective, that is the problem. One has to find a solution to that problem and the only solution can be one that is incremental, simple and constitutionally effective. The starting point is parliamentary sovereignty, and within parliamentary sovereignty, as I think the Committee would probably accept, executive sovereignty really, for all practical purposes. One has to reach a position in which the Executive for practical purposes cannot but do what is requested. This is perhaps an incremental process but the

committee system, which has developed considerably over the last decade, has been quite effective in preventing constitutional solecisms and preventing on some occasions catastrophes from happening in legislative terms.

My proposal would be to create a template for what would be good practice legislation, a process that would include scrutiny standards such as pre-legislative scrutiny, obviously post-legislative scrutiny, but in one place. At the moment you look at a myriad of committee reports overlapping and you do not get it in one place. I think that Parliament should set up an independent monitoring body. It has so far resisted this, most recently in its 2008 statement on post-legislative scrutiny. It does it very elegantly. That particular body should work in liaison with the specialist Committees of the House of Lords and the House of Commons and it should have a role by which it could make recommendations. The Government must be free, I think, to reject the recommendations. However, it should be able to provide—and the framework statement I drafted attempts to cater for this—weighty reasons, that is a Strasbourg formulation, for rejecting any recommendations. If it cannot do so, it would be publicly recorded, in my scheme, that there was a constitutional violation. This is not perfect. It is not a perfect enforcement mechanism, but it revs up the pressure on the Executive, which I think is the thrust of that question.

Q8 The Chairman: Would it be reactive in the sense that this super body would deal with proposals, or would it be proactive in making proposals?

Richard Gordon: Both, but in the case of proactivity, in the case of reform proposals, on which it would, of course, consult and liaise with Committees, I would think it would not be sensible to give that body any form of power to make recommendations that would be regarded as a constitutional violation if they were not followed. The position is different, I think, with legislation that fails to meet scrutiny standards or existing practices that are

entirely unclear and which the body says should be clarified. But the idea that a reform proposal would have effectively to be adopted unless there were good reasons not to is, I think, going too far.

Q9 Lord Hart of Chilton: Would there be any ground rules relating to that, such as prior conditions of attempts to reach consensus, an actual, proper consultation, before proposals are put forward?

Richard Gordon: Yes.

Q10 Lord Hart of Chilton: At the moment one of the things we are constantly berating people with is the absence of consultation, the absence of an attempt to reach consensus, and then the absence of pre-legislative scrutiny. I assume that those would be ground rules in relation to the decision-making that would come about as a result of your proposal.

Richard Gordon: They would be and, indeed, I am sure the Committee knows about the New Zealand legislative advisory council and the use of checklists in New Zealand particularly. New Zealand is interesting because, unlike most other comparables, it does not have a written constitution. This would have more teeth than that, but the point being that it would have checklists and scrutiny standards whereby you would be able to check whether there had been adequate consultation and so on and so forth.

Q11 Lord Norton of Louth: It was this Committee that initially recommended the Committee on post-legislative scrutiny that was then referred to the Law Commission. I was very much involved in the Law Commission recommendations. The Law Commission recommended a joint committee and I think what you are suggesting then is taking that and to some extent building on it in terms of having that mechanism for checking that the

legislation meets the criteria that you are stipulating. But you are also suggesting then that the Committee would have teeth and I am wondering if you could just expand a bit on what you had in mind in terms of the sanctions that they would be able to deploy.

Richard Gordon: There will not be sanctions. I do not think you would persuade Parliament to go for it anyway if there were sanctions, but I do not think you could have sanctions. The parallel model, I think, the paradigm perhaps, is if you look at statutes such as the Human Rights Act, which, for all its imperfections, the courts have built on and said it is a constitutional statute and implicitly you cannot repeal it. Momentum builds up and if the House has endorsed a statement of the kind I am suggesting it would be quite difficult for it to pull back from that if it had agreed to what seems like quite a mild proposal. In other words, the scrutiny body, for want of a better word, makes a recommendation, let us say. This would be built into this so it would not be this, but let's say it made a recommendation for post-legislative scrutiny and the Government said, as it did I think in response to the Law Commission's proposal, "We adopt it but we don't think we need an external body", the committee could make a recommendation. If it was not followed and there was not a good reason for it, there would then be a constitutional violation. That is not a sanction but I think it would have quite a powerful political effect.

Q12 Lord Norton of Louth: Yes. It would be the equivalent, as you say, of the Joint Committee on Human Rights or the reputation of something like the Public Accounts Committee in terms of the strength that would come from the reputation of the Committee rather than the formal sanctions employed in relation to government?

Richard Gordon: Yes.

The Chairman: Sir John, do you have a comment on it?

Professor Sir John Baker: I agree very much with most of that because I think the force of embarrassment is a very strong one and it has worked up to now with the Human Rights Act. As I said in my opening statement, if things go on as they are at present then there is no answer to Lord Crickhowell's question. There has to be somehow a change in the way Government approaches this question. It seems to me wrong that the Government should think it is the function of government to change the constitution that controls its own functioning. Of course, the Government can always refuse to facilitate any legislative proposal that comes forward. It seems to me there is less harm done by obstruction than by positively pushing forward reforms that do not have consensus. If nothing happens, it cannot be worse than it is.

Q13 Lord Goldsmith: This is enormously valuable and very thought provoking. Just continuing down that line of what the mechanisms are, what the rules are and how one enforces them, in a sense what comes through what you have been saying so far is potentially there are three different mechanisms that could control a future government. One is ultimately the courts, if something is laid down that the courts can enforce, but that gives rise to the issues that Richard Gordon referred to about concerns about justiciability of a constitution. The second is a written constitution or something of that sort that imposes some, for example, supra-majority provisions in relation to particular forms of legislation, although again how it is enforced may come back to the same question. The third is a degree, ultimately, of parliamentary restraint, which is caused either by a risk of embarrassment or a consensus as to what the right thing to do is, or possibly it is a question of the role that this House can play, which at some stage it would be interesting to have your views on, although this House can play less of a role when two of the major parties are in coalition than it can when only one of them is in Government.

My question was really to try to tease those out. As a matter of reality, which of these is actually going to work? Does it ultimately depend upon parliamentary self-restraint surrounded by methods of embarrassment, strong statements as to what the constitutional process ought to be, or do we need to have something more than that, like a written constitution that produces a supra-majority or like an ability for the courts to do what they have never done since Cromwell, which is to interfere in what Parliament is doing?

Professor Sir John Baker: If I might start. That is partly a political question of what can in practice be achieved, and your Lordships are better placed to decide that than a humble academic from outside because it is real politics. I am not utterly persuaded that a written constitution is the most desirable course. I perhaps differ from Richard Gordon on this. At least until recently, I was always of the opinion that written constitutions were unsatisfactory because of the power they give the judges, who of course are very wise and you have the advantage of a written text and you know how to change it and it would not be necessary to have this Committee asking these questions. But judges can only focus on cases in front of them; they cannot take account of wider issues that are not represented by counsel. They cannot take account of problems of resource allocation because they are only considering the one issue in front of them and, therefore, they think in absolute terms. There are many questions on which I do not think judges have any more qualifications to decide than ordinary people. For instance, if the question of human life and abortion came to be an issue in this country, are judges better qualified to say when human life begins than Members of Parliament? I do not see that they are. To label that a legal question is very misleading. It is npt a legal question.

On the other hand, the alternative may be worse and for me it all turns on the future of the House of Lords. If the House of Lords loses its present power to do what it has been doing

over the last 10 years then the only alternative is to hand the authority to the judges. But I would prefer it if a solution could be found within Parliament; that is my personal view.

Richard Gordon: Yes, I agree with the three categories. I think those are the three categories. My own preference, despite the book that I wrote a year or two ago, is for parliamentary restraint, but it would be a restraint that was also a surrender of some power. In other words, it will obviously take restraint for Parliament to consent to a statement of principle with teeth but, once done, rather like the Human Rights Act, you get what I would call the law of unintended effects, whereas a written constitution is just a bridge too far. It is rather like the localism that is surfacing in the new Bill. It is great to empower communities, but do those communities yet have the sophistication, the knowledge, the education, to be able sensibly to take advantage of it? I do not think we are going to get a written constitution politically and, therefore, I agree with Sir John.

I think there is a great deal of latent hostility between Parliament, certainly the Commons, and judges, both ways. I think neither necessarily have entered into a constitutional dialogue with the other, and I think we saw in the hunting case there were two Law Lords out of a panel of, I think, seven or nine, making quite frightening statements about the judiciary constructing parliamentary sovereignty and if they can do that they can take it away. Now, that as a constitutional statement is almost revolution.

My feeling is that you could not just go for a model like a constitutional reform position statement without the House of Lords actively being involved by way of its Committees. The great tension and worry that I think I have is what is going to happen to the House of Lords. If the House of Lords were to become wholly elected, the role that a specialist House might play at the moment might be diluted quite a lot. That would worry me, so that is why I do think you need some independent scrutiny as well.

Q14 Lord Goldsmith: That is very useful indeed. Just on that last point, presumably an elected House of Lords would also not carry with it the independence from a party political point of view that would be necessary in order to impose that restraint?

Richard Gordon: Exactly.

Q15 Lord Goldsmith: But the second question I just wanted to go back to, if parliamentary self-restraint is the only practicable way forward, at least at the moment, then we need to find a way of writing the rules, as it were, by which Parliament should govern itself and should restrain itself so it can see those areas that are problematic. The question is how we go about writing that rulebook.

Richard Gordon: I agree, and I think drafting it would be quite a considerable exercise. I suspect the rather rushed lines that I have drafted would not meet the political temperature sufficiently.

Lord Goldsmith: It is a good start.

Richard Gordon: But something is needed, yes.

Lord Goldsmith: Yes.

Q16 Lord Powell of Bayswater: I just wanted to look at the same question for a moment from the other end of the telescope and Sir John's real politics. If a political party campaigns on a manifesto that includes a substantial measure of constitutional reform and wins a healthy majority, are we right to be trying to set mantraps to hinder the application of that constitutional change? Is it democratic to suggest that a dusty Committee of the Lords should be able to stand up to the will of the majority as expressed in an election?

Professor Sir John Baker: I think it is.

Q17 Lord Powell of Bayswater: I gathered that, but I wondered why you think it is.

Professor Sir John Baker: Well, it is the problem of majoritarianism, isn't it? Merely because you have a majority of one, I do not think that is a sufficient entitlement.

The Chairman: I think Lord Powell said a healthy majority.

Lord Powell of Bayswater: Which traditionally on the whole governments have had. I know we are in a unique situation now.

Professor Sir John Baker: I would suggest that in order to change the rules by which governments operate one needs a very substantial measure of consensus, and simply to include it in a party manifesto along with hundreds of other things is not sufficient. I should perhaps add that I would not favour referendums either. I do not think that is the way of doing it.

Q18 Lord Norton of Louth: Coming back to the point about consensus, one can distinguish between having a consensus on the process—I think that is possibly achievable along the lines that Mr Gordon was indicating—and consensus on the substance, as Sir John was suggesting here and in your lecture. You are suggesting there should be some extraordinary procedure there governing it. If we look at the principal constitutional legislation that has gone through over the past century since the Parliament Act, hardly any of that has been consensual. It is the government of the day; it has gone through usually on a party vote, with the possible exception of the Representation of the People Act 1918. On the basis of that, one could argue then your proposal would in practice result in very little happening to our constitution.

Would your argument, therefore, be that the onus then comes on the Government to be more proactive in persuading others rather than simply relying on a majority? Do you think

that is achievable or is it the case that we are probably going to have to stick with what we have if those procedures were implemented?

Professor Sir John Baker: What I was mainly urging was joined-up thinking rather than just picking off points one by one. I do not see the government of the day having time to do that and, therefore, there needs to be some other way of approaching the constitution as a whole. I entirely take your point, of course, about others driving constitutional change, particularly when it is impossible, it seems, to get the public interested. I think that is the fault of the press. I think if the press could report a little more of what is going on, for instance in this Committee, we would have a much better environment of constitutional change. At the moment, there seems to be complete indifference outside Parliament to major changes.

Q19 Lord Shaw of Northstead: The more I listen to all this the more I feel that these discussions that we are having are very necessary and, of course, very valuable, but I am not convinced that the way we are conducting things at the moment is as far as we can go and as good as we can get. Do we need to alter anything basically?

Richard Gordon: You need to alter the lack of—to use Sir John's phrase, perhaps—joined-up thinking, the lack of a clear line between that which is appreciated as sensible and desirable by, for example, a specialist committee, by academics following that, by the Law Commission following that, but no action being taken, so quite a lot of hot air is blown. If one ploughed through all the overlapping committees of the Commons and the Lords, but particularly perhaps the EU Committee, this Committee and one or two others, perhaps the Constitutional Reform Committee in the Commons, you would probably, digging through it, find a template for good legislation. You would find it in isolated sentences of a report here and there. You could pick it all up, but it would not be, as I said earlier, in one place and it

would not, therefore, have the potency. I remember speaking to the then head of the Law Commission who bemoaned the fact that several reports of the Law Commission just were jettisoned; they went nowhere.

What seems to me to be very important is not only the development of the present processes but something new that injects quasi enforcement into it. That is why I go for this kind of model.

Q20 Lord Crickhowell: Lord Powell posed the question of the Government coming in with a substantial majority, but really the greater problem may be the present situation where two parties have commitments in their manifestos to which they attach huge importance and the only way in which a Government was formed was for a deal to be done in which the two most important—just pick two out of a number—constitutional commitments in both parties have been put together in a deal, which then is presented to Parliament as being sacred and unbreakable and has been presented in that way. Bearing in mind we only have a Government in existence because of the existence of this agreement and it is, therefore, pressing on with these proposals regardless, I again cannot be clear, however desirable all these proposals are, whether they could be implemented in practice.

Richard Gordon: To take, for example, something like the Public Bodies Bill, which has huge constitutional implications in relation to bodies that could be abolished by the exercise of a Henry VIII clause and where they have the sword of Damocles hanging over their head, that executive fiat would be in any coherent constitutional model, I suspect, a cause for a scrutiny body making a strong recommendation.

Q21 Lord Crickhowell: But it has actually had scrutiny at this Committee and, in fairness, the Government has very substantially altered and improved the Bill as a result of this scrutiny.

Richard Gordon: Yes. That is very helpful, but to the extent that the Government did not pause for thought, did not stop, continued on its legislative rollercoaster simply because it had a policy initiative that was not democratically mandated but was a fusion of two parties, let's say, this would be an improvement. It would be a practical improvement. What you cannot stop, I think, are democratic results, whether they be the result of a fusion or a strong majority, following a process resulting in legislation that may not have the endorsement of a majority of the population. What you can do, none the less, both with post-legislative scrutiny and the kind of model I suggest here, is to go back over our constitutional arrangements, existing arrangements as well, and seek clarity and reform in relation to past legislation. That could have an effect for the future in a way that currently it does not.

Q22 Lord Renton of Mount Harry: First of all, my apologies for arriving late, Lord Chairman. Have you already discussed very much the question of referenda or not?

The Chairman: No. We have alluded to it, because we referred back to the European Bill that we were discussing on the floor yesterday, and Sir John said that he was unhappy with referendum but not in a particular context. So I think that is a useful development.

Lord Renton of Mount Harry: Thank you very much. First of all, I very much agree as an ex-MP with the comments that one of you just made that it is easy to exaggerate the amount of interest that people as a whole have in what is happening in Parliament and so forth. I remember as an MP how we had to bribe people with coffee and cocoa to get them to come and do anything at all. I do not think that basically that has changed, but where it

seems to me that there is a real possibility of change is this new emphasis on referenda, and not just that on 5 May on AV and so on but also indeed on the European Union Bill. I wonder how you regard this in terms of your overall view of Parliament and its relationship with people. It does seem to me now that there is this sort of growth of, "Well, we'll have a referendum; that is going to be more interesting to people than things that happen at general elections" and that, therefore, almost inevitably the importance of the general election recedes because the important thing is the referendum that has happened in the middle because of something like a crisis, a European Union Bill or not. I just wonder what your views are on that.

Professor Sir John Baker: Well, it certainly might create more interest, I could concede that. My concern is that it may not produce the right answers. For one thing, it offends against my objection to piecemeal legislation. You are picking out one issue and you are asking people a very specific issue and most intelligent people's reaction to a referendum is, "Well, what if? Yes, I might vote for that, if that". Even the voting system, you might say that is a separate issue that can be separated out, but one might well ask other questions, like what are MPs for? One really needs to decide that before you decide what methods of selection you are going to use. Everything is interrelated.

I am not saying the public are not intelligent enough to understand these issues, but I think if they are only presented with one very small issue that has been framed by the Government, presumably in a way that is designed to produce some sort of answer, and there is not then much guidance—I have not yet heard very sensible arguments in public; journalists have written things about them, but there has not been much guidance in the form of leaflets or anything—I am not sure that that is calculated to produce a result that is any better than sticking a pin in.

Richard Gordon: My own feeling about referendums is that they are part of a much wider constitutional series of interlocking provisions. If you had a written constitution there could be a place for referenda. There is a place in our current constitution for referenda but we do not quite know what it is. We do not really know when referendums are conducted, undertaken, and the process itself, as Sir John has indicated, has a great deal of uncertainty attached to it in terms of the result it produces.

It does seem to me that this is a particular area of our existing arrangements that needs to be clarified. In the proposal I put forward, or suggest tentatively, the monitoring body would examine precisely that form of question. It would then eventually perhaps make a recommendation.

Q23 Lord Goldsmith: I just want to follow up on the referenda question, or referendums question. One thing that it does do is to focus the mind of the government of the day on whether it really wants something. History is littered with cases of governments who have found themselves going to a referendum on particular issues, losing them, and that has been politically very, very damaging. For example, in dealing with the issue of independence for overseas territories, the Government's view has been you cannot get the people to decide this in a general election. You have to have something that is quite specific to know that is what the people want so that it is not just swept up in general enthusiasm for one party or another. Do you see merit in a referendum at least as a way of forcing a government to think does it really, for example, to take the Fixed-term Parliaments Bill at the moment, want four years or five years? What actually is the significance of this and are they prepared to put their judgement to a big political test, not just to the test in Parliament where it knows it is going to command a majority?

Professor Sir John Baker: Well, I would not go so far as to say they could never be of use, but I am very suspicious about their value.

Richard Gordon: I simply do not know is the answer, I am afraid. I think they could have that tangential value, but that does not necessarily legitimise the constitutional use of a referendum. On that model, it becomes a political weapon in certain circumstances, but that does not necessarily mean it should be adopted constitutionally.

Q24 The Chairman: You have both referred, I think, to New Zealand as an example of a country where some of these matters are more appropriately dealt with, where, of course, the referendum weapon, if you want to use that, has been used more substantially. Do you feel there is any connection between those two?

Professor Sir John Baker: I am afraid I have not studied the use of referendums in New Zealand. I should have done.

The Chairman: No. Well, let's move on.

Q25 Lord Rodgers of Quarry Bank: I still struggle myself with what is and is not reform. In your short article to *The Times* you refer to European diktat and global capitalism. Yesterday we had to debate the Second Reading of the European Union Bill, as Lord Renton has mentioned, on referendums. How far do you see the European Union Bill as a reform Bill because it includes referendums and sets aside what you describe as a European diktat? If I may just follow and link that, I look to a further paragraph. You refer to the apathy that seems to have been triggered, with a rapidly declining electoral pattern—not entirely true recently—and then you go on further to, going back if I may, the time-honoured institutions of the House of Lords, the banks and the police appear increasingly unfit for the purpose. What I am trying to get in my mind is—I am not making it very clear—are you perhaps

making assumptions about things that need reform and how would you define the terms? If there is evidence of "increasingly unfit for purpose", what is the measure?

Richard Gordon: Well, the measure has to be, I think, first of all, reaching a definition of what constitutional change is on a very broad and open-ended level, which I have tried to do. But that is not enough because so many things could fall under that umbrella. What you then have to do, as Sir John has done and as I have tried perhaps less effectively to do, is to delineate the areas where there would be a presumption that constitutional change was involved. I happen to think, not because of the referendum particularly, that in the context of the European Bill that would be constitutional reform because it would affect in a new way the relationship between our institutions and Europe. That seems to me something that should be presumed to be constitutional reform. There are many other areas that would not fall within that and where there would be no presumption. In this draft model, what I have said is, "Exceptionally, other proposals for laws, rules or other practices which are considered to affect the operation of the constitution in a new and significant way will be subject to the appropriate monitoring and scrutiny procedures".

One or two of the things you have mentioned—I fear that I may have said quite a lot of things in *The Times* article before I had considered the matter properly—might well not be constitutional reform. It would depend, I am afraid, in some areas at least, on an evaluation of the substantial effect test, which is obviously one of value judgement.

The Chairman: Does that take you any further, Lord Rodgers, or do you want to pursue this?

Q26 Lord Rodgers of Quarry Bank: No, not quite. Let me just take the example I have mentioned in passing, "The police appear increasingly unfit for purpose". I am only saying how do you define it and explain it and give evidence to justify the need for reform?

Richard Gordon: Certainly, the reform of the police is not something at the moment that self-evidently fits within the categories I have put in. It might well be a policy legislation. One of the points I wanted to make was that you can have public policy legislation that is not constitutionally focused but which does have constitutional effects and, therefore, that would also fall within my definition of constitutional reform. How you would get the evidence that the police are not fit for purpose—I am sorry that I am being lynched on that phrase—you would obviously have to look at how effective the police are in modern society from an evaluation of statistics. But I am not sure that is the question that leads to the definitional one of what is constitutional change. What is constitutional change must be something that either falls within a presumption that because it affects the existing institutions and is new, a new change, is constitutional reform or it is an exceptional case. Those are my broad categories.

Q27 Lord Norton of Louth: If I can come back to the point about joined-up thinking. Sir John, in your lecture it is a point you make about there being no coherence to the approach to constitutional change as a constitution. Both of you, in talking about looking at joined-up thinking, have tended to stress the role of Parliament. I want to take it back a bit to Government. To take the example you have already offered of the Public Bodies Bill, the Henry VIII provisions have now gone, Clause 11 and Schedule 7 are out because of the work of this House, but the point you were making, Mr Gordon, is why did the Government not think of that in the first place and see the objection? I really want to come back to the point about within Government itself there are presumably problems now because there is no joined-up thinking about our constitutional arrangements; things come forward on a very piecemeal basis. Should there be some mechanism, some process within Government that we should be exploring that would avoid problems that you have identified?

Q28 The Chairman: May I add a subsidiary to that? Would it not be possible to make a case that if the Government, as it were, functioned in a way that in constitutional classes at the university would be considered in terms of Cabinet Committees and so forth, that would, in fact, be the appropriate mechanism?

Professor Sir John Baker: We had a Department for Constitutional Affairs. It struck me as outrageous that the Government should actually set up a department to change the constitution. We then had a Democratic Renewal Council, which is so secret we are not even allowed to know whether it meets. I do not even know whether it still exists; I presume it does. It does not seem to have produced any good. There needs to be something written down somewhere.

Q29 The Chairman: Sorry to interrupt you, but let us assume that those two institutions that you have quoted were to some extent politically transient, would not the operation of the unwritten constitution about Cabinet Governments, as we have understood it very clearly I think in this country, in an appropriate way answer the question that Lord Norton has put?

Professor Sir John Baker: Well, perhaps I have misunderstood it, but it seems to me that to leave it entirely to the Government without any kind of check is dangerous. In fact, it is not constitutional.

Q30 Lord Norton of Louth: I was not thinking in terms of the check, I was thinking Government thinking itself, the process at the moment, because it seems so disparate. Hence the point you were making about there is no joined-up thinking within Government itself, so should there be something done within Government that enables it to think, "If we

do this, it has that effect. How do we see it? What is the impact upon our constitutional arrangements?"

Professor Sir John Baker: There should be, yes.

Richard Gordon: This is very primitive, I am afraid, but what I suggest is that where there is any doubt that, for example, proposed legislation may involve issues relating to constitutional reform, those responsible should consult the scrutiny body and obtain a view. Now, that is fairly primitive but it seeks to address your question, which is should there not be some mechanism for Government being alerted to danger long before you even get into pre-legislative scrutiny, and the answer is, yes, there should be. It is very unlikely to be manuals on legislative techniques because they simply will not be read in practice. There has to be some dynamic that falls short of coercion but which is a trigger for action.

Q31 Lord Norton of Louth: But doesn't that suggest that you have some mechanism within Parliament that does understand the constitution, but you are suggesting within Government they are having to refer it because they do not understand the constitution?

Richard Gordon: I am, yes.

Q32 Lord Norton of Louth: Should there be some means by which Government itself is somewhat more sensitive and has greater awareness?

Richard Gordon: Yes. For example, without wishing to be disrespectful, some of the statements made by the Prime Minister on the effect of the Human Rights Act, the need for a Bill of Rights, certainly before he came into office, demonstrate, I think, a lack of full constitutional legal understanding. There is a need for whether you call it education or advice or something that enables them to be alerted. All I was suggesting, perhaps much more immediately and without the wider picture of that much more strategic framework, is

the threat that they could be at risk of a recommendation so they need to be over-careful in what they refer to a scrutiny committee.

Q33 Lord Crickhowell: I think one is encouraged to support that view on the draft Cabinet Manual, which made no mention, for example, of Henry VIII clauses in its guidance, gave no proper advice about how to approach constitutional change and made a series of quite serious mistakes about the arrangements for the House of Lords. If the system within Government, as exposed by that manual, is flawed, the case for having some body to which things should be referred does seem to me rather a strong one.

Richard Gordon: The Cabinet Manual would be a classic example of a constitutional practice that was not legislation but which had constitutional implications. One of the interesting questions that came up at the all-party group was whether this manual would be justiciable. The answer is if it is justiciable it is probably a good thing if the court can declare that something is legally inaccurate in it, for example. I do not see that as a threat to democracy.

Professor Sir John Baker: At least we now know, or at least we think we know, what sort of advice is now being given and, if it is flawed, we know that it is flawed and we can make suggestions for improving it.

Q34 Lord Goldsmith: Just coming back to this external body that tells the Government, either at its request or unsolicited, "This is a constitutional matter and these rules should apply" or after the event, "This is a constitutional violation because you haven't obeyed these rules", I am very interested in this idea. You mentioned, I think, Mr Gordon, the New Zealand example as a place where this exists. Who sits on this body and how is it appointed?

Richard Gordon: Well, two points. First of all, the New Zealand body does not have the "coercive" power that I am suggesting. It is purely recommendatory. It was set up by government. It is independent. It has academics, it has a wide range of constitutional specialists on it, and it produces a book, basically, with scrutiny standards, checklists. It is taken very seriously in New Zealand, but I should add to that or qualify that by saying that I am not convinced that New Zealand has the system of parliamentary committees that we have in this country. Yes, you have that body but, no, you do not have the specialist parliamentary committees. You could say it balances out. What you do not have in New Zealand is these extra teeth that I am suggesting that this body should have.

Q35 Lord Goldsmith: What successes has it had, if you in your terms define as successes cases when it has changed the course of what the government was doing or stopped the government in its tracks?

Richard Gordon: I cannot give you specific examples because I have not studied its progress in that way. What I can say is that the process of legislative scrutiny in New Zealand is more advanced than ours in this respect at least, that there are a series of set-out templates for legislation of the kind I suspect may have been recommended by this Committee in 2004. It is a formal process.

Q36 Lord Goldsmith: Are there other countries that have a similar system?

Richard Gordon: The countries one would be looking at are countries with a system not dissimilar to ours, perhaps, but of course in Continental-style councils of state you probably have that kind of system. In Australia, because of its federalist structure, you have some states like Queensland that go quite far in legislative scrutiny but other states that perhaps

do not. I think that New Zealand is quite a good model. Not only, of course, does it have this system, it also has a Cabinet Manual from which we have learned quite a lot, I think.

Q37 Lord Goldsmith: It does not have a written constitution, which was the point you made before, whereas these other countries may well have a written constitution. So the councils of state will be applying those rather than their own judgement as to what is an appropriate way to proceed.

Richard Gordon: Yes, that is true.

Q38 The Chairman: In your lecture, Sir John, you mentioned Canada, not as an example of this but as an example of an effective use of what one might call a lighter form of judicial review than, for example, the American courts. Did you want to pursue any of that in relation to constitutional reform?

Professor Sir John Baker: Yes. My views on that were rather secondhand, Lord Chairman, and I apologise for not having done the research. As I understand it, the courts in Canada can override a statute but it is not final in the way that the American courts can simply reject a statute as unconstitutional. The government in Canada can come back and insist on the statute, but as I understand it the onus is on them. Then we have this embarrassment factor, as with the Human Rights Act here, that a government is very unlikely to say, "Well, we're going to do it anyway", and I believe so far has not in Canada done that.

Q39 Lord Powell of Bayswater: I am still troubled by the question that really leads on from what Lord Goldsmith was asking and which relates to what I said earlier. How do you legitimise constitutional change? Both of you have clearly set your faces against legitimising it by popular vote, whether in an election or a referendum or in referendum with a threshold,

and want to legitimise it by a process, seemingly one involving an unelected body and the weapon of embarrassment. It just seems to me that that is slightly swimming against the tide of modern politics generally. Do you think you are perhaps getting into a bit of a dead end here? It sounds that what you are describing might have gone down well in the 19th century but I just slightly wonder whether in the 21st it will.

The Chairman: I think that particularly relates to the point about the House of Lords, which you have both made, and we could explore that a little more.

Professor Sir John Baker: Yes, that is the core of the problem, I agree, and I am not sure how one resolves it logically. Practically, it seems to me, for the reasons I have given, that if the House of Lords becomes an elected body, or largely elected body, with career politicians who are seeking advancement through the political world, even if the House does not have the same political complexities as the House of Commons, it is going to change its character. I think everybody agrees that it would change its character, and the only argument that I have heard in favour of it is that the House must be democratic in order to have legitimacy but I have never been persuaded by that case. I have not heard it argued. It seems to be assumed very widely because of the Parliament Act. If we did not have the Parliament Act that might be true, but the House of Lords cannot force laws on people that have not been voted for. It provides the kind of independent check that is needed and it is either that or the judges under our present system, unless we can think of something else. A committee of citizens or a jury of citizens might sound excellent in theory, but I cannot see it really working in practice.

Lord Powell of Bayswater: Sounds more like *Celebrity Come Dancing*, if I may say so.

Professor Sir John Baker: Well, it would operate rather like that, I think, yes.

Richard Gordon: I take Lord Powell's question as really a polite but frontal attack on each of our positions. My response to that would be, first of all my credentials for radical reform

are perhaps encapsulated in the book I have written, which is an attempt in principle to capture democratic legitimacy. You would have citizens' councils on it; you would have automatic referendums and so on. But it seems to me that, although I agree that that is more in tune with the zeitgeist, it is simply impracticable at this moment.

What one should be looking for is a process for recognising that there are serious deficiencies in our constitutional system and how best they may be resolved. All the soundings I got from the book when I wrote it were, "Fine, very interesting, but nobody is going to adopt a written constitution". If that is not correct, I resile all our positions, very happy to go for it, but if it is correct, and I think it probably is, then the second-tier model that I am suggesting seems to me to catch parliamentary sovereignty and accept it, because I attack it in the book as a fiction. It also accepts the incremental model of our constitution and organic development and what do we have other than the weapon of shame or total constitutional change? I do not see what it is.

Q40 Lord Powell of Bayswater: Might I just say I would not dream of attacking your credentials, which are infinitely greater than my own. It was just the conclusions you were reaching.

Richard Gordon: Absolutely.

Professor Sir John Baker: If I may come back on the question again, it seems to me that it is a matter of trying to write down in some way what are accepted norms. Of course, putting it in writing does not solve problems, there are still going to be questions of interpretation, but most so-called democratic countries in the world have written constitutions. They are not ruled by popular democratic bodies; they are ruled by judges, in fact. I think our system as we had it was better than that.

Q41 Lord Rodgers of Quarry Bank: I was going to ask a question further about the House of Lords. We have been through this now and we do not want to go in too deeply, but when we do make assumptions about reform of the Lords, I see here—forgive me, but I refer to your paper, your article—again "increasingly unfit for purpose", referring to the House of Lords. What is the measure of it being increasingly unfit? I mention that again because we are a more representative House; you can say that without any question. We have far more extended scrutiny. What is your measure again of increasingly unfit?

Richard Gordon: It is not my position, incidentally. My book sets out very clearly the role I think the House of Lords should have, and I am much more inclined to an appointed and an elected House. I compromised at 70/30 in favour of elected simply because it seemed to me that that was where the tide was going, but I do not believe that we should have an elected House, if you ask my personal position.

You could step back from this and you could look at the preamble to the Parliament Act, which talks about the need to make the House of Lords more representative and to radically reform it. A hundred years have gone by and you could say, "Well, what has actually happened?" You could ask, "If nothing has happened or very little has happened, why hasn't it?"

Lord Rodgers of Quarry Bank: A great deal has, a great deal. There has been.

Richard Gordon: Well, exactly. In fact, I think the committee system, for example, has developed enormously. We have seen what has happened, of course, in relation to hereditary peers. I fear the dangers of what might happen in the near future more than I fear the current system. Notwithstanding all that, I do not think that however good the committee system is—and it is good, with some problems because there are the overlaps and so on—it is sufficient sanction, for want of a better word, in the process of legislative

reform that we are talking about, constitutional reform. It is good but it does not cement reform effectively or as effectively as it might.

Q42 Lord Goldsmith: I was going to ask a slightly different question if I may, if that is convenient. We have had some discussion about consensus and I wanted—this perhaps is particularly addressed to Sir John—to look backwards at how consensus has been achieved on difficult constitutional problems in the past, whether that has involved a consultation of opposition parties, of minority groups and so forth, and whether there are examples you can draw on from legal history of great constitutional reform that have involved consensus that has worked.

Professor Sir John Baker: I do not think we have, really. It has not been built into the system in the past. Of course, there have been measures like the Human Rights Act, which had a wide measure of consensus. In terms of the concept of human rights, there is, of course, a great debate now about who should decide on them, but there was broad agreement on that and it had been talked about quite a lot in advance. Whereas if you compare it with the Supreme Court, for instance, which was presented as a fait accompli and there was no public discussion, even though there was great disagreement within the Law Lords, as I understand it; a completely different approach.

Q43 Lord Goldsmith: I was trying to go back a bit before that.

Professor Sir John Baker: A bit before, yes. Well, I do not think there ever was an attempt to achieve consensus under our system. That is a defect of an unwritten constitution.

The Chairman: Did you want to pursue that, Lord Goldsmith?

Lord Goldsmith: I cannot.

Q44 Lord Hart of Chilton: I just have one question. We have been talking a little this morning about what form of toolkit we could adopt to make things better and there have been various views put forward: yes, it would be a good idea; no, it is swimming against the tide. I would like to go into the question of a tide moving in favour of greater judicial intervention, and I would like you both to comment on that, because if there is greater judicial intervention then, of course, that could lead to a big constitutional crisis in itself.

Richard Gordon: I foresee that, I am afraid, as something that is quite possible. Admittedly, a lot of the move to the Supreme Court was cosmetic and so far the Supreme Court has kept very much within its remit. It has not really changed. There is a very interesting book called *Constitutional Futures Revisited*, which is edited by Robert Hazell, and there is an essay in that book on the future of the Supreme Court. There are four possible scenarios, one of them being the Supreme Court discovering its Marbury v Madison moment and striking down an Act of Parliament, declaring it to be unconstitutional. I think it was Sir Stephen Sedley who said if that happened you would not know who would blink first, but the point being that if that happened it would be wholly unprecedented.

There is an unresolved question at the heart of our constitutional arrangements, which is did the judges create sovereignty and, if so, can they take it away? Or, as I think, was sovereignty a political reality that it is not a construct of the common law but is a fact, a political fact? If the judges attempted to legalise its origins and to change it, would that be to create revolution from a judicial construct of their own? There are real unresolved tensions here, and that is why in this suggestion I have for a scrutiny body you would be going over those questions. You would be clarifying it long before it happened. I do at the moment think there is a real possibility; it will be incremental but if it happens it will be a very major shift.

Professor Sir John Baker: Yes, sovereignty is a fact, clearly. I agree with Richard Gordon, but the Supreme Court and its predecessors have indicated a willingness to begin to change

the conventions that the judges apply in relation to Parliament. It could be said that the recognition of Parliament as being sovereign is a convention, or you could say it is an observance of fact. I think it is a mixture of the two, really, but if the judges are already beginning to think that they might change the convention that is a warning sign that Parliament and the Government ought to take notice of. It would be the least satisfactory way of dealing with the issue because the judges then would be acting without any written guidance and have no written constitution. They will be having to make up the constitution as they go along in striking down Acts of Parliament. I am sure they would only do it to begin with in an extreme case, which one does not like to try and contemplate, but it might spread from then onwards. It would be far better to reform the system in such a way that they did not have to do that.

Richard Gordon: I should just mention, by the way, interestingly that I was told, again coming back to New Zealand, that they put into the judicial oath a commitment to upholding sovereignty, which is a very interesting legislative device. It may be worth considering.

Q45 Lord Norton of Louth: We are coming almost full circle in terms of definition, which is obviously usually the biggest problem. It is really, Sir John, your point about trying to achieve a consensus, and consensus and, say, a supra-majority are not necessarily the same thing. Coming back to attempts to reach agreement on previous constitutional measures, you have cross-party talks that have then usually broken down. I am just wondering what you were thinking of in terms of the mechanisms by which one would seek to achieve a consensus, not necessarily just an majority, say, in Parliament but presumably consultation, bringing in other groups, in order to reach agreement. I presume that is what you were meaning by consensus in order to move forward?

Professor Sir John Baker: Yes, there are different kinds of constitutional change, of course, and there are some that have simply been exercises of political powers. The Parliament Act is an example, the first one: the use of a majority to achieve a result that could have been achieved in other ways by flooding the House of Lords with peers or whatever. Others, which are the better ones, are those that are a result of discussion and everyone coming to agree. But I have already said that I am not altogether sure how one achieves that in a world in which the press show a complete lack of interest in constitutional matters. I am afraid as long as that is the case we are not going to get the public working these things out from scratch. They have to be guided in some way, but the guidance should not come from a Government that has thought up the policy behind closed doors and then announces it as Government policy so that if you ask a question, "Sorry, would it be better if we did it that way?" you are seen as attacking the Government.

Q46 Lord Norton of Louth: It should be a more open process?

Professor Sir John Baker: A more open process, yes.

Q47 The Chairman: Not necessarily a more informed one, from what you are saying?

Professor Sir John Baker: More informed, yes.

The Chairman: That is difficult to achieve. Does any other member of the Committee have a point that they wish to make? Well, we are enormously grateful to both of you. It has been very, very interesting indeed. As we said at the beginning, we would be very grateful for all the written documents that you were speaking about when you gave us your good lists and so forth. Nicola and Emily will pursue that with you, if we may. We are very grateful indeed for your time. This has been very valuable and we obviously will return to many of these subjects when we come to write our report. Thank you both very much indeed.